

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 20, 2010

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 20, 2010. Vice Chairman Bamburak called the meeting to order at 7:00 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Vice Chairman
Gregory J. Smith, Secretary
Jerry Gruen, Member
Anthony Zamparelli, Member
Keith DosSantos, Alternate Member

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

Absent: David Malinowski, Zoning Hearing Board Chairman

APPEAL #10-1548 – WILLIAM AND SUSAN JENNY

William and Susan Jenny were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan dated 2/5/10, least revised 3/8/10, and this was marked as Exhibit A-2.

Mr. Jenny stated they are putting in a built-in pool and were told that there was too much impervious surface.

Mr. Habgood stated the numbers they supplied on Exhibit A-2 are accurate. The existing impervious surface is 19.2% and the proposed is 22.1%. He stated they are planning to remove the walkway from the driveway to the rear of the property. The permitted impervious surface is 18%. Mr. Gruen asked what they would have when they remove the walkway, and Mr. Habgood stated it will be 22.1%. Mr. Gruen noted the decking around the pool, and Mr. Jenny stated it is concrete.

Mr. Bamburak stated they are already above the permitted impervious surface, and he asked if they bought it this way or did they install other construction. Mrs. Jenny stated they purchased it this way in 1997, and all the impervious surface was there. Mr. Bamburak asked if there is a record of any other construction that brought this above the 18% permitted, and Mr. Habgood stated this is one of the older properties in the Township and initially it was based on building coverage so items such as patios, walkways, etc. were not counted. He stated they do not have a record of the shed or the concrete pad by the shed. Mr. Bamburak asked what the concrete pad to the right of the shed is used for, and Mr. Jenny stated he believes the prior owner used it for his dog as there is a fence around it. He stated he does not use it, and he would be willing to remove it. Mr. Habgood stated if they removed this pad, the impervious surface would be reduced to 21.5%.

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

There was no public comment.

Mr. Smith asked Mr. Habgood how sure he is with the 21.5%, and Mr. Habgood stated he feels this is accurate since he did the calculations based on the Site Plan and his figures matched the Applicant's exactly. Mr. Majewski stated he concurs with the figures provided by Mr. Habgood.

Testimony was closed at this time.

Mr. Smith moved, Mr. DosSantos seconded and it was unanimously carried to grant the relief requested in the way of a total impervious surface to 21.5%.

APPEAL #10-1549 – STEVEN KORTICK

Ms. Audrey Kortick and Mr. Michael Calorio, contractor, were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was an 8 ½" by 14" drawing of the property, time-stamped by the Township 3/22/10; and this was marked as Exhibit A-2.

Ms. Kortick stated when she and her husband moved to their home fifteen years ago they had no children and the two-car garage was sufficient for their needs. She stated since their children are very active in the community with sports they have a lot of equipment. She stated they would like to add a garage which will put them over the impervious surface allotment. She stated they are proposing to change at least part of the driveway to a product called flexipave which is an extremely porous material; and any water that would go over the driveway would go directly into the ground and not end up in the

impervious surface but will just be shifting where the impervious surface is. She stated the Sales Manager from KBI which makes this product is present this evening to answer any questions.

Mr. Bamburak stated Exhibit A-2 shows the 464 square foot proposed garage as well as a 504 square foot addition. He asked if this addition was previously added, and Ms. Kortick agreed. Mr. Bamburak stated there is no break down of the impervious surface by square footage for anything. He stated they do not know what the existing or proposed impervious surface will be.

Mr. Calorio stated they do have these impervious surface numbers. He stated there is a Plot Plan with all of the numbers aside from the addition which is built on the porch for which a Permit was pulled in 1999. He stated the addition was built in 2006 on top of that porch. He stated he does have both of those Permits. He stated the 504 square foot addition is for the garage which is proposed. He stated the addition is out the back of the house, and he says this is 624 square feet. Mr. Calorio stated the existing house is 1,772 square feet, there is 168 square feet of sidewalk, 1,369 for the driveway, 28 for the porch, and 160 for the shed for a total of 4,121 square feet. He stated he estimates this to be 23% to 24% impervious surface that is existing. Mr. Majewski stated it is 24.25% impervious surface. Mr. Habgood stated the permitted impervious surface was done by the square footage for each lot no matter the lot size and for this lot it is 3,960 square feet. Mr. Calorio stated they received a Variance in January, 2000 to go to 4,098 square feet total allowed.

Mr. Maloney joined the meeting at this time.

Mr. Habgood stated the current homeowners were before the Zoning Hearing Board in 1999 (Appeal #99-1045) and the Zoning Hearing Board granted a Variance for 4,098 square feet of impervious surface coverage. Ms. Kortick stated this was for a raised patio which had pavers, and they then built the addition directly on top of that patio.

Mr. Bamburak asked if there were any mitigation measures required at that time, and Mr. Habgood stated there were no Conditions attached to the approval by the Zoning Hearing Board at that time.

Mr. Toadvine asked what the impervious surface will be with the addition of the garage, and Mr. Calorio stated it is an additional 432 square feet of impervious surface.

Mr. Bamburak stated what was submitted indicates it was going to be an additional 406 square feet, and Mr. Calorio stated he has a stamped print which he will submit which shows 432 square feet. Mr. Majewski stated this will bring the impervious surface to 26.8%.

Mr. Bamburak stated Ms. Kortick has indicated they would like to mitigate some of the impervious surface with the proposed driveway material, and Ms. Kortick agreed.

Mr. George Barnum from KBI was sworn in and stated this is a porous pavement system which is made from 50% from recycled tires and a multi-faceted local stone ½” to 3/8” which is mixed up with a binding agent. This results in a porous system with an 18% to 23% flexible open voids that have 4,000 inches per square foot porosity which is faster than grass. They have 4” of #57 stone underneath it and 2” of the product as well as a water vault system that holds a little over one half gallon of water. He stated it is 90,000 pound load bearing.

Mr. Toadvine asked if the Township engineer has seen this product, and Mr. Majewski stated he has as they have submitted the product to the Township in February. He has reviewed it, and the product seems to be a good alternative for a driveway replacement. He stated it effectively allows water to pass through the system down to the ground like grass would. Mr. Toadvine asked if they consider this to be pervious; and Mr. Majewski stated while it meets the definition of impervious surface in the Ordinance, effectively from the perspective of stormwater management, it mitigates the impervious surface by 100%. Mr. Bamburak asked if they put up a 432 square foot structure, 432 square feet of this material in the driveway would be an even match, and Mr. Majewski agreed.

