

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
SPECIAL MEETING
MINUTES – AUGUST 31, 2021

A special meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 31, 2021. Mr. Zamparelli called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Anthony Zamparelli, Chair
 Pamela VanBlunk, Vice Chair
 Matthew Connors, Secretary
 James Dougherty, Member
 Peter Solor, Member
 Michael Tritt, Alternate Member

Others: James Majewski, Director Planning & Zoning
 Barbara Kirk, Township Solicitor
 Adam Flager, Zoning Hearing Board Solicitor
 Frederic K. Weiss, Supervisor Liaison

APPEAL #21-1906 – GABRIEL DECK & ALEXANDRA CALUKOVIC-DECK
Tax Parcel #20-039-004-001 & #20-039-004-002
INTERSECTION OF WOODLAND DRIVE & WEST SCHOOL LANE, YARDLEY, PA 19067
(Continued from 8/17/21)

Mr. John Fenningham, attorney, called Mr. Scott MacDonald who was sworn in. Mr. Fenningham stated he is the attorney for the MacDonalds who are Party Status Objectors to this Application.

Mr. Fenningham stated Mr. Victor Fiorvanti tested positive for COVID, and he is quarantining, and he does have symptoms so everyone has worked together to postpone his cross-examination and further Testimony until late September.

Mr. MacDonald stated he lives at 829 Edgewood Road with his wife and three children. Mr. Fenningham asked Mr. MacDonald how long he has lived at this address which adjoins the Bausinger property including the flag lot parcel, and Mr. MacDonald stated they have lives thee for approximately four years. Mr. Fenningham asked Mr. MacDonald if prior to living at this location has

he lived in the Township at other locations; and Mr. MacDonald stated he previously lived at 163 Crestview Way and 1265 Thames Crescent. He had lived in the Township for about thirty years.

Mr. Fenningham asked Mr. MacDonald about his education. Mr. MacDonald stated he attended Duke University and graduated with a Bachelor's Degree in geology in 1977. He stated he also attended Rice University and obtained a Master's Degree in geology in 1984. He stated as part of professional development he has attended numerous short courses, conferences, seminars, and webinars in areas that pertained to general work areas that he has been involved with. Mr. Fenningham asked if Mr. MacDonald if he has been certified in any field of specialization, and Mr. MacDonald stated he has been certified by the State of Pennsylvania as a professional geologist for many years. He stated he is currently employed by Ramboll, which is a global engineering and environmental consultant. He stated he advises private and public sector clients, law firms, private equity, and other financial sector clients for over thirty years in a range of environmental-related matters. He stated he is familiar with the kinds of discussions that are being held with regard to this Application as these issues are not "new to him."

Mr. Fenningham asked Mr. MacDonald if in his employment activities and training does he deal with surface water, remediations, and geological issues; and Mr. MacDonald stated he does. Mr. Fenningham asked Mr. MacDonald if he deals with remediation of wetlands, etc.; and Mr. MacDonald stated he does. Mr. Fenningham asked Mr. MacDonald if he also deals with the cost, etc. of surface water controls and different submissions to Governmental regulatory bodies; and Mr. MacDonald stated he does.

Mr. Fenningham asked Mr. MacDonald if he has previously been qualified as an expert in administrative proceedings or litigation matters; and Mr. MacDonald stated has in at least thirty to forty different matters pertaining to the performance or non-performance of environmental matters, natural resource damages litigation, private party cost recovery, Federal Superfund matters, and other related matters. He stated he also worked extensively in the area of International arbitration, and has provided expert assistance on numerous matters, in Africa, Panama, Ecuador, Columbia, and other places. He reviewed a recent case where he served as a "third party neutral to an arbitral tribunal. He stated all of these matters involve effected media, which are soils, ground water, surface water, sediment, and work around those issues.

Mr. Fenningham asked Mr. MacDonald if he received and reviewed the original Application for Zoning relief filed by Mr. and Mrs. Deck.

Ms. Kirk asked Mr. Fenningham if he is offering Mr. MacDonald as an Expert Witness or as a Fact Witness; and Mr. Fenningham stated while he is being offered as a Fact Witness, he wanted the Board to have a sense of his special background. Mr. Fenningham stated if anyone wishes to ask Mr. MacDonald Expert opinion questions, they should feel free to do so.

Mr. MacDonald stated he did receive and review the original Application that was filed on behalf of the Decks. Mr. Fenningham asked him his reaction to that Application; and Mr. MacDonald stated despite concerns that had been raised previously with both the Bausingers and the Decks about property conditions and the effect of storm events on his property and those properties further downstream, he was surprised to see that the proposed development was entirely within the floodplain and wetland buffer areas. Mr. MacDonald stated he felt the initial Plans showed a lack of recognition and appreciation of the conditions existing at the Bausingers' property, the effects of surface water flow in the area, and the flooding associated with the creek.

Mr. Fenningham asked Mr. MacDonald if he is referring to the flag lot parcel or the Bausingers' own parcel when he indicated the Bausinger property; and Mr. MacDonald stated he was referring to the flag lot parcel.

Mr. MacDonald stated they did on different occasions invite both the Decks and the Bausingers to see their property; however, they did not accept those invitations, and as far as he knows, they have not directly observed conditions on his property.

Mr. Fenningham asked Mr. MacDonald if he spoke to anyone with the Township after reviewing the original Plans, and Mr. MacDonald stated he did. Mr. MacDonald stated as part of his own due diligence, he reached out to the Township originally asking to speak with Mr. Majewski; but he was not available. Mr. MacDonald stated he spoke with Mike Kirk at some length about this property, and they reviewed together information available on the Township's Website, FEMA maps, wetlands maps, and other available information that Mr. Kirk helped him navigate through. Mr. MacDonald stated Mr. Kirk expressed concerns about the property and believed it was not buildable in its current form. There was no access

at that time, and there still is not, and there was protected natural resources. Mr. MacDonald stated he is aware that others have talked directly with Mr. Majewski; but since he was not a party to those conversations, he does not want to misstate what may have been discussed.

Mr. Fenningham asked Mr. MacDonald if he came to learn after that time that the Decks withdrew their original Application and that they submitted a Revised Application, and Mr. MacDonald stated he did. Mr. Fenningham asked Mr. MacDonald his reaction to the Revised Application, which is the proposal before the Board. Mr. MacDonald stated that even though the proposed dwelling was moved, somewhat re-configured, and smaller in size, it still lies within the floodplain area. He added that he feels that if these parcels were to be developed, there would be additional contribution and exacerbation of those conditions effecting his property and others in the downstream area. Mr. Fenningham asked Mr. MacDonald if those are the reasons that he continues to oppose the Application before the Board, and Mr. MacDonald agreed those are the reasons combined with the views and opinions of Mr. Fiorvanti. Mr. Fenningham stated despite Mr. MacDonald's background, he retained Mr. Fiorvanti to assist him in the opposition to this Application, and Mr. MacDonald agreed.

Mr. Fenningham ask Mr. MacDonald if he was present at the meeting on August 3 when he asked questions of Mr. Geonnotti, and Mr. MacDonald agreed. Mr. Fenningham stated he specifically asked questions about Exhibit A-4, which is the Applicant's Zoning Plan, and Exhibit A-7, which is the ALTA Survey Plan. Mr. Fenningham stated Mr. Geonnotti testified that the Notes that were referred to that night, Note 32 on the Zoning Plan, and the Note on the ALTA Plan, were mistakes. Mr. Fenningham asked Mr. MacDonald if he believes that those Notes were mistakes.

Ms. Kirk Objected and asked Mr. Fenningham the basis for forming that opinion. Mr. Fenningham stated Mr. MacDonald heard the Testimony, and he explained his background and knowledge of these matters. Ms. Kirk stated he was not involved in the preparation of the Plan, and she does not know how he could offer Testimony as to what is on the Plan is a mistake or not. Mr. Fenningham stated Mr. MacDonald heard the Testimony and saw the Exhibits and he could form an opinion, adding a layman could form an opinion whether those Notes appear to be mistakes or provide substitive information.

Ms. Kirk stated she would renew her Objection as to Mr. MacDonald not having a basis to form that type of opinion. She added that it is up to the Board to determine whether the Testimony was credible versus what was written on the Plan. Mr. Fenningham stated he did not ask him whether Mr. Geonnotti's Testimony was credible, he asked him if in his judgment and his experience, does he think those Notes are mistakes. Mr. Fenningham stated he feels Mr. MacDonald can have a layman's opinion about that.

