

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – OCTOBER 6, 2009

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 6, 2009. Chairman Malinowski called the meeting to order at 7:45 p.m.

Those present:

Zoning Hearing Board: David Malinowski, Chairman
 Paul Bamburak, Vice Chairman
 Jerry Gruen, Member
 Anthony Zamparelli, Member
 Paul Kim, Alternate Member

Others: Robert Habgood, Code Enforcement Officer
 David Truelove, Township Solicitor (left meeting in
 progress)
 John Donaghy, Township Solicitor
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Solicitor
 Matt Maloney, Supervisor Liaison

Absent: Gregory J. Smith, Zoning Hearing Board Secretary

APPEAL #08-1481(A) – THE FRANKFORD HOSPITAL OF CITY OF PHILADELPHIA, INC.

Mr. Malinowski stated testimony was closed on 8/18/09. The Board received Briefs and Findings of Fact from all Parties and has had time to study them and will render a Decision this evening. He stated the Board will take a ten minute recess to meet with their attorney regarding legal matters related to the Decision.

A short recess was taken at this time. The meeting was reconvened at 8:00 p.m.

Mr. Malinowski stated under the State Sunshine Law, they are required to call the meeting to order in order to be able to legally confer with their attorney so they had to call the meeting to order, take a recess, and then they could confer with their attorney.

Mr. Kim moved and Mr. Zamparelli seconded to grant the Special Exception for Medical Office and Hospital with the following Conditions:

- 1) Route 332 to be widened and restriped on the eastbound lane to provide for three lanes leading to the Inter-State I-95 Interchange;
- 2) That a second westbound turn lane be added on Route 332/Stony Hill Road;
- 3) That the proposed access intersection on Stony Hill Road which is proposed to be located opposite of Corporate Center Drive be signalized;
- 4) Further in order to mitigate Aria Health System's impact on traffic due to arriving and departing employees, no shift change may take place between the hours of 7 a.m. and 9 a.m. or the hours of 4 p.m. and 6 p.m. In addition, the Certification of Compliance of this Condition shall be made annually at the year end to the Lower Makefield Zoning Officer.

Mr. Gruen asked that the Board consider what this vote means. He stated the Zoning document was created for regulation and to make sure that any development in the Township is not detrimental to the community, its residents, and its unique character. He stated the Zoning Board of Appeal is not a Court of law, and they are just ordinary citizens who were appointed to the Board to see to it that they do the best for the Township. He stated after months of deliberation, it is clear that the proposed Hospital in this location will create an irrevocable and dramatic change to the area that the Township has tried for years to retain as farmland. He stated they have helped Shady Brook Farm with numerous exceptions and tax breaks. He stated while the property may be put to some commercial use one day, the Hospital needs a Special Exception because it is not a regular building. He stated it is a very unique, 365 days a year, seven days a week, twenty-four hour a day operation with a possible helicopter pad with doctors flying in and out claiming it is an emergency.

Mr. Gruen stated the Hospital representatives have been very vague about what ultimately they plan to do with the buildings and what kind of medical facilities they will provide to the community. He stated he suspects they have been vague because this is only the first stage, and they are looking to buy the rest of the farm; and the entire farm will become a campus with nursing schools, etc. Mr. Gruen stated both the Township and the Hospital representatives have stated that whatever happens, it will go to a Court of Law, and he would like the Zoning Hearing Board be on the side of the Township. He stated if the Zoning Hearing Board turns it down, the Township stands a much better chance of prevailing in the Court.

Mr. Gruen stated he feels the Zoning Hearing Board should do what is in the best interest of the community. He stated it also became very clear over the last months that the overwhelming majority of the Township residents agree that this is the wrong place to put a Hospital, and this location is not suitable and it will be detrimental to the community and change the character of the area for the worse forever. He stated the Board of Supervisors are opposed to the project as is the Planning Commission; and they based their opinion on valid, substantiated traffic and environmental issues. He stated he feels because of the change to the quality of life that the project will bring given this overwhelming evidence and concern, it would be irresponsible for the Zoning Hearing Board to approve this Exception. He stated if they are wrong, they should let the Courts say they are wrong.

Mr. Gruen stated all the Conditions that have been attached may solve the traffic problems and they could add underpasses and overpasses and with money they could fix this location, but he does not feel they want to live in an area with overpasses like in the City of Philadelphia. Mr. Gruen stated the Hospital claimed that they could not upgrade their present building; but he stated Penn Hospital in Philadelphia is the oldest hospital in the Nation, and they have been able to do this. He stated a hospital is not a building – it is the doctors and equipment. He stated they could have spent the money on the present building that they are spending on this farm, and they would have been better off, and the Township would be better off. He stated while the Hospital has indicated they are here to serve the community, they are not doing the Township any service. He stated they are coming here because it is a higher-income community, and they are abandoning the eastern part of the County that needs a hospital.

Mr. Kim moved to add the following Conditions:

- 5) The cost of the improvements listed as Conditions will be borne by Aria Health Systems;
- 6) Conditioned on PennDOT approval.

Mr. Gruen moved and Mr. Bamburak seconded to amend the Motion that the Hospital cannot buy any adjacent land and cannot increase the size of the Hospital for the next seventy-five years. Amendment did not carry as Mr. Bamburak and Mr. Gruen were in favor, but Mr. Kim, Mr. Malinowski, and Mr. Zamparelli were opposed.

Original Motion carried with Mr. Kim, Mr. Malinowski, and Mr. Zamparelli voting in favor, and Mr. Bamburak and Mr. Gruen opposed.

Mr. Truelove left the meeting at this time.

APPEAL #06-1372 – PETER ORLOFF AND JOY GRACE

Mr. Orloff and Ms. Grace were sworn in.

