

A meeting of the Township of Hamilton Planning Board was held on the above date with Chairman Gordon Dahl presiding. Members present were Michael Biglin, William Christman, Chris Jensen, Joseph Nickels, John Percy, Charles Pritchard and David Wigglesworth. Alternate member present was Joan Dumoff. Also present were Ronald Curcio, representing Chris Rehmann, Engineer Consultant; Joseph Adamson, Landscape Architect Consultant; John Rosenberger, Solicitor; Robert Watkins, representing James Mott, Planner Consultant; and Steven Mazur, representing Kevin Dixon, Alternate Traffic Engineer Consultant.

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes – Mr. Percy moved, seconded by Ms. Dumoff, to approve the minutes of the meeting of September 18, 2008, as published. SAID MOTION CARRIED WITH SEVEN MEMBERS VOTING “AYE”, NO “NAY”, ONE “ABSTAIN”.

Debra Kraus – Mr. Percy moved, seconded by Ms. Dumoff, to adopt the resolution prepared by the Solicitor for Debra Kraus, Application #2008-010.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Christman – Aye	Mr. Percy - Aye
Ms. Dumoff – Aye	Mr. Pritchard - Aye
Mr. Jensen – Aye	Mr. Wigglesworth - Aye
Mr. Nickels – Aye	Mr. Dahl – Aye

SAID MOTION CARRIED.

Ocean City Home Bank – Mr. Percy moved, seconded by Pritchard, to adopt the resolution prepared by the Solicitor for Ocean City Home Bank, Application #2008-011.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Christman – Aye	Mr. Percy - Aye
Ms. Dumoff – Aye	Mr. Pritchard - Aye
Mr. Jensen – Aye	Mr. Wigglesworth - Aye
Mr. Nickels – Recused	Mr. Dahl – Aye

SAID MOTION CARRIED.

Wal-Mart Stores, Inc. (Continued Site Plan Hearing) – Stephen Nehmad, Attorney; William McManus, P.P., L.S.; Sherry Thomas, Wal-Mart Market Manager; Perry Petrillo, Architect; Peter J. Dolcy, P.E.; and Deanna Drumm, Traffic Engineer, were present.

Mr. Rosenberger outlined how the meeting would proceed. He referred to the memorandum he had prepared that addressed the various items of relief, waivers and conditions which should be considered during its deliberations. The memo had been distributed to Board members and its professional consultants, in addition to Mr. Gasiorowski, Mr. Daines and Mr. Nehmad as a courtesy.

In response to a request of Mr. Nehmad, Mr. Dahl asked that Constance Van Seeters identify herself and step forward if present. There was no response.

Ronald Gasiorowski, Attorney, representing Constance Van Seeters and William Sumas of Shop Rite; and Donald Daines, Attorney, representing Acme and Super Valu, were present, also. Mr. Daines arrived soon after Mr. Gasiorowski started questioning Mr. Curcio.

Mr. Gasiorowski referred to Mr. Curcio’s review letter, and asked questions of Mr. Curcio related to his review of the proposed modifications to the storm water management system; his knowledge of how the existing storm water management presently functions; his

review of Mr. Cranmer's report; and whether additional documentation and independent studies should have been presented.

Mr. Daines asked additional questions of Mr. Curcio related to the existing basin and possible cause of its present condition.

Mr. Nehmad objected to Mr. Daines asking additional questions, as he had been provided the opportunity at a previous hearing, but Mr. Daines was permitted to proceed.

Mr. Nehmad asked questions of Mr. Curcio related to the questions asked by Mr. Gasiorowski and Mr. Daines.

Mr. Curcio responded to all questions presented.

Mr. Gasiorowski stated that he objected to the two memorandums Mr. Rosenberger had submitted to the Board, and noted that he had not seen the first one. Mr. Rosenberger stated that he had given the second memorandum to the objectors' attorneys as a courtesy.

Mr. Daines summarized his presentation and encouraged the Board to defer any action on the application until it is certain that the basin is functioning properly and would accommodate the proposed development without causing an adverse impact. He quoted testimony provided at previous hearings and a 1988 decision.

Mr. Gasiorowski summarized his presentation and stated he concurred with Mr. Daines. He encouraged the Board to commission an independent engineering study of the basin, and to defer action on the application until the information is submitted.

Mr. Nehmad responded to Mr. Daines' and Mr. Gasiorowski's comments and discussed assessing credibility, motive, objectors' funding, impervious coverage compliance, recognized methods of storm water management, minimal number of variances, consistency with the purpose of the Design Commercial Zone and the benefits of the improvements being proposed by the Applicant.

Mr. Percy moved, seconded by Mr. Biglin, to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Board members asked questions with regard to impervious coverage; pedestrian safety at the store entrance; security; pro rata share contribution toward off tract improvements; architecture and colors of building; trash control in buffer and parking lot; energy saving efforts; neat and clean construction practices; fence type during construction; hours of operation; truck turning ability; refrigerant use; sidewalk construction; and the storm water management basin.

Mr. Thomas, Mr. Petrillo and Mr. Nehmad responded to the questions. Mr. Dolcy described how the Applicant planned to proceed with reconstructing the basin.

Ms. Thomas stated that the site lighting would be curtailed in the event the hours of operation are reduced.

As a result of the discussion, the Board decided that the Applicant would proceed with the basin construction and that the basin would be stabilized before any major site work is commenced. Mr. Percy suggested that if it is discovered that the situation is other than anticipated, and something is found that would be detrimental to the environment, the Applicant should return to the Board to present a solution. Mr. Dolcy stated that soon as the basin is dewatered, he would contact the Township Engineer to witness a test pit. Mr. Dolcy, also, agreed to contact the County Engineer to discuss the basin that was constructed at the intersection of Tilton Road and Pomona Road.

Mr. Nehmad stated that the Applicant would accept, as conditions, the items identified in Mr. Rosenberger's memo, attached to a letter dated September 30, 2008, with the exception of the energy efficiency program referenced in Mr. Adamson's report, as there were no Ordinance

standards. He stated that, instead, the Applicant would employ the energy efficiency measures outlined by Mr. Petrillo.

After some discussion regarding the need for sidewalk in the area of the loading dock, Mr. Nehmad agreed that the Applicant would provide sidewalk behind the loading dock area, on the eastern side of the driveway from Route 40.

Mr. Rosenberger advised the Board as to what it has to weigh when considering the variances, and he reviewed them.

Mr. Biglin moved, seconded by Mr. Pritchard, to grant variances for building length, light standard height, number of building-mounted signs, number of free standing signs, total area of signs and lot frontage associated with Application #2008-002, submitted by Wal-Mart Stores, Inc.; Block 1134, Lot 9.

Mr. Percy asked how the building was being treated to address the building length variance, and Mr. Petrillo described what was being proposed.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Biglin – Aye, as some of the variances serve to improve conditions

Mr. Christman – Aye

Ms. Dumoff – Aye. She stated that she agreed with Mr. Biglin.

Mr. Nickels – Aye. He stated that he echoed Mr. Biglin’s comments.

Mr. Percy – Aye. He stated he was satisfied with the answer to his question regarding building length

Mr. Pritchard – Aye. He stated he felt that the granting of the variances would not have a negative impact and would serve to enhance the current site.

Mr. Wigglesworth – Aye. He stated he agreed with the comments of the other Board members.

Mr. Dahl – Aye. He stated that the granting of the variances would improve the overall development of the site and further the goals of the Township’s Master Plan.

SAID MOTION CARRIED.

Mr. Nickels moved, seconded by Ms. Dumoff, to grant preliminary and final site plan approval to Wal-Mart Stores, Inc.; Block 1134, Lot 9, Application #2008-002, with waivers granted for parking lot layout, loading space width, light intensity, parking setback, separation between basin bottom and seasonal high water and certain traffic study information, conditioned upon providing a parking setback of thirty feet from the Toys “R” Us boundary; providing a separation between storm water basin and seasonal high groundwater of two feet, six inches; providing a fair share contribution toward the signalization of Wal-Mart Drive and Route 322, and other corridor improvements as determined by the Board’s Traffic Engineer Consultant; providing sidewalk behind the loading dock and other locations to the satisfaction of the Board’s professional consultants; reconstructing the storm water management system to the point of stabilization prior to the initiation of site work and building construction; returning to the Board for additional consideration in the event it is determined that the basin will not function as designed, resulting in a detrimental effect to the environment; reducing the amount of illumination accordingly in the event the facility is operated less than the proposed twenty four hours a day, seven days a week; contacting the Township Engineer to arrange for him to witness a test pit in the basin after it is dewatered; contacting the Township Engineer to arrange for him to witness the removal of unsuitable material within the stormwater management basin and its replacement; implementing energy efficient and energy savings measures as outline in Perry Petrillo’s report, dated March 31, 2008; and compliance with the recommendations contained within the reports of Ronald Curcio, dated February 14, 2008, and February 25, 2008; James Mott, dated February 18, 2008; Joseph Adamson, dated February 18, 2008, March 3, 2008, and March 21, 2008, and Steven Mazur, dated CHECK REPORT DATES

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Biglin – Aye. He stated that he believed the testimony provided justified the granting of the waivers; that the conditions being imposed tying site construction with the storm water management basin construction would address most of the concerns raised; that a good-faith

effort would be made to ensure that the basin functions as designed; that there are maintenance agreement requirements that would require maintenance of the storm water management system; and that the project would be good for the Community due to the proposed improvements to enhance the entire site. He thanked all those in the audience that attended the hearings.

Mr. Christman – Aye. He stated he agreed with Mr. Biglin’s sentiments and thanked those that attended the hearings. He noted the efforts of the Township and other organizations to see that storm water management basins are maintained and functioning as designed so there is no adverse impact upon the environment. He questioned why Mr. Daines’ and Mr. Gasirowski’s clients never attended an Environmental Commission meeting to advise of their concerns with regard to storm water management in the Township and to learn what the Commission has done with regard to the issue. He invited Ms. Van Seeters, and other community residents, to attend a future Commission meeting.

Ms. Dumoff – Aye. She thanked everyone for attending the meeting and stated she concurred with Mr. Biglin’s and Mr. Christman’s comments. She stated that she would have liked for Ms. Van Seeters to have been present at the meeting so the Board could see their neighbor and hear her concerns.

Mr. Nickels – Aye. He stated there is an opening on the Environmental Commission if Ms. Van Seeters is interested in serving.

Mr. Percy – Aye. He thanked everyone for attending the meetings and noted that the Board could not take competition into consideration when considering approval of an application. He advised of the purpose of the Design Commercial Zone, and stated that the Board appreciates public comment and public attendance during hearings. He expressed disappointment that Mr. Gasirowski’s clients weren’t present so the Board could hear their concerns directly, and noted the past and present efforts of the Township to ensure vehicular and pedestrian traffic safety and environmental safety during the development process.

Mr. Pritchard – Aye. He felt that the testimony of the Applicant and the Board’s professional consultants had far more credibility than that of the Objectors. He thanked Board members for their patience, knowledge and participation during the hearing.

Mr. Wigglesworth – Aye. He thanked all of those that had participated in the process, and stated he was honored to be part of it.

Mr. Dahl – Aye. He stated he believed that all the issues had been addressed adequately, resulting in the best possible development. He thanked the public for attending and offering comments, and the Objectors’ attorneys for their professionalism.

SAID MOTION CARRIED.

Traffic Study Proposal – Mr. Dahl deferred making a decision on Alexander Litwornia’s proposal to study the traffic impact of development within the Hamilton business Park until the next meeting when Mr. Litwornia would be present.

COAH Update – Mr. Biglin briefly discussed the status of COAH, Round 3, and promised to update the Board at a future meeting after he has had an opportunity to gather more information and talk to Phil Sartorio.

Pinelands Area Proposed Changes – Mr. Pritchard encouraged members to attend scheduled meetings regarding the Pinelands Commission’s proposed changes to the Pinelands Area, as it involved changes to the Pinelands map and a clustering proposal.

Public Comment – Mr. Dahl opened the hearing to public comment.

Gerald Chudoff, Union Representative for the United Food & Commercial Workers Union, Local 152, advised that he had attended eight or nine meetings when Wal-Mart hearings were conducted, and stated that he resented not being able to speak at this particular hearing, as he wasn’t being given the ability to be heard with regard to issues unrelated to the drainage

basin. He referred to a letter he had sent to Township Officials, outlining certain issues, and a response that he had received to that the letter. Mr. Chudoff commented with regard to the affordable housing impact upon the Township, traffic circulation, visual and environmental impact of outside pallet and cardboard storage and location of outside cart storage. He accused the Board of not allowing the Union's attorney, Bret Last, to speak, and expressed the opinion that the Board "bowed over" for the Applicant. Mr. Chudoff stated that he would consult someone about filing an appeal, as it wasn't on record that he wanted to speak at this meeting and the Board voted before he was able to speak.

Mr. Dahl informed Mr. Chudoff that everyone had been given a fair chance to present comments and ask questions with regard to the Applicant's proposal, after which public comment was closed, with the exception of Mr. Gasiorowski's and Mr. Daine's participation, in an effort to provide an opportunity for those two attorneys to present cogent and coherent arguments. He stated that he took offense to Mr. Chudoff's comment that, because he wasn't able to provide additional comments at this meeting, he was treated unfairly, after it was made clear some time ago that the meeting would be closed to general public comment and ample opportunity had been provided for the general public to be heard.

Mr. Chudoff attempted to make comments with regard to truck traffic testimony. Mr. Rosenberger stopped him, stating that the Board cannot entertain comments on people's credibility and allow evidence to be placed on the record related to the application when the Applicant is not present to respond. Mr. Rosenberger further stated that the Board has rendered a decision on the application and the matter was closed.

Mr. Nickels moved, seconded by Mr. Pritchard, to close the public portion of the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Adjournment – Mr. Nickels moved, seconded by Mr. Pritchard, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Respectfully submitted,

Nancy Rainbow,
Planning Board Administrator