Mr. Murphy stated he joins in with Ms. Kirk's Objection.

Mr. Flager stated he does not understand how Mr. MacDonald would understand someone else's Notes in the preparation of someone else's Plan layman or otherwise. Mr. Fenningham agreed to move on.

Mr. Fenningham stated on August 3 Mr. Tritt raised the question as to the status of Mr. MacDonald's property and whether it was in the floodplain or not, and Mr. MacDonald stated he recalls that question that night.

Mr. Fenningham asked Mr. MacDonald to describe his situation with his house and its location adjoining the flag lot parcel. Mr. MacDonald stated when they acquired their property, they were aware that a creek was present. He stated he did some of his own diligence with respect to whatever he could find on the Internet and talked at length with the homeowners about the creek and its behavior over the last thirty years that they had lived there including had it flooded, had they had any problems with significant erosion as a result of storm events. He stated the answer was "no," and he did not have any reason not to believe that answer at that time. He stated he subsequently came to a "very different understanding" over the last four years that they have lived there with significant flooding as a result of fairly common storm events including significant property erosion on a routine basis. Mr. MacDonald stated this can be seen in the videos and pictures he will show.

Mr. MacDonald stated he was also familiar with the illustration of the one hundred year floodplain across his property and the designation of a special flood hazard area that runs through his property and also the flag lot property. He stated they "acquired what they acquired and now it is a bit of a mess, but they just try to deal with it."

Mr. Zamparelli asked Mr. MacDonald if he indicated that he bought the property four years ago, and Mr. MacDonald agreed. Mr. Zamparelli asked if he indicated that at the time that he was purchasing the property that he

canvassed the neighborhood if there were any problems with the stream or flooding and used his geology knowledge and “other facts,” and he still bought the property and now he has problems. Mr. MacDonald agreed.

Mr. Tritt stated since his prior question prompted this, he would like to ask questions. Mr. Tritt stated he is a civil engineer and he lives on Deerpath Road, and his property backs up to the stream as well. Mr. Tritt stated he is downstream from where Mr. MacDonald is. Mr. Tritt stated he has done some research on Google Earth, and he saw that Mr. MacDonald have over 700’ of stream frontage. Mr. MacDonald stated that “sounds about right.” Mr. Tritt stated as a geologist, Mr. MacDonald understands the issues about water quality degradation and testified to these issues. He asked Mr. MacDonald what is the best way to prevent soil erosion and the degradation of the water quality.

Mr. Fenningham stated Mr. Tritt is asking an “expert opinion.” Mr. Tritt stated that is how he presented himself. Mr. Fenningham stated he had argued about asking his opinion about the Notes.

Mr. Tritt stated Mr. MacDonald is concerned about taking vegetation out and developing the lot, but Mr. MacDonald has 700’ of stream frontage that has no vegetation on it at all; and in fact, he mows right up to the edge of the stream. Mr. Tritt stated that does nothing but increase the issues downstream for people like himself and people at Makefield Lakes. Mr. Tritt asked Mr. MacDonald if he has considered any kind of vegetation program. Mr. Tritt stated when he himself put a fence in at the back of his property, he allowed a 40’ buffer and left the vegetation go back to a natural state just for this very reason, but Mr. MacDonald is mowing up to the edge but states that he is concerned about erosion and water quality.

Mr. Fenningham stated the focus is not on what is the condition of Mr. MacDonald’s property, and the focus is whether development of an upstream property is going to exacerbate the conditions. Mr. Tritt stated while he knows that, he wants to know what Mr. MacDonald is going to do to help him and other people downstream when he has 700’ of grass going up against the stream. Mr. Fenningham stated what he is going to do is oppose this Application so that there is not additional flow. Mr. Tritt stated Mr. MacDonald is already causing a problem although he understands he did not create the problem. Mr. Zamparelli stated he feels that Mr. Tritt has a point.

Mr. Fenningham stated the focus is Mr. MacDonald's opposition to further development upstream. Mr. Tritt stated Mr. MacDonald has a pool and a house in the flood zone. Mr. Tritt stated while Mr. MacDonald did not create the problem, he is part of the problem for everyone downstream. Mr. MacDonald stated he would disagree, and he does not feel he is part of the problem. He stated they "inherited" a property that turned out that the stream behavior "was not as advertised." He stated they "inherited the house and it was more of a small stream." He stated this stream cannot handle any more water, and the stream has eroded a significant portion of his frontage; and it is not his responsibility fully to maintain the stream. Mr. Tritt stated Mr. MacDonald's property line goes to the center line of the stream as does his own so he is responsible for his side of the stream. Mr. MacDonald stated that is not what is at issue tonight, and what is at issue is that the conditions at the Bausinger property do not suggest that a dwelling should be built there. He stated it is 100% protected land, the house sits in the floodplain, there is a wetlands buffer, and there are wetlands. He stated that is what is at issue. He stated even upstream areas are being eroded as are his property, Peter Dodds' property and others downstream.

Mr. Tritt stated his was as well until he let the vegetation grow back. Mr. MacDonald stated he has had a lot of vegetation grow back, but he does not feel that is the point here. Mr. MacDonald stated Silver Lake is experiencing significant sedimentation, and that Association is responsible for sediment at the bottom of the Lakes, so it is a "big, big problem." Mr. Tritt stated he would "take Mr. MacDonald more seriously if he allowed vegetation to grow up.

Ms. VanBlunk stated Mr. MacDonald is not here for a Variance.

Mr. Fenningham stated the videos will show that if vegetation had been planted, it would not be there anymore. Mr. Fenningham asked Mr. MacDonald if he videotape the conditions of the creek on his property over the last four years, and Mr. MacDonald stated he did. Mr. Fenningham asked if the videos were taken during 2018, 2019, 2020, and 2021, and Mr. MacDonald agreed. Mr. Fenningham stated the videos will start with 2018 which was marked as Exhibit MAC-36, 2019 will be Exhibit MAC-37, 2020 will be Exhibit MAC-38, and 2021 will be MAC-39.

An attempt was made to show Exhibit MAC-36 taken in 2018; however, it was not able to be viewed right side up.

Mr. Fenningham asked Mr. MacDonald if he took the videos of his property; and Mr. MacDonald stated he took them or his daughter or wife may have taken them, but they were all present in each storm event. Mr. Fenningham asked if these videos are presented to show the Board the condition of the property during a storm event, and Mr. MacDonald agreed.

A video was shown to the Board. Mr. Fenningham stated the videos were in different storm event in each of the four years current and going back three years. Mr. MacDonald was asked to identify the video being shown adding that if it is the second video he assumes it would be 2019; however, Mr. MacDonald stated he was not certain in which order they were showing the video. He stated he was not able to put a date stamp on the videos although he could on the pictures.

Mr. MacDonald stated what is being seen is a portion of the stream that runs directly across his property. Mr. Fenningham asked what is the black material in the foreground, and Mr. MacDonald stated it is his driveway.

Mr. Fenningham stated the dates of the videos are August 14, 2018, August 7, 2019, August 4, 2020, and July 12, 2021.

Mr. MacDonald stated they were trying to provide a representative sampling across the four years. He stated the video is one of them, and it can be seen that it was a fairly normal rainfall event; and the water is significantly over the original banks of the creek flowing across his property, some portion of Peter Dodds' property, and then under Edgewood Road toward Mr. Tritt's house.

Mr. Fenningham stated the left portion of the video screen is toward the flag lot parcel and the right is going downstream, and Mr. MacDonald agreed.

Another video was shown, and Mr. MacDonald stated it can be seen that there is significant water coming from upstream of his property, and it is almost to the base level of the bridge. He noted on the video, the shot is back towards the flag lot property, going across his property, and it is going in multiple directions before it re-joins. He stated he owns the property across the bridge, and when it rains it is not usable. He stated the video continues in the direction towards Edgewood Road. He stated what can be seen in green is not the bank of the property, and it is a flooding stage event; and it can be seen that it continues to expand as it goes down the edge of his property.

Mr. MacDonald stated on multiple occasions the water has reached the level of his driveway which was shown on the video.

Mr. Fenningham asked if the stream is going over vegetation as viewed on the video, and Mr. MacDonald stated it is. The view shown on the video was feet away from the macadam driveway. Mr. MacDonald stated the water is cutting behind mature trees, and eventually that will become an island. Mr. MacDonald stated the water is over existing vegetation and cutting behind trees. It was noted by Mr. Fenningham that Mr. MacDonald's voice can be heard in the video, and Mr. MacDonald stated you can also hear the voice of one of his daughters.

