

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 16, 2013

The regular meeting of the Zoning Hearing board of the Township of Lower Makefield was held in the Municipal Building on April 16, 2013. Chairman Bamburak called the meeting to order at 7:45 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Jerry Gruen, Vice Chairman
 Anthony Zamparelli, Secretary
 Keith DosSantos, Member
 Mark Moffa, Member

Others: Bob Habgood, Code Enforcement Officer
 John Koopman, Township Solicitor
 Mark Eisold, Township Engineer
 Barbara Kirk, Zoning Hearing Board Solicitor
 Pete Stainthorpe, Supervisor Liaison

APPEAL #13-1658 – SUNFLOWER FARM, LLC

Mr. VanLuvanee stated since the last Hearing he had the opportunity to review some of Exhibits Dr. Bentz had provided as well as his own notes regarding the direct Testimony. Mr. VanLuvanee stated at the last Hearing they discussed the existing Satterthwaite House and Dr. Bentz's proposal to use it as an office rather than a residence. Mr. VanLuvanee stated included with Exhibit A-7 was a report from Mr. Milnor, Dr. Bentz's architect. Mr. VanLuvanee stated Mr. Milnor was retained by Dr. Bentz to evaluate the ability to adapt the House to the use she wanted to make of it which was as an office. Mr. VanLuvanee stated Dr. Bentz did not specifically ask him to evaluate the ability to bring the house up to residential standards such that she could occupy it, and Dr. Bentz agreed. Mr. VanLuvanee stated she also retained a structural engineering firm to evaluate both of the buildings that Mr. Milnor had also evaluated, and Dr. Bentz agreed. Mr. VanLuvanee stated she did not include their report in Exhibit A-7; however, Dr. Bentz stated she did include it in the Bid.

Mr. VanLuvanee noted the Minutes from the Board of Supervisors' meeting of 4/7/10 which was two years before Dr. Bentz signed the Agreement to purchase the property. Mr. VanLuvanee marked as Exhibit C-7 a copy of the first seventeen pages of the Minutes of the Board of Supervisors meeting of 4/7/10, and according to the Minutes, Dr. Bentz appeared at that meeting to discuss her interest in the property; and Dr. Bentz agreed. Mr. VanLuvanee stated at that meeting Dr. Bentz was characterizing some of the

information she had received from Mr. Milnor, the architect; and he asked Dr. Bentz if she would agree that at the end of the first paragraph of Page 15 of the Minutes it indicates she had received quotes to restore the House and the outbuildings at a cost range of \$110 per square foot to \$400 per square foot or \$500,000 to \$2 million, and Dr. Bentz stated this is an accurate representation of what she said. Mr. VanLuvanee stated the next paragraph of the Minutes indicates that Dr. Bentz stated, “in order to generate the revenue to be able to afford this, she would need an initial building of approximately 5,000 square feet;” and Dr. Bentz agreed that this was an accurate summary of her Testimony. Mr. VanLuvanee stated according to the Minutes she then added that she may also need to add another building in the future, and Dr. Bentz agreed that this was an accurate statement.

Mr. VanLuvanee stated in Mr. Milnor’s report, Mr. Milnor never stated whether or not the house could be restored to residential standards. Mr. VanLuvanee provided a copy of excerpts from the Minutes of the Board of Supervisors’ meeting from 10/17/12. These were marked as Exhibit C-8 and are pages four through thirty-four of the meeting Minutes. Mr. VanLuvanee asked Dr. Bentz if she was present at that meeting with Mr. Murphy and Mr. Milnor, and Dr. Bentz agreed.

Mr. VanLuvanee stated Page 9, the second paragraph, first sentence reads, “Mr. Benedetto asked Mr. Milnor if it would not be a livable facility once updated; and Mr. Milnor stated it would be livable, but also stated that there is an issue with having an office and a residence in the same building since it is a mixed use and the Building Code looks at the two uses separately;” and Dr. Bentz agreed that this is an accurate statement of what Mr. Milnor testified. Mr. VanLuvanee stated Mr. Milnor actually told the Board of Supervisors that the house could be restored to be used as a residence, but Dr. Bentz did not want to use it that way. Mr. Murphy stated he did not feel Dr. Bentz could answer this. Mr. VanLuvanee agreed to withdraw the question.

Mr. VanLuvanee provided Exhibit C-9 which are excerpts from Dr. Bentz’s proposal for the Satterthwaite Farmstead, and Dr. Bentz agreed these were parts of what she presented to the Township. Mr. VanLuvanee stated approximately halfway back is a report from Larsen and Landis to Dr. Bentz dated 7/1/12. Mr. VanLuvanee stated the initial statement on the first page of that Report indicates that Dr. Bentz had retained this firm to evaluate the structural integrity of the house and the bank barn, and Dr. Bentz agreed. Mr. VanLuvanee stated on the top of the second page of their report under “House” there is a statement that reads, “Overall the house is in poor to fair condition. Roof and wood floor framing consists of wood framing most likely the majority of the floor framing is not adequate to support office loads.” Dr. Bentz stated what he is referring to is that the house is dilapidated and the first floor of the House in the north part of the house, you cannot even walk on those floorboards or you will fall into the basement. She stated what he is referring to is the whole house is not structurally sound as far as the floors are concerned so therefore you cannot use it for office space, although you could not use it as

a residence as well as it is now. Mr. VanLuvanee stated it does not say that in the Report; however, Dr. Bentz stated she talked verbally to them about it. Mr. VanLuvanee stated what Dr. Bentz is indicating is that the floor as she understands it would have to be structurally supported in order to be used for residential or office purposes, and Dr. Bentz stated probably the floor needs to be replaced. She stated it is not being supported underneath, and it is spontaneously opening up holes. Mr. VanLuvanee stated if they read the Report in its entirety, there is nothing that says the property cannot be restored, and it is just a question of price; and Dr. Bentz agreed.

Mr. VanLuvanee asked Dr. Bentz if it would be a fair statement that her interest was not to use it as a five acre residential property; and Dr. Bentz stated her interest is to restore the house, continue the history, heritage, and culture, and the way to do that is to have a successful business there to provide the funding to do that. Mr. VanLuvanee stated this was her conclusion, but there may be others who are otherwise situated that have another conclusion. Dr. Bentz stated they were the only ones that put a Bid in after two Bid cycles.

Mr. VanLuvanee asked Dr. Bentz if she ever considered the possibility of renovating the house for a combination of uses such as Mr. Milnor commented on which would be a residence and an office. Dr. Bentz stated Mr. Milnor did not comment on that specifically; and she believes Mr. Benedetto asked him that question, so he answered it. Mr. VanLuvanee asked Dr. Bentz if she ever thought about that, and Dr. Bentz stated she feels a mixed use is not a good idea. Mr. VanLuvanee stated this is her opinion, and Dr. Bentz stated it is a fact. Dr. Bentz stated most people would not want to live in their office. Mr. VanLuvanee stated Dr. Bentz decided she did not want to live in her office; and Dr. Bentz stated she would not think that was a good idea, however, she added she would love to live on the property and be a steward of the property which would be an honor and a privilege.

Mr. VanLuvanee stated one of the Variances being requested is a Variance from impervious surface. He stated if she were to live in the existing house and use it as her residence and office, they would not need to build a second house and this would reduce the amount of impervious surface. Dr. Bentz stated that is not on the table, and what is on the table is their Site Plan on which they have spent a considerable amount of time and effort with their engineer and lawyer. Mr. VanLuvanee stated while he understands that this is not on the table, she has asked for a Variance to give herself the ability to add a new dwelling. Dr. Bentz stated it will be a small, modest dwelling so she can be on the property to steward it and so that there will be a person on the property twenty-four hours a day, maintaining it including snow removal, leaf removal, landscaping, etc.

Mr. VanLuvanee noted the Site Plan, Exhibit A-2 shows a new residence with an 1,800 square foot first floor and garage and a drive coming back to the residence. Mr. VanLuvanee stated this is additional impervious surface, and Dr. Bentz agreed. She stated the outline of the 5.14 acre plot is such that the Satterthwaite House is prominent and is facing Mirror Lake Road. She stated everything else is behind it so all of the impervious that is needed including the driveway has to be that way because it has to be behind the Satterthwaite House. She stated they are trying to be extremely cognizant of the neighbors. She stated they are trying to make it very amenable to the neighbors and pleasurable to look at. She stated what you would see from Mirror Lake Road is essentially unchanged, and you would see the Satterthwaite House in a restored fashion, and everything else would be behind it. She stated they need the impervious because of the driveways.

Mr. VanLuvanee stated Dr. Bentz is telling the Zoning Hearing Board that it is her choice not to renovate the existing house for use as a house and office, and instead of doing that she wants to add a second residence; and Dr. Bentz agreed.

