

MINUTES

Upper Saucon Township Board of Supervisors
Regular Meeting
Monday, October 8, 2018 – 6:30 P.M.
Township Municipal Building

Members Present: Dennis E. Benner, Chairman
Brian J. Farrell, Vice Chairman
Philip W. Spaeth
Kimberly Stehlik
Stephen Wagner

Staff Attending: Thomas F. Beil, Township Manager
Joseph Geib, Assistant Township Manager
Jeffrey Dimmich, Township Solicitor
Charles Unangst, P.E., Township Engineer
Patricia Lang, Director of Community Development

CALL TO ORDER

Mr. Benner called the meeting to order at 6:32 p.m., in the Public Meeting Room of the Upper Saucon Township Municipal Building, 5500 Camp Meeting Road, Upper Saucon Township, Lehigh County, PA.

PLEDGE OF ALLEGIANCE

Mr. Benner asked all in attendance to stand and recite the “Pledge of Allegiance.”

NOTIFICATION

Mr. Benner announced that all public sessions of the Upper Saucon Township Board of Supervisors are electronically recorded. The recordings are maintained as part of the record of the meeting until the minutes are transcribed and approved by the Board.

PUBLIC COMMENT

None

SUBDIVISIONS & LAND DEVELOPMENTS

None

MINUTES

None

PUBLIC HEARING ON PROPOSED ORDINANCE NO. 163 – VACATING PORTION OF SHORT ROAD LOCATED SOUTH OF ITS INTERSECTION WITH PASSER ROAD

Chairman Benner opened the hearing and asked Solicitor Dimmich to handle the proceedings.

Solicitor Dimmich briefly summarized proposed Ordinance No. 163 and said the purpose of the hearing was to accept public input on the proposed Ordinance. He said the proposed Ordinance was prepared in response to a request by Provco Pineville Acquisitions, LLC for the Township to vacate a portion of Short Road between Passer Road and Route 309. The vacation of Short Road is requested in connection with a development proposal by Provco Pineville Acquisitions to construct a gas station at the southwest corner of Route 309 and Passer Road.

Solicitor Dimmich asked the interested parties in this matter to identify themselves.

Attorney Erich Schock of Fitzpatrick Lentz and Bubba said he was present on behalf of Provco Pineville Acquisitions, LLC.

Attorney James Preston said he was present on behalf of APS Associates, LLC.

Solicitor Dimmich reviewed the legal requirements for vacating a public road.

Solicitor Dimmich introduced the following exhibits into the record:

- Exhibit T-1 – Petition of Provco Pineville Acquisition LLC to vacate a portion of Short Road
- Exhibit T-2 – Complete copy of proposed Ordinance 163
- Exhibit T-3 - Complete copy of Ordinance No. 133 adopted by the Board of Supervisors on May 24, 2005 conditionally vacating a portion of Short Road between Passer Road and Route 309
- Exhibit T-4 – Road vacation plan for Short Road dated July 25, 2018 prepared by Bohler Engineering
- Exhibit T-5 – Metes and bounds description for area of Short Road to be vacated dated February 21, 2018 last revised July 27, 2018 prepared by Control Point Associates, Inc.

- Exhibit T-6 - Copy of public notice for proposed Ordinance 163 which was submitted to The Morning Call newspaper for publication on September 27, 2018
- Exhibit T-7 – Copy of actual public notice printed in The Morning Call on September 27, 2018
- Exhibit T-8 – Copy of Public Notice for proposed Ordinance 163 which was mailed to all owners of land adjacent to the portion of Short Road proposed to be vacated and other interested parties
- Exhibit T-9- Legal memorandum prepared by Attorney Erich Schock in support of petition submitted by Provco Pineville Acquisition LLC to vacate a portion of Short Road

Exhibits T-1 through T-9 were admitted without objection.

Attorney Schock presented his case in support of Provco Pineville's request for the Township to vacate a portion of Short Road. Michael Cooley of Provco Pineville Acquisitions, Eric Britz of Bohler Engineering, Casey Moore of McMahon Associates and Matthew Hammond of Traffic Planning and Design gave testimony in support of the requested vacation of Short Road. Messrs. Cooley, Britz, Moore and Hammond shared the opinion that the vacation of Short Road would not damage or inconvenience any area property owners.

Attorney Schock introduced the following Exhibits into the record:

- Exhibit A-1 – Agreements of Sale entered into by Provco Pineville Acquisitions LLC for the purchase of various properties at the southwest corner of Route 309 and Passer Road
- Exhibit A-2 – Lot consolidation / subdivision plan, sheet #4 of 34, last revised May 15, 2018, for Provco Pineville Acquisitions LLC
- Exhibit A-3 – Lot 8A exhibit, sheet#1 of 1, dated August 9, 2018
- Exhibit A-4 – Site plan, Sheet #2 of 34, last revised May 11, 2018
- Exhibit A-5 – Matthew Hammond, P.E., Executive Vice President of Traffic Planning and Design – Summary of professional qualifications
- Exhibit A-6 – Casey Moore, P.E., Executive Vice President and Regional Manager of McMahon Associates, Inc. – Summary of professional qualifications
- Exhibit A-7 – Memorandum dated August 24, 2018 prepared by Casey Moore, P.E., regarding Short Drive evaluation

Exhibits A-1 through A-7 were admitted without objection.

Deborah Hopson of 3906 Passer Road had questions concerning the properties depicted on Exhibit A-2. Mr. Britz responded to Ms. Hopson's questions.

Messrs. Cooley, Britz, Hammond and Moore responded to questions from Attorney Preston.

Messrs. Hammond, Cooley and Britz responded to questions posed by Board members and Solicitor Dimmich.

Jerry Schwenk, Jr. recited the history of Short Road, noting the Township has maintained the road for many years. He said the current configuration of Short Road presents some safety concerns especially at the intersection with Passer Road. He said he operates an antique mall located along Short Road and he wants to continue to operate this business if the vacation of Short Road does not get approved. If the vacation of Short Road is approved, he intends to sell his property where the antique mall is located to Provco Pineville Acquisitions.

Kirpal Saini, owner of APS Associates LLC, testified that the vacation of Short Road would create an unsafe condition for the public and make it extremely inconvenient for motorists to gain access to commercial properties that APS Associates owns at the southern end of Short Road. He was opposed to the vacation of Short Road.

Mr. Saini responded to questions posed by Attorney Schock.

Attorney Preston introduced Exhibit O-1 into the record. Exhibit O-1 includes an aerial image of the intersection of Route 309 and Passer Road and a photograph of the Short Road connection to Route 309.

Exhibit O-1 was admitted without objection.

Mr. Saini responded to questions from Mr. Spaeth.

Solicitor Dimmich asked if anyone from the public wished to comment. There was no response.

Mr. Benner asked if there was a motion to adopt proposed Ordinance No. 163.

Motion made by Mr. Farrell and seconded by Mr. Wagner to adopt proposed Ordinance No. 163 vacating a portion of Short Road located between Passer Road and Route 309.

The motion was approved by a vote of 5 to 0.

The public hearing was concluded at approximately 9:06 p.m.

A copy of the transcript from the hearing on proposed Ordinance No. 163 is attached to these meeting minutes and identified as Attachment 1.

RESOLUTIONS

None

MOTIONS

Request For Payment – Nimaris Construction LP – Certification No. 1

Motion made by Mr. Wagner and seconded by Ms. Stehlik to authorize payment in the amount of \$60,840.00 to Nimaris Construction LP for work completed on the Oakhurst Stormwater Outfall Stream Conveyance System.

The motion was approved by a vote of 5 to 0.

Release of Funds – Weyhill Estates, Phase 1 – Certification No. 7

Motion made by Mr. Farrell and seconded by Mr. Wagner to authorize the release of construction security in the amount of \$31,005.00 for Phase 1 of the Weyhill Estates subdivision in accordance with the Community Development Director's memo dated October 1, 2018.

The motion was approved by a vote of 5 to 0.

Release of Funds – Lanark Commons - Certification No. 2

Motion made by Ms. Stehlik and seconded by Mr. Farrell to authorize the release of construction security in the amount of \$616,651.54 for the Lanark Commons land development in accordance with the Township Engineer's recommendation made by letter dated October 3, 2018.

The motion was approved by a vote of 5 to 0.

Request For Payment – Oakhurst Storm Sewer Improvements– Certification No. 4

Motion made by Mr. Wagner and seconded by Ms. Stehlik to authorize payment in the amount of \$174,124.97 to H&K Group, Inc., for work completed on the Oakhurst Storm Sewer Improvement Project.

The motion was approved by a vote of 5 to 0.

CORRESPONDENCE & INFORMATION ITEMS

None

DIRECTION/DISCUSSION ITEMS

Cancellation of Board of Supervisors meeting scheduled for October 22, 2018 due to lack of agenda items

It was the consensus of the Board to cancel the meeting originally scheduled for October 22, 2018.

BILLS, PAYROLL, AND COMMISSIONS

Motion made by Mr. Farrell and seconded by Ms. Stehlik to authorize payment of the Prepaid Invoice List and Warrant List dated 10/5/2018.

The motion was approved by a vote of 5 to 0.

ADDITIONAL BUSINESS

Ms. Stehlik updated the Board on a recent meeting she attended with representatives from the Lehigh Valley Planning Commission. She noted the Lehigh Valley Planning Commission is encouraging municipalities to propose transportation projects for possible inclusion in the Lehigh Valley's Regional Plan.

COURTESY OF THE FLOOR

None

EXECUTIVE SESSION

At approximately 9:28 p.m., the Board met in executive session to discuss a personnel matter.

The Board returned from executive session at approximately 9:39 p.m.

ADJOURNMENT

Motion made by Mr. Wagner and seconded by Mr. Farrell to adjourn the meeting.

The motion was approved by a vote of 5 to 0.

The meeting was adjourned at approximately 9:40 p.m.

Secretary

BEFORE THE BOARD OF SUPERVISORS
OF UPPER SAUCON TOWNSHIP

In Re: : Proposed Ordinance No.
: 2018-163
VACATION OF A PORTION :
OF SHORT ROAD :

A public meeting held in the above
matter at the Township Municipal Building, 550 Camp
Meeting Road, Center Valley, Pennsylvania, on
Wednesday, October 8, 2018, commencing at 6:30 p.m.,
stenographically reported by James P. Gallagher III,
Registered Diplomate Reporter.

BEFORE: THE BOARD OF SUPERVISORS

DENNIS BENNER, Chairman
BRIAN J. FARRELL, Supervisor
STEPHEN C. WAGNER, Supervisor
PHILIP SPAETH, Supervisor
KIMBERLY STEHLIK, Supervisor

JEFFREY R. DIMMICH, ESQ., Solicitor
THOMAS BEIL, Township Manager
JOSEPH GELB, Assistant Manager
CHARLES UNANGST, Township Engineer
MICHELLE VOLK, Township Clerk

* * *

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1
2 APPEARANCES:

3 FITZPATRICK, LENTZ & BUBBA
4 By: ERICH J. SCHOCK, ESQ.
5 4001 School House Lane
6 Center Valley, PA 18034
7 Eschock@fbllaw.com
8 -- for Provco Pineville Acquisition, LLC

9 BROUGHAL & DEVITO
10 By: JAMES F. PRESTON, ESQ.
11 38 W. Market Street
12 Bethlehem, PA 18018
13 Jamespreston@broughal-devito.com
14 -- For APS Associates, LLC

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1 MR. BENNER: The Upper Saucon Township
2 Board of Supervisors regular meeting, Monday,
3 October 8, 2018 is now in session.

4 Let's stand and pledge the flag.
5 (Pledge of Allegiance)

6 MR. BENNER: The next item on our
7 agenda, I guess we are going to adjourn this one.

8 MR. DIMMICH: We'll stay in session,
9 Mr. Chairman, and just go into the hearing.

10 MR. BENNER: All right. Then we are
11 going to go into a public hearing on a proposed
12 ordinance number 163 concerning the vacating of a
13 portion of Short Road. And at this time I think I'm
14 going to turn the meeting over to our solicitor.

15 MR. DIMMICH: Thank you, Mr. Chairman.
16 Let's first get all the parties of interest in here,
17 and then we will do a brief explanation. The
18 Petitioner as I have it is Provco Pineville
19 Acquisitions, LLC, is that correct?

20 MR. SCHOCK: Correct.

21 MR. DIMMICH: And who is here -- I
22 know your name, but I'd like to have it on record,
23 who are you representing?

24 MR. SCHOCK: Eric Schock from
25 Fitzpatrick, Lentz and Bubba.

1 MR. DIMMICH: Okay. And are there
2 any -- I know Mr. Preston is here. So is there any
3 party that wishes to be recognized as an objector?

4 MR. PRESTON: The party's name is APS
5 Associates, LLC, and I represent APS Associates.

6 MR. DIMMICH: And it's James Preston?

7 MR. PRESTON: James Preston, that's
8 correct.

9 MR. DIMMICH: Now, even though there
10 is -- you don't have to be a party to speak at this
11 type of a hearing. This is sort of a hybrid. So
12 others may be allowed to speak without being
13 recognized as a party. The party gives you special
14 status, rights to appeal, other issues that might
15 come hand in hand with that. So right now is -- I
16 don't want anybody to feel that simply because
17 you're not a party, at an appropriate point you may
18 be able to speak and have input.

19 Okay. What has happened here, and I'm
20 going to just give you a brief background on this
21 matter. There was a second petition filed by
22 Provco. I'm just going to use an abbreviated --

23 MR. SCHOCK: It's Provco, actually.

24 MR. DIMMICH: Provco. Would you
25 rather have me use -- what's the next word on there?

1 MR. SCHOCK: Pineville.

2 MR. DIMMICH: Pineville. What's
3 better for you?

4 MR. HAMMOND: Provco.

5 MR. SCHOCK: Provco.

6 MR. DIMMICH: Provco filed a petition
7 to vacate a portion of Short Road located in Upper
8 Saucon Township. They filled the petition on 9 --
9 it was their second petition. The first one was
10 withdrawn. They filed it on September 20, 2018.
11 They are requesting that a section of Short Road
12 basically from Preston Lane down to --

13 MR. SCHOCK: Passer.

14 MR. DIMMICH: Passer Road, I'm sorry,
15 down south almost to 309, not completely to 309, be
16 vacated. And it is part of the Wawa project. All
17 right.

18 Vacations of roads are governed by the
19 township code. It's sort of an unusual practice.
20 At one time road vacation and road openings were
21 done under the general road law. But I guess the
22 courts got tired of hearing these things, and the
23 legislature gave you the honor of making these
24 decisions.

25 There are two pertinent sections, 53

1 PS 67 304, which is the power of the township to lay
2 out, open, widen, vacate their roads. They must do
3 it by ordinance, and it must be done after a
4 petition is presented. You must act within 60 days,
5 that's why I put the date in. And if you turn them
6 down they have a right to appeal to Common Pleas,
7 which appoints viewers from the Board of View to
8 actually do a de novo hearing on this matter.

9 If you approve it, obviously they
10 can -- the other party can also appeal.

11 As I said, there were two sections
12 that you must be aware of. And if there are
13 questions you need to ask me in executive session,
14 please notify the chairman. They can only be legal
15 questions that deal with legal issues. All the
16 other discussions will be in public.

17 The second portion is 53 PS 67 305,
18 and it says before the passage of any ordinance --
19 and I'm just going to shortcut it here -- to vacate
20 any road or highway, the Board of Supervisors shall
21 give 10 days written notice to the owners of
22 property adjacent to the road of the time, place,
23 and date set for the hearing. It does say if you
24 approve it you can file it immediately. And any
25 person who is affected by the ordinance within 30

1 days can file -- we'll call it an appeal, but it's
2 really exceptions, and they have to set forth
3 sufficient surety, and they file a petition for
4 review.

5 And interestingly, the last section on
6 this provision says, after the expiration of the
7 term allowed for filing exceptions, or upon the
8 Order of Court -- or upon the Order of the Court,
9 upon disposition of any exceptions, the Court of
10 Common Pleas on application by petition by the Board
11 of Supervisors or any person interested shall
12 appoint three viewers from the County Board of
13 Viewers to assess the damages and benefits
14 occasioned by the proceeding, unless they are
15 otherwise agreed to.

16 So in this particular case with a
17 threat of damages -- potential threat, I'm not
18 saying that any party might be allowed them, I'm
19 just saying there's a potential threat, the
20 ordinance as drafted is a conditional ordinance to
21 vacate the road, and it's conditioned upon, if it is
22 granted, and if you find sufficient evidence, and
23 I'll go through that in a moment, the condition
24 would be that they -- the party who asks for the
25 vacation indemnify, defend, hold as harmless and pay

1 attorney fees for anything that arises out of the
2 vacation of the road. They did that simply to try
3 to protect them. I found one other case where a
4 party did that, but it did not develop into the
5 necessity. The Court mentioned it, but never -- it
6 was not the center of the Court's decision.

