

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – FEBRUARY 28, 2012

A meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on February 28, 2012. Chairman Bamburak called the meeting to order at 7:05 p.m.

Those present:

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

Others: David Truelove, Township Solicitor
 Barbara Kirk, Zoning Hearing Board Solicitor
 Jeff Benedetto, Supervisor Liaison

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

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

Mr. Bamburak stated while he was not at the last meeting when this matter was discussed, he did watch it on the Township Website.

Ms. Kirk stated her office prepared a Master List of the Exhibits that were submitted during the initial Hearings as well as those that have been submitted since the Remand started, and all Counsel and Board members have been provided a copy of that list.

Mr. Truelove stated at the last meeting he and Mr. VanLuvanee were discussing the opinion of Mr. O'Brien with respect to the improvements, and he stated he would like to read into the Record Mr. O'Brien's testimony in this regard. Mr. Truelove noted the Transcript from the meeting held on 9/23/08 when Mr. O'Brien was being questioned by

Mr. VanLuvanee. Mr. Truelove read from Page 63, Line 3 as follows:

Mr. VanLuvanee: Mr. O'Brien, under the Zoning Ordinance if the improvements that you have highlighted on your Exhibit were made, would you tell the Board please what in your opinion the resulting traffic conditions would be with those improvements in place.

Mr. O'Brien: Sure. What I have right now is Figure 16, 2009 Future Levels of Service with development. Figure 16 summarizes the Levels of Service throughout the Study Area with the Hospital traffic as well as with the roadway improvements that we are proposing. Generally, the intersections will operate similar to or better than without the development conditions even with the Hospital and the proposed roadway improvements due to the additional capacity created by these roadway improvements.

Mr. Truelove stated he had made the statement that he recalled that there was an opinion that Mr. O'Brien had said that even with the Hospital development, the roadway improvements would actually improve the traffic conditions, and he believes that Testimony proves this.

Mr. VanLuvanee stated he feels Mr. O'Brien's exact words were "similar to or perhaps improved" which was why he Objected the last time. He agreed the Transcript speaks for itself.

Ms. Kirk stated the Board does have a copy of the Transcript and they can read it for themselves.

Mr. Truelove resumed his questioning of Mr. Wursta. Mr. Truelove asked if Mr. Wursta reviewed the applicable Special Exception provisions in the Lower Makefield Township Ordinance, and Mr. Wursta stated he did. Mr. Truelove asked if he specifically reviewed the traffic provisions, and Mr. Wursta stated he did. Mr. Truelove asked if those traffic provisions incorporate the Traffic Impact Study requirements of the Subdivision and Land Development Ordinance, Exhibit 3 – Traffic Impact Study Requirements; and Mr. Wursta stated they do. Mr. Truelove stated this was put into Evidence as Exhibit T-23.

Mr. Truelove asked Mr. Wursta if, in his professional opinion, the McMahon Study and subsequent testimony from O'Brien met the minimum requirements of the Traffic Impact Study requirements, and Mr. Wursta stated they did not. Mr. Wursta stated they did not follow the guidelines within the Traffic Study Ordinance for Lower Makefield Township. Mr. Truelove asked if he holds that opinion to a reasonable degree of professional certainty, and Mr. Wursta stated he does.

Mr. Truelove stated Mr. Wursta is also familiar with the 1/7/11 Remand Order from Judge Fritsch back to the Township; and Mr. Wursta stated he is familiar with it, but he does not have it right now. A copy was provided to Mr. Wursta by Mr. VanLuvanee.

Mr. Truelove asked Mr. Wursta based upon the information in the Remand, if in his professional opinion does the McMahon Study and testimony by Mr. O'Brien adequately consider and/or take into account the traffic impact created by the Newtown Township developments.

Mr. VanLuvanee Objected and stated there is no foundation for that question from this Witness. He stated this Witness has so far told them that the only thing he did was review other testimony and has offered no new evidence in these proceedings. He stated they are also concluding that there is an impact that has not adequately been considered. Mr. VanLuvanee stated the Remand Order does not reach that conclusion. He stated the conclusion will ultimately be left to the Zoning Hearing Board based on new evidence that they receive.

Mr. Truelove stated he feels he did lay the foundation through Mr. Wursta's testimony to reviewing information including the other McMahon Studies that did take into account Newtown Township Development, and it was information relied on for Newtown Township. Mr. Truelove stated he does agree that ultimately it will be Zoning Hearing Board's determination, but that is what expert Witnesses are here are to help the Board do.

Ms. Kirk asked that he re-word the question to the effect that upon consideration of the Remand Order, how if any was the McMahon Study deficient in considering proposed development in Newtown Township. Mr. Truelove agreed to adopt that question; however, Mr. VanLuvanee Objected to that question. He stated the opportunity was provided to present new evidence, not to form different conclusions; and Mr. Wursta has not really told them what he considered or whether he formed any conclusions. Mr. VanLuvanee stated Mr. Wursta has told them that he did not feel that the Study was done appropriately, but that is a different question than is being asked now.

Mr. Bamburak stated they understand that the Township wants them to consider the Traffic Study as deficient. He stated they would like to see some new numbers or a new study. Mr. Bamburak stated they are indicating that Mr. O'Brien did not consider Newtown Township, and he asked Mr. Truelove if they have a Study showing numbers of contributing Newtown Township traffic.

Mr. Truelove stated it is the Applicant's burden to carry forward on this. He stated they have also demonstrated that there are several developments in the area that were not considered that have impact; and while they may not be quantified, it is not the Township's burden to go forward on that. He stated they do need a professional opinion

to make that statement. He stated the Applicant chose not to present any additional evidence with respect to this; and it is his position that the Township does not have to present new evidence, although they can say based upon their professional opinion through an expert, that information had it been considered would have demonstrated that they would be more of an impact that renders the McMahan Study not credible. He stated this is all that the Township has to do.

Mr. Bamburak asked Ms. Kirk if this is correct, and that the Township does not have to present any new information, and that all they have to do is keep attacking the McMahan Study. Mr. Bamburak stated there is a standing Objection from Mr. VanLuvanee; and Mr. Bamburak stated he understands Mr. VanLuvanee's Objection.

Ms. Kirk stated the Order stated that the Zoning Hearing Board is entitled to take additional evidence with respect to the impact of the proposed Hospital traffic volume and congestion in consideration of the pending Newtown Township development as well as the Scudders Falls Bridge Project and the other items in the Judge's ruling. Ms. Kirk stated generally it is the Applicants' burden of proof to provide that evidence to show that the proposed Hospital meets those requirements. She stated the Applicant has chosen at this point in time not to present any additional testimony; therefore, it is the Board's discretion if they want to hear the additional information or evidence from the Township and other Parties opposing the Application.

Mr. VanLuvanee stated he respectfully disagrees with Ms. Kirk. Mr. VanLuvanee stated he did not make an Application to supplement the Record; and this was made by the Township and by RAFR. Mr. VanLuvanee stated the Zoning Hearing Board has already concluded in its prior Decision that the traffic improvements that are proposed to be made by Aria, and which were made as a Condition of the Conditional Use Approval, would in fact mitigate the impact of the Hospital on the surrounding road network. Mr. VanLuvanee stated that Finding has not been reversed by the Court. He stated the Court's Order was not based on the fact that they concluded that the Zoning Hearing Board erred or used its discretion; and it was rendered simply because the Township and RAFR alleged that they had been deprived of an opportunity to cross examine his Witnesses on matters which they believed to be important. He stated the Court gave them an opportunity to present Evidence to the Board on these issues. He stated it did not direct him to present any Evidence on any issues. He stated the Board had already rendered a Decision Granting the Conditional Use subject to Conditions.

Mr. VanLuvanee stated the burden is not on him to supplement the Record or on the Board to reverse their Findings. He stated it is up to someone who made the Application to supplement the Record to convince the Board that their prior Decision for some reason should be changed or modified, or some of the Findings of Fact should be changed or modified based on new Evidence.

Mr. VanLuvanee stated so far all the Board has heard is a second traffic engineer giving an opinion already given by the first traffic engineer for the Township that there were deficiencies in the McMahon Study. Mr. VanLuvanee stated the Board members at the time who heard that first Application spent three or four nights listening to Mr. Angelastro try to convince the Board of the same thing; and when it was all over the Board made the Finding of Fact that what the Applicant was proposing would mitigate the impact. He stated there is no burden on the Applicant to present Evidence because the Board has not decided anything; and their Decision still stands unless and until as a result of whatever Evidence is presented in these Hearings, the Zoning Hearing Board chooses to take another look at the Findings and perhaps supplement the Findings, or modify them with some respect to any of the issues. He stated it is not his burden to go forward.

Mr. Truelove stated because the Remand Order allowed them to pursue areas which they were not allowed to pursue last time, it was determined that the Applicant did not have its Witness look at any other information even though clearly the Record was deficient that way. He stated it is not for the Township to be in the position to have a Traffic engineer put other information out there, when the Applicant still has the burden to supply. He stated now that they do not have additional information from them as to what they relied on, the Township's expert can say with that information that was not reviewed, the Court said should have been reviewed, and the Study is still deficient.

Mr. VanLuvanee stated the Court did not say it should have been reviewed. He stated what the Court said was perhaps this information is important; and if the Township has information they can present it to the Board. Mr. Bamburak agreed.

Mr. Smolow stated RAFR's position is the Township question of this Witness on the topic of the impact of development in Newtown Township is proper under the Court's Order of 1/7; and it specifically directed the Zoning Hearing Board to make supplementation of the Record as to the following subject matter: "Paragraph 1 of the Court's Order – the impact of the proposed Aria Hospital Medical Office Building traffic volume and congestion taking into consideration the anticipated traffic from pending Newtown Township Developments." Mr. Smolow stated the Township has the right to ask this Witness his opinion regarding that topic.