Mr. Toadvine stated he understood they were going to do the entire driveway with this material, and Ms. Kortick stated they had not made a decision on the exact amount although they would do at least 432 square feet and more if required by the Board. Mr. Toadvine asked about maintenance to insure that it remains pervious, and Mr. Barnum stated in the past with porous concrete, porous asphalt, and other permeable paving systems, they required high maintenance because they were a fixed void capacity and a hard surface which was 6” to 8” thick. He stated they are only 2” thick with flexible voids that constantly move the fines down into the substrata in conjunction with a filter fabric underneath to stop the re-infiltration of fines, so this will not get clogged. He stated if it does get silted in, it is 100% recoverable and they have done soil load testing. He stated they have used the product in the North for over five years. He stated the Army Corps of Engineer is using this in Pennsylvania. He stated he does have the documents regarding maintenance, cleaning, testing, and information regarding the tactile surface which requires 50% to 60% less ice melting materials. He stated you never need to sand this surface because it is tactile. He stated it has a neutral ph and has a positive impact on water quality and it removes phosphates and nitrates as they go into the ground.

Mr. Zamparelli asked what happens after a few years if they do not do any maintenance. Mr. Barnum stated they have had this product in the ground for over ten years, and it is very low maintenance. He stated if you keep the surface from being sealed off just by leaf blowing and pressure washing, you can maintain the porosity. Mr. Zamparelli asked what happens if they do not do that maintenance and if it will restrict the flow over time; and Mr. Barnum stated in most cases because it is only 2” thick, whenever it rains, it is a self-cleaning product. Mr. DosSantos asked if the homeowners could do anything to negatively impact the porosity, and Mr. Barnum stated you cannot seal it. He stated this product will never crack and never pothole because it is so flexible.

Mr. Toadvine asked if there is any issue with this product and the requirement that all driveways be paved. Mr. Habgood stated the Code requirements are that the driveway must be a hard surface. Mr. Majewski stated he does feel that the product meets the definition of a suitable hard surface. He stated the Township does have a standard Stormwater Management Operations and Maintenance Agreement that they have homeowners sign whenever they do something that does require a high level of maintenance than is normally expected, and this would address the maintenance concerns. He stated this Agreement would be recorded and binding on this and future homeowners that in the event they do not properly maintain the system, the Township has the right to go in do the maintenance for them, and charge them for that. He stated this also allows for the Township to inspect the system to make sure it is working properly. Mr. Bamburak asked if the Township does this on a regular basis other than if an adjacent homeowner makes a complaint. Mr. Majewski stated a Permit is issued by the DEP to discharge stormwater management into the waters of the Commonwealth; and as part of that Permit, the Township is obligated to periodically inspect best management practices for stormwater management systems such as these. He stated they have to file a report every year with DEP to verify that they have done this.

Mr. Barnum stated in Allegheny County they have a consent order with the EPA to use porous paving. He stated this material could be used for a pool deck, and they meet playground standards. He stated in Pittsburgh the Water and Sewer Commission to incentivize construction in using and maintaining porous pavement systems, they are giving water and tax rebates back for sewer and taxes on new construction in the County.

Ms. Kortick stated they have spent a lot of money on their property, and this driveway will be expensive. She stated they are not looking to move, and they would take care of the surface. She stated they would be willing to enter into the Maintenance Agreement if it were made the Condition of grant of any Variance.

Mr. Barnum stated the product does come in different colors so you match the aesthetics for a neighborhood, and it is not just black.

Mr. Toadvine asked if it would clog the product if there were an oil leak, and Mr. Barnum stated it will not clog. He stated rather than the “first-flush effect” that occurs with hardscape parking lots with run-off that occurs with point source pollution that goes into the storm drains, with this product it is dissipated over a larger area to put into the ground to allow the groundwater to naturally recharge.

Mr. Gruen asked the life expectancy of the product; and Mr. Barnum stated they have been in the ground for over ten years, and they have no breakdown or degradation. He stated because it is encapsulated rubber they feel it could be in the ground for fifty years.

Mr. Bamburak stated it appears that this is a good product, and he suggested that Mr. Barnum make a presentation before the Board of Supervisors so that this use of pervious paving could be Codified to avoid this problem for other people.

Mr. Zamparelli stated there are no Plans for the garage itself, and Mr. Toadvine stated there are no issues with the garage other than the impervious surface.

Mr. DosSantos asked if they would be willing to install more of the paving than the square footage of the proposed garage, and Ms. Kortick agreed. Mr. Toadvine based on the previous Variance granted they are already 23’ over; and with the garage, they would have to do a minimum of 455 square feet to swap it off and come into compliance with the prior Variance which was granted. This would bring it to 4,098 square feet. Mr. Smith asked if the entire driveway were to be replaced with this material, what would be the impervious surface assuming it were considered to be pervious. Mr. Bamburak stated he feels this could be an onerous Condition. Mr. Habgood stated this would bring the total down to 3,184 square feet.

Mr. Toadvine asked if they would have a preference where they would use this material in the driveway, and Mr. Barnum stated they would prefer to put it where the apron connects and then the driveway going to the garage could be blacktop or concrete. He stated there would be an interrupter strip so the water would not reach the apron and not reach the gutter. He stated this would be approximately 700 square feet of this material.

Mr. Gruen asked who would inspect this, and Mr. Bamburak stated Mr. Majewski already discussed this. Mr. Gruen asked who would physically inspect the construction and check that it is working after two years. Mr. Habgood stated the Township engineer would inspect this. He stated they would have to get a Road Opening Permit from the Public Works Department for changing the material of the driveway. He stated driveway inspections are done through Public Works and the Township engineer. Mr. Bamburak asked if you have to get a Road Opening Permit if you change the driveway on your own property, and Mr. Habgood stated you are not required to do this is you are only

exchanging it as is; however, because of the nature of this material, it would require a Permit from Public Works to make sure that it is inspected. He stated a Road Opening Permit is the general Permit used for any change to a driveway.

Mr. Esposito stated the Township is participating in this matter and they would request that the Applicant enter into a Stormwater Management Operations and Maintenance Agreement as already noted. He asked if they would agree to a Condition that they would agree that this would be maintained as a porous surface forever, and Ms. Kortick agreed. Mr. Toadvine stated he assumes that if they were to change this, they would have to come back for a Permit. Mr. Majewski stated the Condition is appropriate, and they could amend the standard Agreement to make sure that this Condition is in there.

Ms. Kortick agreed that they would do at least 700 square feet.

