

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – SEPTEMBER 21, 2010

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 21, 2010. Vice Chairman Bamburak called the meeting to order at 7:05 p.m.

Those present:

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

Others:                             Robert Habgood, Code Enforcement Officer  
   James Esposito, Township Solicitor  
   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 #10-1561 – TIM MOORE

Mr. Bamburak stated this matter was continued from September 7, 2010.  
Mr. Tim Moore was present and was reminded that he was still under oath.  
Mr. Bamburak stated at the last meeting, Mr. Moore had been asked to bring back additional information to the Board to clarify his request. Mr. Moore provided pictures of his property this evening. He also noted that Mr. Gruen stopped at his property and suggested that he provide letters from adjoining neighbors which he also provided to the Board this evening.

Mr. Toadvine marked as Exhibit A-3 a collection of seven photos of the area where Mr. Moore would like to place the shed. Mr. Toadvine stated the Board will take notice of the letters from the neighbors indicating that they have no problem with the proposed location of the shed.

Mr. Moore stated he showed Mr. Gruen the location where he wanted to put the shed. He stated he could bring it out 2' from the rear and side property line. Mr. Gruen stated he looked at the property; and his only hesitation is that if the shed were right on the property line or 1' in, there may be future concerns as to who owns it. He stated the

property does have a lot of slope and moving it in would cause hardship. He stated where Mr. Moore has proposed to locate the shed is to the benefit of the neighbors to the back and side and will be the least intrusive location. He stated he could move it 2' in from the back and side property line.

Mr. Majewski stated while he did not visit the property, he has looked at aerial photographs of the property, and his only question was that it appeared from the aerial photographs that there were overhead electric wires running through the back of the property. He stated he could not ascertain whether they were on Mr. Moore's property or the property behind his. Mr. Moore stated the power lines go through the back of the property on his neighbor's property to the rear. He stated the shed will not be near the power lines. Mr. Majewski stated the shed would not be allowed to be within the easement of the power lines; but there is no recorded easement on the record plan.

Mr. Smith asked Mr. Habgood if he is aware of any restriction regarding power lines, and Mr. Habgood stated he is not aware of any.

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

There was no one from the public wishing to speak to the matter, and the testimony was closed.

Mr. Smith moved and Mr. Bamburak seconded to approve the relief requested in the way of a 2' setback from the property lines for the requested shed. Motion carried with Mr. Gruen, Mr. Smith, and Mr. Zamparelli in favor, Mr. Bamburak opposed, and Mr. Kim abstained.

#### APPEAL #10-1565 – CAMERON C. AND OLGA JEAN TROILO

Mr. Edward Murphy, attorney, was present with Mr. Carter VanDyke, Mr. C.T. Troilo, and Mr. Steven Burger. Mr. Bamburak noted that this matter was continued from September 7. Mr. Murphy stated they had rested at the last meeting. Mr. Esposito stated that while the Township is participating, they have no comments.

Mr. Toadvine stated at the last meeting, Mr. Malinowski had participated, but he is not present this evening. Mr. Toadvine stated he feels it would be prudent if the Board were to reserve a Decision tonight and allow Mr. Malinowski to review tonight's transcript, and they could vote at the next meeting. Mr. Murphy agreed to this.

Mr. Bamburak asked for public comment.

Mr. Matthew DosSantos, 755 Stony Hill Road, was sworn in. He stated his property borders the proposed development. Mr. Murphy stated on Exhibit A-2 it shows that Mr. DosSantos has two parcels (Tax Parcel #20-13-2-1 and Tax Parcel #20-13-2) which are located immediately north of the subject property, and Mr. DosSantos agreed.

Mr. DosSantos stated he is not against this development and realizes that their property is included in this. He stated when he refers to “their property” he is referring to all four properties – his two properties, his father’s property at 765 Stony Hill Road, and Sam and Kenny Stewart’s property at the point of I-95 and Stony Hill Road overpass. Mr. Murphy noted the upper right hand corner of Exhibit A-2 the location Mr. DosSantos is referring to is an arrow point of all the property that is white, and the property in question is marked in hatched an area that is the four parcels that Mr. DosSantos is referring to. Mr. DosSantos stated their property has been re-Zoned to H/C, but at the present time it is not included with the project being discussed this evening. He stated the reason for changing this is for future development. Mr. DosSantos stated they noticed that the sewer stops quite a way back, and they were interested to know the size of the sewer. He stated they have more than 5.2 acres since there is a right-of-way where the old road used to go before they made the overpass for I-95. He stated they were told this property would be able to develop 74 units. He asked if the sewer line that goes partially up the road is large enough for future development.

Mr. Bamburak stated the Zoning Hearing Board has no jurisdiction over the sewer lines and cannot make this as a Condition for any approval. Mr. Majewski stated that although he is not the sewer engineer, he believes that the pipe is sufficient to handle development from upstream.

Mr. DosSantos stated the pipe stops pretty far back and would not service their properties. He asked if there is a reason for this. Mr. Majewski stated this project is under review by the Township as part of the planning process, and those issues should be brought up by Mr. DosSantos at the Planning Commission and Board of Supervisors meetings.

Mr. DosSantos stated he has heard that along his property line they will build the backs of the houses, and they want a Variance to make it closer to the property line. Mr. VanDyke stated they are not requesting a Variance for setbacks for the units as they are in compliance with the Ordinance; however, the area where there is a question is the area where there is an existing driveway, and there is a Variance request for this preexisting condition. He stated the driveway is supposed to be 10’ back from the property line, but this is a narrow strip that is only 10’ wide. He stated at the last meeting they discussed the fact that this will only be an emergency access. He stated they will have to determine if this is to be paved, gravel, or be checker block pavers with grass.

Mr. DosSantos stated he was referring to the back of the dwellings. Mr. VanDyke stated there is a Variance request but it does not have to do with the mass of the buildings. He stated the Ordinance has two separate setbacks – one for garages and one for the principal structure which has living areas. He stated there was a policy discussion that was reviewed before the Historic Commission and the Planning Commission whether or not to allow a studio or habitable space above the garage. He stated the setback for a garage is 20' and for living area it is 40' so they are requesting a Variance to allow the livable space to be 20' because it is above the garage. It will not have any impact in terms of the mass of the building – it is only in terms of the use. He stated in discussion with the Planning Commission and the Historic Commission, they felt that having the living space above the garage would mean that people would be looking out over the alley, and they would keep it cleaner and it would not just be a service drive.

Mr. Murphy stated the units involved would be Units 1 through 14, and they are adjacent to Mr. DosSantos' property. He stated Mr. VanDyke has indicated that the setback of the buildings from Mr. DosSantos' property is in accordance with the Ordinance. The reason they are asking for relief is because they are proposing to have apartments over the garages. He stated without the apartments, the garages are properly dimensioned and no Variance is being sought, and it is only because a portion of the garage could be habitable that there would be a question.

Mr. DosSantos asked if they will have any fences or trees, and Mr. Burger stated there will be a landscaped screen. Mr. DosSantos asked about the elevation of the house and if the water run off will be directed away from his property. Mr. Burger stated it will be collected and directed away from the property to a detention facility underneath the parking area and a rain garden basin on the west side of the site.

Mr. DosSantos stated a letter was sent out to notify the residents about the project, but he did not receive a copy. He stated he did see the letter which indicated that he would need to make it known that he wanted to be a participant. Mr. Toadvine asked if he would like to have Party status, and Mr. DosSantos stated he does want to have Party Status.

Mr. David Miller, 1648 Yardley-Langhorne Road, was sworn in. He stated he has lived in Edgewood Village for forty-two years. He stated the Village is an entity, and he asked that the Zoning Hearing Board consider the total context of the entity of the entire Village.

