

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JANUARY 17, 2012

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on January 17, 2012. Mr. Gruen called the meeting to order at 7:30 p.m. He noted that they will end the meeting by 10:00 p.m.

Those present:

Zoning Hearing Board: Jerry Gruen, Secretary
 Keith DosSantos, Member
 Anthony Zamparelli, Member
 James McCartney, Alternate Member

Others: David Truelove, Township Solicitor
 James Majewski, Township Engineer (joined meeting in
 progress)
 Barbara Kirk, Zoning Hearing Board Solicitor
 Jeff Benedetto, Supervisor Liaison

Absent: Paul Bamburak, Zoning Hearing Board Chairman
 Gregory J. Smith, Zoning Hearing Board Vice Chairman

APPEAL #11-08-1481(A) – THE FRANKFORD HOSPITAL OF CITY OF PHILADELPHIA INC. (REMANDED)

Mr. Gruen stated he understands that Mr. Smolow will be presenting Witnesses this evening. Mr. Smolow stated he will complete his cross examination of Mr. O'Brien.

Mr. VanLuvanee noted an error on the Transcript of November 15, 2011, Page 108, Line 21 where there is a statement made which should be attributed to Mr. Truelove rather than himself; and Mr. Truelove agreed.

Mr. VanLuvanee stated following the Hearing he received a phone call from Mr. O'Brien advising him that he had recollected following his testimony that McMahon had updated their Traffic Study in connection with the filing of Preliminary Land Development Plans. He stated copies of the updated Study have been provided to Mr. Truelove, Mr. Koopman, and Mr. Smolow under letter dated November 21, 2011. He stated this is inconsistent with the original testimony. He stated Counsel has had the opportunity to review the updated Study since the letter of November 21, and he does intend to offer a copy of that letter.

Mr. Smolow stated he has questions of the Witness. Ms. Kirk asked if there is any Objection to what Mr. VanLuvanee has stated that under cover letter dated November 21, 2011 he provided copies of an updated Traffic Study since the last Hearing. Mr. Smolow stated while Mr. VanLuvanee did do this, he would object to it becoming part of the Record. He stated he does not feel it is Mr. VanLuvanee's intention to make it part of the Record. Mr. VanLuvanee stated it was not his intention at this point depending on how Mr. Smolow chooses to use it. Mr. VanLuvanee stated he does intend to ask Mr. O'Brien questions with regard to whether or not he did in fact provide some updated information in connection with the Land Development Application which he feels may be relevant only because he had testified that he had not done this; and Mr. VanLuvanee stated he is making clear that Mr. O'Brien corrected this immediately after the Hearing, and Mr. VanLuvanee gave notice of that correction to Counsel. Mr. VanLuvanee stated in his opinion this is not relevant because in his view, as he has expressed many times, what is relevant is the date the Board closed the Hearing; but if the Board is going to reopen the Hearing and accept testimony from other Witnesses with regard to items subsequent to, he is going to reserve the right to supplement his testimony as well depending on what is presented by Counsel.

Ms. Kirk stated they are not getting into the admissibility of that document as an Exhibit, and she just wanted to make sure that the Record is clear that the statement made by Mr. VanLuvanee about providing a letter with a copy of an updated Traffic Study to Mr. Smolow, Mr. Koopman, and Mr. Truelove was true; and she asked if they all agree with that statement. They all did agree with this statement.

Mr. Smolow asked Mr. O'Brien about Mr. VanLuvanee's letter of November 21, 2011 when he reported that after the last Zoning Hearing Board meeting, Mr. O'Brien recalled preparing an updated traffic count in December, 2009; and he reported this to Mr. VanLuvanee, and Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien what it was about the question Mr. Truelove asked him at the last Hearing that "stumped" him when he had asked whether or not he had prepared any additional studies, and Mr. O'Brien had answered, "No." Mr. O'Brien stated prior to the November Hearing, he was under the impression that the only information that was relevant was information that was available at the time of that Hearing, so he put the March, 2010 information to the side and focused all his efforts on going through and preparing information that was available at the time of the Hearing. Mr. Smolow stated it is fair to say that Mr. O'Brien's initial response to Mr. Truelove at the last Zoning Hearing meeting was incorrect, and Mr. O'Brien agreed.

Mr. Smolow stated the 2010 Traffic Study report was based on traffic counts including traffic counts Mr. O'Brien took of the I-95 southbound ramp in 2009, and Mr. O'Brien agreed. Mr. Smolow asked the month Mr. O'Brien took the counts, and Mr. O'Brien stated it was in December. Mr. Smolow stated this was the same season he took the counts that were in the 2008 report that was part of the Zoning Hearing Board Record, and Mr. O'Brien agreed. Mr. Smolow stated in the December, 2009 counts he recorded

the traffic counts on the right turn movement off of the I-95 southbound ramp, and Mr. O'Brien agreed. Mr. Smolow stated in December, 2009 with respect to that ramp and the right turn off of I-95, the counts differed substantially from the counts he took of that ramp in December, 2007; and Mr. O'Brien agreed they did differ. Mr. Smolow noted Figure 4 of the 2010 report shows the counts for the southbound ramp of I-95 in December, 2009 for the weekend p.m.; and Mr. O'Brien agreed that this is for the weekday afternoon peak hour. Mr. Smolow stated with respect to the counts taken in December, 2009 Mr. O'Brien found that there were 928 vehicles making right turns during the week day p.m. peak hour in December, 2009; and Mr. O'Brien agreed. Mr. Smolow stated this compares with 548 vehicles Mr. O'Brien found making right hand turns during the weekend p.m. peak hour in December, 2007 which was in the 2008; and Mr. O'Brien agreed.

Mr. Gruen asked at what time of the day the traffic count was taken, and Mr. O'Brien stated they count from 4 p.m. to 6 p.m. for the weekday afternoon period; and they then look at the single highest peak hour in that two-hour period. Mr. O'Brien stated this was true for both 2007 and 2009. Mr. DosSantos asked if they were both done at the relatively same time period in December, and Mr. O'Brien stated in 2007 it was done December 19, and in 2009, it was done December 1.

Exhibit RAFR3 was marked which is a composite of Figure 4 of Mr. McMann's 2008 Report. Mr. VanLuvanee stated he objects to the Exhibit as it is past the closing date of the Hearing on the Special Exception. He stated this is evidence that would not have been available to Mr. O'Brien at the time of his testimony during the original proceedings before the Board. Mr. VanLuvanee stated this is intended to be cross examination of Mr. O'Brien's original testimony; and he asked how the Witness can be cross examined with respect to evidence that was not available until two years after the Witness testified.

Mr. Smolow stated he is trying to lay a foundation.

Ms. Kirk recommended to the Board that the Objection be overruled, and Mr. Smolow should proceed.

Mr. Smolow noted RAFR3 which is from Figure 4 of McMann's 2008 Report. He stated the second page is from the 2010 report. Mr. O'Brien agreed that this is what the Exhibit represents. Mr. Smolow showed the right-hand turn off of the I-95 ramp on a Plan. Mr. Smolow showed where it indicates 548 vehicles from the 2007 traffic count and on the second page of the report the counts taken in 2009 showed at the same location 928 vehicles, and Mr. O'Brien agreed. Mr. Smolow asked if Mr. O'Brien would agree that this represents a 69% increase in traffic between the counts taken in 2007 and 2009; and Mr. O'Brien stated while he is not sure of the percentage, it is an increase. Mr. Smolow asked if this represents a significant difference, and Mr. O'Brien stated it is a large increase. Mr. Smolow asked Mr. O'Brien if this would suggest to him that the counts

he took in 2007 were not accurate, and Mr. O'Brien stated this is not necessarily correct. Mr. Smolow stated the Delaware Valley Regional Planning Commission did a Traffic Report for the Delaware River Joint Toll Bridge Commission in 2004 for this same location. Mr. Smolow stated Mr. O'Brien had indicated that he was familiar with that Study, and Mr. O'Brien agreed. Mr. Smolow noted Figure 2A of that report which showed their counts in 2004 were 962 vehicles for the weekday p.m. making the right hand turn off the same ramp, and Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien comparing the 2004 counts by the Delaware Valley Regional Planning Commission to Mr. O'Brien's counts in 2007, does this suggest that the counts in Mr. O'Brien's Report were inaccurate; and Mr. O'Brien stated this is not necessarily true. Mr. Smolow asked Mr. O'Brien if he would agree that the difference between the 2004 counts of the Delaware Valley Regional Report and Mr. O'Brien's 2008 Report was approximately 57%, and Mr. O'Brien stated he does not have the percentage.