Mr. Toadvine stated this matter has been continued for some time because they were waiting for a Plan to be prepared by the Natural Resources Conservation Service (NRCS); and this Plan has now been prepared. He stated the Applicants have just seen the Plan for the first time this evening. Mr. Toadvine stated he assumes that the Plan requires various improvements to the property which they will have to do in order to comply with the requirements and be granted the Variance they have requested. He asked if they are in a position this evening to tell the Board if they are agreeable to what is in the Plan or if they would like time to review the Plan further.

Ms. Grace stated they would need time to review it. She stated their Appeal was about something else, and this Plan is something entirely different although they appreciate it. She stated they would need time to discuss the Plan with someone to make sure they understand what it entails. Mr. Toadvine stated he feels the Plan addresses the issues they raised in their Appeal, and Ms. Grace agreed.

Mr. Toadvine asked how long they feel they would need before they could come back to the Board and advise if they are satisfied with the Plan or if they need some modifications. Ms. Grace stated she does not feel it would do any good to proceed with the Plan until they could also do something about the water that is coming off the road since there are no storm drains to protect them from the road. She stated she could review the Plan and try to find out how much it would cost. Mr. Toadvine asked how long she feels this would take, and Ms. Grace stated she did not know.

Mr. Orloff stated he feels six months would be sufficient. It was suggested that the matter be continued until April 6, 2010; but Ms. Grace stated she did not feel it would take her that long to determine the cost and get more information. It was suggested that they grant a continuance until January 19, 2010. Ms. Grace stated this is acceptable. She stated she is not sure what time of year this work would have to be done, and she understood it would have to be done in the winter. Mr. Majewski stated this is typically a project that could be done in the middle of summer since the stream level would be lower and vegetation would grow when planted in the fall.

The Applicants agreed to waive the time constraints under the Municipalities Planning Code.

The Plan submitted entitled “Detail Plans for Brock Creek Rip Rap” from the Natural Resources Conservation Service of the United States Department of Agriculture dated 7/6/09 was marked as Exhibit A-4.

Mr. Gruen moved, Mr. Bamburak seconded and it was unanimously carried to continue the matter to January 19, 2010.

APPEAL #09-1526 – LINDA TRIMBLE ZADNIK

Mr. William Zadnik and Ms. Linda Trimble Zadnik were sworn in.

The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet document entitled, “As Built/Grading Plan” time-stamped by the Township 8/20/09, and this was marked as Exhibit A-2. Also accompanying the Application was a one-sheet document entitled “Impervious Surface Breakdown Chart” time-stamped by the Township 8/20/09, and this was marked as Exhibit A-3.

Ms. Zadnik stated they are requesting approval to construct a shed in their back yard. She stated they combined two households and do not have sufficient space to store items.

Mr. Zadnik stated he feels there are some inequalities in the present impervious surface calculations. He stated there are 56 homes in their development, and approximately 20% of them have less square footage on their properties ranging from 13,939 to 14,941.

He stated if he lived in any of those properties, he would be able to do what he wants with his property. He stated they actually have more square footage, and he feels he should have at least the same opportunity that someone has with a smaller piece of property.

Mr. Gruen stated he agrees, adding the Zadniks own 200 square feet more property but are being penalized with 3% less impervious surface.

Mr. Donaghy stated the Township is not participating in this matter.

Mr. Toadvine stated the impervious surface ratio is based on lot size, and his property is 15,200 square feet. The break point is 15,000 square feet so that if he had 200 square feet less of property, he would be permitted 24% which the Applicant feels represents an inequity. Mr. Habgood was asked if he agrees with the calculations submitted, and he agreed.

There was no public comment, and the Public Hearing portion was closed.

Mr. Gruen moved, Mr. Bamburak seconded and it was unanimously carried to approve the increase in impervious surface from 20.58% to 21.65% or 3,290 square feet.

APPEAL #09-1527 – MAKEFIELD WOODSIDE, LLC

Mr. Edward Murphy, attorney, was present with Mr. Curtis Rittler, engineer, who was sworn in.

The Application submitted was marked as Exhibit A-1. Sheet #1 Preliminary Plan for Edgewood Crossing dated 8/18/09 was marked as Exhibit A-2.

Mr. Murphy suggested that he summarize the Application and highlight certain issues, and Mr. Rittler can then confirm the accuracy of the summary. This was acceptable to the Board.

Mr. Murphy stated the Plan submitted is an adaptive reuse of two parcels located at the corner of Stony Hill Road and Langhorne-Yardley Road. He stated the focus of the Application involves the installation of a parking area behind the existing store. He noted on Exhibit A-1, the corners of the existing building are almost immediately on top of the existing right-of-way of Stony Hill Road; and immediately behind that building what is proposed is the installation of a parking area and a corner of the parking lot encroaches within the 5' separation that the Ordinance requires of any improvements or structures from the edge of the right-of-way. He stated they are seeking relief to permit a corner of the parking area to be located within 4' of the right-of-way instead of 5', so they are asking for relief of 1'. Mr. Murphy stated he would suggest that legally no relief is required because the existing non-conformity (the corner of the existing store) is already located closer to the edge of the right-of-way than the edge of the parking area they are proposing; however, Mr. Rittler received advice from the Township staff that relief should be requested so as to permit a corner of the parking area to be located within that distance.

Mr. Murphy stated if the parking lot cannot be located where it is depicted on Exhibit A-1 several parking spaces would be lost; and while they could probably move them elsewhere on the Plan, it would minimize the adaptive reuse of the building because in order to make it a viable commercial use, they need to provide as many parking spaces adjacent to it so as to attract tenants to want to occupy it. Mr. Murphy stated he feels the Township is in support of this request in order to try to adaptively reuse this very old, historic building. He stated while he feels technically no relief is required since they are not increasing the extent of the existing non-conformity along Stony Hill Road and the relief they are seeking is de minimis, in an abundance of caution, the Township requested that the Application be submitted and that they request appropriate relief.