Mr. Miller stated he has reviewed the list of Variances being requested. He asked how many egresses there will be on Yardley-Langhorne Road and how many on Stony Hill Road in the entire project. Mr. VanDyke stated there is an existing access for the existing office building, Heston Hall, and there is going to be an access street, mid block, and between that and the existing access to Heston Hall, there is an exit-only which is only a right-hand turn out. He stated in between the access drive and Stony Hill Road there is

an entrance-only which is next to the existing driveway into two residential structures that currently exist. He stated on Stony Hill Road there are currently a number of driveways for existing residents, and there will be only one access drive which is setback considerably from the intersection to allow for stacking since Stony Hill Road is an arterial road. He stated that access road is directly opposite the day care facility on the eastern side of Stony Hill Road. Mr. Miller stated there are also other cuts off the site.

Mr. Maloney joined the meeting at this time.

Mr. Miller stated they have indicated that there will be right-hand turns only which is toward Langhorne, and he does not feel this is what people are going to do; and he feels they will try to make left-hand turns. He stated he feels there are a lot of driveways coming out in a very short space.

Mr. Miller stated they are asking for a drive-in window for something other than a financial institution. He stated it was mentioned three times in the Zoning laws that it had to be for a bank, and it cannot be for anything else. He stated he heard that they were going to have a drive-in window for a coffee shop. He stated he feels this will allow them to put in a drive-in window for anything and it could be a drug store with a drive-in or a fast food restaurant with a drive-in window.

Mr. Miller stated with regard to the requests for Variances for setbacks, they have requested to have less than 40', but it does not tell how many feet they want. He stated it also notes that the developer wants to have a setback of less than 35', but it does not say how many feet. Mr. Toadvine stated #5 indicated that it will be 20' because the garage is going to have an apartment above it, and the garage has a 20' setback. Mr. Toadvine stated this is for Units 4 through 6, 12 through 17, 21 through 23, 26 through 29, 34 through 37, and 40. He stated this is also for Units 1, 2, 7 through 10, 18, 19, 24, 25, 30 through 33, 38, 39, and 44 through 46. Mr. Toadvine stated the setback will be 20' because it is a garage. He stated a garage is permitted to be 20', but the problem is they are proposing a loft above the garage to be used as living space. As a result, that building would then be classified as a principal structure which requires a 40' or 35' setback depending on the unit. He stated the structure itself is not going to violate the setback – it is the use. Mr. Miller stated he feels they should make it 40'.

Mr. Miller stated the builder wants to permit the required open space to include naturalized detention stormwater management. Mr. Miller stated it was indicated that it would not be mowable. Mr. Miller stated he feels it will either be naturalized which means you will let grass grow or it will have water in it, and he does not feel it will be usable land for any of the people living or shopping there to utilize. He stated it is completely defeating the open space idea to allow this.

Mr. Miller stated the builder also wants the front porches to have less than 120 square feet in area. Mr. Miller stated 120 square feet is 10' by 12', and this is not very big. He stated many of the existing structures have big front porches; and if they wanted to keep this project in line with the entire Village, they need porches of a decent size to make it look Victorian or whatever the look is going to be. He stated he does not see the need for less than 120 square feet. He stated he does not have the figures to tell exactly how big the porches will be. Mr. Bamburak stated they are asking for a range of porch sizes of 45 to 100 square feet. Mr. Miller stated he does not feel this is very big.

Mr. Miller stated the builder also wants to eliminate the need for one loading space for each 10,000 square floor feet; and he stated this means nothing to him. He stated he does not know how big they need for a loading dock. He stated his concern is with what time deliveries will be made, how large are the trucks, how noisy they will be, and where will they pull into. He feels they should consider this seriously.

Mr. Miller stated he is concerned about the rain garden type of stormwater management. He stated when Edgewood Crossing was being reviewed, they were told that it would be an underground system; but for this project, they were told that there will be an underground system, but it will not be able to handle it all. He stated they want to have a garden type stormwater management which he feels is similar to a detention basin. He asked why one side of the street they have to have underground, but for the other side of the street, it does not have to be that way. He stated they have sewer and water problems in the area, and now there will be a detention basin with more water seeping in.

Mr. VanDyke stated the Plans show 95% of the all stormwater will be handled underground. He stated the area in question is where there is an existing detention basin, and there is an existing pipe that goes underneath I-95 so they need an access point. He stated they felt that because the EAC was in favor of rain gardens and ground water recharge, this would be an ideal opportunity to have an area which is going to be approximately 2 ½% of the site that would be a rain garden and planted with wet-tolerant trees; and will function as a buffer as well.

Mr. Miller noted the requested relief from the green space requirement between property lines. He stated they want to have less than 10' feet wide. He stated while he does not know exactly where these places are, less than 10' feet of green space would not even allow you to put in a tree. He stated 10' feet sounds like a very small amount to start with, yet they want relief to make it even less than that. Mr. Murphy stated they have already explained the reason for this. He stated it is the existing driveway abutting Mr. DosSantos' property line. Mr. VanDyke stated another area is on Stony Hill Road near the intersection of Yardley-Langhorne Road where PennDOT has requested a third lane for a left-hand turning lane and this pushes the curb cut close to the existing porches on the stone building on the corner, so it is less than 10'.

Mr. Miller stated they are requesting parking spaces to be allowed to be less than 10' by 20'. He stated this will do what everything in the list of Variances does, and will maximize the space the developer can rent or sell and minimize the open space, roads, and everything else.

Mr. Miller stated at the last meeting, Mr. Murphy outlined Mr. VanDyke's background as far as the Village is concerned, and indicated that he was the main designer of the Ordinance that governs what you can build there. He stated Mr. Smith had asked if it was all right when he drew it, why was it not all right now. Mr. Miller stated Mr. VanDyke was working with paid professionals and volunteers and was working for Lower Makefield Township. He stated they came up with these plans; but now he is working with Mr. Troilo's group. Mr. VanDyke stated he is still a consultant for the Township, and tonight he is representing the Historic Commission. Mr. Miller asked Mr. VanDyke if he was not representing Mr. Troilo in any way, and Mr. VanDyke stated this is a public/private partnership between the Applicants and the Historic Commission on the part of the Township in order to facilitate the implementation of the TND Overlay District within Edgewood Village.

Mr. Miller stated the Village has not changed, but they want to change the rules of what they want to build there. He feels they are saying they did not get it right the first time; but he feels they did it right the first time. He asked that the Board consider the entire Village before they vote on the Variances being requested.

Ms. Helen Heinz, 1355 Edgewood Road, was sworn in. Mr. Toadvine asked her location in relation to the property in question; and Ms. Heinz stated she is down Edgewood Road from the property, but she is also a member of the Historic Commission and worked on the TND Ordinance since its inception. She stated the Historic commission was told that they could not be a Party; but she wanted to advise the Board that the Commission has discussed this Plan, and there are some problems. She stated they have not seen any architectural drawings and only saw buildings laid out. She stated she understands that this is not the purview of the Zoning Hearing Board. Ms. Heinz stated the Historic Commission discussed the Plan at great length, and there are some misrepresentations on what was discussed.

Ms. Heinz stated she agrees with Mr. Miller about the number of egress points from the development. She stated they did agree that there would be a bank, but it was to be all internal. She stated the purpose was to have this as a walking Village, and the more you put roads out into the collector road, the less likely it will be that this will be a walking village. Ms. Heinz stated the drive-in window was very specifically discussed, and they only wanted drive-in windows for a bank and there were to be no other drive-in windows. She stated the bank drive-in was to be internal inside the development.

Ms. Heinz stated with regard to setbacks, they just recently discussed the idea that people may want to put on additions to their houses to have garages, and they tried to decide if there was a way the developer could put into his plan extended living quarters over residences; but there was no way they wanted this to be put in fully. Ms. Heinz stated she feels it would be appropriate that if a homeowner had a problem like this, they should come to the Zoning Hearing Board, and they could consider Variances at that point; and there is no way they should be helping the developer to make his property more saleable up front. She stated the way they originally designed it, it was less dense than this; and a lot of the setback constraints they are asking for could be solved by less development.

Ms. Heinz stated they did discuss the porches, and 120' is the minimum; and if they wanted to put more, that would be better. She stated the Village is designed to look like an 1850 Village, and the point of the architecture at that point would be to have a private space between your house and the public; and porches are totally appropriate, but 120' is small.