Another video was shown. Mr. MacDonald noted his wife speaking on the video. He stated the water force is so strong that there is a channel where it runs uphill because there is nowhere for it to go. He noted the bridge in the video and stated it "will be gone anytime soon." He stated the water is significantly over banks and over vegetation. He stated this was a normal rainfall event. Mr. MacDonald's driveway in the bottom right portion was noted. Mr. MacDonald stated this is "not a creek from a rainfall event, and it is a flowing river in his view." He stated it is significant.

Mr. Fenningham asked Mr. McDonald if the water in comparison is closer to his driveway than it was in the prior video; and Mr. MacDonald stated it can be seen on the edge in the video, but it has been completely over the driveway on one or two occasions. Mr. MacDonald added that it can be seen that this is not a creek, and it is a very significant volume of water that is every time it rains.

Ms. Kirk asked when this last video was taken, and Mr. Fenningham stated they will provide that information at the next meeting as they do not have the dates on the videos. Mr. Majewski stated the videos shown were in order of the dates. He stated the first one was the one that was rotated 90 degrees was the video of 8/14/2018. He stated the second video shown which was right side up was 8/7/2019, the third video was 8/4/2020, and the last video was 7/12/21.

Mr. MacDonald asked if they were able to rotate the 2018 video 90 degrees back; and while Mr. Majewski tried, he was not able to do so.

Mr. Fenningham Moved for the admission of the videos into the Record.

Mr. Connors asked if they have what the storm events were for each of those storms including the amount of rainfall, and Mr. Fenningham stated he could present that data at the next Hearing. Mr. MacDonald stated those were all individual storm events – one day rainfall – and they were not multi-day rainfall events. He stated on the July 12, 2021 date was described as a 100 year flood storm event; but that was in Bensalem, and not in Lower Makefield Township or Yardley where it was reported one to two inches.

Mr. MacDonald stated as it could be seen the problem does not start at his property, and it starts upstream of his property. He stated he hopes this gives a sense and helps understand their concern in addition to the actual property conditions of the flag lot.

Mr. Zamparelli stated he would have liked some more information on the storm events themselves, although the pictures are clear and can be entered into Evidence.

Mr. Dougherty stated while Mr. MacDonald indicated that this was what it looked like every time it rains, he asked Mr. MacDonald if the videos were indicative of a heavy rain event, a moderate rain event, or a light rain event. Mr. MacDonald stated rain events depend on duration, and it could rain heavy for an hour or two and produce something like what was seen or it could be something but is more moderate but extends throughout the day. He stated he feels they were what he would call “routine rain events or maybe you would want to call them moderate in general, maybe heavy.”

Mr. Solor stated what was requested, which may be resolved by the next Hearing, would be to have the rainfall data which would tell whether it was a two-year storm or a three-year storm. Mr. Fenningham stated they will present that data.

Mr. Fenningham stated they also submitted thirty-five photographs, and he would Mr. MacDonald if he took the photographs and if he did anything to alter anything that was in the viewscape; and then have them accepted into the Record subject to Mr. Murphy’s right to cross-examine.

Ms. Kirk stated the photographs were designated MAC 1 through MAC 35, and she asked what they started with. Mr. Fenningham stated the photos were date stamped, and MAC 001 is dated March 11, 2021, and MAC 001 through MAC 007 are the same date – March 11, 2021. Mr. Fenningham stated the photos are date stamped at the bottom, but he was not able to do that for the videos.

Mr. Murphy asked if the photographs depict anything other than what the four videos taken as a whole showed. Mr. Fenningham stated Mr. Murphy has seen the videos. Mr. Murphy stated he does not know that there is any value in them if they are just going to be further representations of the four videos.

Mr. Fenningham asked if Mr. Murphy has an Objection to the being entered, and Mr. Murphy stated he does not. Mr. Murphy asked if Mr. MacDonald took the videos, and Mr. Fenningham stated he did. Mr. Fenningham asked Mr. MacDonald if he did anything to alter them. Mr. Murphy stated if Mr. MacDonald took the photos and they are date stamped, he would not Object to them being entered.

Mr. Fenningham Moved into the Record MAC 1 through MAC 35.

Mr. Fenningham asked Mr. MacDonald if there was any particular photograph that he wanted to empathize. A photo was shown, and Ms. VanBlunk asked if that picture shows what it looks like every day minus a rain event. She stated she feels a little explanation is necessary.

Mr. MacDonald stated the pictures were primarily to illustrate the erosional effects of the creek behavior subsequent to rainfall events. He stated those effects are significant. He noted on one photograph a carve-out of their property can be seen. He stated the stream was never this size previously. Mr. Fenningham stated this photo was taken March of 2021. Mr. MacDonald agreed and stated this is erosion of their property from the storm events. He showed a photo of the front of his house and where there has been “material erosion” of his property. Mr. Fenningham stated this photo is MAC 5. MAC 4 was shown looking toward the flag lot. Mr. MacDonald stated there are now “various islands in the creek now.” He stated the photo shows the original banks that have since “sloughed into the creek.” He stated the water that was shown in the videos covers all of this entirely.

Mr. MacDonald showed a photo where there are tree trunks and tree branches that the flow brings down across his property, and they are constantly having to secure contractors to clean things up. He showed a photo where it can be seen that there are two trees where the stream has cut behind them, and it is slowly cutting away at the banks.

Mr. Fenningham noted MAC 23 which was taken July, 2021, and it shows that the vegetation that is there is overrun by the stream flow. He stated this is after a storm event, and the vegetation has been overrun.

Mr. MacDonald noted photo MAC 8 which shows debris that was dropped out of the flow when the stream began to recede.

The photos were Entered into the Record.

Mr. MacDonald stated this was never about the Bausingers' right to sell their property or the Decks' right to explore development opportunities if they were to become the actual owner of Record. He stated this is about the condition of the property adjacent to his yard. He added it was clear on either Exhibit 4 or 7 that there was a narrative that indicated that there was no building envelope that existed on the site. Mr. MacDonald stated that was not one of his maps, rather it was one of Mr. Geonnotti's maps yet these lots were put up as buildable lots. He stated he feels greater diligence or analysis should have been conducted by the Bausingers and their advisors early on. He stated he has been talking to the Bausingers about this property, and he had expressed interest in the property, not for development, but for preserving it as open space. He stated he did not believe it was a buildable lot, and he was not going to enter into an Agreement with them under any other scenario. He stated it would have been clear that the buildable lot designation was questionable at best based upon what was known at that time. He stated he feels it would have been helpful to this process if it had started out "with a sense that this had a representation that was not quite right." Mr. MacDonald stated he feels it "offered certain complexities to this that might not have been needed.

Mr. MacDonald stated as a resident of Lower Makefield Township, he believes that the Zoning Board is here to protect people – the kinds of decisions that they make – and that the Township Ordinances were developed in a way to stop this type of development, and to enforce the protection of natural resources and keep what we have. He stated this is why they expressed to the Bausingers their interest in the property but for preservation of open space.

Mr. Zamparelli asked Mr. MacDonald if he actually asked them to set up a meeting to discuss buying the property, and they said "no." Mr. MacDonald stated they have had multiple conversations with them. Mr. Zamparelli asked if he indicated to them that they actually wanted to buy the property. Mr. MacDonald stated they expressed their concern about the characteristics of the property and protection of the land; but their interest was not in pursuing development, and their interest was in pursuing open space, and they did not believe that it was a buildable lot. Mr. Zamparelli asked if Mr. MacDonald offered to buy the property, and Mr. MacDonald stated

they did not because he was not going to pay the price they were asking for it under a scenario that it was a buildable lot. Mr. Connors stated what the Chair is asking is if he ever put an offer in based on whatever value Mr. MacDonald appropriated for that property, and Mr. MacDonald stated he did not. Mr. Connors asked Mr. MacDonald if he made an offer to purchase the property in “any way, shape, or form;” and Mr. MacDonald stated they did not.

Mr. MacDonald stated he feels the Zoning Board’s obligation is to protect people like him and other people downstream; and he would argue that would also include the Decks from building on this property on protected lands and with likely dangerous property conditions under various storm events as Mr. Fiorvanti discussed at the last Hearing.