Mr. Smolow asked Mr. O'Brien as an expert and someone familiar with the operation of the intersection is there any reason for a 57% decline in traffic volume at the intersection. Mr. O'Brien stated there are fluctuations in traffic every day, and he is not specifically aware why the traffic volume on the day they counted in 2007 would be lower from the other days that counts were taken.

Mr. DosSantos asked when the 2004 Study counts were done, and Mr. Smolow stated he will get to this in a little while and he believes it was done in 2003/2004. Mr. DosSantos stated he was asking when during the year it was done since the other two counts were taken in December; and Mr. Smolow stated he cannot represent that he can pinpoint the exact month. Mr. Smolow asked Mr. O'Brien if he knew when the counts were taken, but Mr. O'Brien did not know.

Mr. Smolow asked Mr. O'Brien if he recalled his testimony when he testified in October, 2008 regarding his opinion that the traffic counts that he took and were recorded in the 2008 report represented in his opinion higher than average traffic; and Mr. O'Brien stated he did not specifically recall this. Mr. Smolow read from Mr. O'Brien's testimony of October 21, 2008, Page 52 beginning at Line 19:

"Mr. Smolow: Did you consider the number of students that matriculate at the campus?"

Mr. O'Brien: I did not. Again I should point out that I believe that the count period that we studied in December reflects higher than average traffic volumes because of people shopping for the season so I do believe that traffic counts are higher than average in the area."

Mr. Smolow stated on the next page it states:

“Mr. Smolow: How much higher than average?”

Mr. Smolow stated Mr. O’Brien initially stated he did not know and then he asked the question):

“Mr. Smolow: In your expert opinion can you tell us how much higher?
Do you think it was 2%, 3%.

Mr. O’Brien: My guess is like probably 15 to 20.”

Mr. Smolow asked Mr. O’Brien if he read the testimony correctly; and Mr. O’Brien stated while he did, this was in general and was not specifically referring to a specific movement.

Mr. Smolow asked Mr. O’Brien as an expert would he agree with him that the traffic counts he took on the ramp in December, 2007 did not represent a higher than average traffic volume for that ramp for the p.m. peak hours.

Mr. VanLuvanee Objected and stated it is obvious that Mr. Smolow is cross examining based on his cross examination that he already did of this Witness back in 2007 based on information that was available two years after the fact; and there is evidence in the Record based on the questions Mr. Smolow is asking the Witness to read that Mr. Smolow had a full and complete opportunity to cross examine the Witness on the basis of his conclusions in his original Testimony. Mr. VanLuvanee stated this has nothing to do with the new information that the Board is entitled to hear if it is going to hear anything about the impact of the Scudders Falls Bridge Improvement Project potentially on traffic volumes. Mr. VanLuvanee stated Mr. Smolow did not raise an Objection nor was there a Remand to provide Mr. Smolow with the opportunity to cross examine a Witness on the basis of information that was not available to the Witness in 2007 or 2008 when the Witness testified.

Mr. VanLuvanee stated they went through this at the last Hearing, and the Chairman had indicated he was waiting to hear something new and they were not going to go back and “re-hash” information that was available.

Mr. Smolow stated he is trying to lay a foundation to show the impact of the traffic off the Scudders Falls Bridge Project and what impact it will have on this area with and without the Hospital. He stated to show that impact he has to compare the increase on the ramp due to the Scudders Falls Bridge improvements with something; and the thing he is comparing it to is the data in the McMahon 2008 Report. He stated tonight

Mr. VanLuvanee started out the Hearing with an explanation about a 2010 Report. Mr. Smolow stated he has to compare the Scudders Falls Bridge improvements to something, and he wants to show that the numbers they are looking at on this ramp which connect the Scudders Falls Bridge with I-95 and with this location, were inaccurate. He stated so far they have shown three studies, two of which show a daily count in the afternoon in the 900 range; but for some reason in the 2008 Report, Mr. O'Brien had a count in the 500 range.

Mr. VanLuvanee stated this is still cross examination. Mr. VanLuvanee stated Mr. Smolow had the right to put a Witness on to testify that he considered the 2007 information, the 2009 information, and the 2004 DVRPC, or could have considered his own counts.

Mr. Truelove stated he would join in Mr. Smolow's presentation; and he feels that in order to connect up the Record and make it cohesive, this is the only way to do it because you have to make it part of the entire Record.

Mr. VanLuvanee stated it is making it incoherent, and they are doing a good job of attempting to confuse the issues before the Board.

Mr. Gruen allowed Mr. Smolow to continue with his examination. Ms. Kirk stated Mr. VanLuvanee's Objection is overruled.

Mr. Smolow asked Mr. O'Brien if his count for this ramp during the p.m. peak hour is inaccurate, would he agree that this would impact the calculations and projections that he gave to the Board for the traffic conditions along the 332 corridor.

Mr. VanLuvanee Objected, and stated that question clearly has nothing to do with the Scudders Falls Bridge Project.

Mr. Gruen stated part of the Decision was that they could hear testimony regarding all traffic in the area; and if this gives the Board information about traffic in the area, he feels they should allow the question to stand.

Mr. VanLuvanee stated that was not the Remand Order. He stated there were three subjects – “the impact of the proposed Hospital/Medical Office building on traffic volume and congestion taking into account the anticipated traffic from pending Newtown Township development; conformity of the proposed Aria Hospital/Medical Office building with the provisions and requirements of the Comprehensive Plan, and the impact of the Hospital building upon traffic in light of the anticipated Scudders Falls Bridge Project.” He stated Mr. Smolow's question has nothing to with any of those three subjects.

Ms. Kirk stated agreed that was the Judge's Order of January 7, 2011 but a subsequent Order issued by the Court on March 8, 2011 indicated with respect to the matter in which the Evidence may be presented to supplement the Record was within the sound discretion of this Board. Mr. VanLuvanee stated that was not intended to and clearly did not expand the scope of the relevance. Mr. VanLuvanee stated the Court had determined that these were the three areas that the Board could hear evidence on. Mr. VanLuvanee stated he had asked the Court to clarify it because it was somewhat confusing as to what the Court intended; and while the Court declined to do that, it said they would leave this up to the Board, but the limitation is still reflected in the three numbered paragraphs of the Judge's January 7, 2011 Order. Mr. VanLuvanee stated they are not here to re-open the entire Record with regard to traffic.

Mr. VanLuvanee stated the Motion to re-open the Record and present additional evidence only recited two questions that were the RAFR's Counsel and Township's Counsel belief that they had been deprived an opportunity to cross examine. Mr. VanLuvanee stated Mr. O'Brien was not one of the people they indicated they were not provided an opportunity to cross examine. He stated there is no indication that Mr. O'Brien was not fully and completely cross examined. Mr. VanLuvanee stated he agrees that Mr. O'Brien was not cross examined about evidence that was not available to anyone. He stated if they wanted to cross examine Mr. O'Brien with respect to the DVRPC 2004 traffic counts, they were available and they cross-examined him. Mr. VanLuvanee stated you do not re-open a Record to give somebody an opportunity to re-try a Case after they have lost. He stated you re-open a Record if there is evidence that is necessary to properly decide the Case. He stated that has not been determined yet, and the Board has not seen any evidence of this yet.

Ms. Kirk stated the Zoning Hearing Board has not unilaterally decided to re-open the Record, but is following the dictates issued by the Common Pleas Court of Bucks County. She asked Mr. Smolow if there was a way to re-phrase his question to fit within the three elements as outlined in the Judge's Order.

Mr. Smolow stated in calculating or projecting the future traffic increases due to the Hosptial, Mr. O'Brien used a program called Synchro, and Mr. O'Brien agreed. Mr. Smolow stated in using that program, Mr. O'Brien entered into the program data regarding the existing traffic volumes and conditions; and Mr. O'Brien agreed. Mr. Smolow stated with respect to the Scudders Falls Bridge, Mr. O'Brien would enter data including the southbound ramp from I-95 to 332 into Synchro along with other data to arrive at a report that estimates future traffic projections; and he asked Mr. O'Brien if this was correct.

Mr. VanLuvanee stated he Objects, and the basis of the Objection is that Mr. O'Brien has already testified that he did not take the Scudders Falls Bridge Project into account because he did not think it was relevant. Mr. VanLuvanee asked Mr. Smolow how he can ask this Witness questions about the impact of the Scudders Falls Bridge when he already testified he did not consider it.

Mr. Truelove stated information that is in there would have formed the basis for the opinion had he taken it into account, and they have the right to explore this based upon what is the Report.

