
COMMONWEALTH OF PENNSYLVANIA



**A SPECIAL INVESTIGATION OF
STARRUCCA BOROUGH'S
BUCK ROAD BRIDGE RENOVATION PROJECT**

WAYNE COUNTY, PENNSYLVANIA

AUGUST 2009

JACK WAGNER, AUDITOR GENERAL

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL



August 4, 2009

The Honorable Mary Ann DeBalko
Mayor
STARRUCCA BOROUGH
P.O. Box 83
Starrucca, Pennsylvania 18462

Dear Mayor DeBalko:

The Department of the Auditor General's Office of Special Investigations has conducted an investigation regarding allegations of abuse of state funds and other financial improprieties by the Borough Council of Starrucca Borough, Wayne County. This report contains the results of our investigation.

In the process of conducting this investigation, we reviewed the Borough's bank records, researched public records in both Wayne and Susquehanna Counties, interviewed concerned citizens, reviewed minutes and video recordings of Borough Council meetings and reviewed records of state agencies.

We found that Starrucca Borough Council approved the Buck Road Bridge renovation project, which resulted in a substantial benefit to two members of Borough Council, without regard to other pressing needs of the Borough and the cost to the citizens of the Borough. The actions of the two members of Borough Council may constitute a conflict of interest under state law. Our report includes four recommendations to address this finding.

We urge the Borough Council to implement all of the recommendations made in this report. The Department of the Auditor General will follow up at the appropriate time to determine whether our recommendations have been implemented. We are also forwarding copies of this report to the Pennsylvania Office of Attorney General, the Pennsylvania State Ethics Commission, the Federal Emergency Management Agency, the Pennsylvania Emergency Management Agency, and the United States Department of Agriculture's Natural Resources Conservation Service for their review and whatever further action they may deem appropriate.

This report is a public document and its distribution is not limited. Additional copies may be obtained through the Department's website, www.auditorgen.state.pa.us.

Sincerely,

/S/

JACK WAGNER
Auditor General

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EXECUTIVE SUMMARY

FINDING	RECOMMENDATIONS
<p><u>FINDING :</u></p> <p>Starrucca Borough Council approved the Buck Road Bridge renovation project, which resulted in a substantial benefit to two members of Borough Council, without regard to other pressing needs of the Borough and the cost to the citizens of the Borough. The actions of the two members of Borough Council may constitute a conflict of interest under state law.</p>	<p>We recommend the following:</p> <ul style="list-style-type: none"> • Starrucca Borough Council should refrain from any future projects that do not benefit the entire community; • Starrucca Borough Council should refrain from any future projects that are beyond the financial capability of the Borough; • Starrucca Borough officials and employees should comply fully with the requirements of the Public Employee and Official Ethics Act and the <i>Borough Council Handbook</i> regarding avoidance of conflicts of interest; and • The Borough should seek reimbursement for the costs of the project from the parties who benefitted from the bridge improvements. <p>Copies of this report will be forwarded to the Office of Attorney General of Pennsylvania, the Pennsylvania State Ethics Commission, the Federal Emergency Management Agency, the Pennsylvania Emergency Management Agency, and the United States Department of Agriculture’s Natural Resource Conservation Service for their review and whatever further action they may deem appropriate.</p>

BACKGROUND AND INTRODUCTION

Starrucca Borough (“Borough”) is located in Wayne County, Pennsylvania, along the border with Susquehanna County in the northeast corner of the Commonwealth of Pennsylvania. The United States Census for 2000 reported the population of the Borough to be 216. The Borough covers an area of 8.8 square miles.

The Borough is governed by a Mayor and a Borough Council consisting of seven elected members referred to in this report as “councillors.”¹ The Borough also has three elected auditors. The Secretary/Treasurer is an appointed position. The Federal Emergency Management Agency (“FEMA”) Agent is also an appointed position

In February 2007, the Department of the Auditor General (“Department”) received a telephone call from the District Attorney of Wayne County, who stated that he had received allegations that certain officials of Starrucca Borough had acted improperly with respect to a controversial bridge replacement project. Because the District Attorney had previously acted as solicitor for the Borough, he had a representational conflict that would prohibit him from investigating or prosecuting the Borough or Borough officials. Accordingly, he referred the matter to this Department for whatever further action the Department might deem appropriate. At or about the same time, he referred certain related allegations of a criminal nature to the Pennsylvania Office of Attorney General for whatever further action that agency might deem appropriate.

The Department’s Office of Special Investigations (“OSI”) initiated this investigation on February 26, 2007, and interviewed the District Attorney on March 2, 2007. The District Attorney stated that the allegations involved the officials and residents of the Borough who are listed in Table 1:

¹The Commonwealth of Pennsylvania’s *Borough Council Handbook* (10th ed., June 2000) uses the term “councillor” (rather than “councilman” or “councilperson”) to describe a member of a borough council. Accordingly, we will use that term throughout this report.

Table 1
District Attorney's List of Starrucca Borough Officials and Residents
as of March 2, 2007

	<u>NAME</u>	<u>POSITION</u>
1.	Downton, Jack	Former Mayor
2.	Rhone, Kirk	Current President of Council
		(Brother of Fred Rhone)
3.	Buck, Robert	Councillor
4.	Gurske, Lou	Councillor
5.	Rhone, Fred	Councillor
		(Brother of Kirk Rhone)
6.	Haynes, Darl	FEMA Auditor
7.	Everett, Paul	Former Borough FEMA Agent
8.	Everett, Loreda	Wife of Former Borough FEMA Agent
9.	Weldy, Robert	Former Councillor
10.	DeBalko, Mariann ²	Former Mayor
11.	Travis, Laura	Current Secretary/Treasurer

The District Attorney, in response to questions, stated the following:

- The first allegation³ that he had received involved the Buck Road Bridge (“Buck Bridge”) project in Starrucca Borough.
 - He did not know the exact location of Buck Bridge.
 - This controversial project involved the replacement of the bridge on Buck Road that leads into a remote area of Starrucca Borough and farther into Thompson Township, Susquehanna County.
 - This project is controversial for several reasons:
 - The bridge is actually owned by Wayne County, but Wayne County does not want the bridge, and does not want to pay for its replacement.
 - The bridge replacement would only benefit a small number of Borough residents, including three members of Council and the brother of a councillor.
 - Thompson Township has abandoned its approach road to the bridge from the other side.⁴
 - At the end of 2006, an application for a Community Development Block Grant to be used for the bridge replacement project was denied.

² Mary Ann DeBalko has pointed out that the District Attorney misspelled her given name and that she was a former councillor, not a former mayor.

³ The District Attorney received a number of other allegations as to which our investigation discovered insufficient evidence to include in this report.

⁴ Our investigation later determined that Thompson Township abandoned one section of this road in 1953 and a second section in 2001.

- The three members of Borough Council who would benefit from this bridge replacement project are Council President Kirk Rhone, his brother Fred Rhone, and Robert Buck.
- These councillors own large amounts of land that would be serviced by the replacement bridge.
- These land owners want the replacement bridge because they want to retire from farming and sell their farmland for development, and the replacement bridge would be a requirement for the land development.
- These three councillors voted to approve the borrowing of \$80,000 by the Borough in order to fund the total cost of the bridge replacement project.
- Engineering work for the Buck Road Bridge project was done by an engineering firm that was hired by one of the councillors who would benefit from the project, and Pennsylvania Emergency Management Agency (“PEMA”) and/or Pennsylvania Liquid Fuels⁵ money was used to pay the engineering firm.
- He believes \$5,000 was paid in engineering costs.

In April 2006, the Borough had an application for an \$80,000 loan under consideration, and yet the Borough did not have enough money to pay a \$600 debt to the neighboring Borough of Thompson for fire protection services.

The Starrucca Borough Financial Audit 2006 provided by the District Attorney contained the following additional information:

- For 2006, Borough expenditures were \$11,028 in excess of total revenues of \$25,929.
- The General Account had a \$13,075 balance carried forward from the previous four years.
- The majority of the excess spending was a \$5,054 fine imposed by the Pennsylvania Department of Transportation (“PennDOT”) for misuse of Liquid Fuels funds in a prior year and the engineering costs for Buck Bridge.
- The General Account had a 2006 year-end balance of \$1,031 going forward to 2007.

The District Attorney also stated:

- Borough resident Paul Everett was the Borough’s former FEMA Agent, but he was removed from this position by the current Council.
- Paul Everett was replaced in this position by Darl Haynes, the current FEMA Agent.⁶

⁵ Each municipality in the Commonwealth of Pennsylvania receives from the Pennsylvania Department of Transportation an annual allocation from the Liquid Fuels Tax Fund to be used to for repairs and maintenance to roads within its boundaries. This annual allocation will be referred to as “Liquid Fuels funds” or “Liquid Fuels money” throughout this report.

⁶ The minutes of the January 12, 2006, Starrucca Borough Council meeting report that Paul Everett was removed from the FEMA Agent position by a vote of all in favor except Councillor

- Some of the opponents of the Buck Road Bridge project have complained of harassment and terroristic threats.
- He has referred these complaints to the Office of Attorney General.
- The harassment and threats have included the following:
 - Loose tire lug nuts and tires being taken off cars.
 - Notes, typed on old manual typewriter, such as “watch what you’re doing.”
 - Veiled threats of arson.

The Buck Bridge project was completed in July 2008, and an opening ceremony was held on July 16, 2008.

Gurske. In addition, Darl Haynes was appointed to the FEMA Agent position with four yes votes, one nay vote, and two abstentions.

FINDING AND RECOMMENDATIONS

FINDING: Starrucca Borough Council approved the Buck Road Bridge renovation project, which resulted in a substantial benefit to two members of Borough Council, without regard to other pressing needs of the Borough and the cost to the citizens of the Borough. The actions of the two members of Borough Council may constitute a conflict of interest under state law.

On March 15, 2007, Borough Auditor George DeBalko was interviewed in the presence of Borough Auditor Paul D'Agati and in the presence of his wife, former Borough Councillor Mary Ann DeBalko.⁷ In response to questions, George DeBalko stated the following:

- The Buck Bridge is on the Buck Brothers Farm in the Borough of Starrucca.
- The Buck Brothers Farm is a corporation owned by Councillor Robert Buck and Council President Kirk Rhone (Robert Buck's brother-in-law), and their wives.
- The Buck Bridge was first proposed in 1917, and was built in 1927.
- Buck Bridge is actually owned by Wayne County,⁸ not the Borough of Starrucca, but Wayne County does not want to repair this bridge.
- The bridge carries a Borough dirt road, which used to be a driveway, across a creek and into Thompson Township, Susquehanna County.
- The bridge currently has a three-ton capacity, and planned repairs would raise the bridge capacity to 21 tons.
- The Buck Brothers Farm occupies 70 acres that are in Starrucca Borough, and 370 acres that are in Thompson Township, Susquehanna County.
- The Buck Brothers Farm uses the 70 acres in Starrucca as a cow pasture for its dairy farm, but the acreage in Thompson Township is not used.
- Thompson Township has abandoned two-thirds of the road leading from Pa. Route 171 to the Buck Bridge.
- Thompson Township will not maintain its portion of the road, because Thompson Township cannot access its part of the road on the other side of the bridge with heavy equipment needed for road maintenance.
- Increasing the bridge capacity to 21 tons would allow both Thompson Township and Starrucca Borough to move road maintenance equipment across the bridge.

⁷ Mary Ann DeBalko was elected Mayor in the November, 2007 election, but she was not the Mayor on the date of this interview.

⁸ As will become apparent throughout this report, there is a difference of opinion regarding the ownership of the bridge and the responsibility to maintain the bridge.

- Councillors Bob Buck, Kirk Rhone, and Fred Rhone are the driving force on the Borough Council for the approval of the Buck Bridge project.
- These three councillors also have the support of three other councillors.
- Councillor Lou Gurske is the only councillor who opposes this project.
- Borough Council voted to approve a ten-year loan in the amount of \$70,000 from Pennstar Bank to fund the Buck Bridge project.
- This loan would require a \$900 monthly payment for ten years from Starrucca Borough.
- The Borough does not have the money to make these loan payments.
- This loan was approved by the Pennsylvania Department of Community and Economic Development (“DCED”) as a Unit Grant Loan, which means that the Borough has the right to raise taxes in order to fund these monthly loan payments.
- Around May, June, or July 2006, the Borough Council paid \$16,500 out of the Borough’s General Fund to Delta Engineering of Binghamton, New York, for preliminary engineering work on the Buck Bridge.
- This payment depleted the Starrucca Borough General Account balance down to zero.
- The Borough could not afford this type of spending because the Borough’s revenues only amount to \$14,000 per year.

A second interview of George DeBalko and Mary Ann DeBalko was conducted on April 18, 2007.⁹ At this meeting, they provided OSI with a copy of a Petition of the Inhabitants of Starrucca Borough for the Erection of a County Bridge dated May 14, 1917, which included an order of the Wayne County Court of Quarter Sessions appointing three bridge viewers to view the place at which the bridge was to be erected. The Report of Viewers dated May 29, 1917, stated the following:

That taking into consideration the cost of erecting and maintaining said bridge, and the ability of said Borough to defray the same, and to maintain the necessary roads and bridges therein, the erection of said bridge requires more expense than it is reasonable the said Borough should bear; and that the said bridge should be entered of record as a county bridge.¹⁰

In response to questions, Mary Ann DeBalko stated the following:

- In 2005, the Borough submitted a Community Development Block Grant application to the Wayne County Commissioners in the amount of \$25,000 for Buck Bridge repairs.

⁹ In his response to the draft report, George DeBalko contends that Borough Auditor Paul D’Agati was present during both interviews. However, the OSI Special Investigator conducting the interviews indicates that Paul D’Agati was not present during the second interview on April 18, 2007.

¹⁰ This Report of Viewers is at variance with a subsequent declaration of the Wayne County Commissioners at a meeting on June 5, 1923, which stated: “Wayne County not to assume any responsibility for maintenance of said bridge after it is built or any liability for any accidents that may occur.” See page 13 within.

- This application was rejected by the Wayne County Commissioners because the Borough Council meeting at which the application was approved was not advertised.
- The Borough submitted a second Community Development Block Grant application for Buck Bridge repairs to the County Commissioners in January 2006 in the amount of \$30,000.
- This application was accepted despite the fact that it contained two errors:
 - The application stated that Buck Bridge carried a road that led to 970 acres of land, but did not state in which municipalities the land was located.
 - Only 70 of these acres were in the Borough, and the remaining acreage was in Thompson Township, Susquehanna County.
 - The application stated that Buck Bridge carried a road that led to eight houses, but did not state in which municipalities the houses were located.
 - Seven of these houses were actually located in Thompson Township.
- When one of the Wayne County Commissioners was informed of these errors [prior to the OSI investigation] he replied, “We don’t care.”
- The Commissioners then approved the application and forwarded it to DCED, where it was rejected.

Borough Councillor Louis Gurske was interviewed on May 21, 2007. In response to questions, Gurske stated the following:

- He was elected to a four-year term as a member of Borough Council in 2003, and had served as an appointed councillor for approximately 1½ years before being elected.
- He also served as Acting Mayor of the Borough for the last two or three months of 2005.
- He lost in the Borough Council primary election in May 2007.

After describing the history of the bridge project, Gurske provided the following reasons why he felt this project should be stopped:

- Robert Buck, Kirk Rhone, and their family members are the only people who will benefit from the repairs to Buck Bridge or its replacement.
- This bridge cannot be accessed by vehicles from Thompson Township, Susquehanna County, on the other side of the bridge.
- The only access from Pa. Route 171 on the Thompson side is a “buggy trail” which was never developed into a road.
- Most of the property on the Thompson side is the Doctor Shelley Nature Preserve, which contains no dwellings of any kind.
- Thompson Township has abandoned a section of road that is only accessible from the Starrucca Borough side, because the Buck Bridge will not support heavy equipment needed to maintain the road.
- From the Starrucca Borough side of the bridge, it is possible to drive one mile, and seven-eighths of this mile is in Susquehanna County.

- The Buck and Rhone families plan to develop their farmland into residential properties and need an upgraded or new Buck Bridge to transport modular homes onto the land they plan to develop.

Starrucca Borough residents Paul Everett and Loreda Everett, his wife, were interviewed on May 31, 2007. Everett told OSI that he currently has no official position in the government of the Borough, but he had previously served as a Borough councillor and Borough FEMA Agent. Everett provided the following additional information relevant to Buck Bridge and plans to repair it:

- The current plan to spend the \$70,000 in loan proceeds will allow for bridge repairs that will include the installation of low guardrails.
- This cost could only be the beginning, because additional repairs or replacement will cost much more.
- The \$70,000 bank loan is the only available funding for the Buck Bridge project, and the Borough cannot afford the monthly payments on this loan.
- All Borough councillors except Lou Gurske voted to approve this loan for the Buck Bridge repairs.
- The proposal to repair or replace the Buck Bridge will benefit the owners of the Buck Brothers Farm only.
- There are no permanent residences on the road leading from the bridge into Susquehanna County, but there are some hunting cabins serviced by this road.
- Thompson Township does not maintain its side of the road that it abandoned 50 years ago.

A search of the records of the Wayne County Recorder of Deeds, the Wayne County Tax Assessment Office, and the Wayne County Conservation District Office revealed that the only properties in Wayne County that abut Buck Road and the Buck Bridge are owned by Robert Buck and Kirk Rhone and their wives. Therefore, they are the only residents of Starrucca Borough who would benefit from the project.

A search of the records of the Susquehanna County Assessment Office revealed that Robert Buck and Kirk Rhone and their wives are the owners of 216.2 acres of land in Susquehanna County that is only accessible by Buck Bridge and Buck Road [Township Route 671 (“TR 671”)]. Furthermore, a search of the records of the Susquehanna County Historical Records/Archives Office revealed that, on July 2, 1953, the Supervisors of Thompson Township enacted an ordinance vacating the following described section of road:

That a certain road or section of road, in the Township of Thompson, is useless, burdensome, and unnecessary for the convenience of the traveling public, said road is described to wit: that portion of a road commonly called Route 671 between the farms of [Buck and Rhone] on the east [other landowners on the west] being approximately (9/10) of a mile.

These records also contained a map of the vacated section of road indicating that the total distance vacated was 4,752 feet.

The statement in this document that the described section of Buck Road (TR 671) was vacated because it was “useless, burdensome, and unnecessary for the convenience of the traveling public” confirms that Buck Road is not a through road and that it is worthless to the general public.

On June 28, 2007, a current Thompson Township Supervisor and a former Thompson Township Supervisor were interviewed and provided the following information concerning the position of Thompson Township regarding TR 671, which is also known as Buck Road in Wayne County and as Erk Road in Susquehanna County:

- Buck Bridge is located on this road which passes from Starrucca Borough in Wayne County into Thompson Township in Susquehanna County.
- For the purposes of discussion [and this report], it is best to look at TR 671 as consisting of four sections (from east to west):
 - Section 1: The section of TR 671 known as Buck Road which is located in Starrucca Borough, Wayne County.
 - Section 2: The section of TR 671 from the Wayne County/Susquehanna County line that comes to a dead end in a field.
 - Section 3: The middle section of TR 671 that is now vacated.
 - Section 4: The section of TR 671 which formerly connected to Pa. Route 171 in Susquehanna County, but which is now vacated.
- These four sections of road were further described as follows:
 - Section 1: This section, which is located in Starrucca Borough, Wayne County passes through the Buck Brothers farm and contains the Buck Bridge.
 - Section 2: TR 671 comes to a dead end in Thompson Township 1.3 miles from the Susquehanna County/Wayne County line.
 - The Gilleran property in Thompson Township, Susquehanna County, is the Thompson Township property located closest to the dead end of TR 671, but they were not sure if TR 671 actually reaches the Gilleran property.
 - There are no personal residences located along TR 671 in the area between the county line and the Gilleran property.
 - This section of TR 671 is approximately 1.3 miles long, and all of the land along this section is owned by Robert Buck and Kirk Rhone, the owners of Buck Brothers Farm.
 - Kirk Rhone is also the President of Borough Council, and Robert Buck is a Borough councillor.¹¹
 - Section 3: This middle section of TR 671, which is located entirely in Thompson Township, was vacated by the township in 1953.
 - Section 4: There is currently no access to TR 671 from Pa. Route 171.

¹¹ Records of the Susquehanna County Assessment Office, Montrose, Pennsylvania, indicate that property number 096.00-1,017.01,000, consisting of 153.82 acres adjacent to Buck Road (TR 671), is not currently owned by the Buck or Rhone families. However, this property was sold by the Buck and Rhone families in 1997 to the current owners.

- This section of TR 671 was vacated by Thompson Township in 2001.
- Since the 1980s, this area has contained a nature preserve known as Shelley Preserve, and there is no access through the Shelley Preserve to TR 671 leading into Starrucca Borough.
- Thompson Township received PennDOT [Liquid Fuels] money in the amount of approximately \$2,500 per year to maintain the 1.3-mile stretch of TR 671 in Thompson Township [Section 2].

The former Thompson Township supervisor also stated the following:

- This project was a waste of taxpayers' money, because no one lived on this stretch of road, and Thompson Township cannot access this stretch of TR 671 without going through Starrucca Borough, and this access requires heavy equipment to pass over the Buck Bridge, which only has a three-ton weight limit.
- The Thompson Township Supervisors began the discussion about vacating Section 2 (the 1.3-mile stretch from the county line to the dead end) in 2004.
- This action to vacate the road required 60 days' notice to the public.
- During this public notice period, the supervisors encountered pressure not to vacate this stretch of road from several residents of Starrucca Borough, particularly Darl Haynes.
- As a result of this pressure, the supervisors took the action to temporarily close Section 2 of TR 671.
- The supervisors have the authority to keep a temporarily closed road closed forever.
- It is his "bottom line" opinion that spending money for repairs to Buck Bridge or replacement of Buck Bridge is a complete waste of money, because such action would only benefit Robert Buck and Kirk Rhone, the owners of the Buck Brothers farm.

The former Thompson Township supervisor provided OSI with copies of the following documents:

- Two-paged document titled "Thompson Township Application for Subdivision or Land Development," dated April 1, 2007, submitted by Robert E. Buck and Kirk Rhone, for development of Buck – Rhone Subdivision on TR 671 approximately 3,000 feet from Susquehanna County/Wayne County line.
- Affidavit of Ownership, dated April 10, 2007, in which Kirk Rhone and Robert Buck swore to the ownership of the Buck – Rhone Development located in Thompson Township identified as Tax Parcel 096.00 – 1,017.00,000.
- Map (not to scale) of Buck – Rhone Parent Tract dated March 21, 2007.
- Map of Buck – Rhone Subdivision, Thompson Township, Susquehanna County, Pennsylvania, dated November 20, 2006, which also contains the following information:
 - Total area of property is 216.2 acres.

- Minimum lot size is 10.22 acres.
- Total number of lots:
 - Proposed – 1
 - Developed from parent tract since 15 May 1972 – 5
 - Total - 6

The former Thompson Township supervisor also stated:

- These documents are proof of the intention of Borough Council President Kirk Rhone and Borough Councillor Robert E. Buck to develop land owned by them in Thompson Township, Susquehanna County.
- This land is only accessible from Starrucca Borough by driving over the Buck Bridge, which indicates why Buck and Rhone want to spend the money of Starrucca Borough taxpayers to repair or replace the Buck Bridge.
- This proposed subdivision is on the section of TR 671 [Section 2] which has been temporarily closed by Thompson Township.
- The Buck – Rhone Subdivision plan will not be approved by Thompson Township while this section of TR 671 is temporarily closed, and Thompson Township has no plans to change the status of this section of TR 671.
- Buck and Rhone understand the current status of this section of TR 671, and they have applied for this subdivision in order to try to force Thompson Township supervisors to open this section of TR 671.¹²

The former Thompson Township supervisor was again interviewed on August 27, 2007, at the parking lot of the Shelley Nature Preserve located along Pa. Route 171 in Thompson Township. He pointed out where Buck Road (TR 671) ends immediately adjacent to the Shelley Nature Preserve parking lot. He provided copies of the following documents:

- Notice dated September 8, 1953, stating that an Ordinance was enacted by the Board of Supervisors of Thompson Township, Susquehanna County, Pennsylvania stating the following:

That a certain piece of road being a section of [Township] Route 671, and lying between the farms of I. L. Buck on the east, and John Bauman on the west, being approximately nine-tenths (9/10) of a mile, is useless, burdensome, and unnecessary for the convenience of the traveling public. That the said section of the highway known as [Township] Route 671 between the Farms of I. L. Buck on the east, and the farm of John Bauman, formerly of Joseph Sienkiewicz, on the west, being approximately nine-tenths (9/10) of a mile is hereby abandoned and vacated.¹³

¹² After the Buck Bridge project was completed, Thompson Township did reopen Section 2 of TR 671.

¹³ This ordinance refers to what has been described in this report as “Section 3” of TR 671, also known as Buck Road and Erk Road.

- Copy of Ordinance No. 27, dated April 2, 2001, resolving that the Board of Supervisors of Thompson Township ordain that the north end of Township Road 746, (Stack Road) beginning at the intersection of Pa. Route 171 and Stack Road be vacated because it has not been used and is not useable. This ordinance divides the vacated section of road into 12 courses and distances which total 2,818.2 feet [0.53 miles].¹⁴
- Minutes of the Meeting of the Thompson Township Board of Supervisors of September 7, 2004, which state the following:

A motion was made . . . to temporarily close Erk Road until such time as the bridge in Starrucca Borough was repaired or replaced so that township road maintenance equipment could safely traverse the bridge. Motion passed. . . . The road will be closed immediately and appropriate signage placed on both ends of the road. The board of supervisors will contact Starrucca Borough Council to advise them of the decision to close the road.¹⁵

- Minutes of the Meeting of the Thompson Township Board of Supervisors of November 1, 2004, which state the following:

The board of supervisors met in executive session prior to the meeting to address issues related to Erk Road [TR 671]. Upon convening the meeting a motion was made . . . to advise the solicitor to proceed with efforts to deal with the objections to temporarily closing Erk Road. Motion carried unanimously.

Wayne County Engineer -- Bridge Ownership Issue

On April 30, 2007, Wayne County Engineer Stephen J. Knash, P.E., provided OSI with a copy of a handwritten page of minutes of a Wayne County Commissioners' meeting dated June 5, 1923, which contained the following statement:

Motion made and carried that the County Commissioners appropriate the sum of \$1,500 to Starrucca Boro [sic] to assist in building a bridge over Starrucca Creek near residence of I. L. Buck. Wayne County not to assume any responsibility for maintenance of said bridge after it is built or any liability for any accidents that may occur.¹⁶

Knash stated that he interpreted the meeting minutes to mean that Wayne County did not own the bridge.

¹⁴ This ordinance refers to what has been described in this report as "Section 4" of TR 671, also known as Buck Road, Erk Road, or Stack Road.

¹⁵ These minutes refer to what has been described in this report as "Section 2" of TR 671, also known as Buck Road or Erk Road.

¹⁶ This statement is at variance with the Report of Viewers dated May 29, 1917, which declared that "the bridge should be entered of record as a county bridge." See page 7 above.

Pennsylvania Department of Transportation – Bridge Ownership Issue

On May 16, 2007, two representatives of the PennDOT Bureau of Municipal Services, PennDOT District 4-0, Dunmore, provided the following information regarding the Buck Bridge issue:

- PennDOT’s position is that the Buck Bridge is owned by Starrucca Borough.
- PennDOT’s position regarding the ownership of Buck Bridge is in agreement with the position of Wayne County.
- The access roads on both sides of Buck Bridge are Borough roads, not PennDOT roads.
- The Borough is responsible for repairs and upgrades to Buck Bridge, and PennDOT has no concern or interest in the Borough borrowing money to finance repairs to Buck Bridge or any Borough roads.
- PennDOT has no concern or interest with private citizens using their own money to pay for engineering expenses regarding Buck Bridge.
- PennDOT authorized the use of \$5,000 in Liquid Fuels funds by the Borough on July 5, 2006, for engineering fees regarding Buck Bridge.

Department of Community and Economic Development Block Grant Application

The DCED Grant Manager in Scranton was interviewed on September 4, 2007, and stated the following:

- He was involved in the approval process for a Community Development Block Grant (“CDBG”) application from Wayne County.
- This application was approved except for the funding of the reconstruction of the Buck Bridge.
- He and the Wayne County Redevelopment Director personally inspected the Buck Bridge.
- He [the Grant Manager] concluded that work on the Buck Bridge would only benefit the owners of the land where the bridge is located and that such work would be of little or no benefit to Starrucca Borough.

The Grant Manager provided OSI with a copy of his letter dated June 1, 2006, addressed to the Executive Director, Wayne County Redevelopment Authority, which contained the following paragraph:

Starrucca Borough, Street/Road improvements.

The proposed activity, reconstruction of the Buck Bridge, does not meet a National Objective as required for CDBG funding. A Borough-wide income survey placed Starrucca at 65% LM/I [Low and Moderate Income]. This would usually qualify an activity under the category “Area Benefit” however in this case the bridge is in an inappropriate service area. Buck Bridge and Erk Road presently have no outlet and no dwelling units, LM/I or

other. The proposed project does not fit into any other CDBG category.

The Grant Manager also provided a copy of a Small Communities Program Division Certificate of Eligibility/Fundability Computer Input Worksheet in the name of Wayne County for fiscal year 2006, which included the following comment regarding Starrucca Borough, Buck Bridge:

After visiting the proposed project site and reviewing documents presented support and opposition to this activity, it has been determined that this is not an eligible activity. This is an inappropriate service area.

Payments to Delta Engineers

The Borough made payments to the firm of Delta Engineers of Binghamton, New York, for engineering work regarding the Buck Bridge as are set forth in Table 2:

Table 2
Summary Schedule of Starrucca Borough Payments to Delta Engineers in 2006

STARRUCCA				
BOROUGH	CHECK	CHECK		MEMO
ACCOUNT	DATE	NUMBER	AMOUNT	LINE
General Checking	6/7/06	673	\$4,950	Buck's Bridge
General Checking	7/5/06	680	<u>4,075</u>	Buck's Bridge
Total General				
Checking			<u>\$9,025</u>	
Liquid Fuels Checking	7/5/06	120	<u>\$5,000</u>	Buck's Bridge
Total Liquid				
Fuels Checking			<u>\$5,000</u>	
Total 2006				
Payments			<u>\$14,025</u>	

The 2006 Starrucca Borough Financial Audit listed 2006 revenue in the amount of \$25,929, which included \$14,126 in property taxes and \$5,615 in realty transfer taxes. In addition, this audit listed the Borough's 2006 Liquid Fuels allotment in the amount of \$22,977.

Table 3 shows the payments for Buck Bridge engineering costs as percentages of the Borough's General Fund revenue and its Liquid Fuels allotment.

Table 3
Summary Schedule of Engineering Cost Percentages for 2006

<u>GENERAL FUND</u> <u>REVENUE</u>	<u>BUCK BRIDGE</u> <u>ENGINEERING</u> <u>EXPENSES</u>	<u>PERCENTAGE OF</u> <u>REVENUE</u>
\$25,929	\$9,025	34.8%
<u>LIQUID FUELS</u> <u>ALLOTMENT</u>		
\$22,977	\$5,000	21.7%

Pennstar Bank Loan

Starrucca Borough Council advertised for proposals, with a deadline of August 1, 2006, for the borrowing of \$70,000 at competitive rates and terms for the purpose of rebuilding Buck Bridge. By letter dated August 1, 2006, Pennstar Bank, Scranton, offered to purchase a General Obligation Note, Series 2006, for the purpose of rebuilding Buck Bridge and issued by Starrucca Borough, as follows:

1. Amount of Note: \$70,000
2. Term of Note: Ten (10) Year Term
3. Type of Note: General Obligation Note, Series 2006 – A
4. Rate of Interest Per Annum: The note shall (subject to the following terms) bear interest on the outstanding principal balances with a bank qualified tax free rate (360/360 day basis) of 4.64% fixed.
5. Repayment Terms: Annual payments of principal and interest beginning June 2007.
6. Security: The note will be secured by the full faith, credit and taxing power of the Borough of Starrucca, Wayne County, Pennsylvania as evidenced in the note agreement and in such a manner satisfactory to the bank and evidenced by the borrower's approval.

As part of the process of applying for this loan, on January 3, 2007, Starrucca Borough submitted to DCED a "Debt Statement Pursuant to Section 8110 of the Local Government Unit Debt Act" ("Debt Statement") signed by Laura Travis, Secretary, which showed that the Borough had zero indebtedness.

Appended to the foregoing document was a “Borrowing Base Certificate – Section 8002,” dated January 3, 2007, which reported Starrucca Borough’s total revenue¹⁷ figures for the previous three years as are set forth in Table 4:

Table 4
Summary of Revenue Figures Reported on Borrowing Base Certificates

FISCAL YEAR	TOTAL REVENUES RECEIVED (money from all sources)
2004	\$35,240
2005	37,700
2006	<u>46,200</u>
Total Net Revenues	<u>\$119,140</u>

The Borrowing Base Certificate sets forth a Borrowing Base¹⁸ of \$39,713.33 (total revenues for the prior three years of \$119,140 divided by three).

Section IV of the Borough’s “Debt Statement” dated January 3, 2007, contained the following information:

- Borrowing Base -- \$39,713.33
- Applicable debt application -- \$99,283.33 nonelectoral (250% of the borrowing base 300% for counties)

¹⁷Act of December 19, 1996, P.L. 1158, No. 177, § 8002(c), as amended, 53 Pa.C.S. § 8002(c) (Local Government Unit Debt Act), defines “total revenues” as:

“**Total revenues.**” All moneys received by the local government unit in a fiscal year from whatever source derived except the following:

(1) Subsidies or reimbursements from the Federal Government or from the Commonwealth measured by the cost of or given or paid on account of a particular project financed by debt.

(2) Project revenues, rates, receipts, user charges, special assessments and special levies which are or will be pledged or budgeted for specific self-liquidating debt or for payments under leases, guaranties, subsidy contracts or other forms of agreement which could constitute lease rental debt except that the payments are payable solely from these sources, but that portion thereof that has been returned to or retained by the local government unit shall not be excluded.

(3) Interest on moneys in sinking funds, reserves and other funds, which interest is pledged or budgeted for the payment or security of outstanding debt, and interest on bond or note proceeds, if similarly pledged.

(4) Grants and gifts in aid of or measured by the construction or acquisition of specified projects.

(5) Proceeds from the disposition of capital assets, and other nonrecurring items, including bond or note proceeds not considered income under generally accepted municipal accounting principles.

¹⁸ “Borrowing base” is defined in Section 8002(c) of the Local Government Unit Debt Act, which provides, in pertinent part, as follows:

“**Borrowing base.**” The annual arithmetic average of the total revenues for the three full fiscal years ended next preceding the date of the incurring of nonelectoral debt or lease rental debt as set forth in a certificate stating the total revenues in each of these years and stating the average, executed by the authorized officials of the local government unit or by an independent accountant.

This computation indicated that the Borough loan in the amount of \$70,000 was within its nonelectoral debt limitation of \$99,283.33.

The Pennstar Bank General Obligation Note contained the following repayment information regarding this loan:

(a) commencing on June 15, 2007, and continuing on the same day of each year thereafter, the Municipality shall make annual equal consecutive payments of principal and interest to the Registered Owner in the amount of \$8,907.52 each; and

(b) on the date June 15, 2017, ten (10) years, three (3) months from the date of the issuance of this Note, the Municipality shall make a final payment to the bank in the amount equal to the remaining outstanding principal balance of this Note, plus accrued interest thereon.

The terms of the note indicate that Starrucca Borough will pay \$91,302.08 on this loan over 10.25 years, and a Pennstar Bank amortization schedule reveals that interest in the amount of \$19,075.06 will be paid over the life of this loan.

The Vice President, Government Financial Services, Pennstar Bank (“Bank Vice President”), was interviewed on September 12, 2007, and provided the following information:

- The Starrucca Borough loan from Pennstar Bank in the amount of \$70,000 is a General Obligation Note.
- Any municipality can qualify for such a loan because it is based on the full faith and taxing power of the municipality.
- There is no limitation on what a municipal government can do to raise taxes in order to pay off debt.
- A government’s power to tax is the “best loan collateral on the planet.”
- The amount of a local government nonelectoral loan is limited by DCED to 250% of the borrowing base, which is the average of the municipality’s revenue for the most recent three years.
- Starrucca Borough Debt Statement had a nonelectoral debt limitation of \$99,283.33, which is computed at 250% of the borrowing base of \$39,713.33.
- Any false statements or false figures on a Debt Statement would disqualify the local government unit from qualifying for a loan.
- The Borough was in a favorable position to have this loan approved because it had no other debt.
- Ninety-nine percent of all bank loans to government units are classified as “nonelectoral,” which means that the public did not vote to approve these loans.
- The revenue figures reported on the Borough’s Debt Statement are also reported to DCED on an annual basis.
- DCED has to approve all local government borrowing that exceeds \$125,000 or has a term longer than five years.

- This Borough loan was approved by DCED, and Pennstar Bank would not have approved this loan if it had not been approved by DCED.

Records of Pennstar Bank show that the proceeds of this loan in the amount of \$70,000 were deposited in the Borough General Account on March 15, 2007.

Citizens' Petition (Source: Video of December 6, 2006, Starrucca Borough Council Meeting)¹⁹

At the December 6, 2006, meeting of the Starrucca Borough Council, Secretary/Treasurer Laura Travis read correspondence from concerned citizens and taxpayers of the Borough, which contained the following statements:

- The Buck Bridge loan will require annual payments of \$10,900, which will leave the Borough with debt of \$4,839 at the end of the year.
- This loan will leave the Borough with no money for unexpected expenses including additional legal expenses, an expense for which the Borough spent more than the budgeted amount of \$1,500 during the previous year.
- The following question: "What exactly is wrong with Buck's Bridge if the Council feels it needs \$75,000 for its repair?"

Travis then read the following:

Petition to Reject Starrucca Borough Taxpayer Funding of the Repair/Upgrade Project to the Buck Road (Route No. T-671) Bridge that Crosses over the Starrucca Creek on the property of the Buck Brothers Farm.

In 1917 when it was determined that a bridge was needed to cross the Starrucca Creek on Buck Road it was also recognized by the Wayne County Commissioners to be too "burdensome upon the inhabitants of said Borough of Starrucca and more than it is reasonable they should bear." Given this, the County agreed to build and maintain the bridge, and that the "said Bridge should be entered of record as a County Bridge."

Today the County recognizes that the usefulness of the bridge no longer exists and refuses to use County taxpayer money to maintain the bridge. The State of Pennsylvania, as well as the Federal Government, has also refused to provide any funding to repair this bridge. Given this, the current Starrucca Borough Council has determined that they will take

¹⁹ The Borough, its solicitor, and Treasurer Laura Travis have each demanded that the contents of the video recordings of the Borough Council meetings be removed from this report on the grounds that the recordings were made without Council's permission. We have not acceded to their demands. We note that no suggestion has been made that the events and statements contained in the videos are not accurately depicted and recorded. Furthermore, the video recordings, which were not made by our investigators, are in the public domain and available on the Internet. The videos ensure that this report contains an accurate and complete rendition of the statements and events that occurred at the Council meetings, which were *public* meetings.

responsibility to maintain the bridge placing the entire financial burden on the small tax base of the Starrucca Borough. To date the estimate for repairs has risen from \$25,000 two years ago to more than three times that amount today. The Starrucca Borough Council is currently seeking to borrow nearly \$85,000 to cover some of this cost. Just as in 1917, when the cost to build and maintain the bridge was too great a burden on the community, it is still too great a burden today.

The undersigned citizens stand in objection to funding the maintenance costs of the Buck Road Bridge and demand that the Starrucca Borough Council stop any further efforts to use local tax money in this project.

Two copies of this petition, containing a total of 68 signatures, were submitted to Starrucca Borough Council. The official minutes of the December 6, 2006, Starrucca Borough Council meeting contained no details regarding the correspondence or petition, but merely state the following:

A letter from the “concerned citizens” was read.
A copy of a petition was presented to the board.

Citizen’s Questions about Loan for Buck Bridge (Source: Video of January 3, 2007, Starrucca Borough Council Meeting)

During the January 3, 2007, Starrucca Borough Council meeting, a citizen asked if Council had completed a budget analysis in order to determine if Starrucca Borough was following the guidelines for borrowing \$70,000. The Solicitor responded that a budget analysis was not required for a long-term capital project loan, that this capital project loan had different DCED requirements, and that he “had sent the project up” [to DCED].

The citizen asked whether, even though Council has a petition indicating that the majority of the community is against this loan, Council is going to go ahead with this loan. The Council President replied “yes.” The citizen asked if the public should have the opportunity to vote on this loan. The Solicitor replied that the Borough does not have to give the public the right to vote on this loan -- the Borough could give the public the right to vote, but, in this case, it chose not to.

Receipt of Bids for Buck Bridge Renovations (Source: Video of September 5, 2007, Starrucca Borough Council Meeting)

During the September 5, 2007, Borough Council meeting, Council President Kirk Rhone stated that the Borough had received four bids for the Buck Bridge project:

- Bidder No. 1: \$85,000 lump sum bid (bond submitted with bid);
- Bidder No. 2: \$103,000 (bond submitted with bid);
- Bidder No. 3: \$88,000; and
- Bidder No. 4: \$198,200.

Rejection of Bids (Source: Video of September 5, 2007, Starrucca Borough Council Meeting)

One of the Starrucca Borough Councillors made a motion that the Borough Council reject all bids. Council President Kirk Rhone stated that current bids are above what the Borough can afford. The motion was seconded and passed with one negative vote.

Re-bidding (Source: Video of September 18, 2007, Starrucca Borough Special Meeting)

The following is a chronology of events that took place at the September 18, 2007, Starrucca Borough special meeting:

- All bids for Buck Bridge repairs (lowest being \$85,000) had been previously rejected.
- At additional cost of \$400, Delta Engineers submitted a new proposal to be presented to interested bidders, with bridge approach work deleted from the original proposal. Purpose is to obtain bids in lower amounts.
- Councillor Gurske stated all they were doing was dividing the whole job into two smaller jobs, but the total cost will still be the same.
- Councillor Fred Rhone made a motion to pay Delta Engineers the additional \$400. The motion was seconded by Don Haynes and then passed.
- Councillor Robert Buck made a motion to re-bid the Buck Bridge project without the road approach work. The motion was seconded by Councillor Don Haynes and then passed.

Receipt of Revised Bids (Source: Video of October 9, 2007, Starrucca Borough Council Meeting)

The Secretary/Treasurer read four revised bids for the Buck Bridge repair project:²⁰

- Bidder No. 1: \$81,200;
- Bidder No. 3: \$72,000
- Bidder No. 5: \$108,710; and
- Bidder No. 2: \$87,850.

After the members took several minutes to review the bids, Councillor Fred Rhone made a motion to table voting on bids in order to give councillors more time to review the bids and to meet on Friday, October 12, 2007, to vote on the bids. Councillor Donald Haynes, Jr. seconded the motion, and the motion was passed, with Councillor Lou Gurske casting the only negative vote.

²⁰ This is the order in which the bids were read by the Secretary/Treasurer. Bidder No. 4 did not submit a second bid.

Awarding of Contract (Source: Video of October 12, 2007, Starrucca Borough Council Meeting)

Borough Council President Kirk Rhone stated that the purpose of this meeting was to review bids for Buck Bridge rehabilitation. Rhone stated that all bids in the first round were rejected. Rhone stated that the second round of bids included the following:

- Bidder No. 5: \$108,700.
- Bidder No. 2: \$87,850.
- Bidder No. 1: \$81,200.
- Bidder No. 3: \$72,000.

Borough Councillor Donald Haynes Jr. made a motion that the Borough accept the bid of Bidder No. 3. Councillor Fred Rhone seconded this motion. Borough Mayor Jack Downton asked how the Borough was going to pay for this project. President Kirk Rhone responded that money from both the Liquid Fuels Account and the General Account would be used to pay for the Buck Bridge rehabilitation.

The motion passed with Councillor Gurske casting the only negative vote. He stated that the Buck Bridge is not a Borough bridge, but rather is a county bridge, as proven by then-Solicitor Lehutsky.

Completion of Buck Bridge Project

An article was published in the July 17, 2008 edition of the *Wayne Independent* regarding the ceremonial opening of the Buck Bridge on July 16, 2008. On the newspaper's website, the article was accompanied by two comments from citizens who criticized this project because it was a "bridge to nowhere" and because it was a special interest for Buck and Rhone.²¹

Other Comments Regarding Buck Bridge Project

During a meeting on July 11, 2008, Borough Solicitor Ronald M. Bugaj provided copies of several documents, including the following:

- Letter dated March 1, 2007, from Jack Downton, the Borough Mayor at that time, and addressed to Bugaj, which states, in pertinent part, the following:

After talking with you briefly on 2-22-07 I feel we are both in agreement the nonsense in Starrucca Borough has to stop. I feel the only way to correct the infractions is to make those making the bad and irresponsible decisions to be held accountable.

I am requesting an injunction to stop the borrowing of \$70,000 for Buck's bridge. I feel this should have immediate attention and be filed before the March 7, 2007 council meeting. I have listed my reasons below:

²¹ *Wayne Independent* website, www.wayneindependent.com, "Starrucca officials open Buck Bridge," accessed on July 17, 2008.

1. With the 2006 audit report Starrucca Borough cannot handle this financial burden.
 2. Borough code section 1005 Powers of council #3 on what tax base is \$70,000 going to be paid back.
 3. With possible lawsuits against Starrucca Borough this is not the time to take on such a huge debt load.
 4. The Borough needs to handle the issues regarding the subpoenas and resolve the \$5054 issue.²²
- Letter dated April 2, 2007, from Jack Downton, the Borough Mayor at that time, and addressed to Starrucca Borough Council, which states, in pertinent part, the following:

This letter is in regards to my March 1, 07 letter asking Attorney Bugaj to respond to me in writing which he has not done. It is very obvious that what attorney Bugaj and I talked about is very different than he is willing to put in writing. I had made him aware of the many improper actions from Darl Haynes, Kirk Rhone and the Majority of council. In light of what he said “we need to end the nonsense in Starrucca” he keeps it going for his own job security. Attorney Bugaj’s bill in March for \$1685 was not in the best interest of Starrucca Borough. Let me remind you Attorney Bugaj was aware the money paying his bill was from FEMA. The general account is in the red.

The subpoenas are nothing more than a diversion from borrowing \$70,000 for Buck’s bridge and \$5054 not being transferred for eight months to the proper account. Borough money is being spent and what will the borough benefit from all 5 subpoenas. Our time and money should be put into whom and why did the possible manipulation of funds occur.

- First Set of Interrogatories²³ Addressed to Robert Weldy (Borough resident) which contained the following answer regarding the issue of applying for Community Development Block Grants to fund the Buck Bridge:

Unless you consider the cows who pasture on the land served by the bridge as low-to-moderate income families, no human family living in the Borough will benefit from this bridge project. Since there are no homes or business located on the other side, or served by the bridge, there is no direct benefit to the low-to-moderate income families in the Borough.

²² The \$5,054 fine was imposed by PennDOT for misuse of a portion of a previous years’s allocation of Liquid Fuels funds..

²³ The Interrogatories were issued by Starrucca Borough Solicitor Ronald Bugaj in connection with legal proceedings instituted by Starrucca Borough Council in the Court of Common Pleas of Wayne County, Pennsylvania, Docket No. 150 Civil 2007.

- In answer to the interrogatory: “How does this benefit the community that is seeking \$70,000 loan for the Buck’s Road Bridge?” Weldy stated: “The community does not benefit by any work done to the Buck Road Bridge.”

Interview of Kirk Rhone, Borough Council President

Borough Council President Kirk Rhone was interviewed on September 30, 2008, and, in response to questions, provided the following information:

- In 1990, he and Robert Buck told Starrucca Borough Council that the bridge needed repairs.
- At that time, the bridge was put on a state list of repair projects.
- Again, in November 2004, he and Buck approached the Borough for having a preliminary study done on the bridge, and he and Buck would pay for this study.
- He and Buck then paid the Delta Engineering firm \$1,500 with their own money, and the preliminary study was completed in January 2005.
- The Borough applied for and received a \$25,000 grant from DCED, but this grant was sent back to DCED by a previous Borough Council.
- The Buck Bridge renovations have been completed except for the installation of guide rails, and the Borough has no plans for additional work on the bridge.
- Thompson Township in Susquehanna County plans to upgrade the portion of the road that is accessed by the Buck Bridge and extends into Susquehanna County.
- When asked who will benefit from the Buck Bridge project, Rhone provided the following affidavits to OSI:

Table 5
List of Affidavits

<u>DATE</u>	<u>AFFIANT(S)</u>
9/26/08	Kirk and Alice Rhone
9/26/08	Robert and Lillian Buck
9/26/08	Jim Sanderson
9/26/08	Nick Krehel
9/26/08	Bernard Povanda
9/26/08	Robert Aillery
9/26/08	Robert Gilleran, Jr.
Undated	Robert and Alice Gilleran

These affidavits are summarized as follows:

- Rhone and Buck Affidavits:
 - Buck and Rhone and their spouses are co-owners of land in both Starrucca, Wayne County, and Thompson Township, Susquehanna County, that is directly accessible by the Buck Bridge and Buck Road.

- With the completion of the Buck Bridge, the Buck and Rhone families are in the process of subdividing two parcels of land, one parcel for use by their children and the other parcel for family use.
- The Buck and Rhone families are not currently marketing any of their land for sale, and do not intend to sell any of their land in the near future.

When asked where the land being subdivided for his daughter and the daughter of Robert and Lillian Buck is located, Rhone stated that the parcels are located in Thompson Township, Susquehanna County.

- Affidavits of Sanderson, Krehel, and Povanda:
 - Sanderson, Krehel, and Povanda are co-owners of 153.82 acres of land in Susquehanna County that was purchased by Krehel and Povanda from the Rhone and Buck families in 1997. (Sanderson purchased his interest in this property from Krehel and Povanda in 2004.)
 - Each of these three affidavits ends with the following sentence: “The completion of the Buck Road Bridge enables me and my family to better utilize and access our property.”

In a telephone interview on August 24, 2007, Sanderson provided the following information regarding this property:

- This property is used by the current owners for hunting.
- The owners use TR 671 and the Buck Bridge to access this property.
- The only other access to this property is by way of a rails-to-trails road which is going to be closed.
- He is involved in the ownership of another 160+ acre parcel of land that is also only accessible by way of TR 671 and the Buck Bridge.
- This property is deeded under the name of Carzo.
- He supports the issue of the repairs to the Buck Bridge or its replacement because he would like in the future to construct a cabin or a house on his property.
- It is his intention to timber part of his land and use the timber profits to build the house or cabin.
- He is aware of the fact that the Buck Bridge currently has a low weight limit and the bridge will probably not support the weight of the heavy equipment that would be needed to timber his land.
- He is also concerned that the current weight limit would not support the equipment needed to construct a cabin or a house.

A search of the records of the Wayne County Recorder of Deeds Office revealed that Sanderson, Krehel, and Povanda do not own any land in Wayne County near Starrucca Borough. In addition, a search of the records of the Wayne County Tax Assessment Office revealed that none of these three individuals is recorded as a real estate taxpayer in Starrucca Borough, Wayne County.

- Aillery Affidavit:

- Aillery states that “With the Buck Bridge going in, it allows me better access to my property.”
- The Susquehanna County plat book indicates that Aillery owns 92.7 acres of land that is located entirely in Thompson Township, Susquehanna County.
- Robert Gilleran, Jr. Affidavit:
 - Robert Gilleran, Jr. states in his affidavit that he owns approximately 175 acres of land to which the only public access is by means of Buck Road (671) and Buck Bridge.

By voice-mail message on September 20, 2007, Robert Gilleran, Jr. told OSI that he supports the plans to repair the Buck Bridge because these repairs would increase the value of his property.

- Robert and Alice Gilleran Affidavit:
 - The Gillerans state in their affidavit that “In the fall of 2007 the auditor general’s office visited our place of residence and discussed the fact that the Buck Road Bridge was the only access to about 175 acres of property owned by us and recently conveyed to our son, Robert Gilleran.”

Robert and Alice Gilleran were interviewed at their home located in Thompson Township, Susquehanna County, on September 18, 2007. During this meeting, Robert Gilleran, Sr. stated that he is in favor of the Buck Bridge repairs because he would like to see the bridge weight limit increased.

A search of the Susquehanna County public records revealed that all of the Gilleran property is located in Susquehanna County.

In the September 30, 2008, interview, Rhone also stated the following:

- He and Robert Buck, and their wives, are the only affiants who own land in Starrucca Borough, Wayne County.
- All of the other affiants own land that is located entirely in Thompson Township, Susquehanna County.
- He and Buck have received approval for subdividing two parcels of their land located in Thompson Township.
- The original plan for this subdivision was for each of their daughters to build houses, but the daughters do not have the money to build these houses at the present time.
- The total acreage in both counties owned by him and Buck is about 763 acres.
- Thompson Township currently receives Liquid Fuels funding for 1.35 miles of Buck/Erk Road located in Thompson Township.
- Thompson Township is obligated to maintain this road as long as it receives Liquid Fuels funding.
- He had no knowledge of a DCED response to an application for Buck Bridge funding that was rejected because of the location of the bridge.

- He never saw any records regarding this application or its rejection.
- Borough Council members did review the citizens' petition against the Buck Bridge project that was submitted to Council on December 6, 2006.
- Council rejected this petition because councillors believed that this was a Borough bridge and that they had the responsibility to repair this bridge.
- Regarding Starrucca Borough payments totaling \$14,025 to Delta Engineers for Buck Bridge engineering work, he could not identify exactly who approved these payments but believes that Starrucca Borough Council approved these payments.
- He agreed to try to provide OSI with a copy of the minutes of the Council meeting at which these payments were approved.²⁴
- He did not know who approved the use of Liquid Fuels funds in the amount of \$5,000 for this engineering work, but he agreed to try to provide OSI with a copy of the minutes of the Council meeting at which the use of Liquid Fuels funds was approved.²⁵
- Buck Bridge and Buck Road are both on the list of Borough roads that are approved for maintenance that can be funded with Liquid Fuels funds.
- His involvement with the application process for the Borough's loan at the Pennstar Bank for the financing of the Buck Bridge project was limited to working with the Borough's Secretary/Treasurer and meeting with bank representatives, but he could not remember the names of the bank representatives.
- He hopes that the Borough can pay the \$8,907.52 annual payment on this loan for the next ten years out of general funds, and he hopes that the Borough will not have to raise taxes in order to pay off this loan.
- However, the Borough will raise taxes if increased revenue is required to pay off this loan.
- The Borough has not applied for authorization to use Liquid Fuels funds for paying off this loan.
- Regarding contributions made to Starrucca Borough for the Buck Bridge project, he and Robert Buck, d/b/a Buck Brothers Farm, made a contribution in the amount of \$8,000 in April or May of 2008 to Starrucca Borough for the funding of the Buck Bridge project and paying off the bank loan for this project.
- This payment was made with a check drawn on the Buck Brothers Farm checking account.
- He could not explain how the figure of \$8,000 was decided upon for this contribution.
- He and Buck made this contribution because they knew that the Borough needed money to pay for the bridge project, because a previous Council had returned \$25,000 in funding for the bridge to the state, and because they hoped that their contribution would lessen the chances of the Borough raising taxes in order to fund this project.

²⁴ Documentation on this issue was not provided to OSI as of the date of this report.

²⁵ Documentation on this issue was not provided to OSI as of the date of this report.

- The Boy Scouts from Vestal, New York, who use land accessible by the Buck Bridge for camping, contributed \$1,000 to the Borough for the Buck Bridge project.
- There were about five other anonymous contributions made for the Buck Bridge project, but he would not identify the sources of the anonymous contributions.

Interview of Robert Buck, Member of Borough Council

During an interview conducted on September 30, 2008, Borough Councillor Robert Buck provided the following information:

- The majority of Borough Council decided to go ahead with the current Buck Bridge project two or three years ago because the bridge was unsafe.
- Borough Council also took this action because Thompson Township could not use the bridge because of its weight limit and the lack of railings on the bridge.
- The railings have not yet been installed, but the Borough has plans to get the railings installed.
- He and Kirk Rhone, his business partner and brother-in-law, benefit substantially from Buck Bridge project because of the land that they own adjacent to the bridge and road.
- Residents of Thompson Township, Susquehanna County, will also benefit from this project because it will improve access to their lands, some of which are landlocked except for the Buck Bridge access.
- The bridge is used by the Boy Scouts who have a camping area that is accessed by the bridge and by people who want to visit the waterfalls that is accessed by the bridge.
- He and Kirk Rhone did submit a subdivision plan to Thompson Township for land owned by them that is only accessible by the Buck Bridge.
- This subdivision plan was approved by Thompson Township in 2008.
- The purpose of this subdivision was to provide land to Buck's daughter and Rhone's daughter for future home construction.
- The Borough did receive approval for a DCED grant in the amount of \$25,000, but this grant money was sent back to DCED.
- He does remember the Borough citizens' petition against the Buck Bridge project that was submitted to Borough Council.
- He does not know why the minutes of this meeting contain no details regarding this petition.
- Borough Council listened to this petition, but Borough Council decided to go through with the project.
- The safety factor was one of the reasons for going ahead with this project.
- Regarding Starrucca Borough's payments totaling \$14,025 to Delta Engineers for Buck Bridge engineering work, he recalled these payments being made, and he believes that these payments were approved by Borough Council.
- He recalls the use of Liquid Fuels funds for these payments, but he is not sure who approved the use of Liquid Fuels funds for these payments.

- Buck Bridge and Buck Road are both on the list of Borough roads that are approved for maintenance that can be funded with Liquid Fuels funds.
- He believes that the Borough auditors looked at these payments during their audit and made no objection to these payments.
- He had no involvement in the loan application process for the Pennstar Bank loan in the amount of \$70,000 being used to finance the Buck Bridge project.
- As a member of Borough Council, he did vote to approve this loan.
- The Borough has no plans at this time to raise taxes in order to pay off this loan at the rate of \$8,907.52 per year for the next ten years.
- The idea of raising taxes has never been discussed.
- At this time, he does not know if the Borough will use Liquid Fuels funds to pay off the Buck Bridge loan.
- Regarding contributions made to Starrucca Borough for the Buck Bridge project, he and Kirk Rhone, doing business as Buck Brothers Farm, made a contribution in the amount of \$8,000 to Starrucca Borough for the funding of the Buck Bridge project and paying off the bank loan for this project.
- This contribution was not solicited by Starrucca Borough.
- He and Rhone made this contribution because they knew that the Borough needed money to pay for the bridge project and because they hoped that their contribution would lessen the chances of the Borough raising taxes in order to fund this project.
- The Boy Scouts from Vestal, New York, who use land accessible by the Buck Bridge for camping, contributed \$1,000 to the Borough for the Buck Bridge project.
- Property owners who use their land for hunting also contributed money to the Borough for the Buck Bridge project.
- There were a few other anonymous contributions made for the Buck Bridge project, but he would not identify the sources of these anonymous contributions.
- The total number of these other anonymous contributions was less than five.

Thompson Township Response to Information Provided by Rhone and Buck

During a telephone conversation on October 1, 2008, the Thompson Township Planning Commissioner provided the following updated information regarding the Buck/Rhone subdivision plan in Thompson Township, Susquehanna County:

- This subdivision application has not been approved by Thompson Township, because Buck and Rhone could not get a driveway permit for this land because the land is located on a Thompson Township road that was closed at the time.
- This section of road is now open [Section 2].
- Thompson Township informed Buck and Rhone by letter that this subdivision plan was not being approved.
- Buck and Rhone recently sent an informal survey plan for this subdivision to Thompson Township and asked Thompson Township to look at this map and advise Buck and Rhone if anything was missing.

- Thompson Township returned this map to Buck and Rhone with no more than a post-it note attached, which was an indication that Buck and Rhone will re-submit their subdivision plan to Thompson Township sometime in the future.

Contributions to Borough for Buck Bridge Project

In response to a Writ of Summons served on Pennstar Bank on September 19, 2008, OSI received copies of the following documents on October 2, 2008:

- Re: General Checking Account in the name of Starrucca Borough:
 - Statements from January 1, 2008, through August 31, 2008.
 - Deposit tickets and deposited items from January 1, 2008, through August 31, 2008.
- Re: State Checking-Liquid Fuels Account in the name of Starrucca Borough:
 - Statements from January 1, 2008, through August 31, 2008.
 - Deposit tickets and deposited items from January 1, 2008, through August 31, 2008.
- Re: FEMA Account in the name of Starrucca Borough:
 - Statements from January 1, 2008, through August 31, 2008.
 - No deposits on statements.

An examination of these records revealed that the following contributions were received by Starrucca Borough for the Buck Bridge project as are set forth in Table 6:

Table 6
List of Contributions

<u>DATE</u>	<u>CHECK NUMBER</u>	<u>AMOUNT</u>	<u>CONTRIBUTOR</u>	<u>FOR/ MEMO LINE</u>
5/20/08	1398	\$1,000	Boy Scouts of America	Buck Road Bridge
			Vestal, NY	
5/31/08	11613	8,000	Buck Brothers	(Donation for
			K. Rhone / R. Buck	Buck Rd. Bridge)
			Star Spring Farm	
			Starrucca, PA	
6/1/08	8177	3,000	J. D. Sanderson, D.M.D.	Jim Sanderson
			Hamlin, PA	Bernie Povanda
				Nick Krehel
6/5/08	2186	10,000	Root's Tax Service	Charitable Donation -
			Jacqueline A. Root	Starrucca Bridge
			Lawrenceville, PA	

On October 2, 2008, the Treasurer of Boy Scouts of America (“BSA”) Troop 221, Vestal, New York, and her husband provided the following information regarding a check issued to Starrucca Borough Council in the amount of \$1,000 and bearing the notation “For Buck Road Bridge” drawn on the bank account of the troop:

- Both she and her husband are leaders in BSA Troop 221.
- In addition, she serves as treasurer for the organization.
- BSA Troop 221 has been camping on property owned by the Buck Brother's Farm since 1965.
- The owners of the farm are Robert Buck and Kirk Rhone, brothers-in-law.
- Another active and longtime leader of BSA Troop 221 is the brother-in-law of Robert Buck and Kirk Rhone.
- This leader's wife (now deceased) was the sister of Robert Buck and of Kirk Rhone's wife.
- It was through this relationship that BSA Troop 221 started camping on the Buck Brother's Farm.
- BSA Troop 221 camps on the Buck Brother's Farm, on average, twice per year.
- This is usually in the spring and fall or winter.
- The last time they camped at the farm was in May 2008.
- The campground is located in Susquehanna County about one mile from the Buck Bridge, which is located in Wayne County.
- All of the land across the Buck Bridge belongs to the Buck Brother's Farm.
- The Buck Bridge was in deteriorating condition and in need of repair.
- The leadership of BSA Troop 221 became aware Starrucca Borough was repairing the bridge during the May 2008 camping trip to the Buck Brother's Farm.
- The leadership of BSA Troop 221 decided to make a donation to Starrucca Borough for the Buck Bridge, which resulted in the \$1,000 check being issued to the Borough.
- The donation was not solicited by the owners of Buck Brother's Farm or anyone else in Starrucca Borough, including any Starrucca Borough official.
- Access to the campground, if not via the Buck Bridge, would be made by either fording the stream flowing under the bridge or using the Rails-to-Trails property, also located in Susquehanna County.

On October 7, 2008, James D. Sanderson, D.M.D., of Hamlin, Pennsylvania, provided the following information regarding a contribution made to the Borough by him and two fellow landowners:

- He issued a check in the amount of \$3,000 to Starrucca Borough Council as a contribution to help the Borough to pay for the Buck Bridge renovation project.
- He, together with two co-owners of the property that he owns that is accessible by the Buck Bridge, contributed \$1,000 each, for a total contribution of \$3,000.
- The amount of the contribution was decided on by the three co-owners.
- This contribution was made as the result of a solicitation by Darl Haynes, made by means of a telephone call, who told him that the Borough's budget

was a “little short” and the Borough could “use some help” in paying for the Buck Bridge renovation project.

- He was the only one of the three co-owners that was solicited. Povanda and Krehel were not solicited.
- He has had conversations with Kirk Rhone and Robert Buck about the Buck Bridge, but neither Rhone nor Buck solicited a contribution from him.
- He is in favor of the Buck Bridge project, because the renovated bridge with its increased weight load has given him the capability to timber his land, and, with the profits from the timbering, he plans to build a house on his land.
- He is aware of the issue involving who benefits from this project, and he has definitely benefitted from this project.
- He believes that 10 or 15 acres of the land that he and his two co-owners own is located in Wayne County.²⁶

During a telephone conference call on September 16, 2008, with Jacqueline Root and her attorney, Root provided the following information:

- She is currently associated with a business named R&R Energy Consulting.
- Prior to the formation of R&R Energy Consulting, she worked on her own as a consultant in the gas leasing business.
- She got started in this business because she was a landowner who was negotiating a gas lease and she got neighboring landowners to work together in negotiating their leases.
- Her business involves organizing several landowners into a group working together, and she represents the group in dealing with gas companies for the best possible gas lease deal.
- This process involves obtaining bids from various gas companies for the amount per acre that the gas company is willing to pay.
- Her objective is to obtaining better deals as the result of the increased acreage owned by the group as opposed to the acreage owned by a single landowner.
- She provided the following information about the Starrucca group of landowners that her business, R & R Energy Consulting, represented in gas lease negotiations:
 - The group started with 12 landowners, but eventually grew to 150 landowners throughout Wayne and Susquehanna Counties involving more than 20,000 acres of land.
 - The Starrucca group meetings and negotiations took place at a church hall in Starrucca.

²⁶ This statement of belief is not supported by the records of the Wayne County Recorder of Deeds Office, which reveal that James D. Sanderson and the two co-owners listed above do not own any land located in Wayne County near Starrucca Borough. In addition, the records of the Wayne County Tax Assessment Office do not show any of these three individuals as a real estate taxpayer in Starrucca Borough, Wayne County. The statement of belief is also contradicted by Kirk Rhone who told OSI that, except for him and Buck, all of the other providers of affidavits (including Dr. Sanderson) own land that is located entirely within Thompson Township, Susquehanna County.

- The amount paid to Starrucca group landowners for the gas leases was \$750 per acre, which was the highest amount paid for gas leases in this area at the time (November 2007).
- R & R Energy Consulting's commission for representing the Starrucca group in these gas lease negotiations was \$5 per acre.
- She is aware of the Buck Bridge and she knows where it is located.
- Regarding the issue of the Buck Bridge and the Buck and Rhone gas leases, she provided the following information:
 - Buck and Rhone were part of the Starrucca group, and she had no personal or direct dealings with Buck and Rhone prior to the signing of the leases.
 - Buck, Rhone, and other Starrucca group members had no legal representation for these lease negotiations or signings.
 - After the leases were signed, she spent the night at the Buck residence because staying there was more convenient than traveling back to her hotel in Gibson, Pennsylvania.
 - Neither Robert Buck, Kirk Rhone, nor any other Starrucca landowner, ever discussed the Buck Bridge with her, and the Buck Bridge was never an issue in these negotiations.
 - Land access has never been an issue in gas lease negotiations.

During the course of this investigation, OSI obtained copies of two Memorandums of Oil and Gas Leases from the Wayne County Recorder of Deeds Office in Honesdale. These memorandums indicate that Buck, Rhone, and their wives leased approximately 312 acres of jointly owned land in Wayne County to Chesapeake Appalachia, LLC for gas drilling rights.²⁷

OSI also obtained copies of two Memorandums of Oil and Gas Leases from the Susquehanna County Recorder of Deeds Office in Montrose. These memorandums indicate that Buck, Rhone, and their wives leased 451 acres of jointly owned land in Susquehanna County to Chesapeake Appalachia, LLC for gas drilling rights.²⁸

On September 4, 2008, Chesapeake Energy Corporation, Charleston, West Virginia, the parent company of Chesapeake Appalachia, LLC, provided complete copies of the above described gas leases to OSI. These documents indicate that Chesapeake made the following payments to Buck and Rhone and their spouses:

- Buck, Robert E. and Lillian S:
 - Wayne County Lease -- \$117,607.50
 - Susquehanna County Lease -- \$169,125.00
- Rhone, Kirk O. and Alice K:
 - Wayne County Lease -- \$120,550.00
 - Susquehanna County Lease -- \$169,125.00

²⁷ For the most part, these two Wayne County Memorandums of Oil and Gas Leases pertain to the same property parcels that are jointly owned by Buck and Rhone.

²⁸ These two Susquehanna County Memorandums of Oil and Gas Leases pertain to the same property parcels that are jointly owned by Buck and Rhone.

The total compensation paid to Buck and Rhone and their wives by Chesapeake Energy Corporation for leasing gas-drilling rights on their properties in Wayne and Susquehanna Counties was \$576,407.50.

Conclusions and Recommendations:

The evidence shows that the approval and financing of the Buck Bridge Project by a voting majority of the Starrucca Borough Council resulted in a substantial benefit to Council President Kirk Rhone and Councillor Robert Buck while other citizens of the Borough received little or no benefit from the project.²⁹

The *Borough Council Handbook* states the following:

Conflicts of Interest

Borough Councillors should be very careful to avoid the possibility of conflict between their personal and private interests and their role as a public officer. The Ethics Act states the people have a right to be assured the financial interests of public officers do not conflict with the public trust.

In any issue brought before Council where an individual member has a conflict of interest, or there is an appearance of a conflict of interest, that Councillor should refrain from voting on the issue. Pennsylvania courts have long upheld as a fundamental public policy principle the rule that members of a government body cannot vote on any matter where they have a direct personal interest.³⁰

The Public Official and Employee Ethics Act (“Ethics Act”) contains the following prohibition:

§ 1103. Restricted activities

(a) **Conflict of interest.** -- No public official or public employee shall engage in conduct that constitutes a conflict of interest.³¹

²⁹ While the evidence also shows that a few property owners in Thompson Township, Susquehanna County, Pennsylvania, may also benefit from the Buck Bridge project, it is the taxpayers of Starrucca Borough, Wayne County, who are obligated to pay for the project.

³⁰ *Borough Council Handbook*, Governor’s Center for Local Government Services, Chapter II, page 10.

³¹ Act of October 15, 1998, P.L. 729, No. 93, as amended, 65 Pa.C.S. § 1103(a) (Public Official and Employee Ethics Act). Section 1102 of the Act defines “conflict of interest” as follows:

Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the

The evidence shows that Council President Kirk Rhone and Councillor Robert Buck have engaged in conduct that may constitute a conflict of interest under the Ethics Act, because they voted to approve the Buck Bridge project and the financing of the project by the Borough of Starrucca, even though they are the only Borough residents who own land that is directly accessible by the Buck Bridge. The improvement of the Buck Bridge may result in a private pecuniary benefit to them, in that it may increase the value of their land for development purposes.³²

The evidence also shows that the Buck Bridge project will severely strain the financial resources of the Borough, and may result in an increased tax burden on the residents of the Borough.³³ Furthermore, the fact that Buck and Rhone made an \$8,000 contribution to the project, and the fact that the Borough FEMA Agent solicited at least one additional donation, demonstrates that Borough officials realized that the Borough could not afford this project.

We also note that both Buck and Rhone were evasive in their refusal to identify the sources of all of the contributions made to the Borough for the Buck Bridge project, and especially the \$10,000 contribution of Jacqueline Root, who negotiated the Starrucca Group gas leases and who was paid \$5 per acre for a total of approximately 20,000 acres involved in these leases. Jacqueline Root was also evasive when interviewed regarding the issue of the Buck Bridge Project, in that she claimed that neither Buck, Rhone, nor

same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

³² In their responses to a preliminary draft of this report, Buck, Rhone, their attorneys, and the Borough Solicitor all disputed that a violation of the Ethics Act may have been committed, relying on the Act's definition of conflict of interest which excludes ". . . an action . . . which affects to the same degree a class consisting of the general public or a subclass consisting of an industry occupation or other group which includes the public official . . . , a member of his immediate family or a business with which he or a member of his immediate family associated." Whether the other persons who may have benefitted from the bridge project constitute such a subclass under the case law interpreting this provision will be a matter for the State Ethics Commission to decide.

³³ The decision to devote the scarce financial resources of the Borough to repair the Buck Bridge at the same time as a severely damaged portion of the Shadigee Creek Floodwall was in need of repair also raises questions about the judgment of Borough Council. While federal and state funding had initially been secured to repair the damaged floodwall, the Borough was later notified that the federal and state funding had been de-obligated [withdrawn] for the following reasons:

- FEMA/PEMA (the Federal and Pennsylvania Emergency Management Agencies) de-obligated funds for this project because the wall was located on private property, even though the wall protects a state road and other properties in the Borough.
- The United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") refused to fund this project because the house on the property was no longer occupied by a full-time resident.

Even though the Borough received notice that the floodwall funding was being de-obligated *before awarding the contract to rebuild the Buck Bridge*, Starrucca Borough Council proceeded with the Buck Bridge project and incurred \$70,000 in debt, when it could have deployed the Borough's limited financial resources to repair the damaged portion of the Shadigee Creek Floodwall, which is a public safety hazard to the entire community.

Copies of this report will be forwarded to FEMA and the NRCS to make those agencies aware that the condition of this floodwall remains a threat to the public safety of Starrucca Borough.

any other Starrucca landowner ever discussed the Buck Bridge with her. Her claims are belied by the fact that she had made a \$10,000 contribution to the Borough for the Buck Bridge project, a fact that was only discovered upon a subsequent review of the Borough's bank records obtained from Pennstar Bank.

Accordingly, we recommend the following:

- Starrucca Borough Council should refrain from any future projects that do not benefit the entire community;
- Starrucca Borough Council should refrain from any future projects that are beyond the financial capability of the Borough;
- Starrucca Borough officials and employees should comply fully with the requirements of the Ethics Act and the *Borough Council Handbook* regarding avoidance of conflicts of interest; and
- The Borough should seek reimbursement for the costs of the project from the parties who benefitted from the bridge improvements.

Copies of this report will be forwarded to the Office of Attorney General of Pennsylvania,³⁴ the Pennsylvania State Ethics Commission, the Federal Emergency Management Agency, the Pennsylvania Emergency Management Agency, and the United States Department of Agriculture's Natural Resources Conservation Service for their review and whatever further action they may deem appropriate.

³⁴ As was noted in the introduction to this report, this matter was originally referred to the Department of the Auditor General by the District Attorney of Wayne County because, having been the Borough Solicitor when this project was first proposed, he has a representational conflict that would prohibit him from investigating the matter. As he has already referred certain related matters of a criminal nature to the Office of Attorney General because of the same representational conflict, we are sending this report to the Attorney General as the appropriate law enforcement agency to conduct whatever further investigation it may deem appropriate.

STARRUCCA BOROUGH'S RESPONSE TO DRAFT REPORT

Although we clearly indicated in our letter transmitting the draft report to the Borough that we were giving the Borough an opportunity to respond, we received responses from the Borough Solicitor, the Borough Council, three individual members of Borough Council, the Borough Treasurer, and two private attorneys. Because of the voluminous nature of these responses, we are unable to reproduce them in their entirety in this report.

However, we have gleaned the major points from these responses that are relevant to the finding, and we have addressed them either in footnotes in the body of the report or in the Comments section that follows.

**DEPARTMENT OF THE AUDITOR GENERAL'S COMMENTS
ON THE RESPONSES OF STARRUCCA BOROUGH AND OTHERS
TO THE DRAFT REPORT**

We appreciate the thorough review and detailed written response provided by the Borough through its Solicitor and the separate written responses provided by several borough officials directly or through an attorney. As a result of these responses, which are too voluminous to reproduce in this report, we have made a number of changes to the draft report where we deem that a correction or clarification is warranted. We have limited our comments to the points raised in the various responses that are germane to the finding. In some instances, we have merely added a footnote in the body of the report to address a point, to explain a change, or to clarify an issue. The points requiring more extended comment are discussed below. As necessary, we have commented on the excerpts from the responses through our inserted footnotes.

As a preliminary matter, we would like to address a general criticism that animates all of the responses. We fully understand that the decision to repair the Buck Bridge was a decision made by a majority of the duly elected members of Borough Council, but we respectfully disagree with the suggestion that such decisions are beyond the purview of the Department of the Auditor General. The power and duty of the Department of the Auditor General is to audit and investigate waste, fraud, and abuse in matters involving state programs and state funds, as well as federal funds that flow through the State Treasury. The finding in this report directly involves, or is ancillary to, several such state programs, including the Borough's use of its annual allocation of Liquid Fuels Tax funds, applications for grants from DCED, FEMA/PEMA, and the U.S. Department of Agriculture, and the mandates of the Local Government Unit Debt Act. Accordingly, it is our duty to report the results of our investigation into these matters, including criticism of the official actions and decisions of officers and elected officials of the Borough, when such actions are found to be wasteful, abusive, fraudulent, or contrary to law. The finding clearly meets one or more of these criteria.

As to the specific objections raised in the responses, both the Borough Solicitor and a private attorney retained by Robert Buck and Kirk Rhone take particular issue with the statement in the finding that the actions by council members Buck and Rhone, in advocating and voting to approve the Buck Bridge project, *may* constitute a conflict of interest under the Ethics Act. The Solicitor states, in pertinent part:

With regard to the Buck Bridge Project, the Borough Council as a whole determined that this project should be pursued and completed for the benefit for [sic] the community at large. It has always been my viewpoint as a Solicitor that the decision to entertain and pursue public works project [sic] within the community is a political decision, which the governmental group in power must make. Since Starrucca Borough has so few individuals of population, it is impossible for them to determine the

amount of individuals who would directly or indirectly benefit from various public works project.³⁵ The Bridge in question is one that has needed repairs for a substantial period of time, and the Borough Council determined that as a matter of safety and preserving the infrastructure within the community, it should proceed with the borrowing of these monies and the repair of said Bridge. Again, all along it was felt that this was a political decision which was not directly benefiting any individual within the community and certainly not those individuals that served on Borough Council at the time. As has been pointed out by Mr. Rhone and Mr. Buck's attorney,³⁶ Buck and Rhone gained no direct pecuniary benefit from this project which is located on a public road. The fact that either or both of them may have participated in discussions and/or voting with regard to this project along the way does not indicate any conflict of interest in my opinion for the foregoing reasons. The findings of the Auditor General in its draft Report are clearly skewed in favor of the prior majority Council Members of 2005. As you will see throughout the course of the exhibits provided to you within this packet, much of the information of a factual basis that was placed in this Report by the Auditor General either are factually incorrect or are tainted in favor of the individuals who were majority members of the 2005 Borough Council.

With respect to the issue of conflict of interest, the attorney for Buck and Rhone states the following:

The AG's [Auditor General's] main claim, that of conflict of interest, has several glaring deficiencies. As you know, a conflict under the Ethics Law occurs when a public official uses the authority of his office for the private pecuniary benefit of himself, his family or his business. Nowhere in the draft report is there any indication that the reconstruction of the Buck Bridge by the Borough inured to the private pecuniary benefit of either of these parties. I believe the AG would have to show at the very least a significant increase in the value of Rhone and Buck's real estate by reason of the bridge work in order to sustain their burden. The report merely assumes and never addresses this indispensable element. By copy of this letter I am advising my clients to have a state certified appraiser do a "before and after" the bridge work appraisal of their real estate so as to be ready to dispel this insinuation should the AG's office ever address it.³⁷

³⁵ Logically, the opposite of this statement would be true, i.e., because the Borough has so few residents, it would be relatively *easy* to determine who would directly or indirectly benefit from a public works project.

³⁶ The pertinent parts of the letter from the attorney for Buck and Rhone follow.

³⁷ We acknowledge that it seems to be self-evident that the value of real estate which is accessible from a public road only by a bridge in such serious disrepair that it might have to be closed would be enhanced by repairing the bridge, and that the value of such real estate would be enhanced even more by the replacement of the bridge with a new bridge of significantly greater weight-bearing capacity. In

Secondly, the act makes clear a conflict of interest does not occur from conferring a *de minimis* benefit or one which impacts a subclass consisting of an industry, occupation or other group which includes the public official. [The draft report's] analysis is rather myopic to say the least – it assumes the world drops off sharp at the Wayne-Susquehanna County line. In fact there are many Thompson Township landowners on this road who benefited far more than Messrs. Rhone and Buck, inasmuch as they were thereafter able to have their properties timbered. Rhone and Buck did not do so.³⁸

* * *

Moreover, the draft ignores the very real benefit conferred on all Starrucca Borough residents by having a bridge which was clearly unsafe made safe for the general traveling public. The Borough Code charges the council with maintaining, among other things, the “safety and welfare of the borough, its trade, commerce and manufactures.” [53 P.S. § 46202(17)] Had the council not acted to remedy a known hazardous condition it would have exposed itself to potential liability for injury or property damage occasioned thereby.³⁹ * * *

* * *

Furthermore, it is important to note that even had Messrs. Rhone and Buck abstained from voting on the bridge repair loan the resolution still would have passed! * * * The resolution passed 5 to 1, one member not present. Had Rhone and Buck abstained it still would have passed 3 to 1. * * * While in hindsight Rhone and Buck should probably have abstained on the Buck Bridge resolution, any perceived conflict must still be approached with a “but for” or “materiality” analysis. Rhone and Buck’s votes in this case made absolutely no difference in the final result.⁴⁰

When it receives a copy of our report, the State Ethics Commission will have an opportunity to determine whether the conduct of Buck and/or Rhone constitutes a violation of the law. This is a determination that requires the application of a statutory definition to a complex set of facts, and, as their attorney points out, the conduct may fall within the exception for actions that benefit to the same degree a class consisting of the

reviewing our referral, the State Ethics Commission can decide whether and to what extent the issue requires further investigation.

³⁸ The State Ethics Commission will have to determine whether Buck and Rhone are members of a class consisting of the general public or a true subclass consisting of more than one member. If so, the Commission will then have to determine whether Buck or Rhone or both of them benefited from the bridge project to the same degree as (i.e., no more than) other members of the class or subclass to which they belong.

³⁹ As to “safety and welfare,” if the old bridge were indeed dangerously unsafe, exposure to liability could easily have been avoided by barricading or demolishing the bridge. Concerns about “trade, commerce and manufactures” are overblown, especially considering that the road on the other side of the bridge comes to a dead end in an adjoining township with no possibility of connecting to any other public highway.

⁴⁰ This interpretation of the requirements of the Ethics Act fails to consider the effect of the possible influence on other members of Borough Council that Buck and Rhone could have exerted by failing to recuse themselves from all discussions and deliberations regarding the bridge project.

general public, or a subclass consisting of more than one person, to which the public officials belong. However, no matter how the State Ethics Commission may resolve these statutory issues, as a matter of fact, the only two residents of the Borough of Starrucca who significantly and directly benefit from the improvement of the bridge are Council members Robert Buck and Kirk Rhone. Perhaps in a theoretical sense, all of the residents of the Borough derive a general benefit from the improvement of the bridge, in the sense that any resident could move heavy equipment across the new bridge to access properties owned by Buck and Rhone (and a few other private landowners, none of whom resided in the Borough). However, it is beyond dispute that the road on the other side of the bridge comes to a dead end in an adjoining township and that connection to any other public highway is blocked by a nature preserve. Therefore, it is not difficult to understand why some Borough residents have taken to calling it “the bridge to nowhere.”

The attorney also took umbrage at the suggestion that the Buck Bridge project was undertaken despite “other pressing needs” of the Borough. He states:

Nowhere is it shown that other projects went unattended or taxes were raised because of this obligation – in fact, they have not been and yet all other Borough needs and obligations have been met and the debt already paid down by approximately 20%.

However, the attorney does not address the “other pressing need” that is actually cited and discussed in the report, namely the repair of the Shadigee Creek flood wall. The report criticizes Borough Council for devoting the limited resources of the Borough to the Buck Bridge project when an urgent project affecting the health, safety and welfare of the entire community was deferred indefinitely. The Shadigee Creek Wall project,⁴¹ which was anticipated to be funded by federal grants, and the Buck Bridge project, mostly funded by the Borough, were both in the planning stages at the same time. However, the anticipated federal funding for the Shadigee Creek Wall project fell through *before* Borough Council approved the Buck Bridge Project. The Buck Bridge project could have been cancelled or deferred. Granted, the Borough is actively seeking other *outside* sources of funding to repair the flood wall, but no one knew if or when such funding might be forthcoming. If the Shadigee Creek should overflow its banks before such funding is found, the damage would not be confined to a single property. A large number of Borough properties would be devastated by such a flood. The finding that, in the face of this pressing need affecting the health, safety, and welfare of large numbers of Borough residents, the Borough Council used up most of its borrowing power to repair a “bridge to nowhere” is a legitimate criticism.

In light of the foregoing, we believe that our finding and recommendations are warranted. The Department of the Auditor General will follow up at the appropriate time to determine whether all of our recommendations have been implemented.

⁴¹ The contractor selected to repair the flood wall submitted on November 7, 2005, a bid of \$124,600 to complete the project.

DISTRIBUTION LIST

This report was distributed initially to the following:

The Honorable Edward G. Rendell
Governor

The Honorable Robert M. McCord
State Treasurer

The Honorable Thomas W. Corbett, Jr.
Attorney General

The Honorable Allen D. Biehler.
Secretary, Pennsylvania Department of Transportation

The Honorable Jacob D. Corman, III
Chair, Senate Appropriations Committee

The Honorable Jay Costa, Jr.
Democratic Chair, Senate Appropriations Committee

The Honorable Dwight Evans
Chair, House Appropriations Committee

The Honorable Mario J. Civera, Jr.
Republican Chair, House Appropriations Committee

Chair
Senate Transportation Committee

The Honorable J. Barry Stout
Democratic Chair, Senate Transportation Committee

The Honorable Joseph F. Markosek
Chair, House Transportation Committee

The Honorable Richard A. Geist
Republican Chair, House Transportation Committee

John J. Contino
Executive Director, State Ethics Commission

Robert P. French
Director, Pennsylvania Emergency Management Agency

The Honorable Michael Lehutsky
District Attorney, Wayne County

Jonathan Sarubbi, Regional Director
Federal Emergency Management Agency

Arlen Lancaster, Chief
United States Department of Agriculture,
Natural Resources Conservation Service

Robert A. Muller, District Manager
Wayne Conservation District

Ronald Bugaj, Esquire
Starrucca Borough Solicitor

Kirk Rhone, President
Starrucca Borough Council

Donald Haynes, Jr., Vice President
Starrucca Borough Council

Robert Buck
Starrucca Borough Council Member

Frederick Rhone
Starrucca Borough Council Member

Anthony Palonis
Starrucca Borough Council Member

Arthur Kopp
Starrucca Borough Council Member

Peter Frank
Starrucca Borough Council Member

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, Pennsylvania 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.