Mr. MacDonald stated the Plan in March illustrated a dwelling within the floodplain and wetlands buffer zone. He stated he did speak directly with the Decks about this as to whether they felt these were reasonable Variances to ask for. Mr. MacDonald stated the Ordinances are there for a purpose. He stated a Revised Plan was submitted in June, and yet the development remains in the floodplain area as illustrated by Mr. Fiorvanti at the last meeting. Mr. MacDonald stated a lot of time and money has been spent on this, and at some point this will come to an end.

Mr. MacDonald stated he understands that there is a “built-in predisposition by Zoning Boards to grant reasonable accommodations to Applicants.” He stated he understands that is not an uncommon view, but he would ask if similar accommodations also not be given to any Party who opposes the development. He stated he feels the Board would agree that “unbiased examination of the facts and the circumstances would be expected by any Township resident – not just him.” He stated he feels that reasonable accommodation has been granted to this applicant by way of receiving months of time to modify an original Plan that still does not meet the “test of buildability or which offer adequate mitigation measures to stop further impacts to his property, the creek, and others in downstream areas.” Mr. MacDonald stated this is protected land, and he sees no reasonable basis to grant relief, and it seems contrary to the intent of the Ordinance.

Mr. MacDonald stated not once have the Decks or the Bausingers expressed any interest in his concerns or any willingness to “truly engage in them.” He stated he feels they have actually “shown some level of disregard for the protections afforded to property conditions at the Bausinger’s lot.” Mr. MacDonald stated the conditions in the creek are “so egregious” as can be seen from the videos,

and it is clear that this creek cannot handle any more water. He stated it is also clear that the vegetation in place, which is significant in some places, does very little to stop the flow and the erosional effects of this creek. He stated as described by Mr. Fiorvanti, the mitigation measures offered by the Decks are “overstated and wholly inadequate.”

Mr. MacDonald stated in his view there is no hardship for the Bausingers or the Applicant although they may believe that there is. Mr. MacDonald stated he feels that the hardship is his as illustrated by the videos and the pictures and the engineering analysis performed by Mr. Fiorvanti. Mr. MacDonald asked how can Variances be granted to Ordinance designed to protect the environment and sensitive eco-systems knowing that the same protected conditions downstream will continue to severely degrade. Mr. MacDonald stated his property has been harmed by this creek and the surface water flow that it receives from both properties and various storm outfalls as have downstream residents and Silver Lake. He stated their property values have been harmed and their ability to sell their house is significantly diminished because of the circumstances that they face. He asked that the Board consider that in this context that they have suffered significant hardship because of the conditions that exist in the creek. He stated the suggestion of additional development given the behavior of the creek seems like is something “that does not fit,” whether it is the lot next door to him or some other property in the future. Mr. MacDonald stated for these reasons he asks that the Zoning Board deny the Zoning relief requested by the Decks.

Ms. Kirk stated Mr. MacDonald purchased his property in 2017, and Mr. MacDonald agreed. Mr. Zamparelli stated he indicated that he “inherited it.” Mr. MacDonald stated they bought the property in November, of 2016; but they did not move in until June of 2017. Ms. Kirk stated he purchased the property and did not inherit it from someone, and Mr. MacDonald stated they purchased it. Ms. Kirk stated at the time of the purchase, the stream existed across his property, and Mr. MacDonald agreed.

Ms. Kirk asked Mr. MacDonald to explain why there are videos of the streambed flow from 2018, 2019, and 2020 when the Application was not filed until March of 2021. Mr. MacDonald stated they have more than just these four videos. He stated initially they were extremely surprised by the evolving conditions in the stream from what the seller of their house and “other folks had told them about how the stream behaves.” He stated they were taking pictures to document what they were seeing and what kinds of issues may exist in the

future or “may exist with the seller and their representation as to water conditions on this property.” Ms. Kirk asked Mr. MacDonald if those videos were taken in anticipation that he might have sued the seller for failure to accurately disclose the stream conditions; and Mr. MacDonald stated he did not say that, and he added that he stated that they took them because it was important to document a “sort of contrary representation of the stream however he might use it.” He stated this problem progressively got worse, and their concern about the stream conditions escalated with time. Ms. Kirk asked if, once he learned about the worsening condition of the stream, he considered coming to the Township and put in additional plantings along the stream to prevent the erosion of the streambeds. Mr. MacDonald stated he did reach out to the Township early on, and the Township engineer, Mr. Pockl, came out to the house to look, and his response was “this seems like a you problem.” Ms. Kirk stated Mr. MacDonald was reaching out to the Township for the Township to solve the problem, and Mr. MacDonald stated he is not “offering any view toward who should solve the problem.” He stated the view he is offering is that the significant conditions of the creek and the context of additional development along that creek. He stated “here we have that issue in coordination with the fact that the Bausingers’ property does not provide a platform for building such a dwelling as we have been discussing.” He stated it is protected land, sits in a floodplain and wetland buffers and wetland; and it is contrary to the Township Ordinances with respect to protection of the environment. He stated they were “not scheming or trying to do anything,” and they were trying to “watch over time.”

Ms. Kirk asked Mr. MacDonald if he personally tried to strategize to put additional vegetation plantings along the portion of the stream on his property to help prevent some of the overflow. Mr. Fenningham stated at issue is the flow coming from the Applicant’s property; and Ms. Kirk’s line of questioning is to say what can be done for the Objector’s property, and he does not feel that is at issue here. Ms. Kirk stated Mr. Fenningham’s argument is that the development cannot occur on the property upstream because that building will worsen the condition on Mr. MacDonald’s property; and Mr. MacDonald argued that over the course of the last four years, the streambed has eroded even more. Ms. Kirk stated based on what she has seen, she cannot tell if that is just a severe storm event or if it happens all of the time; and she is trying to understand if it is worsening on his property, what measures did he take to try to mitigate the damage.

Mr. Fenningham asked Ms. Kirk if she is challenging his objection and opposition based upon what he is doing for his own property to remediate. Ms. Kirk stated she wants to understand his position. Mr. Fenningham stated he has stated that for all the reasons that Mr. Fiorvanti testified and the fact that Exhibit A-4 says that there is no building envelope, that further development upstream will cause further re-direction and diversion of the water within the floodplain; and that the remedial measures proposed will not be effective, and that the condition that can be seen now will be exacerbated by that additional flow. Ms. Kirk stated Mr. Fenningham's client's position is that he is not only opposing this Application, but he is taking the strong position that there should be no development of any nature whatsoever on that property; and he just testified that there should not be any development on that property. She stated she is trying to understand how Mr. MacDonald is reaching that conclusion that a lot in a Residential Zoning District cannot be built at any time.

Mr. Fenningham stated he feels the answer is evidenced in Exhibit A-4, which is that due to the Natural Resource Ordinance protections, and the vegetation existing on the proposed flag pole driveway that would be eradicated, and due to the "rain garden not being saturated or under water," that there should not be any house located where it is proposed to be located on the flag lot parcel.

Ms. Kirk stated that is not what Mr. MacDonald's Testimony said. Mr. Fenningham stated he does not understand why Ms. Kirk is challenging him. He added that what he "really said was that his desire was to have that lot preserved as open space," and he feels that Ms. Kirk is turning that into him saying nothing should be built on that property. Mr. Fenningham stated Mr. MacDonald is saying that what is proposed should not be built on that property. Ms. Kirk stated that is not what Mr. MacDonald said, and he had stated that as he understands it, this Ordinance was designed to stop development on that property. Mr. Fenningham stated the Applicant acknowledges that there is no building envelope based on the application of the Zoning Ordinance provisions. Mr. Fenningham stated the Zoning Ordinance also requires consideration of impact on adjoining downstream properties, and it also requires the Board to assess whether there will be excess run-off onto adjoining properties. He added that as Mr. MacDonald stated, the Ordinance encompasses not just the Applicant but surrounding neighbors and property owners. He stated he feels the logic of the opposition is that if these conditions exist now, and you "take the Applicant for the presentation it is making that there is no building envelope," there should not be anything built as proposed on the lot because it will exacerbate the conditions.

Ms. Kirk stated Mr. Fenningham just clarified something different from what Mr. MacDonald stated, and she was trying to understand the scope of the opposition. She stated Mr. MacDonald testified that he understood the Ordinance was designed to stop development, and she took that to be that he was opposing any type of development on the lot. Mr. Fenningham stated he “is happy to have clarified that.”