Ms. DosSantos asked Mr. Wursta if he has independently done any Studies regarding the Newtown Township developments, and Mr. Wursta stated they did some analysis; and he did previously testify as to the impact of an example of development in Newtown that would impact the intersection. He stated this was Tudor Square, and he gave an analogy of what the traffic would do there as well as Lockheed Martin. He stated the same could be said for the Scudders Falls side on the east side. He stated adding traffic to any condition will make it worse, and exacerbate it.

Mr. Wursta stated he brought with him this evening a copy of that analysis which takes the McMahon Study and adds Newtown traffic and shows a degradation, therefore an impact. He stated as an example, it could be done to any degree they like – a big Traffic Study or a simple analysis.

Mr. DosSantos stated the examples given – Tudor Square and Lockheed Martin, are existing developments, and the Court's Order of 1/7 discussed pending Newtown Township development; and he asked if Mr. Wursta has taken into account any pending Newtown Township development in preparation for the opinions that he is giving. Mr. Wursta stated he went back to the time of the Application, and they were pending at that time and were not take into account. He stated he used the volumes from 2007 and added Tudor Square and Lockheed traffic which were pending at the time, and he compared the volumes without those developments with the developments that were pending at the time, and added that traffic to show an impact. Mr. DosSantos stated the Court Order is dated 1/7//1 and discussed pending development, and he would read it to be pending development as of 1/7/11. Mr. Wursta stated any pending development even today within Newtown Township, specifically within the proximity of this site, will have an impact; and whether it is a point in time that he did based upon the original Study or now, the result is the same which is that there is impact. He stated the only issue would be where is the analysis to show how much of an impact.

Mr. Bamburak asked Mr. Wursta is he showed the Board any calculations, and Mr. Wursta stated he did not because they never got that far. He stated he spoke specifically about certain developments within Newtown as an example. He stated he does have a copy of the information he could hand out. Mr. Bamburak stated they would like to see some numbers.

Mr. Truelove stated with regard to the date of the Court Order, the McMahon Study was done in 2007 and 2008; and their position would be that “pending” would be from that point forward.

Mr. VanLuvanee stated he feels it should “pending” at the time the Board made its Decision. Mr. Bamburak stated he recalls Mr. VanLuvanee's initial Objection regarding this. Mr. VanLuvanee stated Mr. O'Brien told the Board that he did not change his opinion at the time. Mr. VanLuvanee stated he has not offered any direct testimony, and he Objected every time there was an effort to introduce issues that were past the date of the Board's Decision. He stated they had a lengthy discussion about this at the last Hearing when they were trying to ask Mr. O'Brien about events that he had not considered. He stated at the last cross-examination, Mr. Smolow was asking questions of Mr. O'Brien whether he considered items that happened two years after he had done his Study.

Mr. Koopman, on behalf of Newtown Township, stated he agrees with the position of Mr. Truelove and Mr. Smolow that the question is a proper question. He stated it may be a follow-up to earlier questions from Mr. Truelove. He stated he feels they will get through the Hearing in a much more expeditious fashion if they err on the side of allowing questions, and they can then dispense with a lot of this argument and get the Hearing done. He also stated he does not know if the Board is going to hear new evidence or new numbers that will tell the Board that there will be an adverse effect on traffic, but he feels the Board is under the misapprehension that they need to have that type of evidence before them to reconsider its Decision, and he does not feel this is accurate.

Mr. Koopman stated he feels the purpose of the Remand was because the Township, RAFR, and Newtown did not have the opportunity to cross-examine a Witness on behalf of the Applicant. He stated the Applicant has the burden of proof. He stated he feels the Board may, at some point in time, evaluate whether what they are hearing from these Witnesses is strong enough to convince the Board that the Study that was done by the Applicant is defective to the point where it does not meet the Applicant's proof. He stated the Applicant has the burden of proving that there is no adverse effect upon traffic and other factors as set forth in the Ordinance. Mr. Koopman stated he feels that what they have heard to date raises serious questions as to whether they have met that burden, and this is where the Board may have to do some analysis once they have heard all the Testimony; and if the Testimony bears on this, he feels the Board should hear it.

Mr. VanLuvanee stated that Testimony was already given and both RAFR and Newtown Township had the opportunity to present traffic engineers. He stated Mr. Truelove did present a traffic engineer who had made a calculated decision not to do any independent studies, and he recalls that they spent three Hearings hearing his Testimony.

Mr. VanLuvanee stated the Township's engineer told them the same things about the McMahon Study that they have heard today; and he talked about the fact that Newtown Township traffic should have been considered, and the Board accepted evidence with regard to what those developments were. He stated the problem was that the Township never submitted a conclusion, and they never gave the Board any numbers. He stated they never presented any Evidence that indicated what Frankford was proposing would not in fact mitigate the impact of the Hospital and the Office Building developments. He stated in the Board's Findings of Fact they concluded that would. He stated the Township and RAFR had the opportunity to present independent Traffic Studies, and neither of them chose to do that.

Mr. Truelove stated they were not allowed to go there with regard to Newtown Township and the Scudders Falls Bridge Project. Mr. VanLuvanee stated they have Evidence in the Record, but they never offered a traffic engineer to take that Evidence and go anywhere with it. He stated all of the Development Evidence is in the Record.

Ms. Kirk stated based on her review of the Record, there was substantial Testimony about the developments in Newtown Township, and she believes Mr. O'Brien was cross-examined and indicated in that Testimony that he did not contact anyone from Newtown Township to discuss those pending Developments and the impact of traffic. Ms. Kirk stated the Board's position is that they have already heard Mr. O'Brien indicated that he did not contact Newtown Township. She stated they are looking for new Evidence to supplement the Record showing how Newtown Township's pending development will be effected by the proposed Hospital facility.

Mr. Truelove stated this is why he put into the Record the prior McMahon Study because it indicates that in other Studies in areas smaller than this, McMahon looked at Newtown Township development; and this was an important part of their analysis which they completely ignored.

Mr. VanLuvanee stated this Newtown Township development was outside of the scope of the Lower Makefield Township Ordinance. Mr. VanLuvanee stated Mr. Truelove put T-15 and T-16 into the Record at the original Hearings, which was the map of development and a list of developments in Newtown Township. He stated the traffic engineer did not take that Evidence and do anything with it which would have been logical. Mr. VanLuvanee stated Mr. O'Brien as the right to express his opinion. He stated the Court has not said Mr. O'Brien was wrong.

Mr. Bamburak stated there is a standing Objection, and Ms. Kirk stated it was whether Mr. Wursta reviewed Mr. O'Brien's Traffic Study and what deficiencies if any did he determine there were in that Study based upon Newtown Township pending development. She stated this question prompted Mr. VanLuvanee's Objection that these on the basis that this should have been asked before or there should have been independent Traffic Studies presented.

Mr. Bamburak stated the Board would like to get date, and if Mr. Wursta has numbers available there would like to have this. He stated the Objection is overruled.

A short recess was taken at this time in order for copies of Mr. Wursta's information to be made. The meeting was reconvened at 7:45 p.m.

Mr. Truelove marked as Exhibit T-24 – a four-page document - which are comparisons and calculations that Mr. Wursta has referred to in his Testimony, and Mr. Wursta will explain how he came to these conclusions.

Mr. Wursta stated it was not their intention to do a full Traffic Study from the Lower Makefield perspective, and they were just going to provide an analysis to prove the point that there is an impact.

Mr. Wursta noted the top sheet which is a Summary Sheet. He stated the top section indicates “McMahon Study,” the second is a reproduced analysis called the “Reproduced Synchro” which is the traffic engineering software used to come up with the numbers, and the last is “Revised With New Volumes.” Mr. Wursta stated they compared the McMahon Study, the reproduction of what he did with the McMahon numbers, and the new volumes accounting for Tudor Square and Lockheed Martin numbers he had testified to earlier.

Mr. Wursta stated the sheets after that are the actual data sheets, the first one from the McMahon Study, the second from the Reproduced Study, and the third one is with the new volumes.

Mr. Wursta noted specifically the westbound side which are traffic volumes in the through direction is 1,752 cars westbound, and the delay is 49.1 seconds which is a Level of Service D. He stated when they reproduced those numbers they came up with 59.2 second delay which is a Level of Service E. He stated this is a change in delay of 10.1 seconds. He stated they do not have the specific reason why there was a change; however, they took those numbers and added volume from the Newtown developments and determined that it was now a 71.6 second delay which a Level of Service E; and the change in delay was 12.4 seconds. He stated it went from an E at 59 seconds of delay to an E of 71.6 seconds of delay.

Mr. Bamburak stated the McMahon Study had used some numbers and put them into the models provided by Synchro; and he asked Mr. Wursta if he used the same data for his model, and Mr. Wursta stated he did. Mr. Bamburak asked Mr. Wursta if he knows why his newer numbers were worse. Mr. Wursta stated there are variables within Synchro, but they did not get to that level of analysis. He stated assuming the middle section is accurate, adding Newtown traffic still shows a change in delay. He stated if you use the McMahon Study and the new numbers at the bottom, it is a big change in delay; and if you use Mr. Wursta’s new analysis with the McMahon numbers, it is a smaller change in delay. Mr. Wursta stated they did this analysis very quickly to show an impact of the Newtown Development so no matter what numbers they used, adding the Newtown volume shows a decrease in Level of Service and an increase in delay. Mr. Wursta stated when you add traffic, it will add delay. Mr. Wursta stated when you are determining mitigation of improvements, you add all this extra volume in to determine

what the worst case is going to be and see how you can mitigate it. He stated if the numbers are light, you are not going to provide the recommended improvement you would need to provide because your numbers are light. He stated this is the sole issue with regard to the Scudders Falls traffic and the Newtown traffic.

Mr. DosSantos asked Mr. Wursta when he did his analysis, and Mr. Wursta stated he did it just before the last Hearing.