Mr. Murphy moved for admission of the Exhibits.

Mr. Rittler agreed that the summary provided by Mr. Murphy was accurate.

Mr. Gruen asked how close the parking lot will be to the setback of Stony Hill Road, and Mr. Murphy stated there are several setbacks; and the Township measures the setback not from the property line or the legal right-of-way, but from the ultimate right-of-way. Mr. Murphy asked Mr. Rittler how much more the ultimate right-of-way is set back from the edge of the legal right-of-way; and Mr. Rittler stated it is 20.6'. Mr. Murphy stated that area consumes a significant portion of the existing store. He stated the building is in the area between the legal and ultimate right-of-way.

Mr. Donaghy stated the Township is not participating in this matter.

There was no public comment, and the Public Hearing portion was closed.

Mr. Gruen moved, Mr. Bamburak seconded and it was unanimously carried to approve the request for a 4' setback conditioned on the Plan marked as Exhibit A-2 which depicts the area where approval is necessary.

APPEAL #09-1528 – PATRICK R. AND KAREN REILLY

Mr. Edward Murphy, attorney, was present with Mr. Paul Wojciechowski, engineer, and Mr. Patrick Reilly who were sworn in.

The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan dated 9/2/09, and this was marked as Exhibit A-2.

Mr. Murphy stated this property is made up of three lots from the original Subdivision Plan of Delavue Manor – Lots #10, #11, and #12. He stated in 1939 the house on the lot was built; and at the time the house was built, the property only had frontage on Alton Road and consisted of all of Lot #10 and a piece of adjacent Lot #11. He stated over time the property was expanded, and the people who built it in 1939 bought the rest of Lot #11 and all of Lot #12 in 1953. He stated in 1953, the lot became a corner lot because with the additions, the property had frontage on Alton Road as well as Terracedale Road and has been considered a corner lot since that time. Mr. Murphy stated in 1951, according to the Township records, a garage and a porch were added onto the original house; and in 1986 the great room, which is the oddly-configured room shown on the Exhibit, was added. He stated they presume that even though the lot is a corner lot, the Township may have always treated the property not as a corner lot. He stated in a traditional lot setting, there is a front, rear, and two side yards; and in 1939 when the house was first built, that was the approach which was taken. He stated the house was oriented toward Alton Road. He stated when it became a corner lot in 1953 according to the Ordinance it had two front yards; but under the definition of the rear yard it should be measured to the side of the house where the garage is where it backs up to the property owned by the Colts. He stated if that were to happen, they would not need relief since they are proposing to add an

addition and a small section of driveway to create an additional car garage. This is highlighted in the Exhibit. He stated if the lot is viewed as a corner lot like it has been for 56 years, the area abutting the addition would be a side yard and not a rear yard; however, based on advice of the Township staff, they are treating the area behind the proposed addition as the rear yard. He stated legally he is not sure they need any relief, but they have made Application.

Mr. Murphy stated the request is to expand the garage in an L-shaped fashion as shown with an expansion of the driveway to accommodate this. By doing this, they will need a side/rear yard of 41'1" rather than the 50' that would otherwise be required. Mr. Murphy stated Mr. Reilly has had discussions with his neighbors, and none indicated they had a problem with his proposal.

Mr. Murphy stated all the improvements shown on the Plan total 29.1% impervious surface in a District today that permits a maximum of 18%. He stated this 18% limitation became effective in December, 1987. Mr. Murphy stated all the improvements shown on the Plan existed prior to 1987. He stated everyone, including the Township, presumes that they might have been permitted prior to 1987. He stated since they purchased the property in 2000, Mr. and Mrs. Reilly have not added any of the improvements which are on the Plan. He stated what the Reillys have done, which is reflected in the Exhibit, is to ensure by removing some impervious that the 29.1% existing impervious surface is not added to by virtue of their proposed addition. He noted the chart on the left hand side of the Plan which shows that certain impervious that existed apparently without Permit, has been removed so that there is no net increase in the existing or proposed impervious surface.

Mr. Murphy noted on Exhibit A-2 the little jog which is in the area where the garage addition will be built. He stated Mr. Reilly wants to make sure that the new addition is flush with the existing addition so they have modified the Plan to eliminate the jog. He stated this does not increase the impervious surface, but it slightly changes the size of the proposed addition by a few square feet. He presented a modified Exhibit which was marked as Exhibit A-3 which reflects the new calculations. Mr. Wojciechowski stated the new calculations are the change in impervious surface, and they added impervious surface to the garage and deducted it from the proposed driveway. He stated they balanced this out by removing a portion of the driveway. He stated the Zoning Officer mentioned that there was no evidence of Permits for the shed or a flagstone walk so they did not count them in their impervious to their credit, and this was deducted in the second column under "Built Without Permit."

Mr. Murphy asked the size of the proposed addition under the original Application, and Mr. Wojciechowski stated it was approximately 20 square feet more than being shown. Exhibit A-3 reflects the revised calculations to eliminate the jog from the building adjacent to the existing garage, but does not result in any overall increase beyond the 29.1% impervious surface.

Mr. Wojciechowski and Mr. Reilly agreed with the summary as related by Mr. Murphy.

Mr. Reilly stated they are proposing additional space, but are planning on removing the old garage and constructing a larger garage.

A copy of Exhibit A-3 was provided to the Board this evening. Mr. Toadvine stated Exhibit A-3 is the Plan dated 9/2/09 with a revision date of 10/5/09 showing the changes referenced by Mr. Murphy.

Mr. Toadvine stated the 29.1% impervious surface will remain 29.1%, and Mr. Murphy agreed. Mr. Gruen stated they are actually reducing the impervious surface from 29.7% to 29.1%.