Mr. Fenningham stated at issue is the proposed Application and the proposed construction of a particular structure within what Mr. Fiorvanti testified to and depicted in his Exhibits in the floodplain area itself – not in the buffer – but in the floodplain area. Mr. Fenningham stated the opposition is based upon those facts, the expert opinion by Mr. Fiorvanti, and also the Applicant’s own Plans. He stated he understands that they are asking for Variances, but the point is are the Variances reasonable, and is there a hardship established.

Mr. Zamparelli stated the property has a hardship of its own. Mr. Fenningham stated the hardship is created by the application of the Zoning Ordinance requirements. He stated when you apply those, there is no envelope. Mr. Murphy stated Mr. Fenningham is making his case. Mr. Zamparelli stated that is the hardship. Mr. Fenningham stated what Mr. Fiorvanti brought out is that it is not the Ordinance, it is the existence of natural resources that the Ordinance is designed to protect. Mr. Fenningham stated it is not the Ordinance that is saying that they cannot do something, it is the condition of the property as it exists. He added “nothing could be clearer than the flag pole property that is shown in the photos in Mr. Fiorvanti’s Exhibit that shows all of the vegetation that is there now which they say should not be eradicated as it creates a bowling alley of a macadam lane for the water to flow.”

Mr. Murphy stated he will focus his cross examination of Mr. MacDonald on the facts that he presented this evening. Mr. Murphy stated according to the Bucks County Board of Assessment Records, Mr. and Mrs. MacDonald purchased the property on November 14, 2016, and Mr. MacDonald agreed. Mr. Murphy stated he paid slightly less than \$670,000 for the property, and Mr. MacDonald agreed. Mr. Murphy stated based on the public records, the MacDonalds had a significant mortgage with Wells Fargo that was taken out in consideration of that purchase, and Mr. MacDonald agreed. Mr. Murphy asked at the time that they purchased the property and obtained the mortgage did Wells Fargo require them to have flood insurance, and Mr. MacDonald stated they did not. Mr. Murphy asked why they did not.

Mr. Fenningham Objected and asked the relevance since they are not arguing compensable harm. Mr. Murphy stated he will reach the point where they will talk about whether or not the property was in the floodplain or not, and the absence of flood insurance suggests that someone felt the property was not in the floodplain or else they would have required flood insurance. Mr. Fenningham asked which property they are talking about, and Mr. Zamparelli stated they are talking about Mr. MacDonald's property.

Mr. Fenningham stated that is not the property at issue. Mr. Murphy stated the issue of the location of the floodplain is critical and central to this case.

Mr. Murphy stated the fact that someone determined that the MacDonald property was not in the floodplain and thus did not require flood insurance is relevant to a subsequent argument.

Mr. Murphy stated Mr. MacDonald does not have flood insurance, and Mr. MacDonald stated he did not say that. He added that he does have flood insurance. Mr. Murphy stated Wells Fargo did not require him to purchase flood insurance, but he subsequently acquired flood insurance. Mr. MacDonald stated subsequent to buying the house, he secured flood insurance for his property from Selective Insurance.

Mr. Murphy stated this November, Mr. MacDonald will have owned the property for five years, and Mr. MacDonald agreed. Mr. Murphy asked Mr. MacDonald if he has in the intervening five years since he purchased the property made home improvements; and Mr. MacDonald stated he is not sure what the relevance of that question is, but he asked what Mr. Murphy feels are improvements. Mr. Murphy asked if he has replaced windows, the roof, carpets, and other types of home improvements that would further confirm his additional investment in the property behind the \$669,500 paid for the property. Mr. MacDonald stated they have improved the pool, painted the house in areas, and normal things that you "have to keep up with."

Exhibit A-18 was marked, and Mr. Murphy stated the first page shows the MacDonald home and its relation to the creek that Mr. MacDonald spoke about this evening; and Mr. MacDonald agreed. Mr. Murphy noted below the color image, it makes reference to a Google map of this year; and Mr. MacDonald agreed. Mr. Murphy asked Mr. MacDonald if he would agree that this photo fairly and accurately represents the condition of his property and the location of the house in relation to the stream, and Mr. MacDonald agreed.

Mr. MacDonald stated others this evening have indicated that it appears that the property area in front of the MacDonald home between the home and the stream is manicured, and it appears that the property has been mowed to the edge of the creek.

Mr. Fenningham Objected to the use of the word “manicured” as he was not sure what Mr. Murphy was implying. Mr. Murphy stated he was implying it was mowed. Mr. MacDonald stated he does mow the lawn, but they do not mow to the very edge. He stated they mow within a certain number of feet.

Mr. Murphy stated it would appear that the distance from the point of the driveway to the edge of the stream, represented to the two dots, is 29’ as shown on the first page of Exhibit A-18; and Mr. Fenningham agreed as it is shown on Exhibit A-18, page 1. Mr. Murphy asked Mr. MacDonald if he would agree that the distance between the front portion of the home and the creek is approximately 42’, but Mr. MacDonald stated he does not know the exact distance. Mr. MacDonald stated he sees a Google Earth image. Mr. Murphy stated that image is also reflected in a wider shot on Page 2 of Exhibit A-18. Mr. Murphy stated this shows the relationship of the MacDonald home to the creek, the bridge that was prominent in some of the videos that Mr. MacDonald showed this evening, and it shows the driveway that extends from the home parallel at some points to the creek and out to Edgewood Road; and Mr. MacDonald agreed.

Mr. Murphy asked if the property have any stormwater management facilities on it when he purchased the property in November, 2016. Mr. MacDonald asked Mr. Murphy how he is defining “stormwater management;” and Mr. Murphy stated he is asking if it had any rain gardens, underground ballasts, rain barrels, or any other type of mitigation measures to manage stormwater; and Mr. MacDonald stated it did not to his knowledge. Mr. Murphy stated he understands that Mr. MacDonald in the intervening years since he has owned the property did not installed any such stormwater management facilities on the property, and Mr. MacDonald agreed.

Mr. Murphy stated Mr. Tritt and Ms. Kirk had inquired about the fact that he had not chosen “for whatever reason” to consider installing any riparian buffer along the nearly 600’ of linear frontage that his property maintains along Silver Creek.

Mr. Fenningham Objected to this line of questioning. He stated Mr. Murphy is raising an issue of failure to mitigate which he feels is irrelevant to the opposition to the Decks' Application. Mr. Murphy stated he is raising the question of "good faith" and whether or not Mr. MacDonald is here "with clean hands" arguing about something where he has taken no steps on his own to mitigate downstream property owners' damage which "he so severely criticized." Mr. Fenningham stated he assumes this opposition to any Objector is going to be consistent to "everybody should be stopping what is happening upstream," and is exactly the reason the MacDonalds are arguing about upstream development of their property. He stated he Objects to this line of questioning attacking the opposition for not doing something to avoid stormwater on their property. He added when you see the videos that the stormwater that flows overcomes vegetation and creates islands in the stream.

Mr. Murphy stated Mr. MacDonald testified tonight and the videos appear to suggest that in certain rain events, water reached, and further down the driveway toward Edgewood, seemed to overtop the driveway; and Mr. MacDonald agreed. Mr. Murphy asked Mr. MacDonald if water has ever reached his home, and Mr. MacDonald stated it has not. Mr. Murphy stated according to the Bucks County Board of Assessment Records, Mr. MacDonald has a full basement; and Mr. MacDonald stated they do have a basement. Mr. Murphy asked if he has had any basement flooding or first-floor flooding. Mr. MacDonald stated they did experience some water in the basement. He stated the house has a three-tiered sump pump system, and the reason is because it requires the back-up systems because of the rainfall, groundwater table, etc.

Mr. MacDonald stated the other pages on Exhibit A-18 show Exhibits that have been seen before which show the relationship of Mr. MacDonald's property identified as 20-34-72 in relation to his client's property. Mr. Murphy stated there is also an aerial that highlights the MacDonald home and also shows the pool in the far corner of the MacDonald property in relation to the house and the creek, and Mr. MacDonald agreed. Mr. Fenningham asked if the blue line is the dimension of the MacDonald property, and Mr. Murphy agreed. Mr. Fenningham stated beyond that at the bottom of the page are the trees and the coverage on the flag lot, and Mr. Murphy agreed. The Bausinger house was also noted.