Mr. Bamburak noted the westbound through number was 1752 in the McMahan Study and the Reproduced Synchro and then 1760 with the new volumes so it appears that this would only be eight more cars in an hour but it changed it from a Level of Service D to a Level of Service E, and Mr. Wursta stated it was eight cars through, five more in the left turn lane, and two more for eastbound right turns. Mr. Wursta stated the issue of traffic volume is not just the eight more cars westbound, and there are cars that are changing traffic volumes in all the movements so the traffic signal has to account for that as well. He stated eastbound there were 40 cars added, westbound 13, and 31 northbound, and collectively they all have an impact. He stated if you add green time to the side street it takes away from the main street and increases the delay. He stated if there were only eight cars, it would not make that much of a difference.

Mr. DosSantos asked if the middle section where he reproduced Synchro, was it the same software that McMahan used, and Mr. Wursta stated it was. He stated there are generally some variables that they might have looked at differently, but he has not had an opportunity to see what this was specifically. He stated they took the McMahan numbers to verify them, and came up with something different; therefore they decided that they had to show all three so that the impact could be seen.

Mr. Bamburak asked Mr. Wursta if he personally ran the simulations, and Mr. Wursta stated he did not.

Ms. Kirk stated the adjustment for the Reproduced Synchro could be the result of adjustments that maybe McMahan did that Mr. Wursta did not do and vice versa, and Mr. Wursta stated it could be anything including the percent of heavy vehicles and he could have used 3% when McMahan used 2% or any number of other variables that would result in this difference.

Mr. DosSantos asked if there is a way to run it with the exact same set of numbers that McMahon used, and Mr. Wursta stated if they did that they would show the exact same percent change in delay once they add the numbers. He stated there is no way they will show the same Levels of Service or delay when you add traffic. Mr. Wursta stated they are not saying that there was any “fudging” of numbers by McMahon. Mr. Wursta stated this is an example of what happens by adding just two developments. He stated this does not include the Scudders Falls traffic or other Lower Makefield and Newtown traffic, and they feel all that should have been taken into account to provide for the proper background; and then when the development traffic is added from the Hospital, it would show you what then should be mitigated to get the Levels of Service to a tolerable level. Mr. DosSantos asked the location of Tudor Square, and Mr. Wursta stated it is on Newtown-Yardley Road across the street from Roberts Nursery.

Ms. Kirk stated looking at the numbers provided, she is only seeing a difference in the Level of Service westbound through traffic where it goes from a D to an E, and everything else appears to be exactly the same Level of Service as indicated by the McMahon Study, and Mr. Wursta agreed. Mr. Wursta stated the software optimizes traffic signal timing. Mr. Wursta stated there are different levels of Level of Service E. It stated it is a range in delay, but everything is a degradation. He stated you can have a minute of delay or a minute and ten seconds; and while it is still a Level of Service E, it is still an increase in delay.

Mr. Bamburak stated the only change was the westbound through movement, and Mr. Wursta agreed.

Mr. Truelove stated Mr. Wursta indicated he only looked at two Newtown Township developments for this analysis, and Mr. Wursta agreed. Mr. Truelove stated the change in delay for the westbound through traffic was 12.4 seconds over and above the reproduced Synchro, and Mr. Wursta agreed. Mr. Truelove stated it is actually 22.5 seconds more delay than the McMahon Study. Mr. Wursta stated while this is correct, that is “apples to oranges.” He stated the middle one and the bottom one are “apples to apples.” He stated the fair way is to compare the middle one to the bottom one.

Mr. Truelove asked if there were more Newtown Township developments added, would Mr. Wursta expect that there would be more delay; and Mr. Wursta stated he would and the 71.6 number would be higher.

Mr. Bamburak stated everyone would agree that if you add more traffic, you are going to have delay; but they wanted to know the magnitude of the changes. He stated if he has to wait two more seconds at the stop light, it is not a big deal; but if he has to wait two more minutes at the stop light, this is a big deal.

Mr. Truelove asked if the McMahon Study was deficient by not taking this information into account, and Mr. Wursta stated it was. Mr. Truelove asked if the McMahon Study was deficient by not taking into account the Scudders Falls information, and Mr. Wursta stated it was.

Mr. Bamburak stated Mr. Wursta came up with this analysis for Tudor Square and Lockheed which were quantifiable numbers, and he asked about the Scudders Falls Bridge numbers. Mr. Wursta stated those numbers were quantified in the Scudders Falls Study that showed an extra volume of cars using the I-95 Ramps on 332, but he did not do this analysis. He stated they were just showing that there is a quantifiable impact of adding traffic from Newtown Township, and you could make the same conclusion out of adding traffic from the Scudders Falls Bridge project or any other development. He stated this is important because if you add all this traffic, you would really need a double left-hand turn lane or a double right-hand turn lane, an extra arrow, etc.

Mr. DosSantos stated based on what Mr. Wursta submitted, it was really only the westbound that would be impacted, and Mr. Wursta agreed based on this analysis.

Mr. Smolow noted Exhibit T-24 and asked what intersection was used, and Mr. Wursta stated it was the Newtown By-Pass and Lindenhurst Road. Mr. Smolow asked if Mr. Wursta did a similar study for Newtown By-Pass and Stony Hill Road; and Mr. Wursta stated he did not, and this was the only one he did. Mr. Smolow asked what hour of day does the Study represent; and Mr. Wursta stated it was the weekday, p.m. peak hour, and they used the McMahon data and volumes. Mr. Smolow asked if they used McMahon's existing data or their projected data for what the traffic would look like assuming the Hospital and Medical Office Building were developed with the improvements proposed by Aria, and Mr. Wursta stated it was the latter – 2009 with the development and the improvements proposed by Aria.

Mr. Smolow stated Mr. Wursta was asked some questions about the variables and whether it would be possible to reproduce the information McMahon report; and Mr. Wursta had indicated that if he had used the same variables as McMahon, he would come up with the same number, and Mr. Wursta agreed. Mr. Smolow asked if the reason why Mr. Wursta had some different numbers in the Reproduced Synchro analysis was because his office who did this plugged in some different variables, and Mr. Wursta stated he did not state this, and he had stated he did not know why.

Mr. Bamburak stated all the variables are there, and Mr. Wursta stated there is more than one page of this; and he only made the front page copy. Mr. Wursta stated he did not take the time to look at where the differences were. Mr. Bamburak stated he would think that for something that is so high profile, they would have taken the time to put in the right numbers. Mr. Smolow stated he feels it is a matter of discretion what variables should be entered in the Synchro analysis, and Mr. Wursta stated it depends on what the variables are that you put into the program. He stated it could be a matter of discretion or a matter of actual calculations and data or any number of things.

Mr. Smolow stated the difference that Mr. Wursta has shown only takes into consideration two of what were pending development at the time, and Mr. Wursta agreed. Mr. Smolow stated he did not consider the additional traffic generated by the proposed Scudders Falls Bridge project, and Mr. Wursta stated he did not.

Mr. Smolow asked Mr. Wursta if he considered the undercount or the issue of additional traffic coming off of the right turn movement off the I-95 ramp that seemed to be present when the Delaware Valley Regional Planning Commission did their Study and when McMahan did their 2009 report; and Mr. Wursta stated as he stated earlier he used the McMahan numbers directly from the report. Mr. Smolow asked if the typical traffic coming off of the I-95 ramp heading west on 332 were 300 vehicles higher than reported by McMahan in the 2008 Study, hypothetically speaking, would that have an impact on his analysis. Mr. Wursta stated if those 300 vehicles were coming off the ramp and were not accounted for at the downstream intersections, it would have an impact and make the delay worse.

Mr. Smolow stated he understands it is Mr. Wursta's opinion that McMahan should have included at least a reference to the Scudders Falls Bridge improvements in its 2008 report, and Mr. Wursta agreed.

Mr. Smolow asked what the relationship is between the present traffic volume on a road segment in relation to the future project volume on a road segment, and asked if when he goes out to take a traffic count to determine the existing road conditions and traffic volume, is that information important in determining the future impact of a development, and Mr. Wursta agreed. Mr. Smolow stated if there is a higher volume of traffic today, that will increase the traffic tomorrow in a future study. Mr. Wursta stated he did not understand Mr. Smolow's question. Mr. Smolow stated he wants to know if all things being equal, if two people measure the existing traffic conditions and one person's measurement is accurate and that count is higher than the inaccurate count, that would influence the future projected traffic at that location, and Mr. Wursta agreed.

Mr. Bamburak stated they understand that Mr. Smolow is trying to indicate that it will get worse if they add more traffic. Mr. Smolow stated he is trying to make a Record.

Mr. Smolow asked Mr. Wursta if he examined the data in the McMahon 2008 Traffic Study, and Mr. Wursta stated he did. Mr. Smolow stated at the last Hearing, they were looking at that data and according to the McMahon Study there were 548 vehicles making a right-hand turn on I-95 during the weekday peak hour; and Mr. Wursta stated he testified to that discrepancy previously. Mr. Smolow stated the Delaware Valley Planning Commission Study had a volume in the 900 range as the typical volume, and Mr. Wursta agreed. Mr. Smolow stated in the 2009 McMahon Study, they also had a much higher number at that location for that same traffic movement, and Mr. Wursta agreed.

Mr. Smolow stated Mr. DosSantos had suggested that the 548 was reported in the McMahon Study in December 19, 2007, and Mr. Wursta stated he did not recall Mr. DosSantos discussing this. Mr. Smolow noted the 2008 McMahon Study and the data used in that study and where the 548 number comes from.

Mr. Smolow marked as RAFR-7 which is a compilation of data. He stated these are data sheets from the McMahon 2008 Traffic Study with a cover sheet and a data sheet dated 12/12/07.