Ms. Heinz stated with regard to the adjacent infill buildings, they discussed at great length which buildings would be the buildings, if there was infill, which the rest of the infill buildings would emulate. She stated they wanted the development to look small, and they did not want it to look massive; and this is why they were fighting to keep the small houses there. She stated it seems that there is a compilation of spaces much greater than 10% additional which is what they asked for.

Mr. VanDyke stated the issue brought up at the last Hearing had to do with the building on the corner of Stony Hill Road and Langhorne-Yardley Road, which is an existing stone structure. He stated the way they developed the Ordinance is that they first developed a conceptual plan with the Historic Commission and the developer/applicant; and this was the groundwork so that they could develop an Ordinance. He stated the footprint existing on the corner is a footprint that was always part of that original Plan.

He stated they have asked the Board for an interpretation. He stated the existing structure on the corner is about 2,400 square feet; and as you look at the view from Yardley-Langhorne Road, the addition being proposed is a one-story addition approximately 1,600 square feet, and when you look at the addition from Stony Hill, the addition is about 1,800 square feet. He stated the Ordinance indicated that it cannot be 10% more than the existing building on the corner; and the intent they came up with was as it looks from the streetscape. He stated they felt they met the intent, and this is an interpretative issue.

Ms. Heinz stated the house on the corner was the largest house that was in the Village, and they only wanted to have small additions to the structures that were there. She stated this is not supposed to look like Newtown; and it was supposed to be small, little houses infilled with small, little houses. She stated the developer does have certain constraints that he needs to market; and they agreed that if they looked like they were independent with additions in the back that were actually the same structure, they would agree to it, but that it had to be reduced in some other area. She stated they should not get the infill and the additions, and the buildings, etc.

Ms. Heinz stated with regard to loading spaces, they discussed tractor-trailers and they said tractor-trailers would not be allowed in this area; and if people wanted deliveries, they would have to arrange other kinds of deliveries. Mr. Murphy stated they agree with this.

Ms. Heinz stated the rain gardens and the rest of the changes that are requested seem reasonable, and the Historic Commission is in favor of those for the environmental purposes.

Mr. Miller stated Mr. VanDyke introduced himself as part of the Historic Commission, and he asked if he is representing the Historic Commission; and Mr. VanDyke stated he is. Mr. VanDyke stated he is the consultant to the Historic Commission; and they developed the Design Guidelines, the Master Plan for the Village, and the Zoning Ordinance that ultimately went before the Planning Commission and the Board of Supervisors. He stated he has been working through the development process to help nurture the projects since they are very complicated because of the TND Overlay and meeting all of the historic guidelines. Mr. Miller asked if he answers to someone on the Historic Commission, and Mr. VanDyke stated he answers to the Commission. Mr. Miller asked if he has cleared what he is saying with the Historic Commission, and Mr. VanDyke stated they went through the review letters from the consultants, clarified items, and then prepared a memorandum to the Board of Supervisors. Mr. Miller stated Mr. VanDyke is sitting between Mr. Murphy and Mr. Troilo so he looks like part of their group, and he suggested that if he is present representing the Historic Commission that he not sit with the developer so people do not misjudge him as he has.

Ms. Heinz stated this was a very unusual relationship they had with Mr. VanDyke. She stated it has not been “smooth sailing” over the course of the last several months. She stated Mr. Troilo paid into a fund that also paid the consultant, and Mr. VanDyke found himself in a difficult position between what the Historic Commission wanted to see and what Mr. Troilo would want to develop. She stated Mr. VanDyke has done an admirable job trying to keep that balance. She stated they are all interested in seeing the project move forward, but most of the members of the Commission are not in favor of so much development.

Mr. Murphy asked that the statement be stricken since Ms. Heinz is speaking as a private citizen and not on behalf of the Commission.

Ms. Heinz stated she feels Mr. VanDyke has done his best to represent to Mr. Troilo what the desire is of the Township, and they are confident that they will uphold the TND as it was developed.

Mr. Gruen stated Ms. Heinz indicated that the Historic Commission could not be represented at the Zoning Hearing Board; and Ms. Heinz stated they were told this by Mr. Fedorchak. She stated their President asked to represent at the Zoning Hearing Board, and was told that they could only speak as private people and not as the Commission.

Mr. Robert Innis, Rose Hollow stated his home is about 100 yards from where all this development will go on. Mr. Innis was sworn in. Mr. Innis stated he is concerned about the traffic in the area and stated with this development there will be more residences, more public coming in to shop, and more cars which will make it ever harder for him to get out on Stony Hill Road. He stated the one stop light at Stony Hill Road and Yardley-Langhorne Road is already a bottleneck. Mr. Innis stated the idea of having a huge, massive development is counter-productive to his getting around the area. He stated a smaller type of development would be fine. He stated having a bank with a drive-in means more cars and more traffic, and there are already banks in the area; and he does not feel they need another bank. Mr. Innis stated he is a member of the Historical Commission, and they do not want to see the flavor of Edgewood Village change in a major way. He stated minor changes would be okay with their thinking, but not huge major changes especially when you make an intersection a big bottleneck. Mr. Innis stated a development this dense is more than what he would like to see. He stated having apartments on top of garages means more people, and he would prefer that they scale this back. He stated he would like to see Edgewood Village stay the way it is with only minor changes. He stated they should keep the Zoning stuff down to a minimum.

The public comment portion was closed.

Mr. Murphy stated they would agree to continue the matter until Mr. Malinowski is available to vote, and Mr. Malinowski will be provided a copy of the transcript of tonight's testimony. It was agreed to continue the matter to October 19 in order to provide time for the Court Report to submit the transcript.

Mr. Gruen asked Mr. Maloney if the Board of Supervisors looked at the Plan and asked the feeling of the Township. Mr. Maloney stated the Board's position is that any changes they would foresee are things that would be dealt with at the Land Use phase, and they do not have any gross objections to the types of things that are being requested. He stated

they are generally supportive of the direction that the developer is taking, but it would be presumptuous to think that the Board of Supervisors is not going to ask for additional changes at the Land Use phase.

Mr. Gruen asked if this is the first Plan they have submitted. He stated he feels this is a great concept but feels it may be a little over ambitious for the size of the property. He stated he feels it seems crowded and confined. Mr. Gruen stated he thinks that one year ago Mr. DosSantos had a “For Sale” sign on his property, and he asked the Applicant if they have considered purchasing his property and incorporating it into their development to make it a little more spacious and more like a Village. Mr. VanDyke stated with regard to the density, there are actually fewer units on the Plan being presented now than there were in the original Plan that was used to develop the Ordinance. He stated there have been some trade-offs, and there may be more in terms of the Commercial space than there was in the first Plan. He stated the Historic Commission and his office have been sensitive to how this meets the intent of the Ordinance, and they feel this does the best it can to make it work for everyone. He stated it has been a bit of a “bumpy road,” but he feels they are coming along really well. He stated with regard to acquisition of the adjacent land, in the early phases, they asked Mr. Troilo to acquire the lands that they have shown on the Plan. He stated it was previously two parcels – the Flowers Tract and the triangular piece along Stony Hill Road; and they pushed for Mr. Troilo to get that parcel on Stony Hill Road even though he knew there were five historic structures on the parcel. An Agreement has been made with the Historic Architectural Review Board (HARB) as to these structures. He stated the masonry structure will remain in tact, one structure will be replicated almost exactly where it is now, one to be a residence will be replicated within the development, and one which will be the post office will be relocated. He stated this has been approved by HARB and the Board of Supervisors. Mr. VanDyke stated the Historic Commission had always pushed to see if they could talk Mr. Troilo into doing the remainder of the triangular piece.

Mr. Troilo stated his father is always looking to acquire properties, but in these economic conditions, they already have a big piece of land they are looking to develop. He stated his father is always open, but at this point he is not actively pursuing it.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to October 19, 2010. Mr. Kim did not vote on this matter.

A short recess was taken at this time.

APPEAL #10-1567 – HEARTHSTONE WATERS LP

Mr. Toadvine marked as Exhibit A-1 a letter received from John Galloway, President of Heathstone Investors, the Applicant, dated 9/20/10 indicating that they are requesting to withdraw the Appeal and requesting the balance of their funds to be refunded.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to mark the Appeal withdrawn.