Mr. Murphy noted in the Exhibit a colored Exhibit which was introduced by Mr. Fenningham, and Mr. MacDonald stated he believes it is one of the FEMA maps. Mr. MacDonald stated the purple is the creek, and the light blue is the designated Special Flood Zone Hazard Area that runs through the entirety of

his property and onto the Bausinger's flag lot. Mr. Murphy stated that would suggest that the entirety of Mr. MacDonald's home and pool is in the floodplain, and Mr. MacDonald stated that is what this suggests. Mr. Murphy stated they know that is inaccurate because this Plan was not based on a field survey but was based on a graphic representation as Mr. MacDonald's expert testified to.

Mr. Fenningham Objected adding that the Testimony related to the flag lot and not to the MacDonald property.

Mr. Murphy stated this was Mr. Fenningham's Exhibit, and he is just suggesting that the graphic representation that Mr. Fenningham suggested was inaccurate, is in fact inaccurate. Mr. Murphy stated the Applicant's was based on a survey and not a graphic representation, and yet the FEMA map suggests that Mr. MacDonald's house is in the floodplain. Mr. Fenningham asked if the focus should not be on the Deck's flag lot and not on the MacDonald property. Mr. Murphy stated he is focused on the accuracy of the Testimony that has been presented. Mr. Fenningham stated Mr. Murphy is "attacking credibility," and Mr. Murphy agreed. Mr. Murphy added "and motivation." Mr. Fenningham stated Mr. Murphy is arguing that his client has an ulterior motive, and Mr. Murphy agreed.

Ms. Kirk asked Mr. MacDonald if his house known as "Tween Brooks," or is he near that residence; and Mr. MacDonald stated that is Peter Dodds' residence, and they are an adjoining property owner to the Bausinger's lot.

Mr. MacDonald stated it is his understanding from the prior owner of his house that historically they have had flood insurance. He stated there are early maps that have dashed lines for the one hundred year flood plain. He added that it is not just a line, and it is a flood zone area. He stated he has not seen information to suggest that this map is that far off to depicting a flood zone area that extends onto the Bausinger's property.

Ms. VanBlunk asked Mr. MacDonald when his house was built, and Mr. MacDonald stated it was around 1970. Mr. Murphy stated it was 1972 according to the Board of Assessment Records.

Mr. Fenningham stated what has been shown as part of Exhibit A-18 shows the coloration of the FEMA areas. Mr. Fenningham noted a structure in the bottom right corner, and he asked if that is the Bausinger house; and Mr. MacDonald agreed.

Mr. Fenningham stated what is depicted shows that the area extends above the flag lot even into the Bausinger property, and Mr. Murphy agreed; however, he added that they have a survey to define exactly where the floodplain is or is not on the property which is the crux of the case. Mr. Fenningham stated they presented theirs as well.

Mr. Murphy asked Mr. MacDonald if he is a member of the Makefield Lakes Community Association, and Mr. MacDonald stated he is not.

Mr. Howard Hunter, 15 Orchard Way, was sworn in. He stated he is the President of the Makefield Lakes Community Association. He stated he had provided a copy of the Minutes from their meeting to the Township, and Mr. Flager stated the Board did receive those. Ms. Kirk stated she also provided a copy of those to Mr. Murphy and Mr. Fenningham.

Mr. Hunter stated in 1998 the Association paid for dredging of the Lake which cost between \$200,000 and \$250,000. He stated subsequently the Upper Lake has continued to fill in, and one of the principals of Princeton Hydro has roughly estimated that it would cost over \$1 million to dredge it again; and the Association does not have that kind of resources. He stated it is a volunteer Association responsible for the taxes and the upkeep of the lakes and the area around the lakes. He stated the open space area and the lakes have been a natural resource for the Township, and people from all over come there to fish in the lakes. He stated the Association is concerned that if this Application is approved, it will open the door for other approvals. He stated at a certain point the lake will fill in, and it will ruin a natural resource because they do not have the funding to fix this.

Mr. Hunter stated those interested could go out to the site on Thursday as there will be significant rain on Wednesday, and it can be seen what happens as it all ends up in the lake. He stated adding another property will result in more erosion of the soils that ends up in the lakes, which is detrimental to the lakes.

Mr. Hunter stated the Association which is made up of ninety homes around the lakes, they are opposed to this development as it stands and request Party Status.

Mr. Zamparelli granted Party Status. Mr. Murphy reminded the Board that he had previously Objected to the Association having Party Status when that topic was broached previously.

Mr. Fenningham stated Mr. Hunter had invited the Board to do a site visit, and they have no objection to that request.

Ms. Joanne Christ, 840 Edgewood Road, was sworn in and stated she lives downstream from the property in question. She stated she and her husband have lived there for forty years, and the Silver Lake stream is on the east side of their property. She stated along with the detrimental impact to the wildlife, they are also concerned with the erosion and flooding that is occurring and getting worse every year. She stated during Superstorm Sandy, there was erosion under a tree along the creek that caused the tree to come down on her house causing \$56,000 in damage to their roof and \$12,000 for the tree removal. She stated two years ago they had to spend another \$9,000 in tree removal from the creek.

Ms. Christ stated Mr. Solor had previously asked about the rain amounts that caused this flooding; and she stated on May 27, 2018 there was significant flooding, and she that flooding was caused by 1.5" of rain in an hour which occurs all of the time. She stated there is flooding on the creek several times a year. She stated in 1991/1992 there was 10" of rain in three hours, and people lost their cars, bridges were washed out, the roads were taken out, and she had water on the front threshold of her front door at that time.

Ms. VanBlunk stated she believes that is the year that a Lower Makefield man died due to the flooding, and Ms. Christ agreed. Ms. Christ stated Mr. MacDonald had pictures of the water getting close to the top of the bridge on Edgewood Road, but the water was well over that bridge on Edgewood Road that night.

Ms. Christ stated their other concerns are the crowding of buildings on lots that they feel should not be developed because they are in a flood plan, and they feel that it sets a precedent when there is crowding for other people to do the same thing and it decreases property values.

Ms. Helene Hartman, 596 Countess Drive, was sworn in and stated she lives in very close proximity to the lot being discussed. She stated she received the letter, and she is requesting Party Status.

Ms. Hartman stated the wetland buffer has been in existence for many years with good reason. She stated she has not heard if an environmental study has been done to ascertain short and long-term effects or how to correct any negative impact on the area such as flooding or erosion. She stated they are not immune to more storms like the recent storms or heavy snows which will

melt into the creek. Ms. Hartman asked if the Plans look at the “unusual as well because the unusual is becoming more normal.” She stated the actions taken will impact all of the homes along the creek and possibly other homes in the area.

Ms. Hartman stated the Petitioners have outlined a water catchment system which she has heard a lot about tonight. She asked if that will be effective; and if so, is there a way to guarantee that it will continue to be effective. She asked if it will be maintained and remain in place. She stated there was also discussion of “border trees, and she has seen trees come down because the ground gets wet.” She stated they fall over, and she has seen them in the creek and in the back of her property. Ms. Hartman asked if the house is sold would subsequent owners be “liable to do the same thing”. Mr. Zamparelli stated it is the property that gets the Variance and not the homeowners so it would stay with the property.

Ms. Hartman stated she would also like to know what will be the impact on the wildlife because the deer go along the creek. She stated there is already an over-abundance, and she asked if there will be “more incursions into the yards if they cannot travel along the creek.” She stated a neighbor had a buck on her porch, and she asked “who wants to be host to a buck during rutting season.”

Ms. Hartman stated the number of Variances and “changes are staggering.” She stated it is “staggering that they had to make so many accommodations.” She asked if they are approaching a slippery slope that will generate more requests of this magnitude in the future. She stated she purchased her home for the woodland setting; and she is concerned that if they start having so many Variances of this type, what it will do to the value of her property. She stated she will probably lose money if this continues to happen. She asked if others who have two lots with “added side yards” subdivide and ask for Variances. She stated her property does have two lots, but she would never consider selling them because she wants to preserve the property. She stated she does not know how many more people have two lots, but that should be considered.

Ms. Hartman stated while reasonable accommodation should be afforded to Petitions, she asked if current residents do not deserve consideration as to their concerns and the impact of preserving their environment, their home values, and the quality of life. Ms. Hartman stated she does not know if the Township Board of Supervisors are in support of this Application or not.

Ms. Kirk stated she has been appearing in opposition to the Application.