Mr. Brian Friedman, 409 Sweetbriar Road, was sworn in. He stated he has no complaint with the proposed garage. He stated he backs up to the back of this property and his property is lower. He stated he does get run off from the back, and he wants to insure that he will not get additional run off. He stated it seems from what has been indicated that this will not happen.

There was no further Public Comment, and the testimony was closed.

Mr. Calorio asked if she were to do the entire driveway with this surface, would she be able to build more on her property such as a pool; and Mr. Bamburak stated this Appeal is this Appeal, and they could not speculate what could happen.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted in the way of a Variance to the impervious surface to allow for a maximum of 4,555 square feet with the following Conditions:

- 1) That 700 square feet minimum of driveway be replaced with the flexipave material information for which was submitted with the Appeal;
- 2) That the Applicant enter into a Stormwater Management Operations and Maintenance Agreement with the Township as part of insurance to the Township that the impervious nature of the material will be maintained in perpetuity.

APPEAL #10-1550 – BRUCE MITTLEMAN

Mr. Bruce Mittleman was present and sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a one-sheet drawing time-stamped by the Township 3/24/10, and this was marked as Exhibit A-2.

Mr. Mittleman stated he is asking for a Variance to permit a fence to be placed in the buffer easement located on his property next to Stony Hill Road. He stated they feel this fence is essential to insure the safety of his children both of whom have special needs. He stated the buffer has thinned out since taking ownership from storms that frequent the area, and he is concerned his children will run through one of these openings while playing even under close supervision. He stated the brush area that borders the buffer area also contains substantial amount of poison ivy. He stated their property is irregularly shaped with a slope and with the 25' setback from the easement area and the grade change, the fence would have to be located almost by the house thereby almost completely eliminating half of their side yard. He stated the original natural buffer was previously reduced by the Township when the bikepath was installed. He added since one of his children has auto immune issues, they are limited in taking her to public places so it is important for them to have a safe place for their children to play in their yard.

Mr. Mittleman stated they propose to install a high-quality composite fence that will blend into the environment and will not alter the character of the neighborhood; and their neighbors have agreed that the installation of the fence will not alter the character of the neighborhood or impair the appropriate use of adjacent property or welfare. He stated he does have letters from all the neighbors from Frazer Drive in support of the fence construction.

Mr. Habgood stated the Site Plan indicates this is a 25' buffer easement; and he believes that when the development was planned since it abuts a collector road, the developer was required to put a buffer easement in to help cut down noise.

Mr. Bamburak stated he believes there are other fences in this area.

Mr. Toadvine asked how high the fence will be, and Mr. Toadvine stated it will be 6' High, and it will be a privacy fence.

Mr. Bamburak stated typically the only Condition that would apply to this kind of request is that they would require that they maintain a gap of at least 2" at the bottom of the fence so that it does not restrict water, and Mr. Mittleman agreed to this Condition.

Mr. Bamburak stated he does not feel there would be an issue with removing this fence since it does not involve stormwater or sewer issues that would require maintenance.

Mr. Toadvine asked who maintains the planted buffer, and Mr. Habgood stated this is the responsibility of the property owner since it is a dedicated development.

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

There was no Public Comment, and the Testimony was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted with the Condition that the Applicant install the fence with at least a 2” gap from the ground.

Mr. Esposito left the meeting at this time. Mr. Donaghy joined the meeting at this time.

APPEAL #08-1483, #08-1483(A), #08-1483(B) – T-MOBILE NORTHEAST LLC

Mr. Eric Goldberg, attorney, was present. Mr. Toadvine advised the Applicant that Chairman Malinowski is not present this evening and Alternate Member, Mr. DosSantos is present. He stated in all likelihood, the Chairman will be back when the Board votes on this matter. He asked Mr. Goldberg if he had any problem with proceeding with the understanding that the Chairman will be voting on this; otherwise only four members would vote on this. Mr. Toadvine stated the Chairman would be able to review the Minutes from this evening’s meeting and will be prepared to vote on the matter at the next scheduled meeting. This was acceptable to Mr. Goldberg.

Mr. Goldberg stated this matter was continued for some time since the Applicant was looking to determine if they were capable of leasing property from the Pennsbury School District. He stated they have testimony this evening that unfortunately the Applicant was unable to do so.

Mr. Michael Polter was sworn in. Mr. Goldberg stated Mr. Polter previously testified at one of the earlier Hearings. He is the site acquisition specialist for this particular area and is charged with locating sites and obtaining leases. He was also the individual who has been in contact with the Pennsbury School District. Mr. Goldberg stated the Zoning Hearing Board had previously requested that they look into the Pennsbury School District as a possible alternative location. Mr. Polter stated he has done this, and he received an e-mail on 2/4/10 from the attorney on behalf of the School Board indicating they have rejected the proposal and indicated that the School Board is no longer interested in pursuing this. Mr. Polter stated he had contacted them several times prior to this, and the School District had indicated they may have been willing to enter into a Lease; and he is

unsure as to what happened to change their mind. He had been in contact with them prior to and after the last Hearing to pursue a potential Lease with them; but at this time they have unequivocally stated that they will not enter into a Lease with T-Mobile.

Mr. Bamburak asked if they gave any indication whether this was a financial or safety concern; and Mr. Polter stated they did not provide a reason and just stated they were no longer interested in pursuing this.

Mr. Donaghy asked if they investigated any other locations, and Mr. Polter stated he has not since the last meeting. He stated at the last meeting they did bring up a few other sites they had considered including the Exxon Station, a few Churches, and the Five Mile Woods. He stated St. John's is run by the Archdiocese, and they will not allow any deals in terms of tele-communications. He stated PECO will not allow any carriers within their compound. He stated another Church they contacted was not interested. He stated the Five Mile Woods is too far, and the property at the Exxon Station is too small to accommodate a tower.

Mr. Peter Tolischus was sworn in and stated he has a Masters in City Regional Planning and has been a licensed professional planner in the State of New Jersey for over forty years. He has done Zoning Ordinances and Master Plans. He stated over the last fifteen years he has handled over 400 cellular cases in the tri-State region including approximately 40 cases in Pennsylvania in the outer ring of the Philadelphia area. He has been accepted by Boards in Pennsylvania as an expert land planner. Mr. Tolischus was offered and accepted as an expert.

Mr. Tolischus stated he has reviewed the applicable Ordinance, Plans, and documents prior to testifying this evening and has visited the site. He stated he visited the site again this afternoon.