APPEAL #10-1566 – MERRICK WILSON

The Application submitted was marked as Exhibit A-1. Accompanying the Appeal is a one-page Plan entitled “As-Built Plan for Lot 4 Towering Oaks of Yardley” dated 10/1/07 with a last revised date of 10/12/07, and this was marked as Exhibit A-2.

Mr. Merrick Wilson was sworn in.

Mr. Toadvine stated there are two aspects to this matter – an Appeal from the determination of the Zoning Officer dated 7/28/10 and an Application for a Variance. Mr. Toadvine asked Mr. Wilson from what Section of the Zoning Ordinance he is requesting a Variance, and Mr. Wilson stated it is for impervious surface coverage. Mr. Toadvine asked if this was one of the issues raised in the denial of the C/O; and Mr. Esposito stated it was not raised in the actual denial of the C/O, but came to the Township’s attention after the fact from another Building Permit Application that was submitted after the C/O. Mr. Toadvine stated the Township is required to proceed on the Appeal from the determination of the Zoning Officer, and Mr. Wilson must proceed on the Variance Application; and he asked Mr. Wilson which he would like to proceed with first. Mr. Wilson stated it does not matter to him either way, but added there is a more recent As-Built he would like to present this evening. Marked as Exhibit A-3 was an As-Built Survey and Plan dated 8/24/10.

Mr. Wilson stated the request is for a Variance for impervious surface for Lot #4 in Towering Oaks. He stated he the existing impervious surface is 16.28%, and the permitted amount is 16%. Mr. Toadvine asked if there are any other Variance requests; and Mr. Wilson stated this is the only Variance he knows of other than the question of whether one foot from the driveway turn-around to the property line requires a Variance. Mr. Majewski stated this is a Land Development issue. Mr. Toadvine stated the Zoning Hearing Board does not have the right to grant a Variance for that.

Mr. Habgood stated he calculated 16.48% as existing impervious surface.

Mr. Wilson stated the house, the driveway, and all the construction of that nature came to 14.7%; and what took it over the top was the paver patio and walkway in the front. He stated these are pavers laid in sand and not concrete so it is partially pervious and rain water goes through it. He stated in addition, in the center of the patio a drain has been placed which drains into the sump pump which draws water out of that. He stated this was done as an added measure to make sure there was no standing water there that would present a problem with getting into the walk-out basement. The pavers are from the front door; and even though it is labeled as a concrete walkway, it is Trex pavers, and there is sand in between each one of the pavers. He stated in the back of the property, on the back left-hand side it indicates “patio,” and this is the patio with the floor drain to the sump pump.

Mr. Toadvine asked if the Township has a position on the Variance request, and Mr. Esposito stated the Township was not aware of what the Variance request was before this evening since it was not specified in the Application. Mr. Toadvine stated it appears that the Variance request is deminimus; and Mr. Esposito stated while it is, there are other issues as to how Mr. Wilson has built the property.

Mr. Kim noted the concrete walk shown on the Plan, and asked if he is calculating this as impervious or pervious, and Mr. Wilson stated he is calculating it as impervious.

Mr. Wilson presented this evening a comparison of this lot to other lots in the majority of Lower Makefield Township which are on one third of an acre or half acre; and he stated this shows that a typical third acre lot has impervious surface of 32% and half acre lots would be at 26%. This was marked as Exhibit A-4.

Mr. Toadvine asked that they proceed with the Appeal from the determination of the Zoning Officer. Marked as Exhibit T-1 was the letter from Robert Habgood to Mr. Wilson dated 7/28/10. Mr. Esposito stated this is a two-page letter with a number of attachments. Mr. Esposito stated the Township is participating in support of the denial of the Certificate of Occupancy.

Mr. Robert Habgood was sworn in and stated he is the Code Enforcement Officer for Lower Makefield Township. He stated he received an Application for a TCO from Mr. Wilson on July 13, 2010; and it was denied by the Zoning Department.

Mr. Habgood stated the first reason listed in the letter for denial was because the driveway is encroaching within the 5’ minimum setback to the right side property line. He stated this was not in compliance with the SALDO Ordinance. He stated in order for the driveway to be permitted, Mr. Wilson would have to get a Waiver from the Board of Supervisors for this encroachment; and to Mr. Habgood’s knowledge, Mr. Wilson has not received a Waiver for this.

Mr. Esposito stated the Denial letter also indicated that Mr. Wilson had not received Permits for the front walkway, rear patio, and retention wall on the property; and Mr. Habgood agreed. Mr. Esposito asked if Mr. Wilson has submitted an Application for those Building Permits, and Mr. Habgood stated he did submit a Building Permit Application for review; and the last one was submitted in August, 2010. He stated Mr. Wilson has been denied for deficiencies from both Zoning and engineering for Mr. Wilson to work on. Mr. Esposito asked why Mr. Wilson was denied the Permits. Mr. Habgood stated the last time in August one of the denials was, per the Building Permit Application Guidelines, he needs to show the dimensions of the structures that are proposed to be built; and he did not show these. Mr. Habgood stated he also needs to show on the Site Plan the setback of the patio and wall to the property lines and the resource protected area, and he did not. Mr. Habgood stated when Mr. Wilson submitted Exhibit A-3, it was also determined that he exceeded the allowable impervious surface as per the recorded linen for the developer of 16%.

Mr. Habgood also stated the As-Built Site Plan submitted with the Certificate of Occupancy Application was incomplete. He stated on that As-Built Site Plan the walkway and patio were hand drawn in instead of being put on the Site Plan by the actual person who developed the As-Built Survey. He stated he is not sure if they are being shown as they have been built on the property since they were hand drawn in and not put on by the engineer. He stated this was another reason that the Application was being denied by Zoning. Mr. Habgood stated the Applicant also needed to update the impervious surface information on the As-Built Site Plan which had not been done on what he had submitted with the Application. Mr. Habgood stated he copied Mr. Wilson the Sections from the Township Zoning Ordinance and from the Development Agreement as to why these items needed to be completed.

Mr. Esposito asked if Mr. Wilson has applied for a Certificate of Occupancy in the past, and Mr. Habgood stated he has approximately six times. Mr. Esposito stated they have six previous Applications to the Township for a Certificate of Occupancy. Exhibit T-2 was marked and is the 10/9/07 Application. Exhibit T-3 was marked and is the 10/31/07 Application. Exhibit T-4 was marked and is the 7/21/09 Application. Exhibit T-5 was marked and is the 9/21/09 Application. Exhibit T-6 was marked and is the 11/10/09 Application. Exhibit T-7 was marked and is the 2/9/10 Application.

Mr. Esposito showed Mr. Habgood Exhibit T-2, and asked him to describe the Exhibit. Mr. Habgood stated this was the Denial of a Certificate of Occupancy Application submitted by Mr. Wilson to try to get a Certificate for the lot under discussion this evening. The denials under the Zoning part of the letter are similar to the reasons issued in the 7/28/10 denial letter. He stated the first issue was that the driveway is encroaching into the 5' minimum setback to the property line. He stated the other issues were for the

first floor elevation being lower and that the As-Built Site Plan needs to be revised to show certain items; and he believes those have been taken care of. He stated the Site Plan at this time did not show the front walkway or the rear patio, and they assumed that they had not been constructed as had originally been shown on the Site Plan for the Permit to build.

Mr. Esposito provided to Mr. Habgood Exhibits T-3, T-4, T-5, T-6, and T-7 which are the denial letters which were sent to the Applicant in the past. Mr. Esposito asked if the denial reasons contained in the 7/28/10 letter were addressed in these other Exhibits as well; and Mr. Habgood agreed that they were. Mr. Esposito stated Mr. Wilson has known about these denial reasons for at least the past Certificate of Occupancy Applications, and Mr. Habgood agreed he has. Mr. Esposito stated he has not addressed them as yet, and Mr. Habgood stated some of the issues have been addressed but some as of the last letter have not been taken care of.