Mr. VanLuvanee stated arguably they have a right to put a Witness on, and they cannot cross examine a Witness about what he did not do. He stated they already had that opportunity before. He stated they already asked Mr. O'Brien if he had taken it into consideration in the original Hearings. He stated if they wish to call a Recess, he will find the place where everybody asked him those questions, and he said the same thing in 2007.

Mr. Truelove stated he was precluded from asking some questions; and Mr. VanLuvanee asked that he be shown this in the Transcript. He stated Mr. Truelove has already completed his cross-examination of Mr. O'Brien, and it is now Mr. Smolow's turn; and he has not complained that he was denied any opportunity to cross examine.

Ms. Kirk asked if it would be fair to say that Mr. VanLuvanee has a standing Objection as to the questions being asked of Mr. O'Brien that he had already testified to and had an opportunity for Counsel in the prior initial Hearings to cross examine him.

Mr. VanLuvanee stated this will be his Objection, but he refuses to allow the Record to be filled up with stuff that he feels the Zoning Hearing Board may determine is inappropriate. He stated a standing Objection does not give him the opportunity to find out whether the Board agrees with it. He stated he feels they could be here for years re-opening everything that the Board already heard in 2007 in 2008, and this is not fair to his client.

Mr. VanLuvanee stated at the last Hearing after consultation with the Board's solicitor, the Chairman was very clear that he wanted to hear new evidence and not a re-hash of what could have been asked in 2007 and 2008; and he is only reiterating that. He stated he read the Transcript today, and three or four times, this was the position that the Chair took. Mr. VanLuvanee stated that the Chairman indicated that he wanted to hear new evidence and not go back over stuff that they already heard and that they already had the right to cross examine. Mr. VanLuvanee stated these were the ground rules in November, and the counsel for RAFR and counsel for the Township were to get on with the presentation of evidence; and they are not doing that. He stated they are going back and re-hashing and cross examining stuff that this witness did not have available to him when he first testified. Mr. VanLuvanee stated he has not offered additional testimony.

He stated had he done that, arguably with respect to anything he put on the record, they would have had the opportunity to cross examine; but he chose not to put that evidence on.

Ms. Kirk recommended to the Board that they give Mr. Smolow some leeway to lay a foundation to start with the presentation of new evidence, and hopefully that will not take much longer.

Mr. VanLuvanee stated he does not get to lay a foundation with Mr. VanLuvanee's expert witness through cross examination; and that is the Objection. He stated he cannot lay a foundation with his witness for new testimony or new facts through his witness.

Mr. DosSantos agreed, and stated if Mr. Smolow has new evidence to put on, he should do so.

Mr. Smolow stated he does have new evidence, and he can also do it by way of foundation through their expert. He stated he is trying to lay a foundation and make a record, and he will go on to something else.

Mr. Gruen called for a two minutes recess in order to consult with their counsel.

Mr. Majewski joined the meeting at this time.

When the meeting was reconvened, Mr. DosSantos stated the Board had the opportunity to discuss the on-going Objection of Mr. VanLuvanee; the decision is that what they are hearing is a re-hashing of old testimony and they are sustaining Mr. VanLuvanee's Objection. He asked Mr. Smolow to present some new evidence and they will give the right to call Mr. O'Brien back on cross examination if this is needed in light of the new evidence.

Mr. Smolow presented Exhibit RAFR-4 and asked Mr. O'Brien if he recognizes it, and Mr. O'Brien stated he does. Mr. Smolow stated this was prepared by the Delaware Valley Regional Planning Commission in September, 2004, and is a Traffic Study of Interstate 95 Scudders Falls Bridge, and Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien when he learned about this report, and Mr. O'Brien stated it was after the 2007/2008 Hearings, but he does not recall when he found out about it. Mr. Smolow asked if he was familiar with the Report when he testified before the Zoning Hearing Board in 2008, and Mr. O'Brien stated he was not.

Mr. Smolow asked Mr. O'Brien in preparing his 2008 McMahon Report, he understands that Mr. O'Brien did not consider the Scudders Falls Bridge Project; and Mr. O'Brien agreed. Ms. Kirk stated Mr. O'Brien's prior answer was that he was not aware of the report during the testimony of the 2007 and 2008 Zoning Hearing Board Hearings, and Mr. O'Brien agreed that this is what he had said.

Mr. Smolow stated in preparing the 2008 Report, Mr. O'Brien did not contact the Delaware Valley Regional Planning Commission for data regarding traffic growth and traffic counts in the area.

Mr. VanLuvanee stated this was a question that could have been asked in 2007 and 2008, and it is possible that it may have been. He stated this is not anything new, and Mr. DosSantos agreed.

Mr. Smolow asked Mr. O'Brien if he would agree with him that the Delaware River Joint Toll Bridge Commission relied on the Report prepared by the Delaware Valley Regional Planning Commission in making its decisions regarding the Scudders Falls Bridge.

Mr. VanLuvanee Objected, and stated the Witness would not know the answer to this question especially since he did not know at the time he testified that the Report even existed. He stated how he would know what the Bridge Commission relied on is clearly an inappropriate question.

Mr. Smolow stated he will lay a foundation for it. He asked Mr. O'Brien if he reviewed the Website for the Delaware River Joint Toll Bridge Commission and the Scudders Falls Bridge Project. Mr. VanLuvanee objected to the question as he is not asking when. Ms. Kirk asked that Mr. Smolow set a time frame as to when he reviewed the Website. Mr. Smolow asked Mr. O'Brien when was the first time he examined the Website for the Delaware River Joint Toll Bridge Commission's Scudders Falls Bridge Improvement Project; and Mr. O'Brien stated while he does not recall exactly, he feels it was probably 2009 or 2010. Mr. Smolow asked in connection with this proceeding, is it fair to say that he kept up to date with respect to information that the Bridge Commission has put on the Website.

Mr. VanLuvanee objected. He stated Mr. O'Brien is his expert, and Mr. Smolow is cross examining him, and he has no right to use his expert to try to lay a foundation for testimony that Mr. Smolow could have put in in 2007 and 2008. Mr. Smolow stated he is trying to put the 2004 Report in. He stated the Board wants to hear more evidence, and he wants to have this Witness testify as to his knowledge about the 2004 Report. Mr. McCartney stated he already testified that he had no knowledge of it. Mr. Smolow stated he understands that. Mr. Smolow stated he is asking him whether he knows the Toll Bridge Commission's use of this Report. Ms. Kirk asked how he would know this.

She stated Mr. O'Brien has been offered as a traffic expert for the Applicant not as a representative of the Delaware Valley Joint Toll Bridge Commission. Mr. Smolow stated he cannot obtain a Witness from the Delaware River Joint Toll Bridge Commission, and the Zoning Hearing Board knows this. He stated the Court will not enforce a subpoena, so he has to get evidence about the Bridge Commission from people who have knowledge or information about the Bridge Commission, and this Witness as a traffic expert in this proceeding might have knowledge about it.

Mr. VanLuvanee stated what Mr. Smolow just asked Mr. O'Brien was whether he read the Website, and from reading the Website whether he knows what factors went into their decision making process; and he stated Mr. Smolow's expert could say this, although he would probably object to that as well.

Mr. Smolow stated he is allowed to cross examine this Witness. Mr. Smolow stated Mr. VanLuvanee cannot control his production of information whether he produces it from this Witness or other Witnesses. Mr. VanLuvanee stated Mr. Smolow has already cross examined this Witness.

Ms. Kirk asked Mr. O'Brien if he is aware whether the Delaware River Joint Toll Bridge Commission relied on this Report, and Mr. O'Brien stated he is not aware of this.

Mr. Smolow asked Mr. O'Brien if he has familiarized himself with the Delaware Valley Regional Planning Commission Report, and Mr. O'Brien stated he has. Mr. Smolow asked Mr. O'Brien if he would agree with him that the Report did not consider Aria's proposed Hospital and could not because it was prepared in 2004.

Mr. VanLuvanee Objected. He stated Mr. Smolow is asking the Witness about a report that the Witness admittedly did not read until after his testimony. He stated this is cross examination, and Mr. Smolow can put a traffic engineer on and already told the Board that he intends to do that. Mr. VanLuvanee stated if Mr. Smolow's traffic engineer wants to read this Report and rely on it for an opinion, and the Board decides they are going to accept new Witnesses, Mr. VanLuvanee will have to cross examine them after he does that. He stated Mr. Smolow cannot cross examine a Witness about things that were not part of his direct examination.

Mr. Smolow stated he has the right to ask this Witness, the Hospital's expert Witness, whether he agrees with this Report. He stated Mr. O'Brien has indicated that he read it, he is a traffic expert, and he has the right to question him about this Report. Mr. VanLuvanee stated he had the right to question him about the Report in 2007 and 2008 when he testified. He stated if Mr. Smolow knew about it, he should have presented it then.

Mr. Gruen sustained the Objection adding they are back where they were previously.

Mr. Smolow stated he is trying to introduce this Witness' knowledge and information about this Report, and he feels he has the right to ask him questions about it. Mr. Gruen advised Mr. Smolow that he cannot ask Mr. O'Brien about new information that he did not testify to at the previous Hearings and is something that he found out about later on. Mr. Gruen stated Mr. Smolow could produce his own Witness who could testify to the Report and give the Board information. Mr. Smolow stated he would like to use Mr. O'Brien to find out what he knows and what his opinion is about certain portions of this Report. He stated he wants to ask him what he knows about the Report and inquire more about the Bridge Commission's use of this Report. Mr. Smolow stated they relied upon this, and this Witness knows that. Mr. Smolow stated his Offer of Proof will also deal with the contents of the Report itself, and whether this Witness agrees with certain provisions and certain findings made by the Delaware Valley Regional Planning Commission in this Report. He stated he wants to know if it is contested or not. Mr. Smolow stated he wants to know if Mr. O'Brien agrees that this is a valid Report.

Mr. VanLuvanee stated all of this could have been done in 2007 and 2008.

Mr. Gruen stated it could not have been done because Mr. O'Brien stated he did not know about the Report. Mr. Gruen stated part of the reason they are back here is because at the time when the Board wanted traffic information regarding Newtown and the Bridge, they could not get it. He stated if they deny information again, it will go back to Court, and they will be back here again next year. He stated he would like to hear all the information they can and let the Board decide what is and is not relevant.

Mr. VanLuvanee stated he agrees that the Court indicated they can receive Evidence, but this does not give Mr. Smolow the right to cross examine his Witness in a manner that goes beyond the scope of direct examination with respect to material that was not available when he testified. Mr. VanLuvanee stated Mr. Smolow is attempting to take his expert, and turn him into Mr. Smolow's expert.

Mr. VanLuvanee stated one of the reasons the Zoning Hearing Board did not get the information that the Court referred to had nothing to do with the way Mr. VanLuvanee presented his Case or made his Objections; but had to do with the fact that Mr. Smolow and Mr. Truelove made tactical decisions not to retain traffic engineers to do independent traffic studies and formulate independent traffic opinions. Mr. VanLuvanee stated this was not his fault. He stated this is the reason the Board did not hear that evidence. Mr. VanLuvanee stated if the Board chooses to re-open the Hearing and let them do it again, even though they could have done it before, that is the Board's prerogative, and this is one of the reasons he asked the Court to narrow the scope. Mr. VanLuvanee stated he still believes that some of that Evidence is irrelevant, but they are not to that point yet.

He stated the Board may decide to let those experts in even though they had the right to call them three years ago.

Mr. Truelove stated one of the reasons they did not do this was because the evidence they tried to cross examine early on in the case was not allowed; and he stated there was no point in putting Witnesses on when the subject matter was not allowed. He stated the Order had to do with the subject matter and not necessarily Witnesses. He stated if they cannot get into the subject matter, Mr. Gruen is right, they will be back here in a year.

Mr. VanLuvanee asked how they can cross examine a Witness about subject matter that the Witness indicated was not relevant to his opinion.

Mr. Smolow stated the matter is here on Remand because he and Mr. Truelove attempted to question Witnesses regarding the Scudders Falls Bridge Project, and Mr. VanLuvanee in the earlier proceedings Objected, and the Board sustained those Objections. When they went to Court and Appealed the Board's Decision, the Court said that the Zoning Hearing Board was wrong, and they should have had the right to cross examine the Witnesses regarding the Scudders Falls Bridge at the time. He stated this is not a re-hash, and he is trying to introduce new information from this Witness who he could not cross examine last time regarding the Scudders Falls Bridge, and the Board is precluding him again from doing this.

Ms. Kirk stated she does not feel what the Board has done is precluding him from cross examining the Witness; and the Board's position is that Mr. Smolow just asked Mr. O'Brien was he aware of the 2004 Report, and Mr. O'Brien stated he was but it was after the 2007/2008 Hearings. She stated Mr. O'Brien has indicated that he did not use elements of this Report in the preparation of his 2008 Traffic Report.

Mr. Smolow stated he now has the right to question this Witness regarding the completeness of his 2008 Study because it did not mention this Report. He stated he also wants to go through this Report because Mr. O'Brien has read the Report. Mr. Smolow stated he does not feel he is limited by the scope of cross examination on this point.

Ms. Kirk stated what the Board indicated was they wanted Mr. Smolow to proceed with new evidence through his own Witnesses and bring Mr. O'Brien back on cross examination. Mr. Smolow was asked where his Witness is.

Mr. VanLuvanee noted the Transcript from 10/1/08 Hearing, page 41, starting Line 18 which was Mr. Smolow's cross examination as follows:

“Mr. Smolow: My understanding is that, and I want to be clear about this, is that you did not consider the Traffic Study that was prepared by the Bridge Commission to prepare your Study, is that correct.

Mr. O'Brien: No. From what I have been able to determine that Study has not been approved yet and has not been finalized.

Mr. Smolow: My question though, Sir, was you did not consider it did you?

Mr. O'Brien: No. I don't believe it was appropriate to consider it.

Mr. Smolow: And you did not consider the Bridge Expansion Project itself in the Study did you?

Mr. O'Brien: No. Because I did not believe that it is expected to be completed prior to the analysis used in our Study.

Mr. Smolow: Would you agree with me though, Sir, that when the Bridge projects get underway that that project will in fact have an impact on traffic and traffic patterns within the Study area.”

Mr. VanLuvanee stated he then Objected, and this Objection was sustained; and that is the question that caused the Motion to lead cross examine; and that question has now been asked again; and Mr. Smolow got a chance to ask that question, and the Witness answered it, and he still said that it would not have any impact.

Mr. Truelove stated that one of the answers Mr. O'Brien gave was that he did not think it was appropriate to look at that; and he feels Mr. Smolow is trying to determine whether that answer was correct at the time.

Mr. VanLuvanee stated he did not ask Mr. O'Brien whether he thought it was appropriate; and that is a different issue.

Ms. Kirk asked Mr. Smolow if there was a way he could structure his questions to deal with that issue. Mr. Smolow stated he can ask those questions, but he also wants to go beyond that. Mr. Smolow stated in preparing a Traffic Study for a large project like the Hospital it is important for a Traffic engineer to consult with PennDOT and the Planning Commissions involved to examine and understand the growth in the areas involved; and asked Mr. O'Brien if this is true.

Mr. VanLuvanee Objected, and stated that is a question that was clearly asked in one form or another at the first Hearing and goes to the question of the Witnesses background and has nothing to do with the scope of the Remand Hearing.

Mr. DosSantos stated he feels the point is that Mr. O'Brien did not take it into consideration, and the Board understand can make the determination whether he should or should not have and determine the credibility or relevance of Mr. O'Brien's testimony.

Mr. Gruen stated the way he reads the Judge's Motion, it indicated that "with respect to issues of clarification, the manner in which supplementation evidence may be presented here either through cross examination of previous Witnesses or calling new Witnesses." Mr. Gruen stated he feels this indicates that Mr. Smolow can cross examine Mr. O'Brien for new information that the Board did not get before. He stated he would like to err on the side of evidence, and he would like Mr. Smolow to continue.

Mr. VanLuvanee stated Mr. Smolow is not paying his Witness, Mr. O'Brien, to give opinions for him. Mr. VanLuvanee stated Mr. O'Brien gave opinions for Mr. VanLuvanee, and expert Witnesses cannot be called as Fact Witnesses, and Mr. Smolow cannot call his witness other than to question him with respect to the scope of the matters that were raised by Mr. VanLuvanee and he has leeway as to how he prepared his report and what he considered. Mr. VanLuvanee stated all of that was clear; however, Mr. Smolow cannot use Mr. VanLuvanee's Witness to present new Evidence that Mr. VanLuvanee chose not to present.

Mr. Koopman stated Mr. Smolow can cross examine the Witness about things he took into account when he prepared his Report and his opinion and whether he should have taken other things into account or not including this Study. Mr. VanLuvanee stated Mr. Smolow did this already. Mr. Koopman stated he does not feel Mr. Smolow has had the opportunity to go through the Report and ask Mr. O'Brien questions about those substitutive issues. Mr. VanLuvanee stated this is because the Witness stated he did not consider it.