Mr. Goldberg marked as Exhibit A-15 a Zoning Map of the Township of Lower Makefield. Mr. Tolischus stated they have shown in yellow the Overlay District. The map is dated 1985 and is the latest version to his knowledge. Mr. Tolischus stated cellular towers are permitted within the three Overlay Districts as a Conditional Use. He showed the first one on the north side of I-95 which is surrounded by R-1 Zone to the north and another Residential Zone to the west. He stated this site already contains a cellular tower. He showed the second Overlay District on the western side of I-95 which contains a cellular tower. He showed the third Overlay District which is in the C-3 District adjacent to I-95, and this also contains a cellular tower. He stated there is also a fourth tower in the Township on the Municipal Complex property. He also showed the site where they are proposing this new cell tower. Mr. Goldberg stated communication

towers are also permitted in the O/R District, and Mr. Tolischus agreed and showed where this is located on the map. Mr. Goldberg stated T-Mobile is using the towers in all three of the Overlay Districts, and Mr. Tolischus agreed adding they are also using the tower at the Township Complex.

Mr. Goldberg asked that Mr. Tolischus describe for the Board the appropriateness of the proposed site for a tele-communications facility. Mr. Tolischus stated the proposed site is heavily wooded with mature, tall trees. He stated it is a one acre site and the woodland provides a lot of buffer and natural screening for a facility such as this. He stated the site is already used for a utility since the water tank is on the site. He stated they are in essence adding a second utility. He stated tele-communication is telephone; and in the past, a Variance was not required to run telephone lines along the road. He stated in order to cover the cellular communication gap described, this is a good location for another utility on the same site that is already used for that purpose. He stated this is an ideal site as opposed to other locations where you would have a free-standing tower which could be seen a mile away if it were in an area with no vegetation to screen it. He stated at the proposed location they have woodlands to mitigate the visual impact of the tower. He agrees that this is an appropriate location for a tele-communications facility because it is so heavily wooded.

Mr. Toadvine asked why they could not locate the tower on the water tower, and Mr. Goldberg stated Mr. Iskander indicated that it was too short and you would be beaming right into the trees.

Mr. Donaghy stated Mr. Tolischus testified about the locations available for cell towers within Lower Makefield Township, and he asked if he also investigated areas in adjoining Municipalities where cell towers might be permitted. Mr. Tolischus stated he did not.

Mr. Goldberg distributed Exhibit A-15 to the Board.

Mr. Bassem Iskander was present and was sworn in. Mr. Goldberg stated Mr. Iskander is the radio frequency engineer for T-Mobile, and he had previously gone over a variety of factors dealing with the gap in coverage in terms of the location of the gap, what is considered reliable coverage recognizing that they are looking for 95%, the type of gap including an in-building and in-vehicle gap, and he also reviewed signal strength which is used as a measure to determine the coverage that exists.

Mr. Goldberg stated at the last meeting Mr. Iskander had just started to discuss the level of coverage provided by other carriers. Mr. Goldberg stated since the time of the last Hearing, the FCC has come out with a determination indicating that it is relevant to a gap in coverage if another carrier provides coverage there. He stated they will still briefly cover the issue of coverage by other carriers, but he asked that the Board understand that

this is now considered irrelevant.
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Mr. Donaghy stated although the FCC ruling does state what Mr. Goldberg has indicated, whether or not it serves to overrule the existing Third Circuit cases is still to be determined.

Mr. Bamburak asked for a summary of this ruling. Mr. Toadvine stated when a carrier comes in and explains that they have a gap in coverage, an argument against their gap in coverage could be that other carriers in the same area have reliable coverage. He stated what the FCC is saying is that this is irrelevant, and it only matters to the particular Applicant whether there is a gap in coverage. Mr. Bamburak asked if it is true that the Zoning Hearing Board should not consider in their deliberations that another carrier can get coverage in this area, and Mr. Toadvine stated this is a question. He stated this is what the FCC has said, but there is no Court ruling. Mr. Donaghy stated the Third Circuit, which covers Pennsylvania, had a case which would indicate that in considering a significant gap you had to see if it was a significant gap for all carriers; and if other carriers had the ability to service that area, it was not a significant gap. Mr. Donaghy stated it will ultimately be a determination whether or not the Courts accept the determination/interpretation of the FCC or if they challenge it. He stated Courts in other areas have ruled the same way as the interpretation of the Act 5 by the FCC, and sometimes Courts do give deference to regulatory bodies; but in this case the Third Circuit case is still out there.

Mr. Toadvine asked Mr. Goldberg if he would agree, and Mr. Goldberg stated they may disagree as to the impact of the FCC decision. Mr. Toadvine asked if there are any new cases pending which have challenged or attempted to affirm the FCC ruling, and Mr. Goldberg stated there is not that he is aware of other than the Third Circuit.

Mr. Goldberg noted Exhibit A-12 which is the AT & T drive test result, and he asked that Mr. Iskander summarize this document. Mr. Iskander stated this is a drive test of the area surrounding the proposed location collecting AT & T Wireless signals only. He stated they did a drive test for AT & T, Sprint/PCS, and Verizon; and they are showing what other carriers have. He stated at that time, there was no FCC ruling. He stated the green dot shows AT & T reliable in-building coverage, the yellow is AT & T in-vehicle coverage, and the red is what is below the in-vehicle threshold for AT& T signals. He stated this data was collected using an AT & T phone, AT & T receivers, and correlated with GPS equipment so you can collect signal strength and location. He stated AT & T has unreliable coverage basically everywhere that is red which includes Makefield Road, Derbyshire Road, and parts of Big Oak Road.

Exhibit A-13 was noted which is the Sprint/PCS drive-test result, and he stated this is the same thing they did for AT & T but they collected Sprint/PCS signals. He stated they do not have access to the other carriers' data bases so they cannot plug them into their tools; but they still have access to the wireless in the area, so they can collect data and find out what their coverage looks like. These were taken prior to the last meeting before the

Exhibit A-14 was noted which is the same information for Verizon drive test results. He stated Verizon probably has the best coverage in the area although they do have a gap on Makefield Road.

Mr. Bamburak noted it was indicated that these tests were done approximately two years ago; and he asked Mr. Iskander if any of the other carriers have done construction in the Overlay District that mitigated some of these issues. Mr. Iskander stated he did not know.

Mr. Goldberg marked Exhibit A-16 which are the T-Mobile drive results. Mr. Iskander stated this is their coverage in the area; and if this is compared to their propagation maps, they should be very similar. This was taken around the same time as the other drive tests. Mr. Goldberg agreed to supply the Board with a scaled-down version of Exhibit A-16. Mr. Iskander estimated that the drive tests were taken after the Application was filed, but before the first Hearing on this matter. Mr. Goldberg stated Exhibit A-16 confirms that T-Mobile has a significant gap in coverage in this area for both in-building and in-vehicle, and Mr. Iskander agreed.

