

Summary of Exeter Township Board of Supervisors Meeting held on September 11th 2006

The meeting was started at 7 PM. Dr. Ganas asked for all to rise for a moment of silence and to reflect on our fallen heroes who passed away during the attacks on 9/11/2001.

All Supervisors were present.

Reading Country Club Update

The RCC General Manager informed those attending the meeting that the numbers of rounds of golf continues to climb, as does the business at the restaurant. He asked the supervisors for a decision on the walk-in freezer bid and stated that his chef believed the current freezer could continue operation for a while to allow other options to be explored. Accordingly, the board decided to put the purchase on hold for now.

Vote: 5-0 rejecting the bid for the freezer

Public Comment

1. Michael Hanson: Gave power washing estimates and pool cleaning estimates to the board (determined last meeting to have the construction company pay for washing and cleaning). Mr. Hanson also expressed concern due to blasting and asked if geological studies were done. The Solicitor stated that he would look into the issue and get back to Mr. Hanson.
2. Eric Simms: Thanked the Police for their attention to speeding on Dunham Dr. He stated that speeding was noticeably curtailed.

3. Andrew Yawger: Asked the supervisors to ensure that Central Catholic is held to the conditions assigned to the construction of CCHS and to allow no waivers. Also, he discussed the fact that Wal-Mart expansion was a good idea but only if they were held to the Planning Commission's suggestions for having a cross-over on 422 east of the current traffic light. Further, the expansion should not be allowed without the crossover on 422.
4. Louise Swartley: Asked the supervisors not to proceed with the proposed Rural Village design. She believes it will lead to destruction of farmland. She stated that variances could be granted for businesses instead of opening the door to taking more open space and farmland. In her opinion, the Rural Village plan would further deteriorate Agricultural Preservation Land. Louise made the suggestion that the Rural Village plan be pushed south of Rt. 562 where it is zoned differently.
5. Karl Schemberg: Karl had several questions.
 - a. Karl asked the supervisors how the school board found out so quickly (overnight) that the parking regulations around the school were to be changed as decided by the supervisors. The board did not have an answer. He further stated that the school board believed that they would not have required security cameras in place for another year. Chief Neidert stated that the new regulations would not be in effect until the security cameras were installed. Karl noted that the High School announced the change the day after the supervisors approved it.
 - b. Another question was posed to Chief Neidert. Karl asked the Chief where Detective Dunn was. Chief Neidert stated that it he would protect Mr. Dunn's and

the Township's rights by stating that Mr. Dunn was on sick leave and would say nothing more.

- c. Mr. Schemberg directed a question specifically to Supervisor Barbieri. He questioned Mr. Barbieri about whether or not he knew Elizabeth Majewski. Mr. Barbieri hesitated and then only stated that he knew a lot of people.
6. Paul Pessagno: Stated he lived near Mr. Hanson and was affected by the Forino jobsite too. He asked to whom estimates for cleaning should be forwarded. The supervisors told him to give them to the Township Solicitor, Mr. Hoffert for processing. Concern about the adequacy of berms was raised and it was discussed that the State and the County are both shifting responsibility to ensure compliance to the other. Supervisor Kircher suggested that the board set up a meeting with Mr. Forino to discuss the issues that have been brought to their attention since the project started on August 8th.

Unfinished Business

1. Changes to the Zoning Map were discussed with Ms. Ciotti stating that she would like to wait for approval because the Planning Commission had not acted on the changes for parking spaces. The planners were waiting for the supervisors to direct Great Valley Consultants to provide more information.
Vote: 5-0 to have GVC answer Planning Commission questions
2. Lighting Ordinance: Mr. Hoffert had not had time to complete comments and asked the supervisors to table the matter until he looked into case law.
3. CCHS Project: No info was given to the supervisors yet concerning alternatives to the berms and walls required under the conditional use. Mr. Koch invited the supervisors

to look at examples of the type of berm that was being proposed. Ms. Ciotti and Mr. Barbieri will be examining the examples.

New Business

1. Bershire Bank Waiver Requests and Preliminary Plan

Vote: 5-0 approval

2. Wal-Mart Preliminary Plan:

The following is an except taken from official Exeter Township Supervisor Meeting Minutes dated 9/11/2006

WAL-MART SUPERCENTER #1777 PRELIMINARY PLAN

Henry Koch, representing Wal-Mart, stated a conceptual plan was presented showing we could not get a full-blown intersection on Route 422, and as a result of that, a meeting with PennDOT was held and Mr. Maize, from GVC, wrote a letter on August 23, 2006 indicating if the proposed design was constructed it would mitigate the impact of increased traffic of the Wal-Mart Superstore. Mr. Koch stated Penn DOT had endorsed this conceptual plan and Mr. Maize in his letter concludes by saying, "From a traffic engineering standpoint the plan showed it was feasible to construct the necessary improvements to mitigate traffic impact and there was no longer a reason to recommend against the approval of the Preliminary Plan." Mr. Koch stated the Planning Commission and PennDOT had approved the Preliminary Plan with the condition of addressing the concerns of the businesses at that intersection, which were Dairy Queen, the Car Wash and Taco Bell. He offered to review tonight the plan without that condition. Mr. Koch then posted the plan at Ms. Ciotti's request. Dr. Ganas reviewed with Mr. Koch his understanding of the Planning Commission's condition stating if any of those businesses objected to the plan, it would not go through, to which Mr. Koch stated that was his understanding. Mr. Koch felt they were improving the conditions currently existing and disagreed with the premise of satisfying the wishes of the surrounding businesses and felt that was not a reasonable condition. Mr. Koch introduced two members of his team Engineer Todd Stager and the Traffic Engineer Eric Ostimchuk from Traffic Planning to explain what was proposed. Mr. Stager explained the details of the plan including building elevations, size of the new structure and other aspects of the plan. Mr. Barbieri asked if the Planning Commission was okay with the building to which Mr. Koch stated they were. Mr. Ostimchuk then explained their plan would increase the capacity of the intersection and the improvements would allow for better traffic flow. He outlined the

improvements stating the addition of two lanes at the intersection, which were an eastbound Route 422 right turn lane and a Northbound Lincoln Road left turn lane, as that was where the majority of traffic was flowing. He stated the vehicle stacking and delays would be reduced, and changing the radius of the right turn lane off eastbound Route 422 would improve conditions. He stated he passed the intersection today and noted the guide rail was broken again. Mr. Ostimchuk stated the radii were widened at Route 422 east right-in and right-out truck turning. Ms. Kircher asked if traffic counts had been conducted including the trucks that were used from other companies in the Lincoln Corporate Center during all hours to which Mr. Ostimchuk stated yes. Mrs. Starr asked if the improvements would require taking part of the land of those businesses, to which Mr. Ostimchuk stated discussions were being conducted on that matter. Mrs. Starr felt she did not want the other businesses to be effected by this. Ms. Kircher felt people can't get into Taco Bell and KFC now with two lanes stacked and with three lanes being stacked it would be impossible to exit from businesses on both sides. Mr. Ostimchuk stated the timing of the traffic light would improve that situation. Ms. Kircher stated she lived here and he did not, and she could see what happened at this intersection. She felt they were asking the Board to make a decision that would affect the Township forever and this decision would further complicate a problem area. He further explained the widening of the radii. Mr. Barbieri asked if the traffic counts were conducted in the morning and evening as well as Saturday and Sunday to which Mr. Ostimchuk stated yes, and on Sunday 550 vehicles used the left hand turn lane from Lincoln Road onto Route 422 in one hour. Mr. Barbieri asked if the increase in the size of the store would increase the amount of vehicular traffic to which Mr. Ostimchuk stated yes that was the reason they were suggesting these extensive changes in the roads. Mr. Barbieri asked how much to which Mr. Ostimchuk gave him the number. Dr. Ganas asked if PennDOT and the engineer from GVC approved to which Mr. Rogosky stated yes they were in agreement and the intersection was in failing condition now and would be improved. Mr. Barbieri repeated Mr. Rogosky's analysis of the intersection going from an "F" to a "D". Mr. Koch stated Wal-Mart was going to instruct their truck drivers not to use the Lincoln Road entrance to deliver goods; but, to use the right-in, right-out entrance further down the road. Mrs. Starr asked who would enforce that rule. Both Ms. Kircher and Mrs. Starr stated the Board had been down that road before with the Landfill and that had not worked. Mr. Koch stated he had spoken directly to Wal-Mart and they had assured him that would be done stating they had controls on their deliveries. He also stated when it came to common

carriers, the only power to control them would be an economic one including using other carriers if they did not follow the rules. Mr. Barbieri stated Wal-Mart uses GPS and he knew from his own experience with Wal-Mart they were “pretty tough” and it was the common carriers he would be more concerned about. **JOE GUMENISKI**, 130 Fairview Chapel Road, referred to PennDOT making Route 422 improvements worse and asked the Board to consider that when evaluating this plan. Mr. Barbieri suggested two traffic lights could be used to control the traffic with one light placed before the entrance to Taco Bell timed so that cars coming up Lincoln Road would stack there when the light turned green at Route 422 it would empty out traffic from the businesses. He felt the Board could send a letter to PennDOT, and that solution could turn the “D” ranking at the intersection to a “B”. There was a short discussion on that idea. Mr. Koch felt they would certainly look at that remedy; but felt Preliminary Plan approval would be most appropriate tonight. Mr. Simms from the audience stated he was pleased that the Board was looking out for the businesses; however he asked what about the residents on the other side of the highway. The Board stated the residents on the other side of Lincoln Road would not be affected. The Police Chief suggested the island at the south entrance be minimized to help improve the intersection. Mr. Koch stated they would look at that as well and thanked the Chief for his suggestion.

MOTION by Mr. Barbieri, seconded by Ms. Ciotti, to approve the Wal-Mart Supercenter #1777 Preliminary Plan contingent upon consulting to be a good neighbor with Scott’s Car Wash, Dairy Queen & Taco Bell and to pursue the staging of traffic lights on Lincoln Road. Motion carried with Dr. Ganas, Ms. Ciotti, and Mr. Barbieri voting in favor, and Mrs. Starr and Ms. Kircher opposed.

3. Central Catholic Waiver Requests

- a. Stadium light height requirements asked to be changed from 70 to 80 feet as discussed with the Planning Commission
- b. Asked to have parking lot lights 30 feet in height instead of 20 which would mean less lights, less light pollution and less chance of accidents in the parking lot involving the light poles.

The waivers were deferred to a later meeting at the request of Mr. Koch.

Mrs. Starr brought up a letter she received from Mr. Koch recently. She felt that she and Ms. Kircher were both threatened by Mr. Koch with personal liability and potential litigation in the letter. Mr. Koch stated he did not threaten them in the letter. Ms. Ciotti spoke and stated that she did not feel the letter was threatening. Mrs. Starr then quoted a portion of the letter that stated, "they face the potential of personal liability when they illegally delay a project by disregarding their solicitor's advise." Mr. Koch said that he didn't mention anyone specifically and that he was just informing them of his position. Mrs. Starr had asked for case law and Mr. Koch said that he gave her statutory law, which he believed was better than case law. He did not provide case law requested by Supervisor Starr and stated that he would not debate with her.

Case law (also known as **precedential law** or **decisional law**) is the body of judge-made [law](#) and legal decisions that interprets prior case law, [statutes](#) and other legal authority -- including doctrinal writings by legal scholars such as the [Corpus Juris Secundum](#), [Halsbury's Laws of England](#) or the doctrinal writings found in the [Recueil Dalloz](#) and law commissions such as the [American Law Institute](#). The term "[common law](#)" is also often used to mean case law.

In the [common law](#) tradition case law regulates, via [precedents](#), how laws are to be understood, based on how prior [cases](#) have been decided. Case law governs the impact court decisions have on future cases. Unlike most civil law systems, common law systems follow the doctrine of [stare decisis](#) in which lower courts usually make decisions consistent with previous decisions of higher courts.

Generally speaking there is no direct oversight that appeal courts have over a [court of record](#). If a lower court judge acts against precedent and the case is not

taken to [appeal](#) the lower court decision will stand. This may occur more frequently than has been documented as an appeal is usually quite expensive to prepare.

Some judges are also known to rule against precedent on principle. A judge (or even an interim appeal court) may rule against a precedent that is outdated. The judge may feel the decision needs to be overturned due to more sophisticated legal reasoning. Such a judge may wish to help the law evolve by ruling against precedent and thereby indirectly inducing a losing party to appeal. The appeal court will then have an opportunity to review the lower court's decision and may adopt the lower court's reasoning, thereby overturning previous case law. This may also happen several times as the case works its way through intermediate appellate jurisdictions.

Statutory law is written [law](#) (as opposed to [oral](#) or [customary law](#)) set down by a [legislature](#) or other governing authority such as the [executive branch](#) of [government](#) in response to a perceived need to clarify the functioning of government, improve civil order, answer a public need, to [codify](#) existing law, or for an individual or company to obtain special treatment. (Contrast [common law](#).) In addition to the [statutes](#) passed by the national or state legislature, lower authorities or [municipalities](#) may also promulgate administrative [regulations](#) or municipal [ordinances](#) that have the force of law — the process of creating these administrative decrees are generally classified as [rulemaking](#). While these enactments are subordinate to the law of the whole state or nation, they are nonetheless a part of the body of a [jurisdiction's](#) statutory law.

ⁱ Definitions and discussions concerning Case Law and Statutory Law taken from [Wikipedia, the free encyclopedia](#)
Website: http://en.wikipedia.org/wiki/Statutory_law