Mr. DosSantos stated Mr. Smolow should stop asking Mr. O'Brien if he looked at the Report; and Mr. Koopman stated while he agrees, he feels the Board should allow Mr. Smolow certain leeway to go into this and get it on the Record and the Board can determine whether it is relevant or not. Mr. Koopman stated he should be able to cross examine Mr. O'Brien as to why he did not include this in his Traffic Report and even ask specific questions about the relevance of certain things in the Report. Mr. VanLuvanee stated he already had that opportunity, and he just read it from the Record.

Ms. Kirk stated the Board understands Mr. VanLuvanee's Objection and the other attorneys' responses to that Objection. Mr. Gruen stated he feels they should give Mr. Smolow some leeway and continue with the cross examination. Ms. Kirk asked Mr. Smolow to fine tune his questions to deal with those specific issues. Mr. DosSantos stated he would like to see Mr. Smolow move on; and Mr. Smolow asked for time to prepare his questions.

A short recess was taken at this time.

Mr. Smolow stated Mr. O'Brien has identified the Report that was prepared by the Delaware Valley Regional Planning Commission in 2004 and has testified that he did not consult with them, and Mr. O'Brien agreed. Mr. Smolow stated Mr. O'Brien has already testified that he did not see the Report prior to preparing his 2008 Report, and

Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien if he saw it before he prepared his 2010 Report, and Mr. O'Brien stated he did not believe so. Mr. Smolow stated one of the reasons Mr. O'Brien did not see the Report was because he did not contact the Delaware Valley Regional Planning Commission to gather data regarding traffic growth in the community; and Mr. O'Brien stated this is partly true but also the reason he did not contact them was because based on information he was aware of, there was no clear timeline for the project and no funding for the project and there was no reason to believe that it would be completed prior to the opening of the Hospital. Mr. Smolow stated Mr. O'Brien did nothing to inquire as to the actual timeline of the project, and Mr. O'Brien stated he did not specifically with regard to the Delaware Joint Regional Planning Commission. Mr. Smolow stated Mr. O'Brien also did nothing to inquire about the project from the Delaware Valley Planning Commission either, and Mr. O'Brien agreed.

Mr. Smolow asked Mr. O'Brien if was fair to say that it would have been sound engineering practice at the time to at least inquire of the status of the Project from the Delaware Valley Regional Planning Commission; and Mr. O'Brien disagreed and again stated if there was no clear timeline and no funding, and based on his review of the Report since then, there is not much of an impact from the Project on the Study Area.

Mr. Smolow stated Mr. O'Brien did not know the status of the Project because he did not inquire of anyone who would know the status; and Mr. O'Brien disagreed, and stated the information he was aware of indicated there was no clear timeline for the Project, and as of now there is still no clear timeline as to when the Project will be completed, and there is no funding for the Project to be completed. Mr. Smolow stated at the time in 2008, he did not confirm with anyone that there was no clear timeline. Mr. O'Brien stated he was aware of this at the time. Mr. Smolow again asked Mr. O'Brien if he inquired of anyone of the timeline; and Mr. O'Brien again stated he did not inquire of anyone from the Delaware Valley Regional Planning Commission or

the Joint Toll Bridge Commission, but based on information he was aware of at the time, there was no clear timeline which is also true today. Mr. Smolow stated Mr. O'Brien also mentioned funding and he stated Mr. O'Brien did not inquire of anyone about the funding for the Bridge Project either; and Mr. O'Brien again stated that with the Joint Toll Bridge Commission he did not.

Mr. Smolow stated Mr. O'Brien indicated that in his opinion the Bridge Project would not have much of an impact on the Study Area, and Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien if he is aware that the Study Report identified as RAFR-4 does talk about the impact of the Bridge Project on the Study Area.

Mr. VanLuvanee Objected and stated the Remand is to determine the impact of the Hospital on traffic in light of the Scudders Falls Bridge Project and accompanying roadway changes.

Mr. Gruen stated Mr. O'Brien testified that it would not have any effect.

Mr. VanLuvanee stated he did not say this, but said he did not take it into account in his Study. Mr. Gruen stated he just testified about this.

Mr. Smolow stated Mr. O'Brien just testified that he did not believe that the Scudders Falls Bridge Improvement Project would have much of an impact on the Study Area, and Mr. O'Brien agreed. Mr. Smolow stated the 2004 Delaware Valley Report talks about the impact of the Improvement Project on the Study Area, and Mr. O'Brien agreed.

Mr. Smolow stated it includes a Section on the impact of the Scudders Falls Bridge on the Study Area; and Mr. O'Brien stated while it does, it does not fully analyze the Project as it now stands. Mr. Smolow stated as it stood in 2004, the Report talked about a significant impact on the Study Area, and Mr. O'Brien stated he does not believe it was a significant impact.

Mr. Smolow noted Page 32 of the Report, the second paragraph which states, "Adding highway capacity to a given facility tends to reduce the travel time for trips served by that facility which in turn increases the demand for travel on that facility. This increase in demand is due to both diversion of trips from other routes and nodes (if there is competing transit service) and also an overall increase in the demand for travel between origin/destination pairs served by that facility;" and Mr. O'Brien agreed that this is how it reads. Mr. Smolow asked Mr. O'Brien if he agrees with this statement, and Mr. O'Brien stated he does. Mr. Smolow read the last sentence of the paragraph as follows: "The additional capacity and corresponding reduction in congestion increases the attractiveness of the Scudders Falls Bridge relative to the other River crossing facilities," and Mr. O'Brien agreed that this is how it reads. Mr. Smolow asked Mr. O'Brien if he agrees with this, and Mr. O'Brien stated he does.

Mr. Smolow read from the second paragraph from the bottom as follows: “By 2030 under the Build Alternative traffic volumes on the I-95 corridor range from 75,900 vehicles per day between PA 332 and Taylorsville Road to 85,000 vehicles per day on the Scudders Falls Bridge,” and Mr. O’Brien agreed that this is how it reads.

Mr. Smolow continued to read as follows: “These volumes are between 6,900 and 8,500 vehicles per day higher than the corresponding volumes under the No-Build Alternative.”

Mr. VanLuvanee Objected, and stated if Mr. Smolow wants to offer the Exhibit he is sure the Board would accept it and added that he could have offered this in 2007 and 2008 and could have asked the questions he is asking now in 2007 and 2008.

Mr. DosSantos asked Mr. O’Brien if he has since had the opportunity to review the 2004 Study, and Mr. O’Brien stated he has. Mr. DosSantos asked Mr. O’Brien if based on his review of the Study has it changed the opinions he offered with regard to the traffic flow that he gave in 2008, and Mr. O’Brien stated it does not. Mr. O’Brien stated based on the information in the Report, the peak hour traffic volumes at the two interchange intersections will increase by approximately 5% as a result of the Bridge Project; and this was before counting for tolling. Ms. Kirk asked that Mr. O’Brien repeat his answer; and Mr. O’Brien stated based on the information in the 2004 DVRPC Traffic Study, traffic volumes at the two intersections at the Interchange of I-95 and 332 will increase by approximately 5% or less during the morning and afternoon peak hours which were the periods that he studied as part of the Hospital project.

Mr. DosSantos asked Mr. O’Brien if based on this information, has it altered his opinion at all that he gave earlier; and Mr. O’Brien stated it does not and added that traffic volume fluctuates more than 5% from day to day.

Mr. Zamparelli stated Mr. O’Brien had indicated that this was before accounting for tolling, and he asked if it would be higher or lower if there was tolling. Mr. O’Brien stated while it is not easy to clarify, a new report was released in November, 2011; and in the Summary of that Report it stated, “The results of the analysis show that during the peak hour, the volume of traffic using the newly completed I-95 Scudders Falls Replacement Bridge will not be appreciably different than the volume of traffic that would use the existing Bridge without a toll.

Mr. Gruen asked Mr. O’Brien if he would say that traffic today in 2012 is the same as it was in 2004 and that traffic will not increase more than 5% since the Study was done in 2004. Mr. O’Brien stated this Study looked at 2015 and 2030.

Mr. Smolow stated he would like to question Mr. O'Brien regarding the issue of the 5% increase. He provided a document he marked Exhibit RAFR-5. Mr. Smolow stated Mr. O'Brien just testified that he believed based on the 2004 Report that there would be approximately a 5% increase in the intersections involved if the Scudders Falls Bridge Improvement Project goes ahead, and Mr. O'Brien agreed. Mr. Smolow stated RAFR-5 is a composite Exhibit which shows Figures 5A and 8A from the 2004 Report, and he stated in the lower left hand corner it shows 2015 No-Build Alternative which is what would happen with the projected traffic volumes if the Project did not go ahead; and Mr. O'Brien agreed. Mr. Smolow stated this shows that in 2015 if the Project does not go ahead according to the Study there would be 1,060 cars making a right turn off of the ramp in the p.m. peak hours, and Mr. O'Brien agreed. Mr. Smolow stated this compares on the next page with the 2015 Build Alternative which shows a projection of 1,130 vehicles in the p.m. peak hour, and Mr. O'Brien agreed. Mr. Smolow stated this difference represents approximately 70 additional vehicles in the p.m. due to the Scudders Falls Bridge Project, and Mr. O'Brien agreed.

Mr. Smolow marked Exhibit RAFR-6 which is a composite Exhibit showing the Delaware Valley Regional Planning Commission projected traffic volumes for the I-95 ramp a.m. and p.m. peak hour traffic volumes for 2030. Mr. Smolow stated the No-Build alternative shows 1,110 vehicles would be making the right hand turn in the p.m. peak hour and this compares to 1,160 vehicles in the p.m. peak hour in the Build situation in 2030, and Mr. O'Brien agreed. Mr. Smolow stated this is an increase of approximately 50 vehicles, and Mr. O'Brien agreed. Mr. Smolow stated Mr. O'Brien testified that this does not represent a significant increase; and Mr. O'Brien agreed adding that looking at the intersection as a whole and how much traffic is projected without the Scudders Falls Bridge Project, he does not feel the approximate 5% increase is significant.

Mr. Smolow stated those numbers do not take into consideration the increase due to the Hospital, and Mr. O'Brien agreed. He stated this specifically had to do with the increases due to the Bridge Project.

Mr. Smolow asked if it would be a fair methodology to figure out the traffic impact from both the Hospital and the Scudders Falls Bridge Project to add the projected increase that Mr. O'Brien projected for the Hospital to these numbers that the Delaware Valley Regional Planning Commission projected; and Mr. O'Brien agreed but stated he could not comment on exactly how they got their background growth, but the general methodology would seem adequate. Mr. DosSantos stated Mr. O'Brien is therefore suggesting that his numbers plus their numbers would equal a new whole number given the two projects together; and Mr. O'Brien stated he would not be able to determine exactly how they calculated their background growth. He stated he knows how he calculated his background growth, and he feels that it was a conservative determination; but in their background which equated to about 1% per year, they utilized Municipal

forecasts and based on information in the DVRPC Report on Page 13, it states, “The Municipal forecasts are based on an analysis of historical data trends adjusted to account for infrastructure availability, environmental constraints to development, local Zoning policy, and development proposals.” Mr. O’Brien stated he feels it would be reasonable that they assumed some sort of development on the proposed Hospital parcel based on a review of the local development policy.

Mr. Gruen asked if he assumes they projected it based upon an office building and not a Hospital. He asked Mr. O’Brien if they contacted him, and Mr. O’Brien stated they did not and his Report was after their Report. He stated he cannot estimate what they assumed would be developed on the proposed Hospital property.

Mr. Gruen noted the impact if they toll the Bridge, and he asked Mr. O’Brien if it is his testimony that the local traffic is not going to increase. Mr. O’Brien stated they put together the Addendum to the Environmental Assessment Report that addresses tolling, and this is dated November, 2011. He stated in the Report they talk about different impacts of the tolling based on whether it is a low toll or a high toll during the different peak hours. He stated they have not determined what toll they would be using, but in Summary they indicated that the volume of traffic on the Bridge will not be appreciably different than the volume of traffic that would use the existing Bridge without a toll. Mr. O’Brien stated this is the opinion of the Bridge Commission.

Mr. DosSantos asked Mr. O’Brien what his opinion is with regard to how tolling would have an impact. Mr. O’Brien stated he did not do as complete a report as they did, but from his standpoint, it sounds realistic. He stated he knows that people who travel on Route 1 or I-95 have the option of which Bridge they want to take so it does make sense that some traffic that goes across Route 1 now would use the Scudders Falls Bridge once it is improved; but depending on the level of toll put on that Bridge, you may not necessarily get as much traffic from Route 1 diverting to the Scudders Falls Bridge.

Mr. Gruen stated he is not asking about the Route 1 traffic but is asking about the Newtown traffic and local traffic and instead of taking the Scudders Falls Bridge, they will take Stony Hill to one of the other bridges that are non-toll.

Mr. VanLuvanee stated the traffic coming southbound on I-95 is what they are focusing on and not a question of whether people are going to get onto the Bridge to go across it. Mr. VanLuvanee stated Mr. Smolow’s question is only concerning the southbound traffic exiting onto the By-Pass. Mr. Smolow stated this is not what Mr. O’Brien’s testimony was nor was it the Board’s question.

Mr. Gruen stated there will not be a toll going northbound; but if there is a toll, they may take the local streets. Mr. O'Brien agreed that it will be southbound, and it depends on how much tolling is instituted. Mr. Gruen stated there is a possibility that Lower Makefield will get an increase in traffic on the local streets in the p.m. Mr. O'Brien stated based on the Report, it is not going to be a large increase.

Mr. Smolow stated he had no more questions for Mr. O'Brien.

Mr. VanLuvanee stated while he has no redirect at this time, he will reserve the right to call Mr. O'Brien as a rebuttal witness depending on testimony heard from the Township and RAFR.

There was some discussion about the numbering of Exhibits; and Ms. Kirk stated she had indicated at the last Hearing, she would attempt to get through all of the prior Exhibits so that they were consistent with numbering, however, she was unable to accomplish that goal yet.

Ms. Kirk stated she believes that the only Exhibit the Township previously offered was the Comprehensive Master Plan Update previously submitted as Exhibit T-21.

Mr. Phillip Wursta was sworn in and stated he works for Pennoni where he is a Vice President and Regional Manager. Exhibit T-22 was provided which is Mr. Wursta's CV, and Mr. Truelove stated he has provided this to Counsel other than Mr. Koopman who knows him; and Mr. Koopman stated he would Stipulate that Mr. Wursta is qualified.

Mr. Wursta stated he has worked for Pennoni for twenty-four years. He stated he is a traffic engineer and his responsibilities have been numerous within the company. He stated presently he is the Regional Manager in charge of the Doylestown and King of Prussia Offices. He stated prior to that he was the technology principal for Pennoni's Transportation Division which incorporates the whole discipline of transportation engineering within Pennoni including roads, bridges, traffic signals, and anything that has to do with transportation.

Mr. Gruen asked Mr. VanLuvanee if he would accept Mr. Wursta as an expert Witness, and Mr. VanLuvanee stated he had the opportunity to cross examine Mr. Wursta before and recognizes that he is qualified as a traffic engineer. The Board was satisfied as well. Mr. Truelove stated Mr. VanLuvanee has also retained Mr. Wursta as an expert from time to time, and Mr. Wursta stated his clients have. Mr. Truelove stated Mr. Wursta has represented both developers and Municipalities in Land Development matters, and Mr. Wursta agreed that this is correct with regard to traffic.

Mr. Truelove offered Mr. Wursta as an expert in traffic design, analysis, and review. Mr. VanLuvanee stated he had no Objection as to qualifications but he Objects to the testimony on the basis that this Witness could have been called previously, and Mr. Truelove had a full opportunity to bring an expert in before; and there is no reason to bring in an expert in now.

Ms. Kirk stated the Board recognizes Mr. VanLuvanee's Objection, but they will proceed with the testimony.

Mr. Truelove stated Mr. Wursta has heard the testimony of Mr. O'Brien this evening and also reviewed the testimony in the earlier proceedings with regard to this matter as well as reports and other information related to the proposed Hospital, traffic, and transportation issues; and Mr. Wursta agreed he had. Mr. Truelove stated those issues are effected and created by the anticipated project with respect to traffic issues, and Mr. Wursta agreed. Mr. Truelove stated he has also listened to testimony tonight and on prior occasions since the Remand about other studies, data, and information related to traffic and transportation; and Mr. Wursta agreed. Mr. Truelove stated those were in the region effecting and effected by the traffic in the Study Area for the proposed Hospital, and Mr. Wursta agreed. Mr. Truelove stated among the items he has reviewed was the McMahan Studies from 1997 and 1998, and Mr. Wursta he did review the O/R District Zoning Study McMahan did in that timeframe. Mr. Truelove stated there was a subsequent one as well within a year or two for the ICT Building, and Mr. Wursta agreed. Mr. Truelove stated Mr. Wursta also heard Mr. O'Brien's testimony and has read the reports regarding the background traffic and proposed improvements to the Study Area if the Hospital were built, and Mr. Wursta agreed.

Mr. Truelove stated as far as the appropriateness of Mr. Wursta's testimony, he asked Mr. Wursta if he was also familiar with the Lower Makefield Township Subdivision and Land Development Ordinance and requirements for traffic studies and review; and Mr. Wursta stated he is.

Mr. VanLuvanee stated he believes Exhibit T-21 was already marked which is the Alternatives and Analysis Study for the O/R Zoning District; and it was agreed to mark Mr. Wursta's CV as Exhibit T-22.

Mr. Truelove marked Exhibit T-23 which is an attachment which is part of the SALDO Ordinance for traffic impact study requirements for Lower Makefield Township. Mr. Wursta stated he has reviewed this. Mr. Truelove noted Page 5 Sub-Section D7 where it states, "Conclusions and Recommended Improvements," and he asked Mr. Wursta to read the three sentences which Mr. Wursta read as follows: "Levels of Service for all roadways and intersections shall be listed. All roadways and/or intersections showing a Level of Service below C shall be considered deficient and

specific recommendations for the elimination of these problems shall be listed unless design limitations preclude Level of Service C. Where such conditions exist, the traffic engineer shall seek guidance from the Township prior to the submission of the Traffic Impact Study.”

Mr. Truelove stated Mr. Wursta has reviewed the McMahon 2008 Study, and Mr. Wursta agreed. Mr. Truelove asked Mr. Wursta, based upon the Study’s conclusions with respect to the Study Area in the As-Built condition with the Hospital, what are the anticipated Levels of Service at the intersections abutting the Hospital project if the Hospital is built; and Mr. Wursta stated they range from Levels of Service C to F. Mr. Truelove asked what were the requirements of the Applicant with respect to following up if the Levels of Service were below C.

Mr. VanLuvanee Objected, and stated the Ordinance speaks for itself to the extent that it is relevant. Mr. Gruen overruled.

Mr. Wursta stated there should be a specific recommendation for the elimination of those problems. Mr. Truelove asked if that would be seeking guidance from the Township prior to submission of the Traffic Impact Study.

Mr. VanLuvanee Objected, and stated Mr. Truelove was leading the Witness.

Mr. Truelove asked when those conditions exist what should the traffic engineer for the Applicant do according to the Ordinance; and Mr. Wursta stated they have to provide recommendations for the elimination of those, and if they cannot because there are design limitations, they are supposed to seek the guidance of the Township.

Mr. Truelove asked based on the review of the McMahon Report from 2008 and Mr. O’Brien’s testimony, were there design limitations precluding obtaining a Level of Service C.

Mr. VanLuvanee Objected and stated the question is whether or not Mr. Truelove is asking the Witness whether this is his opinion or whether or not there is something in the Report that he will tell about. Mr. VanLuvanee stated if Mr. Truelove is limiting it what he is going to tell is in the Report and where it is, he has no Objection; otherwise there is no foundation for the question. Mr. Truelove stated his foundation was reviewing the Report and listening to the testimony. Mr. VanLuvanee stated as long as Mr. Wursta is specific in his answer, he does not have a problem. Mr. VanLuvanee stated Mr. Truelove could ask the Witness what report he is referring to and what page.

Mr. Truelove asked Mr. Wursta in reviewing the McMahon 2008 Report, does he have an opinion as to whether there were design limitations precluding obtaining the Level of Service C, and Mr. Wursta stated he was not aware of any design limitations. Mr. Wursta stated the issue is anything below a Level C was not addressed whether there were design limitations or not.

Mr. Truelove asked Mr. Wursta if guidance was sought from the Township according to his review of the Report, and Mr. Wursta stated he is not aware of any.

Mr. Truelove stated Mr. Wursta was present for Mr. O'Brien's testimony last time and this evening, and Mr. Wursta agreed. Mr. Truelove asked if he heard anything in his testimony about seeking guidance from the Township with respect to the issues raised in Mr. Wursta's testimony tonight, and Mr. Wursta stated he did not.

Mr. Truelove asked Mr. Wursta, in reviewing the information that was testified to and the information that he was supplied, what should McMahon have done with respect to the information that lead to the Level of Service below C. Mr. Wursta stated they should have mitigated any Levels of Service that were below C and should have provided some mitigation measurements with regard to traffic improvements to improve the capacity to a Level of Service C or better. Mr. Truelove stated this was not done, and Mr. Wursta stated they have not to the extent that Levels of Service below C have remained.

Mr. Truelove asked, taking into account Newtown Township developments and the Scudders Falls Bridge Project, what impact if any, would have taken those into account had on the ability to perform the task described.

Mr. VanLuvanee Objected due to lack of foundation. Mr. Truelove stated the foundation was the review of the information. Mr. VanLuvanee stated Mr. Truelove indicated that the Witness reviewed the Reports, and that is all they know he did. Mr. Truelove stated he is laying the foundation to provide the opinion and will then get more specific. Mr. Truelove stated he recognizes that he cannot lead the Witness and indicate where in the Report this is seen.

Mr. Gruen stated he should ask Mr. Wursta which report.

Mr. Truelove asked Mr. Wursta in the information that has been supplied to him within those Reports, which Reports provided the information that demonstrate that the McMahon Study did not properly pursue guidance from the Township.

Mr. VanLuvanee Objected to the word "properly." He stated this cross examination was available three years ago, and they are not getting into a new testimony.

Mr. Truelove stated it was not because he is trying to get the information about Newtown Township and Scudders Falls Bridge. Mr. VanLuvanee stated Mr. Truelove already produced information about Newtown Township and it is already in the Record. He stated what Mr. Truelove did not do was to produce an expert to draw an opinion from the evidence.

Mr. Gruen disagreed and stated at the time they were told not to consider Newtown Township; and Mr. VanLuvnaee stated this was incorrect, and it was Mr. O'Brien who stated he did not consider it. Mr. VanLuvanee stated there were two Witnesses and a number of Exhibits about Newtown Township.

Mr. Gruen overruled the Objection.

Mr. Wursta asked Mr. Truelove to repeat the question, and Mr. Truelove stated the information about Newtown Township Developments was not considered by Mr. O'Brien; and Mr. Wursta agreed.

Mr. VanLuvanee asked what information he is asking about, and stated Mr. Truelove needs to be specific. Mr. Truelove stated that will be his next question. Mr. VanLuvanee stated Mr. Truelove needs to ask the questions in a proper order so that they can make sense out of the testimony. Mr. Truelove stated while he respects Mr. VanLuvanee, he is an experienced attorney himself as well.

A short recess was taken at this time.

When the meeting was reconvened, Mr. Truelove asked Mr. Wursta if he has an opinion to a reasonable degree of professional certainty as to whether the McMahan opinions regarding the proposed improvements are credible in that they claim that the traffic level will improve if the Hospital is built as proposed.

Mr. VanLuvanee Objected and asked where in the Record it shows that Mr. O'Brien indicated that traffic will improve. Mr. Truelove stated he does not have the actual Transcript. Mr. VanLuvanee stated he recalls that Mr. O'Brien testified that the improvements proposed would mitigate the impact of the Hospital project. Mr. Truelove stated he recalls that Mr. O'Brien stated that after the Hospital was built and the improvements were made, the actual traffic conditions will improve.

Mr. VanLuvanee stated Mr. Truelove may be right, but they should still be told where in the Transcript it indicates what Mr. O'Brien stated, and Mr. Wursta could then testify as to whether or not he feels that was a credible opinion. Mr. DosSantos stated they could also ask this of Mr. Wursta hypothetically as well, and Mr. VanLuvanee agreed and stated he would not Object to this as long as it was clear that it was hypothetical.

Mr. Truelove stated he felt this was agreed to by everyone, and Mr. Gruen stated he also recalls that Mr. O'Brien indicated that the traffic would improve; however, they do not have it in front of them in writing this evening. Mr. Truelove stated he does have this at his office.

Ms. Kirk stated Mr. Wursta had indicated that he reviewed the testimony, and she asked him if he recalled that statement made by Mr. O'Brien as offered by Mr. Truelove; and Mr. Wursta stated he did not recall.

Mr. Truelove asked Mr. Wursta based upon his experience and review to a reasonable degree of professional certainty, is the McMahon's Report and testimony without reviewing the Scudders Falls Bridge Project and information professionally credible.

Mr. VanLuvanee Objected and stated this is not an opinion question. He stated professionals can differ, and Mr. Wursta cannot testify that there is no credibility to their opinion. He stated Mr. Wursta can testify that his opinion is different and tell why.

Ms. Kirk asked that Mr. Truelove rephrase his question as to whether or not the review of the information would be an acceptable methodology, and if so why or why not.