7 So what you're going to hear tonight
8 is an actual hearing. It starts with a petitioner.
9 The objector will have opportunity to cross-examine.
10 You may ask questions. And then listen to the
11 objector. And they'll have a chance to
12 cross-examine just like we would in any court
13 hearing.

14 The standard, what are you going to be
15 looking for. The standard is, does the petitioner
16 prove by substantial evidence, which is more likely
17 than not, that's substantial, that the road should
18 be vacated as being useless, inconvenient, or
19 burdensome. Those words, by the way, come right
20 from the old road law. Some of the cases also state
21 that you will also have to make a finding that the
22 vacation of the road is necessary for public
23 convenience, or that it won't affect public
24 convenience. I've seen it written in the negative
25 and in the positive. So the bottom line is, this is

1 a very seldomly used section. Most people are
2 unfamiliar with it. Although I have done vacation
3 of roads before, I've not ever vacated a road under
4 the Second Class Township Code, so I have to do a
5 lot of learning myself to make sure I at least
6 believe I am correct and give you the correct
7 guidance.

8 But remember, you must make a finding
9 that it's useless, inconvenient or burdensome, and
10 it's necessary for public convenience, or in the
11 opposite way, that it will not negatively affect
12 public convenience.

13 I also wanted you to know that I do
14 not believe the eminent domain law will apply, only
15 because I feel that this section of the Second Class
16 Township Code as it speaks specifically to the item
17 of vacation becomes preeminent. It is a very
18 narrowly construed thing. It even deals with the
19 damages. So I believe we'll be under that. There
20 are cases on vacation of public roads for
21 condemnation. I am not sure they apply. This has
22 its own -- its own being.

23 So with that, does anyone on the board
24 have any questions about what they're going to be
25 listening for? Your going to be listening for

1 evidence that it's useless, inconvenient, or
2 burdensome, and that the vacation is necessary for
3 public convenience, or it will not harm public
4 convenience as the alternative. That's what you'll
5 be listening for. Obviously you'll hear other
6 material matters concerning the circumstances.

7 Any questions?

8 (No response.)

9 MR. DIMMICH: Okay. Mr. Schock, do
10 you have any questions? I know I've made rather
11 extensive comments.

12 MR. SCHOCK: No.

13 MR. DIMMICH: And Mr. Preston, do you
14 have any questions?

15 MR. PRESTON: No questions.

16 MR. DIMMICH: All right. With that
17 then we'll start by turning IT over to Provco and
18 their attorney, Erich Schock, and ask you to present
19 your case.

20 Hold on, I'm sorry, before I do that I
21 want to read in the exhibits. My fault.

22 T-1 for this hearing will be the
23 petition of Provco Acquisition, LLC to vacate a
24 portion of Short Road.

25 T-2 is a complete copy of proposed

1 Ordinance 163.

2 T-3 is a complete copy of Ordinance
3 number 133 adopted by the Board of Supervisors on
4 May 24, 2005, conditionally vacating a portion of
5 Short Road between Passer Road and Route 309. The
6 same section, but it was done in 2005. Different
7 type of condition though, at that time. The
8 condition was the entity would acquire certain
9 properties, and they didn't. So they were never
10 able to record that.

11 When a road is vacated it has to be
12 sent to the Clerk of Courts Criminal where it is
13 recorded, and they keep track of all the records
14 that are open or vacated.

15 T-4 is a road vacation plan for Short
16 Road dated July 25, 2018 prepared by Bohler
17 Engineering, and it's B O H L E R.

18 T-5 are the metes and bounds
19 description for the area of Short Road to be vacated
20 dated February 21, 2018, last revised July 27, 2018
21 prepared by Control Point Associates, Inc.

22 T-6 is a copy of the public notice for
23 Proposed Ordinance 163 which was submitted to the
24 Morning Call newspaper for publication on September
25 27, 2018.

1 T-7 is a copy of the actual notice
2 printed in the Morning Call on September 27, 2018.

3 T-8 is a copy of the public notice for
4 Proposed Ordinance 163 which was mailed to all
5 owners of land adjacent to a portion of Short Road
6 proposed to be vacated and other interested parties.

7 T-9 is a legal memorandum prepare by
8 Attorney Erich Schock in support of the petition
9 submitted by Provco Pineville Acquisitions, LLC, to
10 vacate a portion of Short Road.

11 So those exhibits will be admitted
12 without objection. And the main purpose is to show
13 that we are procedurally covered, and all the bases
14 have been met to go ahead with the hearing.

15 Now, with that, I will turn it over to
16 the petitioner.

17 MR. SCHOCK: Thanks. All right. My
18 first witness is Mike Cooley.

19 * * * *

20 MICHAEL COOLEY, having been duly
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SCHOCK:

24 Q. Do you want to spell your last name?

25 A. First name is Michael, last name is Cooley,

1 C O O L E Y.

2 Q. Okay. And what's your connection to what
3 we're calling Provco?

4 A. I am a principal in the entity, and I
5 manage and oversee all of our investments and land
6 development projects, including this one here on
7 Passer Road.

8 Q. Okay. And with regard to this project, did
9 Provco enter into agreements potentially to acquire
10 multiple parcels near the intersection of Passer
11 Road and 309?

12 A. Yes, we did. I entered into approximately,
13 I believe six separate agreements with adjacent
14 properties necessary to acquire enough ground to
15 accommodate this project.

16 Q. And a couple of those are along Short Road
17 which we're here on tonight, correct?

18 A. That is correct.

19 Q. And I'm not sure that you need to have the
20 typical offer of standing, but we have got exerpts
21 for the two agreements of sale for the tracts that
22 happen to be along Short Road. Is that correct?

23 A. Yes, that's correct.

24 MR. SCHOCK: So I'm just marking that
25 as A-1, and then offer that to the solicitor. I

1 didn't make multiple copies to waste paper.

2 MR. DIMMICH: You want to mark this as
3 Applicant 1?

4 MR. SCHOCK: Applicant 1.

5 MR. DIMMICH: Mr. Morris, do you wish
6 to look at this?

7 MR. SCHOCK: These are exerpts.

8 MR. DIMMICH: Do you wish to look at
9 this before I --

10 MR. PRESTON: No.

11 MR. DIMMICH: Mr. Schock, you've
12 offered it?

13 MR. SHOCK: Yes.

14 MR. DIMMICH: Any objection?

15 MR. PRESTON: No objection.

16 MR. DIMMICH: It's admitted.

17 Q. Generally, where are the properties
18 located?

19 A. The properties are located I would say the
20 northeast corner, southeast corner of the
21 intersection of 309 and Passer Road.

22 Q. And you're proposing to consolidate those
23 into a single tract for development, is that
24 correct?

25 A. That is correct.

1 Q. And what were you proposing to put there?

2 A. We are proposing to put a prototypical Wawa
3 convenience store with a fueling station, and a
4 separate fast food restaurant tract.

5 Q. And your engineers who are here this
6 evening will give more detail, but you retained an
7 engineering firm to assist you in preparation of
8 those plans, correct?

9 A. Yes, that is correct.

10 Q. And these plans were submitted to the
11 township, correct?

12 A. The plans have been submitted to the
13 township for preliminary land development, and we
14 did go through a zoning process as well to receive
15 necessary zoning relief to build the project.

16 Q. Okay. And in connection with that project
17 the engineers determined that in order to proceed
18 you would need to have a portion of Short Road
19 vacated?

20 A. Absolutely, yes, that is correct.

21 Q. And is that the reason why you filed this
22 petition?

23 A. Yes, it is.

24 MR. SCHOCK: Okay. That's all the
25 questions I have for this witness.

1 MR. DIMMICH: Cross.

2 * * *

3 CROSS EXAMINATION

4 BY MR. PRESTON:

5 Q. Mr. Cooley, good evening.

6 A. Good evening.

7 MR. PRESTON: My name is Jim Preston.

8 And again, for the record I represent APS
9 Associates, LLC, which owns the property to the
10 south of yours.

11 Can I make a brief statement before I
12 begin?

13 MR. DIMMICH: In this case, certainly.

14 MR. PRESTON: I just want the Board to
15 understand why I'm here. We're aware of the
16 project. We don't oppose the project. We're not
17 trying to defeat the project or make it go away. In
18 fact, we welcome it because we think it's a good
19 idea. Our problem is that we own the property
20 immediately to the south that we also use Short Road
21 as access to our property, and by cutting off the
22 northern section we're going to be more or less
23 isolated. That's our position. I don't want the
24 board to think that we're here just to mess with
25 these guys, because we're not.

1 Q. Okay. Mr. Cooley, you're familiar with all
2 the properties I guess that front on or have -- or
3 use Short Road for access?

4 A. I believe so.

5 Q. Well, doing your due diligence, you've been
6 on Short Road, have you not?

7 A. Yes.

8 Q. And its entire length?

9 A. Yes. Well, the entire length on the -- on
10 the south side of Passer Road.

11 Q. That's a good point, from south of Passer
12 Road south?

13 A. Right.

14 Q. And it goes out to where, 309, is that
15 correct?

16 A. Correct.

17 Q. Do you know how long that road is
18 approximately?

19 A. I don't.

20 Q. Do you know how many properties front on
21 Short Road that are not part of this vacation?

22 A. How many front on Short Road that are not
23 part -- I don't know if I understand the question.

24 Q. How many properties that front on Passer
25 Road that will still front on Passer Road after the

1 vacation on the remaining Passer Road?

2 A. Okay. I believe there's -- I believe at
3 least three. If I look at a parcel map I could tell
4 you.

5 Q. No, that's fine. You're aware then that
6 anyone traveling on Passer Road is not allowed to go
7 out onto 309 from Passer Road, are you aware of
8 that?

9 A. Anyone traveling on Passer Road --

10 Q. I'm sorry, I mean Short Road, traveling on
11 Short Road. If you're on Short Road you cannot get
12 onto Route 309 from Short Road, is that correct?

13 A. If you're on Short Road you cannot get onto
14 309?

15 Q. Yes.

16 A. Currently?

17 Q. Right. That's my question, are you aware
18 of that?

19 A. I'm not sure, if you want to look at a
20 plan, if Short Road terminates at your client's
21 property, or if it has a driveway out to 309.

22 Q. Okay. Let me show you, if I may. Let me
23 show you this.

24 Mr. Cooley, do you recognize that
25 photograph?

1 A. Yeah, I believe that's the -- called the
2 curb cut, which you access that portion of Short
3 Road to and from 309.

4 Q. Do you recognize the other photograph
5 that's attached?

6 A. I do.

7 Q. What is that photograph?

8 A. That's an aerial view of the quadrant, or
9 the portion of the intersection showing Short Road.

10 MR. PRESTON: With the Board's
11 permission I'd like to mark this as O-1, and I can
12 hand this up if there's no objection.

13 MR. DIMMICH: You want it as Objector
14 1?

15 MR. PRESTON: Yes.

16 MR. DIMMICH: Any objection?

17 MR. SCHOCK: No.

18 MR. DIMMICH: It consists of two maps
19 or two photos?

20 MR. PRESTON: This is two photographs.
21 One is an aerial photograph that you'll see in a
22 minute of the subject area, the entirety of Short
23 Road from Passer down to 309.

24 MR. DIMMICH: Okay. As you know,
25 normally we would only -- when you put in your case

1 is when you put in your evidence, or motion, but we
2 don't need to follow the rules as strictly.

3 MR. SCHOCK: Can I just have our
4 engineer look at it?

5 MR. DIMMICH: Yes.

6 MR. PRESTON: Take your time.

7 And the second one is a picture of the
8 entrance from 309 onto Short Road.

9 MR. DIMMICH: Just so I'm clear,
10 Mr. Morris, the gist of your question was that if
11 you're going south on the currently non-vacated
12 portion of Short Road you cannot exit onto 309, you
13 can't enter onto 309 to go southbound?

14 MR. PRESTON: That's correct. You
15 can't leave Short Road at its southern tip and get
16 onto 309. It's one way. That's what this is going
17 to show us. If I can --

18 MR. DIMMICH: Thank you. So we're
19 admitting O-2.

20 THE WITNESS: So, Mr. Preston, can I
21 answer your question?

22 MR. PRESTON: Please do, yeah.

23 THE WITNESS: It's my understanding
24 that Short Road does have access to 309 via this
25 curb cut that's in this photograph.

1 Q. Access to -- could you be a little clearer?

2 A. Well, you asked me if vehicles could access
3 309.

4 Q. Can you leave Short Road, going south on
5 Short Road, approaching 309, and then enter onto
6 309?

7 A. Yes. In my opinion I believe that you can,
8 you can drive down Short Road and access the
9 driveway that shows a stop sign, and a stop bar for
10 cars to stop before they make a turn.

11 Q. Okay.

12 A. The answer is yes, I believe that legally
13 you can drive down Short Road and access 309.

14 Q. Isn't there a one way sign there?

15 A. There is a one way sign on the stop sign.
16 And I believe it indicates that -- in my opinion, it
17 indicates that 309 is one way heading southbound.

18 Q. And is 309 a divided highway?

19 A. Yes, it is. In this portion of 309 the
20 part of this property is a divided highway.

21 Q. So if the only way to access a particular
22 property were through this cut here, would you be
23 able -- you wouldn't be able to make full access
24 turning movements out of that driveway?

25 A. This does not appear to be a full access

1 driveway because it is a divided highway.

2 MR. DIMMICH: Could you clarify that,
3 sir, again? When you say it's not a full access
4 highway --

5 A. What he means by full access is you can
6 make all turning movements, meaning you could make a
7 left out or a right out, a left into it, and a left
8 out of -- left in, left out, right in, right out.
9 So this driveway only permits vehicles to take a
10 right-hand turn into it, and a right-hand turn out
11 of it, because of the nature of the divided highway.

12 MR. DIMMICH: I understand all of
13 that. The supervisors all live here. They're
14 familiar with this. I used to go to the Peppercorn
15 Pub. I know exactly. When you're coming down south
16 on Short Road it's your testimony though that you
17 can exit at the bottom of Short Road, but only go
18 southbound on 309? Is that what your testimony is?

19 A. That is correct, yes.

20 MR. DIMMICH: Okay. I didn't mean to
21 interrupt. I just wanted to understand his
22 testimony. It doesn't mean that I'm contradicting
23 anything you've asked him.

24 MR. PRESTON: Very good. Thank you.
25 The petition that's currently before

1 the township, which is marked as Exhibit T-1, do you
2 have a copy of that for me?

3 MR. SCHOCK: It should be attached
4 here. Yes.

5 Q. Let me invite your attention to paragraph
6 11, please. Do you see where it says, vacation of
7 the subject portion of Short Road would not damage
8 or inconvenience any area property owners?

9 A. I do.

10 Q. Do you see that statement there? Currently
11 all properties that front on that section of Short
12 Road, and again, by that section I mean the section
13 below Passer Road, I'm not talking about anything
14 above Passer Road. For that section of Passer Road,
15 they all have the ability to go north and get up to
16 Passer Road, is that correct?

17 A. When you say they all have, there is --
18 there's your client's property, and the old
19 furniture store, and the old Peppercorn Pub. So
20 that would be correct.

21 Q. Okay. And they could go north on Short
22 Road to get to Passer Road?

23 A. They can.

24 Q. And, in fact, properties owned by, at least
25 one property owned by my client has the right to do

1 the same thing, isn't that correct?

2 A. I would believe so.

3 Q. And what happens when you get to Passer
4 Road and you want to get onto 309, is there a
5 controlled intersection there?

6 A. There is.

7 Q. Controlled intersection being one
8 signalized with a red light?

9 A. That's correct.

10 Q. Now, in paragraph 11 -- let me ask this a
11 different way. After the vacation, will the -- will
12 my property, my owner be able to use his property to
13 go north on Short Road after the vacation?

14 A. No, because Short Road would be vacated
15 and removed.

16 Q. So he wouldn't have access to Passer Road
17 to access the signalized intersection, is that
18 correct?

19 A. Not via Short Road.

20 Q. Any other way that you're aware of?

21 MR. SCHOCK: You know what, at this
22 point I'm going to object. I think he's getting a
23 little far afield from his direct testimony, and I
24 mentioned, we do have traffic engineers here. So --

25 MR. DIMMICH: He is a party, and a

1 party I think is subject to broader examination,
2 just so you understand. I think it's fair. Please
3 proceed.

4 MR. PRESTON: Thank you.

5 Q. Any other property?

6 A. I'm sorry, can you repeat the question?

7 Q. Let me try something different here. On
8 paragraph 11 it says the vacation -- are you with me
9 again -- of the subject portion of Short Road would
10 not damage or inconvenience any area property owners
11 because, and then you list a series of items there.
12 Is that right?

13 A. Yes.

14 Q. So it's your opinion then, it's your
15 testimony that the vacation of Short Road will not
16 inconvenience my client?

17 A. That's my opinion.

18 Q. Even though he will not have access to a
19 signalized intersection?

20 A. Yes, that is correct.

21 Q. Then how will he access -- how will he get
22 onto his property and get off of his property after
23 the road is vacated?

24 A. How will he access 309?

25 Q. How does he get to his property via the

1 public road network?

2 A. Well, he would take a -- a right-hand turn
3 to the property off of 309.

4 Q. And how would he exit?

5 A. He would take a right-hand turn out of his
6 driveway onto 309.

7 Q. And if he were coming north on 309, how
8 would he get to his property?

9 A. He would have to -- I believe the engineers
10 can speak to that.

11 Q. I'm asking you though, if you know. If you
12 don't know you can say I don't know.

13 A. I don't know exactly.

14 Q. You don't know how he would do that?

15 A. I don't know the route exactly off the top
16 of my head.

17 Q. Okay. And the land development plan for
18 the parcels that you've assembled, when you look at
19 those, when you assembled those parcels, and you put
20 them under agreement, obviously you were aware that
21 Short Road existed, is that correct?

22 A. Yes.

23 Q. And you knew that it led ultimately to one
24 of the parcels that was owned by my client, is that
25 correct?

1 A. When I put them under agreement or sometime
2 during my due diligence?

3 Q. I would go with due diligence.

4 A. That is correct.

5 Q. Prior to this evening, is that correct?

6 A. That is correct.

7 Q. And the land development done, the plan
8 that you have, or that you -- you or your client had
9 put together and submitted and has had the township
10 review assumed all long that Short Road would be
11 vacated, is that correct?

12 A. That is correct.

13 Q. Have you discussed with anyone at all any
14 alternatives for access to my client's property that
15 would allow them access to Passer Road?

16 A. I did. I actually spoke to your client --

17 Q. Okay.

18 A. -- On at least two occasions, trying to
19 figure a solution together. And at the time I
20 offered and showed him a potential easement through
21 my property that would be able to connect him to
22 Passer Road.

23 MR. PRESTON: Can I just have a
24 minute? I've just been given these exhibits for the
25 first time.

1 And again, you may not know the answer
2 to this. I understand your engineer is going to
3 testify?

4 MR. SCHOCK: Yes.

5 MR. PRESTON: Very good.

6 Q. You may or may not know the answer to this,
7 is there an HOP, a PennDot HOP for that little
8 driveway cut where Short Road goes out to 309?

9 A. You're asking me if a permit exists for
10 that driveway?

11 Q. Yes.

12 A. I'm not aware.

13 Q. You're not aware?

14 A. I'm not aware either way if there is one or
15 is not.

16 MR. PRESTON: That's all the questions
17 I have. Thank you.

18 MR. DIMMICH: Any redirect?

19 MR. SCHOCK: No.

20 MR. DIMMICH: Any questions from the
21 Board?

22 MR. WAGNER: I have a question. I'm
23 uncertain where the property boundaries are on this.
24 Maybe in some fashion if that could be drawn in or
25 something?

1 MR. SCHOCK: We have a plan we can put
2 up on the board and I can then have the engineer
3 just go through that next.

4 MR. WAGNER: And we would be able to
5 kind of line up it up to this photograph?

6 MR. SCHOCK: Yeah, let's do that.

7 MR. PRESTON: I believe, sir, once the
8 engineer testifies I'll be happy to identify it.

9 MR. SCHOCK: And actually just so
10 everyone is aware, this is the civil engineer. The
11 traffic engineer will testify too to kind of address
12 the questions you had, Jim. Maybe the best thing to
13 do now is to have the civil engineer just explain
14 the lot lines.

15 MR. PRESTON: Okay.

16 MR. DIMMICH: You're going to be
17 putting him on tonight?

18 MR. SCHOCK: Yeah, I'll call him for
19 that purpose. I was going to call the traffic
20 engineer.

21 MR. DIMMICH: I mean, it's important
22 that the supervisors understand all the facts.

23 MR. SCHOCK: Sure.

24 MR. DIMMICH: Even though we're not
25 doing it in the normal perfectly clear courtroom

1 way.

2 MR. SCHOCK: No problem. We'll do
3 this next because I think that will make things make
4 more sense.

5 * * * *

6 ERIC BRITZ, having been duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SCHOCK:

10 Q. Could you state your name and spell your
11 last name?

12 A. It's Eric Britz, B R I T Z.

13 Q. And who do you work for?

14 A. Bohler Engineering.

15 Q. And the question came up about the
16 properties that need to be acquired. Do you have a
17 plan that would explain what properties are being
18 required and that shows where those various property
19 lines are?

20 A. I do. I brought a copy with the
21 subdivision plan with me.

22 MR. SCHOCK: I'll mark this as A-2.

23 MS. HOPSON: Excuse me. We're on the
24 opposite end. Could I please look at the map too?

25 MR. DIMMICH: Many times we have these

1 digitalized so you could see it on the TV, but
2 unfortunately we don't.

3 A. So there's essentially eight properties
4 altogether, including Short Road being one of them
5 that are involved in the development. You have the
6 Bassler property, which has access to Main Street to
7 the east -- I'm sorry, to the west of the property,
8 which is lot 1. Lot 3 is located along Passer. Lot
9 4 along Passer. Lot 5 along Passer. And lot 8
10 along Passer. And lot 6, which has -- it's along
11 Passer and Short Road. And lot 5, block 1, is on
12 the east side of Short Road with frontage on Passer.

13 MR. DIMMICH: Just to clarify for me,
14 what did you say, 1, and what's the other, 2, the
15 the ones that are on the east side?

16 A. On the east side?

17 MR. DIMMICH: Yes.

18 A. Block 5, lot 1.

19 MR. DIMMICH: Block 5, lot 1. That's
20 where the Peppercorn Pub is, is it not? I know it's
21 not operating as the Peppercorn Pub.

22 A. I think it's apartments now.

23 MR. DIMMICH: Yes, it is apartments.
24 But that's what we customarily called the Peppercorn
25 Pub?

1 A. Yes.

2 MS. HOPSON: And how many properties
3 are east of 309, not counting the Peppercorn Pub?

4 MR. DIMMICH: Hold on. We'll give you
5 a chance to ask. But we normally -- we're trying to
6 keep some order to it. Okay. Please don't let me
7 forget to allow you to ask.

8 MR. SCHOCK: So then why don't we do
9 that next, Eric.

10 A. Why don't we also clearly show
11 Mr. Preston's client's property, the boundaries, so
12 we know what we're talking about.

13 Q. So, Eric, on the plan you've got up for the
14 time being, just where is the southernmost boundary
15 of the land that Mr. Cooley 's company would be
16 acquiring?

17 A. So that's located just north of the creek,
18 and it's all really part of -- this whole southern
19 portion of the property is part of the lot known as
20 block 4, lot 8.

21 Q. Okay. So on this plan then just to the
22 south of that line is the APS property that we call
23 8A, that's Mr. Preston's clients, correct?

24 A. That's correct.

25 Q. Okay. So why don't you put up -- do you

1 have an aerial?

2 A. I do.

3 MR. DIMMICH: Is that A-3?

4 MR. SCHOCK: Yes. We'll mark that as
5 A-3.

6 THE WITNESS: This is the same as T-4
7 as well.

8 MR. SCHOCK: Is it? Okay.

9 Q. Now, Eric, can you then reorient the Board
10 again based on that small one that you had to where
11 the property is?

12 A. Sure. So again, this is that southern
13 property line that we were looking at that is the
14 subject of the Wawa development, which is just south
15 of the property. And this is the property in
16 question, lot 8A, which is the only other lot that
17 fronts Short Road.

18 Q. And this is Short Road coming down to 309,
19 is that correct?

20 A. Correct, correct. It's the right of way of
21 Short Road.

22 MR. DIMMICH: Where is the curb cut,
23 is it all the way at the southern end?

24 Q. You want to point out the curb cut?

25 A. Yeah, it's at the southern end, off of the

1 actual right of way of Short Road and then 309.

2 Q. Okay. And since I didn't do this at the
3 beginning so we could jump into that question, who
4 do you work for?

5 A. Bohler Engineering.

6 Q. And what's your professional
7 qualifications?

8 A. I am a civil engineer. I've been working
9 on site design, land developments, subdivisions and
10 such for the last 19 years.

11 Q. Okay. And you've done many land
12 developments, subdivisions and things in that time
13 period?

14 A. I have.

15 Q. Have you testified before boards and such?

16 A. I have.

17 MR. SCHOCK: I ask that he be
18 qualified as an expert in civil engineering.

19 MR. PRESTON: No objection.

20 MR. DIMMICH: No objection. You're
21 good. You may proceed.

22 MR. SCHOCK: Okay.

23 MR. DIMMICH: You're accepted as an
24 expert.

25 Q. Then one last item, can you put up the plan

1 that shows the proposed development so the Board can
2 have a sense vis-a-vis the proposal where these all
3 fit in then? And I'm going to mark this as A-4 and
4 just explain to the Board what this plan is, and
5 then just walk them through, so they can get that
6 sense too.

7 A. So this is a plan of the development
8 proposed that was described earlier, with the Wawa
9 convenience store, and the gas services, and the
10 fast food restaurant. This plan proposes two access
11 points, one full access point further west on Passer
12 Road, and another access point off right in, right
13 out on Route 309. It proposes 75 parking stalls
14 for the Wawa facility, and 42 for the fast food,
15 total of 116 stalls, which is what's required by the
16 code. Landscaping surrounding the property in
17 multiple areas, storm water management, lighting.
18 It's a brand new development.

19 Q. And with respect to the configuration of
20 the access points, traffic improvements, things of
21 that sort, that's handled by the traffic plan and
22 design, and a gentleman is here to testify about
23 that, is that correct?

24 A. That is correct.

25 Q. Okay. One last question. You indicated

1 the APS property. Does this aerial accurately
2 depict what's there? It looks like it's just
3 macadam, but no other use, is that correct?

4 A. That is correct.

5 MR. SCHOCK: Okay.

6 MR. DIMMICH: Even though this is out
7 of order, are you done at this point?

8 MR. SCHOCK: Yes.

9 MR. DIMMICH: Ma'am, can you identify
10 yourself for the record?

11 MS. HOPSON: I'm Deborah Hopson. I
12 live on Passer Road. I'm under the assumption that
13 we're the last property purchased. There should be
14 one more on our left that is not in this project, if
15 I'm correct. Is that true, because I couldn't quite
16 see it on this map here?

17 THE WITNESS: I think this is her
18 property line there.

19 MR. SCHOCK: Okay.

20 Q. You can now refer to A-2.

21 A. So in A-2, Ms. Hopson, this is your
22 property, and there is one more property that fronts
23 both Passer and Main Street. It's block 4, lot 2,
24 owned by Mr. and Mrs. Horner.

25 MS. HOPSON: Right. That is not into

1 the plan, is that correct?

2 THE WITNESS: That's correct.

3 MS. HOPSON: Okay. I just needed
4 clarification on that. Thank you.

5 MR. DIMMICH: Could you Spell your
6 name, please?

7 MS. HOPSON: D E B O R A H, H O P S O
8 N.

9 MR. DIMMICH: Thank you. I'm sorry to
10 interrupt, but she had asked a question.

11 MR. SCHOCK: No problem.

12 MR. DIMMICH: I would have forgotten
13 it.

14 MR. SCHOCK: That's all the questions
15 I have for the civil engineer.

16 MR. DIMMICH: Any questions from the
17 Board?

18 (No response.)

19 MR. DIMMICH: Mr. Preston, any
20 cross-examination?

21 MR. SCHOCK: Did you have questions?

22 MR. PRESTON: I have a question.

23 MR. SCHOCK: Okay.

24 MR. DIMMICH: Go ahead, whenever
25 you're ready.

1 MR. PRESTON: Okay. Thank you.

2 * * *

3 CROSS EXAMINATION

4 BY MR. PRESTON:

5 Q. Mr. Britz, good evening.

6 A. Good evening.

7 Q. I just want to talk a little bit about
8 existing conditions prior to this proposed land
9 development. As it sits now my client owns a
10 particular property, I think you identified it to
11 the south of the proposed development on Short Road,
12 is that correct?

13 A. Yes.

14 Q. And currently my client is able to access
15 that property there and travel the full length of
16 Short Road, is that correct?

17 A. I'm sorry, say that again.

18 Q. My client is able to access his property by
19 traveling the full length of Short Road, is that
20 correct?

21 A. Yes.

22 Q. And if the Board grants the petition to
23 vacate he will no longer be able to do that, is that
24 correct?

25 A. As far as the full length of Short Road

1 that exists today, that is correct.

2 Q. How will my client access that particular
3 property if the board grants the vacation?

4 A. He would access it via the existing curb
5 cut on 309.

6 Q. Does it reach 309?

7 A. The portion of Short Road to remain does
8 reach 309 -- well, it reaches the next property that
9 he owns, which has access to 309.

10 Q. So he has to go across a second property to
11 get to the --

12 A. Yes, his property.

13 Q. Okay.

14 A. As it exists today.

15 Q. As it exists today. So he has a second
16 property that abuts Short Road, isn't that correct?

17 A. No.

18 MR. PRESTON: I have no further
19 questions.

20 MR. DIMMICH: Okay. Just one quick
21 comment. I may have accidentally called you by the
22 wrong name tonight.

23 MR. PRESTON: That's happened before.

24 MR. DIMMICH: No problem.

25 MR. PRESTON: I can't tell you some of

1 the things I've been called. Okay.

2 MR. DIMMICH: I apologize.

3 MR. PRESTON: Okay.

4 MR. DIMMICH: All right. Next
5 witness.

6 * * * *

7 MATTHEW HAMMOND, having been duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCHOCK:

11 Q. State your full name spell it.

12 A. Sure. Matthew Hammond, H A M M O N D.

13 MR. SCHOCK: Okay. I'm going to hand
14 you what I've marked as A-5.

15 MR. DIMMICH: The CV?

16 MR. SCHOCK: Yes. I'll have Matt
17 summarize it.

18 Q. Is A-5 a summary of your qualifications?

19 A. Yes, it is.

20 Q. Okay. Can you just briefly run through for
21 the Board your professional qualifications and
22 background relative to traffic engineering?

23 A. Sure. I have 23 years experience. I
24 currently serve as executive vice president of
25 traffic planning and design. I'm a registered

1 professional engineer in seven states including
2 Pennsylvania. And I specialize in traffic and
3 transportation, and mostly worked on the development
4 side of the business for the past 23 years.

5 Q. And have you testified fairly often before
6 municipal bodies with respect to traffic engineering
7 as an expert in traffic engineering?

8 A. Yes, unfortunately too many times.

9 MR. SCHOCK: Okay. I'd like to offer
10 him as an expert in traffic engineering.

11 MR. DIMMICH: Any questions on his
12 qualifications?

13 MR. PRESTON: No objections here.

14 MR. DIMMICH: All right. He's
15 accepted.

16 MR. SCHOCK: Thank you.

17 Q. So are you the traffic engineer on this
18 project?

19 A. I am.

20 Q. Okay. And describe the current road
21 configuration in the vicinity of the project.

22 A. Sure. And I think Mr. Britz had touched on
23 this briefly, but I'll just again -- I'll speak
24 loudly again just to orient you. On Exhibit A-4, to
25 the right side of the plan is 309 running in a north

1 south direction. Here towards the top of the plan
2 which I'm pointing is Passer Road which runs east
3 west. And then within this area here that I'm
4 pointing with my pen is the current location of
5 Short Road. You'll see that the approach on Passer
6 Road consists of approximately one lane in each
7 direction at the signalized intersection. On 309
8 you currently have two lanes traveling in a
9 northbound southbound directions, with dedicated
10 left turn lanes approaching the intersection.

11 Q. Okay. And in working on this project did
12 you make a determination as to whether Short Road
13 had any significant use?

14 A. We did. As part of the application that we
15 made not only to PennDot, being that Passer Road and
16 Route 309 are both PennDot owned and controlled
17 roadways, we did conduct what's called a traffic
18 impact study. That study analyzes obviously
19 existing roadway network surrounding the
20 development, and looks at how the network will
21 operate in the future. It usually requires usually
22 some sort of improvement to mediate the impact of
23 that development. So as a part of that traffic
24 study we actually conducted counts during the peak
25 hours of traffic at the subject intersections, one

1 of them being Short Road and Passer Road. The
2 counts are conducted in the AM time period, which
3 falls between 7 and 9 AM, the PM period which falls
4 between 4 and 6 PM on a typical weekday, and then we
5 also did a Saturday midday time period, which is
6 typically between 11 AM and 1 PM on a Saturday.

7 Based on those counts, and those
8 counts are typical standard industry-wide when
9 you're looking at these type of uses, we found that
10 the amount of traffic entering and exiting Passer
11 Road during those peak hours was approximately seven
12 vehicles in the AM peak and seven vehicles in the PM
13 peak. And I believe it was five entered in the
14 morning, and two exited. And then in the afternoon
15 it was four entered, and three exited out to Passer
16 Road. So it was relatively minor usage on that
17 roadway. And that's for obvious reasons based on
18 the uses that currently exist along Passer Road --
19 or I'm sorry, Short Road.

20 Q. And are there physical limitations
21 associated with Short Road that you analyzed in
22 connection with the project?

23 A. I think the biggest limitation to that
24 road, and I think it's obvious to everyone, is its
25 proximity to the intersection of 309 on Passer Road.

1 We were involved a number of years ago on the
2 previous project for this property, which was I'll
3 refer to it as the Newman development, which
4 essentially had the same type of uses proposed, a
5 little different configuration, a little bit
6 different properties utilized. But one of the
7 issues in that project was the same issue we're
8 facing here is that the Short Road connection to
9 Passer Road and its distance to the intersection of
10 309 and Passer Road.

11 Q. And do you know that distance
12 approximately?

13 A. So, depends on how you measure it. But if
14 you take it from the stop bar that exists back to
15 Short Road on Passer Road it's about 65 feet.

16 Q. Now, where are the proposed access points
17 for the Wawa development?

18 A. So obviously we will be looking to close
19 Short Road as it exists, and the driveway that's
20 being proposed along Passer Road would be located --
21 again, I'm referring to Exhibit A-4 -- will be
22 located approximately 300 feet west of 309. So
23 while today Short Road comes in about approximately
24 65 feet from 309, we'll be moving it another 235
25 feet away. So our driveway serving this development

1 will be located 300 feet away. On 309 I believe
2 we're another about 310 feet away traveling south of
3 Passer Road and 309. Again, that driveway is a
4 right in, right out, due to the fact there's a
5 median that currently exists along 309.

6 The driveway, I don't recall if it was
7 mentioned, but the driveway on Passer Road is
8 actually a full access driveway, right in, right
9 out, left in, left out being proposed.

10 Now, one of the things that goes along
11 with the access point, and I mentioned the traffic
12 study was completed to analyze the impact of the
13 development and what needed to be done, we kind of
14 had a basis for what PennDot's expectations were.
15 Again, I mentioned we have previously worked on the
16 Newman development. What we were proposing is some
17 significant improvements to this intersection to
18 help alleviate some of the concerns, some of the
19 issues that exist today, as well as some of the
20 issues that may present themselves in the future.
21 These improvement relate mostly to Passer Road and
22 the provision of turn lanes on the westbound and
23 eastbound approaches. We would have a separate
24 left, a separate through, and a separate right on
25 the westbound approach coming to 309. I'm sorry, on

1 the westbound approach and on the eastbound approach
2 we would have the same type of configuration. So
3 whereas today you have one lane approaching the
4 intersection, you now have three lanes which will
5 significantly help Passer Road.

6 As I'm sure everyone is aware, there's
7 times where the traffic backs up on Passer Road back
8 towards Main Street. These improvements will
9 significantly reduce that queue and help alleviate
10 that congestion aspect. And that's a cost that's
11 being borne by the developer. And somewhere in the
12 range of 850 to \$950,000 of roadway improvements.
13 In addition to some other improvements, traffic
14 signal timing adjustments, deceleration lane along
15 the frontage of 309. So some other ones. But those
16 are the ones that probably provide the most benefit
17 to the intersection.

18 But those improvements will not bear
19 the fruit that they will if Short Road were to
20 continue to be in its location along Passer Road.

21 Q. And would Short Road need to be vacated,
22 removed, something, with any development proposed in
23 that area?

24 A. In my opinion, yes. Obviously as I've
25 mentioned the biggest issue is the fact that you

1 have a roadway or an intersection on a roadway
2 that's 65 feet from a road that carries
3 approximately 34,000 vehicles a day. This was an
4 issue that was brought up by PennDot at various
5 stages, and as I mentioned before, almost a decade
6 ago as part of the Newman development.

7 So my opinion would be that if there
8 is any development along Passer Road with any of
9 the parcels -- I'm sorry, Short Road, along any of
10 the parcels it would require that applicant to
11 prepare a traffic impact study, and would require it
12 to be reviewed by the township, and likely PennDot,
13 being that Passer Road and 309 are both PennDot
14 owned roadways, which would bring up the issue at
15 that point as well.

16 Q. So in your opinion is it not possible to
17 develop along Short Road without somehow moving the
18 intersection off of 309, further away from 309?

19 A. If a property or two or three or four were
20 developed for single family homes, the possibility
21 of leaving Short Road where it is today probably
22 wouldn't be as much of an issue. But if any of
23 those properties along Short Road were developed,
24 more significant development, a commercial
25 development, multiple apartment units, things of

1 that nature, than absolutely Short Road would likely
2 need to be vacated, or at least relocated from its
3 current location.

4 Q. You've heard at the beginning the solicitor
5 mentioned the standard about -- and I'll read it so
6 that I don't goof it up, and that is, useless,
7 inconvenient or burdensome. Based upon your
8 analysis, do you believe Short Road is burdensome to
9 the public in its current condition?

10 A. Absolutely, absolutely. I believe due to
11 the fact that it again has a short separation
12 distance with 309, the queues that's exist, the
13 traffic that currently backs up from 309, to put it
14 in perspective, with 65 feet of distance between
15 309, the stop bar at 309 and Passer Road and Short
16 Road allows you to stack three cars before you're
17 blocking Short Road. And every single time that
18 I've been out here -- my office is right up on
19 Saucon Valley Parkway, and the times that I've been
20 down here regarding this project, I don't know that
21 there's been a time that I haven't seen at least
22 four or five or six cars backed up waiting to turn,
23 waiting for the light to turn green on Passer Road
24 and at 309. So that intersection of Short Road is
25 blocked a significant amount of time throughout the

1 course of a day as it currently exists.

2 Q. Now, you heard Mr. Preston indicate that
3 his client's issue is that the lot at the bottom of
4 Short Road closest to its current intersection with
5 309 would not now be able to go north. Is that a
6 correct statement?

7 A. Sure, yes.

8 Q. Can you explain then how access is achieved
9 to that property, and I think the other witnesses
10 touched on it, but if you can go into a little more
11 detail.

12 A. Sure. Again, in referring to lot 8A as
13 well as lot 9, both of those two southernmost lots,
14 access today is provided not only off Short Road to
15 Passer Road, but also Short Road to 309. And by
16 vacating this, the subject portion of Short Road, it
17 would still allow for the southern portion to
18 provide access to 309. You would be able to come
19 from the north, make a right in, from north on 309.
20 It could also be an exit and travel south on 309.
21 However, you lose the ability to make that left in
22 or left out. But I do not believe, in my opinion,
23 that that is a detriment to the property. Currently
24 as it exists it's a vacant lot on lot 8A, and it's a
25 single family home on lot 9. So as it exists today

1 there is very minimal traffic accessing that portion
2 of Short Road to access those two lots.

3 In the future the ability for someone
4 to come from the south, if they were traveling north
5 and wanted to access the site they would have the
6 ability to approach the intersection of Passer Road
7 and make a U turn, and come down 309 and enter via
8 right turn. There's no prohibition on U turns at
9 that intersection. They would also have the ability
10 to turn left -- let me just give you -- on Fairmont
11 Street, travel around the back up Main Street to
12 Passer, and back down.

13 That is not uncommon for this stretch
14 of 309. There are many properties that are
15 developed and in operation, whether residential or
16 commercial along 309 on the divided section of
17 highway that only have access via right in, right
18 out on 309. That's just the nature of the beast,
19 and it's not unusual outside of Route 309 where you
20 have divided highways. So they would have the
21 ability to access that parcel, parcel 8A and 9,
22 again, via Main Street, or via U turn at the
23 intersection.

24 Q. And T-9 consists of a memorandum along with
25 an exhibit that your firm prepared, is that correct?

1 A. That is correct.

2 Q. Okay. If the Board could reference T-9 I
3 would ask that Mr. Hammond just go through and
4 explain the analysis. I'll call it the access
5 analysis that you did as part of that.

6 A. Sure. And it's -- as I just mentioned, we
7 did have the opportunity to look at other parcels
8 along 309 because again, having a divided highway,
9 having parcels that only had the ability to access
10 the roadway via right in, right out, is again
11 something that occurs in the immediate vicinity of
12 the site. And what we did is we put together a few
13 exhibits.

14 Figure 1 of those exhibits is kind of
15 the key to the other exhibits obtained. We looked
16 at the Short Road property and I think I just
17 described how access would be provided to that
18 property if the northern portion of Short Road were
19 to be vacated.

20 We also looked at the Royal Truck and
21 Equipment property which is immediately south of the
22 subject parcels. That is a truck sales equipment
23 service operation that only has right in, right out
24 access to Route 309.

25 Also further up Route 309 there's a

1 number of properties where 309 splits and provides
2 for the northbound lanes and southbound lanes with
3 properties in between that coupling.

4 And then also looked at the Putt U
5 facility, which again we know has become very
6 popular. They only have right in, right out access
7 to 309.

8 So what we wanted to do is just show a
9 comparison of, if the northern portion of Short Road
10 were to be vacated, and lot 8A and lot 9 were only
11 provided access via that existing right in, right
12 out to 309, if someone was traveling northbound, or
13 wanted to go back north, how do they get there, we
14 wanted to compare distances.

15 So you'll see from Exhibit 2 if
16 someone were to want to get to parcel 8A or 9 if
17 they were traveling northbound on 309, they would
18 have the ability to make a U turn to get to the
19 property, which is essentially almost the same, we
20 called it out here as .2 miles, but it's almost
21 exactly the same as the distance today if you were
22 making a left at Passer Road and making another left
23 onto Short Road. You would have to get down to
24 parcel 8A or 9. So this U turn is almost exactly
25 the same distance, however, we are trying to be

1 somewhat conservative.

2 Then I talked about the vehicles
3 exiting out, they have the ability to exit out
4 either coming southbound, and coming around through
5 the shopping center and making a left to go back
6 north on 309, or they have the ability to make a
7 right and come out Fairmont Street and back up
8 Fairmont Street to Passer to utilize the signal.

9 Figure 3 just shows basically the same
10 type of exhibit but for the Royal Truck property,
11 you will see they only have right in, right out
12 access. You'll see in the bottom left of the
13 exhibit you'll see a comparison with the option, the
14 inbound and outbound options, a comparison of the
15 distances traveled. So you'll see that for someone
16 that wants to get to and from the Royal Truck
17 facility from the northbound direction of 309, they
18 actually have to travel further than what we are
19 proposing as part of this vacation.

20 Figure 4 looks at the various
21 properties along northbound 309 where the roadway
22 splits, and most of those are residential. There's
23 a couple commercial, a car repair, a couple
24 commercial facilities, home businesses along that
25 section. But you'll see from the tax maps there's a

1 good number of properties that only have the ability
2 to access their property via right in or right out
3 on 309.

4 And then, finally, figure 5 shows, as
5 I mentioned, the Putt U miniature golf facility on
6 309. Again by virtue of the fact there's a median
7 on 309, anyone desiring to get to that facility has
8 to travel, you know, past the site, you know,
9 another .4 miles on 309 to get south on 309, and
10 then another .9 miles, if they want to go north and
11 access the site.

12 So you'll see the distances are very
13 comparable if not more to what we are proposing if
14 the northern portion of Short Road is vacated. And
15 it's quite commonplace along 309 for the various
16 properties that exist today.

17 Q. And so based on that analysis, were you
18 comfortable with the fact that right in, right out
19 would only remain at the bottom of Short Road,
20 considering the benefit to removing the intersection
21 of Short and Passer?

22 A. Yes. There's a significant benefit, a
23 significant safety benefit to the removal of the
24 intersection of Passer and Short Road as it exists
25 today. I think I've outlined a number of reasons

1 why it's a problem. I think everyone that's
2 familiar with it knows it's a problem. It's
3 something that's been identified by PennDot for
4 going on a decade at this point. They realize the
5 spacing is too close and any additional traffic
6 added to Short Road would require its modification.
7 It just cannot continue to exist as it does and
8 expected to be handled -- expected to handle
9 additional traffic.

10 Furthermore, due to the fact that
11 there are a number of successful businesses and
12 other residences along 309 and other roadways
13 throughout the region that are divided that only
14 provide for right in, right out access, it was my
15 opinion this would not be a detriment to an existing
16 vacant lot, and the existing single family home that
17 currently reside on lot 8A and lot 9.

18 Q. And it is not uncommon in your experience
19 that a road divider is sometimes put on a road that
20 doesn't have one?

21 A. Yes, it is. Yes, that's absolutely true.
22 There are a number of projects that I can think of
23 where either a developer, or really PennDot has come
24 through and made modifications to a roadway and
25 added a median within the roadway that prohibits

1 left in and left out access.

2 Q. And is that essentially what results here?

3 A. It's essentially the same thing, but for
4 the fact that the right in, right out exists today,
5 and operates today.

6 MR. SCHOCK: That's all the questions
7 I have for this witness.

8 MR. DIMMICH: Cross-examination,
9 Mr. Preston.

10 MR. PRESTON: Can I see the exhibit
11 that's being referred to.

12 MR. SCHOCK: Sure. T-9.

13 * * *

14 CROSS EXAMINATION

15 BY MR. PRESTON:

16 Q. Good evening, Mr. Hammond.

17 A. Good evening.

18 Q. My client's property, you've been here
19 through the course of these hearings, is that
20 correct?

21 A. That is correct.

22 Q. When I use that term you know what I'm
23 talking about?

24 A. Yes, sir.

25 Q. My client's property, currently they

1 have -- my client has access to Passer Road, a right
2 turn takes him to a signalized intersection, is that
3 correct?

4 A. That is correct.

5 Q. And if this petition to vacate is granted
6 he will no longer have that ability, is that
7 correct?

8 A. That's correct.

9 Q. So he will lose his access to Passer Road
10 to a signalized intersection?

11 A. That's correct.

12 Q. As a traffic expert, a traffic engineer,
13 would you consider that to be a substantial change
14 in a property's accessibility?

15 A. I don't know that I would classify it as a
16 substantial change. Obviously it's a change to the
17 property. It's a change in access. What I look at
18 is a balance between safety and reasonable access to
19 be provided to a property. In my experience with
20 PennDot and working with a number of projects that I
21 have, and I couldn't even tell you exactly where
22 this is within PennDot's code, but PennDot does
23 state that access, reasonable access shall be
24 provided to a property. And everything that I have
25 heard from PennDot and all the discussions that

1 we've had and meetings we have had, PennDot has told
2 us that the existing location of Short Road onto
3 Passer Road is not something that they feel is
4 appropriate.

5 Q. That's not responsive to my question. My
6 question was, and looking at your CV I see here Wawa
7 food markets, various locations throughout PA, New
8 Jersey and Delaware. That's true, isn't it?

9 A. Yes.

10 Q. So you're familiar with Wawa, you're
11 familiar with the operations?

12 A. Absolutely.

13 Q. You're familiar with the traffic patterns?

14 A. Yes, sir.

15 Q. My question to you was, isn't it a
16 substantial change to an access to a property if you
17 were limited to right in, right out as opposed to
18 access to a full signalized intersection?

19 A. It really depends on what your definition
20 of substantial is.

21 Q. Let's do it this way. Let's do it this
22 way.

23 A. Sure.

24 Q. What's the exhibit that's on the board
25 there, what's the number of that?

1 A. Exhibit A-4.

2 Q. Okay. That has along 309, I think there is
3 right in, right out, is that correct?

4 A. That is correct.

5 Q. Okay. Let's assume that Passer Road wasn't
6 there and there were no intersection there and there
7 were no signal there, and all the Wawa had was that
8 right in and right out, would Wawa build that site?

9 A. I couldn't answer that. That's a question
10 for Wawa. But based on my experience likely not.

11 Q. The answer is no, isn't it?

12 A. I think I answered the question.

13 Q. Okay. So access to that signalized
14 intersection is a substantial benefit, isn't it?

15 A. For this type of use, yes.

16 Q. What's the property zoned, do you know?

17 A. Off the top of my head I do not know.

18 Q. Do you know if it's zoned any differently
19 than my client's property?

20 A. I don't know. What I can tell you is that
21 there is a current pending land development
22 application that shows two potential uses of
23 property that would generate an amount of traffic
24 that would necessitate the access as proposed on
25 Exhibit A-4. Your client's property, 8A and 9,

1 currently show a vacant lot and a single family
2 home. And would likely be in the same position that
3 we are right now when they made application to the
4 township and to PennDot for any land development
5 they would propose on those two lots. Not taking
6 into account the fact that I also believe your
7 client also owns property that fronts along Main
8 Street.

9 Q. Okay. Again, that's not responsive to the
10 question that I asked. But let's go back to your
11 testimony. You said that the current use of the
12 road is you say a burdensome, or a burden, is
13 that -- I believe you testified that it was a burden
14 or burdensome?

15 A. I don't remember the exact language, but I
16 believe, yes, it was somewhere along that effect,
17 yes.

18 Q. Then I believe that you talked about
19 stacking along Passer Road at the intersection?

20 A. Yes, sir.

21 Q. Is that correct?

22 A. Yes.

23 Q. And that has created the burden, or
24 contributed to the burden, is that correct?

25 A. So I believe the stacking, the fact that

1 traffic currently stacks up beyond Passer -- I'm
2 sorry, beyond Short Road onto Passer Road for a
3 number of periods throughout the course of the day
4 does contribute to the fact that presents a problem,
5 and becomes burdensome to not only Passer Road, but
6 the intersection with 309.

7 Q. And that's for all six cars that come out
8 of there?

9 A. No, that's for the traffic that backs up on
10 Passer Road that backs past Short Road.

11 Q. Okay. What's the burden then relative to
12 Short Road?

13 A. The burden relative to Short Road is the
14 ability for vehicles on Short Road to enter and exit
15 the roadway while traffic is stacked up, and having
16 the fact that you are separated by 65 feet of
17 distance between Short Road and 309.

18 Q. Is that true for all six cars that go in
19 and out of there a day?

20 A. That's true for one car.

21 Q. That's true for one car. You talked about
22 the right ins and right outs condition that affects
23 other properties along 309. Do you remember that?

24 A. I did.

25 Q. Can you identify one of those?

1 A. Sure, Royal Truck.

2 Q. Which one?

3 A. Royal Truck property.

4 Q. Did Royal Truck when it was developed, do
5 you know if it had access to a signalized
6 intersection?

7 A. I do not know.

8 Q. Do you know if when Royal Truck was
9 developed whether it had to decide at that time
10 whether it wanted to develop with right in and right
11 out?

12 A. I do not know.

13 Q. Do you know any other examples along 309?

14 A. Well, I believe the exhibits show a number
15 of examples that we pointed out. There's the Royal
16 Truck property, there's the Putt U.

17 Q. Let's talk about Putt U. Do you know when
18 Putt U was developed, do you know if at the time it
19 was developed it had access to a signalized
20 intersection that was then subsequently taken away?

21 A. I do not know.

22 Q. Isn't it possible that when Putt U was
23 developed they knew they had to develop a right in,
24 right out?

25 A. I'm sure that's a possibility. I couldn't

1 answer.

2 Q. You're involved with due diligence, are you
3 not?

4 A. Yes.

5 Q. As a traffic engineer they bring you in on
6 their due diligence investigation?

7 A. I believe I answered yes.

8 Q. Okay. And you looked at feasibility of
9 various sites here, isn't that correct?

10 A. That is correct.

11 Q. And if Wawa wanted to purchase a site that
12 had a full access intersection, and they agree to
13 purchase that site they enter into that agreement,
14 would you feel that it was somehow -- that the value
15 of that property would be somehow affected if
16 subsequent to that purchase access to that
17 signalized intersection was then removed?

18 A. I have nothing to do with valuations or
19 whether a property increases in value or decreases
20 in value. I look strictly at the property and
21 determine what I think is reasonable, efficient and
22 safe access to the property, provide those opinions
23 to Wawa and the developer for them to make a
24 decision on whether or not they would like to
25 develop that site.

1 Q. And let's go full circle, and I'll end with
2 this. That particular site there which has a
3 signalized intersection to the north and a right in,
4 right out to the south, if I eliminated the
5 signalized intersection, if I could just have Passer
6 Road and just eliminate that site with the right in
7 and right out to the south, would you advise Wawa as
8 to whether or not that would be an advisable
9 location?

10 A. So you're asking me if the site would only
11 provide for a right in, right out off of Route 309?

12 Q. Right.

13 A. And no other access?

14 Q. Right.

15 A. Ultimately that would be a decision up to
16 Wawa. It would depend upon how much traffic
17 traveled along that section of 309. The likelihood
18 of them developing that site with a right in, right
19 out only on 309 would probably be very low.
20 However, we're not talking about a Wawa being
21 developed on 8A or 9. We're talking about two
22 existing properties that contain a vacant lot and
23 single family home. If there was a plan that was
24 proposed for development, significant development,
25 these discussions, or the discussions that we have

1 had with PennDot to date would be the same
2 discussions that your client would be having with
3 PennDot. And it would be trying to figure out how
4 they could relocate Passer Road because PennDot has
5 a significant concern -- I'm sorry, relocating Short
6 Road, because PennDot has serious safety concerns of
7 the location of Short Road as it exists on Passer
8 Road.

9 Q. This project requires a PennDot HOP, does
10 it not?

11 A. Yes, sir.

12 Q. Do you know if there is currently a valid
13 HOP for the intersection of Short Road and 309?

14 A. I do not. It exists. It's operating. So
15 I don't know if there's a valid HOP, a likelihood of
16 there being a valid HOP for that road is probably
17 low due to the fact that it's been around forever,
18 and if it's classified as a local road. It likely
19 did not need an HOP permit.

20 MR. PRESTON: No further questions.

21 MR. DIMMICH: Thank you. Any
22 redirect?

23 MR. SCHOCK: I do.

24 MR. DIMMICH: Okay.

25 * * *

REDIRECT EXAMINATION

BY MR. SCHOCK:

Q. Mr. Hammond, taking you back to the issues that the proximity of the Short Passer intersection to 309 create, okay, Mr. Preston said for one car. Is it true though that one car waiting to turn left and go south on Short could have problems for vehicles out onto 309?

A. Yes.

Q. Can you explain that?

A. Sure. So obviously there's traffic on Passer Road that is stacked up waiting to turn or go straight through the intersection of 309, and it stacks up back past Short Road. If one vehicle was waiting to make a left in to Short Road any other vehicle that's trying to get through that area, you would have to try to sneak by, or if there's a vehicle traveling down southbound on 309 that makes a right onto Passer Road may not be able to react in time to see that vehicle making a left.

In regard to the other direction, one of the things that has been an issue on some of the sites that I've worked on in the past, the proximity of a driveway as it relates to another intersection, and the closer the driveway is to that intersection

1 the more likely that you'll be promoting rear end
2 accidents. If someone currently was traveling on
3 Passer Road going eastbound and wants to make a
4 right turn, puts their right turn signal, and you
5 have two intersections in very close proximity, you
6 may believe that that person is turning right onto
7 309, but in fact they're turning right onto Short
8 Road, thereby potentially creating safety concern
9 and potential rear end accidents.

10 Obviously there is not a significant
11 amount of traffic that currently travels on Short
12 Road. But obviously we wouldn't be having this
13 discussion and I don't believe there would be
14 opposition if the plan wasn't to develop some
15 parcels along Short Road in the future which would
16 thereby increase traffic. So I don't know that I
17 would necessarily just say there's seven vehicles on
18 it today, and, therefore, for the six vehicles
19 waiting to turn in there it's not a problem. It's
20 obviously a land development application being
21 proposed that's going to generate additional
22 traffic, and then there's two lots that contain one
23 single family home. So again, there's a number of
24 issues that are resolved by relocating or
25 eliminating Short Road at Passer Road.

1 MR. SCHOCK: That's all I have.

2 MR. DIMMICH: Recross?

3 MR. PRESTON: Yes.

4 * * *

5 RECROSS EXAMINATION

6 BY MR. PRESTON:

7 Q. I just want to follow up on that. You're
8 saying that the land couldn't be developed to the
9 extent that you're proposing if Short Road were to
10 remain in its current location, is that correct?

11 A. Yes, that's what I'm saying.

12 Q. Are you familiar with the prior petition to
13 vacate that was granted by this board and is
14 attached as an exhibit to the packet, are you
15 familiar with that?

16 A. I am not.

17 Q. Would you be surprised if I told you that
18 they conditionally agreed to vacate that road
19 provided all of the properties abutting Short Road
20 were held in common ownership?

21 A. I don't know that that surprises me, nor do
22 I know how that would change my opinion on the
23 safety and operational aspects of Short Road and
24 Passer Road.

25 Q. Well, PennDot will not give you the

1 necessary HOPs for your volumes if you leave Short
2 Road where it is, isn't that correct?

3 A. PennDot -- no, I don't know that that's
4 correct. I know that PennDot would not allow the
5 additional traffic -- they would not allow
6 additional traffic, not even one car is what I was
7 told, to be added to Short Road in its current
8 location if development were to occur along Short
9 Road.

10 Q. Okay. Well, now, I just asked you this
11 question. Isn't it true that PennDot would not
12 allow you to develop the site as you proposed
13 without you eliminating that connection between
14 Short Road and Passer, isn't that what you just
15 said, they're requiring it?

16 A. Yes.

17 Q. So the answer to that question is they will
18 not allow you to develop it unless you eliminate
19 that condition, isn't that correct?

20 A. Correct. They specifically in initial
21 meetings discussed the fact that the intersection of
22 Short Road needs to be eliminated or relocated
23 further away from 309, hence the plan that is
24 proposed and has been submitted to the township and
25 PennDot, which shows Short Road being eliminated and

1 an access point being provided 300 away from the
2 intersection.

3 Q. And that's to the benefit of your client,
4 isn't that correct?

5 A. Well, the access point is for the benefit
6 of the client, but the elimination of Short Road
7 within 65 feet of 309 is for the benefit of the
8 motoring public, and the residents, and the
9 traveling -- the vehicles that travel the
10 intersection on a daily basis.

11 Q. Have you given any or your client given any
12 consideration to the joint development of those
13 properties, i.e., allowing access to the properties
14 and connect them as was originally intended in the
15 original petition to vacate?

16 A. I can't speak to that.

17 MR. PRESTON: No further questions.

18 MR. DIMMICH: Do you have anything
19 else?

20 MR. SCHOCK: No.

21 MR. DIMMICH: Before the board asks
22 questions, I just have a couple questions that I
23 want to like to get things on the record.

24 * * *

25 EXAMINATION

1 BY MR. DIMMICH:

2 Q. Mr. Hammond, I thought I heard you say that
3 you live and work in the area?

4 A. So I'll clarify. I used to work in my
5 office building on Saucon Valley Parkway, or Center
6 Valley Parkway, excuse me. I did work on the
7 lifestyle center, the Olympic camera facility. I no
8 longer work out of that office on a regular basis,
9 and we've actually relocated our office to downtown
10 Allentown. But I was working out of the office for
11 a number of years. So I'm very familiar with the
12 area.

13 Q. Okay. But you are familiar with the
14 condition and the location of the Short Road section
15 that is sought to be vacated, is that correct?

16 A. That is correct.

17 Q. You've gone out and looked at it?

18 A. Yes, sir.

19 Q. Could you -- first of all, approximately
20 how long of a distance are we talking about for
21 vacation, just approximate?

22 A. So rather than be approximate, likely it's
23 approximately 400 feet, maybe. Let me just measure
24 this real quick so that --

25 Q. Sure. I would just like to get a few

1 things on the record that's concerning the road that
2 you're seeking to vacate.

3 A. Sure. Approximately 450 feet.

4 Q. Okay. And it's in a basically a north
5 south direction?

6 A. Correct.

7 Q. Could you describe it, is it a two lane
8 road, a one lane road, what is it?

9 A. It's a -- it acts as a two line roadway.
10 It's in significant disrepair. There's sections of
11 it that are concrete, there's sections of it that
12 are asphalt. It would not meet any of the current
13 standards with respect to a two lane roadway.
14 However, that's what it operates as and has operated
15 as.

16 Q. Do you know if it is part of the liquid
17 fuels payment for the township?

18 A. I do not know.

19 Q. Do you know if it appears on the township's
20 official map of roads? If you don't know --

21 A. I'm not a hundred percent sure, but I
22 believe it does.

23 Q. Do you know if there are any utilities,
24 electric, sewage, whatever, that would run either
25 at, in, or along Short Road, the area that you seek

1 to vacate?

2 A. I do not know off the top of my head. That
3 would probably be a better question for Mr. Britz.

4 Q. Okay. And the zoning, that's come up a
5 couple times, so let's clarify this. The zoning for
6 the property, both the property -- we'll call it the
7 Wawa property to make it simple, the Wawa property
8 and at the property of APS, do you believe that
9 zoning to be identical?

10 A. I believe it to be consistent, yes.

11 Q. Okay. Do you know if the township
12 currently maintains Short Road by plowing it in the
13 winter and patching potholes, or whatever?

14 A. Couldn't answer with any certainty.

15 Q. Do you have any idea why a portion of -- I
16 looked at your maps that you submitted. Why is the
17 southern portion wider than the northern portion of
18 Short Road?

19 A. I don't know the answer to that. I do know
20 just below our property line there is a culvert
21 that runs -- the stream runs under. So it's likely
22 there's a portion of it that's wider down there, not
23 only because of that, but because of the turn, the
24 radius, when you're traveling south to get to 309,
25 the movement that needs to be made. But again I

1 couldn't answer that a hundred percent. That's just
2 what I gleaned from being out there and seeing it.

3 Q. Now, the reason -- I realize why the courts
4 use the terms useless, inconvenient, burdensome in
5 the disjunctive, so all you have to do is one of
6 them. I understand that. But do you believe Short
7 Road as it current exists is useless?

8 A. I believe as it currently exists, your
9 definition --

10 Q. I didn't write the report.

11 A. My definition of useless would be that the
12 road is unnecessary and provides a burden on the
13 general public in its current state, and that but
14 for a number of the parcels that exist along Short
15 Road, which are under the control of my client, that
16 it's unnecessary to provide useless access. 8A
17 provides direct frontage on Short Road, and the
18 southern portion of Short Road and parcel 9 provides
19 for frontage along 309. So they both have the
20 ability, both of those properties have the ability
21 to access 309. And again, as I mentioned, it's my
22 understanding that 8A and 9 are under the same
23 ownership as is parcel 10, which is the parcel to
24 the west which has frontage on Main Street.

25 MR. DIMMICH: I don't want to get

1 involved in asking too many questions, but does the
2 Board have any questions of Mr. Hammond?

3 MR. WAGNER: I have a question
4 regarding Short Road.

5 * * *

6 EXAMINATION

7 BY MR. WAGNER:

8 Q. The part that would be vacated, I'm not
9 clear on the exact beginning and end of the parcel
10 that would be vacated, and is any part -- is any
11 part of what's being vacated in front of the APS
12 property?

13 A. Well, it depends. As I mentioned, there is
14 two parcels. I'm referring to Exhibit A-4. There
15 is two parcels on the southern side of the subject
16 property that we've been referring to them as 8A and
17 9.

18 Q. Right.

19 A. 8A has direct frontage on Short Road, and
20 the portion of Short Road that's being proposed to
21 be vacated essentially extends from our southern
22 property line which is where the culvert exists.

23 Q. Your southern property line?

24 A. Our southern property line. So if you're
25 familiar with Short Road there's a culvert.

1 Q. Okay.

2 A. If you took that line on the north side of
3 the culvert that's our southern property line, and
4 it would be from that point all the way up north to
5 Passer Road. The section where the culvert is down
6 to 309 would remain. Now, lot 8A has frontage on
7 Short Road. Lot 9 has frontage on 309. But your
8 question was, do any of the -- is there any other
9 parcels that have frontage. The only other parcel
10 as I mentioned before is lot 10 which is in this
11 area here, which is in the back corner, the
12 southwest corner of the property there that is also
13 owned by the same ownership.

14 Q. Yeah. Okay. But my question is strictly
15 about what part of Short Road would be vacated. So
16 lot 10 isn't even relevant to that.

17 A. Sure. So essentially where I'm putting my
18 pen on A-4, right where the culvert is, north to
19 Passer Road would be vacated. The portion from the
20 culvert south would remain.

21 Q. Okay. And now if you look at it currently,
22 there's a -- between Short Road and 309 there's a
23 teeny little strip that gets narrower and narrower
24 until it disappears. Who currently owns that, or
25 who is proposed to own that?

1 A. I believe this portion of property is
2 actually in the PennDot right of way.

3 Q. Okay.

4 A. It's 309 right of way essentially.

5 Q. Okay. That's really irrelevant?

6 A. Correct.

7 MR. WAGNER: Okay. That's all I was
8 wondering. Thank you.

9 MR. DIMMICH: Any other questions?

10 * * *

11 EXAMINATION

12 BY MS. STEHLIK:

13 Q. There was a comment with regard to the
14 easement that was offered. Can you speak to that at
15 all?

16 A. I cannot. I was not part of those
17 discussions.

18 MR. DIMMICH: We'll let you recall --

19 MR. SCHOCK: Would you like me to
20 recall Mr. Cooley?

21 MR. DIMMICH: At the appropriate time.
22 I wanted to see if Ms. Stehlik has any more
23 questions.

24 MS. STEHLIK: No, I'm okay.

25 MR. DIMMICH: We'll give you an

1 opportunity after the board is done.

2 Anyone else have questions? I just
3 want to make sure everybody has all the facts so
4 that we can make a reasonable decision.

5 Q. I have just one other that might still be
6 in your jurisdiction. The portion of Short Road or
7 Short Drive, I should say, that is still going to be
8 present, who is going to be responsible for the
9 maintenance or the plowing of -- excuse me, snow
10 plowing or anything of sorts.

11 A. All I would say is that whoever is
12 currently maintaining Short Road or Short Drive
13 would continue to maintain that portion. I don't
14 know. There was a question that was posed earlier
15 about whether or not the township maintains Short
16 Road, I don't know the answer to that. But whoever
17 is maintaining it today would continue to maintain
18 that smaller portion of it.

19 MS. STEHLIK: Okay.

20 MR. WAGNER: Excuse me. Are you
21 finished?

22 MS. STEHLIK: I'm done.

23 MR. WAGNER: Is there absolute
24 evidence that Short Road was ever legally dedicated
25 right to 309, because there's a short stretch there

1 that looks like it's a hundred percent different,
2 paved a hundred percent different, and it's sort of
3 like somebody just took it over?

4 MR. DIMMICH: In answer to your
5 specific question, we've looked. We cannot answer
6 that. And the only thing we know is that Short Road
7 was considered a public road because the portion of
8 Short Road north of Passer was vacated by this
9 board -- when I say the board, not you people
10 particularly, but the Board at one time before my
11 even coming on board as your solicitor. So they
12 believed it to be -- Short Road to be a public road.
13 And I can't really testify.

14 MR. WAGNER: You're talking about the
15 whole lane. I'm talking about that little teeny
16 piece. It could have been a dead end is what I'm
17 thinking, and, you know, the barrier, the people
18 just drove out.

19 MR. DIMMICH: There's no records. We
20 have looked up at the Clerk of Courts. We've looked
21 for an ordinance ordaining it, and cannot find it.

22 MR. WAGNER: So it's not known. Okay.

23 MR. DIMMICH: But it does -- but we do
24 take -- I don't want to testify. We'll let someone
25 else.

1 MR. WAGNER: It could have been there
2 before 309.

3 MR. DIMMICH: It could have been.

4 MR. WAGNER: Or maybe it was 309. I
5 don't know.

6 MR. DIMMICH: Any other questions?

7 * * *

8 EXAMINATION

9 BY MR. SPAETH:

10 Q. Just to follow up on the snowplowing. I
11 don't even know if the township actually plows this
12 road, but if the township does plow this road, if
13 Short Road was vacated, then the plow I guess would
14 have to come down 309, going south, and then make a
15 right turn to go up Short Road to plow that section.

16 A. And then exit back out.

17 Q. How would the plow turn around to go back
18 out on 309?

19 A. Well, there is a wider area. I don't know
20 the size of the plow. If it was a dump truck it
21 would probably be a little bit more difficult. But
22 there is a -- and I'm referring to Exhibit A-3 here.
23 There is a pretty wide -- here's Short Road. And
24 here's a section in here that falls within that
25 easement that the plow would likely be able to turn

1 around. I couldn't say could just make a nice
2 sweeping maneuver, it may have to make a couple
3 maneuvers, but it would have the ability to get back
4 out that way.

5 MR. SPAETH: Okay.

6 * * *

7 EXAMINATION

8 BY MR. FARRELL:

9 Q. That piece to the left, that's part of an
10 easement?

11 A. This looks like this is the property line
12 for 8A, and this looks like part of the Short Road
13 easement.

14 Q. Yes.

15 A. It's pretty wide.

16 Q. Okay. And my second question is, just kind
17 of following up on Mr. Wagner's concern about access
18 to 309, recognizing that the history of all this may
19 be difficult to ascertain, is there anything that
20 would prevent access to 309 once Short Road is
21 vacated, could PennDot come back and say, hey, you
22 know, there was never a highway occupancy permit, or
23 access was never formally granted, so therefore we
24 are going to not allow access to 309 from Short
25 Road?

1 A. So that's a good question. I can't answer
2 that definitively because it would be some
3 speculation on PennDot's part, but what I can tell
4 you just based on my experience is that if the
5 northern section of Short Road were to be vacated,
6 and the remaining southern piece or the stub would
7 remain to provide access to 8A and 9, they would
8 continue to provide access to 8A and 9. I don't
9 believe PennDot would come back and all of a sudden
10 decide they're going to eliminate an access that
11 serves a vacant lot and a single family home. It's
12 just my experience that they're not in the business
13 of going out and looking for trouble, so to speak.

14 There's no indication that they would
15 not allow that access to remain. Obviously if they
16 were, and again, I hate to speak for PennDot, but in
17 the instance they did come back and say, well, now
18 that the northern section of Short Road is vacated
19 we're going to eliminate and not allow any access to
20 the southern portion, then PennDot essentially
21 faults the property. They have essentially
22 condemned it if they don't provide access to the
23 property.

24 Again, as I mentioned earlier in my
25 testimony, they have to provide a reasonable access.

1 They have to allow reasonable access from their
2 roadways to the property. So again, if they would
3 eliminate access and the inability for those
4 properties to access the state roadway, they in my
5 opinion would have to compensate the property
6 owners, essentially a condemnation.

7 Q. I mean, couldn't PennDot argue that access
8 to the south never existed, and therefore if Short
9 Road is vacated to the north, that they don't have
10 any responsibility, and therefore they wouldn't have
11 to condemn the property?

12 A. Well, again, that would be looking for
13 PennDot to go pick a fight. I don't believe that
14 they would require any changes to the existing
15 southern section of Short Road as it currently
16 exists today, serving the properties as they exist
17 today. I don't know that they would go through the
18 hassle. I mean, I can't be definitive because I'm
19 not speaking for PennDot. But I don't know that
20 they could be definitive -- I'm sorry, they would
21 take it upon themselves to look at the ownership of
22 the roadway that exists today, and as it operates
23 today. They would likely leave it remains as is.

24 However, if those properties were ever
25 to be developed, then PennDot would then look at the

1 roadway and determine what would need to be done in
2 order for access to be provided. There is likely
3 that there would be some changes required, radii,
4 maybe widening, cleaning it up somewhat, providing a
5 longer road. Those are things that might happen in
6 the future if those properties are ever developed.
7 But as it exists today, as the properties exists
8 today, I do not see PennDot going through the effort
9 of basically saying that intersection doesn't exist,
10 we are not giving you access any more because,
11 again, that's a lot of work for them, and opens them
12 up to potential liability, and having to go through
13 a court proceeding, whether or not they're
14 successful or not at the end of the day.

15 MR. SPAETH: Okay. I have nothing
16 else.

17 MR. DIMMICH: Any other questions?

18 MR. FARRELL: No.

19 MR. BENNER: I have another one.

20 MR. BENNER: Mr. Preston, how large
21 are your client's collective properties?

22 MR. PRESTON: The acreage? Do you
23 know the acreage?

24 1.7, Mr. Benner.

25 MR. WAGNER: Is that 8A? Which

1 property?

2 MR. BENNER: That's both of them?

3 MR. PRESTON: Yes. I think it's
4 listed right here. Yeah, that would be correct.
5 They have -- if you go to paragraph 8 of the
6 petition, the acreage is listed there, 1.06 and .6.

7 MR. BENNER: What I'm getting at here
8 is, you started with your presentation this evening
9 indicating that your client really doesn't object to
10 this development.

11 MR. PRESTON: That's correct.

12 MR. BENNER: What is it that you want?

13 MR. PRESTON: Access to our property
14 other than the right in, right out. If I could
15 speak now, what we're --

16 MR. BENNER: So this about a cross
17 easement, is that what this is about?

18 MR. PRESTON: Pretty much so, yes.

19 MR. BENNER: I got it.

20 MR. PRESTON: We are not -- you know,
21 my client is a developer as well. And what we are
22 being told is the right in, right out access that
23 currently exists at the end of Short Road, that
24 PennDot will respect that as long as he maintains
25 what's there, which is that old house. You may be

1 familiar with it. But the same could be said for
2 his property. They're going to respect that road as
3 long as they own the development.

4 The issue here is what happens when
5 somebody wants to develop it. And they want to take
6 Short Road and pull it onto their side of the sheet,
7 which means it comes off of our side of the sheet,
8 and we are left with a right in, sort of dilapidated
9 right in, right out that PennDot will allow us to
10 drive into our house. And he bought the property,
11 it's zoned commercial, same as theirs for
12 development, knowing it has access to Passer Road.
13 So we just want to be able to get on to Passer Road,
14 Mr. Benner, that's all we're looking for. That's
15 all.

16 MR. WAGNER: I have a question. Is
17 this the first time the subject came up between the
18 parties?

19 MR. PRESTON: I'm going to let Mr. --
20 I have come to this case relatively late. I didn't
21 realize that he even had a land development plan.

22 MR. WAGNER: We're here tonight, and
23 we are past that point, and it isn't our business.
24 That's how I personally -- that's how I see that.

25 MR. PRESTON: Understood. I believe

1 it has, and I believe the township has been involved
2 in some of those discussions. I believe the staff
3 knows. With the Board's permission -- well, Kirpal
4 is here.

5 MR. DIMMICH: The township made
6 efforts to try to get this issue resolved as a
7 mediator, but that didn't go very far.

8 MR. WAGNER: Didn't work.

9 MR. PRESTON: We're not here at the
10 11th hour, Mr. Wagner. That's not what this is.

11 MR. WAGNER: I don't have any other
12 questions.

13 MR. DIMMICH: Okay. Now it's your
14 chance, since all these questions were asked, it's
15 your chance to recross based on that, if you wish.

16 MR. PRESTON: Well, then I'll just
17 make some statements, which are not evidence.

18 MR. DIMMICH: Well, I know this isn't
19 zoning. This is an important thing, but it's not
20 evidence, I understand.

21 MR. PRESTON: Okay.

22
23 * * *

24 RE CROSS EXAMINATION

25 BY MR. PRESTON:

1 Q. Mr. Hammond?

2 A. Yes, sir.

3 Q. Okay. You testified that the right in,
4 right out lower end of Short Road may or may not
5 have a PennDot permit, is that right?

6 A. That's correct.

7 Q. And in your experience PennDot would not
8 necessarily say it didn't have one, PennDot would
9 not necessarily require that to be blocked off as
10 long as it continued to service that lower property
11 with a house, is that correct?

12 A. That is correct.

13 Q. But if anybody wanted to develop that
14 property PennDot would certainly get involved,
15 wouldn't they?

16 A. Develop that property? By that property
17 you mean your client's property?

18 Q. My client's property.

19 A. Yes.

20 Q. With commercial uses permitted in the
21 township zoning ordinance, is that correct?

22 A. That is correct.

23 Q. Okay. They wouldn't likely allow that
24 existing condition to continue, is that correct?

25 A. Well, what do you mean by existing

1 condition? So the existing condition that I would
2 refer to that they would allow is the movement of
3 the right in, right out. The existing condition
4 that they may require modifications to is how that
5 right in, right out currently comes into 309. In my
6 opinion they would likely require some modification
7 to the existing right in, right out driveway. But
8 it would continue to remain right in, right out.

9 Q. And that would be a consequence of the
10 owner's desire to develop the property, isn't that
11 right?

12 A. That's correct. But if we were -- we are
13 speculating now that if lot 8A and 9 were developed,
14 and Short Road was not vacated, then PennDot would
15 be involved, not only in potential modifications of
16 right in, right out, but also the modifications of
17 Short Road and Passer Road.

18 Q. Absolutely.

19 A. Right.

20 Q. And if your clients weren't intending to
21 develop that site that it's intending to develop now
22 PennDot wouldn't be raising a fuss about the
23 connection between Short Road and Passer, would it,
24 fair, it would probably just stay the way it is?

25 A. If everything stayed the way it is, yes, my

1 opinion, yes.

2 Q. They wouldn't be shutting down Short Road,
3 would they?

4 A. Not a normal issue, no.

5 Q. Everything would stay the way it is?

6 A. That's correct.

7 Q. So it's only your intent, the client's
8 intent to develop its property that's triggering
9 those changes, isn't that correct?

10 A. Yes.

11 MR. PRESTON: Okay. Nothing further.

12 MR. DIMMICH: I don't want this to go
13 on forever. Do you have further questions on
14 redirect after all that?

15 MR. SCHOCK: No. I was going to have
16 Mr. Cooley answer Ms. Stehlik's question.

17 MR. DIMMICH: Why don't we then in
18 that case Mr. Hammond is temporarily dismissed, and
19 we'll have Mr. Cooley come back up.

20 MR. HAMMOND: Thank you.

21 MR. DIMMICH: Thank you, Mr. Hammond.

22 MR. COOLEY: Good evening.

23 * * * *

24 MICHAEL COOLEY, having been previously
25 sworn, was examined and testified as follows:

* * *

EXAMINATION

BY MS. STEHLIK:

Q. My question was, there was mention of an easement. So I was looking to see what that would speak to.

A. So I guess a little background. The irony of this matter is knowing what I know now this would have been the first order of business in this project. We've been at this for almost two years, been through zoning hearings, and been through planning commissions, and awaiting to get preliminary and final land development approval. I don't want to get into the amount of dollars we spent, the time, the effort. The staff has been wonderful to work with, and from day one it's obvious that in order to effectuate this project Short Road needed to be vacated. So this is not a new matter. Unfortunately, we're dealing with it completely out of sequence. So, you know, this is -- in a perfect world we would have started construction on this project by now. But we're still dealing with the possibility of it may or may not ever happening.

The answer to your question, once I

1 realized that we needed to go through this hearing,
2 we had a staff meeting that was called to -- well,
3 let me back up. Once we were aware that we were
4 going to this hearing, the staff requested that we
5 get the -- make sure that Mr. Saini was aware of
6 this, and his -- I'll call it cooperating with the
7 vacation of Short Road. So I reached out personally
8 to Mr. Saini via a phone call, and I introduced
9 myself and explained to him what we were trying to
10 accomplish on the neighboring properties. And I
11 offered to come introduce myself in person and show
12 him the plans to discuss it with him. He requested
13 that I e-mail him the plans. And I did so
14 immediately.

15 I followed up with him, you know, a
16 week or so later. And the plan that I sent him
17 showed a connection between his properties, his
18 existing properties, and my proposed development
19 with a cross access or curb cut access so he can
20 gain access to Passer Road via crossing through
21 our development. And it was almost like it wasn't
22 even -- it was a zero consideration. He wasn't
23 even -- I don't even think he thought about it for
24 more than two seconds when he looked at it. And he
25 immediately said, this is not going to work, and he

1 pretty much demanded that, you know, we try to
2 figure out how to basically give him full driveway
3 access across the -- my entire property dedicated to
4 his property.

5 And we then went and met with staff
6 together. And Mr. Saini was present, I was present,
7 the staff was present. And it was blatantly an
8 adversarial meeting. It's just like someone
9 mentioned earlier, nothing was accomplished. The
10 only thing that was offered by Mr. Saini was that he
11 participates in my project in ownership of my
12 project, and we become partners to develop this
13 entire project together. I never met this man in my
14 life, and he is making me a proposition to own my
15 property. And like I said, nothing was
16 accomplished. And that's the extent of my
17 conversations with Mr. Saini.

18 MS. STEHLIK: Thank you.

19 MR. DIMMICH: Any further questions of
20 Mr. Cooley?

21 (No response.)

22 MR. DIMMICH: Any other further
23 cross-examination, just based and what he testified
24 to?

25 MR. PRESTON: I have no cross

1 examination.

2 MR. DIMMICH: Okay. Just so the
3 record is clear, normally offers of compromise and
4 settlement are not admissible in legal cases. I let
5 it in only for the purpose of answering a question
6 as to why -- what really is the issue in this case.
7 And now I think the issue has become very
8 circumscribed, and now you understand it. When
9 you're talking about cross easements, you could have
10 an easement that maybe lets just cars from a
11 residential property, or you could have a cross
12 easement that is a road which would let any number
13 of cars. So there's clearly a huge differential.
14 And I'm not -- I was not privy to those things. I
15 just wanted to point that out to you. But that
16 obviously is part of it. Okay. Thank you.

17 MS. STEHLIK: Is that still an option
18 available at this point?

19 MR. DIMMICH: Pardon me?

20 MS. STEHLIK: Is that easement still
21 an option that's available at this point?

22 MR. COOLEY: I believe potentially it
23 could be.

24 MS. STEHLIK: Okay.

25 MR. PRESTON: Mr. Dimmich -- I'll

1 wait.

2 MR. DIMMICH: No, you're welcome to --

3 MR. PRESTON: Till we get to our case.
4 I have one person. I'd like to have Mr. Saini speak
5 to the Board when it's time.

6 MR. DIMMICH: Okay. Any other
7 witnesses?

8 MR. SCHOCK: I have one last witness.

9 MR. DIMMICH: Certainly.

10 MR. SCHOCK: And this is a little
11 repetitive, so I'll keep it brief.

12 MR. DIMMICH: It takes awhile to
13 develop what the real issues are and what are the
14 real facts in these cases, no matter how you do it.

15 * * * *

16 CASEY A. MOORE, having been duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCHOCK:

20 Q. I showed you -- actually I didn't show you
21 that, but A-6 are your qualifications. Can you just
22 briefly summarize for the board your background?

23 A. Absolutely. I've been a traffic engineer
24 with McMahon Associates.

25 Q. Introduce yourself.

1 A. My name is Casey Moore. I'm an executive
2 vice-president with the firm of McMahon Associates,
3 Inc. I've been an employee there since 1991. So I
4 have 27 years of experience with McMahon. I'm a
5 traffic engineer. I am licensed in five states. I
6 hold a professional engineering license in those
7 states. I serve municipalities as a traffic
8 consultant. I've served PennDot as a consultant,
9 and I also serve developers as a consultant. I've
10 been before numerous boards, both the zoning, and
11 commissioners and supervisors, planning commissions,
12 et cetera. I've provided expert witness testimony
13 over my 27 year career.

14 MR. SCHOCK: Okay. I'd like to offer
15 Mr. Moore as an expert in traffic engineering.

16 MR. DIMMICH: Any questions?

17 MR. PRESTON: I have no questions. No
18 objection.

19 MR. DIMMICH: He has been accepted.

20 Q. And the significant thing you've just
21 mentioned in your qualifications, and why we sought
22 a second opinion was, you do do work for
23 municipalities and for PennDot, is that correct?

24 A. That is correct.

25 MR. SCHOCK: Okay. So I'll hand this

1 out. I'll have Mr. Moore just summarize it for the
2 board.

3 Q. You heard Mr. Hammond's lengthy testimony?

4 A. I have. I've been here the whole time.

5 Q. And you've prepared -- you have prepared a
6 report after speaking with him and learning the
7 facts. Can you just explain to us your conclusion
8 particularly with respect to and from the
9 perspective of his comments regarding what PennDot
10 would require, for example?

11 A. Certainly, yes. We got involved to do an
12 independent review of this. We have not been
13 involved nearly to the extent that Mr. Hammond has
14 with this project. But when the thought was brought
15 up that they wanted to vacate this portion of Short
16 Road, which we're calling Short Drive in our study,
17 in our letter, because that's what it's posted as
18 out there, Short Road, you know, we've looked at the
19 safety and operational aspects of that road as it is
20 today, and as it may be in the future.

21 So our evaluation looked at it from
22 the perspective of if we were looking at this
23 project independently as the township traffic
24 consultant, or as the PennDot reviewer, how would we
25 approach this if this project was proposed for

1 redevelopment, which it is.

2 From what we know, and Mr. Hammond
3 testified to the location of Short Road is in very
4 close proximity to Passer Drive where it comes out
5 on Passer Drive to the signalized intersection. Any
6 additional traffic to that road we feel -- and
7 PennDot has concurred with this in Matt's testimony
8 as well, that Short Road would need to be either
9 moved, relocated, or removed altogether in this
10 case.

11 There is problems with vehicles
12 shooting past that intersection. There's problems
13 then with the sight distance as you come out of
14 Short Road, not being able to look toward 309
15 because you're looking through cars on that side of
16 the road. I think Mr. Hammond testified to the fact
17 that if cars are queued on Passer and a car was
18 turning left onto Short Road coming off of 309 it
19 could be blocking traffic that's coming behind it,
20 potentially rear end that vehicle.

21 So in our evaluation of this we felt
22 as to what PennDot was asking for was the same thing
23 that we would ask for. We serve PennDot also in the
24 capacity as an extension of their traffic unit
25 reviewing highway occupancy permit plans as a

1 consultant reviewer since 1994. So having been in
2 that position, PennDot really wants safety and
3 operational efficiency, and with the redevelopment
4 this property, the roadway being further away from
5 the signalized intersection is prudent to do from a
6 safety and operational perspective.

7 We were also asked to look at what
8 happens to the south side of Short Road at 309. I
9 would agree with what Mr. Hammond said, that portion
10 of road would remain as a right in, right out. It
11 permits those movements today. I do not know as
12 well if that has ever been permitted like with an
13 official highway occupancy permit. If it predates
14 1982, which I believe it does, I believe just the
15 configuration of it from looking at the maps that
16 might have been the alignment of where 309 used to
17 be before the bypass was built, that PennDot is not
18 going to seek out a property as a single family home
19 and a vacant lot to reconfigure that, and permit
20 that driveway today. It would be upon redevelopment
21 of those properties that it would require a new
22 permit to be provided, and the design then to meet
23 and conform with PennDot regulations and today's
24 standards.

25 Q. And one other item that you mentioned which

1 we would like your opinion on is, would any
2 development along Short Road, be it these properties
3 or the adjoining property that remains along Short
4 Road to the south, require relocation of Short Road
5 or removal of Short Road, like Mr. Hammond opined?

6 A. Yes. I believe in my memorandum we looked
7 at the township ordinances. So let's say that these
8 properties that are subject to this hearing tonight
9 weren't being redeveloped, and that lots 8A and 9
10 were coming in for redevelopment, and they proposed
11 to use Short Road in its current configuration. By
12 township ordinance, I believe it's Section 305, a
13 traffic impact study would be required. Being that
14 the access then would fall onto a state road either
15 to 309 or to Passer Road, the traffic impact study
16 would reveal that any increase in traffic for
17 redevelopment of those properties would require much
18 of the same that we talked about tonight in
19 testimony from others. That intersection would need
20 be to relocated further back from 309, or
21 eliminated.

22 I can say that besides this area of
23 309 where there's a median in the road and it
24 restricts some properties to right in, right out,
25 there's properties as far south as Montgomerville

1 where they put up a median, and there's a lot of
2 properties in that location that don't have access
3 to signals, and those properties function as right
4 in, right out as well.

5 MR. SCHOCK: Okay. That's all the
6 questions I have for this witness.

7 MR. DIMMICH: Cross.

8 * * *

9 CROSS EXAMINATION

10 BY MR. PRESTON:

11 Q. Mr. Moore, good evening.

12 A. Good evening.

13 Q. I think you stated that any development of
14 the properties, any of the properties really along
15 Short Road, if they're to be developed for
16 commercial uses it's likely PennDot is going to
17 require Short Road be relocated?

18 A. Yes, unless you're redeveloping a house for
19 a house.

20 Q. Swapping out a house for a house?

21 A. Exactly. Anything that's going to add --

22 Q. That's why I said commercial property.

23 A. Yes.

24 Q. So regardless of what property is
25 developed, any of the properties that are developed

1 commercially PennDot is going to require them to
2 realign or replace or removal of that?

3 A. They would carefully look at Short Road at
4 Passer Road, yes.

5 Q. And Short Road is, or Short Drive is
6 relatively short, isn't it?

7 A. Relatively short.

8 Q. There's only how many lots along that road,
9 if you know?

10 A. I don't know for sure, but I'm going to say
11 four to six lots.

12 Q. That's fair. I'm not going to hold you to
13 it. Are you familiar with the prior ordinance that
14 conditionally vacated Short Road?

15 A. I am not. I did not get that deeply
16 involved with the project.

17 MR. PRESTON: Then no further
18 questions.

19 MR. DIMMICH: Does the board have
20 any -- any redirect?

21 MR. SCHOCK: No.

22 MR. DIMMICH: Does the Board have any
23 questions?

24 (No response.)

25 MR. DIMMICH: Before we get done, or

1 move on, I have an issue on the exhibits. The two O
2 exhibits, Mr. Preston, which one is O-1?

3 MR. PRESTON: They were
4 collectively marked.

5 MR. DIMMICH: There's two photos in
6 this one, and two photos in this one, and I have O-1
7 and O-2.

8 MR. PRESTON: No, there should be --

9 MR. SCHOCK: There should have been
10 just one packet with two photos. That's all you
11 gave me.

12 MR. PRESTON: That's all.

13 MR. DIMMICH: So theirs is no O-2,
14 just O-1.

15 MR. PRESTON: O-1 is two pages, two
16 photographs. One would be an aerial and one would
17 be a picture of an intersection.

18 MR. DIMMICH: And the only other
19 exhibit that I wasn't quite sure of, 2, 3 and 4 are
20 plans.

21 MR. SCHOCK: We'll take them off.

22 MR. DIMMICH: I need to have something
23 done. I have A-5, I have A-1, 6, 7 -- I show seven
24 A exhibits. Is that correct?

25 MR. SCHOCK: A-7 was my last one.

1 MR. DIMMICH: And we have three maps.

2 MR. SCHOCK: We'll take these off at
3 the end of the hearing and hand them in. Just in
4 case one of us refers to them.

5 MR. DIMMICH: I just want to keep the
6 record clean.

7 MR. SCHOCK: And I'm not sure I asked
8 for admission of all of those.

9 MR. DIMMICH: Any objection to the
10 admission of any of these?

11 MR. PRESTON: No objection.

12 MR. DIMMICH: All exhibits are
13 admitted that have just been moved and submitted,
14 and have been offered.

15 I believe I should ask you this.
16 There are no utilities on this road, on Short Road,
17 is there?

18 MR. SCHOCK: Mr. Britz should answer
19 that one.

20 MR. DIMMICH: Who has to answer it?

21 MR. SCHOCK: The civil engineer
22 probably should answer that.

23 MR. DIMMICH: Well, with your
24 permission I'd like to ask him.

25 MR. SCHOCK: I'll recall him.

1 MR. DIMMICH: Swap them out here.

2 MR. SCHOCK: Sure.

3 * * * *

4 ERIC BRITZ, having been previously
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. DIMMICH:

8 Q. It's Britz, is it not?

9 A. Britz, B R I T Z.

10 Q. Mr. Britz, are you -- first of all, are you
11 familiar with Short Road as it currently exists?

12 A. I am.

13 Q. Are there any utilities that the Board
14 needs to worry about along that road?

15 A. There is none that I'm aware of.

16 Q. Have you looked at the official township
17 map to see if this road exists on the map?

18 A. I have not.

19 Q. Do you know if it is covered by liquid
20 fuels?

21 A. I do not.

22 Q. And as far as, do you you know who has been
23 doing the maintenance? I mean, obviously somebody
24 has done it because there's macadam and all sorts of
25 stuff there, but --

1 A. I'm not aware of who is doing the
2 maintenance.

3 Q. Okay. You did not inquire?

4 A. No.

5 Q. And as far as the zoning is concerned, I
6 assume this will come forward on Mr. Preston's side
7 of the case, but maybe you know, is the APS property
8 zoned the same as the Provco property?

9 A. It is.

10 MR. DIMMICH: Thank you.

11 Does the Board have any questions
12 based on my questions?

13 (No response.)

14 MR. DIMMICH: Anybody else have
15 questions?

16 MR. SCHOCK: No.

17 MR. DIMMICH: Is there anybody in the
18 audience that wants to ask any questions of any of
19 the witnesses at this point?

20 MR. SCHWENK: I'd like to just make a
21 statement pertaining to use of the property.

22 MR. DIMMICH: Could you please come
23 forward first, please, sir. Because as I said, this
24 is a hybrid between a formal trial and public input.
25 So first of all you're going to have to identify

1 yourself and then you'll have to be sworn in.

2 MR. SCHWENK: Jerry Schwenk, Junior.

3 * * * *

4 XXXJERRY SCHWENK, JR., having been
5 duly sworn, was examined and testified as follows:

6 * * * *

7 MR. SCHWENK: I was just going to say
8 that the original use of the property as I
9 understand it was a car dealership. And the road
10 that was questioned about the original use of that
11 road, whether that was part of 309 or not, it's my
12 understanding it was the original 309. And it was a
13 car dealership, sitting right on 309, which is the
14 glass windows in the front of my store.

15 So when that road, when the new 309
16 came in, that road, I believe that was a stop sign
17 that you could enter on 309 going south. So as far
18 as can somebody use it going forward and can PennDot
19 take it away, it's been that way since probably the
20 '40s, I guess. I'm getting old, maybe '30s. I've
21 been around that property since late '70s or '80s,
22 and that had always been used as it is now. There's
23 a stop sign, and I think a street sign on it. And
24 also I'm pretty sure the township maintains it,
25 because there was what amounted to a speed bump that

1 because the concrete was that bad, and it was that
2 way for years, and then they took it out and put
3 that macadam portion of it in. And it's been in its
4 current form. There's potholes in it like that. I
5 drive a big truck, I got to go around it. So it's
6 barely usable.

7 And as far as the safety of it, when
8 you're coming off 309 turning left onto it now, I
9 think they said 60 some feet, in reality there's
10 room for one car to turn left, and that road is
11 always blocked. So that's always stacked. So
12 somebody is hanging out the tail of their car out on
13 309. So it's not that safe.

14 That being said, I've been operating
15 it as a business, and the car count is not specific.
16 I've had an antique business there, an antique mall
17 and vendors there. So depending on their hours
18 there's significantly more traffic than that. In
19 case this deal doesn't happen I want to maintain
20 what I have.

21 And prior to that when I bought it
22 from my father we had an auction business there. So
23 we had significant traffic then. However, it was
24 always a disaster, and never should have been there.

25 MR. DIMMICH: Can you spell your name,

1 please?

2 MR. SCHWENK: S C H W E N K. But it
3 was always been the same even when I was a kid
4 there. We rented that property as an auction
5 property before we bought it. And so it was always
6 traffic, and always an issue, people waiting to turn
7 left there stacking. So certainly it didn't get any
8 better the way things are now. So is it usable or
9 burdensome, or whatever, I would have to say
10 probably not that usable, and very burdensome.

11 However, it is already being used as
12 I'm currently using it now, and I don't have a
13 problem being there in the future myself in case it
14 doesn't happen.

15 But it was a car dealership, and that
16 was the old 309. And so I think that has been able
17 to access 309 going south for literally decades,
18 whenever -- whenever the new highway came in, and
19 they changed it.

20 MR. DIMMICH: I realize you're not a
21 party, but you have added testimonial evidence
22 here, so --

23 MR. SCHWENK: Well, I was going on the
24 public comment section.

25 MR. DIMMICH: Well, we will give them

1 a chance to ask any questions if they have any.

2 Do you have any questions.

3 MR. PRESTON: Just real quick.

4 * * *

5 CROSS EXAMINATION

6 BY MR. PRESTON:

7 Q. You said you own a property, yours is the
8 property --

9 A. The antique business.

10 Q. You own that?

11 A. Yes.

12 Q. And they're going to purchase it from you
13 if they're successful?

14 A. Yes.

15 MR. PRESTON: Okay. No further
16 questions.

17 MR. SCHOCK: Nothing.

18 MR. DIMMICH: Does the Board have any
19 questions?

20 (No response.)

21 MR. DIMMICH: Okay. Thank you. I
22 don't want to make it onerous for anybody to come up
23 and fear they're going to get grilled here, but I
24 want it fair for everyone.

25 Do you have any further testimony on

1 your side?

2 MR. SCHOCK: No.

3 MR. DIMMICH: And you've already moved
4 your items into evidence. So you will rest. And
5 we'll then turn to the defendant.

6 MR. SCHOCK: Do you want the table?

7 MR. PRESTON: No, this is going to be
8 very short. It's getting late. What I'd like to do
9 with the Board's permission is Mr. Kipor Saini is
10 here. He is the principal, the owner of the
11 property. He's the corporate entity that owns the
12 property. If you can give him a minute or two to
13 address the Board I think we're done.

14 With the Board's permission.

15 MR. DIMMICH: Okay. Certainly.

16 * * * *

17 KIRPAL SAINI, having been duly sworn,
18 was examined and testified as follows:

19 * * * *

20 MR. DIMMICH: Give your name and
21 address.

22 MR. SAINI: Kirpal Saini, K I R P A L,
23 S A I N I, 15 Murray Drive, Easton, Pennsylvania,
24 18042.

25 MR. DIMMICH: Just so it's clear,

1 you're the owner of APS?

2 MR. SAIARINI: APS.

3 MR. DIMMICH: Those properties, the
4 two tracks, 8A and 9 I think is what they have been
5 identified as?

6 MR. SAINI: Absolutely, yes.

7 MR. DIMMICH: Okay. Please tell us
8 what you wish the Board to know.

9 MR. SAINI: The reason I am here,
10 first of all, the traffic engineers, they're only
11 giving you their side of this because they want to
12 please the people who is paying their bill to the
13 Wawa, and the other one. But the reality is
14 entirely different. They are not revealing the dark
15 side of what they are proposing. It's going to
16 create an unsafe condition for the public. It's
17 going to be very burdensome. It will be very
18 inconvenient.

19 If you will allow me, if they will
20 allow me I would like to use their exhibit, if you
21 don't mind.

22 MR. DIMMICH: You may use the exhibit.
23 But please, whichever you use please identify it on
24 the record what you're using.

25 MR. SAINI: Yes. I only want to

1 identify the Short Road --

2 MR. DIMMICH: What exhibit are you
3 looking at, sir?

4 MR. SAINI: This is Exhibit A-4.

5 MR. DIMMICH: A-4. Thank you.

6 MR. SAINI: And coming on 309 south,
7 going south, there is no way anybody can make 180
8 degree turn. That's what it's like. If you are
9 going 70, you go and come back right away. A lot of
10 people will get killed.