Mr. VanLuvanee stated he Objects to this line of question as it is beyond the scope of Mr. Truelove's direct examination of this Witness.

Mr. Bamburak allowed Mr. Smolow to ask his question, and Mr. Smolow noted the second data sheet and asked Mr. Wursta if he recognizes this as the data sheet that McMahon showed in its report for 12/19/07 for the I-95 southbound off ramp, and Mr. Wursta agreed it is. Mr. Smolow noted the upper left hand corner has a column I-95 southbound off ramp which is for the peak hour for the intersection beginning at 5:00 p.m.. Mr. Smolow stated in the third column of data it shows there was, according to McMahon, a total volume of 548 vehicles making a right-hand turn, and Mr. Wursta agreed. Mr. Smolow stated this number also appears in the middle of the chart above the word "peak" in the center of the page, and Mr. Wursta agreed. Mr. Smolow stated there is another set of data on the right-hand side and it shows that the through data going west on 332 at that location was 1,134 vehicles, and Mr. Wursta agreed. Mr. Smolow stated if you add this together you would come up with a number representing the traffic westbound at that intersection, and Mr. Wursta agreed. Mr. Smolow stated this would be 1,682 vehicles that would be heading west from that intersection, and Mr. Wursta agreed. Mr. Smolow stated this is according to McMahon's data on 12/19, and Mr. Wursta agreed.

Mr. Wursta noted the data sheet before it in this Exhibit which is a data sheet according to McMahon's Report that was taken on 12/12/07, and Mr. Wursta agreed. Mr. Smolow stated this is one week apart, and Mr. Wursta agreed. Mr. Smolow stated the peak hour on this data sheet begins at 4:30 p.m., and Mr. Wursta agreed. Mr. Smolow stated this is the westbound traffic at the intersection of Stony Hill Road and 332, and Mr. Wursta agreed. Mr. Smolow stated this is the first intersection west of the southbound ramp, and Mr. Wursta agreed. Mr. Smolow stated this is one week before the other data as this is 12/12, and the other date was 12/19, and Mr. Wursta agreed. Mr. Smolow stated on this data sheet, on the third data column from the left in the upper corner, it shows the total number of vehicles traveling west, and Mr. Wursta agreed. Mr. Smolow stated the number there is 1,682, and Mr. Wursta agreed. Mr. Smolow stated that number also appears in the center drawing area showing the data traveling west on 332 coming from Newtown-Yardley Road, and Mr. Smolow stated this is the exact same number that appeared the week before; and Mr. Wursta agreed. Mr. Smolow stated this was one week apart, and it is a slightly different peak hour, but McMahon found that there were exactly, to the vehicle, the same number of cars traveling westbound. Mr. Smolow stated this is all premised on the assumption that on 12/19 there were 548 cars making a right-hand turn, and Mr. Wursta agreed.

Mr. Smolow asked Mr. Wursta to explain how a week apart with different hours of measurement, the traffic engineer who took this data came up with exactly the same number of cars traveling at that intersection. Mr. DosSantos stated that is not a proper question for this Witness. Mr. Bamburak stated that was the count. Mr. Smolow asked Mr. Wursta if he finds this peculiar. Mr. Wursta stated while it is odd, he does not feel there was any "hanky-panky" with the numbers, and he would see this as a coincidence. He stated it does not minimize what he previously testified to that he feels there was probably a miscalculation or some event that caused the right-hand turn volume from I-95 to be drastically different than the other three Studies. Mr. Smolow asked Mr. Wursta if he would agree with him that this is odd, and Mr. Wursta agreed.

Mr. Smolow asked if the number of vehicles coming off the I-95 ramp according to McMahon was assuming 300 vehicles less than what would be typical for that intersection during the weekday p.m. peak hour, would influence the traffic counts for traffic going west on 332; and Mr. Wursta stated it would be 300 less. Mr. Smolow stated not only would there be an undercount at the I-95 ramp but there would be an approximately 300 undercount at the Stony Hill intersection, and Mr. Wursta stated that was counted separately. Mr. Smolow stated the numbers add up. Mr. Wursta stated it was his determination that was most likely a coincidence. Mr. Smolow stated those numbers would also be undercounted by 300.

Mr. VanLuvanee Objected. He stated the Witness has already given his answers to these questions. Mr. Bamburak agreed and stated these are the counts, and the number just happen to be that.

Mr. Smolow asked if the undercount would also influence the traffic counts at the other intersections west of I-95.

Mr. VanLuvanee Objected to the form of the question and he stated he feels the question would be assuming there was in fact an undercount, would it have an impact.

Mr. Smolow stated assuming there was an undercount at the I-95 ramp of approximately 300 vehicles heading west, would that influence the count at the Stony Hill intersection, and Mr. Wursta stated that question cannot be answered without some parameters associated with it. He stated they were not at the same time of day or on the same day, and they were not in the same week. He stated at the same time during the same day, the right turns from I-95 do go down to Stony Hill Road; but otherwise, they counted Stony Hill Road separately. He stated those numbers in general traffic engineering stand by themselves. He stated the issue is that sometimes when there is a volume that does not make sense, it should be looked at and perhaps re-adjusted based on verifying counts etc. He stated he feels there could have been an event or any number of things that made that number lower. He stated the issue is that they did not catch it.

Mr. Smolow asked if they caught it, is it Mr. Wursta's opinion, that they should have done a re-count; and Mr. Wursta stated he feels they should have verified it, and they could have done any number of things. He stated they could have found that there was an accident on the Scudders Falls Bridge that messed up traffic, and they could have done a lot of different things. He stated he is simply pointing out that it was not addressed based upon the historical data.

Mr. DosSantos asked Mr. Wursta if he, in his experience, sees under counts as part of traffic studies; and Mr. Wursta stated he does. Mr. DosSantos asked when they find this, is it common practice to then do some due diligence to find out why those numbers were off, and Mr. Wursta stated it is.

Mr. DosSantos stated Mr. Smolow had asked Mr. Wursta about Stony Hill Road, and he stated he understands Mr. Wursta did not prepare any data or analysis sheets for Stony Hill Road, but asked if he looked at any of the numbers for Stony Hill Road. Mr. Wursta stated they looked at the numbers as part of the Studies, but they did not look at them like they did when they found the issue of the right-hand turn at I-95. He stated what they were trying to do, and the reason they did not do more regarding this was, was they were trying to provide the point that due diligence was not exercised with regard to these volumes at the intersection with I-95 as well as the issue of the growth in traffic with Scudders Falls Bridge and Newtown. He stated they could have spent the Township's money and re-done a Traffic Study knowing what they know after the fact and added all of these in together to come up with their own Study, but they did not feel the burden of

proof was on them, and they were just trying to show that there were some errors, miscalculations, or deviance between the Studies that should have been addressed to properly show mitigation measures for the roadway network as it relates to the Hospital.

Mr. DosSantos asked Mr. Wursta if his analysis found any issues or problems with the intersection of the By-Pass and Stony Hill Road with the numbers that were provided by McMahon, and Mr. Wursta stated one of the issues they saw from a calibration perspective that they testified to was the queue lengths. Mr. Wursta stated they had significant queue lengths, and they were shown in the McMahon data sheets as much lower than what was out there. He stated this is similar to the issue of an undercount; and when something like this happens, you have to go back and look at this and try to determine why the data points in the computer analysis are not showing what is out there in the real world. He stated he is not saying they are right or wrong as they could have counted something less on one day than what he saw. He stated he cannot answer as to why, and there could have been an event such as the Light Show, etc.

Mr. Bamburak stated he has seen traffic-counting devices which are basically rubber hoses that go across the road, and he asked why the traffic engineers do not set these up and leave them up for two weeks and count everything that goes over it. He stated he feels they could measure it a lot better with one of these automated devices. Mr. Wursta stated the reason they do not do this at intersections is because you have to do turning movements. Mr. Bamburak asked if they could not have put it across the southbound exit ramp, and Mr. Wursta stated they could. Mr. Bamburak stated if they did this, they would then have real numbers.

Mr. Smolow stated the Zoning Hearing Board has the right to do this and engage someone to do this.

Mr. Wursta stated depending on the circumstances, you can go to that expense to do something and verify the counts. He stated on the I-95 ramp, they could have easily put a counting tube across the ramp as a supplement to the manual counts that are done at the intersection and compare the two. Mr. Wursta stated this is done frequently because a lot of Traffic Study Ordinances require average daily traffic counts. He stated when this is required, they frequently put a tube down that is down for a week or two; and it collects a lot of information including speed, vehicle classifications, etc. Mr. Wursta stated they would use those types of counts; and if the manual count is off, they would then determine what is happening. He stated this does not happen in every occasion, and the people who do their traffic studies are trained in traffic studies and get paid based upon the accuracy of their counts. Mr. Wursta stated for most intersections in Bucks County, especially signalized intersections, there is traffic count data that is historical in nature; and you can go back and see trends and make sure that the numbers are not “out of whack,” and if they are, you try to find out the reason why.

Mr. Bamburak stated a lot of these Applications rest on traffic counts; and the Board of Supervisors may want to consider this when they review the Ordinances, and see if something could be done so they are doing a better job.

Mr. Zamparelli stated if there was a count done with such a device for two weeks, they would have good data to compare.

Mr. Koopman noted Exhibit T-24 and stated he understands that Mr. Wursta was discussing that for the westbound through, there was a difference in Level of Service from D to E; and Mr. Wursta agreed. Mr. Koopman stated what this is showing is a degradation in Level of Service with the development and even with the mitigation proposed in the McMahan Study. Mr. Wursta stated while this is correct, the comparison should be between the Level of Service E in the middle section and the Level of Service E in the bottom section and not with the D in the top section. Mr. Koopman stated what has been shown is even with the proposed mitigation improvements that McMahan has suggested, you still have a degradation in the Level of Service, and Mr. Wursta agreed. Mr. Koopman asked Mr. Wursta if he is suggesting that additional improvements to this intersection are necessary in order to mitigate the adverse effect upon Level of Service; and Mr. Wursta stated that is the reason they feel that those other developments in Newtown and Scudders Falls should have been added to properly assess that mitigation, and he cannot answer that question as far as the specifics because they did not do that complete analysis. He stated he does feel that if you add traffic, it is going to increase your mitigation measures.

A short recess was taken at this time.

When the meeting was reconvened, Mr. McCarthy asked about the intersection delay being graded a Level of Service D, and he asked for an example of what this means and if there are similar intersections in Bucks County that are at Level of Service D. Mr. Wursta stated the average delay is about one minute. He stated if you are sitting in a queue of cars and you do not get through an intersection on the first green light, that would be a Level of Service D. He stated many intersections in Bucks County are 90 second cycle lengths. He stated the other rule of thumb they use is that most people are happy if they get through on that green light no matter what the line of traffic is, and this is what they strive for.

Mr. McCarthy asked the Level of Service currently at that intersection, and Mr. Wursta stated currently at Lindenhurst and the By-Pass weekday morning eastbound it is a Level of Service F, and westbound left into Lockheed it is a Level of Service E. Mr. Wursta stated at Lindenhurst Road during the afternoon peak hour eastbound through is a Level of Service F and westbound through is an F with a delay of 100 seconds eastbound and 82 seconds delay westbound. Mr. McCarthy stated Mr. Wursta is indicating that

currently they are Levels of Service E and F, and with the new proposed traffic they would be better. Mr. Wursta stated they would generally be the same with a little less delay adding one lane of traffic in a double-left turn lane. Mr. Wursta stated he has indicated that the mitigation associated with that may not be accurate because they did not take into account all the traffic volume they needed to.

Mr. McCarthy stated even with Mr. Wursta's westbound numbers, it is saying that overall it will be a Level of Service E which it is currently. Mr. Wursta stated they indicated that it would be a Level of Service E only taking into account two Newtown developments; and they did not count everything. Mr. McCarthy asked Mr. Wursta why he did not consider everything if they were trying to drive the point of the negative impact on the Level of Service. Mr. Wursta stated they did not feel it was their burden to show anything other than there was an impact, and they did not have to show the degree. He stated generally this burden is on the Applicant to show what their impact is, and his was only of a reviewing nature. He stated Traffic Studies are expensive, and they did not feel they were in the position to spend Lower Makefield dollars on this.

Mr. Gruen stated Mr. Wursta based all his information on the McMahan Study, and he asked if, in his professional opinion, he feels they got enough data and information to come to the conclusion that they came to or should they have taken more days and not just a few hours here and there. He asked Mr. Wursta if he would have done a little more detailed Study to come to the right conclusion.

Mr. VanLuvanee Objected to the question for the Record because the Study was done in accordance with what Lower Makefield requires. He stated whether or not Mr. Wursta would have decided to do something different or whether the Ordinance was written differently is a different issue.

Mr. Wursta was allowed to answer the questions, and he stated he would have.

Mr. VanLuvanee noted Exhibit T-24 looking down the second page which shows Synchro 7 Report Page 14, in the middle of the page, third out of the five sections it reads, "Actuated Green" and "Effective Green;" and there are numbers in the westbound column of 4.8, 51.6, and 68.6. Mr. VanLuvanee noted the third page which is the second Synchro analysis which Mr. Wursta did and in those same columns he sees an effective green of 4.8, 51.6, and 68.6; and Mr. Wursta agreed. Mr. VanLuvanee noted the page for 2009 with Development with revised volumes and the same columns show 4.8, now 50.2 instead of 51.6, and 67.2 instead of 68.6, and Mr. Wursta agreed. Mr. VanLuvanee stated this is at least one variable, and Mr. Wursta agreed. Mr. VanLuvanee stated the signal timing changed and he assumed a change in signal timing when he added the Newtown Township traffic; and Mr. Wursta stated he either assumed or optimized.

Mr. VanLuvanee stated there is a change, and Mr. Wursta agreed. Mr. VanLuvanee stated signal timing does obviously have an effect on delay, and either mitigates it or increases it, and Mr. Wursta agreed. Mr. VanLuvanee stated Mr. Wursta cannot tell today how that change impacted the increase in delay that he has projected on the westbound through traffic.

Mr. VanLuvanee stated when Mr. Wursta started his Direct Testimony at the last Hearing, he stated he had heard the Testimony of Mr. O'Brien, and had reviewed the Testimony from the earlier proceedings, as well as reports and other information related to the proposed Hospital traffic and transportation issues. Mr. VanLuvanee asked Mr. Wursta with regard to the prior Transcripts, what Transcripts did he review. He asked him if he reviewed the prior Testimony of Mr. O'Brien in the original proceedings, and Mr. Wursta stated he did. Mr. VanLuvanee asked Mr. Wursta if he reviewed the Testimony of the Township's traffic engineer, Mr. Angelastro, and Mr. Wursta stated he did. Mr. VanLuvanee asked Mr. Wursta if he reviewed the cross-examination of Mr. Angelastro, and Mr. Wursta stated he did. Mr. VanLuvanee asked Mr. Wursta if there was any other Testimony that he reviewed from the prior proceedings other than the traffic engineer's, and Mr. Wursta stated he believes he read them all, but he cannot recall the specifics.

Mr. VanLuvanee asked Mr. Wursta if there was anything that was presented with regard to the projected traffic from the Hospital and the Medical Office Building that he took issue with, and Mr. Wursta stated there was not. Mr. VanLuvanee stated Mr. Wursta's criticism of the McMahan information is with respect to the existing traffic volumes where in one case he found one count that he found problematic, and Mr. Wursta stated this is one thing that he found. Mr. VanLuvanee asked if he looked through the other approximately 150 pages and found any other number he found to be abnormal or needed to be looked at again, and Mr. Wursta stated the other thing they looked at were the queue lengths.

Mr. VanLuvanee asked Mr. Wursta if he reviewed Mr. Angelastro's Testimony regarding the queue lengths that the Board considered before they rendered their Decision in 2008, and Mr. Wursta stated he did. Mr. VanLuvanee asked Mr. Wursta if he reviewed Mr. Majewski's Testimony regarding the queue length and looked at all the photographs he had taken in a non-traffic engineering perspective with what had been projected as the queue length, and Mr. Wursta stated he did. Mr. VanLuvanee stated Mr. Wursta therefore knows that the Board also had the benefit of those photographs and Mr. Majewski's Testimony when they rendered their Decision, and Mr. Wursta agreed.

Mr. VanLuvanee asked Mr. Wursta if it is his Testimony with regard to queue length and his findings that they differ in any respect from what Mr. Angelastro had found and testified to before the Board previously; and Mr. Wursta stated he does not recall his Testimony as comparing the existing McMahon analysis versus the queue length, just that there was excessive queue lengths. Mr. VanLuvanee stated the Board could determine that by going back to look at the Transcripts.

Mr. Smolow Objected and stated this line of questioning is beyond the scope of this Witness' direct Testimony.

Mr. Bamburak agreed to allow it.

Mr. VanLuvanee asked Mr. Wursta if he did a separate queuing study, and Mr. Wursta stated he did not.

Mr. VanLuvanee stated the intersection of the By-Pass and Stony Hill Road is an intersection where both roads are PennDOT roads and Mr. Wursta agreed. Mr. VanLuvanee stated before any modifications are made to that intersection a PennDOT Highway Occupancy Permit will be required, and Mr. Wursta agreed. Mr. VanLuvanee stated before the entrance to the proposed Hospital/Medical Office Building is permitted on Stony Hill Road, a PennDOT Highway Occupancy Permit will be required, and Mr. Wursta agreed. Mr. VanLuvanee stated with regard to the right in/right out access point on the By-Pass, if it is to be approved, that would also require a PennDOT Highway Occupancy Permit; and Mr. Wursta agreed. Mr. VanLuvanee asked Mr. Wursta if in his twenty-four years of experience as a traffic engineer, in order to get a PennDOT Permit for those access points, a Traffic Impact Study would be required by PennDOT; and Mr. Wursta agreed. Mr. VanLuvanee asked Mr. Wursta if, in his experience, will that Traffic Impact Study include the movements that contribute traffic to that intersection of Stony Hill and the Newtown By-Pass including the traffic exiting the southbound ramp from I-95.

Mr. Smolow Objected stating this is not relevant. Mr. VanLuvanee stated this is the same area where they have an issue about the traffic counts.

Mr. Bamburak allowed the Witness to answer the question, and Mr. Wursta stated PennDOT will require this.

Mr. VanLuvanee stated when the PennDOT Permit is submitted, PennDOT will require an updated Traffic Study with current volumes, not 2008 volumes, 2009 volumes, or 2007 volumes.

Mr. Smolow Objected adding he feels this has nothing to do with the impact of the Scudders Falls Bridge Project or the impact of development in Newtown Township or this Witness' prior Testimony.

Mr. Bamburak stated he feels it does, and he allowed the Witness to answer the question.

Mr. Wursta stated usually, but not always, as it depends on generally if the Township is involved, and sometimes PennDOT will not make them re-do a whole Study; and they will only ask them for an amendment updating the counts, etc. He stated he does feel they will have to update the Study.

Mr. VanLuvanee stated whatever PennDOT determines is relevant will have to be submitted, and Mr. Wursta agreed. Mr. VanLuvanee stated the scope of the Study will be determined by PennDOT, and Mr. Wursta stated this is generally correct in corroboration with the Township. Mr. VanLuvanee stated the Township would normally be requesting and given the opportunity to comment and make suggestions with regard to the scope of the Study and also request to be able to submit review comments to PennDOT if they have any, and Mr. Wursta agreed.

Mr. Gruen asked Mr. VanLuvanee if he is suggesting that the Board should just not worry about the McMahan Study and just worry about what will happen in the future and count on PennDOT to solve their problems. Mr. VanLuvanee stated he is not suggesting that. He stated there were a lot of questions about what difference 582 cars may or may not make, and the point is that these are PennDOT roads, and PennDOT will ultimately make the decisions about improvements. He stated if this were a Township intersection and the Township had control, and the Township could exclusively determine what improvements could be made, that is one thing. He stated in this case, the Board appropriately made Findings of Fact and Conditioned their Approval on certain improvements to be made. He stated unfortunately if PennDOT decides they do not want those improvements, this will be a different issue; but in this case, the Applicant has already voluntarily agreed to that as a minimum level of improvements. He stated PennDOT will ultimately tell everyone what is going to happen at that intersection; and if the Permits are not issued, the project is not built.

Mr. Smolow stated the issue is whether this Application meets the requirements of the Township Zoning Ordinance which says that the traffic they add to the intersection shall not burden the intersection or cause a hazard; and it does not say that they have to meet PennDOT requirements.

Mr. VanLuvanee asked why they are worrying about whether a Traffic Impact Study does or does not have one count out of one hundred that is wrong as the ultimate question is whether or not what they propose will or will not mitigate the traffic impact of the additional traffic placed by the Hospital on the road. Mr. VanLuvanee stated they have heard no evidence from this Witness about what impact the Hospital is going to have. He stated they had a base line, and then you add the Hospital traffic; and the question is does the Hospital when it adds the traffic put any more traffic or impact these roads in any way that was different from what you would expect of the construction of a Hospital/ Medical Office Building at this intersection. He stated that is in fact the legal standard, and that is what is relevant – not whether the Study does or does not meet every little nuance. He stated that is an issue over which they already had three different traffic engineers tell them three different things. He stated in the end it is what is the impact of the Hospital-generated traffic.

Mr. Truelove stated he joins in the Objection of Mr. Smolow. He stated the SALDO requirements, which Mr. Wursta already testified to, and which are incorporated into the Special Exception Ordinance do require conclusions and recommended improvements if there are Levels of Service below C. Mr. Truelove stated this is in the Township Ordinance so there is a standard for the Board to apply, and this is the point of Mr. Wursta's Testimony.

Mr. VanLuvanee stated it does not require the Applicant to do it for reasons he will explore, and he will move on.

Mr. Bamburak stated all they have at this point are the current Traffic Studies, and they do not know what PennDOT will require. Mr. VanLuvanee stated he has no argument with this. He added they also do not know when Scudders Falls will be built. Mr. Bamburak stated they made their Decision based on the traffic counts they had at the time, and Mr. VanLuvanee agreed. Mr. Bamburak stated they could get to a point where they say what they do at the Zoning Hearing Board really does not matter because PennDOT is going to do it all over anyway, but they need to have some reference. Mr. VanLuvanee stated he has no argument with what the Board did.

Mr. VanLuvanee stated Mr. Wursta told the Board at the last Hearing that he felt Mr. O'Brien and McMahon wrongly ignored what they called the Scudders Falls Bridge Project. Mr. VanLuvanee asked Mr. Wursta if he had been asked to do that Study knowing that the Bridge has not been funded yet and that there is no certain start date for that project, how would he have suggested that the Project be analyzed.

Mr. Smolow Objected and stated the information is not on the Record about the funding, and it was noted that it is in the Record. Mr. Bamburak allowed the question stating Mr. Smolow's argument is that the Traffic Study was incomplete, and Mr. VanLuvanee is trying to see how Mr. Wursta would have made it work.

Mr. Wursta stated he would have addressed it based upon the information available, and he would not have ignored it. Mr. VanLuvanee asked Mr. Wursta if he had taken a look at the information available and concluded based on the fact that the Project was speculative, is he saying he would have considered it anyway.

Mr. Smolow and Mr. Truelove both Objected. Mr. Truelove stated the Study numbers are not speculative; and Mr. VanLuvanee stated he did not say this – he said the Project. Mr. Truelove stated the Project includes a Traffic Study that was conducted in 2004 that had specific numbers including background growth for Municipalities close to the Project site which are close to this area as well.

Mr. Bamburak stated Mr. VanLuvanee is asking Mr. Wursta if he would have included those numbers, and Mr. Wursta stated he would have included those numbers and he would also have included the status of the Project and its relevance; and it would have at least been a paragraph in his Traffic Study.

Mr. VanLuvanee stated in Mr. Wursta's Study in order to be complete, he would certainly have noted that there is no assurance that the Project would ever be built; and Mr. Wursta stated he would probably have indicated a proposed building date based upon whatever the information was that was available. He added if, in fact, the word from the Joint Toll Bridge Commission was that there was no funding date yet available, he would have quoted that in his Report.

Mr. VanLuvanee stated one of the three areas where Judge Fritsch allowed RAFR and the Township to supplement the Record was with respect to the impact of the Aria Hospital/ Medical Office Building upon traffic in light of the Scudders Falls Bridge and accompanying roadway changes. Mr. VanLuvanee asked if there has been any evidence at this point about accompanying roadway changes from the Scudders Falls Bridge; and Mr. Wursta stated he has not looked at this issue, and only verified that they were not addressed in the McMahan Study. Mr. VanLuvanee asked Mr. Wursta if he looked to see what the roadway changes might have been, and Mr. Wursta stated he did not.

Mr. VanLuvanee asked Mr. Wursta with respect to Newtown Township traffic did he review the list of projects that was introduced by Witnesses for Newtown Township at the original Hearings which were shown on Exhibits T-15 and T-16, and Mr. Wursta stated he did. Mr. VanLuvanee stated Mr. Wursta indicated that he only developed numbers from two projects to supplement the McMahan numbers and those are reflected on Exhibit T-24, and Mr. Wursta agreed.

Mr. VanLuvanee asked Mr. Wursta if he is currently the Newtown Township engineer, and Mr. Wursta stated he is not. Mr. VanLuvanee stated he was previously, and Mr. Wursta agreed. Mr. VanLuvanee stated Mr. Wursta would be familiar with some of

these projects, and Mr. Wursta agreed. Mr. VanLuvanee stated Mr. Wursta is also probably familiar with the requirements for Traffic Studies in Newtown Township, and Mr. Wursta stated he is. Mr. VanLuvanee stated they are different from Lower Makefield's requirements, and Mr. Wursta stated he does not recall the specifics. Mr. VanLuvanee asked Mr. Wursta if he recalls that Newtown Township requires a Study of intersections within one half mile of the project without regard to intersections in the Township within one half a mile. Mr. Wursta stated he believes that is similar to Lower Makefield. Mr. VanLuvanee asked if it is correct that this is what Newtown Township says; and Mr. Wursta stated he does not recall, and he would have to see it.

Mr. VanLuvanee stated Mr. Wursta referenced the development across from the Roberts Property in Newtown Township. He asked Mr. Wursta how far that is from the Project site, and Mr. Wursta stated it is approximately one mile. Mr. VanLuvanee stated at some point Mr. Wursta, in his professional judgment, makes a determination as to what projects will or will not have an immediate impact on the Study Areas so that in your opinion they should be accounted for separately rather than as part of the background growth. Mr. Wursta stated by happenstance, they did not take into account all the ones that would be impacted by the specific developments not being accommodated by background growth. Mr. VanLuvanee asked Mr. Wursta if he took a look at the Map which was marked as Exhibit T-15 showing the Newtown Township developments, and the list of developments that were identified on Exhibit T-16, and Mr. Wursta stated he just reviewed the list. Mr. VanLuvanee asked Mr. Wursta if he formed a professional opinion as to what developments in Newtown he thought should have been specifically identified and not counted for generally in background growth, and Mr. Wursta stated he did not.

Mr. VanLuvanee stated on Page 90 of the Transcript from last month's Hearing, Mr. Wursta was talking about background growth versus specific projects, and on Line 9 Mr. Wursta stated:

“As an example that if an office building was going to be built right next to the Hospital Site and it was going to generate 100 trips and as an example, say there was 1000 trips on the road, that is a 10% increase in traffic by adding that 100 trips, so you can't say that when you use a 2% background growth and say that is accommodated within the background growth.”

Mr. VanLuvanee stated this was a specific example Mr. Wursta gave, and Mr. Wursta agreed.

Mr. VanLuvanee asked Mr. Wursta, with reference to Newtown Township traffic, did he look at those projects and determine which of those would not have been accounted for in the 2.4% background growth that McMahon assumed; and Mr. Wursta stated he feels this is the same question that was just asked. Mr. VanLuvanee stated he assumes his answer then is “no.”

Mr. Koopman Objected and stated it is the same question. Mr. Truelove stated this has been asked and answered. Mr. Bamburak stated he feels it is different, and Mr. DosSantos asked that he answer the question; and Mr. Wursta stated he did not.

Mr. Bamburak asked Mr. Wursta how does he determine when to name a development's contribution to traffic as opposed to including it in background growth. Mr. Wursta stated generally you look at each development and determine the geographic location and the size within a certain framework and look at the highway network see what the likelihood of a specific amount of traffic will travel in the vicinity of that site so it is really judgment. He stated it is easier to do when there is a large road like the Newtown By-Pass because a lot of traffic funnels to that arterial to disperse. He stated something large that is likely to use the main roads and go by your site, should be included.

Mr. VanLuvanee stated Mr. Wursta testified that McMahon should have provided mitigation measures which would have improved Levels of Service, and Mr. Wursta stated he would have to read the Testimony.

Mr. Truelove Objected since he is not sure that was the Testimony.

Mr. VanLuvanee asked Mr. Wursta if he prepared any written reports that he gave to Mr. Truelove that he prepared in anticipation of Testimony tonight, and Mr. Wursta stated he does not recall that he gave him any notes or anything else with regard to that. He stated he did along the way reference some of the items he Testified to such as queuing, but he not do any Studies. He stated Mr. Truelove also did not see the information that he provided to the Board this evening.