Mr. VanLuvanee stated he would like to discuss the number of buildings proposed recognizing that they will be taking some buildings down, and Mr. Young provided statistics about the building numbers. Mr. VanLuvanee stated the excerpt from the 2010 Board of Supervisors meeting marked as Exhibit C-7 suggested that Dr. Bentz had told the Township initially that she needed to be able to build approximately a 5,000 square foot facility in order to make it feasible to renovate the Satterthwaite House and the barn; and Dr. Bentz agreed. Mr. VanLuvanee asked if this would be the proposed colic barn adding that she indicated to the Zoning Hearing Board at the previous meeting that this would be the first building built, and Dr. Bentz agreed. Mr. VanLuvanee stated Dr. Bentz also told the Board about the proposed elective care barn of 2,600 square feet which would be the second phase, and Dr. Bentz agreed. Mr. VanLuvanee asked what the timing would be assuming she was successful in the practice before she would have enough business to expand to the second building, and Dr. Bentz stated possibly a few years. Mr. VanLuvanee asked if it would be correct that she would not build the second building unless she were in fact successful, and Dr. Bentz stated they would build it if needed. Mr. VanLuvanee stated the Zoning Hearing Board will want to understand what is the minimum Variance that Dr. Bentz needs in order to use the property. He stated Dr. Bentz told the Board of Supervisors on 4/7/10 and has told the Zoning Hearing Board this evening that she expects to build the first 5,000 plus square foot colic barn and conduct her practice.

Mr. VanLuvanee stated the Agreement of Sale which was introduced as Exhibit A-6, indicates that Dr. Bentz needs to be able to renovate the Satterthwaite House and the barn within eighteen months from Settlement; and Dr. Bentz stated they have to get a Certificate of Occupancy for the Satterthwaite House within eighteen months.

Mr. VanLuvanee stated he understands that in order to do that, Dr. Bentz would need to know that she can build the proposed colic barn first and establish a practice before she would be willing to spend the money to do the renovations to the House; and Dr. Bentz stated she never said this. Dr. Bentz stated their plan is to simultaneously build the horse facility and renovate the House since they need an administrative office. Mr. VanLuvanee stated the intent is to simultaneously renovate the Satterthwaite House and build the colic barn, and Dr. Bentz agreed. Mr. VanLuvanee stated she will start her practice with the colic barn, and Dr. Bentz agreed.

Mr. VanLuvanee asked if the ability to build the colic barn would be sufficient for her to make the investment to renovate the Satterthwaite House; and Dr. Bentz stated this is what she is thinking, but they may also need the elective care barn to put the x-ray machine, etc. She stated she cannot say she would not need a bit of the elective care barn as well. Mr. VanLuvanee asked if it would be fair to characterize this as a Master Plan, and Dr. Bentz stated it is a Master Plan – a Generation Plan. She stated they did this so that everything would be organized and laid out. She stated they want to have a beautiful courtyard effect which is very typical of well-planned horse farms. She stated from the road what you see is beautiful barns, and behind is all the parking etc.

Mr. VanLuvanee stated at the last Hearing there was discussion about the proposed Mascot Barn, and he feels Dr. Bentz indicated that in this barn would be healthy animals that would be permanent residents. Dr. Bentz agreed and added they would be used for teaching for small student groups who would need to learn as well as Scout Groups. She stated those animals would also be used as occasional blood donors if needed. Mr. VanLuvanee asked if the Mascot Barn is a necessary part of the proposed medical boarding use; and Dr. Bentz stated it is, and she again noted the blood donation for that reason. She stated if a horse is hemorrhaging on the surgery table or if there is a new-born foal that needs a plasma or blood transfusion, they take the blood directly from the horses and put it in the other animals. Mr. VanLuvanee asked if it is Dr. Bentz's testimony that all uses similar to the use that she hopes to establish have animals that are permanent residents from which the blood could be taken or is there another source. Dr. Bentz stated in general they use fresh, whole blood. She stated sometimes they do use plasma transfusion that you can buy commercially. Mr. VanLuvanee stated she also indicated that this would be a teaching facility with groups coming in; and Dr. Bentz agreed and stated she believes in mentoring the next generation.

Mr. VanLuvanee stated one of the other Variances being requested is a Variance to have more than two livestock units on the property. He stated the Ordinance allows two per five acres in a Residential District. Mr. VanLuvanee asked if the additional livestock be those that she is treating or is she asking for a Variance so that she can have more than two livestock for personal use, and Dr. Bentz stated they are for the treating.

Mr. VanLuvanee stated there would also be two in the Mascot Barn, and Dr. Bentz stated they would have up to three stalls in the Mascot Barn. She stated horses do not do well by themselves, and you need at least two horses or a horse and a pony. Mr. VanLuvanee asked Dr. Bentz how many she would expect to have in the Mascot Barn, and Dr. Bentz stated she would have at least two but no more than three. Mr. VanLuvanee stated the other livestock units would be those being treated, and Dr. Bentz agreed.

Mr. VanLuvanee stated originally it was his understanding that with the possible exception of the animals in the Mascot Barn, all the animals Dr. Bentz would have there would be animals that would be there for medical treatment; and Dr. Bentz agreed. Mr. VanLuvanee stated Exhibit A-6 that was offered at the last Hearing is a copy of the Agreement of Sale with the Township, and on Page 14, paragraph 20 of the Agreement there is a paragraph entitled “Pasture,” which reads, “The seller (which would be the Township) agrees to consider leasing a portion of the adjoining property to the purchaser for the purpose of pasturing horses, ponies, etc. all of which must be related to the purchaser’s veterinarian business or the purchaser’s personal use.” Mr. VanLuvanee stated if Dr. Bentz was going to pasture horses on other ground, she would need to keep them on her five acres – feed them, house them, and put them in a barn; and Dr. Bentz agreed. Mr. VanLuvanee stated the paragraph references personal use, and he asked if Dr. Bentz is asking the Zoning Hearing Board for a Variance to permit her to have more than two animals for personal use; and Dr. Bentz stated she is not. She stated she is asking for the animals for the Mascot Barn.

Mr. VanLuvanee asked Dr. Bentz if she has had any discussions with the Township since entering into the Agreement with regard to leasing a portion of the Township property for pasturing, and Dr. Bentz stated she has not. Mr. VanLuvanee asked Dr. Bentz if that paragraph was included in the Agreement of Sale at her request, and Dr. Bentz stated she did not believe so. Mr. VanLuvanee asked Dr. Bentz if she thinks the Township just gratuitously put it in there, and Dr. Bentz stated she cannot speak for the Township. Mr. VanLuvanee stated Dr. Bentz signed the Agreement, and Dr. Bentz agreed but added the Township’s lawyers prepared it. Mr. VanLuvanee asked Dr. Bentz if she had a lawyer involved as well; and Dr. Bentz stated she did have a lawyer involved, but she does not feel he would speak for the Township either. Mr. VanLuvanee asked Dr. Bentz if she recalls any discussions about why Paragraph 20 was included in the Agreement; and Dr. Bentz stated at the Board of Supervisors meetings, she believes she mentioned that if this were an option, she would enjoy that.

Mr. VanLuvanee asked Dr. Bentz if she were able to lease additional pasture, would she use that additional pasture for the purpose of allowing the animals that she is treating to go out into a pasture; and Dr. Bentz stated it would be for whatever they needed it for. She stated pasture is for animals whether you are hand walking them and grazing them or turning them out. Mr. VanLuvanee stated the question is whether or not the concept of pasturing is a concept that relates to the proposed medical boarding use or whether that was a concept that related to her personal use; and Dr. Bentz stated in general it is nice to have a little bit of pasture for animals. She stated if they have a sick animal that is recovering post-op, and you need to hand graze it, it is really nice to have a little paddock where you can put them out in or hand walk them. Mr. VanLuvanee stated if she did this, it would in essence become part of the medical boarding use, and Dr. Bentz stated she agrees that this is correct. Mr. VanLuvanee stated at this point in time, she does not have a lease for any additional property from the Township; and Dr. Bentz agreed.

Mr. VanLuvanee stated she has an Agreement to purchase the 5+ acres only, and Dr. Bentz agreed. Mr. VanLuvanee stated the relief being requested is to conduct her use on the five acres only, and Dr. Bentz stated it is 5.14 acres.

Mr. VanLuvanee stated at the last Hearing Board Member DosSantos asked how she would dispose of the manure, and Dr. Bentz had indicated it would be a closed receptacle and trucked away. Mr. VanLuvanee asked where the manure would be stored before it is trucked away, and Dr. Bentz stated you build a closed receptacle. Mr. VanLuvanee asked if it would be built inside or outside, and Dr. Bentz stated it is usually outside, adding that it is enclosed. Mr. VanLuvanee stated Section 200-68A.1 of the Zoning Ordinance under Agricultural Use states, “No manure storage in connection with agricultural use should be within 150’ of the property line,” and he asked Dr. Bentz if she is willing to abide by that limitation. Dr. Bentz stated this sounds fair. Mr. VanLuvanee stated the Plan did not propose a location for manure storage, and Dr. Bentz stated a lot of people actually use a truck and have it all enclosed in the truck and then the truck just goes away. Mr. VanLuvanee stated the question is how she will do it, and she had indicated “closed receptacle.” Dr. Bentz stated a truck could be included as a closed receptacle. She stated she was going to call Rutgers University which has a fantastic manure management program and discuss different options with them.

Mr. VanLuvanee stated one of the other Variance being requested is a Variance from the buffer requirements of the Zoning Ordinance – buffering between non-Residential use and Residential use. He stated under the Zoning Ordinance it requires a Type I Buffer. Mr. VanLuvanee asked Dr. Bentz if she or any of her consultants reviewed with her the requirements for a Type I Buffer, and Dr. Bentz stated they did. Mr. VanLuvanee stated she is proposing in lieu of the Type I Buffer just a fence, and Dr. Bentz stated she is also proposing vegetation. Mr. VanLuvanee asked Dr. Bentz what type of vegetation she is proposing. He asked if she is just proposing the vegetation shown on A-2 which shows vegetation in front of the property on one side, and Dr. Bentz stated they were trying to

maintain the look of a farm so the other sides would be open. She stated the one side that would be closest to the neighbors would have vegetation such as native trees and plants in order to minimize glare. Mr. VanLuvanee asked if there is any reason why she could not construct a Type I buffer according to the Ordinance requirements, and Dr. Bentz stated they wanted to keep the view of the farm similar to what it is which is the view the people like.

Mr. VanLuvanee stated Dr. Bentz just used the term “glare,” in discussing the reason for the buffer, and his notes indicated that Dr. Bentz testified that the lighting would be “residential,” and Dr. Bentz agreed. Mr. VanLuvanee stated normal residential lighting does not generate glare, and he asked Dr. Bentz if it is her testimony that all of the buildings will not be lit at night. Dr. Bentz stated they would have a typical residential light as anyone would have on their home. Mr. VanLuvanee asked if the parking lot will be lit, and Dr. Bentz stated there will be no lights. Mr. VanLuvanee stated Dr. Bentz discussed operating a 24/7 operation to some extent, and Dr. Bentz agreed. She added it would be mostly during the day. Mr. VanLuvanee stated she had indicated that at some point in time she may have a horse delivered at night, and Dr. Bentz agreed. Mr. VanLuvanee asked if it is feasible to deliver a horse totally in the dark, and Dr. Bentz stated this is why they have residential lighting. Mr. VanLuvanee asked Dr. Bentz what she means by “residential lighting,” and Dr. Bentz stated it is what normally one would do at their house. She stated at her home she has a light on the porch, a light in their garden, and little pathway lights. Mr. VanLuvanee asked about the driveway that will go back to the proposed colic barn, and Dr. Bentz stated there would be headlights on trucks going back to the barn.

Dr. Bentz stated horse people are quite resilient and are not used to a lot of stuff. She stated she has been in pastures having to deal with down horses and all she has had was the light of her truck with no electricity or warm water. She stated you have to be very resilient and know how to do this through practice and experience. She stated she has thought about the Site Plan long and hard, and she wants to be a good neighbor.

Mr. VanLuvanee stated Dr. Bentz indicated at the last meeting that her husband has his own small animal veterinary practice, and Dr. Bentz agreed. Mr. VanLuvanee stated the proposal to conduct a small animal veterinary hospital is not a part of this Application, and Dr. Bentz agreed.

Mr. VanLuvanee stated he assumes that in the course of treating horses, she does find it necessary to use drugs; and Dr. Bentz stated she prefers the term “medications.” Mr. VanLuvanee stated these would be controlled medications; and Dr. Bentz stated she would not use the term “controlled,” she would just say “medications.” Mr. VanLuvanee asked how she stores her medications, and Dr. Bentz stated they have locked boxes and usually only a few people have a key.

Mr. VanLuvanee noted Page 12 of the 10/17/12 Board of Supervisors' Minutes where Dr. Bentz discussed staffing and had indicated initially there would be fifteen to sixteen staff and eventually up to twenty-five, and she had indicated at the last Zoning Hearing Board meeting that this would be on all three shifts; but he did not recall what she said about the break down and how many employees would be on the day shift, second shift, and overnight. Dr. Bentz stated they would have as many employees as were needed based on the self-limiting Site Plan and the parking spaces they are allotted. Mr. VanLuvanee noted the term "self-limiting" and added there is a lot of driveway space where they could park cars along the driveway and outside of the parking area. Dr. Bentz stated the horse trailers would then not be able to get through which would not be conducive for a good business.

Mr. VanLuvanee stated Dr. Bentz testified that she would have fifteen to sixteen employees initially and up to twenty-five, and there are fifteen parking spaces. Dr. Bentz stated initially they were going to do seven parking spaces and bank the rest to be added if needed. Mr. VanLuvanee asked Dr. Bentz what in her opinion would be the self-limiting number of employees she could have if she only built seven parking spaces; and Dr. Bentz stated it would be eight since she would be living on the property and would not need a car as she would be walking. Mr. VanLuvanee asked Dr. Bentz if she would agree that initially as long as she only had seven parking spaces, she would never have more than eight employees; and Dr. Bentz stated they would schedule their shifts accordingly to not have more people than the parking allowed. Mr. VanLuvanee asked if there are seven parking spaces initially which is what she proposed to build, is she telling the Zoning Hearing Board that she will not have more than eight employees, herself and seven people, at one shift; and Dr. Bentz stated this is a general rule of thumb although some people do car pool so there could be eight or nine if two people drive together and use one car.

Mr. VanLuvanee asked Dr. Bentz if the seven spaces she is proposing initially are adequate for her use if her use was limited to the proposed colic barn, and Dr. Bentz agreed. Mr. VanLuvanee asked Dr. Bentz if it is her opinion that she would only need additional spaces if she were permitted to build additional buildings, and Dr. Bentz stated this is her opinion. Mr. VanLuvanee stated if the use were just the colic barn, the impervious surface would be reduced because the parking lot would be smaller and she would not have the elective care barn or the two future expansions; and Dr. Bentz stated she already made the statement that if they needed the elective care barn initially to house things such as x-ray equipment, they would build that if need be. She stated it depends on the type of equipment you get. Mr. VanLuvanee asked Dr. Bentz if she does not control the type of equipment she gets, and Dr. Bentz stated you do but also the dealers/vendors do as well since it depends on what is available and what looks good price wise. Mr. VanLuvanee asked how the Zoning Hearing Board can evaluate what she is requesting in light of this statement. He stated the Board needs to understand what it is she needs at a minimum to make use of the property she is proposing assuming they are

inclined to grant a Use Variance. Mr. VanLuvanee stated it is difficult for him to understand from what Dr. Bentz has testified what it is at a minimum that she needs to establish this use. Mr. Murphy stated he feels that Dr. Bentz's direct Testimony made it clear as to what her proposal for the property is which is embodied in the Zoning Hearing Board Application. He stated the scope of the relief that they seek is based on the Master Plan that was submitted as part of the Application. Mr. VanLuvanee asked Dr. Bentz if her Testimony is that in her opinion the minimum relief that would afford her to be able to make reasonable use of the property is everything that is shown on the Master Plan. Dr. Bentz stated if the question is whether the Master Plan is what they have intended and what they are asking, the answer would be yes and this is why they have done the Zoning Applications and spent the time doing a Site Plan. Mr. VanLuvanee stated while he understands this, Dr. Bentz has also characterized it as a Master Plan and indicated that initially she was willing to proceed with the ability to build just the colic barn on the property in order to renovate the property; and Dr. Bentz stated she has consistently said they may need to put the elective care barn up as well. Mr. VanLuvanee asked from a standpoint of need is that need in order to meet demand or is it need in order to make it feasible for her to use the property. Dr. Bentz stated sometimes you separate equipment out and you have the valuable x-ray unit away from the surgery suite so it depends on what type of deals they get. She stated you can get portable x-ray units or x-ray units with a big boom that are expensive which you need a dedicated room for, and it will depend on what type of deals the vendors offer.

Mr. Bamburak stated the Board is satisfied with Dr. Bentz's response. Mr. VanLuvanee ended his cross-examination.

Mr. Murphy stated Dr. Bentz appeared before the Board of Supervisors a number of times leading up to the first publication of the Bid, the second publication of the Bid, and finally the acceptance of her Bid; and Dr. Bentz agreed. Mr. Murphy stated throughout the course of those public conversations with the Board of Supervisors, the Board always requested that they wanted to see a Master Plan for her future use of the property; and Dr. Bentz agreed. Mr. Murphy stated as a result of that request in terms of the Agreement of Sale and the Application that is before the Zoning Hearing Board, Exhibit A-2 represents Dr. Bentz's vision for how she would use the property over a generation, and Dr. Bentz agreed. Mr. Murphy stated Mr. VanLuvanee has inquired as to what she would do first, and she has made it clear that what she would build first would be the colic barn which is the "intensive-care" wing of the facility, and Dr. Bentz agreed.

Mr. Murphy stated she has also indicated that an integral element of the overall plan, the elective care barn or the "out-patient" barn, is also an important part of the overall approach as Dr. Bentz uses the property for the large animal equine hospital; and Dr. Bentz agreed. Mr. Murphy stated they are not trying to isolate the colic barn from the elective care barn, and while they might not be built at the same time, Dr. Bentz views

them an integral part of the overall operation; and Dr. Bentz agreed. Mr. Murphy stated she will require the elective care barn ultimately to have an efficient operation going forward, and Dr. Bentz agreed.

Mr. Koopman had no questions at this time.

Mr. DosSantos stated the Plan does not work without the elective care barn, and Dr. Bentz agreed. Mr. DosSantos stated she will need both at some point whether it is to house the x-ray equipment or use it for medical purposes, and Dr. Bentz agreed. Mr. DosSantos asked what she intends in the Satterthwaite House for office space, and Dr. Bentz stated it would be an administrative area where clients would come and check in and wait for the horses to be cared for. She stated it would also have a conference room and office space as well as typical storage. Mr. DosSantos asked how much she will need for record storage, and Dr. Bentz stated it would be mostly on computers so paper storage would not be that much. Mr. DosSantos stated the Plan proposes a 3,500 square foot administrative use, and he is not gathering from the testimony that 3,500 square feet would house a waiting room and offices; and Dr. Bentz stated they would need at least two bathrooms and a kitchen area for the staff. She stated they would not use the attic as that would just be for ventilation for the house. Mr. DosSantos stated his question went to the necessity for the separate dwelling which is smaller than the office use. He stated he does not get the impression that the office capacity will use the 3,500 square feet to its best use for the type of office she has indicated; however, Dr. Bentz stated they will definitely use it.

Mr. DosSantos stated when they discussed the Mascot Barn at the last meeting, he got the impression that it was for educational purposes and school groups; and tonight was the first time he recalls hearing anything about the transfusion aspect. Dr. Bentz stated she had made that statement before at the Board of Supervisors' meetings and apologized if that was not clear from the last meeting with the Zoning Hearing Board. Dr. Bentz stated the mascots save lives. Mr. DosSantos asked if this is standard protocol; and Dr. Bentz stated it is adding that most equine hospitals have at least one or two blood donors if not more. She stated a lot of small animal vets have dogs or cats, and the Vet Hospital at Penn has animals that they use. She stated they have three large dogs at their home, and her husband has used their dog for blood transfusions for surgery cases. Dr. Bentz stated in order to be a blood donor, animals need to be a certain weight. Mr. DosSantos asked if a larger animal would be necessary, and Dr. Bentz stated a typical 1,000 pound horse is fine. She stated a large breed dog is necessary in order to be able to take blood.

Mr. DosSantos stated the Zoning Ordinance provides for two livestock units, and Dr. Bentz is proposing at least two and possibly three permanently in the Mascot Barn and she would be adding onto this with the horses that come in for care; and Dr. Bentz agreed. Mr. DosSantos asked Dr. Bentz how many she expects to have on a daily basis aside from the mascots, and Dr. Bentz stated usually you only have a couple patients a day. She stated they would go to surgery and be treated for a while and they would then go home. She stated it is very low volume. Mr. DosSantos asked if it would be less than five on average, and Dr. Bentz agreed it would be less than five not including the three mascots. She stated usually they would only have a couple patients a day and a couple in the hospital.

Mr. DosSantos asked where the locked medical boxes would be located, and Dr. Bentz stated they would be in the treatment area; but she did not want to provide any additional information. Mr. DosSantos stated his concern is that there are veterinary medicines that will be in the buildings, and he asked if the buildings will be manned on a twenty-four hour basis; and Dr. Bentz stated they are “pretty much.” She stated they are treating the animals pretty much twenty-four hours a day, and there is usually somebody around if not two people around all the time.

Mr. DosSantos stated at the last meeting Dr. Bentz discussed having eight employees per shift, and tonight she discussed “self-limiting” based on the number of parking spaces. He stated it appears that she will only have the number of employees to run the hospital based on parking spaces as opposed to the number of employees needed to run the center. Dr. Bentz stated they devised this on the knowledge of what they would need per shift which is why she keeps going back to the self-limiting nature.

Mr. Gruen stated Dr. Bentz indicated last time that the animals would only be hand walked when necessary; and Dr. Bentz agreed that they tend to usually hand walk them when necessary, however, she added if they had a small 12 by 12 paddock to put them in, that would be nice. Mr. Gruen asked if it is imperative to have additional land from the Township to turn out the horses, and Dr. Bentz stated they will work with what they have if they are not able to obtain it.

Mr. Gruen asked Dr. Bentz what kind of treatments she will do adding for the first time tonight he has heard about birthing. Mr. Gruen stated they will also deal with colicky horses, and Dr. Bentz agreed. Mr. Gruen stated this means walking a lot; however, Dr. Bentz stated they usually take them to surgery since they often have intestines which are twisted, and then they might hand graze them as part of their treatment. Mr. Gruen stated this would be the extreme case when the intestine is turned. Dr. Bentz stated she is a veterinary internist which is a specialist, and there are only a few hundred large animal veterinary internists in the United States. She stated they would also have veterinary surgeons at the facility, and there are not a lot of them either. She stated they deal with

the “worst of the worst,” and what can be dealt with on the farm is dealt with on the farm; and they only bring the animals to her when they have surgical insults or need overnight monitoring, intravenous fluids, etc. She stated this is a referral hospital and not a farm where you are just walking the colic hoping that it will get better. She stated these are animals that are dying in front of you. She stated she has had foals that she has been able to save that had an arterial ph of 6.9 which is not compatible with life; but if you get the catheters in and get the fluids going, you can have a foal up and running within a few hours. She stated they save lives and do critical care. She stated what they do is very high tech. Mr. Gruen stated they are like a trauma center for horses, and Dr. Bentz agreed.

Mr. Gruen stated Dr. Bentz indicated that she would have four to five patients a day and some would be staying over which could be a total of ten horses on the property in addition to those in the Mascot Barn; however, Dr. Bentz stated initially in the colic barn there is a surgery suite, a treatment area, and four stalls and potentially one or two stalls would be in the elective care barn. Mr. Gruen stated she is asking for twenty-eight stalls, and Dr. Bentz stated that would be the total number. Mr. Gruen asked why she needs twenty-eight stalls if she was only going to have about ten horses on the Farm; and Dr. Bentz stated this is a generational plan. She stated when she indicates that they will have a couple cases a day, this is true. Mr. Bamburak stated if business went well eventually all twenty-eight stalls could be filled; and Dr. Bentz agreed that while this is correct, this is not normally the case and normally you are cleaning a couple stalls and letting them sit twenty-four hours and they are not usually all full.

Mr. Gruen stated the office building is 3,400 square feet; however, Dr. Bentz stated the Satterthwaite House is 5,500 square feet.

Mr. Gruen stated since this is a trauma center most of the cases will come in the middle of the night; however, Dr. Bentz disagreed. She stated people are not usually awake in the middle of the night. She stated they may come home from work and find that their horse is sick and then take them somewhere. She stated a lot of owners may also ride during the day and would find out then that the horse is sick so it is not often that they are getting horses in the middle of the night.

Mr. Gruen asked if the owners stay with the horses, and Dr. Bentz stated normally they stay for a little bit to make sure that the horse is situated and then they leave. Mr. Gruen asked if she is going to provide the owners with rooms upstairs over the office, and Dr. Bentz stated she will not.

Mr. Gruen asked if they will set bones, and Dr. Bentz stated they will probably do that, but this depends if the surgeon is interested in this. Mr. Gruen asked if they will need an aquatic pool for the horses for exercise, and Dr. Bentz stated they will not.

Mr. Gruen stated Dr. Bentz indicated that she will start by renovating the office building and simultaneously build the Colic Barn and the Mascot Barn and possibly the other clinic. He asked Dr. Bentz when she intends to build the residence, and Dr. Bentz stated they intend on building that shortly on the property because she needs to be there.

Mr. Moffa stated one of the criteria that the Zoning Hearing Board is asked to judge when they grant Variances is that the Variance represents the minimum Variance required to afford relief to do what she wants with the property. Mr. Moffa stated he believes Mr. VanLuvanee's line of questioning about the best use of the Satterthwaite House had to do with whether what she is asking for is the minimum relief she needs when she has made a choice not to live in the Satterthwaite House even though there is perhaps enough space for her to do so. Dr. Bentz stated the building is 5,500 square feet, and she does not want to live in a house that size. She stated she feels it is a beautiful house, and it will be fantastic as an adaptive reuse. Mr. Moffa stated the 5,500 square feet could be for her living space and her office. He asked if she needs 5,500 square feet for the office, and Dr. Bentz stated they would not use the attic as that would be for ventilation only which is very good in old houses. She stated they would just use the first two floors which would be the 3,500 square feet. She stated the first floor would be the administrative area, and the second floor would have a bathroom. She stated it is a large house and will make a great office. She stated when Mr. Milnor saw the house, he stated it would be a fantastic purpose for the house. She stated it will bring it new life and bring the financial needs that the house has since it will cost a lot of money to fix it up. She stated she does not need such a large space for her residence.

Mr. Moffa asked if she looked at having a residence elsewhere on the property so that there would possibly be less driveway required; and Dr. Bentz stated there was nowhere else to put it and they are limited on the 5.14 acres with the Satterthwaite House and the bank barn staying. She stated there was a lot of thought given to this with a lot of people from the engineering firm.

A short recess was taken at this time.

When the meeting was reconvened, Mr. Gruen asked about the different blood types for horses; and Dr. Bentz stated there are approximately four, and it is different than humans. Mr. Gruen stated the reason he is asking is because the Mascot Barn is going to have three animals, and he assumes they would have three different blood types. Dr. Bentz stated just as in people, there are universal donors; and with horses, they tend to go with a quarter horse gelding which is more likely to be a universal donor. Mr. Gruen stated being a gelding would not change the blood type, and Dr. Bentz stated when the mares are pregnant the foal and mare blood can mix to get antibody reactions so it is more helpful to use a gelding which is a castrated male horse. Mr. Gruen stated he did not think that changed the blood type, and Mr. Bamburak stated he feels they need to trust the Doctor.

Mr. Murphy stated on Exhibit A-2 Dr. Bentz has shown that the office space in the Satterthwaite homestead is 3,500 square feet which is made up of two floors; and Dr. Bentz agreed. Mr. Murphy stated her intention is to use the first floor space as an office and the second floor would be restrooms; and Dr. Bentz agreed. Mr. Murphy stated the office space is limited to the first floor of the home that is a series of small rooms as shown in the Milnor Report so it is not a typical Class A office space, and they are dealing with small rooms that will be converted to a conference room and some computer stations. He stated the second floor would be limited to bathrooms and limited storage, and Dr. Bentz agreed. Mr. Moffa asked the breakdown, and Mr. Murphy stated he could provide an existing floor plan. Dr. Bentz stated when the Township did the roof project, the architect who did the roof project did a floor plan for the house so Mr. Moffa could contact the architect who could provide that information. Mr. Moffa stated he was curious about what the floor space was that was not being used on the second floor.

Mr. Kenneth Amey was sworn in, and stated he is a planning consultant who is self employed. He stated he has been in the planning field since 1983 and been self employed since 1994. Mr. Amey's CV was marked as Exhibit A-8. Mr. Amey reviewed some of his experience as a Township planner, Zoning Officer, and planning consultant to a number of Municipalities; and the Board and Mr. VanLuvanee agreed to accept Mr. Amey as a qualified expert.

Mr. Murphy stated Mr. Amey has been present through the several nights of Testimony on this Application, and Mr. Amey agreed. Mr. Amey stated he is also familiar with the Application and the property which he has visited on several occasions. Mr. Murphy stated Mr. Amey has also assisted them in the preparation of the Application and the scope of relief, and Mr. Amey agreed. Mr. Murphy asked Mr. Amey how he would characterize the area surrounding the Satterthwaite House, and Mr. Amey stated it sits in a location which is surrounded on three sides by the remainder of the Patterson Farm in an area which is characterized by agriculture and residential uses in that portion of the Township. The predominant Zoning District that surrounds the site is R-1 and that extends on the west side of Mirror Lake Road and across the street as well.

Mr. Murphy stated Mr. Amey has heard Dr. Bentz describe over the last couple of meetings the nature of her proposed use as depicted on the Master Plan which has been marked as Exhibit A-2, and Mr. Amey agreed. Mr. Murphy asked Mr. Amey how he would characterize the nature of the use as proposed by Dr. Bentz; and Mr. Amey stated the use being proposed is an equine veterinary hospital which will involve the treatment of sick horses.

Mr. Murphy stated at the prior Hearing, Mr. VanLuvanee inquired whether or not there is any use such as Dr. Bentz had described in the Zoning Ordinance, and he made specific reference to a particular provision in the Zoning Ordinance; and Mr. Amey agreed the Mr. VanLuvanee did. Mr. Murphy asked Mr. Amey if any of the provisions of the Zoning Ordinance today provide for a large animal equine hospital, and Mr. Amey stated they do not. Mr. Murphy stated the Ordinance does make provision for a veterinary hospital; and Dr. Amey agreed adding that the Ordinance in the Use Section makes a reference to a veterinary hospital as a permitted use in certain Districts.

Mr. Murphy stated this is the reference to Section 200-68A44, and Mr. Amey agreed. Mr. Murphy asked Mr. Amey in what Zoning Districts as provided in the Zoning Ordinance is the veterinary hospital use in that particular Section permitted; and Mr. Amey stated that use is permitted by right in the C-1, C-2, and C-3 Districts and by Special Exception in the O/R District. Mr. Murphy asked Mr. Amey as described by Dr. Bentz and as depicted on Exhibit A-2 could that use be authorized in any of those Districts, and Mr. Amey stated it could not. He stated one of the reasons is because the use that is contemplated in the Zoning Ordinance, when you look at the Ordinance in totality and not just the description of veterinary hospital but also the other regulations that go along with it, it characterizes an area that would permit a veterinary hospital in a commercial/retail setting. He stated the only area that is not a Retail District or an Industrial District which permits a veterinary hospital is the O/R District, and this is the site of the Lower Makefield Corporate Center, and there is no place in that District that would permit a veterinary hospital. He stated the other Districts are typical Commercial Districts which would not allow the kind of use described by Dr. Bentz.

Mr. Murphy noted an Exhibit marked as Exhibit A-9, and Mr. Amey stated on Exhibit A-9 he took the description of veterinary hospital directly from the Ordinance from Section 200-68A44 and repeated it word for word and also listed the Districts that permit a veterinary hospital either by right or by Special Exception which are the four Districts he just testified to. He stated he also included the standards for off-street parking for the veterinary hospital use. Mr. Murphy noted particularly the provision highlighted on Exhibit A-9 as Section 200-79, and he asked Mr. Amey the parking requirements for a veterinary hospital as that use is described in Section 200-68.44; and Mr. Amey stated that Section requires one parking space for every 150 square feet of gross floor area. Mr. Amey stated that standard is analogous to a typical medical office or a retail setting. Mr. Murphy asked Mr. Amey as a planner, what conclusion would he draw from his review of those three cited Zoning Ordinance Sections – the definition, where it is permitted, and the parking standards required for such a use – as to what type of use was anticipated and where it would it be located.

Mr. VanLuvanee Objected stating the Ordinance speaks for itself.

Mr. Murphy stated Mr. Amey is an expert and is permitted to draw conclusions.
Mr. Bamburak allowed the question.

Mr. Amey stated the series of Sections shown on Exhibit A-9 when put together would lead him to form the opinion that the veterinary hospital as described in the Ordinance would be the typical small animal veterinarian that would be located in a retail type setting or in a store front type setting.

Mr. Murphy stated the nature of the use proposed and described by Dr. Bentz would never be located in a Commercial or the Office/Research Zoning Districts in Lower Makefield Township.

Mr. VanLuvanee Objected adding that this is a leading question.

Mr. Bamburak allowed Mr. Amey to answer.

Mr. Amey stated the use as described by Dr. Bentz would not be permitted in any of the Districts for the reasons they just spoke of because those kinds of Districts are more intense Districts – Districts that have more traffic, Districts that have horns honking and back-up alarms on trucks and loading areas; and as Dr. Bentz testified, part of the care that she needs to give the horses is to provide quiet for them and to provide an area where they can recuperate and be treated without that kind of disturbance that you would see in a typical Retail or Commercial setting. Mr. Amey stated the other issue with the four Districts that do permit a veterinary hospital is that in all four of those Districts, there is a specific requirement that all uses must be conducted entirely within an enclosed building; and as Dr. Bentz testified, the use she is contemplating is a use that requires some outdoor activity.

Mr. Murphy asked Mr. Amey from a planning perspective, based on the knowledge of the use proposed by Dr. Bentz, if he believes that her use is consistent with the R-1 Zoning District regulations in which the property is located, and Mr. Amey stated he does given the unique nature of the use proposed. He stated this is a very unique use; and in the thirty years that he has been involved in the planning business, he has written a lot of Ordinances and read a lot of Ordinances, and he has never seen a description of the kind of use proposed by Dr. Bentz. He stated it is a very unique use, and it requires a unique setting. He stated as he described the general character of the area around the Satterthwaite Farmstead, it is Residential and Agricultural in character; and although the use proposed by Dr. Bentz is not an Agricultural use, he feels it is compatible with Agricultural uses and certainly fits neatly in the R-1 District. He stated the R-1 District contemplates agricultural uses and residential uses, and it is an area that is characterized by less intensity than the Commercial District and less activity and more quiet areas that would be more conducive to the treatment of these animals.

Mr. Murphy stated the fact that part of the use being proposed by Dr. Bentz involves a home occupation is also consistent with R-1 standards; and Mr. Amey stated the use proposed by Dr. Bentz while not a traditional home occupation, Dr. Bentz made it clear that having herself on site is critical to the way she needs to operate the business so it does have a lot of the same characteristics as a home occupation that would be permitted in an R-1 District.

Mr. Murphy stated much commentary has been made this evening about the extent of impervious surface both on the site today and what is proposed by Dr. Bentz as depicted on Exhibit A-2. Mr. Murphy asked Mr. Amey his sense of the extent of the additional impervious surface and whether or not that would be supported by the unique use proposed by Dr. Bentz. Mr. Amey stated the Satterthwaite property is a unique property in that it has a relatively small amount of frontage on Mirror Lake Road, and then it opens up to a much larger width toward the rear of the lot. He stated in order to utilize the property properly, you need to get back to that back portion of the lot which involves some additional paving, driveways, and circulation areas. Mr. Amey stated the nature of the use also involves the need for horse trailers to get in and maneuver safely through the property so there needs to be a certain amount of impervious surface in order to move those vehicles around safely and properly.

Mr. Murphy asked Mr. Amey if he would agree that the Testimony heard this evening and the unique nature of the use by Dr. Bentz provides ample justification for the Variance being sought to increase the number of horses on the property.

Mr. VanLuvanee Objected since he feels Mr. Murphy is testifying and not asking a question; and if it is a question, it is a leading question.

Mr. Murphy asked Mr. Amey if he has an opinion as to the reasonableness of the Variance being sought to increase the number of livestock units on the property based on tonight's Application; and Mr. Amey stated his opinion is that it would be a reasonable request. He stated they heard Dr. Bentz explain that the use she would make of the property would necessarily involve more than two horses.

Mr. Murphy asked Mr. Amey if he has an opinion given the nature of the use proposed as to the reasonableness of the Variance request related to the Class I Buffer; and Mr. Amey stated as Dr. Bentz described during her Testimony, one of the things that is most attractive about the site is its setting and the way it relates to the land as well as the frontage on Mirror Lake Road and coming off of Newtown-Yardley Road. He stated the existing barn is an important part of the landscape in the area as is the existing house especially when it is fully restored. He stated to block those with landscape buffers seems counter productive.

Mr. Murphy stated there is a Variance being sought to permit accessory structures to house livestock closer than 50' to the property line, and he asked Mr. Amey if he has an opinion as to the reasonableness of that request based on the unique use described by Dr. Bentz. Mr. Amey stated they need to consider the unique use as well as the setting of the property and the fact that it is surrounded by the balance of the 260+ acres of the Patterson Farm. He stated the buildings that are shown that are closer than 50 feet to the property line are all in excess of 300' to the nearest residential use. He stated following the letter of the Ordinance would require a 50' setback and the adjoining property would require a 25' setback so there would be a total of about 75' from an accessory building housing livestock and the nearest residential dwelling. He stated in this case, they are providing over 300' to the nearest residential dwelling. He stated because the buildings are set closer to the property line, they are able to open up a courtyard setting around the existing barn and by allowing that setting to remain without being cluttered by other buildings, they can maintain the character of the existing barn on the property.

Mr. Murphy stated Mr. Amey previously testified about the parking standards for a veterinary hospital use as defined in the Ordinance; and given that Testimony, he asked Mr. Amey if he has an opinion as to the reasonableness of the Variance being sought in this case to reduce the number of parking spaces. Mr. Amey stated there was already a lot of Testimony regarding the number of employees and the number of parking spaces, and as described by Dr. Bentz and the number of employees she has and the level of activity she expects on the property, the Variance is a reasonable request. Mr. Murphy asked if Mr. Amey would concur that the parking standard that is in the Ordinance would seem to apply to a small animal vet in a typical commercial storefront rather than a large animal veterinary hospital as proposed. Mr. Amey stated as he previously mentioned, the parking standard of one space for every 150 square feet is the kind of standard he would expect to see in a typical small animal veterinarian.

Mr. Murphy asked Mr. Amey if he believes that if the relief were granted and the use would move forward that it would alter the character of the neighborhood or Zoning District in which the property is located, and Mr. Amey stated the only alteration that he could see would be an improvement. He stated the use as described by Dr. Bentz and depicted on the Plans shows a marked improvement and shows the property being cleaned up, repurposed, and being put to a useful purpose. He stated he feels the Township would be happy to see a useful purpose made of the property so that they know that it will be maintained in the future.

Mr. Murphy asked Mr. Amey if the Zoning Hearing Board were to grant the relief, does he believe that it would substantially or permanently impair the use of adjacent properties; and Mr. Amey stated he does not. Mr. Amey stated as he testified, the major improvements to the property are over 200' off of Mirror Lake Road and as such they are very remote from the existing homes on the other side of Mirror Lake Road. He stated from a visual standpoint, the improvements that are being proposed for the Satterthwaite Farmstead will improve the setting and help maintain the setting of the existing Farmstead while at the same time being far enough removed from any nearby residences so that there would be no impact or damage to the character of the neighborhood.

Mr. VanLuvanee stated it seems that Mr. Amey has assumed that the use proposed by Dr. Bentz for this property is a reasonable use, and Mr. Amey agreed. Mr. VanLuvanee stated there was previously testimony from Dr. Bentz where she acknowledged that her experts did not advise her that the existing Satterthwaite House could not be renovated for Residential purposes, and Mr. Amey agreed. Mr. VanLuvanee asked Mr. Amey in giving the opinions he has offered today, did he take into consideration the fact that the Satterthwaite House could in fact be brought up to residential standards and occupied as a single-family dwelling; and Mr. Amey stated he has not done an independent evaluation of the house, but he has not heard anything to lead him to believe that it would be impossible to convert it to a residential dwelling. Mr. Amey added that in the context of Dr. Bentz's Testimony it is clear that her use she is proposing and her vision for the property does not involve that house being used residential.

Mr. VanLuvanee stated while he understands this, he has heard Mr. Amey testify at Zoning Hearing Boards before and he has been the Zoning Officer where he has had to make determinations as to whether uses are or are not permitted in a number of Municipalities, and Mr. Amey agreed. Mr. VanLuvanee stated Mr. Amey has also offered Testimony before a number of Zoning Hearing Boards in Variance Applications, and Mr. Amey agreed he has. Mr. VanLuvanee stated Mr. Amey recognizes that when an Applicant is asking for a Use Variance, one of the things the Applicant needs to be able to establish is that there are unique physical circumstances or conditions unique to the property and that the hardship justifies the Use Variance related to those conditions. Mr. VanLuvanee asked Mr. Amey how he would conclude that they could not use this property as a residence for a farmstead just as it sits today. Mr. Amey stated he was considering the use that was being offered by Dr. Bentz and considering whether or not it is reasonable and whether or not the use is provided for in the Ordinance as it stands today; and when he evaluates it in that manner, the use is a reasonable use, and the Plan is a reasonable Plan. Mr. VanLuvanee stated Mr. Amey was not asked to, and he is not suggesting to the Zoning Hearing Board, that it is his opinion that the property cannot be used as a single-family residence in a farmstead just by renovating the buildings as

they exist today; however, Mr. Amey stated he does not have enough information to form that opinion one way or the other. Mr. VanLuvanee stated Mr. Amey's Testimony should not be construed as giving that opinion, and Mr. Amey stated he has not offered that opinion.

Mr. VanLuvanee stated he understands that the Use that was filed in the Application is to use the property for an equine hospital. He stated that is one of the uses that is described in Paragraph 4 in the Outline of Relief, but in another location it indicates it is medical boarding use. Mr. VanLuvanee asked Mr. Amey what he concluded the Use was, and Mr. Amey stated he concluded it was a large animal equine hospital. Mr. VanLuvanee stated they all agree that this is not a defined use, and Mr. Amey agreed. Mr. VanLuvanee stated the closest thing to it is probably veterinary hospital, and Mr. Amey agreed. Mr. VanLuvanee stated in the definition of veterinary hospital it does not say that it excludes the use where large animals are treated, and Mr. Amey agreed. Mr. VanLuvanee stated it is a place where animals are given medical or surgical treatment, and Dr. Bentz's use certainly fits that; and Mr. Amey agreed.

Mr. VanLuvanee stated Mr. Amey was present when Dr. Bentz testified on direct and cross-examination about how she was going to conduct the business, and Mr. VanLuvanee stated he felt she had testified that she would not be boarding animals except for animals undergoing medical or surgical treatment; and Mr. Amey agreed. Mr. VanLuvanee stated she also stated that generally the animals would be housed inside although they could be taken out for exercise, and Mr. Amey agreed. Mr. VanLuvanee stated this covers the first sentence of the definition. He stated the second sentence reads, "Use of the facility for boarding is prohibited unless the Use regulations for the kennel are also met." Mr. VanLuvanee stated she is not proposing to board, and Mr. Amey agreed.

Mr. VanLuvanee asked Mr. Amey taking just the definition, what is there about the definition that says that what is being proposed does not fit the definition of veterinary hospital. Mr. Amey stated you cannot take the definition without looking at the Ordinance as a whole. Mr. VanLuvanee stated one of the things that Mr. Amey stated was inappropriate was the parking standard, and Mr. Amey agreed. Mr. VanLuvanee asked why they did not ask for a veterinary hospital and ask for a Variance for the parking requirement if they feel the parking requirement is unreasonable. Mr. Amey stated they want to draw a distinction between the use Dr. Bentz is proposing and a typical small animal veterinarian's office. He stated it is very important that the Board has this distinction. Mr. VanLuvanee asked other than parking, what is the distinction that they need to draw. Mr. Amey stated the setting is very important for the health and

well being of the animals that are being cared for, and the size of the buildings and the size of the property that the use is located on is important. Mr. Amey stated it is a unique use, and to characterize it as a typical veterinary hospital for someone to take their dog or cat to would be improper. Mr. VanLuvanee asked if this would not be a justification, if they had chosen to frame the Application that way, for asking for a Variance from the parking standard and ask for the use of the veterinary hospital. Mr. VanLuvanee stated he is trying to understand why they took it out of the context of the Ordinance. Mr. Amey stated the decision was made as they put the Application together was because this was such a unique use and is a use that is not really covered in the Ordinance, or in any Ordinance that he has seen; and this was the way they chose to approach it, and is the way the Application was drafted. Mr. VanLuvanee stated his point was that perhaps it is covered in this Ordinance and other Ordinances as a veterinary hospital; however, Mr. Amey stated he disagrees.

Mr. VanLuvanee stated if the Board decides that what is being asked for is a veterinary hospital, there is still a request for a parking Variance either way, and Mr. Amey agreed.

Mr. VanLuvanee stated they are also asking for a Use Variance with respect to the proposed large animal hospital, and this is a Use Variance and not an area or dimensional Variance; and Mr. Amey agreed. Mr. VanLuvanee stated the Application was not framed as a substantive challenge to the validity of the Ordinance so they are not contending that this use is unlawfully excluded from the Ordinance, and Mr. Amey stated they are not.

Mr. VanLuvanee stated he was confused about Mr. Amey's Testimony regarding the Zoning Districts in which this Use is permitted adding Mr. Amey had indicated that it was permitted by right in C-1, C-2, C-3 and by Special Exception in O/R.

Mr. VanLuvanee asked how that relates to whether a Use Variance should be granted to use this particular five acre property in the R-1 Zoning District for a veterinary hospital or large animal hospital. He asked what is the relevance of whether it would or would not logically fit in C-1, C-2, C-3, or O/R. Mr. Amey stated he was pointing out that when you do look at the Ordinance in total and look at the definition of veterinary hospital in the Ordinance along with the Districts where it is permitted and the parking regulations that apply, it becomes clear that the use proposed by Dr. Bentz is not a use contemplated by the Zoning Ordinance when the language and regulations for veterinary hospital were drafted. Mr. VanLuvanee asked if this is because of the parking standards; and Mr. Amey stated it is not only the parking standards, and part of his testimony was that the four Districts which do permit veterinary hospitals in the Lower Makefield Zoning Ordinance are not Districts where this particular use would be suitable.

Mr. VanLuvanee stated he feels the Zoning Hearing Board is aware of a forty acre property at the corner of Stony Hill Road and the Newtown By-Pass that is zoned O/R and is actively farmed at the present time; and he asked what would be inappropriate about locating a large animal hospital on this forty acre parcel that has been farmed and is located in the O/R District. Mr. Amey stated he has not evaluated that property nor has he been asked to, and they are talking about this specific property and that is all the Board is being asked to consider.

Mr. VanLuvanee stated Mr. Amey told the Board that he feels the Concept Plan, Dr. Bentz's Master Plan, is a reasonable use of the land; and Mr. Amey agreed. Mr. VanLuvanee stated Mr. Amey was not asked not opine on the question of what the minimum Variance that might afford relief would be, and Mr. Amey stated he was not asked about this.

Mr. VanLuvanee asked Mr. Amey how many times he has been on the property, and Mr. Amey stated it was three times. Mr. VanLuvanee stated Mr. Amey testified about the relationship of this property to the surrounding property; and he asked Mr. Amey if he would agree that there are no unique physical circumstances relating to topography that would distinguish this property from the surrounding property on the Patterson Farm. Mr. Amey stated his testimony was that the configuration of the property is unique as there is limited frontage on Mirror Lake Road which requires the improvements to be put further back on the property which is part of the reason that the impervious cover Variance has been requested. Mr. VanLuvanee stated Mr. Amey knows that it was Lower Makefield Township that chose to create the lot configuration that they are dealing with tonight, and Mr. Amey agreed. Mr. VanLuvanee stated knowing the size of the property from which this five acres was carved out, there is no reason why they could not have created a square lot or a lot with more frontage on Mirror Lake Road, and they could have changed this configuration any way they chose to; however, Mr. Amey stated he had no idea about this. Mr. VanLuvanee stated Mr. Amey knows that it was subdivided within the last several years, and Mr. Amey agreed. Mr. VanLuvanee stated this is not a wood lot that existed for two hundred years and had no road frontage, and somebody created this in the last few years; and Mr. Amey agreed.

Mr. VanLuvanee stated he did not follow Mr. Amey's explanation for why he thought it was reasonable to allow accessory structures closer than 50' to the property line, and he asked that he go through this rationale again. Mr. Amey stated principal buildings in this District are required to be 25' from property lines, and there is a requirement that an accessory building for the housing of livestock be 50' from the property line; and in an abundance of caution they asked for that relief. However, he feels if the principal building only needs to be 25' from the property line and the principal use of the property is for medical boarding and treatment of sick horses, then the principal buildings are set back the required 25'. He stated the question is whether the Board feels there needs to be relief from the 50' setback requirement for an accessory building that houses livestock.

He stated the other part of his explanation was that by having the buildings closer to the property line it opens up the interior portion surrounding the existing bank barn and allows that bank barn to remain in a fitting setting. Mr. VanLuvanee stated with respect to that Variance, it is not anything that is unique about the property that justifies the Variance, it is because they feel Dr. Bentz's Master Plan lays out better if they can put the buildings closer to the property line than the Ordinance would otherwise permit. Mr. Amey stated some of that has to do with the inherent characteristics of the property because the existing barn is where the existing barn is and cannot be changed.

Mr. VanLuvanee stated Mr. Amey also discussed the buffer yard requirement. Mr. VanLuvanee stated in order to evaluate the buffer yard requirements, you have to look at the Zoning Ordinance and the Subdivision Ordinance. Mr. Amey stated the Zoning Ordinance references the Subdivision Ordinance. Mr. VanLuvanee asked Mr. Amey if he looked to see what the Ordinance would require for buffer yards, and Mr. Amey stated he did not look at the technical requirements. Mr. VanLuvanee asked Mr. Amey if he would agree that the Zoning Ordinance would require a Type I Buffer, and Mr. Amey agreed. Mr. VanLuvanee stated relief from the requirement for a Type I Buffer was one of the requested Variances, and Mr. Amey agreed.

Mr. VanLuvanee stated the Zoning Ordinance references Chapter 178 of the Subdivision and Land Development Ordinance, and Mr. Amey agreed. Mr. VanLuvanee marked as Exhibit C-10 are two pages from the Subdivision and Land Development Ordinance Section 178-82 which is referenced in the Zoning Ordinance related to buffer yards. Mr. VanLuvanee asked Mr. Amey to note the bottom of the first page 178-82B – Type I Buffer which goes onto the next page and discussed the 25' wide buffer. He stated there is then a series of requirements for a Type I Buffer which includes berming and planting a mixture of trees and shrubs. Mr. VanLuvanee asked Mr. Amey if there is anything that he observed with reference to the property that would preclude Dr. Bentz from constructing a Type I Buffer on the property from the standpoint of topography and physical conditions; and Mr. Amey stated he does not think there is anything related to the topography or physical conditions that would prevent one from constructing a buffer. He added that he did offer an explanation as to why a buffer was not appropriate in this location on this site. Mr. VanLuvanee asked why it would not be appropriate, and Mr. Amey stated the reason he cited previously was that the setting of this property of the Satterthwaite Farmstead is an important part of the character of Lower Makefield Township. He stated hiding that character behind 25' wide buffers that really do not serve to separate uses in any meaningful way is counter productive, and it blocks the view of something that he feels everyone in the Township agrees that they want to see. Mr. VanLuvanee stated this is a subjective opinion rather than an objective criterion as to how they would decide when or when not to require a buffer between residential and non-residential uses. Mr. Amey stated they asked for the Variance because they believe that a buffer is not appropriate in this location with this use in this setting.

Mr. VanLuvanee asked Mr. Amey what is the legal rationale they would give to the Board to justify granting a Variance based on appropriateness rather than the criteria of Section 910.2 of the MPC and the Zoning Ordinance, and Mr. Amey stated this is a decision for the Zoning Hearing Board to make having heard his Testimony and upon the advice of their attorney.

Mr. VanLuvanee stated what Mr. Amey is basically saying is whether or not a Type I Buffer should or should not be required depends on the circumstances, depends on the uses that are proposed, and there should not be hard and fast rule; and Mr. Amey stated he is saying that certain unique properties deserve unique treatment, and that is the reason the Zoning Hearing Board decides these kinds of cases. Mr. VanLuvanee asked Mr. Amey what makes the property unique, and Mr. Amey stated he already mentioned all of this but stated the site itself is located in a very unique setting. He stated it was taken from part of a larger property, and creating an artificial separation between this property and the larger Patterson Farm property surrounding it does not serve any purpose. He stated they have asked for relief because they feel the character of the Township is better preserved by not providing that buffer. He stated the residences across Mirror Lake Road are also protected by the sheer distance between the construction on the Satterthwaite property and their location.

Mr. VanLuvanee stated Mr. Amey is basically saying that the reason the relief is justified relates to the fact that the Township chose to create this five acre parcel; and even though they have created a physical division, they should treat the property as if that never happened and the Zoning Ordinance requirements do not apply.

Mr. Murphy Objected, and Mr. Bamburak asked that they move on.

Mr. Koopman asked Mr. Amey if it is his understanding that the remainder of the Patterson Farm that adjoins this property is required to be preserved in perpetuity as farmland, and Mr. Amey stated that is his understanding. Mr. Koopman stated it is not likely that the Patterson Farm to the extent that it surrounds the subject property is going to be developed for houses or any other typical type use that might otherwise be permitted in the R-1 District, and Mr. Amey stated as far as he knows that would not be possible.

Mr. Moffa asked if they are saying the other 232 acres are preserved since this is not his understanding; and Mr. Koopman stated he just asked the question, and the Witness answered the question. Mr. Gruen stated his testimony is that the rest of the Farm is preserved land, and they have not heard this. Mr. Koopman stated the Witness answered the question. Mr. Bamburak stated Mr. Koopman asked if the Witness knew that the rest of the land was preserved and there would not be homes built on it. He stated the question of whether it is truly preserved could be gotten from somewhere else.

Mr. Koopman stated the gist of the question was that it was the Witnesses understanding that it is preserved and he answered that it is preserved in a way so that there will not be a Residential Subdivision immediately adjoining the subject property.

Mr. Gruen stated Mr. Amey kept referring to a veterinary hospital as a small animal hospital, and he asked where it says in the Ordinance that it is just small animals. Mr. Amey stated this was his opinion based upon a complete reading of the Ordinance putting all the requirements together including the requirement that all the operation be conducted indoors and it is opinion that when you put it all together what is being referred to is a small animal veterinary hospital. Mr. Gruen asked if he is assuming correctly that when Mr. Amey says C-1, C-2, C-3 for veterinary hospitals is pre-existing Commercial property already built, and he asked what would stop the Doctor from purchasing five or six acres in any one of those Zones and ask the Zoning Hearing Board for relief. Mr. Gruen added that the subject property is very nice but it is an R-1 Zone. Mr. Bamburak stated the Board is reviewing this Application that is in front of them.

Mr. Gruen stated Dr. Bentz is here to get the minimum relief, and the minimum relief would be a Use Variance in any of the other properties. He stated what she wants to do she cannot do on any other property in town. Mr. Bamburak stated he feels they should restrict the questions to the Application before them. Mr. Gruen stated they are asking for relief to put it in an R-1 property because they cannot put it anywhere else, and he is asking what is stopping them from putting it in a C-1, C-2, C-3, or O/R Commercial property. Mr. Gruen stated he is asking why do they need to give a relief in an R-1 Zone. Mr. Stainthorpe stated there is no C-1, C-2, or C-3 land left in the Township.

Mr. VanLuvanee asked that this be stricken from the Record as the person making that statement has not been sworn..

Mr. Bamburak stated he feels they should deal with the Application and not what they could have done differently.

Mr. Gruen stated he feels it is relevant, and Mr. Moffa stated he feels it is relevant as well. Mr. Moffa stated there was a lot of Testimony about C-1, C-2, C-3, and O/R Zoning in the Township, and he feels it is a pertinent question.

Mr. Bamburak asked if any information can be given if they looked elsewhere in the Township. Dr. Bentz stated she appreciates Mr. Amey's Testimony and added that C-1, C-2, and C-3 is big box stores. She stated she is not clear as to how a horse trailer could be next to a Home Depot as it does not work. Dr. Bentz also stated she does not

know where there is five or six acres of C-1, C-2, C-3 open anywhere. Dr. Bentz stated horses need to be on farms so this is a good fit for her proposal. She stated this is why they put the Bid in, and they love the House so it is a full package. She stated around the 5.14 acres would be farmland that the farmer is farming, and this is suitable for horses to be next to.

Mr. DosSantos asked if the serenity of the property is necessary for the horses, and Dr. Bentz agreed. She stated horses are a prey species that need quiet. She stated they need peace and quiet; and if they are around a lot of noise, they also spook which is not good for an animal that is trying to heal. She stated while horses may look calm, when they are upset their heart rate is extremely high which is not conducive for a patient trying to heal.

Mr. Gruen stated Dr. Bentz testified that the horses are going to be indoors. He also noted that the property is located right off Route I-95 which is not exactly the calmest part of town. Dr. Bentz stated the Satterthwaite Farmstead is very quiet and is quite a distance from 95.

Mr. Moffa stated Mr. Koopman asked the Witness if he was aware that the surrounding property was preserved and could not be developed, and the Witness said “yes.” Mr. Moffa stated this he feels this is factually incorrect. Mr. Bamburak stated while he agrees Mr. Moffa may be right, he does not feel the Witness is the one to address it.

Mr. Gruen stated Mr. Amey stated this property is uniquely qualified; however, they are asking for relief from the setbacks because of the existing barn that is on the property. Mr. Gruen stated he feels the property is therefore not uniquely qualified for this purpose. Mr. Amey stated he feels his Testimony was that the unique conditions that exist on the property require the Variance relief that is being asked because the barn is preexisting and it is a unique feature that needs to be preserved.

Mr. Murphy stated under the Agreement of Sale with the Township, the barn is required to be preserved; and there is a required Façade Easement that has to be maintained on that barn which is the centerpiece of the property. He stated this is clearly a unique condition to this property. Mr. Murphy stated the Façade Easement has already been Recorded by the Township and it requires the preservation of the Homestead and the Barn.

There was discussion as to when the matter would be continued to. Mr. Bamburak noted that there are already four items on the Agenda for the next meeting scheduled for May 7. Mr. Zamparelli noted he would not be available on Monday May 7, but could read the transcript. It was agreed to continue the matter to Monday, May 20, 2013 at 7:30 p.m.

Mr. DosSantos moved, Mr. Moffa seconded and it was unanimously carried to continue the matter to Monday, May 20, 2013 at 7:30 p.m.

OTHER BUSINESS

Appeal #10-1574 – Realen Homes, L.P. Extension

Ms. Kirk stated the Board received a letter from Mr. Murphy with respect to the Application of Realen Homes. She stated there was a Decision rendered by the Board approving the Variance request in October, 2012 subject to the Lot Line Change Approval. Ms. Kirk stated at this point the Lot Line Application is not yet completed, and the Variance may expire before the Application is before the Board of Supervisors. She stated out of an abundance of caution, Mr. Murphy is asking that the Variance be extended by at least six months if not longer.

Mr. Murphy stated he is not sure the Board wants him to keep coming back every six months, and he would prefer a one year Extension although he feels they will be done within a year.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to grant a one year Extension.

Appeal #06-1410(A) – Norman and Patricia O'Rourke Extension

Ms. Kirk stated Mr. Murphy also submitted a letter requesting an Extension for this project. Mr. Murphy stated this is a property that fronts on Route 532 and backs up to Brookshire Estates Phase II. He stated this property presumes the ability to connect to the public sewer in Brookshire Estates Phase II which has not yet been built. He stated that project is getting ready to start sometime this summer so public sewer will become available in the relatively-near future. He stated he hopes that one final Extension would be appropriate to enable the public sewer to be installed in the adjacent Subdivision where the client can then connect.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to grant a one year Extension.

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There being no further business, Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to adjourn the meeting at 10:00 p.m.

Respectfully Submitted,

Anthony Zamparelli, Secretary