11 These properties, they're commercial
12 properties, 8A and 9, and that was done 15 years
13 back if I'm not mistaken.

14 MR. DIMMICH: Are you saying they're
15 zoned commercial?

16 MR. SAINI: Yes, sir. They're not
17 homes. And that's not a vacant lot. The lot on 8A
18 is a parking lot for lot number 9. For all the
19 years when Gibson property was there, and even his
20 predecessor was there, that used to be used in
21 conjunction with each other. If you look on the
22 history at the filings with the county board, you
23 will always see one lot has gone with the other
24 always across the board. Everyone knows why.

25 This road was created prior to 1937,

1 the Short Road, by the developer at that time so he
2 can sell these lots along with the other ones so he
3 can develop it. So by doing this, what my friends
4 are proposing, there are only four cars, one car, or
5 two cars is totally untrue. You have to take what
6 was the traffic count when the antique place is in
7 full swing and Gibson Trophy was in full swing. All
8 these years, the 80 plus years, the path of the
9 Short Road was always used. I'm not talking for one
10 year or two year or 20 years, it's 80 plus years.
11 The last record I could get was 1937.

12 When you come in off the back,
13 because, again, it is so sharp, people coming from
14 north, they will wipe you off. You will not be
15 there. I don't know where the public safety is
16 they're promoting. And where they are promoting the
17 left -- the right turn, that is also death. Every
18 single car will flip. I will request each one of
19 you, please drive yourself, make a right turn. If
20 you come out alive I will give you a medal, because
21 you cannot make 180 degrees, no way in this world.

22 We are going to develop those lots. I
23 have been talking to the township. For one reason
24 or the other we did not develop it because we are
25 struggling with other properties on the same road,

1 on Fairmont Street, and all of that. But it is in
2 the plan. But I have discussed with the township
3 manager and the other people in the past.

4 Once you come out of that, unless
5 you're lucky, you go in, you make 180, and you come
6 out, because this is going to be a commercial. This
7 is going to be customers. It's not a residential
8 the way my other side has been proposing, and it has
9 been giving you the wrong information. That is
10 totally untrue.

11 There is no way you can go to Fairmont
12 Street, and there's no U turn. You come back. If
13 you are coming any other direction except coming
14 from south to -- so north to south, that's where you
15 can stop, look around, and if you have a vibrant
16 business tomorrow there, which we will.

17 I've been in this town since 2001, 18
18 years. I've been paying all of my taxes across the
19 board, starting with Fairmont Street up to lot 8A.
20 I've been paying my taxes for the swamp. I've been
21 a faithful citizen, or a businessman. But the point
22 of the reality, there is no way you can get into
23 this lot when you come and make a left. No way.
24 Even PennDot will not give you, even if you put a
25 million dollars. Are they going to put a million

1 dollar? No.

2 Same thing if you are coming from
3 south, you're coming north, there is no way you can
4 make a left turn. You come to the traffic light.
5 There is no way you can do anything. They want to
6 take the benefits for Wawa, but it is burdensome to
7 us. I'm using the same three words. It's unsafe
8 for the public, and it's very inconvenient.

9 Please put yourself in my shoes.

10 MR. DIMMICH: Let me just ask --

11 MR. SAINI: Yes, sir.

12 MR. DIMMICH: I want to make sure I
13 understood what you were saying. You're claiming
14 when you're going south on 309 it would be very
15 difficult and/or inconvenient for you to make a
16 right turn into your property 8A, is that correct?

17 MR. SAINI: According to what they
18 are portraying, that you have to come to the traffic
19 light, make a U turn, and go there. Now you enter
20 the property --

21 MR. DIMMICH: All right. Let's say
22 you're going south on 309?

23 MR. SAINI: Yes, sir.

24 MR. DIMMICH: You know where the end
25 of Short Road is. Can you make a right turn into

1 your property there?

2 MR. SAINI: Physically?

3 MR. DIMMICH: Yes.

4 MR. SAINI: I cannot. I cannot turn
5 180 degrees. I will be looking for somebody with an
6 ambulance.

7 MR. DIMMICH: With this configuration
8 you cannot do it?

9 MR. SAINI: Yes, sir. Then I have to
10 call the ambulance and have them follow me if I'm
11 making a 180 degree turn at 45, 50, 60 miles an
12 hour, because the cars are behind, and it's very
13 hard for people to, you know, have to brake within
14 the 10, 15, 20 feet. So their proposal is very,
15 very bad.

16 When I spoke to Michael in front of
17 the township attorney, and engineer, economic
18 development people, and there are three, four other
19 people in the room. And Eric Schock, the attorney,
20 who used to be my attorney before, he has done a lot
21 of work for me. I proposed, I am not against your
22 development. You want to improve something, you
23 want to develop, it's a business, do it. But I have
24 an easement, or I have a right at this point to get
25 onto Passer Road, to get from Short Road to go to

1 Passer Road. I can go left, I can go east, west,
2 north, south. By doing this you are eliminating me
3 that I can only make a right, and I can only make a
4 right out, if I can make it. And that will not
5 happen, sir.

6 He asked me, what do you want? I
7 said, give me easement anywhere. You can move this
8 road, the road, 20 feet, 30 feet, 40 feet, whatever
9 fits for your development, move this road, which it
10 does not belong to him, unless township hand over to
11 him. It is from one investor, from one businessman,
12 hand over to the other businessman. And that's not
13 right. Everybody should be treated equal.

14 All I'm asking him to do is give me
15 access to Passer Road at his convenience, wherever
16 he wants. He wants 65 feet, 80 feet, no problem. I
17 don't have a problem accessing there once I develop
18 this property, so the people who are going to want
19 to visit us, they can use it.

20 And I was reading that any property
21 which you develop, you have to have a second egress.
22 I will not have a second egress. All of you can
23 understand. I can go in or out. I cannot develop
24 it as a second egress. This was used all the time
25 only as an exit in emergency. That's the right

1 word, emergency exit. You can see the --

2 MR. DIMMICH: Now pointing at A-4.

3 MR. SAINI: This cement road goes all
4 the way in front of the structure, which my friend
5 calls it a house, which is no longer. I think he
6 had not done his homework looking at the zoning of
7 the property, what he is trying to put in the
8 gutter. He have to know that what he's presenting.
9 So after that, there was not any road. It just
10 stopped over there. That used to be a dirt road,
11 and which was later on in the last 10, 15 years,
12 people stopped putting some asphalt. We put some
13 asphalt because it used to be dirt.

14 So please get us an easement to Passer
15 Road. That is all we want. We don't want to block
16 their development.

17 MR. DIMMICH: I understand your
18 argument. One of the difficulties with narrative
19 testimony is it's very difficult to break in, and
20 it's much better when there's a question and answer.
21 But I will let you -- you have a right to do
22 narrative testimony. It just becomes very
23 cumbersome.

24 So, Mr. Preston, do you have any
25 further questions, direct questions you would like

1 to ask Mr. Saini?

2 MR. PRESTON: I do not.

3 MR. DIMMICH: Okay. Any cross?

4 * * *

5 CROSS EXAMINATION

6 BY MR. SCHOCK:

7 Q. Mr. Saini, what is the use that is
8 occurring on lot 9? You keep saying being Mr.
9 Hammond incorrectly referred to it as a house.
10 What's going on there today?

11 A. That's a vacant property, because it did
12 not comply -- let me answer you, sir.

13 Q. I didn't cut you off.

14 A. It did not comply with the fire department,
15 and also the zoning, because you have to put ramps,
16 and you have to put the bells and buzzers. And we
17 had a national client company, we had came in front
18 of the township, and that offer at that time was
19 very prohibitive. It was about \$20,000.

20 Then I did approach the township, and
21 I was going to demolish it, because Mr. Tom Beil, he
22 gave me very good suggestion, he said don't do that
23 right now because you have a certain use to it on
24 these two lots. You can always use it. Don't do
25 that. So that's -- and I've been paying taxes on

1 this property, both properties. So that's -- that
2 is a commercial structure. It's not a house, sir.

3 MR. DIMMICH: Okay. That was the
4 question that was asked.

5 MR. SCHOCK: Okay.

6 MR. DIMMICH: Did that answer your
7 question, at least that question?

8 MR. SCHOCK: That it's vacant, yes,
9 right.

10 MR. DIMMICH: Okay. Next question.

11 Q. The structure that is there though, it
12 could be construed as a residential looking
13 structure, correct, when you look at it?

14 A. There are a lot of properties though which
15 have upper and lower, two floors. They both have
16 used as commercial, and they are done in compliance
17 with the zoning and the fire department.

18 Q. But the answer is, it looks like a house?

19 A. It looks two story to me.

20 Q. Okay.

21 A. Because I don't do residential. I only do
22 commercial.

23 Q. So when you mentioned that people from 9
24 park on the lot on 8A, there are no people on 9
25 right now parking on 8A because it's vacant, is that

1 right?

2 A. The lot 9 is vacant, yes.

3 Q. Okay. So you heard the witnesses testify
4 about any proposed development of your property.
5 You're experienced in real estate development, is
6 that correct?

7 A. Yes.

8 Q. You've done it before, right?

9 A. What you're trying to do, or your associate
10 on the right-hand side is trying to do is create a
11 million dollar --

12 Q. There is no question about that.

13 A. Let me finish.

14 Q. No, you have to answer my question. You
15 have to answer my question.

16 MR. DIMMICH: Hold on. I think he's
17 objecting.

18 The way it goes, he'll ask you the
19 question, you can answer, and I will then let you
20 explain. But please answer the question first.
21 Okay.

22 MR. SAINI: Thank you. Sir.

23 Q. Okay. So the question was, you're
24 experienced in performing -- in doing real estate
25 development, you've indicated that, correct?

1 A. Unconformity of what? If the zoning is
2 right, how you do it, you have old structures, you
3 demolish old structure, it's being done day in day
4 out. Too old, on the old properties you demolish
5 the structure. Before you demolish you get your
6 permits. You go through that, and then that's my
7 plan. That's what I want to do. That's exactly how
8 I'm --

9 MR. SCHOCK: I object. I don't think
10 he's answering my question.

11 MR. DIMMICH: The objection is
12 sustained.

13 Mr. Saini, please answer whatever the
14 question is, if you can, and then I'll let you
15 explain it. But you have to answer the question
16 first.

17 Q. Have you ever taken a raw piece of land and
18 developed it for a real estate project?

19 A. Yes.

20 Q. Okay. So you've indicated that that would
21 be what you propose to eventually do, develop 8A and
22 9, is that correct?

23 A. I will develop it, yes.

24 Q. Okay. Have you investigated with a traffic
25 engineer what would happen to access if you propose

1 to develop those lots?

2 A. If Short Road was there, the expense is not
3 even half. And I am aware of that, or I was made
4 aware that the township has been collecting money
5 for that intersection. I don't know if the money is
6 there.

7 MR. SCHOCK: I'm going to object. I
8 just asked a question --

9 MR. DIMMICH: Okay. Hold on,
10 Mr. Saini. That objection is sustained. That
11 testimony is stricken.

12 I believe the simple question before
13 you was, did you -- have you contacted a traffic
14 engineer to do a study on your properties 8 and 9?

15 A. No, I have not.

16 Q. Okay. So you have no ability to refute the
17 traffic engineer's conclusions that any development
18 of 8A and 9 would not be able to utilize Short Road
19 going north?

20 A. Because that is his aim, that's what he's
21 hired to do that, that he is only concentrating on
22 his client's project. He is not looking towards the
23 rest of the people of how burdensome and how unsafe
24 it is, and how inconvenient it is if they are going
25 to do just the property.

1 So then tomorrow you have this
2 property. St. Luke's just did a beautiful wonderful
3 job. How many years that lot was vacant? But one
4 cannot assume that the lot owner is not going to do
5 that.

6 MR. DIMMICH: That is his response and
7 his answer.

8 MR. SCHOCK: Close, yeah.

9 Q. Did you speak with PennDot at all
10 concerning the development of your properties?

11 A. I was not there yet.

12 Q. Okay. So you don't know what access
13 PennDot might or might not approve for your
14 property?

15 A. From my experience with PennDot they are
16 not going to let me get off that property, or get
17 into that property unless there is the actual peak.
18 And once you go into actual peak, I am struggling
19 with some other township, and I have an
20 intersection, and they are brutal. And they are --
21 if you think that they are going to let me hope to
22 develop that south phase --

23 MR. SCHOCK: I'm going to object.
24 It's not the question.

25 MR. DIMMICH: The objection is

1 sustained. The last portion of his statement is
2 stricken.

3 A. So it is going to be very impossible.

4 Q. Did you review any of the PennDot response
5 letters on my client's project?

6 A. I was never provided.

7 Q. Okay. Did you review any of the township
8 letters with respect to my client's project?

9 A. I was not provided anything. I came here,
10 and I look on that, and I asked about that. And
11 the response is from your experts, and what you are
12 presenting is because you want to take it --

13 MR. SCHOCK: I'm going to object
14 again.

15 A. -- and not give anything. Just give me an
16 easement.

17 MR. DIMMICH: Hold on a second. I
18 think I understand. Mr. Saini is -- Mr. Saini as a
19 property owner has a right to express an opinion
20 concerning his property and its use. I believe that
21 that is the evidentiary law. I think that that's
22 what he's doing. He's just going a little bit
23 beyond.

24 MR. SCHOCK: No problem.

25 MR. DIMMICH: So as far as his

1 opinion, that's fine, and I won't sustain that
2 objection.

3 Anything else?

4 MR. SCHOCK: No, that's all the
5 questions.

6 MR. DIMMICH: Mr. Preston, anything
7 else?

8 MR. PRESTON: Nothing further.

9 MR. DIMMICH: Okay. And your Exhibit
10 O-1 is in.

11 MR. PRESTON: Move for the admission.

12 MR. DIMMICH: It's in. Anything else
13 you wish to present?

14 MR. PRESTON: No, nothing further.

15 MR. DIMMICH: Okay. Thank you, Mr.
16 Saini.

17 MR. SAINI: Thank you very much.
18 Thank you all. Please put yourself in my shoes.

19 MR. DIMMICH: Do you have any
20 rebuttal?

21 MR. SCHOCK: I don't believe so.

22 MR. DIMMICH: Okay. Is there any
23 members of the public that have something they want
24 to add after the laborious testimony that we have
25 just gone through?

1 Any member of the public?

2 (No response.)

3 MR. DIMMICH: And I do not mean that
4 critically. It is just difficult testimony, very
5 difficult. Somewhat emotional even.

6 Does the board have any questions
7 before we close the hearing?

8 MR. SPAETH: I have one question.

9 MR. DIMMICH: Who is it directed to?

10 MR. SPAETH: APS Associates.

11 MR. DIMMICH: Okay. Do you want to
12 direct it to their counsel or direct it to
13 Mr. Saini?

14 MR. SPAETH: Whoever can answer the
15 question.

16 MR. DIMMICH: Let's start with
17 Mr. Preston. See if he can get there.

18 MR. SPAETH: This is a simple
19 question. On your exhibit by the stop sign, there's
20 a -- it looks like a for sale sign. Is either lot
21 8A or 9 for sale right now?

22 MR. SAINI: No.

23 MR. PRESTON: The answer is no.

24 MR. SAINI: That should be for rent or
25 lease. The realty, if they put the wrong sign,

1 that's their mistake, and I will take care of that
2 right away.

3 MR. SPAETH: Okay. That's fine.

4 MR. DIMMICH: Any other questions from
5 the board?

6 (No response.)

7 MR. DIMMICH: All right. At this
8 point, Mr. Chairman, I believe the hearing on the
9 road vacation is concluded. And I turn it back over
10 to you as chairman to continue on with your meeting.

11 MR. BENNER: All right. That leads us
12 to, I guess, what we're going to do here this
13 evening. We heard a lot of testimony going both
14 ways, and these things are always difficult to
15 decide what the best approach is, but we're charged
16 with that obligation.

17 So is there a motion to adopt Proposed
18 Ordinance Number 163 vacating a portion of Short
19 Road, located between Passer Road and 309?

20 MR. DIMMICH: And note that that's a
21 conditional vacation.

22 MR. FARRELL: So moved.

23 MR. WAGNER: Second.

24 MR. BENNER: Any further discussion?

25 (No response.)

1 MR. BENNER: Any further discussion
2 from the public?

3 (No response.)

4 MR. BENNER: All in favor.

5 (The motion passed unanimously.)

6 MR. BENNER: The motion carries.

7 (Hearing concluded.)
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_____, 2018

I hereby certify that the evidence and
proceedings are contained fully and accurately in
the notes taken by me of the within Board of
Supervisors hearing, and that this is a correct
transcript of the same.

James P. Gallagher III
Registered Diplomate Reporter
Notary Public

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