Mr. Goldberg stated at a prior Hearing, they had agreed to provide the search ring itself. Mr. Goldberg marked Exhibit A-17 which is entitled “T-Mobile Existing Coverage Search Ring Location.” This was provided to the Board this evening. Mr. Iskander stated Exhibit A-17 is their existing coverage in the area with a red circle in the center of the map representing where this site needs to be in order to fill the gap in coverage. He stated if it is outside of the red ring, it will not fill the entire gap and would be too close to other sites. Mr. Goldberg stated the red dot represents the approximate location as to where the proposed site is located, and the blue star represents the center of the search ring which would be their ideal location. Mr. Goldberg stated because of the leasing issues which were discussed earlier by Mr. Polter, the subject site is being used rather than some other site which would be closer to the blue star; and Mr. Iskander agreed. He stated to his knowledge, the proposed site is the only available candidate in the search ring that will fill the coverage gap. Mr. Goldberg asked Mr. Iskander how he determined the general search area for this particular site, and Mr. Iskander stated it is a combination of the existing sites, existing coverage in the area, and the outputs of their propagation tool.

Mr. Goldberg noted Exhibit A-15, and asked Mr. Iskander if he is aware that Lower Makefield allows tele-communication facilities in the three Overlay Districts; and Mr. Iskander stated he is aware of this. Mr. Iskander added that T-Mobile has a facility in each of these Overlay Districts as well as at the facility at the Township Building on Edgewood Road. Mr. Goldberg noted the O/R District on the map, and asked Mr. Iskander if putting a tele-communication in this area would accomplish anything. Mr. Iskander stated none of the four sites that are currently on air can provide coverage to

fill the gap in coverage. Mr. Goldberg asked if there is anything T-Mobile can do to fill this particular gap in coverage besides build another tele-communications facility, and Mr. Iskander stated there is not.

Mr. Goldberg asked Mr. Iskander if he looked into whether there were any existing structures in close proximity that could be fill the gap whether individually or cumulatively, and Mr. Iskander stated he did. Mr. Goldberg asked Mr. Iskander to review how the proposed facility will fulfill the requirements to provide reliable tele-communication coverage in the area. Mr. Iskander noted Exhibit A-11 which shows future coverage with the proposed site. He stated this will give slightly more than a half mile radius of in-building coverage and in-vehicle coverage for almost the entire area. Mr. Iskander stated T-Mobile is requesting the minimum height that will fill this particular coverage gap.

Mr. Goldberg stated the current gap for T-Mobile is both an in-vehicle and in-building gap; and Mr. Iskander agreed adding that this proposal will remedy the in-vehicle gap totally, but because it is not in the center of the search ring and because they are proposing the bare minimum that they could have which is 100', it will not cover the entire in-building gap. He stated they would still consider this a good site. This is predicated on the signal strength previously discussed as well as based on having a 95% degree of reliability.

Mr. Goldberg asked that Mr. Iskander describe E911 and how it relates to this particular site. Mr. Iskander stated E911 stands for Enhanced 911 and is the ability for a cell phone subscriber to dial 911 from their cell phone. He stated Bucks County is now Phase II compliant, and he does not believe they were at the previous Hearing in 2008. He stated this means if you dial 911 from your cell phone, you do not have to provide your location, as your location is displayed in front of the 911 operator. He stated because of the gap in coverage in this area, the likelihood of establishing a 911 call is low because it is unreliable service. He stated this site will fill this gap in service so that you will be able to dial 911. He stated if you are in the green area, you will have reliable in-building coverage from your home. He stated statistics have shown that more than 50% of 911 calls are made from cell phones as people are using cell phone as their sole means of communication more and more. He stated T-Mobile has more than 50,000 911 calls per day on their National network in the summer. He stated the number of adults 18-24 who have cut landlines completely is more than 25%, and this is increasing each year. He stated it is therefore very important that a service as essential as 911 be provided, and this site helps do that.

Mr. Goldberg stated this site will not interfere with radio frequency or television reception, local services, or cause any interference at all, and Mr. Iskander agreed that it will not. Mr. Goldberg stated the radio emissions will not produce any additional noise,

odor, dust, glare, lighting, or pollution; and Mr. Iskander agreed.
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Mr. Goldberg stated the required maintenance at this site would be a technician coming once every few months to perform routine maintenance, and Mr. Iskander stated T-Mobile does not have a sufficient number of people to do this as frequently, so they are usually coming out only once every six months.

Mr. Goldberg marked Exhibit A-18 which is a copy of the FCC Decision dated 11/18/09 noted previously.

Mr. Smith asked what 95% degree of reliability means. Mr. Iskander stated degree of reliability is a threshold – a signal strength – and it is determined that if you are below this signal strength, you do not have reliable coverage, and if you are above that signal strength you have reliable coverage. He stated the way they come up with the number is through a process called determining the link budget for the network which means you take your receiver, which is your cell phone's minimum sensitivity and work your way backwards to determine the lowest signal level that a receiver can pick up. You determine how much average losses you are going to have in free space loss, how much average losses you are going to have in-vehicle losses, in penetration losses, reflection losses – and you work your way back to the network. He stated you cannot pick up a signal lower than your lowest sensitivity. He stated this equation is called the link budget. He stated a certain milestone in that equation is your cut-off threshold for in-building coverage and in-vehicle coverage. He stated those are what are determined to be reliable coverage. He stated above that threshold would be the reliable in-building and below that is from in-building to in-vehicle, and below the in-vehicle threshold, is the unreliable coverage.

Mr. Smith asked Mr. Iskander if he is telling the Board that in the white areas on the maps you cannot make or receive a phone call, and Mr. Iskander stated he is not; but he stated this threshold is an industry standard.

Mr. Bamburak asked about the units of signal strength being measured, and Mr. Iskander stated they are in decibels. He stated for in-building coverage it is -76 dbm, and for in-vehicle it is -84 dbm. Mr. Iskander stated the signal starts out at a very high level coming out of the antenna and is over 50 dbm; but as it propagates through the air it goes to 40, 20, 0, -10 etc., and when it gets to -76, this where you cut off. He stated if you wanted to turn this into watts, -76 dbm equals 2.5 times ten to the power minus 11 milliwatts; and this is how low this signal is. He stated this is the minimum sensitivity to be considered for in-building coverage; and this is the 95%. Mr. Smith stated it could be lower than this, and you could still get coverage, and Mr. Iskander agreed.

Mr. Smith noted the search ring shown on Exhibit A-17 which would allegedly cover the areas in white. Mr. Smith asked if he is indicating that placing a tower within the search ring would cover the western part of the map near Lenape Lane, and Mr. Iskander stated he is not. Mr. Smith asked if he is indicating that it would cover the northeast area by Wendover Road, and Mr. Iskander stated he is not.

Mr. Smith asked if the tower will absorb or reflect light, but Mr. Iskander stated he could not answer this. Mr. Smith stated Mr. Iskander had testified that there would not be any glare from the tower, and Mr. Iskander stated he was speaking about the antennas. Mr. Smith asked if they would absorb light as he feels they would reflect light. Mr. Iskander stated he has never seen antennas glare, adding they are made from fiberglass. Mr. Smith asked Mr. Iskander what he meant when he said they would not “glare;” and Mr. Iskander stated he does not feel they will bounce a beam of light into a driver’s eye, and they will not act as a mirror.

Mr. DosSantos asked if the 95% is an industry standard or T-Mobile’s interpretation of this; and Mr. Iskander stated he has worked for most of the cell phone companies, and they all mostly use these figures within 1 db. He stated he feels there are a couple of carriers that use -75 rather than -76.

Mr. DosSantos noted the search ring on Exhibit A-16 and stated the proposed site is at the southern circumference of the ring, and Mr. Iskander agreed. Mr. DosSantos stated if the proposed site was a block past this ring, he assumes they would not be before the Board; and Mr. Iskander agreed. He stated the ring is what they give to the leasing people so they can go out and try to find a suitable property. He stated if they had a perfect candidate in the middle of the ring but it was only 30’ high, they would probably not use it because it would be too low. He stated the proposed site does happen to be at the bottom of the search ring, and they did not draw the ring on top of it. He stated Exhibit A-11 shows that the output coverage of the site is shifted toward the south because this site is at the bottom of the ring. He stated anything south of this site would cause a bigger in-vehicle gap to the north and would cause too much overlap to the south.

Mr. Goldberg stated at a previous Hearing, Mr. Iskander indicated that T-Mobile propagates at a signal of 1900 megahertz; and Mr. Iskander stated they have two signal bands they operate on – 1900 for the 2g network, and they are operating on the AWS eblock which is at the 2100 megahertz for the 3g. Mr. Goldberg stated Sprint, Verizon, and AT & T operate at 800 megahertz; and Mr. Iskander stated Sprint operates their CDMA network on the 1900, and their Nextel merger enabled them to use the 800. He stated the other carriers mostly operate at the lower bands, and this means they get more coverage for their sites.

Mr. Donaghy asked Mr. Iskander when he is doing the tests indicated on the maps which have been provided, is he determining the coverage strictly on phone service as opposed to data service; and Mr. Iskander stated they outsourced the tests to a third party vendor since he does not feel they had all the equipment for the other carriers at that time. He stated they have receivers that will scan the entire band for Sprint, Verizon, etc. and they provide a massive amount of data and there are tools which determine the best signal strength at various points. He stated if they do not have physical receiver equipment, they can use an engineering phone as a receiver and it will do the same thing. He stated the problem with a phone is sometimes it is inside a car as opposed to outside and they get over this by attaching it to an antenna that is put outside the car.

Mr. Donaghy asked if they are considering the gap just for voice service or voice and data service; and Mr. Iskander stated it would be voice and data. Mr. Donaghy asked if there would be any difference between the two; and Mr. Iskander stated voice is more crucial although the thresholds will apply to both because the signal strength equation is the same. He stated with data services there is a little leeway because people are not really using high-speed video conferencing yet, although he feels they will eventually. He stated till now he does not feel people would mind if they have to wait a few seconds for their Web pages to load whereas in voice if there is a delay, this would cause a problem and it would probably drop the call. He stated with data servers there may be some leeway.

Mr. Donaghy asked Mr. Iskander when he indicated there was a gap in coverage in a particular area, does he consider that there is a gap in coverage if service is unreliable in any portion of that area as opposed to a certain percentage of the area; and Mr. Iskander stated it would have to be a significant area. He stated in looking at any of the maps, there are small in-building gaps even between the existing sites, and even though it is an unreliable area, it is not significant enough for them to try to build a new site. He stated if there were an in-vehicle gap that extended more than half mile, this would be considered a gap that cannot be fixed. He stated what is shown on the maps is not “set in stone” as signal levels will change across seasons, and this map would look worse in the summer than in the winter since there would be more leaves on the trees in the summer which means there are more obstructions for the signal. He stated the coverages shrink in the summer and get bigger in the winter. He stated for other carriers such as Sprint and Verizon that use different technologies, their coverage would shrink with use so that the more people there are using a certain site, the coverage would shrink.

Mr. Donaghy asked how they would define a “significant gap” and asked if there is a certain percentage that is used. Mr. Iskander stated when they have an area where there is no in-vehicle coverage, it is a highly-populated area, and a lot of customers, this would be a significant gap. He stated if they cannot fix it using the surrounding sites, they consider it a significant gap. He stated in some areas they have good coverage but small

pockets of gaps, and they can fix those with the surrounding sites, and they may consider losing coverage in one area, by pointing an antenna at another area.

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Mr. Donaghy stated in any particular area were they to provide studies similar to those provided this evening, there may be areas where service is unreliable; and Mr. Iskander agreed, and stated hopefully they are pursuing them if it were a significant gap. He stated if it were only a block, they would probably not pursue it.

Mr. Donaghy noted Exhibit A-14, the Verizon drive test. He asked when this was taken, and Mr. Iskander stated it was taken between July and August of 2008. Mr. Donaghy asked if it is possible that Verizon's coverage may have changed since the time of the test, and Mr. Iskander agreed. Mr. Donaghy stated it seems that the Verizon drive test shows significantly more areas which have in-building coverage and in-vehicle coverage than in the Sprint and AT & T drive tests, and Mr. Iskander stated this is correct. Mr. Donaghy asked if he would still feel they had a significant gap in this area, and Mr. Iskander stated the area northeast of the proposed site has a lot of red in the drive test. Mr. Donaghy stated this is an area that even if the tower were to be constructed as proposed this would just have reliable in-vehicle coverage for T-Mobile; and Mr. Iskander stated he feels they would get a good portion of Anderson and Hickory to have in-building coverage. Mr. Donaghy stated comparing it to Exhibit A-11, it seems that this would be an area where there is not going to be reliable in-building coverage.

Mr. Donaghy stated if the area to the west of the proposed tower as shown on the Verizon site is compared to Exhibit A-11, there would not be a significant improvement in coverage for T-Mobile; and Mr. Iskander agreed and stated if they use the Verizon data and apply the T-Mobile design to it, he feels they would improve, but it would not be a significant improvement for T-Mobile.

Mr. Donaghy stated the only area where Mr. Iskander is indicating that Verizon would have a gap is the area to the northeast of the proposed tower. Mr. Iskander stated it would also be along Makefield Road for three-quarters of a mile going north from the site, although they would have in-vehicle coverage and in some cases in-building coverage. Mr. Iskander stated it is showing that it has in-vehicle coverage now and it will have in-building if Verizon were to put their antenna on the proposed site.

Mr. Donaghy stated what is showing on the drive tests are the current conditions and not what it would be with the new tower, and Mr. Iskander agreed.

Mr. Donaghy stated if Verizon used the proposed tower, there would be some improvement along Makefield Road and to the northeast; and Mr. Iskander agreed, although he added it would not be as much improvement as it would be for T-Mobile. He stated there are other carriers other than Verizon which would benefit more than T-Mobile. He stated Verizon would benefit the least.

Mr. Donaghy asked if there has been an improvement in the cell phones themselves since the time of the tests that would make it easier to have in-vehicle and in-building coverage because of improvements in the cell phones; and Mr. Iskander stated he does not believe so. He stated the sensitivity of the phones has not changed much. He stated phones have improved in other ways, but not necessarily coverage wise.

Mr. Donaghy noted Exhibit A-11 showing the expected coverage, and he asked if someone were to do a drive test similar to that which was done for Verizon and the other carriers, is it possible that there could be areas that are shown to be unreliable even though they are shown as green on A-11, and Mr. Iskander asked if he is asking about after they build the site; and Mr. Donaghy agreed. Mr. Iskander stated this would be possible. Mr. Donaghy stated even with a plan to fill in gaps, there could still be areas within that site that are unreliable, and Mr. Iskander stated there can be. He stated signal strength varies at different times of the day and different times of the year. He stated you could make ten calls in a row from one spot and nothing goes wrong, and make the next five or six and have them drop; and they would consider this unreliable. He stated you may be testing and happen to hit a good alignment of signals. He stated this all goes into the signal thresholds that are put in place. Mr. Donaghy stated he is using the term “unreliable” based on the statement on the plans which are the red dots. Mr. Donaghy stated it would not therefore be unusual to do a drive test for any area and find some red dot areas within the drive test. Mr. Iskander stated you may have a dot here and there but he does not feel you would have a streak for a quarter mile as this would indicate a problem.

Mr. Donaghy stated the fact that there are some areas that are unreliable does not necessarily mean there was a gap in coverage for the whole area, and Mr. Iskander agreed.

Mr. Smith stated it appears Mr. Iskander is saying that it is virtually impossible to create the 95% reliability in every corner of the U.S.; and Mr. Iskander stated he is not saying this. Mr. Smith asked if it is practical to create 95% reliability in every corner of the U.S., and Mr. Iskander stated he does not feel it is practical to do this, and he does not feel the carriers will do it. He stated there are areas such as the Pinelands of New Jersey that they are not going to cover.

Mr. Smith stated when Mr. Iskander has indicated “no in-vehicle coverage” he is saying it is below the 95%; and Mr. Iskander agreed. Mr. Iskander stated on the edge it would be 94% but as you move in, it goes less, and less; and they have to draw the line somewhere. He stated the very edge of the green area could be considered in-building or in-vehicle and it is probably more in the middle and as you move further into the yellow, you get less and less reliable depending on how far in, the terrain, and other factors. He

stated the edge of the green is probably 95% in-building, and as you move in it gets better

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and better. Mr. Smith stated he could be in Kirby Drive which is shown in white on Exhibit A-17 and he could still be getting 94%; but since it is not 95%, it is shown in white. Mr. Iskander stated 95% is a number that deals with the amount of calls and not the signal strength and there is a different number for that. Mr. Iskander stated they have to draw a threshold.

Mr. Donaghy stated Mr. Iskander indicated that in summer months the service is not as good as in the winter, but they do not know exactly when the drive tests were conducted other than sometime between July and November. Mr. Iskander stated he feels it was beginning of winter/end of summer. Mr. Donaghy stated there still could have been leaves on the trees; and Mr. Iskander stated he does not know.

Mr. Gruen asked Mr. Iskander if there have been any advances in technology as far as repeaters so that if they put a ten foot antenna down Makefield Road on every third or fourth telephone pole, could they gain coverage as opposed to putting in a master antenna. Mr. Iskander stated they would get coverage on Makefield Road, but as soon as you get off of Makefield Road, it would decay very quickly. He stated each of them would cover less than 100' if it were open space. He stated there are some problems with them since they cover less area, have much lower power, they cannot handle capacity, and because they are low, they are in line with tree clutter. He stated because there are no trees down the middle of the road, the signal would tunnel good down the road but the side roads would probably not be covered. Mr. Gruen asked if they could add a repeater in the house. Mr. Bamburak stated this is not about putting these in people's homes. Mr. Gruen stated it is an alternative to installing an antenna since other carriers when there is no signal, offer an in-house repeater and they get perfect coverage in the house. Mr. Iskander stated private repeaters are usually locked to the people living in the house so that if someone were passing by and needed to call 911, they would not be able to if they were in a "dead zone." He stated in an area like Lower Makefield, what they are proposing is the ideal solution. Mr. Gruen stated it is not ideal for the people who live next to the tower. Mr. Iskander stated he does not feel what Mr. Gruen is suggesting is a viable option for an area like this.

Mr. DosSantos asked about the E911 coverage and asked if there are any requirement on the carriers to make sure they are providing the E911 coverage; but Mr. Iskander stated he was not sure. He stated Bucks County is in Phase II which is the last Phase. He stated they do have to register every tower with E911. He stated he does not know if there is penalty to T-Mobile if they do not have coverage in the white area.

Mr. Goldberg moved that the Exhibits be entered into the record. Mr. Goldberg rested.

Mr. Donaghy stated the Township would request a continuance in order to consider if they wish to present any witnesses. Mr. Toadvine stated they discussed this previously, and since Mr. Goldberg is unavailable the first meeting in May, Mr. Goldberg agreed to a continuance until Monday, May 17 at 7:00 p.m. Mr. Toadvine stated the matter will be continued with the understanding that if Mr. Donaghy decides not to present any testimony, Mr. Donaghy will let everyone know, and the Board will vote on the matter that evening. This was acceptable to Mr. Donaghy and Mr. Goldberg.