Mr. Truelove asked Mr. Wursta if he is aware of whether McMahon took into account or reviewed any synchronization of lights at any of the intersections emanating from Stony Hill and 332 outward as part of their Study, and Mr. Wursta stated he is not aware of any.

Mr. Truelove asked Mr. Wursta if it is fair to say that Exhibit T-24 is a snapshot of a review that could be expanded into other evaluations, and Mr. Wursta agreed.

Mr. Truelove stated for the Scudders Falls Project, there was a separate Traffic Study done for that regardless of whether it is built or not, and Mr. Wursta agreed. Mr. Truelove stated that was not considered by McMahon as part of their evaluation, and Mr. Wursta agreed.

Mr. Truelove stated the term "background growth" is a technical term that traffic engineers use, and Mr. Wursta agreed. Mr. Truelove asked Mr. Wursta if he would agree that background growth impacts on Levels of Service, and Mr. Wursta agreed.

Mr. Truelove stated Mr. Wursta also used the term, “professional judgment” to determine whether certain developments need to be looked at independently to determine the amount of background growth that might impact on traffic in an area, and Mr. Wursta agreed. Mr. Truelove stated the size of the project sometimes requires different kinds of analyses and studies, and Mr. Wursta agreed. Mr. Truelove asked Mr. Wursta if he would agree that the Aria Hospital Project is a large project, and Mr. Wursta agreed.

Mr. Truelove noted Exhibit T-23 which is the attachment to the SALDO Ordinance for Traffic Studies. Mr. Truelove noted the last page, Sub-Section 7 Conclusions and Recommended Improvements and he asked Mr. Wursta if he would agree that the language in there essentially is a recommendation to pursue professional judgment depending on the circumstances presented with traffic and Levels of Service.

Mr. VanLuvanee Objected, and stated it speaks for itself.

Mr. Truelove stated he is asking now because Mr. Wursta used the term, “professional judgment” and he believes the Ordinance does speak to that issue.

Mr. Bamburak allowed the question.

Mr. Truelove stated it recommends that if the Level of Service C cannot be obtained, unless design limitation preclude that, that the traffic engineer shall seek guidance; and he asked Mr. Wursta if this is an exercise in professional judgment depending on the circumstances. Mr. Wursta stated it is clear that if your Level of Service is below Level of Service C, the traffic engineer for the Applicant should seek guidance from the Township as far as what to do. Mr. Truelove asked if the guidance from the Township would be from the Township Zoning Officer or perhaps the Township traffic engineer; and Mr. Wursta stated it does not say.

Mr. VanLuvanee Objected, and stated it speaks for itself.

Mr. Truelove stated he was going to ask Mr. Wursta in his professional judgment, who would he seek guidance from, and Mr. Wursta stated the Township would direct them to the Township traffic engineer.

Ms. Kirk stated the Township Ordinance sets forth specific requirements depending upon the Level of Service if it is C or below as to how to proceed in considering developments; however, Mr. Wursta stated in professional judgment you make a determination as to whether a specific development should be included in a Traffic Study. Ms. Kirk asked if this does not lead to the possibility of a Level of Service at a certain intersection being C or greater if you did not include a specific project. Mr. Wursta stated it would impact it if you did not include it. He stated there is no way it is going to be better.

Mr. Truelove asked if it would be an accurate study if it did not include that information.

Mr. VanLuvanee Objected, and Mr. Bamburak sustained the Objection.

Mr. Truelove stated he has nothing further with respect to traffic. Mr. Truelove stated he understands that Mr. Smolow has a traffic Witness.

Mr. Bamburak stated there is a 10:00 p.m. curfew so they have another half hour, and Mr. Smolow stated he would like to start and get in his Witness' qualifications. Mr. Bamburak asked that he do this quickly noting he does not feel they ever really Objected to anyone's CV. Mr. VanLuvanee stated he does know that Mr. L'Amoreaux is an engineer who specializes in traffic, and he knows that the Board would accept him as an expert; and while he would reserve the right to question him as to any specific qualifications later, he has no objection to accepting him as an expert. Mr. Koopman stated he did not have any objection. Mr. Bamburak asked that they move past this; however, Mr. Smolow stated he has to make a Record as to his qualifications.

Mr. Jeffrey A. L'Amoreaux was sworn in.

Mr. Smolow stated he would like to make an opening statement to highlight where they are going to go with Testimony; however, Ms. Kirk stated no opening statements are necessary, and he should just proceed.

Upon questioning, Mr. L'Amoreaux stated he is a professional traffic engineer licensed in Pennsylvania. He stated he is self-employed. He reviewed his education and work experience as a traffic engineer including fourteen years with Carroll Engineering prior to beginning his own firm. He stated he has testified as an expert previously, and he reviewed traffic projects that he has worked on including the ACT 209 Transportation Improvement Program for Newtown Township.

Mr. Smolow offered Exhibit RAFR-8 which is Mr. L'Amoreaux's CV, which was accepted.

Mr. Smolow asked Mr. L'Amoreaux if he prepared, at his request on behalf of RAFR, a Study of the traffic impact of the proposed Aria Hospital and Medical Office Building taking the Scudders Falls Improvement Project into consideration, and Mr. L'Amoreaux stated he did. Mr. Smolow asked if he focused his project on the I-95 southbound ramp at the intersection of I-95 and the 332 By-Pass, and Mr. L'Amoreaux stated he did most exclusively. Mr. Smolow asked if he also focused his Study on the weekday, p.m. peak hour traffic, and Mr. L'Amoreaux stated he did. Mr. Smolow asked if his Study from time to time deals with the a.m. traffic as well, and Mr. L'Amoreaux stated it does.

Mr. Smolow asked Mr. L'Amoreaux to advise the Board what documents he reviewed to prepare his Study, and Mr. L'Amoreaux stated he reviewed Site Plans prepared for the proposed Hospital and reviewed the June, 2008 Traffic Impact Study prepared by McMahon. He stated he reviewed the technical memorandum prepared for the Joint Toll Bridge Commission by DVRPC, the Study that they referred to before. He also reviewed the Traffic Diversion Study prepared by Jacobs Engineering Group regarding tolling and the 2009 Existing Weekday peak p.m. hour traffic volumes prepared by McMahon as part of their 2010 Traffic Impact Study for Aria. He also reviewed various documents on the Joint Toll Bridge Commission's Website including the Environmental Impact Study. He stated he also reviewed various transcripts and Exhibits of Hearings presented to the Lower Makefield Township Zoning Hearing Board. He also reviewed the Court Orders and the Township Zoning Ordinance and Subdivision and Land Development Ordinances that are pertinent to this proceeding.

Mr. Smolow stated in addition to the documents he looked at, did he become familiar with the I-95 ramp at the intersection of the 332 By-Pass; and Mr. L'Amoreaux stated he did. Mr. Smolow asked if he conducted any traffic counts at that location, and Mr. L'Amoreaux stated he personally conducted two separate counts at that intersection. He stated he counted them on Wednesday, February 8, 2012 and Wednesday, February 15, 2012.

Mr. Smolow asked Mr. L'Amoreaux if he familiarized himself with the operation of the I-95 ramp and the right-turn movement at the 332 By-Pass, and Mr. L'Amoreaux stated he did. Mr. Smolow asked Mr. L'Amoreaux if he is personally familiar with 332 between I-95 and Lindenhurst Road; and Mr. L'Amoreaux stated he is because approximately ten years ago he designed the traffic signal system that is in place there today at all of the intersections along 332 from I-95 to Lindenhurst and beyond.

Mr. Smolow asked Mr. L'Amoreaux if he is also personally familiar with the existing I-95 Pennsylvania road segment between the Scudders Falls Bridge and the 332 Interchange, and he stated he is.

Mr. Smolow asked Mr. L'Amoreaux if he was also present during the course of some of these proceedings, and Mr. L'Amoreaux stated he has been and he also heard the testimony of Mr. O'Brien and Mr. Wursta.

Mr. Smolow asked Mr. L'Amoreaux if all the opinions in his Study are based on his knowledge, experience, review of documents, personal observations, and to a reasonable degree of professional certainty, and Mr. L'Amoreaux stated they are.

Mr. Smolow offered the Report into Evidence.

Mr. VanLuvanee Objected to its Offer although he does not Object to Mr. Smolow handing it out so that the Board can follow it more easily, but he does reserve the right to Object to content because he does not know what is in it yet.

Mr. Bamburak stated they want to supplement the Record, and this is what the Board has been asking for so he is going to allow it.

Mr. VanLuvanee stated his point is that it is not ready to be Admitted yet, because they have not gone through it yet. Mr. Gruen stated Mr. VanLuvanee can reserve the right to Object to it later on. Mr. VanLuvanee stated he agrees that it is not fair for the Board not to have it in front of them while they are trying to follow along, but there may be questions about it in and certain elements of content he will Object to.

The Report was marked as Exhibit RAFR-9, the Study prepared by Mr. L'Amoreaux at Mr. Smolow's request on behalf of RAFR.

Mr. Smolow noted the Scudder Falls Bridge improvement proposed by the Toll Bridge Commission, and he asked Mr. L'Amoreaux if he familiarized himself with the proposed improvements on the Pennsylvania side of the Delaware River; and Mr. L'Amoreaux stated he did. Mr. Smolow asked Mr. L'Amoreaux to summarize for the Board the proposed improvements. Mr. L'Amoreaux stated the Scudder Falls Bridge Improvement Project will take the existing four-lane bridge over the Delaware River and widen it to six lanes. He stated the six lanes will be three in each direction, and they will continue west from the Delaware River to Route 332. He stated at that point, the six-lane section will convert back to the four-lane section that is south of 332 just as it is today. Mr. L'Amoreaux stated the Project will transfer the six to four by dropping the outside lane into the exit ramp for Newtown. He stated it will be an exit-only lane. He stated in a similar fashion as you go northbound, the lane that gets on with a new loop, the ramp that goes on from westbound 332 on our side, will become the third lane going northbound.

Mr. Smolow asked if the exit-only southbound ramp that is proposed as part of the Scudders Falls Bridge improvements will be a one or two-lane ramp, and Mr. L'Amoreaux stated it will be a one-lane ramp. Mr. Smolow asked how that ramp will be controlled, and Mr. L'Amoreaux stated it will be the same way that it is today with a traffic light for traffic making a left into Yardley and a right-hand yield lane for traffic going into Newtown.

Mr. Smolow asked the status of the Scudders Falls Bridge Improvement Project as reported by the Delaware River Joint Toll Bridge Commission.

Mr. VanLuvanee asked as of what date, and Mr. Smolow stated as of the present time.

Mr. VanLuvanee stated he Objects to the question because the Board made its Decision in 2008, and they would not have had that Evidence available to them. He stated they were not deprived of an opportunity to put on Evidence about something that occurred in 2012 back in 2008.

Mr. Smolow stated the Order that was entered by the Court permits them to introduce Evidence as to pending improvements to the area of Newtown for example and also the Scudders Falls Bridge Improvement Project, and it does not limit their Testimony in any way, shape, or form to what was proposed in 2008 or 2009.

Mr. VanLuvanee stated it does not say that the Board cannot determine that that is the relevant time period. He stated they have this Motion for reconsideration that he filed asking the Court to determine what the development time frame was, and the Court left this up to the Board. He stated this is why he is making the Objection because if you go to 2012, you might as well re-try the whole case on every issue.

Mr. Bamburak allowed Mr. L'Amoreaux to answer the question.

Mr. Smolow stated the fundamental issue in this case is what is the impact of the Hospital taking the Scudders Falls Bridge increase in traffic into consideration, and this is what the Court wants the Board to consider. Mr. Smolow stated the question is what is going to happen, and they are looking forward into the future. He stated the McMahon Report looked at 2015 and 2019, and the 2004 Delaware Valley Regional Planning Commission looked to 2015.

Ms. Kirk stated Mr. Bamburak has already indicated that Mr. L'Amoreaux can answer the question.

Mr. Smolow stated the question he asked was what is the status of the Scudders Falls Bridge Improvement Project as reported by the Delaware River Joint Toll Bridge Commission, and Mr. L'Amoreaux stated the Project is awaiting its Environmental Clearance and he believes preliminary engineering activities are under way or are near the point of conclusion.

Ms. Kirk asked Mr. L'Amoreaux to explain in layman's terms what does it mean by "awaiting its Environmental Clearance" and its "preliminary engineering Plans."
Mr. L'Amoreaux stated every project that uses Federal funding has to obtain an Environmental Clearance, and that is what the Environmental Impact Statement that has been prepared and they have all seen and heard about. Mr. Bamburak asked who grants this, and Mr. L'Amoreaux stated it is granted by the Federal Highway Administration. Mr. L'Amoreaux stated that Clearance will be called a "Finding of No Significant Impact" when it is issued or an FONSI. Mr. L'Amoreaux stated that is what the Joint Toll Bridge Commission is seeking at this point.

Mr. Bamburak stated Mr. L'Amoreaux stated it "will be granted," and he asked if this is not one of the things that "could be granted;" and Mr. L'Amoreaux agreed that it "could be."

Ms. Kirk asked about preliminary engineering Plans, and Mr. L'Amoreaux stated these are a full set of Plans except for the quantities and specifications and the rest of the items you would use to bid the Project to a contractor.

Mr. Smolow stated the Bridge Commission Report indicates that the construction can begin in mid-2013.

Mr. VanLuvanee Objected. He stated there is obviously some piece of writing that the Witness relief on, and rather than having the Witness tell the Board in his own words what that piece of writing says, he feels it would be much better if they had a piece of paper from the Website.

Mr. Smolow withdrew the question and he stated attached as Exhibit D to Mr. L'Amoreaux's Report is a Status Report of the Scudders Falls Bridge Commission dated 10/31/11 which was from the Website, and on the third page of that Report it states:

"The project schedule anticipates a first quarter, 2012 issuance of the NEPA Decision by the Federal Highway Administration – FHWA to the NEPA Decision result in the issuance of a Finding of No Significant Impact (FONSI). Construction could begin in mid-2013."

Mr. VanLuvanee asked that he read the rest of the paragraph, and Mr. Smolow read as follows:

"The start of construction could be effected if the DRJTBC decides to carry out the project as a public/private partnership (P3) which is being assessed. The public is encouraged to visit the Website for the most current information about the I-95/Scudders Falls Bridge Improvement Project."

Mr. Smolow stated the Website was last updated October, 2011.

Mr. Smolow asked Mr. L'Amoreaux if he familiarized himself with the 2004 Delaware Valley Regional Planning Commission Report on traffic with respect to the proposed Scudders Falls Bridge Improvements, and Mr. L'Amoreaux stated he did.

Mr. Smolow asked if that Report is attached as Exhibit F to his Study, and Mr. L'Amoreaux stated it is and he included a copy of the letter from the Bridge Commission's counsel, dated 6/20/11. Mr. Smolow asked that Mr. L'Amoreaux tell the Board about the 2004 Planning Commission Study including when it was performed and what was its purpose. Mr. L'Amoreaux stated the Technical Memorandum that they are referring to as the Study is a Traffic Impact Study for the Bridge, and instead of McMahan, Pennoni, or himself preparing it, the Delaware Valley Regional Planning Commission prepared it. He stated the idea behind the Study was to find out if there was going to be a traffic impact as a result of opening up this valve that they call the Scudder Falls Bridge, and if so, what would happen.

Mr. Smolow asked if the Report includes in its Study Area the I-95/332 area and considers the proposed improvements that he previously identified, and Mr. L'Amoreaux stated it did. Mr. Smolow asked if the Delaware Valley Planning Commission considered a hospital being developed at the intersection of Stony Hill Road and the By-Pass, and Mr. L'Amoreaux stated they did not.

Ms. Kirk asked if Mr. Smolow is talking about the Delaware River Joint Toll Bridge Commission Study area or his own expert's Study. Mr. Smolow stated currently they are talking about the 2004 Delaware Valley Regional Planning commission's Study.

Mr. DosSantos asked if this was not already submitted into Evidence, and Mr. VanLuvanee agreed it was. Mr. Smolow stated it did come into Evidence and was referred to on cross-examination of Mr. O'Brien.

Mr. Smolow asked Mr. L'Amoreaux to summarize for the Board what the Planning Commission said would be the impact on traffic volume if the Scudders Falls Bridge improvements are developed.

Mr. VanLuvanee Objected on the basis that this Report speaks for itself.

Mr. Bamburak stated he did not remember exactly what the Report said. Mr. VanLuvanee stated the problem is he may remember what Mr. L'Amoreaux says that it says and not want to go back and look at it. He stated the Report speaks for itself, and the Conclusions and Recommendations are right there.

Mr. Smolow stated Mr. L'Amoreaux is an expert who is going to summarize for the Board the technical memoranda that was prepared by the Delaware Valley Regional Planning Commission for the Toll bridge Commission.

Mr. Bamburak stated he would like to stop at this time and consider what he will rule. Mr. Smolow stated would like a ruling now on this issue as it is very important. Mr. Bamburak stated he agrees that it is very important and right now he does not know what he wants to rule. He stated he wants to make sure he is making the correct ruling. Mr. Smolow stated he does not understand why there is any hesitancy why they will not hear this new Evidence, and Mr. Bamburak stated Mr. VanLuvanee has indicated that this is not new Evidence, as it is already in Evidence. Mr. VanLuvanee stated his argument is that it says what it says, and if the Witness wants to take that and eventually offer an opinion, this is fine. He stated his Objection is only to Mr. L'Amoreaux paraphrasing and telling the Board what it says. Mr. Bamburak stated he will therefore Sustain the Objection, and he asked that Mr. L'Amoreaux not paraphrase the Report, but will accept Mr. L'Amoreaux use it as a basis for his opinion.

Mr. Smolow stated he has to lay a foundation. Mr. DosSantos sated he feels the Foundation is that he read the Report, and he does not have to summarize it for the Board to show that he read it.

Mr. Smolow stated this is a long document, and he feels the Board would want to have an understanding as to what the document means; and Mr. Bamburak stated this is correct, and it would be Mr. L'Amoreaux's interpretation as to what the document means. Mr. Smolow stated this is correct to some degree, but it is expert summation. Mr. Gruen stated he would like to know what he is basing his opinion on, and Ms. Kirk stated the Board has the document already. Mr. Bamburak advised Mr. Gruen that he and the rest of the Board should read the Report and Mr. L'Amoreaux' Report.

Mr. Bamburak stated he is trying to do this right to that they do not have this matter come back on another Appeal because he did or did not allow something to come in, and he is trying to satisfy all Parties and still get the important information out.

Mr. Smolow stated he hopes that the Board will accept the recommendation of Mr. Koopman that this is a process of gathering information, and they are here because the Board erred the last time. Mr. VanLuvanee stated that is not what the Judge said.

Ms. Kirk suggested that rather than having his Witness summarize what it states in the document Mr. Smolow should have him make references to specific areas of the documents for which he relied on when he prepared his own Report. Mr. Smolow stated this is exactly what he was asking him. Ms. Kirk stated he should not summarize what the document says, but note specific pages of the document on which he relied.

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Mr. DosSantos moved, Mr. Zamparelli seconded and it was unanimously carried to continue the matter to March 20, 2012 at 7:00 p.m.

There being no further business, the meeting was adjourned at 10:10 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary