

Zoning Hearing Board
01/04/06

Zoning Hearing Board Agenda

Wednesday, January 4, 2006 Time: 6:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes of December 7, 2005 Meeting
4. Old Business Case #12-05 The application of Shanks Properties located at 2885 Charlestown Road, Lancaster, PA. The applicant is requesting variances to conditions #1 & #2 of the decision of Case No. 2-00. The applicant wishes to reallocate the space within the existing structure for the two businesses. The applicant is also requesting a special exception of Section 504.1 Expansion or Alteration of a Non-Conforming use. The applicant is also requesting a dimensional variance to increase the maximum permitted area of a business sign. Article 3 Section 315 Signs Table 1. The property is located in the Rural Zoning District. Testimony will be continued.

Case #13-05 The application of John W. & Mary A. Metzger property located at 1765-1785 Temple Avenue, Lancaster, PA 17603. The applicant wishes to subdivide the existing townhouses located on one lot into individual fee simple lots. The applicant is requesting a variance of Section 205.5 Design Standards minimum lot width for townhouses. The property is located in the residential high density (RH) Zoning District. A decision will be rendered.
5. Re-organization Meeting A. Appointment to the Zoning Hearing Board by Township Supervisors B. Election of Officers President Vice President Secretary C. Set Meeting Date D. Selection of solicitor for the Zoning Hearing Board for the year 2006.

6. Adjourn

DRAFT Zoning Hearing Board Minutes

Wednesday, January 4, 2006 Time: 6:00 P.M.

The Manor Township Zoning Hearing Board met on Wednesday, January 4, 2006 at 6:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA. Chairman Allan Granger called the meeting to order.

Members Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: Bruce Ott and James R. McManus Visitors Present: Roger Lehman, 2885 Charlestown Road Stephanie Huber, 2885 Charlestown Road Kevin Johnson, 3008 Columbia Avenue Stacey Morgan, 221 E. Chestnut Street John Sage, 30 Colgate Ave Richard Bauder, 130 Sheep Lane

Mr. Granger introduced the Board Members, the Zoning Officer, the Solicitor, the Court Reporter and the Recording Secretary.

Minutes Mr. Granger asked if there were any corrections or additions to the December 7, 2005 minutes. There were no corrections and the minutes were approved as submitted.

Old Business Case #13-05 The application of John W. & Mary A. Metzger property located at 1765-1785 Temple Avenue, Lancaster, PA 17603. The applicant wishes to subdivide the existing townhouses located on one lot into individual fee simple lots. The applicant is requesting a variance of Section 205.5 Design Standards minimum lot width for townhouses. The property is located in the residential high density (RH) Zoning District. Mr. Granger stated that the testimony was closed at the last meeting and Mr. McManus contacted each Board member independently and drafted a decision that they would discuss at this time. Mr. Granger stated he had a concern regarding the fire hydrant and wondered if it could be relocated by the city. Mr. Granger asked Mr. Ott to bring the location of the fire hydrant to the attention of the Planning Commission when it becomes before that Commission as a subdivision plan. Mr. Douglas made a motion that a variance to the provisions of Section 205.5 of the Manor Township Zoning Ordinance is granted to reduce the lot width for the four interior Townhouse Units with addresses at 1769; 1773; 1777; and 1781; Temple Avenue, in Manor Township, Lancaster, PA 17603, Account No. 410-50847-0-0000, in accordance with and as identified as lots 2,3,4, and 5 on a plan prepared by Strausser Surveying and Engineering, Inc. dated October 19, 2005, Drawing No. 05163030. (Exhibit No. 4) The approval of foresaid variance is subject to the following conditions: 1) The Applicants shall comply with and adhere to the plans, Exhibits and all other evidence presented to the Board by the Applicants or on their behalf at the hearing held on December 7, 2005. 2) The Applicants shall obtain an approved land development plan for the proposed townhouse project and if required by such approval, shall remove impediments to the safe and convenient vehicular access to all off-street parking areas. 3) The Applicants shall comply with all other applicable governmental rules, ordinances and regulations regulating the development, use and occupation of the proposed townhouse project. Any violation of the conditions contained in this Decision shall be a violation of the Zoning Ordinance and shall be subject to the penalties and remedies as set forth in the Pennsylvania Municipalities Planning Code. The Foregoing Decision shall be binding upon the Applicants, their successors in interest and assigns. Mr. Schlemmer seconded the motion and the motion carried unanimously.

Case #12-05 The application of Shanks Properties located at 2885 Charlestown Road, Lancaster, PA. The applicant is requesting variances to conditions #1 & #2 of the decision of Case No. 2-00. The applicant wishes to reallocate the space within the existing structure for the two businesses. The applicant is also requesting a special exception of Section 504.1 Expansion or Alteration of a Non-Conforming use. The applicant is also requesting a dimensional variance to increase the maximum permitted area for a business sign. Article 3 Section 315 Signs Table 1. The property is located in the Rural (R) Zoning District. Testimony will be continued. Mr. Granger turned the meeting over to McManus. Mr. McManus stated that this hearing is a continuation of a hearing held in this matter on December 7, 2005. The Applicant has elected to modify/amend the application and submitted a second application form with the same Index No.12-05. Mr. Ott had been previously sworn and stated that he published notice of the new application, date, time and place of the hearing in the Lancaster Newspapers on December 21

and 28, 2005 and the property was posted on December 15, 2005. The proof of publication was marked Exhibit #4. Mr. McManus stated that the applicants had been sworn in this matter at the previous hearing. Ms. Morgan stated that she had a new witness, Kevin Johnson, who was sworn in. Mr. McManus stated the prior application was asking the Board to modify certain conditions attached to a prior decision in the year 2000 regarding this property. The amended application requests a special exception to expand a non-conforming use on the same property. Mr. McManus asked Ms. Morgan if the Applicant is withdrawing the prior request to modify or is that an additional request to the Zoning Hearing Board. Ms. Morgan stated that this application is an additional request for the Board to consider. Ms. Morgan called Kevin Johnson who stated that he is employed by Althouse, Martin & Associates Architects located at 3008 Columbia Avenue, Lancaster. Mr. Johnson stated that he is a project architect. Mr. Johnson stated that he prepared the plan labeled Existing Floor Plan A-1 Exist. That plan was marked Exhibit #5, which is the existing floor plan and has a revised date of December 14, 2005. The proposed floor plan dated December 14, 2005 labeled A-1PRO was marked Exhibit #6. Ms. Morgan stated that for clarification, it was required that the plan shows the elevation of the building and the addition. The exterior elevations plan drawing No.A-2 was marked Exhibit #7. Mr. Johnson stated that in the original plan they used an existing plan prepared by another firm and they did some computer checking on the overall building. When it was discovered that there was a discrepancy, they went out and verified the dimensions on the existing building. It was discovered that the existing building was longer than what was on the original plan. The loading dock area was not included in the overall square footage. Mr. Johnson stated that they used a specific set of standards to define what the square footage was in the building and he explained how the square footage is determined. Mr. Johnson stated that when the original square footage was done for the building, the area occupied by the wall partitions and possibly the restroom area might have been eliminated. Ms. Morgan stated that Exhibit #5 shows the existing space used by Mechanical Coordinators to be 1,759 square feet and the existing space utilized by the trading company to be 4,467 square feet. Mr. Johnson stated that the square footages were correct. The dock area is 456 square feet. The total building square footage with the dock is 6,226 square feet. Exhibit #6 shows the proposed reallocation of space and the expansion. The proposed space to be used by Mechanical Coordinators is 3,253 square feet. Mr. Johnson stated that was correct. The proposed space utilized by the Trading Company will be 3,574 square feet. The 3,574 square feet includes the loading dock area and the additional area of 559 square feet. Ms. Morgan stated that the proposal is to add a 559 square foot addition. There is an allotment to the Trading Company of 3,574 square feet, including the addition and the dock area. There is an allotment of 3,253 square feet for Mechanical Coordinators. The total building size with the new addition will be 6,827 square feet. The addition will be located on the same lot as the existing building and the total square footage of the addition will not exceed an additional fifty percent of the existing building. The building will conform to the zoning ordinance requirements. Mr. Schlemmer asked if the existing garage belongs to one of the two businesses. Ms. Morgan stated that the garage was there when Mr. Lehman purchased the property and he uses the garage for the storage of lawn care equipment to take care of the property. The use is not changing. Ms. Morgan stated that she looked at the parking lot requirements. There are sixteen (16) spaces available. The Trading Company requires four (4) parking spaces and Mechanical Coordinator requires eleven (11) parking spaces, which leaves one extra parking space. Ms. Morgan stated that there is a condition that they would like the Board to consider. The prior zoning decision required the applicant to stick to the space allocation as set forth in the application. Mr. Lehman has suggested that if SIE

Trading Company goes out of business or leaves the building, that he be permitted to occupy the entire building as long as the scope of his business does not change, namely, does not hire any new employees or add any additional businesses other than those described as part of this application. Mr. McManus asked Ms. Morgan if the Applicant was asking the Board to find that with respect to the use of the Trading Company and the use of Mechanical Company that the building can be used for those allocations for any one of those allocations throughout the building and its expansion. Ms. Morgan stated that was correct to Mr. McManus. Mr. McManus stated to Ms. Morgan that you do not wish to be restricted to the allocations of space between the two businesses. Ms. Morgan stated that was correct. Mr. Granger asked Ms. Morgan if the space allocation request is for the two businesses and nothing else and Ms. Morgan stated that was correct. Mr. Granger stated that you are asking that the space allocation you are requesting could be completely used by one of the two businesses. Ms. Morgan stated that the allocations go along with the scope of the uses not expanding. Mr. Granger stated that there are other things than just the space allocation that would be affected by the request, which might cause concerns. Ms. Morgan stated that it was just a thought. Ms. Morgan stated that she was providing a packet of documents that consist of an excerpt from the zoning map which was marked Exhibit #8 and several photographs depicting signs in the neighborhood. Mr. Lehman stated that currently there is no sign at the property but there was a sign on the property when it was purchased. The sign was non-conforming. The Zoning Hearing Board Decision requested that the sign be removed. Ms. Morgan stated that as part of the application submitted, there was a depiction of the proposed sign. Mr. Lehman's daughter designed the sign. Mr. Lehman stated that the size of the sign seemed to be the appropriate. Ms. Morgan stated that in the packet she handed out, on the last page, there is a photograph of Mr. Lehman's daughter holding a piece of cardboard, which is the proposed size of the sign. Mr. Lehman indicated that the location of the cardboard being held would be the location of the proposed sign. Ms. Morgan stated that they went along Charlestown Road and identified other signs in the area to show what types of signs are in the neighborhood. Ms. Morgan stated that a two square foot sign is permitted in the Rural Zoning District as well as in the Residential and Conservation Zoning Districts. Ms. Morgan stated that when you move into the Agriculture, Commercial or Industrial Zoning Districts which are more like the uses at this site, you are allowed to have a larger business sign. Ms. Morgan stated that the applicant is asking the Board to grant a dimensional variance to increase the size of the business sign from two square feet to eight square feet to accommodate the names of both businesses. The names of the businesses need to be large enough to be viewed by traffic passing by. The sign size will conform to other signs in the neighborhood. Ms. Morgan stated that the applicant feels that the hardship is justified by the fact that they have non-conforming uses that are commercial in nature and that they have a need to identify the businesses. Mr. Schlemmer stated that the maximum permitted number of signs is two per lot and asked if they are looking for two signs or one sign. Ms. Morgan stated that the applicant is looking for one sign. Mr. Schlemmer asked how a person would know which business he was going to with only one sign. Ms. Morgan stated that both businesses are in the same building. Mr. Lehman stated that he is considering a sign on the door of each business. Mr. Granger asked Mr. Lehman how long it has been since there was a sign on the property for the business. Mr. Lehman stated that he never had a sign in the five years that he has been at this site. Mr. Granger stated that Mr. Lehman testified at the last hearing that his visitors are decreasing and Mr. Lehman stated that was correct. Mr. Granger asked the applicant how you justify a larger size, when the number of visitors to the business is decreasing. Mr. Lehman stated that the truck traffic coming to the business is having trouble finding the street

numbers on the mailboxes. Mr. Granger stated that the directions given could be improved to get to the business. Mr. Granger stated that there has not been a sign on the property for five years and now Mr. Lehman is requesting a sign that is larger than allowed. Ms. Morgan stated that Mr. Lehman indicated it has taken him five years to determine what he needs to identify his business. Mr. Lehman stated that most convenient thing has been a cell phone and he usually stands out along the road to wait for the trucks. Mr. Lehman stated that a set of instructions or even his phone number may not go along with shipping orders. Mr. Granger asked if Mr. Lehman understood the sign portion of the zoning ordinance is set up by zoning districts and the fact that he is non-conforming and industrial in nature in the rural zoning district does not change the size of the sign they are allowed and has nothing to do with Mr. Lehman's request. Mr. Granger asked what Mr. Lehman's daughter's credentials were. Mr. Lehman stated that his daughter had a college education in fine arts and also does all his graphic arts at the business. Mr. Lehman stated the sign they gave the Board was merely to give an example of what they are trying to do. Mr. Lehman stated that it is also the same design that was put out for bid. Mr. Granger stated that your justification is the neighborhood has changed. Is that correct? Ms. Morgan stated that the justification of the hardship is that they have a legally existing non-conforming use that complies with industrial and commercial components. They have a building that is located at the top of a hill on Charlestown Road that is a busy road. Ms. Morgan stated that there are larger signs in the immediate vicinity although they are different zoning districts. The granting of this variance would not alter or change the character of the neighborhood that the building currently exists in. Mr. McManus asked if the sign would be illuminated in any way. Mr. Lehman stated it would be illuminated internally. Mr. McManus asked if the illuminated sign would be visible from adjoining and neighboring residential properties. Mr. Lehman stated that he did not think so because there are significant trees between both houses on either side and there is quite a distance between the lots. Mr. McManus stated that the testimony is that the size of the sign proposed of eight square feet is the minimum size sign that will afford the reasonable safe opportunity to identify businesses on the tract and Mr. Lehman stated that was correct. Mr. McManus stated that it would be affixed as a freestanding sign in a location that is approximately indicated in the last photograph of Exhibit #8 and Mr. Lehman stated that was correct. Mr. Lehman stated that the location is also further identified on the site plan. Mr. McManus asked that in the event the use of the property would be reduced to one of the businesses, as Mr. Lehman has testified to, would that result in a sign that could be reduced in dimension and still meet his needs. Mr. Lehman stated perhaps. Mr. McManus asked if Mr. Lehman had an idea as to what the minimum size sign would be for one use rather than two uses on the tract. Mr. Lehman stated that he does not have the square footage but has allocated approximately six inches of height for the identification of the second business. Mr. Ott stated that he wanted the Board to be aware that the Sign Ordinance requires the address to be a part of the sign but it does not count in the square footage of the sign. Mr. McManus stated that eight square feet of the proposed sign would only be for the business advertising and does not include any addresses for the premises. Mr. Lehman stated that was correct. Mr. Lehman stated that the sign is two feet tall and 1 ½ feet wide for Mecco Bonsai and approximately six inches in height of the sign is for the SIE Trading business. Mr. Granger stated that in 2000 when you were before the Board you did accept as part of the conditions that you would meet the ordinance requirements. Mr. Lehman stated he did. Ms. Morgan stated that the elevation drawing was marked Exhibit #7 and Mr. Johnson described the elevations as they were depicted on the drawing. Mr. Granger asked if L&I required anything special for the fire code for the oven. Mr. Johnson stated there is an

existing 12 concrete block wall that will serve as the separation between the existing building and the proposed addition. There will also be a fire rated wall and door installed. Mr. Granger asked if there is any requirement as to the skin of the building addition and Mr. Johnson stated only that it be noncombustible. Ms. Douglas made a motion to close the testimony and render a decision at the February 1, 2006 meeting at 7:00 p.m. in this building. Mr. Schlemmer seconded the motion and the motion carried unanimously.

Reorganization Meeting A. Appointment to the Zoning Hearing Board by Township Supervisors Mr. Granger stated that Barbara Douglas has been reappointed by the Board of Supervisors and Mr. Granger welcomed her back. B. Election of Officers Chairman Mr. Schlemmer nominated Allan Granger for Chairman and Barbara Douglas seconded the nomination. Vice-Chairman Ms. Douglass nominated Walt Schlemmer for Vice-Chairman and Allan Granger seconded the nomination. Secretary Mr. Schlemmer nominated Barbara Douglas for Secretary and Mr. Granger seconded the nomination. C. Set Meeting Dates Normal meeting date is the first Wednesday of the month at 7:00 p.m. in this room and it was agreed to keep the same dates and time. D. Selection of solicitor for the Zoning Hearing Board for the year 2006 Ms. Douglas nominated James McManus as Solicitor and Mr. Schlemmer seconded the nomination.

Adjourn The hearing was adjourned at 7:00 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Wal-Mart Zoning Hearing Board
01/30/06

Zoning Hearing Board Agenda January 30, 2006 Time: 7:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes from October 31, 2005 meeting
4. Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the October 31, 2005 meeting.

DRAFT Zoning Hearing Board Minutes

Monday, January 30, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Monday, January 30, 2006, at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Members Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: James R. McManus and Bruce Ott Visitors Present: See attached list.

Mr. Granger introduced the Board Members, the Solicitor, the Court Reporter and the Recording Secretary.

Minutes Mr. Granger asked if there were any corrections or additions to the October 21, 2005 minutes. There were no additions or corrections and the minutes were approved as submitted.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the October 31, 2005 meeting. Mr. Granger turned the meeting over to Jim McManus. Mr. McManus stated that the last hearing held in this matter was October 31, 2005. It was announced at that hearing the Board would again meet November 17 and December 15, 2005. The November 17th meeting was cancelled at the request of the Applicant and the December 15th meeting was cancelled due to severe weather. This evenings meeting was published in the Lancaster Newspapers on January 16 and 23, 2006. Proof of publication was marked Boards Exhibit #4. Mr. McManus stated his notes indicate they would commence this hearing with Applicants presentation of any witnesses regarding the revised plan relating to a 221,000 square foot store marked at the August 2005 hearing as Applicants Exhibit #33. Ms. Smith noted that they have an outstanding motion to remand the site plan to the zoning officer because it was never acted on. Mr. McManus stated there are no motions practiced before zoning hearing boards. The Board has received the motion together with memorandum of law from both Ms. Smith and Mr. Kenneff and a responsive memorandum of law from Ms. Smith and a memorandum of law from Mr. Kaplin and a supplemental memorandum of law from Mr. Kaplin as well. The issue is whether or not the revised plan, which is the subject of this evenings proceedings, is a new plan and should be referred back to the zoning officer for processing a new application. The prior Board decision was to take that matter under advisement and hear the testimony regarding the revised plan and render a decision at the appropriate time. Mr. Kaplin asked that Bob McHale be sworn in. Mr. McHale identified Applicants Exhibit #33 as a site plan dated 8/26/05 and is sheet #1 of 3. Mr. McHale prepared the site plan marked as Applicants Exhibit #33. Mr. McHale stated that the plan was revised slightly from the original plan based upon criticism of the traffic study regarding the total square footage of the building. The original Exhibit #3 that was presented had 229,690 square feet of retail space that included tire lube express, larger garden center and a pharmacy drive through. The revised plan indicates a 220,070 square foot building. The intent was to bring the building down to approximately 221,000 square feet that was indicated in the traffic impact study. By eliminating the tire lube express, some of

the garden center and the pharmacy drive through, we reduced the square footage of the building. In addition, there were also some questions regarding the access off Columbia Avenue and parking spaces that were along side the eastern portion of the property. The original plan had shown Royal Road as based upon the approved subdivision and the word proposed was added because it is not constructed at this time. The parking spaces located to the east on the site have been eliminated and additional landscape stripping and a cut maneuvering area has been added. There was a question regarding the bus access in and out of the site and that has been remedied by actually indicating a one-way scenario for the buses to be able to access at the southwest corner of the site off South Centerville Road and will be able to go in a one-way direction and circulate through the drive and out to Columbia Avenue. Along the northwest corner of the site there are several parking spaces that originally on Exhibit A#3 were shown. There was a question about people parking in those locations and backing out into a drive; those spaces have been eliminated and the landscape island has been enlarged as shown on Exhibit A#33. When the tire lube express was deleted, it was converted to parking spaces. Other changes include the drive to the east was left open and a gate was added so only emergency or authorized vehicles would be allowed to access through that drive. Mr. Kaplin stated that there was about 8,000 square feet of the store removed with the most significant space being the tire lube express. Mr. McHale stated that was correct. Mr. Kaplin stated that it was possible to close off the back part of the parking lot and therefore eliminate possible conflict between trucks coming into the site and cars that would have been coming to the tire lube express. Mr. McHale stated that was correct. The revised plan provides 1,214 spaces, that is a 5.525 ratio and the minimum required is 5.5. Mr. McHale stated Exhibit A#33 meets all the applicable requirements of the Manor Township Zoning Ordinance. Mr. McHale stated that the revised plan does not require any significant changes to the lighting plan or the landscaping plan that was submitted with the original application. The landscaping already exceeded the requirements for the internal islands and parking spaces and this plan only adding more landscaping. Ms. Smith proceeded with cross-examination of Mr. McHale. Ms. Smith asked if there was a revised landscaping plan or lighting plan submitted with the revised site plan and Mr. McHale stated there is not. Ms. Smith asked Mr. McHale to point out where the pharmacy drive through had been located. Ms. Smith asked if, to Mr. McHales knowledge, is there a pharmacy at that location in the store. Mr. McHale stated to his knowledge the pharmacy will be retained internally. Ms. Smith questioned Mr. McHale on Exhibit A#33 regarding the area of the overhang and the line markings. She stated that it appears there will still be a pharmacy drive through. Mr. McHale stated that the canopy was removed and there could only be one vehicle serviced. Ms. Smith stated the representation earlier that the drive through pharmacy has been eliminated is not accurate. She stated that what was eliminated was the two lane drive through pharmacy. Mr. Kaplin had objections. Ms. Smith stated that it was indicated that the garden center was reduced. Ms. Smith questioned an area on the eastern most section of the garden center and Mr. McHale pointed out the area that would be enclosed with a chain-linked fence. Ms. Smith pointed out an area on the plan and asked if that is a sidewalk area. Mr. McHale stated it was a sidewalk. Ms. Smith stated that looking at A#33, the area has been expanded and she asked for what reason. Mr. McHale stated that it has not been expanded the chain linked area is reduced but the edge of what would be the sidewalk was retained. Ms. Smith stated that since there is parking area in the rear, is that a loading area for people who buy from the outdoor garden center. Mr. McHale stated that it is not any different than what was originally proposed. People can pull off in front of the garden center or to the north side of the garden center. There is no designated loading area within the parking area. Ms.

Smith asked what would be the loading area anticipated on the plan for those who buy in the garden center. Mr. Kaplin objected. Mr. McHale stated that there is no loading area. There are places people could pull up near the garden center area. People will get the products to their vehicle. Ms. Smith asked Mr. McHale to identify the light fixture that has been added in the revised plan and asked if the plan has any information as to the height, design or any other details relating to the light fixture. Mr. McHale stated it does not. Mr. McHale stated that it would be consistent with all the other fixtures. Ms. Smith asked if Mr. McHale or Wal-Mart had run an additional lighting study with the addition of the proposed light fixture and Mr. McHale stated that they have. Ms. Smith asked if that study was presented to the Board and Mr. McHale stated no. Ms. Smith asked if Mr. McHale understood the Ordinance requirement to demonstrate that the plan meets the foot candle requirement and Mr. McHale stated yes. Ms. Smith stated with respect to the additional landscape island, is information provided and Mr. McHale stated no. Mr. McHale stated that they could add landscaping or leave the original landscaping and still be in compliance with the Ordinance. Mr. Cook proceeded to cross-examine Mr. McHale. Mr. Cook stated that Applicants Exhibit #33 is sealed by Daniel R. Weese and he signed it on August 26, 2005 and Mr. McHale stated that was correct. Mr. Cook had questions regarding the garden center. He stated that there are two centers depicted on the plan and Mr. McHale stated there are two locations. Mr. Cook asked if there would be a roof over any portion of the chain linked fence area and Mr. McHale stated a portion is roofed. Mr. Cook stated on the northern garden center, that area is included within the 220,070 square feet and Mr. McHale stated yes. Mr. Cook stated that the western garden area has no roof and Mr. McHale stated that there is no roof and it is included in the 220,070 square feet. Mr. Cook asked Mr. McHale if the transformer pad, bail storage enclosure, screened gated compactor enclosure, compressor house concrete pad and roof on compressor house are included in the square footage and Mr. McHale stated they are not. Mr. Cook questioned what an area was on the plan at the entrances to the store. Mr. McHale stated that it was the vestibule to the entranceway to the facility and that square footage is included as well as the areas adjacent. Mr. Cook asked if any of the changes being proposed with Applicants Exhibit #33 have any impact or change the testimony previously supplied regarding stormwater and Mr. McHale indicated that the stormwater would not change. Mr. McManus asked Mr. McHale if he stated that there are certain roofed and unroofed areas that have been included as part of the 22,070 square feet and Mr. McHale stated yes. Mr. McManus asked Mr. McHale to outline for the Board the perimeter of the area designated for purposes of calculating square footage. Mr. Kenneff proceeded to cross-examine Mr. McHale. Mr. Kenneff asked Mr. McHale to point out for the Board the location of the access drive from Columbia Avenue. Mr. Kenneff asked if that access drive remains an easement that has been granted to Wal-Mart marked previously as Exhibit #7 and Mr. McHale stated it is designated as an access easement. Mr. Kenneff asked who owned the lot to the east and Mr. McHale stated Murry Properties. Mr. Kenneff asked about the lot immediately to the west of the access drive and Mr. McHale stated that Murry Properties also owns that lot. Mr. Kenneff asked what the width was of the access drive and Mr. McHale stated that it varied. Mr. Kaplin objected. Mr. McHale stated that he did not have the measurements of the drive. Mr. Kenneff stated that Mr. McHale previously testified with regard to the prior plan presented by Wal-Mart as to the access drive width. Does the access drive remain the same width as previously testified and Mr. McHale stated yes. Mr. Kenneff asked if there are any display areas with the garden center or other aspect of the property that are not under roof. Mr. McHale stated that the garden center area that will be under a shade cloth was included in the square footage of

the building. Mr. Kenneff asked if there are any areas not under roof that are intended to be used for sale of products and Mr. McHale stated no, the Ordinance prohibits outdoor sales. Mr. Kenneff asked how the size of the store differs from the application made by Wal-Mart in 2001. Mr. McHale stated that he does not recall square footage of that store. Mr. Kenneff asked Mr. McHale if he was able to testify regarding any differences between the plan Exhibit #33 and the plan submitted by Wal-Mart in 2001. Mr. Kaplin had objections. Mr. McHale stated that he did not have exhibits in front of him to highlight any differences. Mr. Kenneff stated that Mr. McHale had testified that the 2001 plan had been revised in 2005 to address certain concerns of the Board set forth in the 2001 decision and Mr. McHale stated he believed that was correct. Mr. Kenneff asked if the items addressed for the Board as revisions to the 2001 and 2005 plan remain the same in this new exhibit #33 and Mr. McHale stated they do. Mr. Kenneff stated that in prior testimony, Mr. McHale was asked a number of questions regarding the access drive and its distance from property lines and it is my understanding that your testimony remains the same and Mr. McHale stated that is correct. Mr. Kaplin had re-direct questions. Mr. Kaplin asked Mr. McHale if it is his testimony that the physical characteristics of the additional light fixtures in the former tire lube express area will be the same physical characteristics as the other light standards and those physical characteristics will comply with the Ordinance in regards to the height and the type of light fixture. Mr. McHale stated that was correct. Mr. Kaplin stated to Mr. McHale that Ms. Smith asked you whether you have any evidence that the addition of this one light fixture will still allow the plan to comply with the lighting requirements. Do you remember that question? Mr. McHale stated that he did. Mr. Kaplin stated that you told her you did not have any evidence with you tonight but do you have a professional opinion as to whether or not the addition of that one light standard will put the lighting plan into noncompliance. Ms. Smith had objections. Mr. McHale stated that in his opinion based upon information, it will not impact or exceed any of the site lighting requirements of the zoning ordinance. Mr. Kaplin stated that whether or not the plan actually complies with the lighting standards will be reviewed again during the land development process and Mr. McHale stated that is correct. Mr. Kaplin stated that isnt it normal that such items as the lighting and landscaping are land development issues and not issues that have effect upon the use of the property. Mr. McHale stated that these items would be reviewed again during land development process. They impact the project from a zoning standpoint. Mr. McHale stated that he is testifying that everything meets or exceeds the requirements. Lee Karon, 321 Post Oak Road, stated that the plan was adjusted downward in size to meet the traffic study and Mr. McHale stated essentially yes. Mr. Karon stated by doing that you are saying the traffic study was incorrect for the original 229,000 square foot store and Mr. McHale stated no. Mr. Karon asked why then was the plan adjusted downward. Mr. McHale stated that he believed there was an amendment to the traffic study that matched the square footage that was shown on Exhibit A#3, but based upon the critique that was presented, it appeared more reasonable to reduce the square footage to match the traffic study than to rework the amendment. Mr. Karon stated that originally it did not meet the traffic study or something. Mr. Kaplin made objections. Mr. Karon asked did you make the store smaller in order to meet the traffic study. Mr. Kaplin had objections and Mr. McManus stated that he believes the question was asked and answered during one of the initial questions. Mr. Karon stated that you must have thought Mr. Planks suggested criticism of the original plan was correct and Mr. McHale stated not necessarily. Dan Brooks, 217 Stone Creek Road, stated that you testified that the Township Ordinance requires 5.5 parking spaces per 7,000 square feet and Mr. McHale stated yes. Mr. Brooks asked if that takes into consideration the spaces taken up during the

summer display of the garden center in the parking lot area. Mr. McHale stated the plan does not propose any outdoor sales because the Ordinance does not allow them. Mr. Brooks asked if it is customary for Wal-Mart to have outdoor displays at other locations. Mr. Kaplin had objections. Mr. Brooks stated that your testimony is there will not be any outdoor displays. Mr. Kaplin stated testimony is that Wal-Mart will comply with the ordinance requirements and the present ordinance requirements do not permit outdoor sales. Mr. Brooks asked if the plan also takes into consideration bales of cardboard stored outside the store area. Mr. McHale stated there is a bale storage area that is depicted on the plan. Mr. Brooks stated that the same questions applies to the storage trailers that are customarily at a majority of the Wal-Marts. Mr. Kaplin had objections. Mr. McHale stated that they are not proposing any additional parking areas for the trucks other than what is shown on the plan. Mr. Brooks stated that at all the other Wal-Marts he has seen, there is not enough parking space to compensate for what was lost in the storage pods. Mr. McHale stated that it is his understanding it would be a violation of the ordinance and that would be between the zoning officer and Wal-Mart. Mr. McManus asked Mr. Kaplin if he had any other witnesses. Mr. Kaplin stated that he is finished with his case. He understood that there will be other witnesses that may require them to call rebuttal witnesses but his case in chief is concluded. Mr. McManus stated that the sequence of events; they had the Applicant present its case and then had cross-examination, rebuttal presentation by the Applicant including the revised plan as part of the rebuttal portion of Applicants presentation and cross-examination of the rebuttal testimony. Mr. McManus asked if anyone disputed that is what has occurred thus far at the proceedings. Mr. Kaplin stated there was more. Mr. Kaplin stated regarding traffic, the Township and the two groups have put their traffic witnesses on also. Mr. McManus stated yes and with respect to traffic each party has testified both in response to the Applicants presentation and their presentation and cross-examination and rebuttal testimony in all traffic issues.

There was a ten-minute recess taken.

Ms. Smith called David Bachman who was sworn in by the Court Reporter. Mr. Bachman stated he lived at 2737 Kimberly Road, Lancaster, in the Wilshire Hills Development located directly to the rear of the proposed Wal-Mart building. Mr. Bachman pointed out the location of his property on Applicants Exhibit #33. Mr. Bachman stated he has lived at his residence for approximately 16 years. Mr. Bachman indicated he had reviewed the application submitted by Wal-Mart and attended the hearings on the application with the exception of a couple he missed. Mr. Bachman stated that he visited other Wal-Mart sites. Mr. Bachman participated in the proceedings of Wal-Marts prior application. Mr. Bachman was an intervener in the appeals of the decision from the Board in that matter. Mr. Bachman stated that when he looks from his home to the proposed site he sees a small strip of woods which is fairly non-existent at this time of year because most of it is deciduous and it is approximately 12 feet deep. At this time of year, Mr. Bachman can see all of South Centerville Road, Woods Edge Plaza and Woods Edge Development. Mr. Bachman stated that his neighborhood is medium density, very quiet, secluded with one entrance and one exit and very little traffic. Mr. Bachman stated that with work he is home much of the time and his daughter is the papergirl so they go through the area often. There is a lot of kids moving into the area now where before there was a lot of senior citizens. Mr. Bachman stated that in the evening it is very quiet. The only noise they hear is the occasional car in front of his house because of a manhole cover. There are no street lights, no sidewalks with the only outdoor lighting being the occasional lamppost, sensor lights and an

occasional porch light. Mr. Bachman sees lights from Woods Edge at Christmas time, dim lights from Woods Edge Plaza and the only lights seen with any significance is the lights from the accounting firm. Mr. Bachman indicated the lights he described do not interfere with his activities inside or outside his home. Mr. Bachman stated his concerns regarding this project are lighting, noise from trucks, shoppers, vehicles, trash, security, loading area, and the approach Wal-Mart shows towards repeated submissions specifically a 24/7 store. Mr. Bachman stated he has not heard specifically this will be a 24/7 store but he did recall initially with the traffic plan there was a discussion during that part of the proceedings where they were discussing as to whether a traffic study was centered around a 24/7 operation because it was all based on a 24 hour period. Mr. Bachman stated that this indicates to him it is probably a 24/7 store. Mr. Bachman stated it bothers him Wal-Mart will not affirmatively state its intentions for the store operations. Mr. Bachman stated he visited other stores that close 9 or 10 p.m. in the evening and then their lights are turn way down and there is no activity and no night time delivery of trucks and there are no campers or RVs in the parking lots. Mr. Bachman stated he has been to a 24 hour Wal-Mart facility in the hours after 10 p.m. and he observed quite a few cars and that type of facility draws from a large area. Mr. Bachman stated that when he goes at midnight there is 150 to 200 cars in the parking lot and that is not at holidays. If a 24 hour store would operate in his neighborhood, his concerns for the late and early morning hours would be lighting, noise, security of his family when trying to sleep, and fumes. Ms. Smith stated the national Wal-Mart is now the subject of a federal order prohibiting idling of trucks on their property an order that applies to all of their facilities although it was generated because of specific facilities. Mr. Kaplin had objections. Ms. Smith asked if that order is enforced, would that alone satisfy Mr. Bachmans concerns with respect to noise. Mr. Bachman stated it would not. Mr. Bachman stated that if you pick up the newspaper at any given time you would see Wal-Mart being fined and still not rectifying situations. Ms. Smith stated if you eliminated the truck noise would you still be concerned with the noise from other sources and Mr. Bachman stated absolutely. Mr. Bachman stated that the compressors for the air-conditioning cooling units make a lot of noise. Mr. Bachman stated that he observed sky lights at other stores and the skylights gives the store an aurora that surrounds the whole developed area and he did not observe any mitigation features or light buffering features with relationship to the skylights. Mr. Bachman stated that he wanted to reaffirm that the Board will do what is right and he has the up most faith in the Board in protecting the health, safety and welfare of the entire region. Mr. Cook proceeded to cross-examine Mr. Bachman. Mr. Cook asked Mr. Bachman if he noticed any difference with the compressors units on the roof. Mr. Bachman stated that there is a different ventilation system and that may be because some of them have a McDonalds inside the Wal-Mart. Mr. Bachman stated that when you stand outside you can hear them. Mr. Cook asked if Mr. Bachman made any observations about whether when the compressors are on the roof, does the sound goes down. Mr. Bachman stated sound travels no matter whether it is up or down. Mr. Kenneff proceeded with cross-examination of Mr. Bachman. Mr. Kenneff asked if Mr. Bachman believed there are adequate roadways to currently handle the traffic. Mr. Kaplin had objections. Mr. Kenneff repeated his question asking, based upon your observations, are you able to relate to the Board whether adequate public facilities such as roadways exist to service the area now? Mr. Bachman stated right now traffic is a mess and there are particular times of day that are very hectic. Mr. Kenneff asked if there are particular corridors observed where the existing conditions are as you described. Mr. Bachman stated Centerville Road and Columbia Avenue as well as Rohrerstown Road and Columbia Avenue and Route 741 and Charlestown Road. Mr. Kenneff stated that Mr.

Henise testified to his concern regarding the traffic study done by Wal-Mart; at certain times of day, traffic was so backed up that simply counting traffic does not give one a true understanding of the major problem. Based upon your practical observation do you agree with Mr. Henise? Mr. Kaplin had objections. Mr. McManus sustained Mr. Kaplins objection. Dale Longenecker, Slackwater Road, stated that he has interest in what is going on because he travels Centerville Road a lot. Mr. Longenecker asks if it means anything to anyone now. He typically comes up S. Centerville Road and the traffic is backed past the entrance to Rohrs Hardware and the bank. You have to stay back so you do not block the intersection. Now you want to add all of this. Does anybody want to explain anything? What is going to happen about this? Ms. Smith called Ms. Sisler, who was sworn in by the Court Reporter. Floris Sisler stated that she lives at 316 Stone Creek Road, Lancaster, in the development of Woods Edge. Ms. Sisler stated she moved in five years ago last August and her home is south and slightly west of the proposed Wal-Mart. Ms. Sisler stated she could see the proposed site from her property. Ms. Sisler has attended the hearings and reviewed the application that was submitted. Ms. Sisler stated the plan she was given to review did not have lighting and landscaping that matched the square footage. Ms. Smith had marked FAID Exhibit #16 A-D a package of photographs taken by Ms. Sisler. Ms. Sisler went through the photographs and indicated the direction they were taken from and what is seen in each photo. Ms. Sisler than read a narrative she had written to the Board. Mr. Kaplin cross-examined Ms. Sisler. Mr. Kaplin asked Ms. Sisler if when she bought her property in Woods Edge did she look at all the plans and Ms. Sisler stated she had not. Mr. Kaplin asked if she was aware there was a 26 acre parcel included in the original Woods Edge Plans and she stated no. Mr. Kaplin asked Ms. Sisler if she was aware that in 1998 Wal-Mart received approval from the LCPC to build the store and Ms. Sisler stated she was not aware when they bought their home but is aware now. Mr. Kaplin asked if Ms. Sisler had not done any investigation and Ms. Sisler stated she had not. Mr. Kaplin stated Ms. Sisler made comment about the stormwater coming from the Wal-Mart parking lot and going into the ponds behind her house. Mr. Kaplin stated Ms. Sisler has no evidence that is what Wal-Mart intended to do. Ms. Sisler stated she hear two approvals of possible water discharge. Mr. Kaplin stated when Ms. Sisler moved in there were fewer houses in Woods Edge than now and Ms. Sisler stated that was correct. Mr. Kaplin asked how many homes have been built in Woods Edge since she lives there and Ms. Sisler stated maybe 75 to 100 homes but she does not know for sure. Mr. Kaplin asked if there are over 300 homes in Woods Edge Development and Ms. Sisler stated she believed there was 200 and some. Mr. Kaplin asked how far the back of Ms. Sislers house is from S. Centerville Road. Ms. Sisler stated she is not sure. Mr. Kaplin asked Ms. Sisler if she realized from S. Centerville Road to the closest part of the proposed building is over two football fields away and Ms. Sisler stated she did not. Mr. Kaplin asked if the distance from S. Centerville Road to the proposed building is not less than the distance from S. Centerville to Ms. Sislers home and Ms. Sisler stated she did not know. Mr. Kaplin stated the Wal-Mart would be four or five football fields away from the back of Ms. Sislers house. Ms. Sisler stated if you are going under the assumption that is correct. Mr. Kaplin questioned Ms. Sisler further regarding the distances. Mr. Kaplin questioned Ms. Sisler on the last photograph she took from her deck. George Elko, 3126 Windon Drive, stated Mr. Kaplin asked if Ms. Sisler researched if the Wal-Mart was coming in. Mr. Elko asked if Ms. Sisler asked the real estate agent if a Wal-Mart was coming in and Ms. Sisler stated she did not know to ask that question. Mr. Elko asked if anyone she know of asked if a Wal-Mart was coming in and Ms. Sisler stated she can only say what she heard at the Homeowners Association meeting and people wondered why they were not told. Mr. Elko asked if someone asked the

agent if a Wal-Mart was coming and they denied it. Ms. Sisler stated she missed a meeting a few times ago where she believes a resident from Woods Edge who claimed to not have been told but Ms. Sisler does not know if she asked the question. Mr. Elko asked what is a comfortable distance to Wal-Mart and Ms. Sisler gave no definite answer. Richard Leisses, 304 Stone Creek Road, asked Ms. Sisler when you purchased your property, was the developer forthcoming in telling you about the proposed Wal-Mart being there and Ms. Sisler stated no. We did ask about the piece of property next to the farmhouse and we were told they did not know but probably something like they were buying would be built there. Mr. Leisses stated that Mr. Kaplin stated it would be approximately 600 feet from the corner of the proposed building to Centerville Road. He asked Ms. Sisler do you really care where the edge of the building is or care about the parking lot that will have 1,000 or more cars. Ms. Sisler stated that she cares about it all. Mr. Leisses asked what she thought would happen to the property values in the area if Wal-Mart is built and Ms. Sisler stated that the property values would go down. Mr. Kaplin had re-cross for Ms. Sisler. Mr. Kaplin asked Ms. Sisler if she did any studies regarding the property values and she stated that she did no studies whatsoever with regards to the value or the effect on the value of her property. Ms. Smith called Derick Potter who was sworn in. Ms. Smith stated that Tiffany Cartwright would proceed with Mr. Potters testimony. Mr. Potter stated that he is a civil engineer since 1994 and employed by Harbor Engineering for 4 years as president of the company. A summary of Mr. Potters qualifications was marked as FAID Exhibit #17. Mr. Potter indicated that the company he works for has both private and municipal clients and a large portion of their work is preparing subdivision/land development plans for private individuals, developers, and school districts. They also work for municipalities for stormwater management, bridge replacement projects, storm sewer installations and they also occasionally work for municipalities reviewing subdivision/land development plans for ordinance compliance. Mr. Potter listed his employment background and indicated he has provided prior expert testimony. Ms. Cartwright asked that Mr. Potter be qualified as an expert in civil engineering, stormwater management design and stormwater management planning. Mr. Kaplin objected to the line of questioning and indicated Commonwealth Court Cases. Mr. Kaplin asked Mr. Potter what type of studies he performed in preparation for his testimony at tonights hearing. Mr. Potter stated that he reviewed the information submitted but did not do any studies himself. Mr. Kaplin asked Mr. Potter to tell him the last large commercial development project he worked on. Mr. Potter stated that it was for the Manheim Central School District; he just completed a project and he did the land development plan and stormwater management plans for that project. Mr. McManus stated that he did not know if it was stated that he was qualified as a licensed professional engineer. Ms. Cartwright stated that Mr. Potter is a licensed professional engineer. The Board accepted Mr. Potter as an expert witness. Mr. Potter provided an opinion letter with respect to Wal-Mart's conceptual stormwater design that was marked FAID Exhibit #18. Mr. Potter stated that he reviewed the preliminary storm drainage report conceptual dated May 6, 2003. Ms. Cartwright stated she believed that was Exhibit #1. Mr. Potter listed the sources he reviewed. FAID Exhibit #19 was introduced that is a site plan aerial photograph of the site. Mr. Potter described what is shown on the photograph. Mr. Potter described the drainage and described briefly the conceptual plan for stormwater collection and discharge from the site. Mr. Potter stated that the report identifies the five lots with each lot having its own basin and he believed lot #1 shares one of the basins. The individual lot basins collect stormwater and discharge them generally towards the existing 18 pipe. Two of the basins drain through to subsequent basins. At that point, they go to a main trunk line where the various basins discharge that trunk line which ultimately discharges to

where that existing 18 pipe is currently located. Mr. Potter stated that he believes Wal-Mart proposes over a 40 pipe that would replace the 18 pipe. The report assumes 70% impervious coverage and he believes the current exhibit for the Wal-Mart site is now proposing 66.9% impervious coverage but that does not address what the other five lots will contain as far as impervious coverage. Ms. Cartwright asked if Mr. Potter was referring to Exhibit A#33 and Mr. Potter stated yes. Ms. Cartwright asked Mr. Potter to describe his conclusion in regard to predevelopment peak discharge and post development peak discharge. Mr. Kaplin had objections stating there is no provision of the zoning ordinance that requires these types of calculations as the special exception proceedings. Ms. Cartwright read from the zoning ordinance Section 448.15.8. Mr. Potter explained predevelopment and post development discharge. Mr. Potter stated that generally you look at where the water is leaving the site in the predevelopment conditions and you create watersheds for those different points of discharge leaving the site. This preliminary storm drainage report actually approaches it differently than it does a prepost analysis for the various interior lots. Mr. Potter stated that his conclusion was that the stormwater management design should meet the predevelopment and post development for the various discharge points leaving the site. Mr. Potter stated that in his conclusion he states that he disagrees with the approach taken to analysis the predevelopment and post development stormwater management. Ms. Cartwright asked Mr. Potter what his conclusions regarding predevelopment peak discharge and post development peak discharge would be if the calculations were done based a point of discharge versus a lot by lot. Mr. Potter stated that as shown on the exhibit, the predevelopment will use a 100 year storm event; the applicant when they do their final analysis will have to look at all storm events. For a 100 year storm event from the report, there is approximately 27 cubic feet per second leaving the site with the existing 18 pipe. The ordinance requires a 50% reduction, so if you take 50% of the 27 cubic feet per second, that drops it to around 13 ½ cubic feet per second that is allowed in the post development condition. When all the stormwater is taken from all the basins that are discharged into that point, there is approximately 36 cubic feet per second leaving the site rather than 13.5 cubic feet. Ms. Cartwright stated that rather than a 50% reduction, there is a 50% increase and Mr. Potter stated that it is not quite 50%. Mr. Potter indicated that Wal-Mart's report did not have any type of site grading to show how the water was getting to the basin or if the water can actually get to the basin nor was there any site grading to show what water topographically could not get into the basin which would be leaving the site undetained. Mr. Potter indicated the items he felt should have been included in the reports. Mrs. Cartwright asked Mr. Potter to explain what happens when the stormwater runs off urban features such as rooftops and parking lots. Mr. Potter stated that at different times of year, there are different results. Mr. Potter stated that the worse case is that the water would be very hot leaving the parking lot; the water could approach 90 degrees Fahrenheit and when it reaches the detention basin; the surface air temperature and the sun actually could make it hotter so you could look at stormwater temperatures leaving the site at 95 degrees. The stormwater would pick up pollutants that are transportable from the sidewalk and pavement to the detention basin. Any development sites that do not currently have NPDS permits that disturb over a certain percentage will have to have NPDS permit. Mr. Potter gave the current regulations that are required for a NPDS permit. Mr. Potter indicated he reviewed the geological report and it does warn against carbonate geology beneath the site. Mr. Potter explained the difficulty with stormwater and carbonate geology. Mr. Potter rendered his opinions with a reasonable degree of certainty in his field. Mr. Kaplin proceeded to cross-examine Mr. Potter. Mr. Kaplin asked Mr. Potter if he did the stormwater management plan at

the same time as he did the land development plan and the entire site grading when he did the design for the school and Mr. Potter stated yes. Mr. Kaplin stated that is the normal time that you prepare a stormwater management plan and Mr. Potter stated yes. Mr. Kaplin stated that you do not prepare a stormwater management plan normally at the conditional use or special exception stage of a development do you? Mr. Potter stated that the ordinance requires you to identify any environmental impacts that are likely to be generated; stormwater is specifically listed as one of those items, and identify specific measures employed to mitigate or eliminate negative impact. Mr. Potter stated that he did not think that has been accomplished. Mr. Kaplin stated that you do not normally do a stormwater management plan at the conditional use or special exception stage of a development do you? Mr. Potter stated that it has been his experience that they have not done a detailed stormwater management plan at the conditional use portion. Mr. Kaplin stated that you are not required to do grading plans at the conditional use or special exception stage. Mr. Potter stated if there is going to be negative impacts, these plans should be done. Ms. Cartwright had objections. Mr. Kaplin asked Mr. Potter if he reviewed the Townships Stormwater Management Ordinance and Mr. Potter stated that he did. Mr. Kaplin referred to Applicants Exhibit #6 which is the final subdivision plan and asked Mr. Potter several questions referring to the exhibit. Mr. Kaplin referred to Paragraph 1 on page 3 of Exhibit #18 and read the paragraph. Mr. Kaplin continued with questions for Mr. Potter regarding the stormwater. Mr. Kaplin read the last sentence of paragraph 1. Mr. Kaplin stated that the reviewing authority under the Township Stormwater Management Ordinance is the township engineer and Mr. Potter stated that is correct. Mr. Kaplin asked Mr. Potter if he is familiar with the Lancaster County Subdivision Ordinance and Mr. Potter stated that he is. Mr. Kaplin stated that when Wal-Mart presents its land development plan for this property to the LCPC, the stormwater management methodology for the site will be reviewed by the LCPC and the county engineer and Mr. Potter stated it will be reviewed by both the Township and the County. Mr. Kaplin questioned Mr. Potter on the NPDS permit and Mr. Kaplin stated that the NPDS permit is not usually obtained at the special exception or conditional use stage and Mr. Potter agreed. Mr. Kaplin stated that the plans for the NPDS permit would be reviewed by the township engineer, county engineer, the county conservation district and the Department of Environmental Protection and there is a specific procedure for obtaining an NPDS permit and Mr. Potter agreed. Mr. Kaplin questioned Mr. Potter regarding the procedures if there is carbonate geology conditions present on the site.

The hearing was closed at 10:00 p.m. and will be continued to February 27, 2006 at 7:00 p.m. in the Manor Middle School.

Respectfully submitted

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer

Zoning Hearing Board Meeting

02/01/06

Zoning Hearing Board Agenda

Wednesday, February 1, 2006 Time: 7:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes of January 4, 2006 Meeting

Old Business Case #12-05 The application of Shanks Properties located at 2885 Charlestown Road, Lancaster, PA. The applicant is requesting variances to conditions #1 & #2 of the decision of Case No. 2-00. The applicant wishes to reallocate the space within the existing structure for the two businesses. The applicant is also requesting a special exception of Section 504.1 Expansion or Alteration of a Non-Conforming use. The applicant is also requesting a dimensional variance to increase the maximum permitted area of a business sign. Article 3 Section 315 Signs Table 1. The property is located in the Rural Zoning District. A decision will be rendered.

4. Adjourn

DRAFT Zoning Hearing Board Minutes

Wednesday, February 1, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Wednesday, February 1, 2006 at 7:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA 17603. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Members Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: Bruce Ott and James R. McManus Visitors Present: Stephanie Huber, 2885 Charlestown Rd Roger Lehman, 2885 Charlestown Rd Stacey Morgan, Esquire

Minutes Mr. Granger asked if there were any corrections or additions to the January 4, 2006 minutes. There were no addition or corrections and the minutes stand approved as presented.

Old Business Case #12-05 The application of Shanks Properties located at 2885 Charlestown Road, Lancaster, PA. The applicant is requesting variances to conditions #1 & #2 of the decision of Case No. 2-00. The applicant wishes to reallocate the space within the existing structure for the two businesses. The applicant is also requesting a special exception of Section 504.1 Expansion or Alteration of a Non-Conforming use. The applicant is also requesting a dimensional variance to increase the maximum permitted area of a business sign. Article 3 Section 315 Signs Table 1. The property is located in the Rural Zoning District. A decision will be rendered. Mr. Granger stated that the testimony was closed at the last meeting and Mr. McManus contacted each Board member independently and drafted a decision that they would discuss at this time. Ms. Douglas made a motion based upon the foregoing, the application of J. Roger Lehman for a special exception to expand the principal building, reallocate the areas for the non-conforming uses located therein, and to erect a freestanding sign containing eight (8) sq. ft. on the property located at 2885 Charlestown Road, Lancaster, PA, Tax Parcel No. 13H-4-7, Account No. 410-68985-0-0000 is hereby approved subject to the following conditions: 1)

Applicant shall adhere to the facts and dimensional criteria contained in his amended application requesting an expansion of a non-conforming use, as well as all testimony presented by the Applicant or presented on his behalf at the hearings held on December 7, 2005 and January 4, 2006 relating to the use and operations of the proposed businesses. 2) Applicant shall adhere to the area allocations and locations of all proposed uses and improvements as set forth in his site plan offered as Applicants Exhibit No. 6. 3) Applicant shall comply with all applicable Federal, State and local regulations regarding the construction, use and operation of the proposed facility. 4) Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies as set forth in the Pennsylvania Municipalities Planning Code. The foregoing Decision shall be binding upon the Applicant, his successors in interest and assigns. Mr. Schlemmer seconded the motion and the motion carried 2 to 1.

The meeting was adjourned at 7:15 p.m.

Respectfully Submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Meeting - WalMart
02/27/06

Zoning Hearing Board Agenda

February 27, 2006 Time: 7:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes from January 30, 2006 meeting
4. Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the January 30, 2006 meeting.

DRAFT Zoning Hearing Board Minutes

Monday, February 27, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Monday, February 27, 2006 at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger

called the meeting to order and led the Pledge of Allegiance to the Flag.

Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: James McManus, Bruce Ott and Barry Smith Visitors Present: See attached list.

Minutes Mr. Granger asked if there were any additions or corrections to the January 30, 2006 minutes. There were no additions or corrections and the minutes stand approved as presented.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the January 30, 2006 meeting. The hearing was turned over to Mr. McManus. Mr. McManus stated that this hearing was continued from the last hearing held in this matter on January 30, 2006. The Board has scheduled two additional meetings that will be held in this building at 7:00 p.m. on March 14th and April 18th. Mr. McManus stated that his records reflect that the last hearing concluded during the testimony of Derick Potter called by Ms. Smith and finished that session with cross examination by Mr. Kaplin. Mr. McManus stated that they are still on cross-examination of Mr. Potter. George Cook proceeded to cross-examine Mr. Potter. Mr. Cook stated that one of the documents Mr. Potter reviewed in this matter was the May 6, 2003 storm drainage report prepared by Wal-Mart and Mr. Potter stated that was correct. Mr. Cook stated that Mr. Potter testified that the document contemplates that the stormwater discharge from Wal-Mart site and the out parcel lots on the east side of S. Centerville Road would occur near the Township Park as shown on FAID Exhibit #19 on the board. Mr. Cook asked where the location of the proposed discharge would occur. Mr. Potter stated at the location of the existing 18culvert. Mr. Cook stated that the culvert would be increased in size according to Wal-Mart to 42. Mr. Potter stated that was correct. Mr. Cook asked if any portion of the storm drainage report listed environmental impacts that are likely to be generated by the discharge of stormwater at that location. Mr. Potter stated that there are no environmental impacts listed in the report that he is aware of. Mr. Cook asked if the report stated that there will be no such impact. Mr. Potter stated that the report states post development run off will be well below the predevelopment. Mr. Cook ask if any of the documents that Mr. Potter reviewed on this matter indicated any alternate stormwater drainage proposals that would entail leaving the stormwater on the eastern side of South Centerville Road to be discharged into the creek. Mr. Potter stated that in the report the only conceptual stormwater that was analyzed in detail was the one that Wal-Mart proposed that routed all the stormwater into an 18 pipe. Mr. Cook asked Mr. Potter if he was aware that Mr. McHale testified to the possibility of discharging the stormwater in that manner and Mr. Potter stated he does recall reading some of the past minutes to that effect. Mr. Cook asked Mr. Potter if the review of that possible method of stormwater discharge was not included in the storm drainage report dated May 6, 2003 and Mr. Potter stated that was correct. Mr. Cook asked if FAID Exhibit #19 depicts the stormwater ponds that exist on the west side of South Centerville Road. Mr. Potter stated that it is an aerial photograph and it depicts the wetland area on the west side of South Centerville Road. Mr. Cook asked Mr. Potter if he was aware that there are stormwater ponds across the street from Wal-Mart lot. Mr. Potter stated that he was aware of that. Mr. Cook stated that Mr. Potter also

reviewed a report on the subdivision plan depicting various phases of Woods Edge Development. Mr. Potter stated yes he reviewed the subdivision report. Mr. Cook asked Mr. Potter if he came to any conclusions regarding what the subdivision plans proposed regarding as to where stormwater was to be directed. Mr. Potter stated that he did not draw any conclusions. Mr. Cook asked Mr. Potter, in his opinion, if Wal-Mart in selecting an alternative for discharge of stormwater, made a purposeful and reasonable decision as opposed to other methodologies. Mr. Kaplin objected. Mr. Cooke asked Mr. Potter if it is fair to say that he was aware of two alternatives as to the possible routes for discharge of stormwater from the Wal-Mart site. Mr. Potter stated he recalls hearing about other alternatives but this alternative is the only one he reviewed. Mr. Cooke asked Mr. Potter if he saw any list of environmental impacts likely to be generated as result of the proposal made for discharge of stormwater. Mr. Kaplin had objections. Mr. Potter stated that he has not seen a list of any environmental impacts. Mr. Cooke asked Mr. Potter if he saw any list of alternatives for the discharge of stormwater and the environmental impact and mitigation measures that might accompany each of those alternatives. Mr. Potter stated no. Mr. Cooke referred to Section 448.15.8 of the codified Zoning Ordinance and read the first sentence. Mr. Cooke asked if Mr. Potter saw any evidence from Wal-Mart's stormwater proposal that could identify any potential environmental impacts associated with that proposal other than what would be in the stormwater drainage proposal dated May 6, 2003. Mr. Potter stated that he has not seen any list of potential environmental impacts. Peter Stillwell, 101 Stone Creek Road, asked who owns the property directly across the street from the proposed Wal-Mart site where the two drainage ponds are located. Mr. Potter stated that he did not know. Mr. Stillwell asked that if the two drainage ponds across the street from the Wal-Mart site are being used to receive the stormwater from the Wal-Mart site. He asked Mr. Potter if he knew who owns that property where the ponds are located. Mr. Kaplin had objections. Mr. Stillwell asked if the exact ownership of the ponds across the street from the proposed Wal-Mart has been clearly identified. Mr. Kaplin still had objections. Mr. Stillwell asked Mr. Potter if he knew if it is legal for the stormwater to be dumped into the ponds if the exact ownership of the property has not been determined. Mr. McManus stated that this witness is not an attorney and is not competent to answer these questions. Mike Zuber, 124 Shannon Drive, asked if anyone has done a study on the environmental life that is in the ponds and in the wetlands. Has there been any kind of study done at all? Mr. Potter stated that he is not aware of any studies that were done. Mr. Stillwell asked if DEP has been given this information in regards to the proposed Wal-Mart drainage and parking lot overflow and have they been asked for their comments on any potential environmental issues associated with this issue. Mr. Potter stated that he recalled seeing a letter from the Army Core of Engineers for the project in years past but for this particular proposal Mr. Potter had not seen any correspondence from them. Mr. Stillwell asked if the letter referred to may have been from the original Wal-Mart application. Mr. Potter stated that the letter he saw was from the Army Core of Engineers from 1998. Mr. Stillwell asked if the Army Core of Engineers did review the application. Mr. Kaplin had objections and stated that they did not review this application. Mr. Stillwell asked if the DEP reviewed this application and he was advised that they have not. Mr. Stillwell asked if the ponds directly across from the proposed Wal-Mart center, in fact, are federally protected wetlands. Mr. Potter stated that he is not sure so he cannot answer the question. Mr. Stillwell asked Mr. Potter if he knew how the run off from the proposed Wal-Mart site could be determined to be legal if no one knows who the correct owner of the pond area is. Mr. Kaplin had objections. Mr. Stillwell asked if Mr. Potter knew if Wal-Mart was legally responsible to develop the environmental impact study in association with

their plan with regards to the projects effect on the surrounding community. Mr. Kaplin had objections. Mr. McManus stated that Mr. Stillwell was asked for legal opinions and Mr. Potter is not an attorney. Mr. Kaplin had several follow up questions for Mr. Potter. Mr. Kaplin stated that in Mr. Potters March 24 letter on page 3 in the middle of that letter, you stated that the interpretation of the stormwater management ordinance will be up to the reviewing authority. Mr. Potter stated yes. Mr. Kaplin stated that at the last hearing he informed Mr. Potter that the Township Engineer had approved the stormwater management report. Mr. Potter stated yes. Mr. Kaplin asked Mr. Potter if he did anything since the last hearing to verify whether or not the Township Engineer has already approved the stormwater management design for this project. Ms. Cartwright had objections. Mr. Potter stated he did review the correspondence from BuchartHorn, the Township Engineer. The last letter Mr. Potter reviewed from Buchart Horn essentially said that the applicant had addressed all the stormwater comments. Mr. Kaplin stated that he had a copy of the letter dated June 18, 2003 from Buchart-Horn to Mr. Smith, the Township Manager. He asked Mr. Potter if that is the same letter he reviewed. Mr. Potter stated yes. Mr. Kaplin had the letter marked Applicants Exhibit #44. Mr. Kaplin had a letter dated September 9, 2003 from the LCPC addressed to Mr. McHale regarding the application for Murry Company/Sher-Wal, Inc. in Manor Township marked as Applicants Exhibit #45. Mr. Kaplin stated that this is a letter from the LCPC to Mr. McHale stating that the subdivision plan received final approval from the LCPC. Mr. Potter stated that was correct. Ms. Cartwright had some follow up questions for Mr. Potter. Ms. Cartwright stated that at the last hearing, Mr. Kaplin asked a question with respect to the fact that this application was for only one lot to be developed. Mr. Potter stated that he recalled the question. Ms. Cartwright asked if Mr. Potters opinion changed with respect as to whether or not Wal-Mart gave the proper analysis on the stormwater, given the fact that only one lot was the subject of this application. Mr. Kaplin had objections. Mr. Potter stated that, in his opinion, his response did not change. Ms. Cartwright asked Mr. Potter if his interpretation as to what the ordinance requires is based on sound engineering principles. Mr. Kaplin had objections. Mr. Potter quoted Section 4.8 from Ordinance 3-99, which is the Township Stormwater Management Ordinance. Ms. Cartwright stated that it was asked at the last hearing if it was normal to do a stormwater analysis as part of a special exception application. She asked Mr. Potter if it is normal in his experience when preparing an application for municipal approval to evaluate all the requirements. Mr. Potter stated he thinks it is normal to provide what is being asked for in an application. Ms. Cartwright asked Mr. Potter if Applicants Exhibit #44 states that Wal-Mart has addressed all comments with respect to the stormwater plan. Mr. Potter read from the letter. Ms. Cartwright asked if the letter said anything about the stormwater plan being approved. Mr. Potter stated he did not see anything about the stormwater plan being approved. Kaplin asked Mr. Potter to read the last paragraph of Applicants Exhibit #44. Mary Dresser was called as a witness and was sworn in by the Court Reporter. Ms. Dresser stated that she is a registered landscape architect with the State of Pennsylvania for 17 years and is self-employed for the last six years. Ms. Dresser listed her educational background, listed her previous places of employment, described the type of service she has provided, listed the type of clients she has worked for and listed the work related organizations that she is a member of. Ms. Dressers statement of qualifications and her resume was marked FAID Exhibit #20. Ms. Smith asked the Board to accept Ms. Dresser as an expert witness in the field of landscape architecture and related issues. The Board accepted Ms. Dresser as an expert witness. In preparing for her testimony, Ms. Dresser stated that she reviewed the landscape plan that was part of the original application A#4. She reviewed the second plan that

was a modification of the first plan that was A#11. Ms. Dresser also reviewed the labeled revised plan that provided modifications to the parking lot and landscape islands that was marked A#33. Ms. Dresser indicated that she looked at the original site plan, attended the other hearings, reviewed transcripts, reviewed the Manor Township Zoning Ordinance, and reviewed the Lancaster County Land Development and Subdivision Ordinance in preparation of her testimony. Ms. Dresser stated that in reviewing the plan she had identified several items that she felt were insufficient. Ms. Smith asked Ms. Dresser what would be the consequence of the failure to provide information relating to landscaping in an application. Ms. Dresser stated that it all works together, the landscaping, grading, and stormwater. She gave an example. Ms. Dresser stated that she has been involved with projects in the past well before they come before a board. Ms. Dresser stated that she has been involved with plans in the feasibility stages, when a developer is trying to determine whether a piece of property can support what use is being proposed. In doing so, one must look from every edge both horizontally and vertically to determine if their building and parking lot can fit on the site along with meeting all the requirements. Ms. Dresser stated that often times she has been involved in every stage of a project. Ms. Dresser stated that there are differences between informational requirements and objective requirements and she elaborated. Ms. Smith stated that Ms. Dresser had testified that she had reviewed various portions of the Wal-Mart Application that had been submitted initially. Ms. Smith asked Ms. Dresser if she could tell whether there was any particular theme or approach that the landscape designer used in the landscape plan design. Ms. Dresser stated that there were a couple of themes. Ms. Dresser stated that looking at Exhibit A#4, the designer began with a dense screen as required by the Ordinance. In trying to satisfy the requirements, the designer placed on the plan a lot of plants and the selection of the plants illustrates a variety. Ms. Dresser continued by stating that the landscape plan looks good on paper; it looks dense and creates a pretty picture at first glance without an analysis of it. An analysis should be based on the Ordinance requirements as well as a feasibility from the standpoint of landscape architectural practices in selecting plant materials. Ms. Smith asked Ms. Dresser if her characterization of a pretty picture was that it carried through on all the plans that was identified as Exhibit A#4 the original landscape plan, Exhibit A#11 the plan revised to verify or confirm the square footage, and Exhibit A#33 the revised plan. Ms. Dresser stated that Exhibit A#4 was the only landscape plan. FAID Exhibit #21 is a reduction of the Exhibit A#4 with Ms. Dressers comments of what was previously marked Exhibit A#33. Ms. Dresser indicated no new landscape information regarding plant material was provided on the revised plan marked Exhibit A#33. Ms. Smith asked if there were any new features observed in plan marked Exhibit A#33 that would have triggered information demonstrating compliance with the landscape requirements in the Ordinance. Ms. Dresser stated yes. She continued to state that the plan would have had to modify landscape islands, modify areas in which screening and plant materials occur, the square footages for the percentage of parking lot area, and the translation to show the required landscape islands. Ms. Dresser stated that the new plan information provided shows a reduction of the number of parking spaces, more planting islands, and a slight modification in the square footage for most of the landscape areas. Ms. Smith asked Ms. Dresser with respect to the information provided for the additional landscape areas, did Wal-Mart provide information as to what the applicant was proposing in those areas. Ms. Dresser stated no in regards to the specific landscape material modifications. Ms. Smith asked if Ms. Dresser was able to review this new plan for compliance with the landscape requirements of the Ordinance. Ms. Dresser stated by this plan alone no. Ms. Smith asked Ms. Dresser if she has an opinion as to whether Exhibit A#33

demonstrates compliance with the objective requirements of the Zoning Ordinance for the landscaping. Ms. Dresser stated that this plan does not demonstrate compliance with the Zoning Ordinance objectives. Ms. Dresser stated that she found numerous planting islands that were not obviously revised based on the reason the plan was revised. For instance, there was more square footage on some of the islands. Ms. Dresser pointed out discrepancies on the plan in regards to the square footage of the planting areas and the numbers of plantings indicated. Ms. Dresser continued by stating that in regards to the planting areas that were gained, there was no indication on the plan as to what would be planted in the areas. Ms. Smith stated that in their testimony, Wal-Mart indicated that they had no need to provide a new landscaping plan because the information appeared on the original application sheet that was marked Exhibit A#4. Ms. Smith asked Ms. Dresser to address that comment. Ms. Dresser indicated that she had a handout, which was a reduction of Exhibit A#4 that she used as a worksheet; the exhibit was marked FAID Exhibit #22. Ms. Smith stated that there is a plan sheet reference in the bottom right hand corner Sheet 3 of 3. Ms. Dresser stated that when she received a copy of Exhibit A#4, she took the Zoning Ordinance and reviewed all the sections dealing with landscaping, beginning with the definitions and general provisions in Article 3 that related specifically to shopping centers. Ms. Dresser continued by reviewing specific landscape sections in the Ordinance that pertained to parking lots and the application requirement criteria for a special exception application. Ms. Smith asked Ms. Dresser if she had an opinion whether the original landscape plan Exhibit A#4 had sufficient information on the plan for her or anyone else to discern compliance with the requirements of the Ordinance. Ms. Dresser listed several things that she noticed missing; one item missing was there were no open swales. Ms. Dresser stated that there was no proposed grading information which establishes the horizontal relationships between the property lines of the site and the portions within the site that will be established as the building. She continued stating that natural features, such as bands of existing trees, were not marked as to where they were located or any specific information about them. Ms. Smith asked Ms. Dresser that in reviewing Exhibit A #4, did you identify any areas in which the plan does not conform or comply with an objective landscape requirement in the Ordinance. Ms. Dresser stated yes. Ms. Dresser went through the following sections of the Zoning Ordinance and read each section and then stated how the landscape plan did not comply with each section. The sections she reviewed were Sections 207.12, 207.13, 207.16, 314, 314.1, 314.2, 314.3, and 314.4 of the Zoning Ordinance. Ms. Dresser also discussed the plants and trees shown on the landscape plan in regards to the separation distance between plants and why she felt some of the varieties were inappropriate for the locations shown on the plan. Many reasons that she gave for the inappropriateness of several varieties of plants and trees were due to the maintenance required, the listed plant size and type of climate conditions.

There was a ten-minute recess.

Ms. Dresser continued with her testimony. She stated she looked at 311.3 regarding clear sight triangle and pointed out the conflicts with the clear sight triangle regarding plantings on the plan. Section 312.6 addresses drainage and in this case Ms. Dresser stated it would be helpful to have the stormwater information on the plan to see how the landscaping plantings fit into the overall design. Ms. Dresser proceeded to list the following sections of the Zoning Ordinance and commented on how the requirements in these sections were not addressed; she stated that in some cases the section was addressed but the information was incorrect or not in detail on the

landscape plan. The sections Ms. Dresser read from the Zoning Ordinance included the following sections: 312.3.2, 312.15.1, 312.15.3, 313.10, 314, 448, 448.12, and 448.15.5.c. Ms. Dresser stated that there are berms proposed and there is a cross section provided on Exhibit A#4. Ms. Dresser stated that on the plan, there are two different size berms. Ms. Dresser stated that some of the berms were labeled four feet and some six-foot. With the Exhibit A#11 plan, there were changes to those berms. The six-foot high berm that was originally proposed along the northern property line between Lot 1 and 2 was changed to four foot high berms. The berm that was located along the northwest corner of the site on the commercial property was originally a four foot high berm and was changed with Exhibit A#11 to a six foot high berm. The assumption that was made was that the distance between the property line and curb line would remain the same. The cross section at the bottom of the page was drawn for both the four and the six foot high berms and the cross section indicate a swale. In many cases, the distance that is proposed where these berms are located could handle the width of a berm but may not be wide enough to accommodate a swale. In some cases, there is not enough room to be able to construct a berm between the boundaries of the property line and curb line. Ms. Dresser stated that she had exhibits that in a very elementary way illustrate that the line of the curb would obstruct construction of the berm. Ms. Dresser presented a two-page document that was marked FAID Exhibit #23A&B. Ms. Dresser explained the cross section and explained the berm heights. Ms. Smith asked Ms. Dresser about the relocated berms. Ms. Dresser explained that there were some relocating of the four and six foot high berms between the original plan Exhibit A#4 and Exhibit A#11, which was drawn to show square footage changes. There were locations where there was no distinction made as to the area assigned for the four and six foot high berms. Ms. Dresser pointed out the changes that were made on the plan regarding the berms. Ms. Dressers testimony will be continued on Tuesday, March 14 at 7:00 p.m.

Hearing was adjourned at 10:00 p.m.

Respectfully submitted,

Barbara Douglas

Recording Secretary Evelyn Rineer
Wal-Mart Zoning Hearing Board
03/14/06

DRAFT Zoning Hearing Board Minutes

Tuesday, March 14, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Tuesday, March 14, 2006 at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present:
James McManus, Bruce Ott and Barry Smith Visitors Present: See attached list.

Minutes Mr. Granger asked if there were any additions or corrections to the February 27, 2006 minutes. There were no additions or corrections and the minutes stand approved as presented.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the February 27, 2006 meeting. Mr. Granger turned the meeting over to Mr. McManus. Mr. McManus stated that the time, date, place and subject matter of this hearing was announced at the last hearing held before the Board on February 27th. The next scheduled meeting in this matter has been scheduled for April 18th at 7:00 p.m. in this building. Mr. McManus stated that his notes indicated the last hearing concluded during the course of direct examination by Ms. Smith of her witness, Mary Dresser. Ms. Smith stated at the conclusion of the last hearing, Ms. Dresser was asked to address the berm requirements and she had handed out Exhibit #23, which was a two-page exhibit. Ms. Dresser identified the provision of the zoning ordinance that addresses berms. Ms. Dresser stated that they appear as one of the elements that can be used in combination with trees, shrubs and other such elements in two areas of the Ordinance. Ms. Dresser stated that she misspoke during her testimony. She had failed to identify two sections that include berms and made a blank statement pertaining to the third section that did not include berms. The two sections that include berms are under the landscape requirement Section 314.2 and the screening Section 314.3. The third section of the Ordinance is Section 448, which allows shopping centers as a special exception. Sub Section 448.12 lists the items pertaining to screening from adjoining residential districts. Ms. Dresser read that section. Exhibit #23 was a two-part diagram showing four foot and six foot high berms. Ms. Dresser pointed out that the areas of the proposed berms on Exhibit A#4. Ms. Dresser point out the locations of the berms proposed along the north edge of the property between the Wal-Mart property and Lot 1 and 2, along the northwest property line, and along southern property line. The diagram was prepared as a result of questions Ms. Dresser had relating to the areas in which the berms were proposed, which were between property line and the curb line. The diagram indicated the choice in berm heights. Ms. Dresser talked about the slope and the amount of space required for the height of the berms indicated. She discussed how the plantings would be affected by the height of the berm. Ms. Dresser stated that if additional width were needed for the berms, it would impact parking. The additional space would change the parking and move the curb line. Mr. Kaplin had objections. Ms. Dresser discussed how the swales would affect the berms. Ms. Dresser indicated that with insufficient space for the berm, the berm would be steeper causing a maintenance issue. Ms. Dresser also indicated that without a grading plan, she was unable to determine if the landscaping and screening met the Ordinance requirements. Ms. Smith asked Ms. Dresser if she had an opinion as to whether the information provided by Wal-Mart in this application and the testimony is sufficient to determine if the plans are in compliance with the Ordinance. Ms. Dresser stated that, in her opinion, the plans are insufficient to determine if all the requirements of the Ordinance are met. Mr. Kaplin proceeded to cross-examine Ms. Dresser. Mr. Kaplin asked Ms. Dresser if she ever performed work on behalf of a municipality and Ms. Dresser stated no. Ms. Dresser stated that she is on the Planning Commission in her borough. Mr. Kaplin asked Ms. Dresser if she is a reviewer of landscaping plans for a municipality. Ms. Dresser stated she has assisted firms in that capacity. Mr. Kaplin

asked if Ms. Dresser was Manor Townships reviewer and Ms. Dresser stated that she is not. Mr. Kaplin referred to Section 448.12 of the Zoning Ordinance and read a portion of that section. He asked Ms. Dresser if it is the zoning officer who is directed to review the landscaping plan for compliance with the Ordinance. Ms. Dresser stated that is not how she would interrupt that section. Ms. Smith had objections. Mr. Kaplin asked Ms. Dresser what type of landscaping services she performs and for who does she reviews projects? Ms. Dresser stated that on several occasions, she has performed sketch plan reviews and designed certain projects; she stated that in doing so, she would review the ordinance and review the criteria that the developer had provided for her to see how the two fit together before preparing her sketch plan. Mr. Kaplin stated that Ms. Dresser does not review projects but prepares landscape plans for projects. Ms. Dresser stated she considers that review along with the preparation of the plans. Mr. Kaplin asked Ms. Dresser if she was familiar with the difference between an application for a special exception and an application for approval of a land development plan or subdivision plan. Ms. Dresser stated yes. Ms. Dresser explained the difference between the two procedures and where they fit into the land development plan process. Mr. Kaplin asked if it isn't true that special exception proceedings, such as this one, is limited to whether the proposed use of the property should be permitted from a zoning point of view? Ms. Smith had objections. Ms. Dresser stated that as part of this process, she was asked to review the plan. Ms. Dresser stated that having participated in plan preparation she knows from experience that it all goes together. One cannot review the landscaping without addressing some of those issues that will definitely come up in the land development stage. Mr. Kaplin asked Ms. Dresser if she was saying that in order for her to review a landscaping plan at the special exception stage, it would be necessary for her to have all the plans necessary to review a land development plan stage such as a grading plan. Ms. Dresser stated that it would be best to have all the plans required for submission of a land development plan as part of the special exception application. Mr. Kaplin asked if it is not true that zoning ordinances usually do not require a grading plan to be submitted along with special exception applications. Ms. Dresser stated that from her experience it varies from municipality to municipality. Mr. Kaplin asked if a grading plan is a fully engineered plan. Ms. Dresser stated that she has prepared conceptual grading plans in order to determine the feasibility of the design as a part of a special exception without it being a fully engineered plan. Mr. Kaplin read Ms. Dresser's testimony from Page 34 of the transcript. Mr. Kaplin referred to Section 603 of the Zoning Ordinance and indicated that the section listed plans that must be submitted with the special exception plan such as site plan, floor plans and elevations. Ms. Dresser stated that was correct. Mr. Kaplin asked Ms. Dresser to tell him where it states a grading plan is required in connection with an application for special exception. Ms. Dresser stated that it is cross-referenced in Section 702.3.1 & 2; she read those sections. Ms. Dresser stated that topographic features are a grading plan. Mr. Kaplin stated that the Ordinance states a plot plan and a plot plan is different than a grading plan. Ms. Dresser stated that, in this case, the plot plan is to include the grading. Mr. Kaplin asked Ms. Dresser if a landscaping plan is listed in Section 605.3 and Ms. Dresser stated that she did not see it listed. Mr. Kaplin referred to Article IV titled Specific Criteria and read Section 401. He stated that this section sets special controls and regulations for certain specific uses and Ms. Dresser agreed. Mr. Kaplin stated that in Section 448, it contains specific criteria for shopping centers and listed 448.9, 12 and 15 as the specific requirements for landscaping for shopping centers. These sections have to do with the percentage of landscaping required and screening from adjoining residential districts using a 10-foot planting strip. Mr. Kaplin questioned Ms. Dresser regarding the landscaping plan as to the planting strips. Mr.

Kaplin asked Ms. Dresser about what plants are indicated that will be planted on the planting strips as well as the size of the trees, shrubs and landscaping of the parking lots. He asked her about the percentage of the parking lot that is required to be landscaped and percentage proposed on the plan. Ms. Smith had objections. Mr. Kaplin pointed out to Ms. Dresser that they are not applying the LCSDLDO in the special exception application and Ms. Dresser agreed. Mr. Kaplin pointed out that if and when they get to the land development plan stage, they will have to comply with the LCSDLDO and Ms. Dresser agreed. Mr. Kaplin stated that if it is determined that this plan under the zoning ordinance does not have enough trees or enough planted islands, Wal-Mart will have to change the plans. Ms. Dresser stated that she agreed. Mr. Kaplin questioned Ms. Dresser regarding her testimony regarding the plantings proposed in the islands on the plan. Mr. Kaplin also questioned Ms. Dresser on Sections 207.12,13 & 16; 312.15; and 314.12.

There was a ten-minute recess. Mr. Kaplin continued with his cross-examination of Ms. Dresser regarding the landscaping buffers and berms. Mr. Kaplin asked Ms. Dresser if she walked the area and Ms. Dresser indicated that she viewed the area from the rear yards of some of the residential properties. Mr. Kaplin questioned Ms. Dresser on the planting islands and asked if she would agree that the change in the size of the parking lot islands was relatively insignificant in relation to the over all parking area. Ms. Dresser stated that it actually created several questions with regards to the square footage indicated for the islands. Mr. Kaplin stated that Ms. Dresser took issue with some of the plant types that the landscape architect selected in both the landscape strips and the parking lot islands. Mr. Kaplin asked Ms. Dresser if she would agree that the plant types selected are permitted types of plantings and satisfy the requirements of the Ordinance. Ms. Dresser stated that, in terms of the Ordinance requirement, it does not address plant type; it only addresses the plant height and plant caliber. Ms. Dresser stated that she was reviewing the plant types in terms of feasibility and how they would perform to satisfy the requirements. Ms. Dresser stated that she reviewed the plant types as to whether or not they were appropriate and would survive in this environment to satisfy the Ordinance requirements over time. Mr. Kaplin stated that what Ms. Dresser is saying, is that she would rather see some other types of plants and trees than those chosen by Wal-Mart's landscape architect. Ms. Dresser stated that she would like to see some other types of plant material in order for them to survive. Mr. Kaplin stated that there was also an issue in regards to the proposed planting because the plantings will intrude into the clear sight triangle and would interfere with sight distance in some locations. Ms. Dresser stated that was correct. Ms. Dresser explained the reasons she felt that there might be issues with the plantings in regards to the clear sight triangle. Mr. Kaplin read Section 313.10 regarding the loading area and questioned Ms. Dresser on her statements regarding the loading areas. Ms. Dresser reviewed what she had stated in her previous testimony. Mr. Kaplin asked questions of Ms. Dresser regarding Exhibit A#33 and A#4. Mr. Kaplin stated that he recalled Ms. Dresser indicated that the screening around the detention basin does not comply with the requirements in Section 314 of the Zoning Ordinance. Ms. Dresser stated that she disagrees. She continued by stating that what she was referring to pertained to not having grading information to indicate where the spillways were going to be located. The spillway would create a break in the screening. Mr. Kaplin read Ms. Dresser's testimony regarding Section 314. Mr. Kaplin asked Ms. Dresser where in Section 314 is there a requirement for landscaping around the detention basin. Ms. Dresser stated that she was not referring to the landscaping to screen a basin. She was referring to the Section 314 and 448.2.12, which requires a continuous buffer strip. Ms. Dresser

stated that she was talking about the landscape strip around the area of the basin. She continued by stating that she did not say that landscaping required around the basin. Mr. Kaplin stated that Ms. Dresser's major criticism is that Wal-Mart may not be able to construct the landscaping strips shown near the area of the stormwater basin because of the final design of the stormwater facilities. Ms. Dresser stated that is correct. Ms. Dresser stated that there is an unknown factor because there is insufficient information related to the grading to know if it all will fit into that space. Mr. Kaplin stated that is because they have not yet designed the specific stormwater management facilities that will ultimately be required under the County's Subdivision and Land Development Ordinance. Mr. Kaplin asked Ms. Dresser if she was able to show him in the Township's special exception requirements, a requirement for the design of the stormwater management facilities at the special exception application time. Ms. Dresser stated that it goes back to what was discussed earlier in Section 605.3 and cross-referenced to Section 702.3, which requires that you show the manner by which sanitary sewage and stormwater shall be disposed. Ms. Dresser stated that her position is that if the submittal included the items listed under the zoning permit information as part of the filing, she would have been able to eliminate quite a few of her questions; many of the questions she had because of insufficient or inadequate material for her to review this plan would have been eliminated. Ms. Smith had redirected for Ms. Dresser. Ms. Smith referenced Section 448.12 and stated that Mr. Kaplin asked you a series of questions relating to this section but she believed he missed the very first sentence regarding development shall be screened. Ms. Smith asked Ms. Dresser if she understood Section 448.12 requirement regarding screening and Ms. Dresser stated yes. Ms. Smith read a portion of that section regarding the plants selected for the landscape screening shall be suited for such plantings and shall be arranged in such a manner to provide accepted visual screening. Ms. Dresser stated yes. Ms. Smith asked Ms. Dresser if she, based on the information provided on this plan, believes that the applicant has complied with this requirement. Ms. Dresser stated she does not believe that the applicant has complied with the requirement based on spacing, type of plant material, and the fact that she only has a two-dimensional plan without grading to determine where the trees will be located. Ms. Smith referred to the interior landscaping requirements on the original plan, Exhibit A#4 and A#11. Mr. Kaplin indicated that the plan had information on it that showed a 9.1% coverage. Ms. Dresser stated yes. Ms. Dresser stated that the original 8% was crossed out and changed to 9.1%. Ms. Smith stated that Mr. Kaplin did not ask about the revised plan A#33 and does similar information appear on the revised plan. Ms. Dresser stated that there does not appear to be a line item for the coverage. Mr. Kaplin had objections. Ms. Dresser stated that based on her review of the application and the ordinance, she understood A#33 to be a site plan and revised from the original plan A#4. The revisions consisted of the following items: 1) the removal of part of the building area, 2) alternations to the parking area on the north side of the proposed building, 3) to the alignment and circulation proposed to the access drive on the east side, 4) along the northwestern property line in terms of increased size of the landscape islands, 5) along the western property line pertaining to the elimination of parking spaces, 6) within the parking lot related to the landscape islands and parking space numbers, 7) to the park and ride area in terms of parking, 8) and changes related to the overhead drive through situation. Ms. Smith asked if there was any information that allowed Ms. Dresser to determine compliance with the landscape requirements with respect to the revisions and Ms. Dresser stated no. Lee Karon, 321 Post Oak Road, asked Ms. Dresser if she worked for Wal-Mart or was paid by Wal-Mart and was there any reason for her to have called the Wal-Mart architect and Ms. Dresser stated no. Susan Smith called Mr. Savage who was sworn in by the Court Reporter. Ronald William

Savage, Ronks, PA, stated that he is a retired magistrate district judge from East Lampeter and Upper Leacock Township and served in that capacity for 12 years. He was previously a police officer for over 20 years in East Lampeter Township and Upper Leacock Township. During his tender as a magistrate judge, Wal-Mart moved into his district. As a result of the presence of Wal-Mart, he observed an increase crime and police matters. Ms. Smith asked how the increase affected his workload. Mr. Kaplin had objections. Mr. Savage stated that there was a dramatic increase in the workload. Mr. Savage stated the types of matters that increased were mostly criminal matters such as summary offenses, misdemeanors and felonies. Mr. Savage had statistics for the year 2002 and listed the figures. Mr. Savage stated that he had what he called block days and had to set aside a day for just Wal-Mart preliminary hearings. Mr. Savage explained what effect the increase in crime would have had on the police officers time. Ms. Smith stated that based on Mr. Savages experience with the Wal-Mart in his jurisdiction, do you have opinion as to whether there would be a demand on the police services in Manor Township if it were to approve this Wal-Mart. Mr. Savage stated that he did not have an opinion. Mr. Savage stated the impact on the police services was dramatic with the opening of Wal-Mart in the area he served. Mr. Kaplin cross-examined Mr. Savage. Mr. Kaplin stated that he understood in 2002 there were 400 total criminal complaints filed for the year and Mr. Savage agreed. Mr. Kaplin stated that 118 of them originated in some fashion with the Wal-Mart. Mr. Savage stated correct. Mr. Kaplin stated that Mr. Savage indicated most of them were shoplifting and Mr. Savage stated that was not correct. Mr. Kaplin stated that Mr. Savage stated that 118 of the 400 criminal complaints were originated with Wal-Mart and Mr. Savage stated yes. Mr. Savage stated that when he says criminal complaints he means misdemeanor 1, 2 and 3 and felony 1. Mr. Savage stated that the crimes would be shoplifting, aggravated assaults, other assaults (simple), and forgeries. Mr. Savage stated that 2/3 of the 118 would have been shoplifting. Mr. Savage stated that the remaining 1/3 would have been assaults, forgeries and other types of crimes. Mr. Kaplin asked Mr. Savage if he was familiar with West Sadsbury Township in Chester County or had any discussion with the police chief and Mr. Savage stated no. Mr. Kaplin asked Mr. Savage if he is familiar with the Second-Class Township Code provision that allows the municipality to set up a special taxing district to raise more money for police protection and Mr. Savage stated he is not familiar with that provision. Ms. Smith had redirect for Mr. Savage. Ms. Smith asked Mr. Savage if in addition to criminal complaints there would have been summary complaints brought before you. Mr. Savage stated yes. Ms. Smith asked if there would have been other types of complaints that came before you with respect to Wal-Mart and Mr. Savage stated yes. He stated that is part of the statistics for 2002. Ms. Smith asked Mr. Savage in respect to the other complaints, was the percentage approximately 30% of the complaints originated out of Wal-Mart and Mr. Savage stated no. Mr. Savage stated that in the summary of retail thefts, there were 270 and 210 originated with Wal-Mart; that would have been 77%. He continued by stating that the number of summary complaints that were not retail theft and not traffic related, there are a total of 840 with 225 originating from Wal-Mart. That is 26%. Peter Stillwell, 101 Stone Creek Road, asked Mr. Savage in his opinion, if the legal cost increased in his jurisdiction with the handling of Wal-Mart shoplifting, etc. and Mr. Savage stated absolutely yes. Mr. Stillwell asked if overtime police cost increased and Mr. Savage stated absolutely. Mr. Stillwell asked if there was an increase in work that had an effect on Mr. Savages life and Mr. Savage stated it did not have any effect. Mr. Stillwell asked if Wal-Mart offered to do any statistical analysis of the increase in the cost of crimes associated with Wal-Mart stores and their impact on the local community and

Mr. Savage said that they have not.

The hearing was closed at 10:10 p.m. and will be continued on Tuesday, April 18, 2006 in this building.

Respectfully submitted

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer

Zoning Hearing Board Meeting

04/05/06

Zoning Hearing Board Agenda

Wednesday, April 5, 2006 Time: 7:00 P.M.

1. Introduction of Board Members

2. Pledge of Allegiance to the Flag

3. Approve Minutes of February 1, 2006 Meeting

4. New Business Case #1-06 The application of Frank G. & Shana Hess property located at 535 Shultz Road, Washington Boro, PA 17582. The Applicant is requesting a special exception of Section 202.3.1 Kennels in accordance with Section 405 of the Manor Township Zoning Ordinance. The applicant wishes to operate a kennel on their property. The property is located in the Rural (R) Zoning District.

5. Adjourn

DRAFT Zoning Hearing Board Minutes

Wednesday, April 5, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Wednesday, April 5, 2006 at 7:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA 17603. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Members Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: Bruce Ott and James R. McManus Visitors Present: Ed Farber, 330A Diehm Hall, MU Zach Bair, 134 University Dr., Millersville Mike Keener, 69 Baron Dr., Lancaster, PA Margaret & Clyde Neal, 1802 Hilltop Rd., Washington Boro Tim Eck, 1807 Hilltop Rd., Washington Boro Frank Hess, 535 Shultz Road, Washington Boro

Mr. Granger introduced the Zoning Hearing Board Members, the solicitor, the zoning officer, the

court reporter and the recording secretary.

Minutes Mr. Granger asked if there were any corrections or additions to the February 1, 2006 minutes. There were no additions or corrections and the minutes stand approved as presented.

New Business Case #1-06 The application of Frank G. & Shana Hess property located at 535 Shultz Road, Washington Boro, PA 17582. The Applicant is requesting a special exception of Section 202.3.1 Kennels in accordance with Section 405 of the Manor Township Zoning Ordinance. The applicant wishes to operate a kennel on their property. The property is located in the Rural (R) Zoning District. Mr. Granger turned the meeting over to Mr. McManus. Mr. McManus asked for the names and addresses of anyone who had an interest in the application. The following individuals expressed interest in the application: Barbara Kauffman, Shana Hess's mother Tim Eck, 1807 Hilltop Road, Washington Boro, who indicated he was against the application. Clyde & Margaret Neal, 1802 Hilltop Rd., Washington Boro, indicated they are against the application. John Brazina, 549 Shultz Road, Washington Boro, indicated he is against the application if there is noise involved. Mr. McManus explained the procedure that is followed for the hearing. Mr. McManus explained party status and asked if anyone wished party status. No one requested party status. Bruce Ott was sworn in and stated he is the Zoning Officer for Manor Township and received the application of Shana and Frank Hess indexed as #1-06. Mr. Ott stated the time, date, location and subject matter was published in the Lancaster Newspapers on March 22 and 29, 2006. Proof of publication was marked Applicants Exhibit #2 and the application was marked Exhibit #1. Mr. Ott stated the property was posted with the date, time, place and subject matter on March 13, 2006 and there was a notice posted in the Township lobby on the same date. Frank and Shana Hess were sworn in by the Court Reporter. Shana Hess stated that they are requesting a special exception to construct and operate an animal boarding kennel under the Rural Zoning section 202.3/202.3.(1) in accordance with Section 405. The intended animal boarding kennel would be within Manor Townships rural zoning located at 535 Shultz Road, Washington Boro, PA 17582. Ms. Hess stated that they will secure a building permit prior to construction and will secure the occupancy certificate prior to operating the animal boarding kennel. The name and addresses of adjoining property owners was attached to the application. The ground floor plans and elevations of proposed structures are shown on Attachment #3. A scaled site plan is shown on Attached #4 with landscaping and slope elevation. The proposed use is in compliance with the Rural Zoning as a special exception use as either a principal use or an accessory use to a permitted use on the same lot as indicated on Attachment #5. The animal boarding kennel will be considered as an accessory use. The facility will house up to forty (40) animals, boarding dogs and cats for brief period of time. The kennel will meet and comply with the requirements in Article 4 of the Zoning Ordinance. Ms. Hess stated that all the criteria would be complied with concerning Sections 405.1 through 405.8. Ms. Hess stated that 535 Shultz Road is zoned Rural and the boarding kennel is an accessory use that is permitted in this district. The acreage of the property is 13.8 acres and the minimum acreage is 2 acres as shown on Attachment #6. Section 405.3; 405.4 and 405.5 is shown on Attachment #4 and complies. Fencing shall consist of a six-foot privacy fence surrounding the outdoor recreational area for the dogs. There will be a secured contract with a waste disposal service upon commencement of kennel operation. Daily operations will begin no earlier than 7:30 a.m. and cease no later than 6:00 p.m. to aid with noise and other possible nuisance conditions. The tentative hours of operation are Monday through Friday 7:30 a.m. 5:30 p.m. and Saturday 8:00 a.m. 1:00 p.m. The

hours of operation will assist with the disturbance concerning neighboring landowners. In addition, they will plant trees and shrubbery around and along the outside animal recreation areas as illustrated in Attachment #4. They will obtain and maintain a license issued by the State of Pennsylvania/State Licensing for Dog Boarding Kennels/Dog Law Act of 192 P.L. 784 No. 225 as shown on Attachment #7. The proposed setbacks for the kennel are in the front yard 68 feet, the side yard 100 feet, and the rear yard 700 feet. The lot coverage is 2,880 square feet and the height of the kennel will be 18 feet. Vehicular access will be from an existing driveway of 535 Shultz Road. The parking area will consist of four (4) parallel parking spaces and the total parking area is 48 feet by 38 feet. The proposed use will not impair the integrity of Manor Township Comprehensive Plan. Mr. Schlemmer had questions on Attachment #4 regarding the setbacks and asked for clarification. Mr. Hess stated that the 68 feet is from the building itself and the 100 foot setback is for the recreation area. Mr. Schlemmer asked if the recreation area includes the fenced area and Ms. Hess advised him that it does not include the fenced in area. Ms. Hess stated that the fenced in area is a provision in the event any dog would escape. Mr. Hess stated that the 68 feet plus the 32 feet of the building would add up to 100 feet. Mr. Schlemmer asked if the fence along the front is six feet in height. Ms. Hess stated that the fence is for trash also and there will be a gate to take the trash out and also it is for control to keep any animals out. The fence is not meant for any type of housing of the dogs. Ms. Hess stated that the animal recreation area is a slab at the back of the proposed building. Mr. Schlemmer read Section 302.1 regarding height of fences and walls. Mr. Schlemmer stated that according to Section 302.1, the fence couldnt be more than three feet high in the front yard. Ms. Douglas stated that it looks like everything is enclosed and does that keep the noise inside. Ms. Hess stated yes the noise does stay inside. Ms. Douglas stated that you are saying that the dogs would be out maybe one hour a day at 15 minutes at a time for exercise, etc. and then would be put inside and Ms. Hess stated that was correct. Ms. Douglas stated that there should not be much smell and Ms. Hess stated no with what they are implementing, there would be no smell. Ms. Hess stated that the flooring is a special type of seamless flooring. Ms. Douglas stated that you are surrounding the area with shrubbery and that will help with noise and Ms. Hess stated yes they are considering hemlock or spruce trees. Mr. Granger stated that he is having problems deciphering the drawings presented that are not to scale and there are no elevation plans as required by the Ordinance. Mr. Granger stated that he is looking particularly at Attachment #3 and #4 and is confused. Mr. Granger stated that it was indicated that the animals are totally contained and if that is so, the recreation area is outside of the building. How do they get from inside of the building to the outside of the building? Ms. Hess stated that they take them out. Mr. Hess stated that there are two access doors from the enclosed area to the outside area. Mr. Granger stated that the sketch shows only one access door. Mr. Hess stated that there are three access doors to the rear of the building. Mr. Hess stated that one is an in swinging door that also people can walk out to the outside. Mr. Granger asked how the animals from the front portion of the building get to the recreational area. Mr. Hess pointed out on the drawings how the dogs will be taken to the recreational area. Mr. Granger asked how high the fence would be for the recreation area. Mr. Hess stated that it is a chain link fence that will be six feet high with separate sections in the recreation area that will be accessed by the four doors out the rear. Mr. Granger asked if there were any elevations of the building that shows what it will look like and Mr. Hess stated that they do not have any elevation drawings. Mr. Granger stated that any approvals that the Board gives is in accordance with the testimony provided and what is said will be done is not adequate. We must have something that we know what it will look like and what is going to be there, so if

we approve it and they build it the zoning officer has something to see that the applicant is following the rules that they were approved by. Mr. Granger stated that there are height elevations and they need to be sure that they are met. Mr. Hess stated that the building will be no higher than 18 feet and the zoning allows up to 32 or 35 feet. Mr. Granger asked what spacing is proposed for the tree plantings. Ms. Hess stated that she had contacted someone from Agway and they will give her the proper distance for growing trees. Ms. Hess indicated that the trees would be 6 to 10 feet apart. Mr. Granger read Section 605.3.1A that indicated ground floor plans and elevations of proposed structure is part of the filing requirements. Mr. Schlemmer stated that he is not clear on the parking provided. Ms. Hess stated that four parallel parking spaces are provided. Mr. Schlemmer asked if there would be a handicapped parking space and Ms. Hess stated that they would definitely make sure that there would be one if need be. Mr. Schlemmer had questions on the distance that was shown for the parking spaces. Ms. Hess stated that if there is an issue they could decrease the amount of parking spaces. Mr. Granger asked how many people would be working at the facility and Ms. Hess stated just herself and possibly her husband would help. Mr. Granger asked Bruce Ott questions regarding the rear yard property line. Mr. Granger questioned the height of the fence, the type of fence and the reason for the fence. Ms. Hess stated that she is proposing a stockade fence. Mr. Granger asked if the building would be air-conditioned. Ms. Hess stated that the kennel would be air conditioned and heated. Ms. Granger asked if the recreation area would be cleaned up and Ms. Hess stated yes. Ms. Hess stated that she will keep a trash can outside to scope up waste and will use a high-pressure hose with disinfectant and cleaning solution. Mr. Schlemmer had questions on Attachment #3 regarding the number of doors. Mr. Hess stated that there is one door and the rest are windows. Mr. Schlemmer asked if there would be a walkway. He was advised it would be all macadam. Mr. Granger read Section 605.3.1A and Section 605.3.4 from the Zoning Ordinance. The section indicated approval of any special exception will also bind the use in accordance with submitted site plan, therefore, should a change in a site plan be required as part of the approval of the use the Applicant shall revise the site plan prior to issuance of a zoning permit. Any subsequent change to the use of the subject property not reflected on the original approved site plan shall require the obtainment of another special exception approval. Mr. Granger stated that what the applicant shows is what is approved and if they change it, they must come back to modify it in the future. If things are not shown, it makes it difficult for the Board to give any approval. Mr. McManus stated that the entire property is 13.8 acres and what is the use of the property now? Ms. Hess stated it is a home and Mr. McManus stated it is residential use. Mr. McManus stated that you are asking that the Board view the kennel as an accessory use. Mr. McManus asked if the Applicant is suggesting that a kennel for up to 40 animals is customarily incidental to a single family home. Mr. Hess stated that because of the acreage, normal circumstances, unless you are in commercial district it does happen in other townships that single-family residences do have boarding kennels on their property. Mr. McManus asked why this is not a principle use on the 13.8 acres. Mr. McManus stated is it your testimony a kennel is customarily incidental to the use of the property as a single family detached dwelling and Ms. Hess stated she personally feels this is a unique case. There are not a lot of kennels. She looks at where she is at rural and the farming as an accessory use for their land and she feels this is comparable to that. Mr. McManus stated the ordinance allows for either principle or accessory use and it appears clear that you have room enough to qualify for an additional principles use that may affect setbacks, etc. Mr. McManus stated since Attachment 4A is not to scale you are not suggesting to the Board they can look at that and get a reasonably good idea as to the exact location of that building once you pour the

footers are you? Mr. Hess felt it would be sufficient, because it is marked in footage for all directions. Mr. McManus stated that you do agree that you measured an area of 68 feet that is only half as wide as an area you have also measured as 32 feet and Mr. Hess stated yes. Mr. McManus stated you are showing a building measuring 80x 32 and that same dimension occurs on Attachment #3 that has been referred to that includes the schematic of the floor plan of the building in an isometric form and in a plan form and Mr. Hess stated yes. Mr. McManus stated that is also dimensioned 32x 80 but it appears the outside border contains an area that contains parking and asked if the dimension on that could be clarified? Mr. McManus asked if the 31x 80 building is the dotted line and Mr. Hess stated that was correct. Mr. McManus asked if the recreation area is similar to a runway area or what is referred to as an outside area for exercise or for relieving the animals and Ms. Hess stated yes. Mr. McManus stated that under the terms of the Ordinance that recreation area would also have to be 100 feet from the property line and Mr. Hess stated that was correct. Mr. McManus stated that the dimension does not show that. Mr. McManus stated that once you get a better idea of actual distances with respect to your property and actual building dimensions and areas you intend to use that it is likely that the building will be pushed up the driveway so you can meet some of the setback requirements. Mr. Hess stated that the way the building is drawn the location of the building is not going to be moved. They still meet the minimum setbacks for the front of the building. The only thing that was in discrepancy is the outside recreation area that still complies 100 with the front of the recreation area that is the back of the building. Mr. McManus stated that the ordinance states that the 100 feet will be measured to the outside of that runway area. Mr. McManus stated that it is impossible from the information provided to see how the applicant can comply with dimensional criteria of the zoning ordinance relating to parking areas, parking stall widths, and turn around areas because of the manner in which this is prepared is not necessarily to scale. Mr. Hess agreed with Mr. McManus. Mr. McManus asked what type of sewer system is on the property and Mr. Hess stated that it is a septic system and well water. Mr. McManus asked if there would be any lavatory or sewer facilities in the kennel building and Mr. Hess stated that they were going to have a holding tank. Mr. McManus asked if that would be approved by the sewage enforcement officer and Mr. Hess stated they have not contacted the sewage enforcement officer. Mr. McManus stated that you do wish to have a connection to some sewage disposal system solely for the purposes of the kennel use and Mr. Hess stated correct. Mr. McManus asked if there would be lavatory facilities for people at the kennel and Ms. Hess stated no. Mr. McManus asked if there would be outdoor lighting of this kennel complex and Mr. Hess stated yes. Mr. Hess stated that there would be floodlights on the exterior of the building and a lamppost off the driveway at the entrance to the kennel parking area. There will be sufficient exterior lighting for nighttime use. Mr. McManus asked if any of this lighting would be visible from the neighboring properties. Ms. Hess stated that their kennel would cease its operations at 6 p.m., and as far as lighting goes the only thing visible from the street would be the post lamp. Ms. Hess stated that no one would be able to see any lights that would be out the rear. Ms. Hess stated that there would not be a need for the lights at night because there would be no one in and out of there after 6 p.m. Mr. McManus stated that you are saying the floodlights will be turned off at 6 p.m. Ms. Hess stated that not the lights in the back yard but the front light would not be on. Mr. McManus asked if there would be only dogs and Ms. Hess stated that she would board cats and dogs. Mr. McManus asked if the attachment and the schematic floor plan shown as Attachment #3 are accurately depicting what you want to do. Ms. Hess stated that they intend to do what was presented and it was taken from a book of places that offer sketch plans; it is an animal boarding

book that the sketch was taken from. Mr. McManus asked if the roof would be flat or pitched. Mr. Hess stated that it would be a pitched roof. Mr. McManus asked what the highest point of the roof would be. Mr. Hess stated that it would be 18 feet at the peak. Mr. McManus asked what the distance from the proposed kennel facility and the nearest adjoining home is. Mr. Hess stated approximately 200 feet. Mr. McManus asked if any of the kennel activities will be offensive to neighboring properties by virtue of smell, noise, heat, glare or chemical deposits on the property. Ms. Hess stated that where they live they are flanked by farm fields where liquid manure is spread and no their proposed use will not be offensive. Mr. McManus asked if they would be placing any signs on the property that advertise the kennel. Ms. Hess stated that they would comply with the Ordinance of Manor Township and Mr. Hess stated the sign would be two square feet. Mr. McManus asked if the driveway indicated on Attachment #4 is paved or gravel and Mr. Hess stated that at this point it would be a gravel driveway. Mr. McManus asked if the existing driveway is gravel and Mr. Hess stated it is paved. Ms. McManus asked if the parking area drive and parking area stall would be gravel and Mr. Hess stated correct. Ms. Douglas referred to Attached #2 and asked where Mr. Eck is located. Ms. Hess stated that his house is not the closest house. Ms. Hess stated that the closest house is across the street and diagonal. Mr. Granger referred to Attachment #3 and asked if it was stated the sketch was from a book on dog kennels and this is not a type of facility that is offered by any manufacturer but a schematic from a book and Ms. Hess stated that it is from a magazine. Mr. Granger stated you really do not know if you can provide exactly what is shown and Ms. Hess stated this is a company that offers the blue print. Mr. Granger asked the name of the company and Ms. Hess stated that she does not have it but can furnish it. Mr. Granger stated that the plan shows a bathroom that is in conflict with the answer regarding the sewage system. Ms. Hess stated that it would not be offered to any people and Mr. Granger stated that it requires a sewage system and do you have approval the sewage system can be provided for that. Ms. Hess stated no they had not contacted anyone at this time. They were not intending to include a bathroom there because only the Applicant would be there and she stated she would use the home. Mr. Granger asked if the state requires a lavatory facility and Ms. Hess stated not for this. Mr. McManus stated your testimony is even if the plan shows a bathroom there will not be a bathroom even for employee use and Ms. Hess stated she did not intend to. Clyde Neal, 1802 Hilltop Road, stated it is his understanding there would be no breeding of dogs and Ms. Hess stated that is correct. Tim Eck, 1807 Hilltop Road, asked if a separate well will be used for the kennel and Mr. Hess stated yes. Mr. Eck if there is anything to prevent this from becoming a puppy mill. Ms. Hess stated she has no intention of having a puppy mill. John Brazina asked if there would be a doggie door so the animals can go to the outside area or are they walked out. Ms. Hess stated they would be taken from the kennels to the outside area. Barbara Kauffman was sworn in by the Court Reporter. Ms. Kauffman stated she has been a licensed kennel owner since 1965 and has seen the County go from 10 kennels to over 250 and most of them are puppy mills today. Ms. Kauffman stated the main service she provides is caring for peoples dogs when they go away or emergencies and kennel regulations and kennel facilities have changed over the years. Years ago there were kennels with doors that open and dogs could go in and out. Ms. Kauffman stated dogs are not boarded like that to day. They are boarded very similar to how they are kept at home inside 95 percent of the time and they go outside to relieve themselves and then they go right back in. The dogs boarded are not considered outside dogs because they are all house pets. Ms. Kauffman stated that the kennel is needed and there are thousands of dogs in Manor Township alone and there are only two or three boarding facilities to take care of the animals. People in Manor Township must go somewhere else to board their dogs.

Ms. Kauffman stated that her kennel is set up to board forty (40) dogs at a time. Ms. Hess stated that her mother has a small boarding facility and she is intending a small boarding facility. Mr. McManus asked about the size of Ms. Kauffmans facility and she stated it is 20x 30. Mr. McManus stated that it has a capacity for forty (40) dogs. Mr. McManus stated that they are looking at a proposal for a facility of 32x 80 and what is the capacity of the number of dogs. Ms. Hess stated her mothers facility is set up differently from the proposed facility. Ms. Kauffman has moveable cages that are not kennels. Ms. Hess intends the kennels to be like those on Attachment #3; it shows the dimensions of the kennels as 4x 6. Mr. McManus asked what the capacity of the proposed facility would be and Ms. Hess stated forty (40) dogs maximum. Tim Eck, 1807 Hilltop Road, was sworn in and stated that his main concern is the property values. Mr. Eck stated when approved for boarding animals there is no clear distinction between boarding animals and puppy mills. Mr. Schlemmer stated that Mr. Granger was trying to explain that the Board approves what is in the zoning ordinance nothing more or less. Mr. Schlemmer stated that if it were not asked, even when it was mentioned, how many people would work there, if her husband could not work there. They are asking for a special exception that has very specific requirements attached and Mr. McManus will outline all those items and if deviated from the requirements, Mr. Ott has the authority to act accordingly. Mr. Eck asked if you are saying, for instance, if they sell one dog from the property that would be sufficient reason and Mr. Schlemmer stated that would be a violation of what they asked for. John Brazina was sworn in and stated his concern is with the noise. He works nights and sleeps during the day. Mr. Brazina stated that he had his dog at the kennel and when he pulled up to the kennel and the dogs as soon as they see someone, all start barking because they think they are going home. Mr. Brazina stated that whether they are in a building or not you hear them. Mr. Brazina stated that there are trucks dumping dirt on the property and they come around the corner on Shultz Road at Hilltop Road; that is a bad intersection and with jake brakes and dogs barking he is concerned about the noise. Mr. McManus asked if there was anything else the Applicants wished to present before the hearing was closed. Ms. Hess stated that other than the fact they fully intend to comply with any criteria and requirements that Manor Township has, they have tried to be thoughtful of their neighbors. Mr. Granger stated that the one thing Ms. Hess mentioned was that they intend to meet the Ordinance that does not help the Board make a decision. It is facts and what we are shown. Mr. Granger stated that they need to know what is proposed because whatever the Board approves is what the Applicant must follow. Mr. Granger stated that when they make a decision, the decision would have conditions that must be followed. Ms. Douglas asked the Applicants if they were comfortable with what was presented and if there is any possibility they would feel they want to give more information and present it next month. Mr. Hess stated it would be up to the Board because they do want to comply. Mr. Hess was advised it is not up to the Board it must be the decision of the Applicant. Mr. Hess stated he is comfortable with what they presented. Ms. Hess stated that she wants to know specifically what is needed so it is clear and there is no uncertainty. Ms. Hess was advised that the Board couldnt tell them was needed. Ms. Douglas stated from the Boards questions, perhaps the Applicant could think that there might be a few things that the Board would like to have. The Applicant could make a decision to make another drawing and come back next month and show it to the Board. The Applicants requested a continuation of the hearing and they were advised there is a \$200.00 continuation fee involved.

The hearing is continued to May 3, 2006 at the request of the Applicants. The hearing was

adjourned at 8:50 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Meeting - WalMart
04/18/06

DRAFT

Zoning Hearing Board Minutes

Tuesday, April 18, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Tuesday, April 18, 2006 at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: James McManus and Bruce Ott Visitors Present: See attached list.

Minutes Mr. Granger asked if there were any additions or corrections to the March 14, 2006 minutes. There were no additions or corrections and the minutes stand approved as presented.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the March 14, 2006 meeting. Mr. McManus stated that this hearing is continued from March 14, 2006. The next scheduled hearing date is May 25 at 7:00 p.m. in this building and an additional hearing, if necessary, will be on June 19 at 7:00 p.m. in this building. The hearing concluded last month with the completion of the direct cross-examination of Ronald Savage. Ms. Smith called Emerik Martin who was sworn in. Mr. Martin stated that he is the Director of Electrical Engineering, since September of 1999, at Weber Smith Associates in Lancaster. Mr. Martin described his firm and the type of clientele they serve. Mr. Martin indicated that he has been a professional electrical engineer since March 1989. Mr. Martin listed his educational background and organizations he is involved with. Mr. Martins resume was marked FAID Exhibit #24. Ms. Smith asked the Board to accept Mr. Martin as an expert witness in power distribution, lighting, emergency power generation and security. Mr. Kaplin asked for an offer of proof as to what Mr. Martin will testify to. Ms. Smith stated that Mr. Martin would be testifying specifically to the lighting plans submitted in Applicants Exhibit #5 and in Applicants Exhibit #33 and the review of the plan as to compliance with the standards with respect to lighting. Mr. Kaplin asked Mr. Martin what he reviewed in preparing for his

testimony. Mr. Martin stated that he reviewed CP-12 Sheets 1, 2 & 3, CP-15 Sheet 1 of 3, and the Manor Township Zoning Ordinance. Mr. Kaplin asked in reviewing the plans what analysis was performed. Mr. Martin stated that he reviewed the information on the plan and checked to see how accurate it was versus the quantity of light fixtures shown. Mr. Martin stated that he went through the cataloged data noted on CP-12 Sheet 2 of 3 and compared how that data matched up with the cataloged data that they had access to. Mr. Kaplin asked Mr. Martin if he prepared his own plan for lighting the proposed Wal-Mart center and Mr. Martin stated no. Mr. Kaplin asked if he ran the plan with the lights or the property without the lights through some type of computer program to determine what is the appropriate lighting. Mr. Martin stated that they did a comparison calculation using a software package called Light Pro. Mr. Martin stated that this is a software package for indoor or outdoor lighting. Mr. Martin stated that they used the software to see how their program would replicate what was indicated on the Applicants plan. Mr. Martin stated that they compared the calculations that the program generated to the calculations on the sheet. Mr. Kaplin asked Mr. Martin if he prepared a plan that he was going to present. Mr. Martin indicated that he had not prepared a plan. Mr. Kaplin had objections to the witness for a variety of reasons. Mr. Kaplin stated that he is qualified as an electrical engineer but not qualified to give the Board anything that is relevant to this application; Mr. Kaplin gave to the Board the Commonwealth Court March 30, 2006 Opinion in the case of Enray Appeal of Edwin R. Thompson et al. The Board accepted the witness as an expert for the purposes offered. Ms. Smith stated that for clarification, the reference to CP-12 Sheet 2 of 3 is Applicants Exhibit #5. Mr. Martin stated that the purpose of his testimony is to review what was submitted on the lighting plan (CP-12) and the revised site plan (CP-15) and to point out where it is or is not compliant with the Zoning Ordinance. Mr. Martin stated that he would offer an opinion on the impact generated by the lighting associated with a 24-hour operation as opposed to an operation during normal business hours. Mr. Martin described the lighting that is in the area at the present time. Mr. Martin stated that there were photographs taken of the area during daylight hours, evening hours, and nighttime hours by two gentlemen in his office under Mr. Martins direction. The photographs were taken during the course of several days. The photographs were marked FAID Exhibit #25A G. Mr. Martin went through the photographs and indicated the location from which each photograph was taken as follows: Photograph A was taken looking south on South Centerville Road and shows a single street light on the third power pole; Photograph B was taken from the rear of the property between the Wal-Mart property and residences along Kimberly Road. There were no lights shown; Photograph C was taken looking northward from the Sutherland neighborhood area in the evening. There were no lights shown; Photograph D was taken looking south from the Woods Edge Park and pond. There were no lights shown; Photograph E was taken from the Woods Edge neighborhood. It shows the lamp style of the streetlights in this neighborhood; Photograph F was taken looking south on Centerville Road. It was taken near sunset and the only light shown is the street light on the power pole; Photograph G was taken and is basically the same as Photograph F, except it is taken at nighttime and the streetlight is the only light. Ms. Smith questioned Mr. Martin on Applicant Exhibit #5, which is the lighting plan. Mr. Martin stated that from the fixtures and the locations that are indicated, the layout plan would represent what would normally be expected for a large scale retail store. Mr. Martin described the type of light standards that were indicated on the plan and stated that some of the standards have 4 fixtures, some have 2 fixtures, and some standards have single fixtures. Mr. Martin described the pole types and how many of each style is indicated on the plan. Ms. Smith questioned Mr. Martin on the lighting fixtures and the amount of light generated by the

fixtures. Ms. Smith asked Mr. Martin if there was any information provided on the lighting plan with respect to the illumination of signs for the project and Mr. Martin stated no. Mr. Kaplin had objections. Ms. Smith questioned Mr. Martin regarding the lights that may emanate from the building and asked Mr. Martin if he had observed any other Wal-Mart facilities with interior lights that emanate from the building. Mr. Kaplin had objections. Mr. Martin stated that he had observed other Wal-Mart facilities that had skylights and they are a source of light at nighttime. Mr. Martin indicated that the plan did not show any information regarding lighting through a skylight. Mr. Martin indicated that this plan did not indicate hours of operation. He continued by stating that the plan did not have a proposal to reduce lighting at reduced commercial hours of operation. Ms. Smith asked Mr. Martin if in applying the standards of the Zoning Ordinance, did he identify any omissions in the information that would make it difficult for him to come to a conclusion that the plan is in full compliance. Mr. Martin stated that there was lack of information regarding the wall-mounted fixture; there was no revised lighting plan with the revised site plan and there were differences in the fixture locations and quantities between the two plans. There was no information provided on the plan for a maintenance schedule for the light fixtures. Mr. Kaplin had objections. Mr. Martin listed the sections of the Ordinance that he felt were applicable to this plan; he listed each section indicating whether the plan was in compliance. The sections Mr. Martin listed were as follows: Sections 312.13; 313.9; 315.4 Subparagraphs 1,17,19,24,31,32,33,34; 315 Table 1; 448.14; 448.15 Paragraph 8; 605.3.2b & 2c. Mr. Kaplin proceeded with cross-examination. Mr. Kaplin asked Mr. Martin how many times that he was at the site; he replied that he was at the site on each of the last four meeting dates in January, February, March and April. Mr. Martin stated that he was not at the site when the photographs were taken. Mr. Kaplin asked Mr. Martin if he directed what photographs were to be taken. Mr. Martin stated that his employees from the office were under his supervision and were directed to go out and take photographs from different locations based on looking at the site plan of the area. Mr. Kaplin questioned Mr. Martin as to what is seen from the Wal-Mart property regarding the homes in the Woods Edge Development. Mr. Kaplin asked Mr. Martin how many homes there are in the Woods Edge Development and the amount of lights that are seen from the development. Mr. Kaplin questioned Mr. Martin regarding the program he used called Lightpro. Mr. Kaplin asked Mr. Martin if he has done land development work in his professional practice and Mr. Martin stated that he has not. Ms. Smith had objections. Mr. Kaplin asked Mr. Martin if he ever is involved in the special exception process. Mr. Martin stated that he would get involved in the process if there is specific needs electrically, be it power, routing, electrical utilities, or lighting that would need to be included as part of the submission. Mr. Kaplin asked Mr. Martin if he had ever prepared a lighting plan for submission in a conditional use process. Mr. Martin stated that he prepared plans for permit applications and did not know if any of that would have been used for a special exception use process. Mr. Kaplin asked Mr. Martin how long he has been involved in this application and Mr. Martin stated since approximately September of 2004. Mr. Kaplin asked Mr. Martin if he had stated that this plan violates the specific Ordinance requirements and Mr. Martin stated that he did not. Ms. Smith had redirect. Ms. Smith questioned Mr. Martin on the requirements of the Ordinance and whether, in Mr. Martins opinion, the applicant complies. Mr. Martin stated that it is his opinion that if the same owner does not own the property that contains the access drive to Columbia Avenue as the proposed Wal-Mart property, then the lighting plan does not comply according to Section 448.14. Ms. Smith asked Mr. Martin if he had an opinion on whether the Applicant met the requirement relating to the lighting impact that was described. Mr. Martin stated that since

not all the fixtures are shown on the plan and the hours of operation are unknown, it is difficult to identify what items would provide the impact and how they could be mitigated. Mr. Kaplin asked Mr. Martin questions regarding the Columbia Avenue access drive. Mr. Kaplin asked Mr. Martin if lighting standards are shown along the access drive and Mr. Martin stated there are lighting standards. Mr. Kaplin asked Mr. Martin if the light standards violate the candlepower limitations of the Ordinance and Mr. Martin stated that they do based on his understanding that the particular piece of property being used for the access drive is not associated with the Wal-Mart tract. Mr. Kaplin asked Mr. Martin that if the access drive were part of the Wal-Mart tract, is it true that the candlepower limitations of the Ordinance would not be violated. Mr. Martin stated that based on that assumption, the answer is yes. Mr. Kaplin asked Mr. Martin who told him the access drive was not part of the Wal-Mart property. Mr. Martin stated that it was a variety of people associated with FAID including Susan Smith, Harry Roth and Jim Huber. Mr. Kaplin asked Mr. Martin if he examined the subdivision plan that was approved and recorded with regard to the subdivision of the Wal-Mart property from the rest of the Murry/Sher-Wal property. Mr. Kaplin referred to Applicants Exhibit #6. Mr. Martin stated that he did not. Peter Stillwell, 101 Stone Creek Road, asked if Wal-Mart prepared a study examining any light pollution on the community immediately adjacent to the proposed Wal-Mart Store and Mr. Martin stated that he was not aware of any study. Mr. Stillwell asked Mr. Martin how many candle foot power is the estimated output at night from this site? Mr. Kaplin had objections. Mr. Martin stated that it would vary as to where you were on the site. Mr. Martin stated that it would be between 4 and 8 candle foot power. Mr. Stillwell stated that if this site was adjacent to a home, would that potentially affect their ability to sleep if their windows were not properly covered. Mr. Martin stated that it would depend on various factors such as the individual; the location of bedroom, whether they have shades, and what type of shrubbery is in the yard, trees, etc. as to the impact on the home. Mr. Stillwell asked Mr. Martin that in his study of lighting, if he ever read anything about individuals who undergo sleep deprivation because of a large amount of light and the problems relating to that. Mr. Kaplin had objections. Mr. Martin stated that he has not read any research. Mr. Stillwell asked Mr. Martin if he is familiar with the effects of large amount of light on the adjacent waterfowl and nesting animals and their nocturnal habits. Mr. Martin stated that it could have an impact dependent on the type waterfowl. Mr. Stillwell stated that if you would take a light meter and you went to another Wal-Mart site and you walked a certain distance away from the site, is there a level that is acceptable for the adjacent community. Mr. Martin stated that the Ordinance requirement in this particular case is one-foot candle. As you get further away from the site, you would have a difficult time measuring significant amounts of light with a light meter. Mr. Stillwell asked Mr. Martin that if you were standing at the ponds, would the amount of light coming from that store affect the ability to see the stars and Mr. Martin stated he would say yes. Dan Nicholas, 181 Cooper Avenue, asked if it has been taken into account lighting that illuminates the building and may be reflected from building. Mr. Martin stated to the best of his knowledge there is no indication that has been taken into account.

There was a ten-minute recess.

Ms. Smith called Harry B. Roth who was sworn in. Mr. Roth stated that he is a community planner and consultant since 1978. Mr. Roth listed his qualifications, his education background, services he provided and indicated the type of clients he has worked for. Mr. Roths resume was

marked FAID Exhibit #26. Ms. Smith offered Mr. Roth as an expert witness in planning and zoning ordinance administration and content. Ms. Smith stated that Mr. Roth would be testifying regarding the relationship between the requirements that appear in the Zoning Ordinance as applicable to a special exception and specifically to this plan. He will also address matters relating to plan compliance. The Board accepted Mr. Roth as an expert witness for the purposes offered. Mr. Roth stated that he reviewed the applicants submission materials both the original and revised plan, transcripts of previous hearings, attended a number of hearings, reviewed the Zoning Ordinance, looked at the Townships Comprehensive Plan, visited the site and looked an aerial photograph of the site. Mr. Roth stated that Manor Township is one of his clients. He worked with them extensively several years ago in developing their Comprehensive Recreation Open Space Plan and also their Zoning Ordinance. Mr. Roth recognized the Zoning Ordinance has been amended since he worked on it. Mr. Roth described his testimony as a defense of the Township Zoning Ordinance. Mr. Roth stated that he believes that the Township Ordinance establishes a clear process by which this use should be approved and clear requirements for the applicant to come in and demonstrate that compliance. Mr. Roth testified to the structure and content of the Zoning Ordinance, organization, planning concept that are requested in the objective requirements. Mr. Roth stated that the Ordinance establishes three different types of uses permitted in the Township and they are permitted uses, special exceptions and conditional uses. Mr. Kaplin had objections. Ms. Smith asked if the Ordinance by its structure or specific requirements address the fit between the commercial and residential uses. Mr. Kaplin had objections. Mr. Roth stated that it does provide requirements to fit commercial and residential development together. Many municipalities of Lancaster County have been emphasizing the need to protect farmland and therefore better utilize the land in the urban growth area. As a result, the planning philosophies that have been promoted and advocated by the Lancaster County Planning Commission, suggest that municipality adopt what is called a staged growth approach, meaning that the municipality projects growth in a community and it sets aside specific areas within that community where that growth should be targeted for. Mr. Roth stated that the effect of trying to preserve farmland forces land uses to locate close to one another. Mr. Roth identified the filing requirements for special exception applications as listed in 605.3.1; 702.2 and 702.3. Mr. Roth identified the deficiencies in the application as defined in Section 207 Article 1, 2, 4, 6 and 7. Mr. Roth stated that the Zoning Ordinance contains objective requirements as listed in Section 448.10; 448.15.4 and 448.15.8. Mr. Roth stated that he does not believe the applicant satisfied the objective requirements based on the deficiencies that the previous experts outlined and he described the deficiencies as related to Section 448. Mr. Roth stated that in Section 448.10, it allows one traffic access per road frontage. Mr. Roth stated that the Applicants plan shows one road frontage along South Centerville Road and they are proposing a second access location off of Columbia Avenue. Mr. Roth talked about the lighting plan proposed. He also stated that the access drive that connects Wal-Mart to Columbia Avenue crosses over another lot, so there is no way that the drive can be set back 100 feet from the property line. Mr. Roth stated that it crosses the adjoining Lot #2 and is within several feet of adjoining Lot #1. Mr. Roth also talked about the environmental impacts and read from the application the narrative that accompanied the special exception application. Mr. Roth went through the application and indicated what he felt was missing in the application in order to show compliance with the Ordinance. Mr. Kaplin had objections. Mr. Roth felt that information provided was insufficient to evaluate the proposed plan and he felt that the applicant has not met their proof of burden. Mr. Roth explained the subjective standards and indicated that applicant

did not comply with all the subjective standards as found in Section 604.3.2. Mr. Roth listed the following sections that he believes the applicant has not complied with including the following sections: 605.2.2a, 605.3.2.b, 605.3.2.c, 605.3.2.d, 605.3.2.f, and 605.2.g. After extensive testimony, Mr. Roth stated that in his opinion, the Applicant has failed to comply with the general requirements attached to the application for granting all special exceptions. Mr. Roth stated that he did not know the hours of operation of the store, as they were not indicated on the application. Mr. Roth commented on the Wal-Mart Super Centers in general. Mr. Kaplin proceeded with cross-examination. Mr. Kaplin asked Mr. Roth in what section of the Ordinance are commercial activities in the Township and hours of operation limited. Mr. Roth stated that other than the conditions that would be attached to any approval of the special exception, there are none. Mr. Roth read Section 605.3.3 regarding the conditions that could be part of a decision. Mr. Kaplin also questioned Mr. Roth on his testimony regarding that no topography was shown. Mr. Kaplin referred to Applicants Exhibit #6, which was the subdivision plan for Lot #4; this is a recorded subdivision plan indicating it shows topography. Mr. Roth stated that the plan does not show proposed contours. Mr. Kaplin questioned Mr. Roth regarding the access drive from Columbia Avenue. Mr. Kaplin indicated that Mr. Roth stated that in order to get a special exception, you have to submit everything needed for a building permit application. Mr. Roth stated that is what the Zoning Ordinance says. Mr. Kaplin stated in order to get a building permit you have to get a land development plan approved in advance. Mr. Kaplin stated that in order to get a land development plan approved you must go to the LCPC and have that land development plan approved. Mr. Roth stated yes. Mr. Kaplin stated that if he has an application in for a use that requires a special exception, he can not go to the LCPC go get a land development plan approved until he has the special exception approved. Mr. Roth stated that he believes that is probably true. Mr. Kaplin asked how the applicant can apply for a special exception use with all the things he needs for a building permit application when he cannot get the land development approval from LCPC until he gets the special exception approved. Mr. Roth stated that he does not know if the zoning permit requires a submission of the subdivision and land development plan.

The hearing concluded during cross-examination of Mr. Roth by Mr. Kaplin. This hearing will be continued to May 25 at 7:00 p.m. in this building.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer

Zoning Hearing Board Meeting

05/03/06

Zoning Hearing Board Agenda

Wednesday, May 3, 2006 Time: 7:00 P.M.

1. Introduction of Board Members

2. Pledge of Allegiance to the Flag

3. Approve Minutes of April 5, 2006 Meeting

4. Old Business Case #1-06 The application of Frank G. & Shana Hess property located at 535 Shultz Road, Washington Boro, PA 17582. The Applicant is requesting a special exception of Section 202.3.1 Kennels in accordance with Section 405 of the Manor Township Zoning Ordinance. The applicant wishes to operate a kennel on their property. The property is located in the Rural (R) Zoning District. This hearing is continued from the April 5, 2006 meeting.

5. Adjourn

DRAFT Zoning Hearing Board Minutes

Wednesday, May 3, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Wednesday, May 3, 2006 at 7:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA 17603. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Members Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: Bruce Ott and James R. McManus Visitors Present: Shana Hess, 535 Shultz Road John Kain, 536 Shultz Rd Bob Silar, 544 Shultz Rd Tim Eck, 1807 Hilltop Rd John Brazina, 549 Shultz Rd John S. May, 100 Red Fox Rd

Mr. Granger introduced the Zoning Hearing Board Members, the solicitor, the zoning officer, the court reporter and the recording secretary.

Minutes Mr. Granger indicated Barbara Kauffman and Shana Hess should be added to the visitors list. There were no other corrections and the minutes stand approved as amended.

Old Business Case #1-06 The application of Frank G. & Shana Hess property located at 535 Shultz Road, Washington Boro, PA 17582. The Applicant is requesting a special exception of Section 202.3.1 Kennels in accordance with Section 405 of the Manor Township Zoning Ordinance. The applicant wishes to operate a kennel on their property. The property is located in the Rural (R) Zoning District. This hearing is continued from the April 5, 2006 meeting. Mr. Granger turned the hearing over to Mr. McManus. Mr. McManus stated this hearing is a continuation from the hearing held on April 5, 2006 and that hearing was continued at the request of the Applicants. At that time, there was some concern whether or not the information supplied by the Applicants was specific enough for the Board to determine the compliance with the specific terms of the Zoning Ordinance. Mr. McManus asked Ms. Hess to proceed. Ms. Hess gave the Board a letter indicating they were withdrawing their application at this time due to extenuating circumstances. The letter was marked Exhibit #6. Mr. McManus stated you are withdrawing your application without prejudice and are reserving the right to reapply at some future date and Ms. Hess stated that was correct. Mr. McManus stated the Board would not

prepare any decision or findings of fact based upon this withdrawal.

There being no further business the meeting was adjourned at 7:05 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer

Zoning Hearing Board Meeting

05/03/06

Zoning Hearing Board Agenda

Wednesday, May 3, 2006 Time: 7:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes of April 5, 2006 Meeting
4. Old Business Case #1-06 The application of Frank G. & Shana Hess property located at 535 Shultz Road, Washington Boro, PA 17582. The Applicant is requesting a special exception of Section 202.3.1 Kennels in accordance with Section 405 of the Manor Township Zoning Ordinance. The applicant wishes to operate a kennel on their property. The property is located in the Rural (R) Zoning District. This hearing is continued from the April 5, 2006 meeting.
5. Adjourn

DRAFT Zoning Hearing Board Minutes

Wednesday, May 3, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Wednesday, May 3, 2006 at 7:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA 17603. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Members Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: Bruce Ott and James R. McManus Visitors Present: Shana Hess, 535 Shultz Road John Kain, 536 Shultz Rd Bob Silar, 544 Shultz Rd Tim Eck, 1807 Hilltop Rd John Brazina, 549 Shultz Rd John S. May, 100 Red Fox Rd

Mr. Granger introduced the Zoning Hearing Board Members, the solicitor, the zoning officer, the court reporter and the recording secretary.

Minutes Mr. Granger indicated Barbara Kauffman and Shana Hess should be added to the visitors list. There were no other corrections and the minutes stand approved as admended.

Old Business Case #1-06 The application of Frank G. & Shana Hess property located at 535 Shultz Road, Washington Boro, PA 17582. The Applicant is requesting a special exception of Section 202.3.1 Kennels in accordance with Section 405 of the Manor Township Zoning Ordinance. The applicant wishes to operate a kennel on their property. The property is located in the Rural (R) Zoning District. This hearing is continued from the April 5, 2006 meeting. Mr. Granger turned the hearing over to Mr. McManus. Mr. McManus stated this hearing is a continuation from the hearing held on April 5, 2006 and that hearing was continued at the request of the Applicants. At that time, there was some concern whether or not the information supplied by the Applicants was specific enough for the Board to determine the compliance with the specific terms of the Zoning Ordinance. Mr. McManus asked Ms. Hess to proceed. Ms. Hess gave the Board a letter indicating they were withdrawing their application at this time due to extenuating circumstances. The letter was marked Exhibit #6. Mr. McManus stated you are withdrawing your application without prejudice and are reserving the right to reapply at some future date and Ms. Hess stated that was correct. Mr. McManus stated the Board would not prepare any decision or findings of fact based upon this withdrawal.

There being no further business the meeting was adjourned at 7:05 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Meeting - WalMart
05/25/06

Zoning Hearing Board Agenda

Thursday, May 25, 2006 Time: 7:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes from April 18, 2006 meeting
4. Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the April 18, 2006 meeting.

DRAFT Zoning Hearing Board Minutes

Thursday, May 25, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Thursday, May 25, 2006 at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger called the meeting to order at 7:20 p.m. and led the Pledge of Allegiance to the Flag.

Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: James McManus, Bruce Ott and Barry Smith Visitors Present: See attached list.

Minutes Mr. Granger stated the members of the Board received draft minutes from the April 18, 2006 and they have been posted in the Township Office. Mr. Granger asked if there were any corrections or additions. The minutes stand approved as submitted.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the April 18, 2006 meeting. The meeting was turned over to Mr. McManus. Mr. McManus stated that this hearing is a continuation of the last hearing on this matter that was held April 18, 2006. The time, date, and place of this hearing were announced prior to the conclusion of the April 18th hearing. The April 18th hearing ended during the cross-examination of FAID witness, Harry Roth, by Mr. Kaplin. Mr. Kaplin proceeded with his cross-examination of Mr. Roth. Mr. Kaplin stated that at the end of the last hearing they were discussing the requirements of the Manor Township Zoning Ordinance with regard to what is required to be submitted with an application for a special exception in Manor Township. Mr. Roth indicated that he recalled the discussion. Mr. Kaplin stated that Mr. Roth indicated Wal-Marts application was defective because the zoning ordinance requires that such an application contain all the information required for the submission of a zoning application and that Wal-Marts application did not contain all of the information required for a zoning permit application. Mr. Kaplan asked Mr. Roth if that was his position. Mr. Roth stated that is part of it. Mr. Kaplin asked if what he said is correct and Mr. Roth stated no. Mr. Roth stated that he indicated the application was defective for any number of deficiencies not just those relating to the submission of materials associated for a zoning permit. Mr. Kaplin stated that you did say that one of the defects with Wal-Marts special exception application was that it did not contain all of the information required for a zoning permit application. Mr. Roth stated he is not sure that he said that. Mr. Roth stated that he said the application had to submit information necessary to demonstrate compliance with all applicable provision of the zoning ordinance. Mr. Kaplin stated that Mr. Roth believed that the Manor Township Zoning Ordinance requires applicants for zoning permits for commercial uses to submit, among other things; fully engineered land development plans and Mr. Roth stated that was not his position. Mr. Kaplin stated that Wal-Mart does not have to submit a fully engineered land development plan in connection with its special exception application and Mr. Roth stated that was correct. Ms. Smith had objections. Mr. Kaplin referred to Mr. Roths resume regarding drafting of zoning ordinances and asked if he

is familiar with the requirements of Pennsylvania Law with regard to submission, approval, and review of special exception applications. Mr. Roth stated that he is not a lawyer; he is a planner. Mr. Roth stated that his work is always subject to review by municipal solicitors, so it is his job to work with local officials to devise standards and review processes by which they can make sure land uses are compatible with adjoining properties in the context of their plan. Mr. Roth stated that he is not an attorney and not able to have ordinances adopted without review by municipal solicitors. Mr. Kaplin asked Mr. Roth if he reads zoning cases and Mr. Roth stated occasionally. Mr. Roth stated that he relies on municipal solicitors and his professional organizations to keep him up to date of relevant findings. Mr. Kaplin named some cases and asked Mr. Roth if he read them. Mr. Roth stated that he does not remember names. Mr. Kaplin had a copy of the Commonwealth Courts March 30, 2006 decision on the Enray Appeal of Edward R. Thompson and turned to page 10 of that opinion. Ms. Smith had objections. Mr. Kaplin asked Mr. Roth if he would agree that generally satisfying the criteria for a special exception is just one step of the subdivision approval process and the subdivision approval for land development cannot be granted until the special exception use is first obtained. Mr. Roth asked Mr. Kaplin if he was talking about subdivision or land development. Mr. Kaplin stated that he was referring to land development. Mr. Roth stated that his statement was true. Mr. Kaplin asked if it is true that special exception proceedings only involve the proposed use of the land and do not involve the particular details of the design of the proposed development. Mr. Roth stated that he would disagree based upon the requirements of the zoning ordinance. Mr. Kaplin asked Mr. Roth about the requirements of the law. Ms. Smith had objections. Mr. Roth stated that he believes that a special exception must demonstrate compliance with technical requirements of the zoning ordinance, many of which deal with issues of design that apparently determines compatibility. Mr. Kaplin stated that his statement was, do special exception proceedings only involve the proposed use of the land and do not involve the particular details of the design of the development? He asked Mr. Roth if he agreed that is an accurate statement of the law. Mr. Roth stated no based on common practice and the way in which special exceptions have been approved. Mr. Kaplin asked if it not true that the law is that even if the detailed design information such as floor plans are required by the zoning ordinance, this information is not relevant to the consideration of a special exception. Ms. Smith had objections. Mr. Roth asked Mr. Kaplin how municipalities determines the number of parking spaces required for a building unless they know how many square feet each of the uses within that building occupy. . Kaplin repeated his question and Mr. Roth stated he did not know. Mr. Kaplin stated Mr. Roth said in his direct testimony that an applicant for special exception is required to affirmatively demonstrate compliance with the general criteria applicable to all special exceptions contained in Section 605.3.2 of the zoning ordinance and Mr. Roth stated he is not sure he used the word affirmatively. Mr. Roth stated it is a requirement of the zoning ordinance that the applicant provide information on each of those criteria as to how their proposal will comply. Mr. Kaplin asked Mr. Roth if he was familiar with the Commonwealth Courts decision of a case in 2001 and Mr. Roth stated he couldnt state if he is familiar with it. Mr. Kaplin read a exert from the decision and asked if in Mr. Roths opinion the statement is accurate in the procedures that are required under Pennsylvania Law with regard to general versus specific criteria. Mr. Roth stated it is his understanding. Mr. Kaplin stated based on that decision Wal-Mart is not required to demonstrate compliance with the general criteria applicable to all special exception uses contained in Section 605.3.2 of the zoning ordinance? Mr. Roth stated only if they comply with all the technical requirements of the zoning ordinance. Mr. Roth listed the following

requirements: parking lot design standards, the screening, the lighting, the landscaping, all of those features that make land use a good neighbor. Mr. Kaplin stated Wal-Mart does not have to demonstrate that it is compatible with the neighborhood other than to demonstrate compliance with the criteria just listed? Mr. Roth stated he believes they have an obligation to present evidence that burden of proof shifts to the opposing parties once you have demonstrated complete compliance with the technical requirements of the zoning ordinance. Mr. Kaplin stated Mr. Roth testified it is incumbent upon Wal-Mart to convince the community that the development would be of benefit to the community. Mr. Roth stated they missed an opportunity to do that. Mr. Kaplin asked Mr. Roth if his testimony is that Wal-Mart is not required to convince the community that the development would be a benefit but they missed an opportunity and Mr. Roth stated that was correct. Mr. Kaplin questioned Mr. Roth regarding whether Wal-Mart has the right under the Manor Township Zoning Ordinance to create an access to the property from Columbia Avenue through an easement over an adjacent property. Mr. Kaplin stated he understands it is Mr. Roth's position that Section 448.10 of the Zoning Ordinance prohibits Wal-Mart from creating an access to its property from Columbia Avenue. Mr. Roth stated he did not say that but stated the ordinance requires one access drive per road frontage. Ms. Smith had objections. Mr. Kaplin asked Mr. Roth if it is his position that Wal-Mart is not permitted to have an access through its property from Columbia Avenue. Mr. Roth stated that is the zoning ordinance position. Mr. Kaplin read Section 448.10 and stated this section says that Wal-Mart cannot have more than one access on each road frontage and Mr. Roth stated the ordinance speaks for itself. Mr. Kaplin stated this section does not state that a lot cannot have an access onto a public road unless it owns frontage along that road and Mr. Roth agreed it does not say that. Mr. Kaplin stated it does not state in this section that two lots cannot share a common access onto a public road and Mr. Roth agreed that is what it said. Mr. Kaplin stated from a planning prospective shared accesses would be desirable as opposed to a separate access onto a busy road for each of those lots and Mr. Roth stated generally speaking that is accurate. Mr. Kaplin stated in order for there to be a shared access by two uses the access would have to be created on one lot and the other lot or lots would have to have an easement over that access area in order for it to work and Mr. Roth agreed. Mr. Kaplin stated that Wal-Mart has an access easement over one of the lots on Columbia Avenue providing an access easement to the Wal-Mart property that is setback. Mr. Roth stated that is not correct, because they have an application for a shopping center with a part of the shopping center crossing a property that is not part of the shopping center. Mr. Kaplin stated that he is asking if they have an access easement over a lot that fronts on Columbia Avenue giving access by easement to the Wal-Mart lot in the back. Mr. Roth stated that is accurate. Mr. Kaplin stated that the shared access that is on the subdivision plan was approved by the LCPC when it approved the subdivision plan that created the Wal-Mart lot. Mr. Roth stated the subdivision plan was approved for any number of commercial land uses. Mr. Kaplin stated that it was approved for the Wal-Mart subdivision and Mr. Roth stated that it was approved for the subdivision of a piece of property not for the proposed Wal-Mart. Mr. Kaplin stated that it created the shared access by easement to Columbia Avenue and Mr. Roth stated yes. Ms. Smith had re-directed for Mr. Roth. Ms. Smith stated that there were some questions about the hours of operation and the question was asked whether the ordinance contains hours of operation. Mr. Roth stated that he recalled the questions. Mr. Kaplin had objections. Mr. Roth stated that he believed his answer was that there is no specific requirement in the zoning ordinance that limits the hours of operation for the proposed use; however, there is a section that grants the authority to the Zoning Hearing Board as part of the

approval of a special exception to attach reasonable conditions to protect the health, safety and welfare of the community. It is under those powers that you have the opportunity. Mr. Kaplin had objections. Ms. Smith asked that if in Mr. Roth's opinion, is the Board in a position to pass conditions when it does not know specifically what the intended hours of operation for the use will be. Mr. Kaplin had objections. Mr. Roth stated that he believed that if the Board is convinced there is testimony on the record that the proposed hours of operation would in some way be detrimental to the public health, safety and welfare, the Board would have the ability to do so in terms of the zoning ordinance. Ms. Smith asked Mr. Roth if in his experience has he seen or proposed ordinances that incorporate standards by reference. Mr. Roth stated yes. Ms. Smith asked Mr. Roth if it is a common practice. Mr. Roth stated that it is a common practice. Ms. Smith asked why references in zoning ordinances are incorporated. Mr. Roth stated that otherwise you would have zoning ordinances that are one thousand (1,000) pages long. It is easier to list one set of standards within one location within the zoning ordinance and then merely cross-reference those standards. Ms. Smith asked Mr. Roth if he is a member of the Pennsylvania Planning Association. Mr. Roth stated that he is a member. Ms. Smith stated as a member of the PPA do you have access to its web site. Mr. Roth stated yes. Ms. Smith asked Mr. Roth that as part of its web site, does the PPA publish decisions and summaries of case laws. Mr. Roth stated yes. Ms. Smith asked if Mr. Roth reviews the decisions and Mr. Roth stated yes. Ms. Smith asked if the names of the cases are important to Mr. Roth when he reviews them and Mr. Roth stated he does not pay attention to the names; he is only concerned with what precedences are set. Ms. Smith asked if Mr. Roth attended the annual conference of the PA Planning Association. Mr. Roth stated not regularly. Ms. Smith asked if he attended the association land use summary. Mr. Kaplin had objections. Mr. Roth stated that he does attend those sessions to stay on top of current thinking and policies. Jack Kenneff called Vincent Wayne to testify. He was sworn in. Mr. Wayne stated that Buchart-Horn, 445 W. Philadelphia Street, York, PA, employs him as a civil engineer. Mr. Wayne listed his educational background and his work experience. Mr. Kenneff offered Mr. Wayne as an expert witness in civil engineering capable of rendering opinions on land development plans and zoning issues. He asked the Board to accept Mr. Wayne for purposes offered. The Board accepted Mr. Wayne as an expert witness. Mr. Kenneff asked Mr. Wayne if he had examined Applicants Exhibit #7 which is the easement over Lot 2. Mr. Wayne stated he had examined the plan. Mr. Kenneff asked if he examined Applicants Exhibit #33, which is the current site plan for the Wal-Mart project. Mr. Wayne stated he did look at Exhibit #33. Mr. Wayne pointed out the location of the easement that gains access to the Wal-Mart site from Columbia Avenue on Applicants Exhibit #33. Mr. Wayne indicated that the easement is not part of the Wal-Mart lot site. Mr. Wayne indicated that he is familiar with the zoning ordinance provision that applies to the easement. Mr. Kenneff read Section 448.15.4 of the Manor Township Zoning Ordinance. Mr. Kenneff asked Mr. Wayne if he had formed an opinion with a reasonable degree of certainty in his field regarding the distance of the access drive as described on Exhibit #7 and as depicted on Exhibit #33 to the property line for Lot #1 as depicted on Exhibit #33. Mr. Wayne stated yes he had formed an opinion. Mr. Wayne stated that he scaled the dimension from the western property line of Lot #1 to the edge of the cartway from the access drive and it is approximately fifteen (15) feet. Mr. Kenneff asked as a result of that measurement and your calculation of it, have you formed an opinion with a reasonable degree of certainty in your field as to whether Wal-Mart is in compliance with Section 448.15.4. Mr. Wayne stated that he would say they are not in compliance. Mr. Kenneff asked Mr. Wayne if he reviewed the zoning ordinance regarding the access drive during the

course of his review of the subdivision plan dated June 13, 2003 submitted by Murry Companies/Sher-Wal and Mr. Wayne stated that he did not. Mr. Kenneff asked Mr. Wayne if he was presented with that plan for review and Mr. Wayne stated yes. Mr. Kenneff asked Mr. Wayne if he reviewed it as it applies to the zoning ordinance and Mr. Wayne stated no. Mr. Kenneff asked if he rendered any opinion as to whether or not that access drive was in conformity with the zoning ordinance when he reviewed the plan dated June 13, 2003 and Mr. Wayne stated no. Mr. Kenneff asked Mr. Wayne if he was familiar that on June 27, 2002 this Board reached a decision in a prior application of Wal-Mart and in finding of fact #37, which is on Applicant Exhibit #1 of this proceeding. The Board found as follows: Wal-Mart's proposed access drive to Columbia Avenue is located near the 100 property lines of both properties identified as tax parcels and recited the tax parcel numbers and Mr. Wayne stated he is not familiar with that decision. Mr. Kenneff stated that in the 2002 decision, the Board found the access drive was not in compliance with the ordinance. Mr. Wayne stated that he was aware of that. Mr. Kenneff asked if Mr. Wayne was aware that during the course of these proceedings Mr. McHale testified; Mr. Kenneff referred to Page 68 and read a section regarding the access drive. Mr. Kenneff also read Item #37 and asked if Mr. McHale is accurate in his testimony stating that they have corrected the deficiency from the 2001 application. Mr. Wayne stated that he disagrees with Mr. McHale because he measured off the eastern property line not the western property line. Mr. Kaplin proceeded to cross-examine Mr. Wayne. Mr. Kaplin stated that looking at Exhibit A#33 from the top left corner of the plan to the east line of Lot #1 the plan says there is a distance of 139.48 to the edge of the curb line of the entrance into the property. Mr. Wayne stated that is correct. Mr. Kaplin stated on Lot #2 there is a similar distance of 108.08. Mr. Wayne stated that is correct. Mr. Kaplin stated that when this subdivision plan was prepared, the entire property was shown as one lot. Mr. Wayne stated that was correct. Mr. Kaplin stated that when the subdivision plan was created, part of that lot was the driveway easement. Mr. Wayne stated that was correct. Mr. Kaplin stated that the ordinance says access drives shall be setback at least 200 from the intersection of any street right-of-way line and they are not talking about that. Mr. Wayne agreed. Mr. Kaplin stated that access drives must be at least 100 from any property line and Mr. Wayne agreed. Mr. Kaplin listed the dimensions that are shown on the plan. Mr. Kaplin asked if Mr. Wayne would agree that when the plan was created the access drive was more than 100 away from both property lines of the consolidated large parcel. Mr. Cook had objections. Mr. Wayne asked if the easement was not created when the subdivision plan was made and Mr. Kaplin stated yes. Mr. Wayne stated that the lot lines were created at the same time as the access easement. Mr. Kaplin stated that they were. Mr. Kaplin stated that you are saying the easement that goes between two lots must be 100 away from the property line that it abuts. Mr. Wayne stated that is what the ordinance states. Mr. Kenneff had redirect. Mr. Kenneff indicated Mr. Wayne stated it is impossible for the access drive to be 100 from each property line and is that because of the configuration of these properties. Mr. Kaplin had objections. Mr. Kenneff asked Mr. Wayne if it abuts a property line because that is where the developer chose to put it. Mr. Wayne stated yes. Mr. Kaplin asked Mr. Wayne how long he has been reviewing plans in Manor Township. Mr. Wayne stated four to five years. Mr. Kaplin stated that his understanding of the procedure is before a subdivision plan can be sent off to the LCPC for its review and approval there has to be a local zoning review. Mr. Wayne stated that was correct. Mr. Kaplin stated that this plan was approved by LCPC. Mr. Wayne stated that the subdivision plan was approved by the LCPC is correct. Mr. Kaplin stated that the Township did review this plan and Mr. Wayne stated he assumed they did. Ms. Smith stated for purposes of the review of

the subdivision plan presented to the County was there a statement as to the intended use of any of the properties on the subdivision. Mr. Wayne stated that he did not recall. Mr. Cook referred to Applicants Exhibit #6 and asked if Mr. Wayne agrees that this is the subdivision plan that his prior testimony has been referencing. Mr. Wayne stated yes. Mr. Cook asked if Mr. Wayne saw anything on the plan that depicts or describes what the use of Lot #4 is going to be and Mr. Wayne stated that after reviewing the plan there was nothing specific. Mr. Cook pointed out the plan note marked LCPC Local Municipal Official Notification Certificate and asked Mr. Wayne to read it for the record. Mr. Kenneff had two exhibits to be marked. Township Exhibit #15 consist of 2001 application of Wal-Mart consisting of letter dated March 13, 2001 from Mr. Kaplins office with the Application form, petition for special exception, the site plan, letter dated May 1, 2001 which has a rendering of the interior store special exception plan, lighting plan, a landscape plan, and letter of June 14, 2001 that refers to submission of the traffic plan but did not include the traffic study and a letter from Mr. Kaplin dated April 17, 2002, where he presents the revised plan. Mr. Kenneff did not have copies for everyone. Mr. McManus requested that copies be made and distributed to each of the council for the parties. Mr. Kenneff stated that he has marked the exhibit as Township Exhibit #16 which is a copy of the request to withdraw the land use appeal and this would have been the appeal from the Boards decision of 2002. Mr. Kaplin agreed that this could be introduced without the necessity of calling the Prothonotary Office to authenticate it.

The Board took a 15-minute break.

Mr. McManus stated that individuals would be given an opportunity to make statements at this time. The following individuals were sworn in and made statements: George Nagel, 587 Woodbine Boulevard, made statements regarding the traffic congestion and commented on the applicants statements made regarding the storage units, overnight parking, and landscaping. Mr. Nagel stated that he feels that Wal-Mart's goals are valid but it is no longer a business decision but an obsession. Charles Smithgall, 534 W. Lime Street, gave some personal background information as well as history of the site. Mr. Smithgall stated that the site has been determined to be of historical significance. Mr. Smithgall stated that he found some artifacts on the site. Mr. Kaplin asked Mr. Smithgall if he trespassed on the Wal-Mart property. Mr. Smithgall indicated he did not trespass. Bonnie Miller, 113 Bent Tree Drive, read a statement and listed stores she was directed to that are suppose to be in similar areas as this Wal-Mart site. Ms. Miller feels they were not in similar areas. Ms. Miller stated that Wal-Mart would be welcome if they complied with the zoning, which it does not and asked that the application be denied. Sutter Hutchinson, 2714 Royal Road, talked about the intent of the zoning ordinance and pointed out the impact of a Wal-Mart store on the neighborhood would be negative. Patricia Hutchinson, 2714 Royal Road, stated that she has lived here 45 years at this address and she has a box that contained 2208 names of people who signed petitions who do not approve of this location for a Wal-Mart store. Ralph Goodno, Executive Director for Lancaster County Conservancy, which is a landowner in Manor Township, stated that the Conservancy is a 36-year-old non-profit conservation organization whose commission is the protection of natural lands and open space. They are primarily a land trust that owns and manages natural lands for wildlife and people and currently own twenty-three (23) nature preserves, one in Manor Township. He is, by training, a landscape architect and spent his last 25 years doing watershed assessments and watershed planning and that is what he will talk about. These are questions that they would like the Board to consider

regarding this proposed development. There are concerns of the impact on the natural systems including wildlife habitat and quality of the rivers and streams in the watershed. The nature of concern is that the land area for this project drains directly into a tributary of the Little Conestoga, which drains into the Conestoga River, the Susquehanna River and ultimately the Chesapeake Bay. This is about the entire watershed of the Chesapeake Bay that the Commonwealth of Pennsylvania has identified as a high priority water quality area to protect. A majority of the surface of the proposed site is to drain directly into the wetland system created as part of the Woods Edge Development across Centerville Road. The wetlands are rich wildlife habitat and provide buffer and reservoirs to balance stream flow and improve water quality. Adequate studies must be completed to ensure stormwater flows from the proposed site do not in any way diminish the natural storage and cleansing value of the wetlands. The Conservancy urges adequate watershed studies including flow and wildlife studies be done prior to permits being granted. Mr. Kaplin asked Mr. Goodno if he knew what was presented in the hearings and Mr. Goodno stated that he had reviewed some of the files. Mr. Kaplin stated that Mr. Goodno knows DEP and the Conservation District has and regulations with regards to practically every item that was talked about on his list. Mr. Goodno stated some of the top concerns. Mr. Goodno stated that the water quality issues and the flow issues are important. Dan Brooks, 217 Stone Creek Road, thanked the Board for their attention and effort put into this. Mr. Brooks stated that he spent nine years of his life at these meetings and he feels it has been a waste of time. Mr. Brooks stated that after hearing all the testimony, he feels that the Board has no option but to decline the request for special exception. Mr. Brooks talked about the size of the building, traffic, police, and legal coverage needed. Mr. Brooks stated that as he looked at other Wal-Mart Centers they fit in the surroundings and you do not find them tucked in between two residential communities on small two lane roads. Mr. Brooks requested that the Board vote no on the request. Lee Karon, 321 Post Oak Road, read an article from the Wednesday Lancaster Newspapers with a headline City Keeps Out Wal-Mart. Mr. Karon stated that he has attended the meetings over the last nine years. Mr. Karon talked about the traffic study done by Wal-Mart. He also talked about existing traffic conditions and indicated how much worse the traffic would be with a Wal-Mart store. Mr. Karon does not feel that the Township was diligent in safe guarding the people who live in the Township by not zoning the property so it would be compatible with the housing. Gloria Hocking, 2734 Kimberly Road, stated that Wal-Mart is creating a monopoly and listed things that would impact the area. Robert Walsh, 400 Stone Creek Road, stated that he has been a Woods Edge resident for the past three plus years and enjoys the rural feel of the area and wants to keep it that way. Mr. Walsh has objections to the increase in traffic and cut through traffic that will result, damage to existing watershed and wildlife, increase in the crime rate and the additional cost to Manor Township. Mr. Walsh asked that the approval be denied and that steps be taken to remove the possibility of the acceptance of future applications. Jackie Rose, 2745 Kimberly Road, stated that her backyard is adjacent to the proposed Wal-Mart site. She stated that she feels that the quality of life will be changed for the worse and there will be a decrease in property values. Peter Stillwell, 101 Stone Creek Road, lives in the farmhouse across from the Wal-Mart site. Mr. Stillwell talked about the geese on the ponds. Mr. Stillwell stated Sam Walton had said Wal-Mart would never force themselves on a community who did not want them. Mr. Stillwell stated Mr. Walton is dead and talked about Mr. Waltons descendants and their wealth and greed. Mr. Stillwell expressed thanks to Jim Huber and FAID for their tireless efforts. George Long, 328 Stone Creek, expressed his concerns regarding the traffic, noise, lighting, crime, and the safety of young people from the notorious characters that would be

drawn to the Wal-Mart Store and he expressed concern about the added cost to the Township. He was also concerned with the pollution of the ponds and streams. Mr. Long stated that he felt that his property values will decrease, local stores will be forced to close, and there would be problems with litter and trash. Mr. Long asked that the Wal-Marts application be disapproved. Mary Jane Rieker, 119 Shannon Drive, stated that she has been to many meetings and listened and learned. She stated that we live in a time of corporate greed and inept politicians. Ms. Rieker stated that it has been proven that the small voice is heard. Ms. Rieker stated that the store is fine but that they do not need them and this is not the place for them. Douglas Madea, 406 Post Oak Road, stated that three words in the zoning ordinance, health, safety and welfare, is all that is needed for the Board to reject the application. Gretchen Madea, 406 Post Oak Road, requested that the Wal-Mart application be rejected. Ms. Madea stated that in the questioning of Mr. Roth by Mr. Kaplan, it revealed the heart of Wal-Mart and they are not interested in caring about the welfare of this community. Ms. Madea talked about the traffic and drive through traffic that would occur. Ms. Madea stated that this is not the place to build a store but possibly they could contribute the land and make a park for Manor Township.

Mr. McManus stated that the next hearing would be July 24 at 7:00 p.m. in this building. Mr. McManus requested that council for the parties prior to that time and not later than June 30 submit suggested findings of fact, conclusions of law, and asked for site notes of testimony with respect to those factual representations. In addition, submit any legal memorandum addressing the various issues raised during the course of the proceedings. Mr. McManus stated that at the July 24th hearing, the first portion of the meeting would be for any statements from those not in attendance this evening after which council can make any summary/argument. The proceedings will then conclude and a decision will be rendered within 45 days.

All exhibits were moved into the record. Mr. Kenneff reserved objections to the plans.

Hearing adjourned at 10:05 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Meeting , Wal-Mart
07/24/06

DRAFT

Zoning Hearing Board Minutes

Monday, July 24, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Monday, July 24, 2006 at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger called

the meeting to order at 7:07 p.m. and led the Pledge of Allegiance to the Flag.

Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: James McManus, Bruce Ott and Barry Smith Visitors Present: See attached list.

Minutes Mr. Granger stated the members of the Board received draft minutes from May 25, 2006 meeting and they have been posted in the Township Office. There were no additions to the minutes but there was a correction; the last name of both Sutter and Patricia is Hudson and not Hutchinson. They both spoke at the last meeting. Mr. Granger made a motion to approve the minutes with the corrections. Mr. Schlemmer seconded the motion and the motion carried unanimously.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. This hearing is continued from the May 25, 2006 meeting. Mr. McManus stated that this hearing is continued from the last hearing held on this matter on May 25, 2006 and the time, date, place and subject matter of this hearing was announced on the record at that hearing. It is expected that tonight will be the last hearing of a series of hearings that began in October of 2004. This evening we will pick up where we left off. The Board will extend the opportunity to those in attendance to be sworn or affirm and make a statement and be subject to cross examination. At the conclusion of those comments, the opportunity will then be presented for council to make summary arguments to the Board. The Applicant will go first followed in any order by council for any of the other parties and then the opportunity for rebuttal after each council has presented its argument in chief. Because of the length of the hearings and consulting with the Board, the Board is requesting of the Applicant to permit the Board to render a decision not later than Monday, September 25, 2006, which is 63 days from the date of this hearing. Mr. Kaplin stated that they agreed to time frame. Mr. Kaplin stated that his recollection of what took place at the end of the last hearing was that the opportunity was given for all the people who were present to make their comments. Mr. Kaplin stated that they were finished and there was still time left. He continued and stated that he believed that Mr. McManus stated that he would only give people an opportunity to make comments that were not at that last hearing. Mr. McManus stated that is what was stated. Mr. McManus read the names of people who spoke at the last hearing. Mr. McManus asked if there was anyone else who wished to give comments that were not in attendance at the last hearing. Gary Lefever, 117 Wellington Road, was sworn in. Mr. Lefever stated that he lives in Wilshire Hills and grew up on a farm in the Solanco area, moved out of the area and then moved back to Lancaster County. Mr. Lefever stated that he does not want Wal-Mart. Mr. Lefever indicated Wal-Mart is not wanted because it is not the kind of enterprise he wants to do business with. He listing business practices, traffic, water run off, and access routes as issues and asked the Board to reject the application. Bonnie Elaine Cain, 1060 Louise Avenue, stated that she is eighth generation to live in Lancaster County. Mr. Kaplin objected to Ms. Cain. The Board indicated that they would hear Ms. Cains comments. Ms. Cain was sworn in and gave her family background. Ms. Cain gave reasons why she does not patronize Wal-Mart. Also, Ms. Cain referred to statements made in Mr. Waltons autobiography.

Marian Metzger, 2734 Sherwood Lane, was sworn in. Ms. Metzger quoted statements from Sam Waltons autobiography. Ms. Metzger indicated that if the Wal-Mart application was approved, there would be a decrease in property values, additional police required, additional emergency personnel and equipment needed, and increase truck traffic and traffic problems. Patrick Karkowsky, 121 Wellington Road, was sworn in. Mr. Karkowsky expressed concern regarding the children in his development with the increase in cut through traffic that will occur if Wal-Mart is approved. Mr. McManus stated arguments of council would begin with Mr. Kaplin. Mr. McManus stated suggested finding of fact from each council of each of the parties together with legal memorandum and reply briefs have been submitted and distributed to the Board for their review. Mr. Kaplin stated there are over 2,000 pages of testimony in the record in this case and probably 60 or more exhibits. Mr. Kaplin stated he would be reviewing what he believes are the important facts and issues that must be taken into consideration in the decision. Mr. Kaplin stated there are rules and regulations in which the decision must be based in order to give the property owner its due process. The Board of Supervisors made the legislative decision to place the Wal-Mart property in the general commercial zoning district. The general commercial zoning district permits the development of a retail store of the size proposed by Wal-Mart. When the general commercial zoning district was created, the Supervisors designated that zoning district as the area in Manor Township in which stores such as the proposed Wal-Mart should be located. Mr. Kaplin read Section 207.1 of the zoning ordinance. Mr. Kaplin stated the Supervisors changed the text of the general commercial district and went from making a large store over 100,000 sq. ft. a use permitted by right to a special exception but it did not change the criteria or the purpose. There are certain principals of law that govern this matter and which cannot be ignored. A provision in the zoning ordinance that permits a particular use in a particular location as a special exception such as the Wal-Mart store indicates legislative determination by the Board of Supervisors that the use is consistent with the municipality-zoning plan. When a use is permitted by special exception, it is not an exception to the zoning ordinance but it is a use to which an applicant is entitled unless the objectors demonstrate according to clearly established and very stringent legal provisions that such use would adversely affect the community in a manner greater than a similar use of a similar size in this location. When talking about general criteria, does this store have any greater effect or negative effect than would any of the other uses permitted in this district of this size? A provision in the a zoning ordinance which permits a particular use in a particular location as a special exception, such as the Wal-Mart Store, establishes a presumption that the use is consistent with the public health, safety and welfare and would not adversely effect the community and that decision was made by the Board of Supervisors. An applicant such as Wal-Mart for a special exception has a limited burden at this point in the land use process. The burden is to prove only that the proposed use complies with the object requirements of the zoning ordinance and is not required to prove compliance with general non-objective requirements of the zoning ordinance such as the stores affect on the health, safety and welfare of the community. Once an applicant, such as Wal-Mart, for a special exception, demonstrates that the proposed use complies with the object of requirement for special exception set forth in the ordinance, the burden then shifts to the opponents to demonstrate that the proposed use does not comply with the general non-objective requirements of the zoning ordinance. Wal-Mart has demonstrated that its plans for its proposed store satisfy all the objective criteria imposed by the ordinance upon retail stores of this size as proposed by Wal-Mart. In the proposed findings of facts that Mr. Kaplin filed, it identifies each of the objective requirements that are in the ordinance which relate to area, bulk, landscaping and

lighting and recite to the evidence that demonstrates compliance with each of the ordinance requirements. The objectors assert that Wal-Mart's landscaping plan violates Section 314.3 of the Zoning Ordinance by spacing trees 25 on center instead of 15 on center and those trees will not block ground level views of the proposed store at a height of six feet within two years of installation. Mr. Kaplin stated that Ms. Dresser could not tell whether the landscaping proposed by Wal-Mart would block the ground level views at a height of six feet within two years. With the exception of FAID's nonspecific and unsubstantiated assertion that the lighting plan does not satisfy the lighting impact standards of Section 448.14 in the vicinity of Columbia Avenue access, none of the alleged deficiencies asserted by FAID relate to the ordinance requirements. The evidence clearly demonstrates that light emanating from the property will not be greater than one-tenth of a horizontal foot candle or greater than one-half a foot candle at the designated vehicular entrances or exists. It is clear that the proposed lighting standards are 25 in height in accordance with the zoning ordinance. FAID talks about stormwater management asserting Wal-Mart's application should be denied based upon Wal-Mart's alleged failure to comply the stormwater management ordinance. Mr. Kaplin states that the record demonstrates that the conceptual stormwater design shown on Wal-Mart's original site plan and revised site plan was, in fact, approved by the Township Engineer in connection with the approval of the recorded subdivision plan for the overall Murry tract. The objectors contend that Wal-Mart's application violates Section 444.10 of the zoning ordinance by providing access to the property from Columbia Avenue over an access easement that it owns rather than over ground that it could or should own in fee simple. When the application to subdivide the Murry tract was filed, the LCPC requested that the number of access points to busy Columbia Avenue be limited. In fact, the general commercial district encourages the use of joint accesses for more than one use on a particular lot in a particular area. The declaration of covenants, easements and restrictions that were recorded and is part of the record prohibits Lot #1 and #2 from accessing Columbia Avenue directly and requires they obtain access only through the shared driveway that FAID now objects to. Accordingly, there is only one access point on the Columbia Avenue side of the property and it serves three lots. Mr. Kaplin stated Harry Roth admitted from a technical point of view this is the way it should be done and is good planning and the record demonstrates that the LCPC approved the subdivision plan which created Wal-Mart's access to Columbia Avenue by an access easement and the subdivision plan has already been recorded (Exhibit A#6). Mr. Kaplin stated before a plan can be submitted to the LCPC for subdivision processing a signed statement is needed from the township that the proposed plan is in accordance with the zoning requirements. Mr. Kaplin handed out and read a statement signed by Mr. Ott to the LCPC and a copy of a letter Mr. Kaplin sent to Mr. Cowhey on January 9, 2003. Mr. Kenneff objected to the introduction of the letter. The statement signed by Mr. Ott indicates the plan is in compliance with the ordinance provision. It is contended that the proposed access easement onto Columbia Avenue violates Section 448.15.4 of the zoning ordinance because it is not set back 100 from the western property line of Lot 1. Mr. Kaplin pointed out the access easement on the plan and talked about the distances. Mr. Kaplin stated that the objectors contend Wal-Mart is required to improve every intersection on every stretch of road identified in the traffic study as being in need of improvement. Also, they stated that Wal-Mart's failure to do so justifies denial of the application. Mr. Kaplin stated the traffic experts for the Township and FAID agree that Act 209 (PA Statute that permits municipalities to impose traffic impact fee) all agree that statute prohibits the township from requiring Wal-Mart to make off-site improvements to all of the roads in the study area contained in the traffic report as a condition to obtain approval of the

application. Wal-Mart cannot be required as a condition of approval of this application to make off-site improvements. It is contended that Wal-Mart's Traffic Impact Study did not comply with certain requirements of the zoning ordinance. The record demonstrates that they did comply with all the requirements of the ordinance with regards to the traffic study. They met with Township officials, PennDot officials, and East Hempfield Township officials to determine what streets and intersections were to be studied and what new developments were to be included. Act 209 prohibits the township from even requiring a Wal-Mart to submit a traffic study except in connection with the assessment to determination of an impact fee if there is a dispute about the impact fee. Mr. Kaplin stated that there are cases that have placed severe limits on a Board's ability to deny a special exception on traffic related grounds unless there is a high probability that the proposed use will generate traffic that is not normally generated by that type of use. Mr. Kaplin stated that even though they did not agree with Mr. Plank's questions and suggestions, they reran the traffic study completely using Mr. Plank's suggestions. The results that were presented to the Board was that the traffic impact in certain instances went down based on Mr. Plank's methodology. Mr. Kaplin stated since Wal-Mart has demonstrated that the proposed store complies with all of the objective requirements of the zoning ordinance, in order to defeat the application, the law requires that the objectors demonstrate the proposed store does not comply with the general criteria of the zoning ordinance. Mr. Kaplin stated that the objectors' burden of demonstrating non-compliance with the general requirements of the zoning ordinance is not satisfied by showing that the proposed store will have effects that are no different or no greater than that which would normally occur when a retail store of this size is constructed. The objectors are required to demonstrate that the impact of the proposed store on the public welfare is greater than that which might be expected from a retail store of similar size under normal circumstances. The objectors cannot meet this burden by offering, even through expert witnesses, all assertions or personal opinions or perceptions of the effect of the proposed store on the community. The objectors failed to present any nonspeculative evidence which demonstrates that the proposed store is not consistent with the stated purpose and intent of the zoning ordinance as required by Sec. 604.3.2A. While the objectors testified generally about subjective perception that the proposed store would detract from the use and enjoyment of adjoining or nearby residential properties, the objectors did not present the quality of evidence necessary to demonstrate there is a high probability the proposed store will detract from the use and enjoyment of adjoining or nearby properties any more than any other retail store of the same size or any other permitted use under the general commercial district as required by Sec. 604.3.2A. The objectors failed to meet their heavy burden of demonstrating through nonspeculative evidence a high probability that the store will change the character of the neighborhood in which the property is located in a manner which is not permitted by the zoning ordinance or in a manner greater than would normally be associated with the development of a retail store of this size in this location as required by Sec. 604.3.2C. They also failed to meet their burden through nonspeculative evidence that there will not be adequate public facilities to serve the proposed store as required by Sec. 604.3.2B of the zoning ordinance. They failed to demonstrate that the proposed store is not consistent with the Comprehensive Plan Land Use designation for the area in which the property is located as required by subsection G of 604.3.2 of the zoning ordinance. Mr. Kaplin stated that the ordinance specifically states as its purpose the development of large-scale retail and service uses of a highway oriented nature to serve the people who use the roads, live in the community and those who pass by. Mr. Kaplin addressed issues in Mr. Kenneff's reply brief and Mr. Cook's brief. Mr. Kaplin stated that Wal-Mart owns the property and the zoning

ordinance permits the use of this property. Wal-Mart is determined to obtain the right to construct the Wal-Mart Store on this site in accordance with the ordinance. Mr. Kaplin urged the Board to do the legally, responsible and correct thing and that is approve this application impose upon his client what they think is important and they will attempt to work with the Board and the community to live with reasonable conditions. Mr. Kaplin thanked the Board for their patience and the seriousness with which they approached this application.

The Board took a five-minute break.

Mr. Kenneff stated that he would be dealing primarily with the issues of res judicata and collateral estoppel. Mr. Kenneff stated he wanted to respond to things raised by Mr. Kaplin during his remarks to the Board. He emphasized the purpose of the ordinance that is contained in Section 207 and Mr. Kenneff stated that no one is saying that they disagree. In order for it to meet the purpose of the ordinance as expressed in Section 207, an applicant must meet the criteria of the ordinance and that is the focus of the entire proceeding and the one in 2001. In many instances, Wal-Mart simply does not meet the criteria of the ordinance. Mr. Kenneff gave example where he believed that collateral estoppel should apply. Mr. Kenneff stated in the Boards Finding of Law #28 in 2001, that the opponents had proved the proposal is more detrimental than a typical shopping center. Mr. Kenneff stated that he disagreed with a statement Mr. Kaplin made that the opponents have not shown this is more detrimental than a typical shopping center. Mr. Kenneff stated that collateral estoppel means that it is not here today for the Board to decide as that was decided by the Board in 2001. The Board has already made the determination that Mr. Kaplin is wrong and this project is more detrimental than the typical shopping center and that finding was appealed and abandoned. Mr. Kenneff stated that goes for many of the other general criteria he went through stating that the opponents have not met their burden of proving noncompliance with the general criteria. In Conclusions of Law #29, 30 and 31 in 2001, the Board found that the opponents had met their burden and Wal-Mart did not comply with the general criteria. Mr. Kenneff stated that he believes that the principal collateral estoppel means those findings are final and for that reason Mr. Kenneff suggests that the Board can deny Wal-Mart's application. In regards to the letter Mr. Ott sent in 2003, remember in evaluating this notification that it was for a subdivision and is not submitted for a particular use but a general submission. Mr. Kenneff read from the letter. It is clear after looking at the content of the letter that Mr. Ott was referring to general criteria of the ordinance and not rendering any opinion that the use for this lot as a shopping center met all of the criteria of the ordinance. Mr. Kenneff referred to the traffic issues stated on Page 8 of his reply brief and he went through each of the cases that Mr. Kaplin cited and analyzed them. Mr. Kenneff stated that he believed that they would see in each instance that the language was used in conjuncture with general criteria of the ordinance not criteria close to Section 448 of the Manor Township Ordinance that provides detail of specific criteria Wal-Mart must meet and which Manor Township asserts for the reasons stated in the brief they have not met. Mr. Kenneff referred to Dr. Plourdes testimony regarding trips generated and asked it be taken together with the testimony of Mr. Henise. Mr. Kenneff talked about Mr. Kaplin's reference to the case of Schubach and stated that this is a different situation than what was present in the Schubach case and explained the difference. Mr. Kenneff referred to Mr. Cooks brief regarding a case law involving collateral estoppel is based upon the restatement of judgments. Mr. Kenneff cited the restatement of judgments Section 27 that states the general rule for when collateral estoppel should apply. In this case, Mr. McHale and Dr.

Plourde in 2001 did work on behalf of Wal-Mart and that work proved to be defective. Mr. Kenneff stated that during cross-examination of Mr. McHale, he acknowledged that there was nothing that prohibited him in 2001 from doing his plans accurately and in conformity with the ordinance. The same was true with Dr. Plourde. Mr. Kenneff stated that he believed the collateral estoppel applies to many significant findings of this Board in 2001 and outlined them extensively in his brief. He talked about Section 448.10 and the Conclusions of Law #13 and #14 that Wal-Mart in fact exceeded the number of access drives. In Conclusion of Law #23, which interpreted Sec. 448.11.21, you find that there was unacceptable drops in levels of service and they presented the same unacceptable drops in levels of service in 2005 and 2006. In the Conclusion of Law #25 dealing with the property line for the access drive, you found it was not within 100 of the property line. In the Conclusion of Law #28 the opponents proved that this Wal-Mart project is more detrimental than a typical shopping center. There are numerous exceptions to the rule but none of these exceptions apply. In regards to the issue of res judicata, Mr. Kaplin cited cases that say it is to be applied sparingly in zoning cases but cases also say if the elements set forth in the case law are met, then res judicata applies with zoning procedures as well as any other case. The idea is things must be litigated and ended; it cannot roll from one proceeding to another. The identity of res judicata are identified as things sued for which are the same. Identity of the persons and parties to the action and the parties are the same. There was no change in land itself. The parties are the same, the tract of land is the same, the zoning district is the same, the ordinance is the same, it is the same special exception, the layout of the building is substantially similar and there has been absolutely no change related to land itself. Wal-Mart's argument that it should not be applied is that the store has gone from 213,000 to 229,000 square feet. Mr. Kenneff stated that in the 2001 decision, the Board outlined all of the problems and all of the impacts that would be placed on the residents of Manor Township as a result of this store. Increasing the size of the store simply exasperates the problem. There has been no substantial change in the plans. There has not been a change in land. Mr. Kenneff talked about the testimony of Dr. Plourde and Mr. Henise regarding the traffic impact study. Mr. Kenneff stated that in his brief he outlined all of the various cases cited by Wal-Mart to support their contention that res judicata does not apply. It could be seen in those cases why res judicata did not apply and listed the cases and the outcome. Mr. Kenneff also talked about the Municipal Capital Improvement Act and stated that act is to allow townships to impose traffic impact fees and fees for other type of services to be performed by an applicant off site and allows this to be done as part of the land development process. It allows traffic impact studies under certain circumstances to be done as part of the land development process. It does not change the enactment of that statute and does not change the long standing law of zoning that traffic is an issue and can be considered by zoning ordinance. Mr. Kenneff stated specific criteria and general criteria related to traffic could be part of zoning ordinance and applications for special exceptions can be denied for failure to comply with the zoning ordinance. Mr. Kenneff stated that he addressed in Manor Townships brief in detail why they believe Wal-Mart has not met the specific criteria of Section 448 of the ordinance particularly as it relates to traffic. Many of the intersections even with the improvements proposed would not fit the criteria of the ordinance with regard to levels of service. This is the wrong place for a project of this size and magnitude and the Township respectfully request that the Board deny the application of Wal-Mart based on collateral estoppel and res judicata and the failure to comply with specific general criteria of the ordinance. George Cook, on behalf of Woods Edge Homeowners Association, stated there is a distinction between the whole application being rejected and issue preclusion. Issue preclusion means an issue was

decided in the past and nothing has changed about that issue now that would cause you to make any sort of different decision. The plan submitted looks a lot like the plan from 2001 and pointed out an area on the plan regarding the easement and the lot line that runs through the easement. The manor this issued was decided four years ago is the same manor this issued should be decided today. Mr. Cook pointed out that the subdivision process is different from than the process before a zoning hearing board. Mr. Cook referred to Applicants Exhibit #6 and stated that a retail store use was not to be found on the plan at the time of subdivision; there was potential for a retail store but the provisions of Sec. 448 did not kick in at that time. Mr. Cook stated that the use of the second access along Columbia Avenue leads to the ability of Wal-Mart to have a traffic report that complies with the ordinance criteria and Mr. Cook submitted that the application does not comply with the ordinance criteria. Wal-Marts entire traffic study is premised on the two accesses. Wal-Mart is proposing a shopping center within a larger shopping center. This leads to less than conventional applications and ordinance provisions. It did so in 2001 and it did so in 2002. Wal-Mart had notice from this Board in 2001 and 2002 when they decided that the way they did it was not acceptable and the applicant did not benefit apparently from that decision other than by receiving subdivision plan approval to correct that issue for zoning purposes. Mr. Cook stated that it is not creditable for Wal-Mart to argue they have not had notice. For traffic purposes, Wal-Mart goes to great length to say that you should only look at Wal-Mart and not the other parcels as they are not being applied for at this time. For the easement analysis, Wal-Mart seems to be taking another approach and that is to look at the other lots. Mr. Cook stated that he feels that Wal-Mart should not have it both ways. Mr. Cook stated that he joins in Mr. Kenneffs comments regarding Act 209. Mr. Cook stated in his brief that he refers to the intersection of Cornerstone Drive and S. Centerville Road. Mr. Cook stated that is an important intersection to his clients because if it does not perform well, traffic will back up and there will be cut through traffic. The levels of service at that intersection go from C to D and C to F. Improvements proposed would not bring the intersection it up to satisfactory levels and it is an intersection that does not comply. Mr. Cook read Section 448.15.8 and stated that he did not see anything submitted by Wal-Mart addressing those issues. Wal-Mart has not submitted a creditable case. Wal-Mart urged the Board to consider conditional approval but have not submitted conditions that they could live with. Mr. Cook stated that generally speaking the building is too large a structure on too small a lot; the lot is too dense and does not comply objectively. Tiffany Cartwright, representing F.A.I.D., stated that they would like to express their objections to the documents presented for the same reasons stated by Mr. Kenneff. Manor Township is empowered under the Municipalities Planning Code to enact standards for a special exception to provide the specific criteria and to specify informational requirements. A municipality has the right and Manor Township has exercised that right to provide increasingly strict objective criteria. The presumption Mr. Kaplin speaks of only operates when the criteria is met. There is not a presumption at the first instance that this use is appropriate and complies with the protection of the health, safety and welfare of the residents of Manor Township. It is only after Wal-Mart has demonstrated compliance with the objective criteria that the presumption operates. It is not for the Board to second guess the legislative judgment that the Board of Supervisors have made but to administer the ordinance and determine three things. 1) Has the applicant submitted the information that is required by the ordinance? 2) Has the applicant submitted any additional information that is necessary for you to determine whether there has been compliance with the ordinance? 3) If you find that there is sufficient information, has the applicant complied with the ordinance criteria? Ms. Cartwright stated that Wal-Mart has shirked

its duty. Their application and revised site plan is plagued by a need to know attitude. Wal-Mart tells you what information it thinks you need to know not the information that your ordinance requires. The application and revised site plan suffer from that lack of information and to the extent that the objectors can attempt to piece the information together to determine compliance. The information given shows it does not meet the objective criteria. Ms. Cartwright stated that Mr. Kaplin indicated reasonable conditions could be provided to correct any deficiencies in Wal-Mart's application is not the law. Commonwealth Court has made it clear and Ms. Cartwright named a case that when an application does not comply with the specific criteria for a special exception the municipality cannot cure that deficiencies by putting a condition on the application that basically the applicant promises to eventually comply with that criteria. Throughout the proceedings, Wal-Mart has defended its refusal to provide certain information by saying that there are some cases that say detailed site plans, etc. are not required at the special exception stage. Ms. Cartwright stated that if you read the cases, Commonwealth Court says that there was no question in those cases about what the applicant was proposing. Here there are real questions as to what Wal-Mart is proposing. For example, is it a 24-hour store? We cannot, as objectors, bear their burden in demonstrating that this store will have a greater effect than stores like it if they do not know what it is that is being proposed. How can it be compared to a Target that is opened from 8 a.m. to 10 p.m. without knowing whether the Wal-Mart is a 24-hour store? How can the lighting be compared that may occur at 2:00 in the morning, between a Target that is closed to a Wal-Mart that may be open when the arrangements and hours of operation of the store is not known. We do not know if the landscaping and screening will meet the requirements of the ordinance without a grading plan. Without a revised lighting plan, do we know if there will be compliance with the ordinance? Without a complete application that is in compliance with the ordinance, we cannot determine compliance. The application is lacking in lighting, landscaping, traffic, signage and dimensional requirements. F.A.I.D. and the individual objectors submit that Wal-Mart has failed to meet its burden of demonstrating compliance with the objective criteria of the ordinance. To the extent that the Board determines there is compliance, the objectors have demonstrated that there are real issues with respect to compliance with the subjective criteria to the extent that the objectors could not compare Wal-Mart to a facility that is like size. It is a direct result of Wal-Mart's refusal to provide information when requested. F.A.I.D. and the individual objectors would ask that the Board deny the application. On behalf of myself, Ms. Smith, Mr. Feniche and Mr. Zaleski from our firm who appeared on behalf of East Hempfield Township, I cannot express enough our thanks for your time, patience and the skill you will employ in making a decision. In rebuttal, Mr. Kaplin stated that he came to the conclusion that there are a very limited number of issues being specifically raised by the objectors. Mr. Kaplin stated that the biggest issue raised is that because they were rejected in 2001 they should be rejected again. Mr. Kaplin again referred to a Supreme Court Case Schubach and Act 209. Mr. Kaplin referred to the case Shelburne Square Associates stating it says that if you find that there trees are not close enough, then the Board can put a condition on the approval. Ms. Cartwright indicated that Wal-Mart must give information on their hours of operation and Mr. Kaplin asked where in the ordinance is that is a requirement. Mr. Kenneff stated that his comment goes back to the Schubach case. Mr. Kenneff stated that in Mr. Kaplin's example, that the land could not be sold to another shopping center and then the new owners apply for a special exception was one of the criteria for application of res judicata; he referred to the Schubach case. Mr. Cook stated that nothing has changed regarding frontage and access drive set back. Mr. Cook stated that they still do not comply. There were issues then and there

are issues now. Mr. Cook stated there are two objective requirements that are unmet. Mr. Cook stated that these issues are regarding traffic. Even if Mr. Henise and Mr. Planks criticisms were not accepted, he would submit that there are levels of service requirements that are unmet. Mr. Cook stated that variances could have been sought by Wal-Mart but they did not. Mr. Cook referred to the Borough of Monroeville case stating that he believes it is a subdivision case and has to do with soil excavation. The facts of the case do not relate to traffic and had to do with rejection of something based on a conditional use aspect regarding a soil application. Ms. Cartwright stated that she is aware of the Shelburne Square case and that case says that where there are minor typographical errors, those kinds of errors can be corrected by putting a condition on a special exception or conditional use application. Wal-Mart does not have minor typographical errors. They have failed to comply with objective criteria of the ordinance and that under established Commonwealth Court case law you cannot correct by conditions. Mr. McManus stated that the hearing is concluded and the Board will render a decision not later than September 25, 2006. The actual date has not yet been determined but that meeting date will be advertised.

The hearing was adjourned at 9:45 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Meeting
09/06/06

Zoning Hearing Board Minutes

Wednesday, September 6, 2006 Time: 7:00 P.M

The Manor Township Zoning Hearing Board met on Wednesday, September 6, 2006 at 7:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA. Chairman Allan Granger called the meeting to order.

Members present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: Bruce Ott and James R. McManus Visitors Present: Charles Hurst, 117 Henley Lane, Mountville John May, 100 Red Fox Rd., Millersville

Mr. Granger introduced the Board Members, the Zoning Officer, the Solicitor, the Court Reporter and the Recording Secretary.

Minutes Mr. Granger asked if there were any corrections or additions to the May 3, 2006 minutes. There were no corrections and the minutes were approved as submitted.

New Business Case #2-06 The Application of David L. Charles, property at 26 Millersville Road, Lancaster, PA 17603. The application is for an expansion of a non-conforming structure in

accordance with Sec. 504.2 and Sec. 605.3 of the Manor Township Zoning Ordinance. The applicant wishes to expand an existing non-conforming office structure. The property is located in the MRC Mixed Residential Commercial Zoning District. Mr. Granger turned the meeting over to Mr. McManus. Mr. McManus requested that Mr. Ott, the Zoning Officer, be sworn in. Mr. Ott stated he is employed as the Zoning Officer for Manor Township and he receives applications when they come before the Zoning Hearing Board for Manor Township and also noted that he did receive Application No. 2-06. Mr. Ott stated the time, date, place and subject matter of this meeting was published in the Lancaster Newspapers on August 23 and 30, 2006. Mr. Ott stated the property was posted with the time, date, place and subject matter on August 17th. A notice of the time, date, place and subject matter was posted in the lobby of the Township Office on August 17th. Mr. Ott provided proof of publication. Mr. McManus had the application marked as Exhibit #1 which included an appendix of the application is a four page 8 1/2 x 11 sheets containing information regarding the application and its compliance to certain provisions of the zoning ordinance. The last page of which is a location plan of subject property and the addresses of the surrounding property owners. In addition to the four pages, there are nine pages of elevation and floor plans, photograph and plot plan. The plans will be referred to if and when they are testified to. The proof of publication was marked Exhibit #2. Charles Hurst stated he is the representative of David Charles. Mr. Hurst stated he is the construction manager of D & R Charles and Mr. Hurst had prepared the application and signed it. Mr. Hurst did not have evidence to show the Board that he was authorized to appear on Mr. Charles behalf. Mr. McManus asked who the owner of the property was and Mr. Hurst stated David L. Charles. Mr. McManus advised the Board there was no connection between that they have by virtue of the application that shows that Mr. Hurst has standing to appear. Mr. McManus stated Mr. Hurst is not an attorney or a direct representative of the client. He is an employee of the owner and is asked the Board to accept the fact that he is appearing on his behalf. Mr. McManus also noted that the application is not signed by David Charles but is signed by someone other than the owner and that is Mr. Hurst. Mr. Schlemmer asked if they could have the hearing and have the signed copies submitted later? Mr. McManus stated if the Board wished to do that it would be a way to expedite the matter. Mr. McManus asked if there was any reason David Charles would not sign the application in addition to Mr. Hurst's signature and Mr. Hurst stated there was no reason Mr. Charles would not sign the application. The Board agreed to request the signature be given to them by the next meeting and continue with the hearing. Mr. Hurst was sworn in by the Court Reporter. Mr. Hurst stated David L. Charles is out of town and unable to be present. The property is located at 26 Millersville Road. Mr. Hurst referred to Plan #E-1A the front elevation and stated there was an addition that was built onto the building a number of years ago that made the entire building a non-conforming building. They are not intending to change the use of the building but would like to extend the building up one more story and keep brick on the outside. As shown on the plot plan, the existing building was built within eight feet of the property line and Greg Staussner of Strausser Surveyors determined that. This make the first floor seven foot inside of the setback and that is the reason they are asking for a special exception. Mr. Hurst stated they are under 50% of building out and the calculations as shown on the plan. They also comply with the parking by providing 26 parking spaces and the required is 21. Mr. Hurst stated the elevations have been provided. Mr. Granger asked if the area of the window and dormer is occupied. Mr. Hurst stated it is attic space. Mr. Granger stated it is then a two-story building with an attic above and Mr. Hurst stated that is correct. Mr. Granger stated it appears like materials are being used for the proposed addition and Mr. Hurst stated it is their intention to match the

existing building. Mr. Hurst stated the names and addresses of adjoining property owners have been submitted with the application. Mr. Granger asked if the adjoining property owners have been notified and Mr. Ott stated they were notified. There is a scaled drawing site plan of the site with sufficient detail and accuracy submitted. A written description of the proposed use has been supplied under Section 702.3.3 indicating there is and will be offices. Nothing has changed from the initial use of the property. Mr. Hurst stated the proposed use is consistent with the purpose and intent of the zoning ordinance and will not detract from the use and enjoyment of nearby properties and it is their opinion it will actually be more attractive to finish the building off then the way the addition looks at this time with the flat roof. There will be no changes in exterior lighting at this time. The character of the neighboring properties will not be changed. There will be no sign changes. Adequate public facilities are available to serve the proposed use. There is no floodplain on this property. The proper permits will be obtained before any work is started. The proposed use will not impair the integrity of the Townships Comprehensive Plan. Mr. Hurst stated they would have offices that will not produce any traffic congestion, noise, glare, air pollution, water pollution, vibration, fire hazards, or emission of any potentially harmful or obnoxious matter or radiation. There will only be day work. David Charles Associates is located on the first and second floor whom employ three individuals and they have 15 real estate agents. D & R Charles is located on the second floor and employs four individuals and has three offices. The property is located in the Mixed Residential/Commercial Zoning District. The front yard setback is 50, there is a pre-existing condition where a one-story building extends into the right side yard setback by 7, the left side meets setbacks and the rear yard setback is 44 6. The existing and new building will not extend higher than 35. The new building will be approximately 32 high. The existing building is 4510 sq. ft. and the proposed new addition will be 1737 sq. ft., therefore, the addition will be 39%. The proposed addition will not further increase the building non-conformity. Mr. McManus asked Mr. Ott if the use of the proposed expansion is permitted and Mr. Ott stated it is. Mr. McManus stated the expansion would not decrease the lot line that is presently non-conforming and Mr. Ott stated correct. Mr. McManus stated this is in essence an application to expand the building vertically along the non-conforming lot line, so is it your determination that there is no increase in non-conformity because the building is already seven feet from the property line. Mr. Ott stated that is correct based on the survey that was done. Mr. McManus stated that even though the ordinance states that no expansion could increase a dimensional non-conformity it is Mr. Otts position that it already exists and this is not an increase. Mr. Ott stated that is correct. Mr. McManus asked Mr. Hurst how many offices are presently in the building. Mr. Hurst stated there are 13 offices and when the expansion is completed there will be an additional four offices. Mr. McManus asked if the non-conforming lot line is the northern one and Mr. Ott stated yes. Mr. McManus asked if the lot line adjoins what has been described as 26 driveway easement and Mr. Hurst stated correct. Mr. McManus stated it does not encroach an adjoining building in anyway and Mr. Hurst stated that it does not. Mr. McManus verified the square footage of the existing building and the proposed addition. Mr. McManus asked that Mr. Charles come in and sign the application as soon as possible. Ms. Douglas made a motion to take the testimony under advisement and make a decision October 4, 2006 at 7:00 p.m. in this building and in the meantime they receive the applications owners signature on the application. Mr. Schlemmer seconded the motion and the motion carried unanimously.

The hearing was adjourned at 7:45 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Wal-Mart Decision
09/25/06

DRAFT

Zoning Hearing Board Minutes

Monday, September 25, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Monday, September 25, 2006 at 7:00 p.m. at the Manor Middle School, 2950 Charlestown Road, Lancaster, PA. Chairman Allan Granger called the meeting to order and led the Pledge of Allegiance to the Flag.

Present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: James McManus, Bruce Ott and Barry Smith Visitors Present: See attached list.

Minutes Mr. Granger stated the members of the Board received draft minutes from July 24, 2006 and they have been posted in the Township Office. There were no additions or corrections to the minutes and the minutes stand approved as submitted.

Old Business Case #7-04 The Application of Wal-Mart Stores. The application of Wal-Mart Stores, Inc. for a special exception pursuant to Section 207.3.14 of the Manor Township Zoning Ordinance. The property is located south of Columbia Avenue and east of South Centerville Road at 235 South Centerville Road, Lancaster, PA. The applicant is requesting permission to build a Wal-Mart Store on the property. The property is located in the (GC) General Commercial Zoning District. A decision will be rendered. Mr. Granger turned the meeting over to Mr. McManus. Mr. McManus stated this hearing was advertised in the Lancaster Newspapers on September 11 and 18, 2006. Since the conclusion of the hearings in this matter, the Board has spent considerable time reviewing the record, exhibits, transcripts, findings of fact, conclusions of law and memorandum of law. The Board asked Mr. McManus to prepare a draft decision and Mr. McManus met individually with each Board member to review the draft decision that was prepared and revisions were made to the draft document. Mr. McManus stated he would paraphrase portions of the draft decision. The following is Mr. McManus's summarization of the Conclusions of Law: Wal-Mart has standing to request a special exception for a shopping center use in excess of 100,000 sq. ft. for its proposed development of the Property. An applicant seeking a special exception bears the burden of presenting evidence that will persuade the Board that Wal-Mart complies with the objective criteria contained in the Zoning Ordinance. When evaluating whether or not a special exception application complies with the specific requirements set forth in the zoning ordinance, the procedure to be followed is to determine whether the plans

as submitted by Wal-Mart demonstrate compliance with the requirements of the zoning ordinance. The Zoning Hearing Board is the finder of fact with exclusive province over matters of credibility and weight to be afforded the evidence. Special Exceptions are made available as a privilege, not as a right. The objectors to a special exception application, when presenting evidence, must raise specific issues concerning the proposals general detrimental effect on the community before the applicant is required to persuade the fact finder that the intended use would not violate the health, safety and welfare of the community. Section 207.3.14 of the Zoning Ordinance provides for shopping center involving any use permitted in this Zone within the CG District are subject to the provisions of Section 448 of the Ordinance. The provisions of Article 4, Section 400 of the Zoning Ordinance require that all uses identified in Article 4 shall comply with the regulations contained in the underlying district and all other sections of the Zoning Ordinance referenced therein. A shopping center is an Article 4 use regulated in part by the specific criteria of Section 448 of the Zoning Ordinance. Section 605 of the Zoning Ordinance contains general criteria applicable to all special exception uses. Wal-Mart failed to meet the burden by failure to comply with Section 448 of the ordinance. Wal-Mart has failed to comply with Section 448.10 of the Zoning Ordinance by exceeding the permitted number of access drives to the tract. An easement interest is not lot frontage for zoning ordinance purposes. Wal-Mart has failed to comply with the requirements of Section 448.11.6 of the Zoning Ordinance by failing in its TIS to utilize a valid design year for the completion of its project. The traffic forecasts were prepared for the year 2005. In so doing, Wal-Mart has failed to comply with the requirements of Section 448.11.8 of the Zoning Ordinance by failing in its TIS to utilize traffic forecasts prepared for a reasonably valid anticipated opening year of the development assuming full building out and occupancy. Wal-Mart has failed to comply with the requirements of Section 448.11.10 of the Zoning Ordinance by failing to properly account for reductions in the volume of new traffic generated by its use of land for pass by and shared trips. Wal-Mart has failed to comply with the requirements of Section 448.11.18 of the Zoning Ordinance by failing to properly analyze reservoirs for vehicles queuing off-site. Wal-Mart has failed to comply with the requirements of Section 448.11.7 of the Zoning Ordinance by overstating the number of internal trips and thereby reducing in some instances the number of trips generated by Wal-Mart by as much as 25%. Wal-Mart has failed to comply with the requirements of Section 448.11.11 of the Zoning Ordinance in that a significant difference between single use rates and mixed use rates have not been justified. Wal-Mart has failed to comply with the requirements of Section 448.11.21 of the Zoning Ordinance by allowing impermissible drops in the levels of service at the times and for the intersections listed on page 1 of Townships Exhibit #9. Wal-Mart has failed to comply with the requirements of Section 448.11.21 of the Zoning Ordinance by failing to require improvements in the levels of service at the times and for the intersections listed on pages 2 and 3 of Townships Exhibit #9. Wal-Mart failed to comply with the requirements of Section 448.11.22.C. of the Ordinance by not stating in the Traffic Impact Study the time frame for making the improvements specified in the Study. Wal-Mart failed to comply with the requirements of Section 605.3.2.B. of the Zoning Ordinance by failing to demonstrate that the proposed use will not detract from the use and enjoyment of adjoining or nearby property owners due to the increased volume of traffic. Wal-Mart failed to comply with the plan submission requirements of the Zoning Ordinance by failing to submit revised floor plan, building elevations, landscape, lighting plans. Wal-Mart failed to comply with the requirements of Section 314.3 of the Zoning Ordinance by failing to demonstrate that planting will be arranged in such a manner as to block ground level views at a height of 6 within 2 years of installation. Wal-

Mart failed to comply with the requirements of Section 448.15.5.C. of the Zoning Ordinance by failing to provide a concise updated chart that gives all square footage information for proposed plantings. Wal-Mart has failed to comply with the requirements of Section 605.3.2.D. of the Zoning Ordinance by failing to demonstrate that adequate police and fire services are available to serve the proposed use. Wal-Mart has failed to comply with the requirements of Section 448.15.4 of the Zoning Ordinance since its proposed access drive to Columbia Avenue is located nearer than 100 feet from a property line. Wal-Mart has failed to comply with the requirements of Section 448.15.8 of the Zoning Ordinance by failing to identify environmental impacts that are likely to be generated and to provide specific measures employed to mitigate or eliminate any negative impacts such as noise, smoke, dust, litter, glare, and stormwater. The parties in opposition to this application have fulfilled their burden in demonstrating a substantial threat to the public health, safety and welfare not normally encountered with a typical shopping center development. The Wal-Mart store as proposed will detract from the use and enjoyment of adjoining or nearby properties and will substantially change the character of the neighborhood due to increased inadequately controlled traffic as evidenced in the deficiencies of its Traffic Impact Study and the failure of Wal-Mart to address the adverse impacts raised by the protestants. Therefore, Wal-Mart has failed to comply with the requirements of Section 605.3.2 of the Zoning Ordinance. Wal-Mart has not met its burden of proving compliance with the general criteria of 605.3.2.B of the Zoning Ordinance in that it has not established that the proposed use shall not detract from the use and enjoyment of adjoining and nearby properties with regard to non-traffic issues, since noise from vehicles, including trucks delivering to the site, will emanate into adjoining residential neighborhoods and parking lot lights will emanate into the adjoining residential neighborhoods. Wal-Mart failed, in violation of Section 605.3.2.D, to demonstrate that adequate roadways were available to serve the proposed use. Wal-Mart has not met its burden of proving compliance with the general criteria of 605.3.2.C of the Zoning Ordinance in that the proposed use will substantially change the character of the subject property's neighborhood in that the lighting, noise and traffic will significantly and adversely impact the neighboring residents' right to the quiet enjoyment of their properties. The objective Zoning Ordinance criteria with which Wal-Mart has failed to comply are numerous and significant and cannot be remedied or lessened in impact by the imposition of conditions. The doctrine of res judicata (claim preclusion) does not bar the submission of and hearing on this Application because substantive elements of the Application differ from the 2001 Application. The doctrine of collateral estoppel (issue preclusion) applies to the determination by this Board in its 6/27/02 Decision that the Zoning Ordinance permits one traffic access per road frontage of the entire shopping center site, regardless of the number of lots within the shopping center site and that the Property had two access drives but had frontage on only one road in violation of Zoning Ordinance, Section 447.10, now codified as Section 448.10. This matter was conclusively and finally determined. Accordingly, this determination is binding upon the Applicant in the present Application and may not be relitigated. The doctrine of collateral estoppel applies to the determination by this Board in its 6/27/02 Decision that Substantial evidence was presented by protestants indicating adverse impacts to neighboring properties occasioned by noise, litter, glare, lighting and stormwater and First-hand observations at other Wal-Mart stores indicate considerable night time noise from loud car radios; trash and litter upon and about the Wal-Mart properties; sales areas set up in the parking lot; overnight parking and camping in the parking lot; and parking lot lighting emanating onto adjacent areas. The adverse impacts to neighboring properties was conclusively and finally determined to be a violation of

Zoning Ordinance Section 447.15.8 now codified as Section 448.15.8. Accordingly, Wal-Mart is now relieved of its burden to demonstrate compliance with the environmental impact and general criteria of the Zoning Ordinance. The submission by Wal-Mart of the Revised Plan does not mandate a remand as a new application because all parties had ample opportunity to review its contents and to prepare a response. Additionally, no prejudice to any party was demonstrated. The Board received the draft individually this afternoon and has not discussed it. They proceeded to discuss the draft. Mr. Granger stated Item 36 is changed to res judicata. Mr. Schlemmer stated he reviewed the document and felt the items presented in this draft decision meet the feelings he has of the findings of fact as well as conclusion of law. Both Mr. Granger and Ms. Douglas stated they concurred with Mr. Schlemmer. Ms. Douglas stated based upon the Findings of Fact and Conclusions of Law contained in the body of this decision, I move that the application of Wal-Mart stores, Inc. with address at 2001 S.E. 10th Street, Bentonville, Arkansas, for a special exception pursuant to the provisions of Section 207.3.14 of the Manor Township Zoning Ordinance to erect, occupy, and use a retail building in excess of 100,000 square feet on properties located south of Columbia Avenue and east of South Centerville Road within GC-General Commercial Zoning District (Tax Account No: 410-72247-0-0000) is hereby denied. Mr. Schlemmer seconded the motion and the motion carried unanimously. Mr. Granger advised the Applicant and parties would be mailed a copy of the decision. There being no further business the hearing was adjourned at 7:20 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary Evelyn Rineer
Zoning Hearing Board Meeting
10/04/06

Zoning Hearing Board Agenda

October 4, 2006 Time: 7:00 P.M.

1. Introduction of Board Members
2. Pledge of Allegiance to the Flag
3. Approve Minutes from September 6, 2006 meeting
4. Old Business Case #2-06 The Application of David L. Charles, property at 26 Millersville Road, Lancaster, PA 17603. The application is for an expansion of a non-conforming structure in accordance with Sec. 504.2 and Sec. 605.3 of the Manor Township Zoning Ordinance. The applicant wishes to expand an existing non-conforming office structure. The property is located in the MRC Mixed Residential Commercial Zoning District. A decision will be rendered.

DRAFT MINUTES Zoning Hearing Board Minutes

Wednesday, October 4, 2006 Time: 7:00 P.M.

The Manor Township Zoning Hearing Board met on Wednesday, October 4, 2006 at 7:00 p.m. at the Manor Township Municipal Building, 950 W. Fairway Drive, Lancaster, PA. Chairman Allan Granger called the meeting to order.

Members present: Allan Granger, Walt Schlemmer and Barbara Douglas Township Officials Present: William Laudien and James R. McManus Visitors Present: David Charles, 26 Millersville Road Charles Hurst, 26 Millersville Road Ted Gingrich, 110 Bent Tree Drive Bonnie Miller, 113 Bent Tree Drive

Mr. Granger introduced the Board Members, the Assistant Zoning Officer, the Solicitor, the Court Reporter and the Recording Secretary.

Minutes Mr. Granger stated copies of the draft minutes for September 6, 2006 were sent to the members and posted in the Township Office for review. There were no additions or corrections and the minutes stand approved as submitted. Mr. Granger stated they also received draft minutes for September 25, 2006 meeting. There were no corrections or additions and the minutes stand approved as submitted.

Old Business Case #2-06 The Application of David L. Charles, property at 26 Millersville Road, Lancaster, PA 17603. The application is for an expansion of a non-conforming structure in accordance with Sec. 504.2 and Sec. 605.3 of the Manor Township Zoning Ordinance. The applicant wishes to expand an existing non-conforming office structure. The property is located in the MRC Mixed Residential Commercial Zoning District. A decision will be rendered. Mr. Granger advised they requested that Dave Charles sign the application. Mr. Charles stated he had signed the application and Mr. Laudien presented the Board with the signed application. Mr. Granger stated the testimony was closed at the last meeting and taken under advisement. Mr. McManus contacted each member individually asking for their comments and recommendations and drafted a decision that the members received today. They will discuss the draft decision at this time. Ms. Douglas made a motion that based upon the foregoing, the application of David L. Charles with address at 26 Millersville Road, Lancaster, Pennsylvania 17603 to expand an existing office building use by 1,737 square feet over the first floor area to within eight (8) feet of the northern lot line of the property located at 26 Millersville Road, Lancaster, Pennsylvania, Parcel Account No. 410-48121-0-0000, pursuant to the provisions of Sections 504.2 and 605.3 of the Manor Township Zoning Ordinance is hereby granted subject to the following conditions which the Board deems the minimum necessary to adequately protect adjoining properties and preserve the character of the neighborhood within which the property is located. 1) Applicant shall adhere to the facts and dimensional criteria contained in its application, Exhibits, site plan and floor plans prepared by D & R Charles Construction for David L. Charles, Project 200613, dated August 7, 2006, as well as all testimony presented by the Applicant or on his behalf at the hearing held on September 6, 2006. 2) Applicant shall comply with all applicable State and local regulations regarding the construction, use and operation of the proposed use. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies as set forth in the Pennsylvania Municipalities Planning Code. The foregoing Decision shall be binding upon the Applicant, his successors in

interest and assigns. Mr. Schlemmer seconded the motion and the motion carried unanimously.

The hearing was adjourned at 7:10 p.m.

Respectfully submitted,

Barbara Douglas Secretary

Recording Secretary