Mr. Bamburak asked for public comment.

Mr. Jack Matthews, 10 Williams Lane, was sworn in and stated he lives next to the property where the tower is proposed to be located. He stated this is a very small area, and the tower will stick out. He stated it not as heavily wooded as has been testified to, and he can look through the woods and see everyone's house. He stated they will install an access road and this will take out trees. He stated there is an existing retention basin which controls the water when it rains, and he understands this is where the access road is proposed so that the retention basin will be filled in. He stated when this started two years ago, the tower was to be a single pole 30' attached to the water tower. He stated now it is getting bigger and higher, and they will rent out spaces for other carriers so it will need to go higher as other carriers will not want to go lower. Mr. Matthews stated he feels the value of all of their homes will go down and nothing has been said about compensation for this. He feels the Applicant is trying to drag this matter out to wear out the residents, but he will continue to be present. He asked that the Board members would come out to the site to see their homes compared to where they want to construct the tower, and he feels this will change everyone's opinion. Mr. Smith stated Mr. Matthews is assuming they have not gone out to the site, and Mr. Matthews stated he has only seen Mr. Gruen there. Mr. Smith stated Mr. Matthews is also assuming that the Board has come to a decision about this matter. Mr. Matthews stated he does not feel anyone would want to see this built if they lived in their homes.

Ms. Judy Krustavage 1453 Makefield Road was sworn in. She stated the residents are unprepared for this as they felt it would be postponed or the School would have agreed to it. She stated this proposal is devastating. She stated if you measure between the houses and the property lines, it will be 80' from two of the houses and three feet from the water tower. She stated no one will want to live here. She stated they will live next to a garage space next to transformers; and while there was testimony that they do not make noise, this is not true and everyone knows electronics this big make noise. She stated they have visited some in other areas, and they make noise.

Mr. Ken Cure, 1461 Makefield Road, was sworn in. He stated the balloons have been tangled in his trees, and they are parking in his driveways and on his lawns. He stated he has missed work trying to determine who is in his yard. He stated they will be bad neighbors using his private driveway. He stated he has a private driveway, and it is not to be used by T-Mobile or anyone who wants to go up and look at the tower when he is not home. He stated they are not using Williams Lane which is the public road, and what has occurred to date is only the beginning if this tower goes in. Mr. Cure stated they have indicated there are a lot of big trees in the area, but he questions how they will have coverage through big trees.

Ms. Lisa Matthews, 10 Williams Lane, was sworn in. She showed pictures of her back yard which show how close the access road would be to her home. She stated they have indicated that they would be using it only once every six months; but she questions if this is true since whenever there is a thunderstorm, they may have to come out. She stated she is also concerned about how this will disturb the wildlife as there are deer and foxes in this wooded area which will be ruined by this cell tower which she does not feel is necessary.

Ms. Judith Johnson, 1459 Makefield Road, was sworn in. She stated the proposed cell phone tower would be in her front yard, and she is vehemently opposed to it as she is opposed to cell towers in any residential area as it will devalue the homes and impact their quality of life. She stated she cannot believe anyone would want to put a cell phone tower right next to a residential property.

Mr. Theodore Krustavage was sworn in. He stated the residents need help from the Board. He stated the maps are not showing people's homes, and his home is the one that the tower will fall on as it will be built 44' from his property line. He stated they have indicated it is a big expanse of woodland area, but it is not as it is his side yard. He asked that the Board help them to prevent this.

Mr. Maloney asked that the Board allow for additional public comment at the next meeting since the people in attendance this evening are not representative of all the people who had been coming out to prior Hearings. Mr. Toadvine stated the only problem would be if Mr. Donaghy decided not to put on any further testimony, and it would just be for a vote. Mr. Maloney stated they could just allow public comment prior to the vote. Mr. Toadvine stated if Mr. Donaghy were not to put on any additional testimony, Mr. Donaghy and Mr. Goldberg would not normally be in attendance. Mr. Donaghy stated he would not have a problem with the Board allowing additional public comment, and he would attend whether he was going to present evidence or not. Mr. Goldberg stated he is not sure there has been a great outpouring of residents at prior meetings, and they would like to have this matter resolved on May 17. Mr. Maloney

stated he does not feel there would be three hours of public comment at the next meeting, but there have been a larger number of people at prior meetings. He stated they came to a number of meeting previously only to hear that the matter was continued, and he would like to give them the opportunity to make comments. He does not feel the matter would go on beyond the next meeting. Mr. Bamburak stated he feels the Board understands that the residents are opposed to this. He also does not feel the Board will be given any additional scientific data from someone who lives in the community. He feels this is the core group of residents who have talked to their neighbors and have made their feelings know. Mr. Maloney stated he would still ask the Board to permit additional public comment at the next meeting.

Mr. Donaghy stated both he and Mr. Goldberg will be present at the next meeting whether or not there are other witnesses to present; and if there are other people who want to make public comment, he does not feel it would hurt to allow this since the testimony has not yet been closed. He stated it may just be a few other people who want to make their feelings known, and this would still not extend the decision any further than next month.

Mr. Toadvine stated Mr. Bamburak was indicating that the Board does understand the feelings of the community, and he would not want the matter to turn into two more meetings. Mr. Donaghy stated he does not feel there would be a reason to go beyond the next Hearing unless there is a Witness that would involve a long examination and cross examination, which he feels is unlikely.

Mr. Krustavage stated they were under the impression that if they did not testify they had no recourse as far any Decision that was made, and Mr. Bamburak stated this is not correct. He stated you can always file an Appeal. Mr. Bamburak stated the Board does understand that the residents are not in favor of this.

Mr. Gruen stated even if they set aside an opportunity for those to speak for the first thirty minutes, it would still not mean that they would have to have a second meeting. He stated this would give an opportunity for someone who could not attend the meeting this evening to speak at that time. He stated the residents have been showing up for two years while the matter was continually postponed by the Applicant.

Mr. Bamburak agreed to schedule one half hour for public comment at the next meeting. One gentleman stated he feels only four more people may want to come speak. Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to May 17, 2010.

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OTHER BUSINESS

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to cancel the meeting of May 4, 2010.

There being no further business, Mr. Smith moved, Mr. DosSantos seconded and it was unanimously carried to adjourn the meeting.

Respectfully Submitted,

Gregory J. Smith, Secretary