Mr. Wilson asked Mr. Habgood if he would not agree that a substantial reason for the previous denials was the lack of a sanitary sewer connection for this house, and Mr. Habgood stated it was not a reason from the Zoning Department. Mr. Esposito stated Mr. Habgood is only addressing the Zoning issues; and Mr. Wilson stated while he understands this, he is not sure that he is separating the Zoning issues from that of the Township engineer issues; and Mr. Esposito stated he is separating them, and he will be calling the engineer to testify.

Mr. Toadvine stated Mr. Habgood testified that the front walkway and the rear patio were not officially drawn on the As-Built, but were hand drawn. Mr. Wilson stated they were initially not drawn, but the updated one which he provided to the Board tonight and which he had provided to Mr. Habgood after his official Application was submitted, was done by his engineer and surveyor. Mr. Wilson stated Mr. Habgood had suggested that when he came to the meeting this evening, he should present it to the Board rather than submit it prior to this evening's meeting. Mr. Bamburak stated the drawing presented by Mr. Wilson this evening which was marked as Exhibit A-3 is still hand drawn in, and Mr. Wilson stated it is not and it was drawn by J. H. Mixner, licensed engineers and licensed land surveyors in the State of Pennsylvania; and they came out and surveyed in the front walkway and back patio. He stated there is nothing hand drawn on the Plan he provided this evening. Mr. Bamburak stated the quality of the lines is not the same as the quality of all the other lines. Mr. Wilson stated there is an original signature, and he would verify that the engineer came out to the site. He stated he may have put it on by hand.

Mr. Smith stated the Survey and Plan Mr. Wilson submitted this evening dated 8/24/10 was not submitted with the Application that is the subject of the 7/28/10 denial letter, and Mr. Wilson agreed. Mr. Wilson stated after he submitted the Application, he asked Mr. Habgood if he should submit the additional As-Built; and Mr. Habgood told him to bring them to tonight's meeting.

Mr. Smith stated no Permit has been issued for the front walkway or rear patio with walls. Mr. Wilson stated he takes issue with this since the front walkway was issued with the original Building Permit for the entire house Building Permit. Mr. Smith asked if he has a copy of the Building Permit and a copy of the Site Plan of record. Mr. Esposito stated there is some confusion as to Plans that have been submitted in the past. He stated the original Building Permit Plan showed a front walkway, but not a rear patio. He stated when Mr. Wilson submitted for another Building Permit, the front walkway was not on the Plan, and this has resulted in some confusion. Mr. Toadvine stated now that he has submitted the revised Plan dated 8/24/10, it would appear that he has satisfied Mr. Habgood's requirements with the exception of the 5' minimum setback for the driveway and the actual Permits being issued for the patio and the walkway. He stated the Plan does show the walkway and dimensions and the rear patio and dimensions, and the updated impervious surface breakdown; and he has requested a Variance for the excess impervious surface. Mr. Toadvine stated it appears that all Mr. Wilson would have to do to satisfy Mr. Habgood is comply with the Permits for the walkway and the rear patio and attempt to get a Waiver from the Board of Supervisors for the setback. Mr. Esposito agreed.

Mr. Smith stated he would assume that Mr. Wilson is not contesting the fact that the driveway encroaches into the 5' minimum setback, and Mr. Wilson stated he is not; and the Plan submitted does show it is 4' away. He stated it was his expectation that the Zoning Hearing Board would be able to issue a Variance; but if they are not, he will cut away one foot from the driveway, and that would be the end of the request for a Waiver.

Mr. Smith asked if he is not contesting all of this, the TCO being denied was correct. Mr. Toadvine stated there are also engineering issues. Mr. Smith stated on the basis of what has been discussed already, the denial was correct. Mr. Kim stated he still has several issues to correct including the 5' minimum setback and getting the Permits. Mr. Smith stated this is his point since these issues existed then, the 5' setback exists today, and this is still a valid reason to deny the TCO which is the question before the Zoning Hearing Board.

Mr. Gruen asked if the walkway was built according to the original Site Plan.

Mr. Habgood stated the original Site Plan for the construction of the new home did show a walkway on it, and this was calculated into the impervious. He stated when the Applicant submitted his first request for Certificate of Occupancy in 2007, the As-Built Site Plan he submitted with that request did not show the walkway so the Township assumed he did not build it. Mr. Gruen asked if the walkway that has been built, was built in accordance with the original Plan; and Mr. Habgood stated as shown on Exhibit A-3, it is different from what was on the original Site Plan. He stated he did not do a calculation to show the differences in impervious surface. He stated sometimes builders do make slight variations depending on the potential buyer for the property, and usually they are calculated again when they come in for the C/O request to make sure that the impervious surface is still within the requirements. Mr. Bamburak stated this is why he is here for the Variance.

Mr. Toadvine asked Mr. Esposito if there is any impediment now to issuing the Building Permits for the walkway and patio other than the Variance for the impervious surface now that Mr. Wilson has submitted the As-Built. Mr. Esposito stated there are engineering issues. He stated the Building Permit needs to go through engineering before it can be issued.

Mr. Majewski was sworn in and stated he is the Township engineer for Lower Makefield Township and has served in that capacity for the last five to six years. He stated he is a registered, professional engineer in the State of Pennsylvania. Mr. Majewski was accepted as an expert witness.

Mr. Majewski was asked if he has reviewed the Temporary Certificate of Occupancy Application submitted by Mr. Wilson, and Mr. Majewski stated he did and sent a letter to the Director of Zoning and Planning for the Township stating his issues with the Application. This letter dated 7/27/10 was marked as Exhibit T-8. Mr. Esposito stated this letter was part of the denial letter. Mr. Toadvine asked if Mr. Wilson was copied on this letter, and Mr. Esposito stated he did receive a copy of the letter in his denial letter. Mr. Wilson agreed that he did receive a copy of this letter.

Mr. Esposito asked Mr. Majewski to go through the reasons why the engineering portion was denied for the C/O. Mr. Majewski stated there were a number of issues for the denial from an engineering standpoint. He stated typically they look at the Developers Agreement for compliance. He stated the Developer's Agreement for this Subdivision requires that the following issues be addressed prior to the issuance of a Occupancy Permit: The first is it states in the Developer's Agreement that sidewalks shall be completed on the lot for which an Occupancy Permit is sought. He stated that sidewalk has not been installed. Mr. Esposito stated the second portion has to do with street improvements necessary for the use and occupancy of a dwelling; and the letter discusses

a No Outlet traffic safety sign. Mr. Esposito asked Mr. Majewski if that sign has been installed in accordance with PennDOT regulations, and Mr. Majewski stated it has not. Mr. Majewski stated PennDOT requires the height of the sign to the bottom of the sign be 7', and also prescribes the location of the sign. Mr. Majewski stated currently he has the No Outlet sign posted on the same post as the street sign. He stated the approved Plans for the development show the sign in a different location from where it has been constructed.

Mr. Esposito submitted a set of photographs which were marked as Exhibit T-9. This is a sheet of twelve pages of photos. Mr. Majewski stated he took these at the project over the years.

Mr. Majewski noted page 10 of the set of photos which shows the No Outlet sign as it is now posted. Mr. Majewski stated the height to the bottom of the sign is required by PennDOT to be 7', and the height as it is installed is approximately 4' to 5' so it is installed 2' too low. He stated it is also not installed in accordance with the approved Plan. Mr. Majewski stated it must be on its own post and is to be at a different location from where it is shown. He stated the current location would not comply with PennDOT regulations as they prescribe a certain setback distance from the road for the sign.

Exhibit T-10 was marked which is a condensed version of the Plan of the front of the development. Mr. Majewski stated on the plan it shows a symbol for W14-2 which is the No Outlet sign. He stated this is shown approximately 50' away from the intersection. Currently the No Outlet sign is 15' to 20' from the intersection.

Mr. Toadvine asked if the Stop Sign that is in dispute also shown, and Mr. Majewski stated the Stop Sign is denoted as R1-1 and on the Plan it is to the left of where they show the proposed roadway. Mr. Wilson asked where this is shown on the Approved Subdivision Plans, Mr. Majewski stated this is shown on Page 8 of 13 of the Approved Subdivision Plan for Towering Oaks.

Mr. Esposito noted Item C in Mr. Majewski's letter which indicated that Mr. Wilson did not properly maintain the inlet silt sacks on the roads, and Mr. Majewski agreed. Mr. Esposito asked the last time Mr. Majewski looked at this situation, and Mr. Majewski stated he was on the site on 7/19/10. He stated page 2 of the pictures, the second picture on the left hand side shows the inlets that are clogged with silt and debris. He stated a silt sack is a piece of black fabric which is put inside the inlet so that water can come in and settle, and the silt settles out. He stated periodically that needs to be emptied out and cleaned and put back in. He stated when it clogs with silt as shown in the photo, the road can flood in a big rainstorm. He stated typically during construction you might have a couple feet of water in the gutter line; but as shown on the same page on the right hand side, when there was a large storm in January of this year, the entire roadway was flooded from curb to curb and was impassable.

Mr. Majewski stated with regard to Item D of his letter, the detention basins have been installed satisfactorily.

Mr. Esposito asked Mr. Majewski to discuss Item E with regard to the sanitary sewers. Mr. Majewski stated since the time they did their letter on July 27, all of the work contained in Item E 1 through 5 has been satisfactorily completed by the developer.

Item F was noted regarding on-lot grading and landscaping, and Mr. Majewski stated the As-Built Plan that the Township had on record for the property had a number of deficiencies. He stated one of them was that the retaining wall and patio were installed without Permits being issued. He stated they have been applied for by Mr. Wilson, and there are a number of items that need to be addressed in order to issue the Permits. Mr. Majewski stated specifically for the retaining wall, the detail shown within the Permit for the retaining wall shows the walls being vertical without being inclined or battered backwards. He stated the manufacturer's specifications for a techno block wall, state that the maximum height of a vertical wall should be 30". The walls that were installed by Mr. Wilson are approximately 4' high; and therefore, they are not installed in accordance with the manufacturer's specifications. Mr. Majewski stated another issue they have is that it appears from the photograph that in some locations the wall is not only not inclined backward which would be what is recommended for a wall of that height by the manufacturer, but it appears to actually be tilting forward slightly. He stated he would be concerned about the stability of the wall. Mr. Smith asked if this is in the letter Mr. Majewski sent, and Mr. Majewski stated it is not in the letter regarding the TCO, and it just states that Permits have not been issued. Mr. Majewski stated now they have an updated As-Built Plan, and he is going through the reasons why the wall Permit has not been issued. Mr. Majewski stated there are also some minor issues with the wall that need to be addressed that were noted in his rejection in the wall Permit.

Mr. Majewski stated his letter of 7/27/10 referred to the As-Built Plan not being drawn correctly. He stated it appears that the updated As-Built Plan that was submitted with the recent wall Permit does appear to be accurate. He stated it appears that the Plan submitted by Mixner is a photo copy of the J.G. Parks Associates Plan that had the patio and walls hand drawn in. He stated the general configuration of that patio and wall appear to be accurate. Mr. Majewski stated on the J.G. Park original Plan that was submitted with the C/O Application, there is a note that states the Plan is for the benefit of the property owner and is not to be used by anyone without the written permission of J. G. Parks Associates, and he does not see any note to the effect on the Mixner Plan that permission was granted by J. G. Parks to photocopy their Plan and their As-Built.

Mr. Majewski stated the As-Built Plan also shows that the grading in the front yard is 1% slope; and by looking at the spot grades that are shown on the Plan and the contours, scaling between them, and doing a calculation, the grading on the Plan is 1% which is pretty flat and there have been times when has been standing water. Mr. Toadvine asked what was required according to the approved Plan, and Mr. Majewski stated he believes it was 2% and that was shown on the approved Grading Plan. Mr. Bamburak asked if this is typically required on all developments, and Mr. Majewski stated this is correct. He stated the only time a 2% slope within a yard would not be required would be if it was specifically designed to be a drainage swale within a drainage easement where you are expected to be carrying a lot of water and a 1% slope would be more appropriate. Mr. Majewski stated Exhibit T-9 shows on the first page several instances where an extreme amount of water is ponding in the yard area partially due to the flatness.

Mr. Wilson asked what picture and what dates show that there is standing water, and Mr. Majewski noted Page 1, the first and second picture on the right hand side dated 1/25/10. Mr. Majewski stated there is another picture on Page 7 showing the dying tree on the property taken 9/11/09, and although this photograph may be blurry, to the right of the tree trunk, you can see an area which looks like mud, and this was standing water.

Mr. Majewski noted Item F in his letter of 7/27/10 it indicates that the existing house elevations, with the first floor at elevation 226.91 is 1.69' lower than those shown in the approved Grading Plan for this lot. He stated the approved Grading Plan shows that the first floor elevation was to be 228.60. Mr. Toadvine stated this would not be an issue provided he meets the slope requirements for the drainage, and Mr. Majewski agreed. Mr. Majewski stated he feels that lowering the house that 1.69' created the flatter front yard and the minor drainage problems that now exist.

Mr. Majewski stated Mr. Wilson also installed street trees of less than 2 ½" caliper, and there are a few dying. He stated the picture with the standing water taken 9/11/09 also shows one of the trees with the top branches missing a number of leaves. He also noted at the bottom of the branch there is a cell phone. He stated his cell phone is less than 2" in diameter, and you can see the size of the tree is the size of his phone. He stated trees of 2 ½" caliper are required by Ordinance. It was noted this can also be seen on page 4. Mr. Gruen asked at what height from the ground do they measure the caliper, and Mr. Majewski stated newly-installed trees are measured approximately 6" above the ground level. He stated the picture he took was at ground level, and if you go up 6" higher, the tree is slightly narrower.

Mr. Majewski stated he also referenced in his letter that the As-Built Plan does not accurately show the location of the pipe that discharges from the roof leaders at the northwestern corner of the house. He stated in Mr. Wilson's Zoning Appeal, he states that the drain pipe was removed off of Lot #3; however, Mr. Majewski stated he visited the site on 9/16/10, and the drawing dated 9/16/10 shows the roof leader that is on Lot #3. He stated on the previous Plan by J. G. Park Associates that had been submitted several times for the Certificate of Occupancy, the line showed that it went from the house on Lot #4 across the property line onto Lot #3. He stated the subsequent Plans had that altered to white that out and not show the line, and Mr. Wilson had stated that it had been removed; however, Mr. Majewski stated he went out and found the pipe still to be on Lot #3. He stated while he cannot confirm that it is connected to the roof leader on Lot #4, he sees no other possible location for the end of that pipe. Mr. Esposito stated if that pipe is on Lot #3, would Mr. Wilson need an easement to have it located there, and Mr. Majewski stated he would. He stated eventually that Lot will be sold, and you cannot have the water from Lot #3 discharging onto Lot #4 without their permission.

Mr. Majewski stated the other item he noted in his letter of 7/27/10 was the As-Built Plan shows the grades of the third car-garage and the setback of the driveway do not match the approved Plans and are not in compliance with the Township regulations. He stated the driveway setback of 4' was mentioned previously by Mr. Habgood. Mr. Majewski stated the Plan that was submitted by J. G. Parks and also by Mixner shows a slope at the garage labeled as 6.8%; however, if you calculate the grades at the back of the driveway where the third-car garage is, that slope comes out to be greater than 8%. Mr. Majewski stated he also took a photograph on 9/16/10 which is shown on Page 6, and this shows the car on the angle; and at the garage, the driveway is slightly steeper and then it flattens out. He stated the calculated slope is greater than 8% which is the maximum permitted by the Township Ordinance. He stated to his knowledge no relief has been granted by the Board of Supervisors to permit those deviations.

Mr. Esposito asked if Mr. Majewski is aware of the Applicant paying all outstanding engineering bills to the Township, and Mr. Majewski stated he does not believe any payment has been made in the last four years for this project. Mr. Toadvine asked if there is any escrow remaining, and Mr. Majewski stated this is correct. Mr. Esposito asked Mr. Majewski if he was present at a meeting at the Township in November 7 with Township officials and Mr. Wilson where he had agreed that money is owed to the Township, and Mr. Majewski agreed he was present at that meeting.

Item #3 of Mr. Majewski's letter regarding the abandoned water well on Lot #4 was noted, and Mr. Esposito asked Mr. Majewski if the well has been closed in accordance with Bucks County Health Department and DEP regulations, and Mr. Majewski stated it has not.

Item #4 was noted, and Mr. Esposito asked if the rusty fuel tank and sewer pipe are still located in the abandoned house located across the street from the property; and Mr. Majewski stated the door to the house is now closed, and he believes that it is now locked and secured. Mr. Majewski stated at the time he had visited the site and taken several pictures several years ago, the door was wide open and anyone could walk in. Subsequent visits showed that he door was unsecured and not closed all the way so that anyone could go inside the house. He stated he has never been inside the house due to its poor condition.

Mr. Kim noted Item #3, and asked what is improper with regard to the seal of the abandoned water well; and Mr. Majewski stated at the time that Mr. Wilson got permission from the Township to put in a temporary well until public water was available, he had drilled a well without securing the necessary Permits from the Bucks County Health Department. Mr. Majewski stated Mr. Wilson then subsequently drilled another well for which he did have a Permit; however, he has never properly closed the other well in accordance with the Bucks County Health Department regulations.

Mr. Toadvine asked what would be the procedure to properly close the well. Exhibit T-11 was marked which is an excerpt of the Bucks County Health Department Rules and Regulations Governing Individual Residential Water Supply Systems and Construction Specifications, effective date of 3/1/07. Mr. Wilson was provided a copy of this Exhibit this evening. Mr. Majewski stated Page 11 of these specifications outlines the procedure for abandoning a well. He stated a Permit must be obtained from the Bucks County Health Department. He stated the abandonment is subject to Health Department inspection. He stated the primary purpose of the steps outlined is to insure that nothing can be dumped down the well in the future to pollute the aquifer. Mr. Majewski stated to his knowledge these procedures have not been done.

Mr. Toadvine asked if Item #4 with regard to the rusty fuel tank is no longer an issue now that it is locked up in the abandoned house, and Mr. Majewski stated this is not the case. He stated in Mr. Wilson's Appeal, he stated he knew of no regulation prohibiting the storage of the fuel tanks within a house; however, Mr. Majewski stated he has researched the regulations of the State of Pennsylvania, and the Solid Waste Management Act (Act 97 of 1980) outlines what is required to dispose of and store solid waste.

Mr. Wilson asked for a copy of these regulations, and Mr. Majewski agreed to provide Mr. Wilson a copy at a later time.

Mr. Majewski stated in those regulations, they have definitions for storage and he read as follows: “Storage – the containment of any waste on a temporary basis in such a manner so as not to constitute disposal of such waste. It shall be presumed that the containment of any waste in excess of one year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.” Mr. Majewski stated this fuel tank has been in there for over a year; and when they met with the DEP and walked the site in 2009, one of the items they had discussed with the DEP and Mr. Wilson was that he had to clean up the site in accordance with all applicable regulations and properly dispose of all waste. Mr. Majewski stated he does not believe that the DEP contemplated that he would just put the waste inside the abandoned house.

Mr. Bamburak asked Mr. Majewski if his research turned up anything particular to storage tanks – or just waste, and Mr. Majewski agreed it just had to do with waste.

Mr. Esposito stated that Item #5 in Mr. Majewski’s letter refers to some inaccuracies in the As-Built Plan most of which have been covered in previous testimony, and Mr. Majewski agreed. Mr. Majewski also stated that a number of those items have been addressed with the latest As-Built Plan by Mixner.

Mr. Bamburak asked Mr. Majewski if he is happy with the quality of the As-Built Plan; and Mr. Majewski stated there are a few minor issues with the As-Built Plan, but generally it is now to scale and accurate. He stated the only discrepancies he sees are that there is a safety fence that was installed around the patio wall which was done at his request, and the location of the discharge pipe from the roof leader being accurately shown. Mr. Bamburak asked Mr. Majewski if he would accept it as a workable Plan; and Mr. Majewski stated he would with some minor alterations. He stated a few spot grades also have to be shown at the walls, but there are no major issues. He stated they could use it as the basis of a Plan for the Variance.

Mr. Kim asked Mr. Toadvine if Mr. Wilson has to first get the Occupancy Permit in order to apply for the Variance, and Mr. Toadvine stated he does not. Mr. Toadvine stated he could not get an Occupancy Permit until he obtained a Variance for the impervious surface.

Mr. Esposito marked the Certificate of Occupancy Engineering Phase as Exhibit T-12. Mr. Esposito noted the area under Public Improvements where Mr. Majewski discussed that half of the front curb has sunk. Mr. Majewski stated this is shown in a number of the photographs marked as Exhibit T-9. He stated where the roadway meets the driveway, the depressed concrete in that area has a 1” lip in between two sections; and either one sank or was not properly installed. He stated this is a tripping hazard. He stated it is also an area where water could collect, and in the winter could potentially ice up.

Mr. Esposito asked if Mr. Wilson has completed the driveway apron according to the Plans and the Development Agreement, and Mr. Majewski stated he has not. Mr. Majewski stated a driveway apron is that portion of the driveway beyond the road and until you get up to and past the sidewalk. He stated it is required by the Township's specifications in the Subdivision and Land Development Ordinance that this area be made of concrete with certain standards of construction. Currently it is just asphalt. Mr. Toadvine asked if there is a picture of this, and it was noted it is shown on Page 3 at the top.

Mr. Wilson asked for the citation for this, and Mr. Majewski stated it is part of the SALDO – Attachment 7 which shows a typical roadway section for local streets, and it shows the driveway apron as being required to be concrete. This citation was marked as Exhibit T-13.

Mr. Kim stated he read Mr. Wilson's response, and Mr. Wilson had indicated that he did not feel it was sunken at all. Mr. Wilson stated it has since been completed. He stated whatever Mr. Majewski thought was a tripping hazard, which he cannot imagine how you could trip, has been repaired. Mr. Kim stated it is clear to him from the picture that it is sunk. Mr. Kim stated ¼" off the surface grade is a tripping hazard according to Federal standards. Mr. Wilson stated it has been repaired, and he has a picture of it.

Mr. Wilson stated he has a lot of questions. Mr. Toadvine advised Mr. Wilson that he had Appealed the Determination of the Zoning Officer. He stated while he may dispute today that these conditions no longer exist, the Board is required to make a determination whether on July 27 when the letter was issued, were the deficiencies there; and by Mr. Wilson's own testimony, some of them were. He advised Mr. Wilson that while he has Appealed the Determination, in actuality, it seems that it would be more appropriate just to re-apply if he has corrected the problems. He stated the Board cannot tell Mr. Habgood he was right when he issued the letter and now it is all better so he has to issue the C/O. He stated the Board does not have this authority.

Mr. Wilson stated his position is that Mr. Majewski just went through a rather lengthy explanation of what he felt was wrong, and the Denial said they had a letter from Mr. Majewski that everything was wrong, so they denied it.

Mr. Smith stated even if everything that the Township engineer just testified to is wrong, the Zoning Hearing Board has Mr. Wilson's own testimony that issues that were raised in the Denial letter from Mr. Habgood existed on the day the Denial letter was issued; therefore, Mr. Habgood had good reason to deny the Certificate of Occupancy request. Mr. Smith stated it does not matter even if the Township engineer is completely wrong. Mr. Smith stated Mr. Wilson's Appeal, by his own admission, should be denied since the Township was correct in denying the request for the Certificate of Occupancy. He questioned what Mr. Wilson could add at this point.

Mr. Wilson stated he does not want to waste everyone's time by cutting off one foot of the driveway and now it is 5' so he can apply and he comes back with a whole new Application and it is denied again for the same reasons that Mr. Majewski is saying, and they have not even addressed all of those issues so they will be back to "square one."

Mr. Smith stated while he can understand this, he asked Mr. Wilson if he has considered hiring a reputable builder to take a look at this and make the corrections that need to be made. Mr. Wilson stated it is not as simple as hiring a builder because there are some very substantial things. Mr. Wilson stated he has been building for thirty years.

Mr. Wilson stated Mr. Majewski just testified that there is a 1% slope and water sits in the front yard. Mr. Wilson stated he has just turned in a Plan from a licensed engineer and surveyor that shows on the Plan, and J.G. Parks did too, that there is a 225.3 elevation in the front yard near the driveway on the right hand side, and on the left hand side there is an elevation of 221. He stated it is a 4' drop over a little more than 100 feet which is a 4% - not less than 1%. He stated this is substantial in starting to re-grade the entire property.

Mr. Smith stated looking at the Plan that was submitted this evening by Mr. Wilson, the front shows 222.7, 222.8 at the curb, and then 222.5; and there is a 2/10ths of an inch difference across a nearly 70' span. He stated this is what Mr. Majewski is talking about.

Mr. Wilson stated he is reading the Plan and he also has photographs from four different dates when there was an inch of rain that fell; and in every one of those cases, there was no ponding of water. A number of Board members advised Mr. Wilson that this does not matter since the numbers do not meet requirements. Mr. Wilson stated if he has a grade of 225.3 and it goes down to 221 that is 4' drop over 100 feet so it is 4% and not less than 1%. Mr. Wilson showed where he had highlighted this on the Plan. Mr. Smith stated that area is not where the problem is, as the problem is the front yard.

Mr. Majewski stated they also just found an error in the surveyor's Plan, and that grade is not correct. He stated this would show that the sidewalk is 2' higher than where the garage is, and since the Plan has 1' contours everywhere, this would mean that they are missing the 224 contour and the 225 contour. He stated he believes the number should be 223.3.

Mr. Wilson stated there are numerous other items, and he does not want to waste everyone's time. He stated Mr. Majewski has a whole bunch of items that he is disputing, and Mr. Wilson stated he has photographs to dispute them. He stated some of the things are incidental and could get corrected without question, but some of them are substantial. Mr. Wilson stated Mr. Majewski is telling the Board that the driveway going into the third bay of the garage is greater than 8%, and he has two licensed surveyors

showing it is 6.8% and numerous photographs that show it is a flat driveway where any reasonable person would have absolutely no problem whatsoever driving in that driveway. He stated this is not insignificant.

Mr. Toadvine stated the issue is the Zoning Hearing Board does not have the authority or the power to go item by item through Mr. Majewski's letter and Mr. Habgood's letter and indicate who is wrong or right and indicate whether or not Mr. Wilson would have to comply with those items. He stated the only item the Board is considering is whether Mr. Habgood acted within the scope of his authority, based on the evidence presented, in denying the Temporary Use and Occupancy Permit. Mr. Toadvine stated all the Board had to do is find that one item Mr. Habgood alleged was incorrect or improper, was in fact incorrect or improper, and Mr. Wilson would not get the Temporary Use and Occupancy Permit. Mr. Toadvine stated as he noted earlier, by Mr. Wilson's own admission, at least two or three of the items cited were accurate. Mr. Toadvine advised Mr. Wilson to work out the other issues directly with the Township as the Zoning Hearing Board cannot work them out for him. He stated all the Board can do tonight is consider granting a Variance for impervious surface and decide whether or not the determination of the Zoning Officer was appropriate. Mr. Toadvine stated all of Mr. Majewski's items are in the SALDO Ordinance; and the Zoning Hearing Board has no authority over the Land Development and Subdivision Ordinance, and all they have authority over is the Zoning Ordinance. Mr. Toadvine stated the Zoning Hearing Board does not have the requisite expertise to state who is right and who is wrong when it comes to the Land Development and Subdivision Ordinance.

Mr. Toadvine stated he feels a lot of the items seem to be rectifiable without much expense or effort. He stated with regard to the driveway, if Mr. Wilson can demonstrate to Mr. Majewski that the slope is 6.5% and not in excess of 8%, Mr. Majewski would not raise that issue in his review letter.

Mr. Wilson stated his only dilemma is that if they had a good working situation where some of the items appear to be de minimis, he would agree. He stated some of these items he is only hearing about for the first time. Mr. Wilson stated any rational person would look at the driveway and see that there is no problem whatsoever of getting a car into the third bay of the garage. Mr. Kim stated he disagrees. He stated there are number of Board members who are engineers, and Mr. Wilson needs to follow the specifications on the written diagram. He stated homeowners expect to get a good house, and he needs to follow the specifications. He stated as a builder he should be responsible for following the specifications so that they do not have to tell him how to read his specifications.

Mr. Esposito stated he put into evidence six previous Temporary Certificate of Occupancy Applications, and he asked Mr. Wilson if they have not been consistent with the denials that were listed in the 7/28/10 Application. Mr. Wilson stated he would not agree. He stated there are pictures from 1/25/10 as evidence that the silt sacks were not cleaned out, and that is evidence of flooding in the roadway and flooding in the front driveway, but he has a letter of final compliance with the Bucks County Soil Conservation District who has jurisdiction over this. He stated of the prior Applications from 2007 and 2009, there are no pictures to indicate that the silt sacks were never cleaned out. Mr. Esposito stated they have pictures in their Exhibit from 7/19/10 during the time of the Application to show that the silt sacks were not properly maintained. Mr. Wilson stated he disagrees with this, and he has evidence that on 1/25 there was a deluge flood of 1.6" in rain that fell in a very short period of time when the ground was frozen over and that is why you have water. Mr. Esposito stated he is not discussing January 25, 2010, and they are showing pictures from July 19, 2010.

Mr. Bamburak stated testimony has been presented to the Board, and the Board will make a decision on the Variance and the determination of the Zoning Officer.

Mr. Esposito stated with regard to the Variance, they would suggest that as part of the grant of any Variance that a Condition be placed that prospective homeowners be notified that they are only permitted an additional 2 ½% impervious surface since normally they would be permitted an additional 3%. Mr. Bamburak asked where that notification would be placed. Mr. Esposito stated it should be in an Agreement of Sale. Mr. Toadvine asked how they could enforce this. He asked Mr. Wilson if he would agree if the Board were to grant the Variance for the additional impervious surface, to notify any prospective homeowners that are going to buy Lot #4 that they are only permitted an additional 2.5% of impervious surface and not 3%. Mr. Wilson stated he does not understand what is being requested since the impervious surface is already been maxed out. Mr. Toadvine stated there is an additional 3% permitted for the homeowner since it is 16% for the developer and 19% for the homeowner. Mr. Toadvine stated by giving Mr. Wilson 16.5%, the homeowner will only be allowed an additional 2.5%. Mr. Wilson agreed to this Condition. Mr. Toadvine stated the Condition should be that it be disclosed prior to the signing of any Agreement of Sale and included in any Agreement of Sale.

Mr. Gruen asked where the water is going from the sump pump; and Mr. Wilson stated it is shown on the new As-Built drawing, and it is highlighted where each one of the drainage pipes is going. Mr. Wilson stated the one in the northwest corner shows exactly where the drainage pipe is going, and it is on Lot #4, not Lot #3. Mr. Wilson stated in the middle of the patio it shows the floor drain, the sump pump, and the connection into the other pipe.

There was no one present in the audience, and there was no public comment.

Mr. Gruen stated the patio has a retaining wall. He asked if there was not testimony that the retaining wall was not built according to spec; and he asked if the Board approves this, does that mean that the wall will stay like that. Mr. Toadvine stated they will have to go to the Township to get this approved.

Mr. Smith moved and Mr. Zamparelli seconded that the relief requested for impervious surface be granted in the way of a .5 increase over the 16% allowed with the Condition that any subsequent purchaser of the property be notified by Mr. Wilson before an Agreement of Sale is entered into that the purchaser will be allowed only an additional 2.5% to a maximum of 19% impervious surface. Motion carried with Mr. Kim opposed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the determination of the Zoning Officer be upheld, and the Appeal is Denied.

There being no further business, Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 9:55 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary