

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – DECEMBER 15, 2020

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held remotely on December 15, 2020. Mr. Zamparelli called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Anthony Zamparelli, Chair/Temporary Secretary  
Pamela VanBlunk, Vice Chair (left meeting in progress)  
Matthew Connors, Member  
Peter Solor, Member  
Michael Tritt, Member

Others: James Majewski, Director Planning & Zoning  
Barbara Kirk, Township Solicitor  
Adam Flager, Zoning Hearing Board Solicitor  
John B. Lewis, Supervisor Liaison

APPEAL #20-1885 – HEATHER & DARYL GEIST  
Tax Parcel #20-060-286 – 1207 LONGMEADOW LANE, YARDLEY, PA 19067  
(Continued from 12/1/20)

Mr. Zamparelli stated at the last meeting they were going to check on the impervious surface. Mr. Flager stated Mr. Majewski went out to the property and confirmed that they did not actually need a Variance so this matter has been Withdrawn.

APPEAL #20-1886 – HYDROSCAPE INC. (AARON & KAREN COHEN)  
Tax Parcel #20-049-201 – 548 KEATING DRIVE, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-1. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Aaron Cohen was sworn in.

Mr. Cohen stated they want to install a pool and their contractor, Nate from Hydroscape, was doing all of the work. He stated when they came out to do the survey, they found that they were already over the impervious permitted. The pool concrete will put them over another 3% or 4%. He stated he had hoped that Nate would be available to answer questions.

Mr. Zamparelli stated the Board has seen the Application, and the impervious surface will be going from 21.4% to 24.1% by adding the pool and the deck around it. Mr. Zamparelli asked if there are any dimensional issues, and Mr. Majewski stated there are not. Mr. Zamparelli stated they will need mitigation efforts to reduce the impervious surface as they are already over the 18% maximum permitted. Mr. Zamparelli asked Mr. Cohen if he purchased the house like that or did he put in any structures for which he did not get a Permit. Mr. Cohen stated that everything on the property was there when they bought the house about three years ago.

Mr. Zamparelli asked what is the plan to mitigate it back to 21.4%. Mr. Cohen stated that is why he was hoping Nate would be here. Mr. Cohen stated they did discuss this, and Nate was talking about doing an underground French drain of some kind. He would be laying fabric and stone down and dirt over top of that, and everything would be underground and would not be noticed. Mr. Zamparelli stated something would need to be submitted which would need to be approved by the Township engineer. Mr. Cohen stated Nate had indicated that he would talk to someone who would know exactly how big to make it. He stated he assumes Plans would have to be submitted, and Mr. Zamparelli agreed. Mr. Zamparelli stated the Board could approve the Variance Conditioned on the mitigation being done and approved by the Township engineer.

Ms. Kirk stated the Township is not participating in this matter.

Mr. Majewski stated he did not speak to Nate but he did calculate what a representative size would be for the seepage pit for the run-off that was added, and it would need to be 2' by 4' by 25'. Mr. Zamparelli asked if there is room on the property to install that, and Mr. Majewski agreed.

Mr. Tritt moved and Ms. VanBlunk seconded to approve the Variance subject to installation of an underground seepage pit subject to the approval of the Township engineer to mitigate from 24.1% to 21.4%.

There was no one from the public wishing to speak on this matter.

Motion carried unanimously.

APPEAL #20-1887 – DAVID & JOANNA SCHWIND  
Tax Parcel #20-055-058 – 1119 GLORIA LANE, YARDLEY, PA 19067

Ms. VanBlunk stated she will be recusing herself from this matter as she lives in this neighborhood.

Mr. Zamparelli stated he understands that the Township will be participating in this matter.

Mr. David Schwind and Ms. Joanna Schwind were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The Impervious Surface Breakdown was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Schwind stated that they want to put in a pool; and while they understand there are Zoning restrictions, they feel what they are requesting is reasonable for the 500 year floodplain. He stated they have been in the house for four years, and they have had no issue with flooding in their yard. He stated they know that the previous owners had a pool. Ms. Schwind stated the house was built with a pool that was “jack-hammered up” by the prior owners a few years prior to when the Schwinds purchased the house. Ms. Schwind stated there have never been flooding issues.

Mr. Connors stated there are only four Board members who will be voting. Mr. Zamparelli stated if there is a tie vote, it is a Denial. Mr. Schwind stated they would like to move forward.

Ms. Kirk asked if it was indicated that the prior owners had a pool; and Ms. Schwind stated they did as the original house was built with a pool, and the pool was on the property until a few years before they moved in. She stated that pool was in a different location from where they are proposing to install the pool as it was all the way to the right so that it was fully in the 500 year floodplain; however, they are planning on putting their pool all the way to the left where just the back corner is in the flood zone. Ms. Kirk asked if it was jack-hammered out or was it filled in, and Ms. Schwind stated it was jack-hammered out and there was a Permit.

Ms. Kirk asked if the new pool will be of a similar size as the old pool. Ms. Schwind stated she believes it will be smaller. She stated a majority of the houses in the neighborhood were built with the same rectangular concrete pool, and the one they are putting in is smaller although she is not sure of the exact dimensions of the pool that was there previously.

Mr. Majewski stated the Pool that was built there in the 1970s was 20' by 38 ½'. He added that the Pool is in the 100 year floodplain as well as the 500 year floodplain.

Ms. Kirk asked the Applicants if they are aware that if the Board were inclined to grant the relief that they would have to comply with certain provisions set forth in the Ordinance specifically that they need to be aware that there could be an increase in their premium rates for flood insurance, and she asked if they are willing to accept that risk. Ms. Schwind stated they currently do not have flood insurance as their house does not qualify for flood insurance. Ms. Kirk asked if that was recently that that was modified, and Ms. Schwind stated it has never had flood insurance. Ms. Schwind stated the houses behind them on David Terrace require flood insurance. She noted specifically the house behind theirs adding that whole house is in the 100 year floodplain. She stated those houses have flood insurance, but her part of Gloria Lane does not have flood insurance.

Ms. Kirk stated on the Impervious Surface Chart it states: "Proposed construction is 427 square feet." Ms. Kirk asked if that is the coping that will be around the proposed pool. Ms. Schwind stated Mr. Fahs from the pool company could answer that.

Mr. Steve Fahs was sworn in. Mr. Fahs stated the total decking is 427 square feet and that includes the pad for the filter as well. The filter pad is 15 square feet. He stated the total impervious comes to 17.3%. Ms. Kirk asked if the proposed location is in the furthest most rear corner of the property, and Mr. Fahs stated they pushed the pool as far out of the floodplain as they could get it.

Mr. Zamparelli stated there is no impervious surface issue, and this is just a floodplain issue. Mr. Connors stated the Zoning relief is needed because they are in the 100 year floodplain. Ms. Schwind stated they are in the 500 year flood plain – not the 100 year floodplain. Mr. Zamparelli and Mr. Connors advised Ms. Schwind that the property is in both. Mr. Connors stated according to the Plan, part of the pool is in the 100 year floodplain, part of it is in the 500 year floodplain, and part of it is outside of the floodplain. Mr. Fahs stated the deep end of the pool is in the 100 year floodplain.

Mr. Connors asked if any filling will be done in either the 100 year or 500 year floodplain. He asked if they are raising the grade to level it off. Mr. Fahs stated the yard is relatively flat so there will not be any grading at all in the floodplain area. Mr. Connors stated they will not raise the grade at all, and they will keep it as is; and Mr. Fahs agreed. Mr. Connors stated he is asking because that area drops down into the stream. Mr. Zamparelli asked if they are changing the grade at all. Mr. Majewski stated the grade is only being altered by not more than half a foot and it is basically at or near grade.

Mr. Flager stated under the Ordinance whenever a Variance is granted in the floodplain, the Decision should state that the Variance may result in increased premium rates for flood insurance and also that such Variances may increase the risk to life and property. He stated any Decision should include that language; and as long as the Applicants are okay with that, it is okay.

There was no one from the public wishing to speak on this matter.

Mr. Connors asked if they will maintain the existing fence; and Mr. Schwind stated they have a plan to put in a new fence, but that is not part of the pool project although they do have a plan to put one in. Mr. Connors stated when they do put in the fence, they need to be mindful of the floodplain and make sure that they are not going to create a dam.

Mr. Zamparelli stated he understands that as long as they are not changing the grade more than one foot, there is no issue going into the floodplain area and they do not need any mitigation efforts although they will have to submit a plan which the Township will review. Mr. Connors stated his concern is making sure that they are not exacerbating a flood issue especially within the 100 year floodplain. He stated he would not want them to add fill into a flood area since that would impact someone else's property. He stated while it may be minor, the Township should consider this. Mr. Zamparelli stated the Applicants will need to submit a Plan showing the installation and any grade changes even if the grade changes are minor. Mr. Connors stated he would request that when they submit this to the Township engineer that they have a Grading Plan associated with the submission so that the Township engineer can determine that there is no change in grade; or if there is, that there is an alternate reduction in grade someplace else on the site so that they are not increasing anything off site.

Mr. Zamparelli asked the Applicants if they would comply with this, and Mr. Schwind agreed.

Mr. Connors moved and Mr. Solor seconded to approve the installation of a pool in the 100 year and 500 year floodplain as depicted on the Exhibit subject to submission of a Grading Plan to the Township engineer for final approval and in compliance with Section 200-59B1e 1 and 2. Motion carried unanimously. Ms. VanBlunk did not vote on this matter.

APPEAL #20-1888 – MUNZ CONSTRUCTION (SHANNON LOPEZ)  
Tax Parcel #20-024-119 – 640 ROSALIND RUN, YARDLEY, PA 19067

Ms. Shannon Lopez and Mr. Colin Craige, Munz Construction, were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The Stormwater Calculations were marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Ms. Lopez stated they moved to the home nine and a half years ago, and the house was already over the permitted impervious surface due to the pool that had been installed. She stated they are hoping to put a roof over the deck to expand the time they are able to use their outdoor space.

The Township is not participating in this matter.

Mr. Zamparelli asked the permitted impervious surface, and Mr. Majewski stated he believes that it is 21%. Mr. Zamparelli stated they are currently at 20.74%, and they are looking to go to 22.79%. Ms. Lopez stated she felt it was going to be 23.5%. Mr. Connors stated it appears that there are two options, and he asked for an explanation. Ms. Lopez stated the two options were a partial roof and a full roof, and their very strong preference is to cover the full deck which would put them at 23.5%

Mr. Zamparelli asked if they did any work on the property without Permits or was the house purchased as it is now, and Ms. Lopez stated they bought the house as it is now. Mr. Zamparelli stated whether it is a full or partial roof they will need some kind of mitigation effort since they will be over the permitted surface. Ms. Lopez stated she did not realize that the partial roof was still on the Plan as one of the options, and it is their very strong preference to have the full roof which would put them at 23.5% impervious surface. She stated they have done calculations for a dry well for 118 cubic feet, and they are proposing 10' by 6' by 5' to get them to 120 cubic feet in order to do the mitigation.

Mr. Zamparelli asked if the roof drains will be going into the dry well. Mr. Craige stated that was pending a site visit as they wanted to see how tonight's meeting went and then go through the mitigation. Mr. Zamparelli stated he would want the roof run-off to go into the dry well. Mr. Connors agreed he would prefer to see the roof run-off going into the dry well.

Mr. Connors asked if Mr. Majewski has confirmed the figures provided by the Applicant, and Mr. Majewski stated the figures were accurate.

Mr. Zamparelli asked if they would agree that the run-off from the roof would go into the dry well, and Ms. Lopez agreed.

There was no one from the public wishing to speak on this matter.

Mr. Solor moved, Mr. Connors seconded, and it was unanimously carried to approve the Appeal subject to providing below ground stormwater mitigation with the roof run-off tied to it subject to Township approval with an effective impervious rate of 21%.

APPEAL #20-1889 – CHRISTOPHER SCHAUFLE

Tax Parcel #20-058-042 – 1309 REVERE ROAD, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The Impervious Surface Breakdown was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Christopher Schaufler was sworn in and stated they are looking to install a pool since the Lower Makefield Township pool was closed this year, and they were not sure what would happen this coming summer. He stated they are planning on also doing a patio around the pool which is shown on the Plans.

Mr. Zamparelli stated there will be an increase in impervious surface, and he asked if there is a plan for mitigation. Mr. Schaufler stated when the Plans were originally submitted, the Plans were Denied because they were starting at over 19% impervious surface which was already over the 18% that Yardley Hunt allows. He stated they were going to go to 22.58%. He stated he received a letter from Mr. Kirk from the Township stating that the Application was Denied because of being over the impervious surface, and to refer to the Township Code Section 174, Attachment 9, Appendix 1. Mr. Schaufler stated when he looked at that it appeared that the engineer he had hired through the pool company to do the calculations for impervious surface never took into account the tree coverage allowed by the Township.

Mr. Schaufler stated his father has been an engineer for over forty years, and he had him run the numbers for the tree coverage; and he feels it would be good if his father could comment on what he did.

Mr. Zamparelli asked Mr. Schaufler if he is stating that because of the trees, the impervious surface calculations are not correct. Mr. Schaufler stated the original ones submitted to the Township were not correct, but after they performed the calculations as stated in the Township Code, they came up with the impervious surface would be according to what the Township would allow.

Mr. Albert Schaufler was sworn in and stated when his son contacted the local Code Official, he indicated that he should refer to Township Code 174, Attachment 9, Appendix I. Mr. Schaufler stated in that there is an allowance



for existing tree coverage on the property for the absorption of run off. He stated it indicates that any trees that are over 4" in caliper, you take the canopy area and that is applied against any additional run-off on the property. He stated you get a benefit for trees being on your property. Mr. Schaufler noted the left-hand side of the Plan sheet where there is a calculation showing all of the various trees on the property and the canopy coverage. He stated this is basically a non-structural BMP called tree planting and preservation. He stated it is under 910 and 911 in Section 174. Mr. Schaufler stated he calculated the existing tree coverage at 6,214 square feet of tree coverage on the property as it exists. He stated there is also a volume reduction calculation in Section 174. He stated he took the volume reduction and the volume as provided is 517 cubic feet of volume that is able to be absorbed. He stated the volume required is the calculation on the right-hand side of the Plan sheet, and that shows 143 cubic feet being required based on the pool, walkway, and patio structure being put in. He stated there is therefore an excess volume on the property right now of 374 cubic feet with the trees.

Mr. Zamparelli asked Mr. Majewski for an explanation, and he asked if the figures are correct on the Plan. Mr. Majewski stated our Ordinance does allow for several different methods to manage stormwater run-off from the additional impervious surface. One of which is to maintain the existing tree canopy on the Lot. He stated another is to plant trees; and one that the Board is most familiar and comfortable with, is installing underground storage of stormwater such as a dry well/seepage pit. Mr. Majewski stated the calculations that the Applicant has on the Plan account for the existing trees coverage on the Lot so that the run-off from what is proposed back goes down to the 18%. He stated they are proposing mitigation using the existing tree canopy as opposed to what the Board is normally used to seeing which is a seepage bed.

Mr. Zamparelli stated they are showing 3.38% over the permitted impervious surface, and he asked if the Applicant is indicating that the trees will mitigate the 3.38% without doing any other mitigation; and Mr. Majewski agreed. Mr. Zamparelli stated that is a large increase, and the Board does not normally accept trees for this amount. Mr. Zamparelli stated the Board is not usually willing to grant a Variance just based on using trees.

Mr. Albert Schaufler stated he basically just followed what was in the Township Code.

Mr. Zamparelli stated he feels they need a seepage bed/dry well to mitigate the increase. Mr. Christopher Schaufler stated according to the Township Code that is not true. Mr. Albert Schaufler stated in Section 910 and 911 of the Code it allows you to plant trees in lieu of a BMP structure. He stated if you have a 6' conifer with a 1 ½" caliper that is equivalent to 10 cubic feet of absorption. He stated they are planning on planting landscaping around the pool area, and they would be amenable to putting in tree coverage and other landscaping around the pool area additional to what is there already in lieu of putting in a structure.

Mr. Connors asked Mr. Majewski what size structure would be required, and Mr. Majewski stated if a seepage bed were to be put in which would consist of a trench lined with a filter fabric and filled with stone the dimension would be 3' by 6' by 15' to control the run-off from the additional impervious surface. Mr. Albert Schaufler asked if that would be for the 143 cubic feet since that is what the excess is. Mr. Majewski stated that dimension would be for the increase in the impervious surface. He stated if they were to account for the full amount back down to the 18%, that would increase the length of the trench from 15' to 20'. Mr. Majewski stated it would therefore be 3' by 6' by 20' or some other comparable configuration to take it back to 18%.

Mr. Christopher Schaufler stated prior to the installation of the pool the impervious surface was already at 19.1% or 19.4% so they were already over before they moved into the house. Mr. Majewski stated that is why he had indicated that to account just for the increase from 19.2% to what they are proposing would require the trench to be 3' by 6' by 15'.

Mr. Albert Schaufler noted the left-hand side of the Plan where it states, "volume required;" and the volume required is 143 cubic feet which is consistent with the calculation on the right-hand side of a net increase of 640 square feet. He stated it seems that they are looking for it to jump up "quite a lot." Mr. Majewski stated to account for the 640 square foot increase, the size of the trench would need to be 3' by 6' by 15'.

Mr. Zamparelli stated that would get them back to the 19.2% which was existing.

Mr. Solor stated it does not have to be 3' by 6' by 15', and it just have to have that volume so it could be 3' by 3' by 30'.

Mr. Albert Schaufler stated he is trying to do the calculation for the volume. He stated the 3' by 6' by 15' which Mr. Majewski mentioned would be 270 cubic feet. Mr. Majewski stated the trench is lined with stone so there is a void ratio. Mr. Schaufler stated it would be 270 cubic feet, and he felt that the increase was only about 140 cubic feet. Mr. Connors noted he needs to account for the void ratio. Mr. Majewski stated there is a spreadsheet calculator available on the Township Website.

Mr. Zamparelli stated the Board is indicating that is what they need to bring it down to the existing impervious surface although they could go lower and take it back to 18%. Mr. Zamparelli stated it can be any configuration that will fit provided they have the total cubic feet required.

Mr. Christopher Schaufler asked if they have to do this even though the Township Code allows for the coverage of the trees; and he asked if they are "throwing that out" and going with the seepage pit instead. Mr. Connors stated the Township Code also has an impervious ratio which is being exceeded so the Applicant is voiding the Township Code. Mr. Connors stated they could come to an agreement or argue about trees. Mr. Solor stated while the Board likes trees, there is no guarantee that the next homeowner would keep them. Mr. Christopher Schaufler stated he understands that this is a precautionary measure for the future, and Mr. Solor agreed. Mr. Connors stated they would then have trees and a structure.

Mr. Christopher Schaufler asked if there is any specific portion of the yard where the structure has to be located. He stated the drainage swale for his property and the neighbor behind him is between the two properties, and the natural swale of the yard is at the back. He asked if the trench could be located anywhere on the property. Mr. Connors stated ideally it should be located where it will capture the new impervious, and they would rely on the Township engineer for final approval of the location.

It was noted that the Township was not participating in this matter.

Mr. Zamparelli stated the Board is not receptive to just trees for this kind of volume increase since a lot of times there are new owners, and the trees do not last. Mr. Zamparelli asked if the Applicant is willing to install the underground seepage system to be approved by the Township engineer as to location and volume, the Board may be willing to grant the Variance. Mr. Christopher Schaufler stated now that he understands the

reason for this, he would agree. He asked if plans would have to be drawn for the pit and submitted, and Mr. Zamparelli agreed that it should be submitted to the Township engineer for approval.

There was no one from the public wishing to comment on this matter.

Mr. Tritt moved, Mr. Connors seconded and it was unanimously carried to approve the Appeal subject to installation of an underground stormwater management system to take the proposed 22.58% impervious coverage down to the existing 19.2% subject to approval by the Township engineer.

**APPEAL #20-1881 – CHALLENGE THE VALIDITY OF THE MIXED-USE OVERLAY ORDINANCE BY DARWIN DOBSON, LAWRENCE BORDA & BRYAN MCNAMARA**

Mr. David Kelliher, the moderator, stated that they are going to have to bring in a number of people and most of them are Party to this matter; however, there will also be members of the public. He suggested that everyone be brought in and be muted with their cameras off; and when the Board is ready for Public Comment, they could be called on and they would unmute. Mr. Kelliher stated there are approximately twenty people. This was acceptable to the Board.

Ms. VanBlunk stated she will be recusing herself from this matter since she is a personal friend of one of the Applicants. Ms. VanBlunk left the meeting at this time.

Mr. Flager stated the three Applicants should be sworn in. Mr. Larry Borda was sworn in. Mr. Flager asked about the other two Applicants, and Mr. Borda stated he did not believe that Mr. Dobson and Mr. McNamara will be on tonight.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. A seven-page Addendum explaining some of the rationale for the Application was marked as Exhibit A-3. The Amended Ordinance that was attached was marked as Exhibit A-4. The Planning Commission memo that was attached was marked as Exhibit A-5. The Declaration of Covenants and Restrictions was marked as Exhibit A-6. The August 17 Board of Supervisors Special Meeting Minutes were marked as Exhibit A-7. The August 31 Board of Supervisors Special Meeting Minutes were marked as Exhibit A-8. The Impact on Nearby Properties was marked as Exhibit A-9. The Traffic Impact Graphics totaling five pages was marked as

Exhibit A-10. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Zamparelli stated there are only four Board members who will be voting on this, and if there is a tie it would be a Denial. Mr. Eric Goldberg, attorney for the Applicant, stated he would like to start presenting Evidence.

Mr. Tritt stated since Ms. VanBlunk has recused herself, it will be a situation where there will only be four members voting on this. Mr. Flager stated the only thing they could do would be that if one other Board member were not to be included so that there would be an odd number of Board members participating.

Ms. Kirk stated before they begin Testimony there are two other items that need to be addressed. She stated a Motion for Intervention was Filed by Mr. Harris who represents the Equitable and Legal property owners. She stated Mr. Harris also filed a written Motion for Dismissal due to lack of Standing and Jurisdiction. Ms. Kirk stated she was also going to make a verbal Motion for Dismissal on the basis of Standing and Jurisdiction. She stated before they can get to the merits of the case, she feels those items needs to be resolved preliminarily.

Mr. Steve Harris stated he is the attorney representing Shady Brook Investors, L.P., legal owners of a portion of the property and ELU DeLuca Yardley, L.L.C., equitable owners of the remainder of the property. He stated they are the property owners that own where the proposed Wegmans, 55,000 square feet of Retail, and the 200 apartments are to be built. He stated they are asking to intervene in this matter as Parties as legal and equitable owners of the property subject to this Ordinance.

Mr. Flager stated Mr. Harris' clients own the property that is subject to this Development, and they are requesting Party Status and wish to intervene in this to oppose the Application. He stated they submitted a Motion to Dismiss which Ms. Kirk has joined in on behalf of the Township. He stated there are procedural issues with that challenging the Standing of the Applicants to Challenge the Ordinance. Mr. Flager stated he feels it makes sense for Mr. Goldberg to offer either Testimony, Evidence, or Argument about the Standing issue; and after that determination, depending on the determination made by the Board, that would dictate whether they are done at that point or whether they would proceed on the Merits.

Mr. Harris stated initially he feels the Board needs to decide whether or not they will grant them Party Status. He stated assuming that the Board does grant them Party Status, there are two items in the Motion to Dismiss. He stated the first is that the Zoning Hearing Board does not have jurisdiction to hear the Procedural Challenge that was brought since that has to be brought before the Court of Common Pleas. He stated secondly for the reasons stated in the Motion as well, that the Applicants do not have Standing because they do not have an interest in the Application that is different than the public at large.

Mr. Flager stated as Chair of the Zoning Hearing Board, it is Mr. Zamparelli's discretion to grant them Party Status. He stated they are the property that is the subject of the Ordinance and as a result of that received Notice. He stated from a legal perspective, they have every right to request Party Status. Mr. Zamparelli stated they should have Party Status.

Mr. Flager stated there are three Challenges that Mr. Goldberg's clients are bringing. He stated one of them is procedural and two are substantive. Mr. Flager stated the first part of the Motion to Dismiss is whether the Zoning Hearing Board has jurisdiction/authority to entertain a Procedural Challenge to the Ordinance. Mr. Flager stated Mr. Harris' position is that the Board does not. He stated Mr. Goldberg should respond to that.

Mr. Zamparelli stated he understands that part, but he asked about the other items such as the Amendments, the off-site traffic, and Spot Zoning. He asked about the Applicants' Standing as he does not know if the Procedural issue comes into play if there is no Standing. Mr. Harris agreed.

Mr. Flager stated the Board could make a determination about the Procedural Challenge outright and then go to Standing or they could do Standing first and then decide everything.

Mr. Zamparelli stated if the Board were to decide on Standing, there would be nothing to decide on Procedurally.

Mr. Connors asked Mr. Harris if he represents all of the owners or just some of them, and Mr. Harris stated he represents all of them.

Mr. Solor asked Mr. Flager if there needs to be a Motion to give Mr. Harris' clients Status; and Mr. Flager stated they do not as it is within the discretion of the Chair, and Mr. Zamparelli has granted them Party Status.

Mr. Flager suggested Mr. Goldberg discuss the Procedural Challenge as far as jurisdiction and also the Standing arguments.

Mr. Eric Goldberg, attorney for the Applicants, stated he recognizes that this is a different situation. He stated the Township adopted the Overlay District consisting of eight parcels, five of which are either owned or controlled by Shady Brook Investors and ELU DeLuca; and they are the five parcels that are the subject of what will be developed. He stated there were three other parcels that were also re-Zoned as part of the Overlay District. Mr. Goldberg stated what is being proposed is that the developer will construct 200 apartments, a 100,000 square foot Wegmans, and about 55,000 square feet of Retail on the five parcels that are collectively being referred to as Prickett Preserve. He stated they are the five parcels represented by Mr. Harris' clients. He stated those parcels are 20-16-40, 20-16-40-1, 20-16-39, 20-12-1-3, and 20-12-2-2; and they total about 37 acres.

Mr. Goldberg stated it is his clients' position that the Overlay District was unlawfully enacted. They believe that it is Contractor Spot Zoning, that the developers are possibly paying more than what is allowed under Section 503A of the Pennsylvania Municipalities Planning Code. They believe that a Restrictive Covenant guaranteeing about \$6.5 to \$7 million in improvements was signed by the developers and perhaps that was done in violation of Zoning Law and the MPC. He stated it was noted that this Approval was contingent on there being a Wegmans, and that is not the purpose of Zoning. He stated Zoning is supposed to be about appropriate use of land and not necessarily who can pay the most, who can pay the most for improvements, or what particular store is there.

Mr. Goldberg stated his clients filed an Appeal from the Supervisors Decision to Amend the Ordinance.

Ms. Kirk Objected. She stated she understood that Mr. Goldberg was to provide Argument as to Standing. She stated he is getting into the substantive nature of the Application and not addressing the preliminary issue of Standing first.

Mr. Goldberg stated that is where he was going and he wanted to give a little bit of background so it was clear as to where his clients were coming from. He stated the Appeal was filed. He stated there were two components to it as noted. One was substantive which he just discussed. He stated the second was procedural. He stated he agrees that the proper venue for Procedural

Appeals is the Court of Common Pleas in Doylestown, and this was filed with the Zoning Hearing Board out of an abundance of caution because he wanted to make sure that there was some jurisdiction. He stated he did not want there to be a situation where it was complained of that the Court of Common Pleas did not have jurisdiction for the procedural matter and the Zoning Hearing Board did not have jurisdiction, so it was done out of an abundance of caution.

Mr. Goldberg stated in terms of the Standing issue, people who have Standing are typically referred to as aggrieved persons. In order to be aggrieved, you typically need three things – there has to be a substantial interest, there has to be a direct interest, and there has to be immediacy. He stated in terms of substantial interest, that means discernible from the general public. In terms of a direct interest that means the matter causes harm either pecuniary or non-pecuniary. In terms of immediacy, it is a causal connection. He stated in this case what the Applicants will show via Testimony is that there is a pecuniary loss of value from the Overlay District if the property is developed as proposed. There will also be specific traffic issues not to the overall population. Mr. Goldberg stated he lives about fifteen minutes away from Prickett Preserve and drives the By-Pass; but he does not necessarily have standing because issues there are common to everyone, and it is not a discernible interest. He stated through Testimony it will be shown that there is a discernible traffic interest.

Mr. Goldberg stated in terms of the Cases, he had an opportunity to read the memo provided by Mr. Harris in support of his Motion, and he disagrees with the interpretation as to what the Cases indicate. He stated the Lauffman Case, and the other Cases, indicate that property owners need not establish financial or pecuniary loss if the property is in close proximity to the subject property. He stated if someone's property abuts the property in question, they are automatically presumed to have Standing; however, what those Cases do not say is just because you are not next door or not a couple hundred feet away does not mean you automatically do not have Standing, rather you get Standing by showing the three aforementioned factors of Substantial Interest, Direct Interest, and Immediacy.

Mr. Zamparelli stated with regard to the Standing issue, while you would not have to live next to the property, where would it stop. He stated he also lives fifteen miles from the property. Mr. Zamparelli stated at this point he does not feel that they are aggrieved.



Ms. Kirk stated there is also the Jurisdictional issue in that besides the Procedural Challenge, these three Parties who filed the Application have also filed a Complaint to the Court of Common Pleas of Bucks County setting forth the same Arguments and seeking the same relief which was docketed with the Court on September 30, 2020. Ms. Kirk stated you cannot argue the same issues before two different Judicial bodies. She stated in this case the Court of Common Pleas would have more exclusive jurisdiction over this matter than the Zoning Hearing Board.

There was discussion about the Court Reporter having been cut off from the meeting; however, Mr. Flager stated since everything is being Recorded, the Court Reporter would be able to get the portion which he missed from the tapes.

Mr. Goldberg stated while he will address the issue raised by Ms. Kirk.

Mr. Goldberg stated with regard to the Standing issue, Mr. Zamparelli had indicated that he understands that an individual next door would have Standing, but he questioned how far out they would go. Mr. Goldberg asked if something were built in the middle of a cornfield with no properties around it would that mean that no one could ever Challenge anything, since that is what Mr. Zamparelli is saying. Mr. Goldberg stated he does not feel that is the intent and that it is not the Law. He stated in terms of what the Cases talk about, they talk about how if you are next door to a property or are within a couple hundred feet you automatically have Standing; however, they do not stand for the opposite position which is just because you are not that far, you automatically do not have Standing. He stated if you can show a substantial, direct, and immediate interest, then you would have Standing. Mr. Zamparelli stated he is waiting to hear the reason for that. Mr. Goldberg stated a lot of that will come through Testimony. He stated he is offering to a limited degree an Offer of Proof. He stated there are Witnesses who will Testify that if this development is constructed as proposed with the 200 apartments, the Wegmans, and the 55,000 square feet of Retail what you will have is a situation where there will be a loss of property values because they do not believe that this development will be the successful development that it has been portrayed to be; and there will be a loss of property values for certain people within a certain distance. Mr. Goldberg stated there is “also someone who has other traffic issues.” Mr. Goldberg stated people have different traffic issues depending on where they live.

Mr. Goldberg stated there is a concern with Mr. Borda in particular who lives at 508 Heritage Oak Drive which is a little under one mile away, and there is a concern about his loss of property value and concern regarding the traffic.

Mr. Goldberg stated Mr. Borda has immediate, discernable, and substantial interests which are different from the general populace. He stated Mr. Borda's interests are different from his own since, as he noted earlier, he lives fifteen minutes away from the site.

Mr. Zamparelli stated he has read the information provided and hears what Mr. Goldberg is saying; however, he feels a lot of this is subjective and not necessarily correct. Mr. Zamparelli stated he also lives in the area, and he questions why Mr. Borda should have Standing. He stated at one point Mr. Borda's loss was listed as up to 13.8% and then it indicated it was closer to 1.5%.

Mr. Goldberg stated he knows the report that Mr. Zamparelli is referring to which was from one of the Witnesses who indicated that it was his opinion that there would be a "deduction" in property value – "it will probably will not be the 13.8%, or it could be, but believes it will be closer to the lower figure." Mr. Goldberg stated that is certainly a pecuniary interest to have one's property value drop as a result of a development which they do not believe is as viable as is being portrayed. He stated they have Witnesses who will Testify. He stated they have a traffic professional who will Testify and there are economic professionals who will Testify.

Mr. Zamparelli stated he did read those Witnesses' opinions and the Case Law, and he still feels that there could be an increase in property values.

Ms. Kirk stated if Mr. Goldberg's summary is an Offer of Proof of the Testimony being provided by the Witnesses a concern and a speculation of a loss of property values does not meet the definition under Case Law of an aggrieved Party who requires a direct and immediate interest or harm. She stated a speculation is just that, and there is no direct harm being shown; and as a result she does not believe that these three Parties have Standing within which to litigate this Appeal.

Mr. Goldberg stated no one will know the impact on the property values, and no one will know for certain the impact of the traffic until the project is built. He stated they cannot figure out what will happen in 2024; however,

based on their information, it is believed that this is what will happen to property values as they do not believe that this project will be successful. He stated he agrees that they are anticipating that, and they believe that there will certainly be an increase in traffic. He stated no one will know that for sure, but they believe that there will be an increase in traffic that will happen. He stated that is not just for the overall population, but rather for the specific area particularly around 508 Heritage Oak Drive; and that is what the Witness will Testify to. Mr. Goldberg stated everything is speculative to as to what is going to happen in the future, and there are no guarantees for anything.

Ms. Kirk stated the Case Law clearly says that a substantial interest is one in which there is some discernible adverse effect to an interest other than in the abstract such as a potential loss of property value. Ms. Kirk stated that is cited in a 2019 Case which clearly states that it has to be an interest or a harm being suffered or will suffer in fact. She stated what Mr. Goldberg is providing is a belief/concern/possibility, and it is not a harm in fact.

Mr. Harris stated if you read the study which was supplied by the gentleman from Temple, it basically states that anyone who lives a mile away may have a 1.8% reduction in property values. Mr. Harris stated even if they accept that is true, that is not different from anyone else. He stated to have Standing you have to have an impact on your property and your interests that are different than the general populace. He stated all that is being cited is that there may be an increase in driving time, and there may be a loss in property values; and while he does not believe that is true, those impacts would be felt by the population in general. He stated that is why these three individuals are not aggrieved.

Mr. Goldberg stated certainly there are other people who share those interests, but that does not make them less substantial, direct, or immediate. He stated there are other people who live around Heritage Oak Drive, but not every single person in the Township has that. He stated it goes back to the point that was raised earlier that if this position that is being articulated by Mr. Harris and Ms. Kirk is correct, in so many instances you would not be able to have anyone seek Standing. He asked who would be close enough to this property that could have Standing since there are very few properties that abut it or are 100 or 200 feet away. He stated the purpose of the Law is to prevent what they believe was done improperly.

Mr. Harris stated the fact that there may or may not be people that are in the immediate area that have Standing that are not raising it, does not mean that suddenly Mr. Goldberg's clients, who live between a mile and two miles from the property and are alleging harm that is identical to their neighbors, is not a person aggrieved who has the ability to file a Challenge to Zoning action. He stated that is his position, and he believes that is the Township's position as well. He stated the harm is speculative; however, even if they are real, they are just the same harms that everyone suffers in that area, and that does not give Mr. Goldberg's clients the right to have Standing. He stated they have to allege something that is different than the public at large, and they have not alleged that even if you take as true what their report say.

Mr. Zamparelli stated he agrees with that. He stated the Report is just someone's opinion. Mr. Zamparelli stated it is true that everyone could possible be aggrieved no matter where they go, and he feels Ms. Kirk was right in citing the Case Law.

Mr. Flager stated Mr. Goldberg may want to elicit some Testimony to support the Argument that there is Standing. He stated Mr. Harris and Ms. Kirk could then cross examine the Witness, and the Board could make a determination at that point as to whether they believe there is Standing for these Applicants. Mr. Flager stated if the determination is made that they do have Standing, they could then proceed to a full Hearing. Mr. Flager stated he feels Mr. Goldberg is entitled to present some Evidence on the Standing issue.

Mr. Zamparelli stated this should be on the Standing issue only at this point. Mr. Goldberg stated he has several Witnesses that will be called; and he asked if the ruling at this point is just for Standing or should they proceed with everything. Mr. Connors stated they want it on Standing only. Mr. Flager stated it should be Standing only since if there is a determination made that there is no Standing, they do not need to get into a full Hearing on all the merits of the entire Application as that would be a lot longer. He stated they should just do it on Standing at this point; and while they still may need to Continue the matter, they would at least be more focused on what the issues are.

The Board agreed that at this point it should be on Standing only.

Mr. Goldberg called Mr. Gordon Meth who was sworn in.

Mr. Goldberg asked Mr. Meth to provide a brief description of his qualifications. Mr. Harris asked for an Offer of Proof. Mr. Goldberg stated Mr. Meth will Testify to the traffic in the area around 508 Heritage Oak Drive in particular and how that adversely impacts, and how there is some Evidence that is missing from the Applicant's previous presentation to the Board of Supervisors. He stated they believe that some of the impact to Heritage Oak Drive was understated when the Applicant had presented its Testimony to the Board of Supervisors.

Ms. Kirk Objected. She stated she would argue that you cannot re-litigate Evidence that was presented at the Hearing before the Board of Supervisors. She stated this is to deal strictly with the Standing issue, and not to re-litigate all of the traffic issues that were presented. She stated everyone had full and fair opportunity at the Supervisors meeting to make their Arguments with respect to the traffic concerns. She stated Mr. Goldberg's clients had their own traffic engineer there who could have disputed what was being presented by the proposed developer at that time.

Mr. Goldberg stated they are not trying to re-litigate anything that was articulated before the Board of Supervisors in August. He stated what they are saying is there is some missing information, and they believe that it could be demonstrated that there is an impact to the traffic around 508 Heritage Oak Drive that is different and discernible from the general population of Lower Makefield.

Ms. Kirk stated her Argument is that they cannot have a "second bite at the apple" by saying that something was not presented at the original Hearing, and that they want to present it now. She stated they had a chance, and it should have been presented back then.

Mr. Goldberg stated that is not what they are trying to do. Mr. Zamparelli stated it is exactly what they are trying to do. Ms. Kirk stated it is exactly what Mr. Goldberg stated he was going to do.

Mr. Flager stated whether that Argument was made at the Board of Supervisors meeting or not is a different issue; and Mr. Goldberg is just trying to establish that for a Standing Argument compared to the Argument that you should not pass an Ordinance, there are two different purposes for that. Mr. Flager stated if they were at the Board of Supervisors meeting,

and they were presenting that, he does not believe it was for the purpose of establishing Standing, and it was for an attack on the Ordinance. Mr. Flager stated now they are just having it as establishing whether they have Standing and how traffic will impact their properties specifically. He stated he feels if it is being done in that way, it would be permissible to have that limited Testimony. He stated he is not saying that they should go through everything, but if there is Testimony about the traffic that supports his Argument for Standing, he feels they can make that.

Mr. Harris asked if Mr. Meth has a Report. Mr. Goldberg stated he has the Exhibit that was sent earlier, and that is what he will use. Mr. Harris asked if that is the Google maps, and Mr. Goldberg agreed. Mr. Harris stated he will deal with that if Mr. Meth refers to them.

Mr. Meth stated he has a Bachelor's and a Master's in Civil Engineering. He stated he is a professional engineer within the State of Pennsylvania and other jurisdictions. He stated he has Testified before in excess of sixty Municipal Land Use Boards over the last twenty years. He stated he has represented both Boards in nearly four hundred Applications, Applicants in approximately one hundred Applications, and interested Parties in about eighteen different Applications, where they were Third Parties. Mr. Meth stated he also has three Certifications from the Transportation Professional Certification Board where he has demonstrated an expertise through experience and examination. He stated one is Professional Traffic Operations Engineer, another is Professional Transportation Planner, and the third is Roadway Safety Professional. He stated he is also currently on the Board of the International Board for the Institute of Transportation Engineers and he is the current Chairman of the Traffic Engineering Council for the Institute of Transportation Engineers.

Mr. Zamparelli stated Mr. Meth appears to be qualified.

Mr. Connors asked Mr. Meth if he Licenses in Pennsylvania, and Mr. Meth stated he has been Licensed in Pennsylvania since 2017.

Ms. Kirk asked if the Institute that provided the Certifications is a State or Federal Agency. Mr. Meth stated it is not an Agency, it is an independent Board. He stated he was a Board member for six years. He stated it is called the Transportation Professional Certification Board, and it Certifies Internationally; and it is loosely affiliated with the Institute of Transportation Engineers in that they share a staff although they are a separate organization.

Mr. Zamparelli stated they will accept Mr. Meth's qualifications.

Mr. Goldberg stated Mr. Meth heard what the developers are proposing to develop on the property by virtue of attending the Hearings in August, and Mr. Meth agreed. Mr. Goldberg asked if it is correct that what they are proposing it approximately 200 apartments, 55,000 square feet of Retail, and about a 100,000 square foot Wegmans. Mr. Meth stated it is a Super Market, and the Traffic Study did not specify a brand, and it was a 100,000 square foot Super Market, 55,000 square feet of Retail, and 200 apartment units. Mr. Goldberg asked Mr. Meth if he is familiar with the Overlay District and the proposed development in general, and Mr. Meth agreed.

Mr. Goldberg asked Mr. Meth approximately how far is 508 Heritage Oak Drive from the Prickett Preserve property, and Mr. Meth stated it is 0.95 miles "as the crow flies." Mr. Goldberg asked Mr. Meth to describe for the Board his thoughts on the impact of traffic as a result of this proposed development.

Mr. Harris stated they do not care what his thoughts are, and the question is whether he has done a Study; and whether or not based upon this Study, he has a professional opinion.

Mr. Goldberg stated Mr. Meth is entitled to provide his thoughts on it whether he submitted a formal Report or not.

Mr. Harris stated he is not disputing that he did not submit a formal Report or not, but the issue is not whether he has thoughts. He stated Mr. Meth is a professional engineer; and what they need is his opinion with a reasonable degree of scientific certainty based upon facts that he has determined, and not what his general thoughts are.

Ms. Kirk stated she would concur with that Objection.

Mr. Goldberg stated Mr. Meth has reviewed the Application and the Traffic Studies submitted by the developer. He stated Mr. Meth has analyzed those, and he has thoughts on those; and he is allowed to present his thoughts predicated on that.

Ms. Kirk stated the Township supports the Objection offered by Mr. Harris. She stated if Mr. Meth is being offered as an expert as to the impact of the alleged negative traffic impact, he is to provide a professional opinion, and not mere thoughts.

Mr. Goldberg stated he will re-phrase the question, and he asked Mr. Meth if he has reviewed the Traffic Analysis that was prepared by McMahan and Associates for this proposed development; and Mr. Meth stated he has. Mr. Goldberg asked Mr. Meth if he has a professional opinion as to how the traffic will be impacted around the area of 508 Heritage Oak Drive. Mr. Meth stated he has opinions about the changes in traffic patterns as a result of the proposed development based on the Study he reviewed in combination with reviewing information from Google maps.

Mr. Harris stated he Objects to Mr. Meth's use of Google maps. He stated if Mr. Meth had done traffic counts and done a normal Traffic Study, that would be one thing; but relying on Google maps is not what responsible traffic engineers rely on. Mr. Harris stated he has probably cross examined a hundred traffic engineers, and this is the first time anyone is going to "pawn off" Google maps as scientific data.

Mr. Goldberg stated the Applicant has presented information in the Study which Mr. Meth has analyzed, and it is not a question of "pawing off which is a very inappropriate term." Mr. Goldberg stated Mr. Meth is willing to offer a professional opinion.

Mr. Zamparelli asked that Mr. Meth be allowed to offer his opinion.

Mr. Flager stated he can testify as to whether Google maps is something that he would regularly use in coming to a professional opinion, and that may alleviate the Objection.

Mr. Goldberg stated Mr. Meth is entitled to offer his professional opinion, and it should also be noted that any Traffic Study that was done in the last nine months would be subject to questions anyway in light of what has been going on in the World over the last nine months.

Mr. Zamparelli stated he does not have a problem with Mr. Meth offering his opinion; however, offering an opinion without his own Traffic Study is no different than a neighbor offering is opinion on traffic. Mr. Zamparelli stated while he would like to hear Mr. Meth's opinion, without his actual Traffic Study, it really does not mean a lot to him.



Mr. Goldberg stated it is certainly very different than a neighbor as Mr. Meth has professional qualifications. Mr. Goldberg stated there is a “tremendous” distinction between a professional opinion versus a lay opinion. Mr. Goldberg stated whether he has done his own Traffic Study, does not necessarily negate the opinion; and moreover he is not sure how valid any Traffic Study done in the last nine months would be.

Mr. Zamparelli stated he does not have a problem with Mr. Meth giving his opinion, but he does have a problem with Mr. Meth not doing an actual Traffic Study.

Mr. Tritt stated he still does not understand how someone who lives a mile away from the project, across I-95, has any Standing at all. He stated he could understand it if he was on the same road, a quarter mile down; however given the distance and the fact that there are several hundred homes in between there and I-95, he does not see the purpose of entertaining this.

Mr. Flager stated it is the point of the Testimony to establish that, and whether they ultimately can is a determination that the Board can make; but they have to have that opportunity.

Mr. Connor asked that Mr. Meth offer his professional opinion.

Mr. Meth stated the main issue from the perspective of 508 Heritage Oak Drive is the impact on a Saturday from the proposed development. He stated the proposed development, unlike Uses that were previously approved for this area, generate a lot of weekend traffic.

Mr. Meth showed Page 3 of Exhibit A-10. He stated he overlaid a map showing 508 Heritage Oak Drive and the project in question. He stated he looked at where there are signalized intersections between the site and 508 Heritage Oak Drive. He stated one traffic signal that was studied in the Traffic Study was the one at Township Line Road and Stony Hill Road. He stated the intersection of Stony Hill Road and Yardley-Langhorne Road was also studied. He stated other intersections were not. He showed four intersections that are on Stony Hill Road that go all the way to Heacock, and they are all within one mile of the Study area. He stated industry publications advise that for Shopping Centers above 100,000, you are to look at all signalized intersections within one mile of the Study Area; and that is in the recommended practice

of the Institute of Transportation Engineers for Traffic Impact Analysis, and it is referred to in Publication 282 of Pennsylvania Department of Transportation when determining a Study Area.

Mr. Meth stated that even though the intersections of Township Line Road and Stony Hill Road and Stony Hill Road and Yardley-Langhorne Roads were counted on the exact same day at the same time on June 1, 2019, there is about a 300 vehicle discrepancy between the two counts. He stated the traffic at one end was about double the other. Mr. Meth stated he feels that the counts should be looked at again.

Mr. Meth showed bar charts on the slide, and he stated the 733 number is the existing traffic on the road. He stated the 168 is traffic from other developments in the area adding that there are about 8 developments that were looked at which had not been built at the time the traffic counts were conducted. He stated 117 is the amount of traffic from the site. He stated about 15% of the new traffic from the site was assumed to be following Stony Hill Road in a direction he showed on the slide. He stated this is a 15% increase in traffic. Mr. Meth stated once you get past Yardley-Langhorne Road, between Yardley-Langhorne Road and Heacock Road on Stony Hill Road, you go from 567 vehicles for existing traffic, 122 from proposed new developments, and 79 from the development in question. Mr. Meth stated all of the numbers came from the McMahan Traffic Study, the counts they conducted, and the analysis they performed.

Mr. Meth stated within the map that is underneath it, one of the things that Google maps does provide, which he uses as a reference to get a sense of what travel times are like in the area, is that it color codes typical conditions. He stated these are the conditions typical for a Saturday at 12:30 based on Google Earth. Mr. Meth stated it is becoming much more commonplace to use what is generally known as “big data” to support Traffic Studies and Analysis. He stated when you take a count on one individual day and base all your opinions on that, you do not know what happened on that day. He stated it therefore helps to get other data sources to double check it. He stated what is shown is that the travel time is shown as being slow on a typical Saturday along the area he showed on the slide. Mr. Meth stated the Traffic Study did not study anything past the Yardley-Langhorne Road and Stony Hill Road intersection. He stated it did analyze the Township Line Road and Yardley-Langhorne Road intersection at the request of the Township engineer.

Mr. Meth stated the reason this matters is that between the new developments that are not built yet and the proposed development, there will be a 35% to 40% increase in traffic along Stony Hill Road on a Saturday based on the projections. He stated there are intersections that may be impacted. He stated when an intersection starts to approach capacity, the delay increases exponentially. He stated the reason that happens is that once not all the cars that arrive at an intersection get through during a given period of time, “you have to join the back of the line, and the line grows, and people have to get through it.”

Mr. Meth stated the reason why 508 Heritage Oak Drive is specifically impacted by this project is the fact that this project will increase traffic on the roads that provide access to 508 Heritage Oak Drive by 15% “in themselves and the overall increase in traffic from that development and other developments is going to be approximately 35% to 40%,” and the evidence already shows that the intersections are approaching capacity.

Mr. Connors asked Mr. Meth what was the intersection grade at Yardley-Langhorne. Mr. Meth stated the only intersection in the area that he pointed to was Stony Hill Road and Yardley-Langhorne Road. He added that as he stated earlier the 733 vehicles that were on the road at one end of the block by Township Line Road were “suddenly” 433 in the Traffic Study. He stated he has a “question mark in his mind about the veracity of that count.”

Mr. Connors asked that Mr. Meth answer his question. Mr. Meth stated the Study had Levels of Service B and C overall but certain movements operated at Level of Service D. Mr. Connors asked about after the development improvements; and Mr. Meth stated the overall intersection was still at a Level of Service C, but one of the approaches was at Level of Service E in the future, and that was the one heading toward the development along Stony Hill Road. Mr. Connors stated the future build analysis including the subject development plus other developments in the area; and Mr. Meth stated it included that.

Mr. Meth added that if there was a problem with the base line counts, that analysis may not be correct. Mr. Connors asked Mr. Meth if he determined that if the base line counts were appropriate in his own study or traffic counts, and Mr. Meth stated the study he did was a thorough review of the one prepared by McMahan. Mr. Meth stated they counted traffic on the same day and they have a large discrepancy between the two intersections. He stated the problem with knowing the volume at two intersections is that it does not really tell you which one is right or wrong.

Mr. Zamparelli stated it has to tell the amount of cars that were counted, and they must have had a method for counting the cars. He added he does not see Mr. Meth's evidence as how he sees that their count is wrong.

Mr. Flager asked if the allegation is that the Study is wrong and the impact will be more substantial to the Applicants, or is it just an attack on the Study itself. Mr. Meth stated it impacts the Applicants because if that intersection operates at far worse Levels of Service than one would assume, any increase in traffic further degrades the intersection.

Mr. Zamparelli asked if he is attacking the Study as being inaccurate with no worth, and Mr. Meth stated he is saying that for that one intersection, he would not trust the results based on the information he has seen. Mr. Meth stated because of the fact that the volume is so much lower at the one intersection versus Township Line Road, he questions whether the Level of Service is really what the Study calculated. He stated he is not saying that they calculated anything wrong, he is saying that the base count they used may have somehow been inaccurate.

Mr. Harris stated he has not Objected; however, other than attacking the Study there has been nothing in the Testimony that shows that the impact is any different on 508 Heritage Oak Drive than it is on 510 Heritage Oak Drive, or 512 Heritage Oak Drive. He stated if the traffic at the intersection doubles, it is the same impact that everyone in the area shares. Mr. Harris stated in order to have Standing you have to have an impact that is different from everybody else. Mr. Harris stated this Testimony is "absolutely irrelevant."

Mr. Goldberg stated he disagrees with that. He stated you do not need "necessarily discernible from every other human being in Lowe Makefield." Mr. Goldberg stated what you need is discernible from just the overall population. He stated someone on the opposite side of town may not have this issue, but that does not mean that someone at 508 Heritage Oak Drive cannot have the same issue or the same concerns as someone at 506 Heritage Oak Drive.

Mr. Zamparelli stated he still finds it odd that Mr. Meth did not do his own Study, and he is saying that the Study that the Board saw before was "worthless." Mr. Zamparelli stated he is trying to find out why Mr. Meth feels that way.

Ms. Kirk stated she would join in Mr. Harris' Objection in that the Testimony presented so far shows that this alleged inaccurate count would increase traffic along the routes as shown that would effect all of the residents along that area and therefore does not show some discernible adverse effect to Mr. Borda or the other Applicants other than an abstract interest that would effect all citizens as set forth in the Case Law.

Mr. Goldberg asked Mr. Meth to explain further the impact to 508 Heritage Oak Drive. Mr. Meth stated within that area there is a road that is substantially impacted by the proposed development. He stated it has 15% of the site traffic coming by it on Stony Hill Road. Mr. Meth stated Stony Hill Road is one of the major gateways to this development. He stated Stony Hill Road also has several, very closely-spaced intersections; and most of them do not have left-turn arrows, and one of the approaches does not have left-turn lanes. Mr. Meth stated the basic information about travel times in this area on a Saturday shows that people can expect "it to go slow, and you cannot get through it very quickly." Mr. Meth stated that is a data point that shows that there are existing traffic issues or delay. He stated it could be because of the traffic signals and the timing and it could be because of capacity.

Mr. Goldberg stated there are existing traffic issues today. Mr. Zamparelli stated they all know that there is a lot of traffic in the area, but Mr. Meth has not discussed the possibility of improving traffic with the lanes and other changes which he has heard will be addressed with this project. Mr. Zamparelli stated he also disagrees that most people will be coming down that road to go to the project when 95 and 332 are right there. He stated as part of the Study, they showed a lot of the traffic, including the truck traffic, would come from 332 and not Stony Hill Road.

Mr. Meth stated 508 Heritage Oak Drive is less than a mile from the proposed use. He stated when the Applicant did their analysis, they assumed that 15% of the traffic from the site was coming to and from Stony Hill Road which means that it does not get on and off 295. He stated all of the improvements proposed as part of the development other than some signalization changes at Township Line Road and Stony Hill Road are up by the By-Pass and the Interchange for 295. He stated the improvements are not on Stony Hill Road near 508 Heritage Oak Drive.

Mr. Zamparelli stated he does recall that the Study was concentrating on 332 and 95.

Mr. Goldberg stated the improvements proposed are not designed for the smaller local roads, and Mr. Meth stated they are not. He stated they stop at the signal that is close to the site. Mr. Meth stated the Traffic Signal is projecting that 25% of the traffic going down Township Line Road and 15% of it is going to and from Stony Hill Road. He stated the only improvement they are doing there is adding an overlap right-turn arrow to give people more green time to make a right turn from the northern part of Stony Hill Road into the development. He stated that is the only improvement proposed in the direction for which nearly half of the site traffic is projected to be directed toward.

Mr. Goldberg asked by not addressing traffic improvements in the area they are discussing, what does that mean for someone who lives at 508 Heritage Oak Drive. Mr. Meth stated that means they will feel the negative consequences of this project without the benefit of the improvement dollars that would come with any development under the Act 209 Transportation Improvement Fee because all of the improvements are being done over by the Interchange and the By-Pass. Mr. Goldberg stated Mr. Borda will feel an increase as a result of this development. Mr. Meth agreed adding that the roads in question will get surcharged by extra traffic. He stated it will not be a small increase as a 15% increase in traffic is fairly substantially.

Mr. Zamparelli stated that would be on a Saturday, and Mr. Meth agreed. Mr. Zamparelli stated there is no question that there will be increased traffic, and they all understand that. He stated he wishes that Mr. Meth would have actually done his own Study. Mr. Zamparelli stated Mr. Meth indicated that 50% of the traffic from the proposed project will be going down Stony Hill Road, and Mr. Meth stated he stated it would be 15%. Mr. Zamparelli stated he believes that was in the Study. Mr. Meth stated he did previously state that between Township Line Road where 25% of the traffic is heading and this direction, nearly half of the traffic goes this way.

Mr. Flager asked if there is any Testimony about the other two properties as he just focused on the one at 508 Heritage Oak Drive. Mr. Meth stated he can Testify similarly for 1776 Cypress Way. Mr. Zamparelli asked how far away is that property, and Mr. Meth stated it is just over two miles. Mr. Meth stated ordinarily he would state that this is starting to get outside the range when you should keep looking at traffic impacts. He showed Page 5 of Exhibit A-10 which shows the proposed project at the top of the slide and Township Line Road as it traverses down to 1776 Cypress Way.

He stated at one point the road becomes Big Oak Road. Mr. Meth stated the one issue on the roadway is that you have a stop sign for Township Line Road in the southbound direction by a Railroad grade crossing. He stated there is also a stop sign on Big Oak Road, but you do not have a northbound stop sign. Mr. Meth stated stop signs are not designed to handle the kind of traffic that is being proposed as part of this development. He showed the bar chart that shows the increase in traffic in the area. He stated on a Saturday there are 553 vehicles on this section of Township Line Road south of Yardley-Langhorne Road. He stated the other approved developments that have not been built yet will add 48 extra vehicles, and 78 are projected for the subject project to be using this sector of road. He stated there are similar increases that he talked about on Stony Hill Road. Mr. Meth stated the proposed site traffic increase is approximately 15% over existing at this location. He stated a stop sign is not designed to handle this amount of traffic. He stated in his experience any time you have more than 600 vehicles on a stop-controlled approach, it will not work well. He stated people have to stop, watch for a gap, and then proceed. He stated there was no Study of this intersection. He noted the orange line on the slide where people approach the stop sign. He stated the amount of traffic on Township Line Road is not compatible with the traffic-controlled sign. He stated that is why 1776 Cypress Way and any homes near there are disproportionately impacted by this project to the extent that they have to rely on that for access.

Mr. Zamparelli stated he knows a Study was not done for this area because it is two miles away from the proposed development, and they have to stop somewhere. He stated he understands that there will be an increase in traffic on a Saturday, but he still does not see where the Standing lies.

Mr. Meth stated there is a recommended practice for conducting a Traffic Impact Study by the Institute of Transportation Engineers. He stated Publication 282 of PennDOT sets the rules for doing a Traffic Study, and indicates that for a Shopping Center of more than a 100,000 square feet you look within a two mile radius of the project. Mr. Meth stated the stop sign that he is talking about is between one and two miles from the site. He stated it also tells you that you should look at signalized intersections within two miles of the site and any major stop-controlled intersections within one mile. He stated Township Line Road at every other intersection is signalized. Mr. Meth stated because this is the main roadway, he feels that intersection should be a Study location. He stated quarter of the traffic is heading in that general direction. He stated a portion of it turns off at Yardley-Langhorne Road, but a portion of it continues and goes right to that stop sign.

Mr. Zamparelli stated he does not understand why PennDOT did not come up with these same issues. He stated PennDOT had some recommendations, but they did not seem to be as much as Mr. Meth has indicated. Mr. Meth stated his recollection of the Testimony from August was that there was an initial meeting with PennDOT, but PennDOT has not accepted this yet.

Mr. Zamparelli stated a Traffic Study was done by McMahan, and PennDOT was involved with that. Mr. Meth stated they Testified that they had a meeting with PennDOT but PennDOT has not given the final ruling yet although he could be wrong. He stated he knows that the Township's traffic engineer specifically requested that the intersections of Township Line Road and Yardley-Langhorne Road and Stony Hill Road and Yardley-Langhorne Road be looked at even though it was not in the initial submission to PennDOT. Mr. Meth stated the Township's traffic engineer also suggested that an improvement be developed that solved the traffic problem at the By-Pass and Stony Hill Road. Mr. Meth stated under PennDOT's regulations, they would not require a full improvement of that intersection – only a partial improvement.

Mr. Flager asked if there is any Testimony about the third property, and Mr. Meth stated he is not prepared to give that. Mr. Flager asked Mr. Goldberg if he had any further questions for Mr. Meth on the traffic impact as it relates to the subject properties, and Mr. Goldberg stated he did not at this point.

Mr. Harris asked Mr. Meth if the Standards published by ITE for a Traffic Study recognize the use of Google maps for a Traffic Study that meets their standards or do they require specific traffic counts. Mr. Meth stated the publication in question was published in 2010, and it is being revised. Mr. Harris asked if the Standards of ITE require traffic counts for a Traffic Study that would be submitted to the Municipality or a State Agency; and Mr. Meth stated it would require traffic counts because it requires analysis of intersections, and there is not enough information from Google to perform traffic analysis at specific locations or to perform Level of Service calculations.

Mr. Harris stated he understands that Mr. Meth had indicated that generally there will be an increase as a result of this development. Mr. Meth stated he does not know if the word "generally" is appropriate. He stated there is a specific increase in traffic because of this project.



Mr. Harris asked if that specific increase in traffic as a result of this project is going to be felt and experienced by everyone who uses the road network, and Mr. Meth stated it is not going to be felt the same way in the same areas. Mr. Meth stated it will have different impacts on different roads based on where the traffic is going and the available capacity of the road. He stated it is not going to be felt the same way for everyone on every road. Mr. Harris asked if everyone who uses the intersection at Stony Hill Road and Heacock Road will suffer exactly the same impact, and Mr. Meth stated they will not. Mr. Meth stated it depends on which direction they are moving, and every movement operates slightly differently. Mr. Harris stated everyone going in one direction toward the intersection will experience exactly the same delay as everyone else who is going to experience no matter where in the Township they come from. Mr. Meth stated he would agree for that movement, and everyone on the one movement will experience the same level of delay.

Mr. Harris stated Mr. Meth's Testimony was limited to the impact of cars approaching the intersection and using Stony Hill Road and Heacock Road, for instance, and he has no opinion as to whether that will or not have an impact on Heritage Oak Drive. Mr. Meth stated he does not have an opinion if there will be a specific impact to Heritage Oak Drive per se. Mr. Harris asked if he has a specific opinion as to whether there will be an impact on Cypress Way; and Mr. Meth stated not Cypress Way itself, only when the traffic from Cypress Way leaves their development and goes to the arterial and collector road system. Mr. Harris stated everyone who comes out of Cypress Way and heads into that road system will suffer exactly the same results of the increase in traffic, and Mr. Meth agreed. Mr. Harris stated everyone who comes out of Heritage Oak Drive onto the road system will suffer exactly the same increase in traffic, and Mr. Meth stated "more or less yes."

Mr. Harris stated Mr. Meth talked about the Traffic Impact Study, and the fact that there is a difference in traffic impact as a result of the Pandemic; and he believes everyone would acknowledge that. Mr. Harris stated the traffic counts that were done for the Traffic Study prepared by McMahan were taken prior to the Pandemic, and Mr. Meth stated they were taken prior to the U.S. cases of the Pandemic.

Mr. Harris asked Mr. Meth if he has checked to determine if in the time period between August and today, whether or not PennDOT has in fact accepted the McMahan Study; and Mr. Meth stated he has not.

Mr. Zamparelli stated the Zoning Hearing Board has a 10:00 p.m. curfew, and he feels the matter should be Continued. Mr. Connors asked that Ms. Kirk be permitted to cross examine Mr. Meth, and this was acceptable to the Board.

Ms. Kirk stated Mr. Meth indicated in his Testimony that there would be a 35% to 40% increase in traffic from the property down along Stony Hill Road, and Mr. Meth stated he Testified that there would be a 35% to 40% increase in traffic from existing levels through a combination of the other approved and non-built developments plus the development in question. Ms. Kirk stated his estimate is based upon projected future development other than the proposed development of the property, and Mr. Meth stated he provided both numbers. He added that he had stated that the overall increase in traffic was 35% to 40% along Stony Hill, but that the specific increase from this development was about 15% above existing traffic volumes.

Ms. Kirk stated the traffic that runs along Stony Hill Road would effect anyone that is driving in that direction on Stony Hill Road; and Mr. Meth stated depending on where they do their turns, they could be impacted differently. Ms. Kirk stated if traffic exists on Stony Hill Road, and you are on Stony Hill Road going in the same direction as traffic, you will be impacted; and Mr. Meth stated while you will be impacted, the way traffic works in a situation like this is that it is not the road itself that is the issue, rather it is the intersections that it meets. He stated the delay experienced will depend on which approach you are coming from, whether you are making a left turn or a through movement, etc. so there are different impacts depending on which way you are turning or moving at the intersections.

Ms. Kirk stated Mr. Meth had indicated that he looked at the traffic counts as contained in the McMahan Study, and Mr. Meth agreed. Ms. Kirk stated he indicated that those base counts may be wrong, and Mr. Meth agreed. Ms. Kirk asked Mr. Meth if he performed independent, separate base counts; and Mr. Meth stated he did not. Mr. Meth stated McMahan performed counts at two different intersections. He stated if you look at the traffic from one intersection, you can total the traffic on Stony Hill Road by Township Line Road; and that totaled 733 vehicles on a Saturday. He stated if you count the traffic at Stony Hill Road at Yardley-Langhorne Road, you will count only 431 vehicles on a Saturday peak; and that is the discrepancy. He added that there are driveways in between, but he did not see anything that would have accounted for a 300 vehicle per hour change between those intersections. Ms. Kirk stated Mr. Meth had access to the Traffic Study prior to the Hearings held before the Board of supervisors, and Mr. Meth agreed. Ms. Kirk stated he had the opportunity to review the Traffic Study at that time, and Mr. Meth

stated he did. Ms. Kirk asked Mr. Meth if he addressed at that time that the base counts were wrong, and Mr. Meth stated he had not noticed it by that point and did not notice it until he did a detailed review on the impact on Stony Hill Road. Ms. Kirk stated Mr. Meth had the opportunity to provide this opinion at the time of the Board of Supervisors Hearings but for the lack of his more detailed review of the Traffic Study, and Mr. Meth agreed.

Ms. Kirk stated Mr. Meth had stated that the address of 508 Heritage Oak Drive will feel negative effects under any development, and Mr. Meth stated it would be potentially impacted by any development that generates traffic. Ms. Kirk stated that would also effect anyone else within that vicinity of Heritage Oak Drive, and Mr. Meth stated it would not necessarily impact them to the same level adding it would depend on what the development is and what the distribution patterns are. Ms. Kirk stated it would effect all of the residents within the development where Heritage Oak Drive is located, and Mr. Meth agreed. Ms. Kirk stated it would also impact whatever other developments are in the same vicinity of Heritage Oak Drive, and Mr. Meth agreed.

Ms. Kirk stated with regard to 1776 Cypress Way, that is about two miles away from the property under the Overlay District; and Mr. Meth stated he believes that the exact measurement is 2.19 miles. Ms. Kirk stated Mr. Meth Testified that about one quarter of the increased traffic would be heading down Township Line Road toward 1776 Cypress Way. Mr. Meth agreed although he added that a fair amount of the traffic does turn on Yardley-Langhorne Road so it does not all go all the way down there. Ms. Kirk stated she felt Mr. Meth had indicated during direct examination that of the increase in traffic from this development about a quarter of it would travel toward Cypress Way which would negatively impact Cypress Way. Mr. Meth stated to the extent that Township Line Road is in the direction of Cypress Way, it would be 25% heading in that direction.

Ms. Kirk asked how many other Residential developments are along Township Line Road between the subject property and 1776 Cypress Way. Mr. Meth stated he has not done a count of them. Ms. Kirk stated there is more than one other Residential development, and Mr. Meth stated he believes so. Ms. Kirk asked if there are also some apartment complexes in that vicinity, and Mr. Meth stated he believes he has seen them. Ms. Kirk stated there is also new development that has recently been constructed which is Residential in the general area

of Big Oak Road as well where Mr. Meth has designated as Route 1 on his map; and Mr. Meth stated Google has it represented as Route 1. Ms. Kirk stated there is additional development there, and Mr. Meth agreed.

Ms. Kirk asked Mr. Meth if all of those developments that exist along Township Line Road will have negative effects from the increased traffic, and Mr. Meth stated any traffic using Township Line Road would potentially be impacted.

Ms. Kirk asked where is the third property located for the third Applicant subject to these proceedings. Mr. Meth stated it is to the north and east of 295 and the By-Pass. Ms. Kirk asked the address, and Mr. Meth stated it is 1412 Heather Circle. Ms. Kirk asked how far is that property from the subject property, and Mr. Meth stated it believes that it is just over one mile.

Ms. Kirk asked based on the Testimony Mr. Meth provided relative to the amount of traffic that would negatively effect the property on Cypress Way as well as the property on Heritage Oak Drive, is it fair to say that there would not be as much of an impact on the Heather Circle property by the increase in traffic; and Mr. Meth stated that was his conclusion that there would not be.

Mr. Zamparelli stated since there is more to discuss, they will need a Continuance. Ms. Kirk stated she would ask the Board to take under advisement that based upon the Testimony provided by Mr. Meth that while his Testimony acknowledges an increase in traffic, that increase in traffic will negatively effect the same general citizenry just as much as it would the three Applicants. She stated as a result these three Applicants do not have the Standing under the current Case Law within which to move forward with this Challenge, and she feels it should be dismissed.

Mr. Zamparelli asked Mr. Flager if they need to hear Public Testimony before they would make a decision on that. Mr. Flager stated Mr. Goldberg may have additional Testimony that he was planning to introduce on the Standing issue. Mr. Goldberg stated that is correct. Mr. Flager asked who else would be Testifying strictly on the Standing issue, and Mr. Goldberg stated there would be an economist. Mr. Flager asked if there would be Testimony from any of the Applicants themselves, and Mr. Goldberg stated there would be.

Ms. Kirk asked if Mr. Goldberg would provide an Offer of Proof as to the Testimony of the economist. Mr. Goldberg stated the two remaining people who would Testify would be one of the Applicants, Larry Borda, as well as the economist. He stated in terms of the Offer of Proof, what the economist will Testify to is that what is being proposed by the developer is not realistic, the 200 apartments will not provide the rents that are alleged by the developer, the apartments will end up having lesser rents, there will be a different groups of people, it is not viable as to what they are proposing as a result of this, and there will be a devaluation of property values for people in the general area such as the one at Heritage Oak Drive. Mr. Goldberg stated obviously it is not unique to 508 Heritage Oak Drive in terms of the person at 506 Heritage Oak Drive would also feel the same impact; however, it does not impact every single person in the Township the same. Mr. Goldberg stated by virtue of the location of 508 Heritage Oak Drive, it is very realistic to believe that there will be a decrease in property value.

Ms. Kirk stated she would Object to the Testimony of the economist as that Testimony is substantially the same as what was provided before the Board of Supervisors; and absent a Study, a speculation as to what may be realistic and may result in a devaluation of property values does not meet the requirements in order to be an aggrieved person to Challenge the Adoption of the Zoning Ordinance.

Mr. Goldberg stated he does not know what the fact that there was Testimony before the Board of Supervisors has to do with this Hearing. He also stated he disagrees with the Objection as the Testimony will show that based on his professional opinion as to what will most likely happen, there will be a decrease in property value.

Mr. Harris stated the problem with the opinion is that he is stating that if you are a mile away from the property you are going to suffer a cumulative negative impact of 1.8% of the value of the property. Mr. Harris stated the economist's report basically states that every property that is one mile away will have a 1.8% decrease in value, and that is not Testimony that provides Standing. Mr. Harris stated he has read the Report, and it is a generalized impact on all residents within the Township.

Mr. Goldberg stated he disagrees that it would necessarily be every single house as he feels some of them are different.

Mr. Flager stated that Study only relates to 508 Heritage Oak Drive, and Mr. Goldberg agreed. Mr. Flager stated Larry Borda lives at that address; however, there are two other properties. Mr. Flager stated the economist would not be Testifying about 1412 Heather Circle and Mr. Meth did not Testify about 1412 Heather Circle. Mr. Flager asked if there is any Testimony or any other Evidence as it relates to 1412 Heather Circle owned by Bryan McNamara, and Mr. Goldberg stated there is not specifically to that address. Mr. Flager stated there is no Evidence for Mr. McNamara's Standing that is being presented today or at a Continued Hearing, and Mr. Goldberg stated there is nothing unique to Mr. McNamara.

Mr. Flager stated the economist would be supporting Standing for 508 Heritage Oak Drive as did Mr. Meth, and Mr. Meth supported the 1776 Cypress Way address. Mr. Flager asked if there would be any additional Evidence or Testimony about Mr. Dobson at 1776 Cypress Way. Mr. Goldberg stated there would not, and the only other person to Testify would be Mr. Borda in addition to the economist.

Mr. Flager stated if that is the case, he feels the Board could make a determination if they wanted to now on the Dobson and McNamara Standing and at a Continued Hearing make a determination after additional Testimony about Mr. Borda. He stated if there is no additional Evidence about Mr. McNamara or Mr. Dobson, a determination could be made now; however, they would then have to allow Public Comment, and he does not know if that is feasible given the time. Mr. Zamparelli agreed.

It was agreed to Continue the matter. Mr. Flager stated the next meeting would be January 5, 2021. Ms. Kirk stated the Hearing with regard to the Mill Road property had been Continued to January 5. Mr. Majewski stated nothing else is contemplated for that meeting.

Mr. Flager stated on January 5, they will continue with the issue of Standing; and once all relative Evidence and Testimony is offered, the Board can make a determination if there is Standing. He stated if it is determined that there is not Standing, the Hearing would be over. He stated if it is determined that there is Standing, they would proceed to a full Hearing on the matter.

Mr. Solor stated he feels they should be going from Standing, to Jurisdiction, and then to a full Hearing. Ms. Kirk stated she would ask for the Jurisdictional issue as well in light of the fact that there is a Common Pleas complaint that

has been filed as well by these three individuals that substantially raises the same Challenges to the Ordinance. Mr. Zamparelli asked if there is anything unusual about that, and Mr. Connors stated he agreed that is unusual.

Mr. Flager stated in the MPC there is language that you can only make one Challenge at a time. Mr. Goldberg stated it is a hybrid situation where you have Procedural matters and also Substitutive Matters. He stated under the MPC Procedural matters are meant to go directly to Doylestown, the Court of Common Pleas; and Substitutive matters go before the Zoning Hearing Board. Mr. Goldberg stated this is an unusual situation, and as a result out of an abundance of caution, he Filed the Procedural matter in the Bucks County Court of Common Pleas but also added the Substitutive Claim in case it became an issue at the Township; and he did the converse at the Township where he Filed the Substitutive Challenge with the Township, but also included the Procedural issue out of an abundance of caution.

Mr. Zamparelli asked how the Court of Common Pleas can decide on that without knowing of the Applicants have Standing. Mr. Harris stated he raised that issue at the Common Pleas Court as well.

Mr. Zamparelli asked if Public Comment would be involved with Standing only. Mr. Flager stated they can take Public Comment on that specific issue. He stated if it gets to a full Hearing, they would then have Public Comment. about the substance of the Application itself. Mr. Flager stated he will. reiterate this at the next meeting so that the public is aware that they will be taking Public Comment specifically on the issue of Standing first, and they would not be taking Public Comment on the Application itself until the Board was entertaining that. Mr. Zamparelli stated he wants to make sure that is made clear.

Mr. Solor moved, Mr. Connors seconded and it was unanimously carried to Continue the Appeal to January 5, 2021.

There being no further business, Mr. Connors moved, Mr. Zamparelli seconded and it was unanimously carried to adjourn the meeting at 10:25 p.m.

Respectfully Submitted,

Anthony Zamparelli, Acting Secretary