Mr. Gruen asked about the tennis court, and Mr. Reilly stated it is asphalt. Mr. Gruen asked if it is crowned and sloped to the side, and Mr. Reilly agreed. Mr. Gruen asked if he would be willing to put in drainage ditches filled with stone on either side to collect some of the water and help improve the drainage on the property; and Mr. Reilly agreed to do this. Mr. Majewski stated they will work with Mr. Majewski on this at the time of the Building Permit to consider additional on-site stormwater management.

Mr. Bamburak stated there has not been any testimony that there is a problem, and Mr. Gruen stated there is 29.1% impervious surface; and while it is grandfathered in, he would like to try to mitigate this if there is a way to do so without it being an expensive mitigation.

Mr. Donaghy stated the Township is not participating in this matter.

There was no public comment, and the Public Hearing portion was closed.

Mr. Murphy moved for admission of the Exhibits.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to approve 29.1% impervious surface subject to the Applicant agreeing to adding stormwater management adjacent to the tennis court to the satisfaction of the Township engineer and approval of a Variance for a 40.9' rear yard setback. It was agreed that this is a rear yard and not a side yard.

A short recess was taken at this time. The meeting was reconvened at 9:05 p.m.

APPEAL #09-1520 LIBERTY TOWERS, LLC

Mr. Malinowski stated the Board has a curfew of 10:30 p.m.; and if the matter goes further than this, it will be continued until a future meeting.

Mr. Richard Lemonowicz, attorney, was present with Mr. Philip Burner, Mr. Bassem Iskander, and Mr. Brian Seidel who were sworn in.

Mr. Lemonowicz stated they are present to request a Use Variance to construct a wireless communications facility on the property at 499 Stony Hill Road which is in the R3M Zoning District; and a communications facility such as the one they are proposing is not a permitted Use in that District. He stated the Applicant has leased a piece of the property from the Brookside Swim Club who are the record owners of the property in order to construct and operate the tower on the property.

The Application submitted was marked as Exhibit A-1. A letter from Mr. Lemonowicz's office dated 9/3/09 requesting an Amendment to the Application was marked as Exhibit A-14.

Mr. Lemonowicz offered additional Exhibits as follows:

Exhibit A-2 – Evidence of the posting of the Zoning Notice

Exhibit A-3 – Copy of the Land Lease Agreement between the Applicant and the record owner of the property

Exhibit A- 4 – Copy of the Deed of the subject property

Exhibit A-5 – Copy of an Electro-magnetic fields Compliance Report for the proposed tower dated 10/2/09

Exhibit A-6 – Copy of the T-Mobile FCC License

Exhibit A-7 – Copy of Sprint/Nextel FCC License

Exhibit A-8 – Copy of FAA Determination of No Hazard to Air Navigation for the facility

Exhibit A-9 – Copy of a Determination by the Pennsylvania Bureau of Historic Preservation dated 7/21/09 indicating that the proposed facility has no effect on historic properties

Exhibit A-10-Series of photographic simulations of the proposed tower

Exhibit A-11-Copy of a map depicting T-Mobile's radio frequency coverage without the operation of the proposed tower

Exhibit A-12-Copy of a map depicting T-Mobile's radio frequency coverage with the operation of the proposed tower

Exhibit A-13-Copy of a Site Plan and elevation drawing for the proposed use with a latest revision date of 10/1/09.

Mr. Lemonowicz provided copies of the Exhibits this evening.

Mr. Toadvine stated if anyone is requesting Party status, they should provide their name and address to the Recording Secretary, with the following requesting Party status:

Lauren Templeton – 544 Heritage Oak Drive

Kristin Tyler – 548 Jenny Drive – Ms. Tyler stated she is also requesting Party status on behalf of a group of residents – Residents Against Brookside Cell Tower.

Mr. Toadvine stated after those interested in becoming Parties have provided their information, Mr. Lemonowicz will have an opportunity to question them as to whether or not they have standing to request Party status; and they will deal with the issue of Ms. Tyler representing the group at that point.

Nathan Edelstein – 761 Canterbury Drive

Rebecca Schwindeman – 479 Jenny Drive

Mr. Lemonowicz asked to question Ms. Kristin Tyler who was sworn in. Mr. Lemonowicz asked Ms. Tyler if Residents Against Brookside Cell Tower is formed in any way in the State of Pennsylvania as an entity, and Ms. Tyler stated it is not an incorporated entity. Mr. Lemonowicz asked Ms. Tyler how far away she personally lives from 499 Stony Hill Road, and she stated she lives approximately 1000 yards away. Mr. Lemonowicz asked how many members are there in the group; and Ms. Tyler stated they currently have twelve members, and they have petitions in support of 125 community members. Mr. Lemonowicz stated he would object to the admission of Residents Against Brookside Cell Tower as a Party due to their distance from the subject property and the fact that they are not an incorporated entity in the State of Pennsylvania.

Mr. Kim asked if they have legal representation at this time or are planning to get legal representation; Ms. Tyler stated the group formed approximately one week ago, and they are in the formation stages. She stated how they are going to proceed has not yet been determined; however, each of the members of the group are prepared to add themselves individually as a Party if that is preferable to the Board. Mr. Toadvine asked if there is a list of these twelve people, and Ms. Tyler provided this to Mr. Toadvine evening. Mr. Kim stated he assumes the twelve people live around the area of the proposed cell tower, and Ms. Tyler stated they do. The list of individuals in the organization was marked as Exhibit R-1, and the list was shown to Mr. Lemonowicz. Mr. Lemonowicz stated he has no objection to the people on the list being named as Parties individually, but he would continue to object to the citizens group being named a Party.

Mr. Toadvine asked Ms. Tyler if it is her representation that all the people who are on the list want to have Party status; and Ms. Tyler stated if the Board is unwilling to grant the group Party status, they are all willing to request Party status individually.

Ms. Tyler asked the basis for the objection, and Mr. Lemonowicz stated as of now there is no formal group. He stated if it were an incorporated entity in the State, he would have a Party with whom he is dealing. Ms. Tyler asked if there is any legal prohibition about an unincorporated group having Party status. Mr. Toadvine stated the issue would be who speaks for the group, and asked if they have decided that there is one spokesperson. Ms. Tyler stated she would be the spokesperson. Mr. Toadvine stated she would therefore testify and speak on behalf of the group, and none of the other members would testify. Ms. Tyler stated depending on the nature of the issue, if someone had better expertise on a particular topic than she, she would then turn it over to that particular member. Mr. Toadvine stated this is the problem with having it as a group.

Mr. Gruen stated they have only had a week to organize, and they are trying to reject them already. He suggested they withhold their approval or disapproval until the following meeting after they have had a chance to organize. Mr. Bamburak stated he feels this is what Mr. Toadvine is discussing. Mr. Malinowski stated there were not going to reject them, but rather the Solicitor was still discussing the matter.

Mr. Toadvine asked Ms. Tyler if she believes that there will be additional people who will want to join the group, and Ms. Tyler stated they are certain of this. Mr. Toadvine stated he feels it would be prudent for the Board to admit them individually since it seems as if more than one person may testify on behalf of the group. He stated normally the reason for forming a group is because you have one spokesperson; and Ms. Tyler stated this is their intent and they were trying to avoid redundant testimony. Mr. Toadvine stated she indicated that other people may also want to testify. Ms. Tyler stated if they need experts, she would not be testifying as an expert.

Mr. Kim stated they are welcome to bring in experts such as engineers or special safety hazard studies; but they would be outside of the group. Mr. Kim stated he would be in favor of entertaining the idea for them to develop their board and charter and come back at some time if they still want to be a group and ask for Party status as a group, or they could do both and have all the people listed individually as Party status and still open the idea to the group being officially listed as Party status.

Ms. Tyler stated they are prepared to go forward as a group, and she has been asked to be the spokesperson; and this is how they would like to proceed. She stated if they insist on individual Party status, they would be glad to do that as well.

Mr. Bamburak stated if they are a group, Mr. Lemonowicz needs to have a contact person to whom he could direct correspondence, questions, etc. Mr. Bamburak stated if they were a legal entity, Ms. Tyler could be the point person; and there would be By-Laws, and it would be set up more formally. He stated if additional people from the group are to testify, Mr. Lemonowicz does not then know to whom documents should be sent if they are requested.

Mr. Kim stated there was a citizens group against the Frankford Hospital, and they started out as this group is starting out; but they came back later and were codified and developed a charter and they were accepted as a group. He stated they could see how this process is run, and then come back as a group; and the Board could reserve that Hearing to hear them as a group and give them time to form a group. Ms. Tyler stated this is how they would like to proceed, and Mr. Lemonowicz stated he felt this was fair.

Mr. Lemonowicz stated he did not have any objection to the other individuals – Lauren Templeton, Nathan Edelstein, and Rebecca Schwindeman who have requested Party status.

Mr. Malinowski stated they will recognize everyone who has requested Party status with the understanding that Residents Against the Brookside Cell Tower will come back with a more formal structure at the next meeting when a final decision will be made on their Party status.

Ms. Lauren Templeton stated she has a preliminary question. She stated the Applicant, Liberty Towers, is not a tele-communication provider, and she stated she is unclear as to how they have standing to pursue this Application. Mr. Lemonowicz stated as attorney for Liberty he has standing to proceed with the Application because he has a Lease Agreement with the record owner of the property authorizing him to file the Application, and in Pennsylvania this is sufficient to make an Application. He stated Liberty Towers does not provide wireless communication services; however, the two individual wireless communication carriers that are represented this evening by witnesses – Sprint/Nextel

and T-Mobile are licensed by the FCC to provide wireless service, and their antennas and their equipment are part of this Application, and they will provide testimony as to their need for the facility.

Ms. Templeton stated she understands the Application, but in order to receive a Variance the lack of provision of tele-communication services speaks to an interest in being able to do that adequately; and she does not understand Liberty Tower's interest in providing a certain level of tele-communication service. Mr. Lemonowicz stated he does not feel this is a requirement of his ability to proceed with the Application.

Mr. Edelstein stated the theory behind the Application is that the Applicant has sustained some substantial gap in its ability to provide services. He stated the whole theory of the Application and the evidence will be that the Applicant is unable to provide tele-communication services into an area of Lower Makefield Township, and this is not an issue that relates to this Applicant, and they are not unable to do this as the Applicant. He stated T-Mobile and Sprint/Nextel are not the Applicants so their basis is not connected to this Applicant.

Mr. Toadvine stated he is assuming that Liberty Towers has a Lease Agreement with T-Mobile and Sprint/Nextel to provide this tower so that they can locate on the tower; and Mr. Lemonowicz will provide testimony during the Application that will go to the issue of these two cell phone providers. He stated there is nothing in front of the Board or in the record to indicate that there is any reason that Liberty Towers does not have the absolute right to proceed with this Application.

Mr. Donaghy stated the Township would like to participate in this matter, and become a Party to the Application.

Mr. Lemonowicz stated he has four witnesses – a professional engineer, a professional planner, a radio frequency engineer, and an EMF compliance expert. He stated he feels they should begin with the professional engineer and then determine how far they can proceed this evening.

Mr. Philip Burtner was sworn in and stated he has been a licensed professional engineer since 1993 in the State of Pennsylvania and approximately twenty other States. He stated he has testified as a professional engineer and expert on wireless communication facilities and has been accepted as an expert. Mr. Lemonowicz offered Mr. Burtner as an expert, and there was no objection.

Mr. Burtner stated he is familiar with the property and has been to the site and the area that surrounds the site. He stated he has reviewed the drawings prepared for this Application with the latest revision date of 10/1/09 which were marked as Exhibit A-13 and were presented this evening. Mr. Burtner noted the display copy of Exhibit A-13 and

stated the subject property is approximately eight acres located off of Stony Hill Road along the railroad tracks. There is a triangular property located between the Swim Club and the railroad tracks. He stated on the eight acre site there is an existing Swim Club with a swimming pool, outbuildings, tennis courts, basketball court, volleyball court, and a parking area in the front as well as additional parking in the back.

Mr. Burtner stated the Applicant is proposing a tele-communication facility which consists of a fenced-in compound that is 100' long by 50' wide which will be gravel covered. The proposed tele-communication tower will be located in the center of the compound, and there will be room around the tower for wireless carriers to install their equipment. The Applicant would also bring in underground electric and telephone services so that the carriers would have those utilities available to them when they construct their facilities and install their antennas on the tower.

Mr. Burtner stated there is an existing gravel driveway from the parking area in the front around the pool and tennis courts to the back, and the Applicant would propose to extend that road another couple hundred feet back to where the tele-communication site is proposed.

Mr. Lemonowicz asked if there is a tower proposed as part of the facility, and Mr. Burtner stated the tower to be located in the center of the compound is proposed to be 150' tall, and would be a typical monopole style tower which is a tapered cylinder approximately four and a half feet at the base and approximately 20" at the top. It is proposed to be made of galvanized steel. He stated the tower would be designed to support six sets of antenna arrays, and each carrier would install their own set of antennas so they could accommodate six separate carriers. Mr. Lemonowicz stated structurally the tower will be designed to accommodate six carriers, and Mr. Burtner agreed.

Mr. Lemonowicz stated the two proposed carriers that will be installed are T-Mobile and Sprint/Nextel, and Mr. Burtner agreed. Mr. Lemonowicz asked if they have equipment associated with their installations, and Mr. Burtner stated they do. He noted S-1 of the documents provided with T-Mobile shown in the northernmost corner with equipment cabinets located on a 10' by 20' concrete slab. He stated Sprint/Nextel is proposing a 10' by 20' concrete pad with their own version of an equipment cabinet.

Mr. Lemonowicz stated Mr. Burtner testified that there would be a compound at the base of the tower and asked if this will be enclosed by a fence. Mr. Burtner stated it will be enclosed by an 8' tall fence including 1' of barbed wire. Mr. Lemonowicz stated within the fenced compound will be T-Mobile's and Sprint/Nextel's equipment, and Mr. Burtner agreed. Mr. Lemonowicz asked if the compound area can also accommodate other users, and Mr. Burtner stated it has been sized to hold all six carriers' equipment which are anticipated to be located on the tower.

Mr. Lemonowicz asked if there is going to be any lighting on the tower, and Mr. Burtner stated there is no FAA required lighting. Mr. Lemonowicz asked if there will be any markings or will it be painted, and Mr. Burtner stated it will not unless it were required by the Township, and the FAA does not require it to be painted.

Mr. Lemonowicz asked if there is any sewer or water service required for this facility, and Mr. Burtner stated there is not.

Mr. Lemonowicz asked if it will be a manned facility, and Mr. Burtner stated it will not. He stated each carrier would have its own set of maintenance requirements and typically T-Mobile would go out once a quarter, and Verizon would go out once a month. Mr. Lemonowicz asked if there would be any traffic impact, and Mr. Burtner stated there would not. Mr. Lemonowicz asked if they would be using the existing driveway cutout from Stony Hill Road, and Mr. Burtner they would use the existing parking area and no additional curb cut from Stony Hill Road is required.

Mr. Lemonowicz asked if the tower will be in a Historic District, and Mr. Burtner stated it will not.

Mr. Lemonowicz asked if there is existing vegetation that surrounds the proposed location of the tower, and Mr. Burtner stated pretty much of the entire tract is surrounded by mature trees. Mr. Lemonowicz asked if the existing vegetation will be preserved to the maximum extent possible, and Mr. Burtner stated it will. He stated they do not anticipate cutting down any trees. Mr. Lemonowicz asked if any of the other existing uses on the property are going to be relocated as a result of the installation, and Mr. Burtner stated they will relocate the volleyball court.

Mr. Lemonowicz asked if there are any guy wires that are a part of the tower, and Mr. Burtner stated there are not. Mr. Lemonowicz asked if there are multiple legs or a lattice-type bracing that supports the tower, and Mr. Burtner stated there is not and it is a cylindrical monopole.

Mr. Lemonowicz asked if the tower will be designed to comply with the American National Standards and Tower Industry of American Standards for communication structures, and Mr. Burtner agreed it will. Mr. Burtner stated currently it is F, but it will be G shortly so the design will probably be done for G.

Mr. Lemonowicz stated the tower will be 150' tall, and Mr. Burtner agreed. Mr. Burtner stated T-Mobile is proposing to occupy the 145' spot on the tower, and their antennas will not extend above the top of the tower. Sprint/Nextel are proposed to install at the 135' elevation, and their antennas will not extend above the top of the tower. T-Mobile is proposing nine antennas, and Sprint/Nextel is proposing nine antennas.

Mr. Lemonowicz asked if the tower is fully automated, and Mr. Burtner agreed.

Mr. Lemonowicz asked if an evergreen screen could be planted around the fenced-in compound if necessary, and Mr. Burtner stated it could.

Mr. Gruen asked if Mr. Burtner is aware that T-Mobile applied for another tower nearby, and Mr. Burtner stated he was aware of this, but is not intimately familiar with the Application. Mr. Gruen asked if the Board approved this tower would it mitigate the need for the other tower, and Mr. Burtner stated the RF expert would be able to discuss coverage.

Mr. Kim asked about the potential for this being a nuisance hazard which would attract young people. He asked if there will be a fence and will they make sure that teenagers cannot climb up on the tower. Mr. Burtner stated the compound will be surrounded by an 8' tall fence and there will be a locked gate. He stated while people are often concerned about these towers being an attractive nuisance, in his experience, they have not had problems. He stated the monopole does not have climbing pegs for the first 20' so it would be very difficult for someone to climb the tower. He stated contractors working on the tower have to use a ladder to access the lowest pegs to climb the tower. Mr. Kim asked if it is a shiny pole, and Mr. Burtner stated it will be exactly like all the other monopoles that are typically seen in the area. He stated coming out of the factory, galvanized steel is shiny, but it will dull down within weeks and will be a dull gray.

Mr. Kim asked if there is a “community-friendly” tower design that would not look like a tower but would serve as a tower. Mr. Burtner stated there are tree poles which work in some areas. He stated there are also flagpoles, but usually these are shorter in length, and they would not accommodate the co-location needs that would be beneficial. He stated a flagpole would only accommodate two or three carriers. Mr. Kim stated he is discussing a tower that would aesthetically blend in with the trees, and Mr. Burtner stated these have been proposed many times and some work in certain locations.

Mr. Gruen stated the tower will be 150' because T-Mobile has the frequency that will only work at that height, and Mr. Burtner stated T-Mobile's RF engineer is present and can speak to their needs. He noted T-Mobile is at a higher frequency and their frequency does not penetrate the ground clutter like an 800 megahertz frequency can.

Mr. Kim asked their power needs, and Mr. Burtner stated the RF expert will have to speak to this. Mr. Lemonowicz asked about the power needs for the regular utility lines, and Mr. Burtner stated it is 220 volts and each carrier would get 200 amps. He stated PECO will bring in 800.

Mr. Gruen asked if they are proposing a generator in case of a power failure, and Mr. Burtner stated there are no generators proposed by either Sprint or T-Mobile.

Mr. Gruen stated if Verizon were to come in, they could possibly put a generator on the site, and Mr. Burtner agreed this is correct. Mr. Gruen stated at this time, they are only dealing with Sprint and T-Mobile, and Mr. Burtner agreed. Mr. Gruen stated they are hoping to sell four more spots, and Mr. Burtner stated the solicitor would advise whether the next carrier would also have to come before the Zoning Hearing Board.

Mr. Lemonowicz stated the Township Ordinance would require a subsequent carrier to come before the Township, and co-location is encouraged in the Ordinance.

Mr. Malinowski asked how the pole would behave in a storm, and is there a storm powerful enough to bring the pole down. Mr. Burtner stated this would depend on how the monopole is designed, and it is very common for Municipalities to request that the pole be designed to fail at a certain level so that basically it would fall within the property lines. He stated this is easily done, and they would over design the anchor bolts and a certain number of the sections and the rest is designed per the Code; and basically there would be a weak point at specific levels to be determined by the engineers.

Mr. Zamparelli asked the lifespan of the towers before they begin to rust or corrode and become a safety problem, and Mr. Burtner stated there are towers which were built in the 1940's which are still standing. He stated the pole they are proposing uses even better galvanizing methods and monopoles have much less propensity to corrode than a lattice tower. He stated they could easily last for 100 years.

Mr. Gruen asked if they floated a balloon, and Mr. Lemonowicz stated they did this already. Mr. Gruen stated he is going to ask that they do this again for at least three days over a weekend so that the residents can see the height at 150'. Mr. Burtner stated he would have to defer to his clients, but feels that three days is not possible since the helium balloons cannot stay up for that long. Mr. Gruen stated they could put them up at least over a weekend since most people work during the week. Mr. Burtner stated he feels putting up a balloon one day during the weekend and letting it fly all day is very reasonable. Mr. Lemonowicz stated they would agree to fly the balloon during some agreed upon hours possibly on a weekday during a rush hour as well as on a Saturday. Mr. Gruen stated this would be reasonable. Mr. Burtner stated it could not be a windy day. Mr. Gruen suggested that they schedule two to three days; and if there is wind, they can do it one of the other days scheduled, and the Township will notify the residents beforehand what the days are. Mr. Lemonowicz agreed to submit to the Board's solicitor some proposed dates and times, and the Township could make this available to the residents.

Mr. Toadvine stated the Zoning Ordinance under Section 200-50.1 requires that they proceed with a Conditional Use Application if they were in Zone where this use was permitted by right. He asked Mr. Lemonowicz if they are willing to agree that they will comply with all the requirements of this Section and proceed, if the Zoning Hearing Board gives a favorable decision, to a Conditional Use Application. Mr. Lemonowicz stated they will comply with this.

Mr. Toadvine asked Mr. Burtner how close from the monopole is the nearest residential dwelling, and Mr. Burtner stated it is approximately 400 feet. Mr. Toadvine stated that distance is at least twice the height of the pole, and Mr. Burtner agreed.

Mr. Donaghy asked if the Variance were granted, would they also agree that if there is a request for co-location by other antenna on the site, that they would also comply with a condition to go to Conditional Use; and Mr. Lemonowicz agreed future tenants would have to comply with the Conditional Use procedure.

Mr. Donaghy stated Mr. Burtner had indicated that some Municipalities require that if the tower were to fall, that it would fall within the confines of the property; and he asked if this tower were to fall, would it fall within the confines of the property. Mr. Burtner stated if it were to fall completely over, it would not fall completely within the confines of the property. Mr. Donaghy asked how far out would it extend into an adjacent property, and Mr. Burtner stated 35' at the northern property line.

Mr. Donaghy noted Exhibit A-13 and asked if they have considered that there may be some encroachment of the driveway into the floodplain area, and Mr. Burtner agreed that it is for about 20', and they could slide it out. Mr. Donaghy stated if they did not do this, they would have to apply for a Variance; and Mr. Burtner stated this will be relocated, the next time the Township sees the Plan.

Mr. Donaghy stated there was a balloon put up so that they could determine the view, and Mr. Burtner agreed. Mr. Donaghy asked if they made any determination as to the distance the tower can be seen, and Mr. Lemonowicz noted photos which were marked as Exhibit A-10. Mr. Burtner stated this is an aerial exhibit which shows the surrounding roads and locates where they took photos. He stated they were taken from the public right-of-way and chose spots where they felt the balloon was readily visible. He stated there are a lot of trees and houses in the way so that it is not easy to get a clear picture. He stated it is 400 feet to the nearest house, and the tower does get pretty small at that distance in his opinion; and compared to the need in the community for advance telecommunication coverage, he feels this is something that is necessary in the community. The aerial map has a star in the middle and this is the proposed location of the tower. Surrounding the star are numbers in arrows from one to four, and these depict locations where the photos were taken. Mr. Burtner stated these are labeled on the subsequent photos. Mr. Lemonowicz stated they floated the balloon at the star location to an elevation of 150', and Mr. Burtner agreed and added he then took the pictures of the balloon and simulated a picture of a tower where the balloon was. He stated the photos that follow the aerial map show the views of what the tower would look like if it were constructed based on the balloon test.

Mr. Zamparelli asked if anyone saw the balloon when it was floated, but no one in the audience indicated that they had seen it.

A gentleman from the audience indicated they cannot see what is being presented, and Mr. Malinowski stated Mr. Lemonowicz indicated that he did not enough Exhibits tonight as he did not anticipate the number of Parties, but will provide them in the future.

Mr. Lemonowicz asked Mr. Burtner the distance that the tower could be seen based on when the balloon was floated. Mr. Burtner stated you can see it from very close and back several thousand feet there are certain areas where you could catch a glimpse of it. He stated there is a mature woodlands and because of the existing houses, there is a lot of clutter to get in the way. Mr. Burtner stated View #1 was taken from the front of the Swim Club and was about 600' from the site, and the balloon could be seen. The photo from View #3 was 800' to 1000' away from the balloon, and the top quarter of the tower was visible and was very small from that distance. View #4 was taken from Oxford Valley Road approximately 1,500' from the tower, and the tower is barely visible. He stated the light fixtures in the parking lot are much bigger than the tower itself.

Mr. Zamparelli asked if the pictures represent the closest view by neighbors; and Mr. Burtner stated there are closer areas, but from a lot of those views, there are trees and clutter which obscure the view. Mr. Burtner stated the pictures represent where you have the most view of the tower.

Mr. Donaghy asked about View #2, and Mr. Burtner stated it was taken 800' from the tower. This is the third photograph of Exhibit A-2.

Mr. Gruen asked what will be the circumference of the antennas to be placed by T-Mobile; and Mr. Burtner stated the platform that holds the antennas is an equilateral triangle with each space being 12'. He stated there are three antennas located approximately 6' apart. Mr. Gruen asked what size balloon they floated, and Mr. Burtner stated it is a 4' diameter balloon. Mr. Gruen stated a balloon would not give an exact representation. Mr. Burtner stated they make it 4' so that when they do their photo-simulation, they know how big to make the platform itself. He stated the antenna are only 5" wide and 50" tall, and there are three of them which are held together by a 3" piece of steel. He stated they are not using the balloon to represent the antennas, they are using it so that when they take the pictures, they know exactly where the tower will be and so that the photo simulation can be accurate as to the size of the antenna masts, thickness of the tower, etc.

Mr. Kim stated this is a Residential area, and he asked if they looked into a non-Residential area for this tower. He asked why they need this site, and Mr. Lemonowicz stated he feels this question should be directed to the RF engineer. Mr. Kim stated he would like to know if there is a non-Residential location that could still accommodate their needs. Mr. Lemonowicz stated he is aware that there have been numerous attempts to build a communications tower in this area of Lower Makefield Township and unfortunately it is predominantly Residential, but there is still a need. He stated the radio frequency engineer will present testimony in this regard.

Mr. Lemonowicz asked Mr. Burtner if the setback requirements for the R-3M Zone are shown on the Plan, and Mr. Burtner stated they are; and the tower and the compound comply with the requirements.

Mr. Malinowski asked that Mr. Burtner be brought back at a future Hearing as there may be additional questions once all Parties are supplied with copies of the Exhibits.

Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to October 20, 2009.

Mr. Lemonowicz agreed to provide the Exhibits to the Township prior to the next meeting.

Ms. Lauren Templeton asked about alternative types of visual impacts that could be used such as a crane rather than a balloon. Mr. Burtner stated a balloon is an accurate analysis of height and a crane is actually bigger than a monopole. Mr. Lemonowicz stated they would agree to float a balloon at times and distances to be discussed with the Township. He stated a crane would present a problem as to whether it could be put on the property and damage that may result. Mr. Kim stated it would be quite expensive for them to rent a 150 crane for three days. Ms. Templeton stated if they had a crane they could do it for one day. She stated she wants to make sure that they are not doing anything prior to the next meeting. Mr. Lemonowicz stated he was assuming that they were going to float the balloon prior to the next meeting, and Mr. Maloney asked that they communicate with the Township staff and the Township will put the times and dates that it will be floated on the Township TV Channel.

There being no further business, Mr. Gruen moved, Mr. Kim seconded and it was unanimously carried to adjourn the meeting at 10:30 p.m.

Respectfully Submitted,

David Malinowski, Chairman