Ms. Hartman stated she feels that is significant and should be considered. Ms. Hartman stated there are rules and regulations for the express purpose of keeping wetlands, buffer areas, homes, properties, and residents protected; and she opposes this request.

Ms. Lisa Van Strat, 35 Homestead Drive, was sworn in. She stated they purchased their house in 1997, and occasionally the creek would overflow its banks. She stated they live upstream from the proposed property. She stated the creek is a “small, little, babbling brook and then all of the sudden a storm comes, and it overflows the banks.” She stated their house sits “fairly back and they have a lot of property before that and it is pretty deep.” She stated it used to be once in a while, but now – every time it rains. She stated if it is a strong storm or it rains for a day, it is constantly overflowing. She stated this is a major problem with the water, and she cannot imagine what it is like downstream or if anything becomes added on where it is taking away from water absorption. She stated she looked at the trends for rain and precipitation and trends going forward, and it stated that in the United States .20% per decade of rainfall is increasing each year, so it is only going to get worse.

Ms. Van Strat stated she does not know if Variances had been given to people up the creek which is why they are getting so much more volume down the creek. She stated their banks are consistently overflowing with rain that it should not be overflowing from.

Mr. Edward Boock, 598 Countess Drive, was sworn in. He stated he is directly behind the property, and he would like Party Status. Mr. Boock stated he moved to his property fourteen years ago from a property in Falls Township which was also on a creek so he is familiar with creeks. He stated when he bought his home in Falls Township which was close to the creek, he did not need flood insurance for his mortgage; however, about three years after that he received a letter from his mortgage company saying that he needed to get flood insurance. He stated he then had to get an elevation survey to show that even though he fell within that range his house was high enough up so that it was out of the flood zone. He stated there was a process they had to go through to get the letter from FEMA to state that he did not need flood insurance for his mortgage. He stated the point that whether or not your mortgage company requires you to get flood insurance up front is a moot point.

Mr. Boock stated a lot of time was spent talking about things other than the Variance they want, and “it reminds him of a magician.”

Mr. Boock stated he did offer to purchase this property from Mr. Bausinger. He noted that Mr. Bausinger came to him about ten years ago and advised him that the property was buildable and if he was interested in it since he had an engineering firm in Fort Washington that said it was buildable. Mr. Boock stated he advised him that he was familiar with creeks and that the property was in a floodplain and a buffer area “and all kinds of problems with getting this building on the property and he did not think it was building, but he would give him \$5,000 or \$10,000 for it to preserve it.” He stated Mr. Bausinger told him “he was crazy and the property was worth \$150,000;” and that is where the negotiation ended. Mr. Boock stated he told him that there were four people interested in the property – the Dobbs, the MacDonalds, himself, and Ms. Hartman “and that is it because everybody know that it has a non-buildable envelope” and people who worry about the environment and the conditions and wildlife would not build on it. Mr. Boock stated Mr. Murphy claims that the Decks are “good stewards of the land,” but he has seen no evidence that they are good stewards of the land. He stated their initial Plan was “so bad it did not even have a water mitigation plan in it,” and he feels that it is a “strategy Mr. Murphy is implying to show that they are trying to come closer to the Board by throwing out a ridiculous plan and then coming in with the real plan.”

Mr. Boock stated his house is very far off the creek, and his basement is flooded at times. He stated the water level is high; and when we get the big storms, the water comes underground and rushing to the creek, and it causes a lot of problems. He stated the neighbors across the street from him who sit up on a hill have a flooded basement. He stated these are houses that are far away from the creek. He stated area is a valley that comes from the baseball/softball fields down into the creek from Makefield Elementary, and that is all the water that is flowing in. He stated there is no denying that there are “flood and erosion problems with this.” He stated there has been a lot of talk about whether someone “mows to the edge of the lawn or whether they do not.” He stated he can provide photos where the naturalized land is being eroded just as bad “as the stuff that there is grass mowed to the edge of the creek.” He stated there is erosion everywhere from where it crosses over Ramsey or Roelofs, and there are trees that are falling down because the roots are getting eroded out from underneath them.

Mr. Boock stated the overall concern is if this property will add water to the creek, it will increase the damage. He stated he does not feel they have proven that they are not going to add water to the creek. He stated their engineer

testified that he feels this project will reduce water to the creek and take water out of the creek, but he does not feel anyone who lives along the creek really believes that.

Mr. Boock stated there was a lot of questions about the dates on videos, and we will be getting 6" of rain tonight so we will be lucky if Edgewood Road does not flood. He stated there will be plenty of videos for everybody at the property because everyone who is opposed to this, surrounds the property. He stated they are going to be "this guy's neighbors; and why he would want to put himself in a fishbowl around people who think this is a bad idea and try to raise a family seems like a bad, crazy idea."

Mr. Boock stated he understands that the lot has a "negative building envelope." He stated this property has been listed for a while, and he tried to sell it to him ten years. He stated there are plenty of developers in the community who passed on it, and you have to wonder why other developers would pass on this if there "was an opportunity to turn a buck." He stated there is no existing flag lot there today, and it is two separate lots. He stated there is no flag lot there today, nor has there ever been a flag lot.

Mr. Boock stated there are engineers and lawyers talking, and the community is trying to figure out what they are talking about. He stated the Decks are not residents of Lower Makefield, and they are not the current owners of the property and just have an Agreement to Purchase "if we throw out our Code book." Mr. Boock stated he heard them say that the property has a hardship, but it seems like the Decks could "walk away from this deal tomorrow with no hardship to them whatsoever." He stated he feels they are putting a hardship on the community by doing this. Mr. Boock stated the Lower Makefield Board of Supervisors is against this request, the Makefield Lakes Association is against this, and they represent ninety homeowners, and four adjacent property owners are against this, three of which have asked for Party Status, and one of them is likely to ask for Party Status.

Mr. Boock stated they have not heard from the Decks, and the only people who have talked for this are paid representatives of the Decks with a "strict mission."

Mr. Boock asked if a reasonable accommodation should be made for the Decks at the expense of surrounding properties.

Mr. Boock stated at the last meeting there was a question about an exemption for the water mitigation, and he asked what is the process to get the exemption. Mr. Flager stated the Zoning Hearing Board is not qualified to discuss that. Mr. Boock asked if they are getting the exemption. Mr. Flager stated that is not something for the Zoning Hearing Board to consider. Mr. Boock asked who makes that decision. Ms. Kirk stated that is handled through the Township engineers who will look at the Plans and ascertain under Stormwater Management what gets applied and what does not get applied. Mr. Boock stated all that the water mitigation numbers that he has seen are based on them getting the exemption. Mr. Connors stated the only thing the Zoning Hearing Board has the ability to rule on is what the Applicant is requesting Variances on; and outside of that they have no jurisdiction.

Mr. Boock stated Ms. Kirk had asked what the shape of the roof was, and Mr. Murphy's answer was "Mr. Deck is an architect." Mr. Boock stated he does not believe they ever got an answer on what the shape of the roof was. Mr. Zamparelli stated the shape of the roof does not matter right now. Mr. Boock asked if they know what kind of gutters are going on the house, and Mr. Zamparelli stated they do not know the design of it right now.

Mr. Zamparelli asked Mr. Boock if he would like to show the Board his presentation.

Mr. Boock stated while he will be showing it, he feels "Mr. Deck's whole presentation has been filled with mistakes and flaws." He stated they did not even get "the right Variances requested the first time around." He stated he wants to know how well thought out this Plan is. Mr. Zamparelli stated others have also made mistakes in the beginning, and it often happens that Plans are revised.

Mr. Boock started his presentation by showing a portion of an EAC Township Website page indicating that "every bit counts." He stated he heard from Mr. Murphy that this is a small project that will not have a big impact, but he feels every little bit adds up to a big impact. Mr. Boock stated he has environmental concerns, wildlife concerns, property value concerns, and concern about his quality of life. He stated he and his neighbors are not concerned about the everyday storms, but they are concerned about the major storms "that come around two to three times." He stated they are concerned that their mitigation systems is not going to be able to handle that; and in fact, will throw additional water into the creek which will increase the damage downstream, and the amount of sediment in the lake. Mr. Boock

stated he has watched the Board's "presentations," and every time there is a water mitigation plan it is at the lowest point of the property, but this one is at the highest point of the property which he does not understand.

Mr. Boock showed a picture of the creek which starts at the softball field. He noted an area on the picture that is open property that could be developed. He showed an area that is not a lake, but because it has collected a lot of sediment, it is more like a swamp. He showed how the creek flows and where the effected properties are including Edgewood Road. He stated all the emergency services are on one side of Edgewood Road; and if that road floods, it will diminish their ability to get to the other side of Edgewood Road for emergency services. He showed the location of Silver Lake and the train tracks, Yardley County Club, the Canal, and then the Delaware River where the water eventually flows to. He noted the properties which will be impacted by this development.

Mr. Boock showed a notice which came out today from Lower Makefield about the flash flood watch. He also showed a recent Tweet from Lower Makefield put out about the importance of wetland buffers, and he added that this property they want to build on is entirely in the wetlands buffer area except for "a little tiny corner of it." He stated to build on something that the Township has indicated is so important does not make sense to him as a resident. He showed a slide of information put out by the Township about the MS4 Pollution Reduction Plan, which he believes is a Federal program where you have to reduce sediment out of your waterways; and he believes the Township is spending a lot of money to do that in the area.

Mr. Boock showed more slides put out by the Township about flooding which the Township is emphasizing through social media. He stated this is what the Applicants "are trying to ignore."

Mr. Boock showed Exhibit A-10 which he feels is "offensive and is what he was talking about being the magician's trick." He showed the 100' buffer, and it can be seen that the entire footprint of the house is in the buffer area.

He showed the slide which Mr. Murphy talked about which shows a 50' buffer area. Mr. Boock stated the difference is the one shows the house completely outside the buffer area which is misleading and "deceitful." Mr. Boock stated he attended the EAC meeting on August 11, 2021; and one of the members of the EAC, the Environmental Advisory Committee, stated that this Plan had the house just a few feet outside the wetlands buffer area so it was "an effective

tactic which even fooled our EAC into thinking that they are not in the wetlands buffer area, and are outside of it.” He stated that “tells him all he needs to know about the person making the presentation when they do little tricks like this.” He stated because it is “factually inaccurate, it should be tossed out of the Record.” Mr. Boock stated they spent all this time talking about Mr. MacDonald’s property instead of telling the strengths of their case to build on the property, and “instead spent his time attacking a neighbor, a neighbor that his client is going to have live next to if he is successful.”

Mr. Boock showed a slide of the aerial photo which had been presented, and he asked when the photo was taken. Mr. Boock stated the photo is inaccurate, and he noted a tree on the photo which is “completely dead.” He stated Mr. Murphy had objected to members of the community showing videos of the creek overflowing because they did not know what the date was, but he put this up but will not tell the date when it was taken.

Mr. Boock showed a slide about the Eliminated Variance Request. He stated initially they requested seven Variances, and that was then dropped down to four. He stated one that was eliminated was they are not building in the floodplain. He stated three of the original Variances were based on flag lot size, and two of them were eliminated but one did not where the pole section is too thin. He asked if they are claiming “the big lot in the back yard, do they need to apply that same standard to the long narrow lot to see if that is able to be built on.” He stated there is a “huge chunk of the driveway that is on that particular lot;” and if they are applying a standard to the main yard in the back yard, it should be applied to the side yard lot as well.

Mr. Boock stated the other one is that they are requesting 22% disturbance in the wetlands buffer area which is over one fifth which is a significantly large number to disturb. He stated the wetlands buffer area from “the Township’s post basically has those things to protect it.” He stated it cleans the water, prevents erosion, and gives the wildlife a place to go; “and no one would eliminate 20% or 22% of their insurance.” He stated the other way of looking at that is 95% of the footprint of the house is on the wetlands buffer area. He stated the 22% is “just the side yards and stuff like that and 95% is the wetlands buffer area which he imagines is a Code for a reason and is well thought out.” Mr. Boock stated he knows that they made a point that every Township has different Codes, and “they are welcome to go to whatever Township they want and he encourages them to do that.” Mr. Boock stated in Lower Makefield they are dealing with a 100’ wetlands buffer area.

Mr. Boock stated he is concerned about the environment, and feels flooding is a universal concern for everyone who is familiar “with it – the creek damage, the erosion to it,” and he feels that this is going to add water to the creek which is going to cause further erosion and further problems downstream.

Mr. Boock stated he has concerns about the sediment in Silver Creek. He stated he also has concerns about chemicals, and they may decide they want to fertilize their lawn, and it gets washed into the creek. He stated they may decide that there are too many mosquitos, which there are because there is a swamp directly on the other side of them, and they want to put mosquito treatment on the grass which will get washed into the creek and downstream. Mr. Boock stated if they approve this, they will have to be restricted on what they could use on the lawn.

Mr. Boock stated creeks are not static and the flow changes. He stated if a rock erodes out and falls into the middle of the creek, the creek will move around it. He stated the problem with this property is that they have mowed all the way down to the creek. He showed a picture of the side yard with the vegetation and the location of two inlets. He stated if they build the driveway there and slope the driveway toward the street, all of the additional water will go into the inlet and right into the creek.

Mr. Boock showed a photo which shows the sign put up by Jackie Hillgrube, the Real Estate agent, which indicates it is a “buildable lot.” He stated he feels “she forgot to put negative building envelope or negative buildable.”

Mr. Boock showed a picture of the side yard which “shows what they are dealing with.” He added this is what “they did not put in their presentation because they did not want you to see what it actually was.” Mr. Boock stated when you are watching a “presentation a lot of times it is not what you see – it is what you don’t see that you need to pay attention to.” He stated in the picture you can see the erosion. He noted the outlet which is a 36” pipe that goes to Makefield Elementary which is a lot of water. He stated their Plan is to fill the pipe with more water. He noted the erosion and the tree on the photo which is about to fall and would be considered a hazard because it is all eroded at the base. He stated the tree will fall over the creek and block it and cause upstream flooding. He stated either the current owners or the future owners need to resolve that. Mr. Boock stated if that tree falls, it will restrict the flow of water and it could flood upstream.

Mr. Boock noted a photo of deer in the back yard where they want to build the house. He stated he sees five to ten deer every day in the back yard where they want to build the house. He stated it can be seen that the lawn is mowed all the way to the edge to the point where the lawn is eroding into the creek.

Mr. Boock showed a photo of another side of the yard with more erosion. He noted an area which is naturalized which is eroded just as bad. He stated naturalizing the property is a good step, but it is “by no means a solution to the problem.” He stated the problem is that there is just too much water. He stated this development is something that they can control.

Mr. Boock showed a slide discussing the importance of trees. He asked if Lower Makefield wants to be contributing to the global crisis or do they want to take a stand and say there “are too many problems with this deal and not do it and they can find somewhere else to live.” Mr. Boock showed another slide listing what trees do. Mr. Boock stated it seems from their Plan that they are going to remove at least five to six full size trees. He stated a mature tree can drink 50 to 100 gallons per day; and if they cut those trees down all that water will migrate its way into the creek and is not included in their mitigation numbers and will cause problems downstream.

Mr. Boock showed a slide from the EPA discussing the importance of trees.

Mr. Boock showed a slide of the Applicant’s mitigation calculations. He stated he believes that Mr. MacDonald has trees on his property already, so he has some of the mitigation tactics that the Applicants are presenting. He stated looking at the numbers, the rain garden is their Plan; and if the rain garden fails, the Plan fails, and everything gets damaged. He stated “it is 197% even though they said 200%, but they were cheating in their favor.” He stated he does not feel that the rain garden is going to work.

Mr. Boock stated he has “plenty more to show.”

Mr. Zamparelli stated they will need to Continue this matter to a future meeting. Mr. Flager stated the date that most people were available is September 29. It was noted that Ms. VanBlunk is not available that day.

Mr. Connors moved and Mr. Solor seconded to Continue the matter to September 29, 2021.

Mr. Murphy stated he understands that at that meeting Mr. Boock will continue with his presentation, and then Mr. Fiorvanti will be available for cross examination and redirect. Mr. Flager stated they would then take additional Public Comment as well as redirect from Mr. Geonnotti.

Mr. Fenningham stated he is concerned that Ms. VanBlunk will not be available on September 29th, and he would prefer that they not conclude on the 29th. Mr. Flager stated he does not believe that they will conclude that evening. Mr. Fenningham stated he also wanted to make Closing Argument.

Motion carried unanimously.

Mr. Connors moved, Mr. Solor seconded and it was unanimously carried to adjourn the meeting at 10:10 p.m.

Respectfully Submitted,

Matthew Connors, Secretary