Mr. Wursta stated his opinion is that with regard to the Traffic Study it was not done in accordance with the Lower Makefield Ordinance nor was it done with regard to a proper execution of local development growth with regard to Newtown Township or the Scudders Falls Bridge Project. Mr. Truelove asked what he bases that opinion on; and Mr. Wursta stated the issue associated with the Lower Makefield Ordinance speaks for itself, and the Report does not meet many of the issues laid out in the Ordinance. He noted as an example the peak hour of the generator is supposed to be used which means that they are not only supposed to study the a.m. and p.m. peak hours that were offered, but you are also supposed to study the highest generating hour of the use which is the Hospital. Mr. Wursta stated if you determine that the a.m. peak hour is 7 a.m. to 8 a.m. but the Hospital's peak hour is 10 a.m., you should study the 10 a.m. timeframe; and they did not do this.

Mr. DosSantos asked Mr. Wursta when he states "supposed to study," what is he basing this on; and Mr. Wursta stated he is basing this on the Lower Makefield Township Ordinance.

Mr. Wursta stated with regard to the issue of background growth, he does not feel it was handled correctly. He stated the background growth is generally traffic that has an origin and destination outside a specific area. He stated local development is added on top of background growth. He stated if an office building was going to be built right next to the Hospital site that would generate 100 trips and there were 1,000 trips on the road, that is a 10% increase in traffic by adding the 100 trips. He stated you cannot say that you will use

2% background growth and say that it is accommodated within that background growth; and this is why you use background growth for trips outside the immediate area of the site, whatever that area is, and you add something that is more pertinent like development that is related in a higher fashion to that roadway network.

Mr. Wursta stated there were other things that were not shown in the Study that do not have a lot of bearing with regard to traffic capacity and analysis such as pavement design and CBR (California Bearing Ratio) values of what the roadway can withstand. He stated those and numerous other things were also supposed to be in the Report.

Mr. Wursta stated the basis of his opinion is also with regard to the queuing that currently exists which is the back up of cars at a particular location. Mr. Wursta stated within the Report, the values of that queue are extremely offset from what is really out there. He stated he has measured and observed queues of almost a quarter mile at a certain time, and the queues associated with the Report indicate something far less. He questions whether there was any calibration done to make it more viable with regard to the Study.

Mr. Wursta stated he also looked at the traffic volume that were just discussed during the cross examination of Mr. O'Brien this evening. Mr. Wursta stated the traffic volumes varied greatly at the southbound off-ramp at I-95. Mr. Truelove asked if he is referencing Exhibit RFR-3, and Mr. Wursta stated this is one of the Exhibits. He stated he also looked at the 1999 McMahan Study, the 2004 DVRPC Study, the 2007 McMahan Study, and the 2009 McMahan Study. Mr. Wursta stated the 2008 Study shows a volume of 548 cars which was previously discussed, but in the McMahan Study from 1999, the volume is 1,132, in the 2004 Study it was 962, and the 2009 Study was 928. Mr. Wursta stated this tells him that something is off with the number, and they should check it out; and this was not done.

Mr. Gruen asked Mr. Wursta if he is aware that in December the traffic can vary drastically between the beginning of the month and as they get closer to Christmas because of the Light Show at the Farm. He stated apparently one of the Studies was taken at the beginning of December when the Light Show just starting; and as they get closer to Christmas, traffic in that location increases tremendously because of the Light Show. Mr. Wursta stated he is aware of the Light Show, but his point is without regard to the cause of the fluctuations, when a problem presents itself and the numbers are not consistent, he would feel they should look into why the numbers were different.

Mr. DosSantos asked Mr. Wursta how is it determined what methodology should be used when the numbers are so different, and Mr. Wursta stated you should re-verify your count information and go out and count at a different time. He stated there are also seasonal adjustment factors that could be used. He stated traffic is relatively consistent, and even in the Christmas season usually Monday, Tuesday and Wednesday traffic is usually a little bit lower than normal; but on the weekend, it skyrockets. He stated this comes from

PennDOT's data with regard to the seasonal adjustment. Mr. Wursta stated to be off by 400 cars an hour through four different studies, three of which were done by the Applicant's engineer, they should have looked at this to see what is happening; so it does raise a level of doubt.

Mr. DosSantos asked Mr. Wursta if he was able to look at the Study that was done in December, 2007, and Mr. Wursta stated he looked at the 2008 Study for the Hospital with the counts being done in 2007. Mr. Wursta stated that Study was off from the other three studies, and the other three studies were higher. Mr. DosSantos asked if he was able to determine why those numbers were lower on that date, and Mr. Wursta stated he was not.

Mr. Wursta stated the other issue that comes to mind is the issue of the Newtown Township traffic and the Scudders Falls Bridge traffic associated with the Judge's Order. Mr. Wursta stated it seems "silly" that as far as you are going to study is the border of your property, even though the Ordinance does say go to the Township boundary. He stated from a traffic perspective you should go as far as you feel you should go to get a good assessment of the traffic volumes that are there.

Mr. DosSantos asked if this is the expected professional view and asked if traffic engineers should go beyond the border of the Township; and Mr. Wursta stated he feels they absolutely should. He stated if there is a major intersection 20' on the other side of the border, you would not be doing anyone any good if you do not study it. Mr. Wursta stated he looked at some of the Newtown traffic including some of the developments that were approved and built during the time that the Hospital project was originally presented and when it was to be built which was from 2007 to 2009. He stated Lockheed Martin has completed an expansion and he also looked at Tudor Square which is on Newtown-Yardley Road. He stated he does not feel you need to be a traffic engineer to realize that if you have development which is close to your site, the traffic will be generated and will impact the road. He stated this will add to the congestion that is already there and exacerbate an already poor condition. He stated this additional traffic will make one of the intersections they looked at from Lindenhurst Road go from a Level of D to E just adding those two developments.

Mr. Wursta stated he feels Newtown traffic should have been looked at because it has an impact on the overall bearing of the improvements associated with that intersection; and this is regardless of the responsibility of the mitigation associated with that. He stated if you take 70 cars from Lockheed-Martin, and 15 cars from Tudor Square and add some other developments from the east side and the west side and add the 70 cars from the Scudders Falls Bridge and add them to the roadway network, it makes a difference that impacts any improvements that will be required to mitigate.

Mr. DosSantos asked Mr. Wursta if he prepared a Study which will be put in evidence, and Mr. Wursta stated he has a copy of a quick analysis of what he did to show that if you are adding traffic to existing traffic you will make the existing traffic worse.

Mr. Wursta stated this should have been addressed, and it would have been fairly easy to address it. He stated he does not therefore find the nature of the Traffic Study to be valid with regard to the overall conditions.

Mr. Wursta stated he also based his opinions on things such as access and egress; and he feels strongly that anything of this size should have more than one full access either out to Campus Drive and exit across from Lindenhurst or a full access point on Route 332. He stated because of the fact that it is going to be a Hospital, they will have to reduce the queues to maintain and allow for emergency vehicle access at all times. He stated adding what they have talked about would undoubtedly cause him to take a look at what other types of improvements would be necessary.

Mr. Zamparelli stated St. Mary Hospital only has one access, and they seem to get by. Mr. Wursta stated the way hospitals develop in his experience is that hospitals grow. He stated at Doylestown, they had to add another driveway 200 feet from an existing driveway. Mr. Wursta stated if they have the opportunity they want to plan ahead.

Mr. Truelove stated he has additional questions, but given the time, he assumes they will continue this, and he could conclude with this Witness at the next meeting. Ms. Kirk stated they were setting aside the second meeting of every month specifically for Aria so at this point, the next meeting date would be February 21, 2012 with the time going back to 7:00 p.m.

Mr. Smolow stated he did not bring his calendar with him, but he does not feel he is available on that date. Ms. Kirk stated if this is an issue, Mr. Smolow should contact the other counsel to come up with a date. She stated the next date available would be March 20, 2012. Mr. Smolow confirmed that he was not available on February 21. Mr. VanLuvanee stated he feels they are going to have to find another date in February as he does not think it is fair to go two months before they meet again. Ms. Kirk asked that the attorneys coordinate additional dates that they are available and she will circulate these dates to the Board and see what dates are available at the Township to use the meeting room. Mr. VanLuvanee stated he has conflicts as well, but they had all agreed that they were going to meet every month at the Zoning Hearing Board's second meeting of the month. Ms. Kirk agreed that the Board made a standing rule when the matter came back on Remand that they would set aside the second meeting of each month for this matter.

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Mr. DosSantos moved, Mr. McCartney seconded and it was unanimously carried to adjourn the meeting at 10:05 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary