

LOWER PAXTON TOWNSHIP  
PLANNING COMMISSION

May 14, 2008

**COMMISSIONERS PRESENT**

Fredrick Lighty  
Roy Newsome  
Dennis Guise  
Ernest Gingrich  
William Neff  
Richard Beverly  
Douglas Grove

**ALSO PRESENT**

Lori Wissler, Planning & Zoning Officer  
Dianne Moran, Planning & Zoning Officer  
Omar Syed, Dauphin County Planning Commission

**CALL TO ORDER**

Mr. Lighty called the regular meeting of the Lower Paxton Township Planning Commission to order at 7:05 pm, on May 14, 2008 in Room 171 of the Lower Paxton Township Municipal Center, 425 Prince Street, Harrisburg, Pennsylvania.

**PLEDGE OF ALLEGIANCE TO THE FLAG**

Mr. Gingrich led the recitation of the Pledge.

**ANNOUNCEMENTS**

Mr. Lighty stated that the rezoning request for Schoffstall will not be discussed at this time. Notices will be sent again to make neighbors aware of the next meeting date. He stated that public comment can still be offered at this time. There was none.

**APPROVAL OF MINUTES**

Mr. Neff made a motion to approve the minutes of the April 9, 2008 regular meeting as well as the minutes from the April 21, 2008 workshop meeting. Mr. Grove seconded the motion, and the minutes were approved as submitted.

**NEW BUSINESS**

**Curative Amendment**  
**Noise Ordinance, Ross Schell**

Ms. Wissler explained that a Curative Amendment has been filed by Mr. Schell regarding the Noise Ordinance. She did not have information on whether the Amendment is to remove the ordinance entirely or to change the sound levels. Ms. Wissler stated that she included the correspondence from Ms. Mitchell to Mr. Schell and a copy of the ordinance, but did not have access to the proposed Amendment to review in preparation for the meeting.

Officer LuAnna Brook was present on behalf of the Lower Paxton Township Police Department. Officer Brook stated that since March 15, 2008 the Police have responded to the address of 203 Knollwood Drive five separate times for noise at that address. Each complaint was regarding loud revving of an engine and/or loud music being played in front of the house. Officer Brook stated that the complainant, prior to contacting the police, had tried to make contact with the person at 203 Knollwood Drive to settle things personally between them. That didn't work, so they got the police involved. Officer Brook stated that through all of the contacts, it seems to be a continuing problem. Amanda Mitchell, Codes Enforcement Officer, was brought into the issue because of the noise. The police department's concern is the neighbor problems, and that the noise is bothering the complainant and probably others.

Mr. Guise asked about citations. Officer Brook stated that the Police Department does not issue citations for noise complaints, but the Codes Enforcement Officer for the Township does. The Codes Officer is trained in the use of the decibel reader. Police officers will be trained in the use of the decibel reader, and once that happens, they can take the readings and forward the report on to the Codes Officer.

Mr. Newsome asked if citations are issued for disturbing the peace. Officer Brook stated that there isn't a "disturbing the peace" necessarily but there is the noise ordinance and disorderly conduct.

Mr. Ross Schell, 203 Knollwood Drive, was present on behalf of the Curative Amendment. Mr. Schell stated that the first time Officer Brook and Officer Cook showed up, Officer Brook never took her hand off her gun, and he had a problem with that. He stated that when an assault team shows up at your house for a noise that is nonexistent, according to all the police officers and all the neighbors except one, you get upset. Mr. Schell stated that not one officer heard the noise and no other neighbor complained. He stated he did not know what noise the violation referred to until Officer Smeck and Ms. Mitchell came to his house. Ms. Mitchell asked him to start his son's car, and as it turns out, his pick-up truck is louder. The car reads 85 decibels, and the truck reads 89. Mr. Schell stated he doesn't think the ordinance should be abolished because he sees there is a need for it, but he thinks the level should be raised and a time limit imposed.

Mr. Schell stated there should be some kind of decibel level such as 120 for 15 seconds, so that when someone installs a new horn in his car he can beep it for 30 seconds. He felt that a headbanger party shouldn't be allowed. The zoning office wouldn't see that at 2am anyway.

Mr. Schell stated that his front yard, on a normal day with nobody talking, is 85 decibels, and his back yard is 84. His son's car revs at 85, and his music was in the 90's. His music is loud, but he doesn't play it very often. Mr. Schell stated his son agreed to not do it after 7pm. He is 17 years old and fixing up his car. Mr. Schell made him put a new exhaust on the car so it would not be as loud. He also made him change the oil and spark plugs.

Mr. Schell stated that cars on the road are exempt, and he understands that. Motorcycles, including police motorcycles, are louder than that. The police motorcycle rocked the windows in his house.

Mr. Schell suggested 120 decibels for 15 minutes. He noted that 80 decibels after 8 hours, will hurt your ears, according to OSHA.

Mr. Lighty asked if the applicant is trying to make a policy statement for what the level should be. Mr. Schell stated that as the ordinance is written, he cannot legally park his vehicle in the driveway. His pick-up and his wife's Mitsubishi are both stock cars from the factory and register about 89 decibels. As the ordinance is written, Mr. Schell stated he cannot park a vehicle in his driveway, nor can he work on a vehicle in the driveway.

Mr. Lighty stated that the applicant has brought a Curative Amendment before the Commission. The applicant has the burden of proving that the zoning ordinance is invalid and must offer substantive grounds as to why. He explained that the ordinance being an inconvenience to the applicant, or the applicant wishing that it be different, does not prove it invalid.

Mr. Schell stated that Ms. Mitchell took the reading in his back and front yards, both of Mr. Schell's vehicles starting, and his son's vehicle. Mr. Schell stated he has had police officers come to his house and say he cannot work on vehicles because of the sound level. Mr. Schell stated that he has been asking about a noise ordinance since 1999 because of trash dumpsters being dumped at 5am. He has always been told there is no ordinance. Mr. Lighty stated the ordinance in effect was adopted in July 2006. Mr. Schell stated he agrees with the whole adoption of the international building code, but feels it should be tailored to Lower Paxton Township. Mr. Schell stated the zoning codes should be custom written for the Township, because they are utilitarian, and are being used all over the country and the world, just like the building codes. Mr. Lighty stated that building codes are somewhat standardized, however, the zoning ordinance was custom written, largely by this Commission, specifically for Lower Paxton Township, in accordance with the Lower Paxton Township Comprehensive Plan. It is solely a product of and for this Township. Mr. Schell stated that there are many townships in Pennsylvania that have the exact same writing in their zoning code. Some do have noise levels, and some have time limits and different variations to the sound levels. Some say 100 decibels after 10pm. Mr. Newsome asked for a copy. Mr. Schell stated he didn't bring that research. Mr. Schell stated he is asking for a change so that he can park his vehicles in his driveway.

Mr. Newsome asked if the vehicles cannot be parked in the driveway because the car exceeds the sound level to get it into the driveway. Mr. Schell stated that just starting the vehicle and idling in the driveway. Mr. Newsome asked if the vehicle can be parked in the driveway. Mr. Schell stated he does still park in the driveway because he doesn't trust parking it on the street. Mr. Newsome asked if the vehicle cannot be parked in the driveway. Mr. Schell stated he does park in the driveway, but technically he is in violation. Mr. Newsome asked what makes it in violation. Mr. Schell then read the letter he received from the zoning office. The letter advised that the revving of the engine and the level of the car radio were above the acceptable level and must be ceased. It says that a notice of violation and a non-traffic citation will be issued.

Mr. Newsome asked why Mr. Schell is in violation. Mr. Schell stated that his pick-up idles higher than the normal sound levels. Mr. Schell stated he wished Ms. Mitchell was here since she did the sound readings.

Ms. Wissler read the following from the police report: "Ms. Mitchell and Officer Smeck went to the Schell residence and spoke with Kris Schell. Kris voluntarily revved his engine and Amanda was able to get a decibel recording. The decibel level exceeded the allowable level under LP Township Ordinance. Kris then turned on his music and the sound level fluctuated between allowable and illegal." Ms. Wissler noted the violation is specifically the revving of the engine and when the music plays, not the idling.

Mr. Newsome stated that he doesn't own a sound meter, but sound levels of a car turning into a driveway are considerably different than the sound of a car revving. He stated that an automobile radio set at a normal level can't be heard outside the vehicle. The level of a radio turned all the way up, to the point that you can hear them from the highway while inside your house, is very different.

Mr. Newsome's repeated his question, can a vehicle get into Mr. Schell's driveway without violating the ordinance. He surmised that Mr. Schell's contention is that nobody can get into their driveway without violating the ordinance. Mr. Schell stated he did not check all of the Township, but he is going by the sound readings done on the vehicles that he owns, which are from the factory.

Mr. Newsome stated that the police report says the sound is from the revving of the engine. Mr. Schell stated that not one officer could tell him what the noise was. He didn't know until Ms. Mitchell and Officer Smeck came to his home and asked him to start the car. They did not ask about any other vehicle, only his son's car.

Mr. Neff stated that a curative amendment has to do with a law that is arbitrary and capricious. His research led to the HUD standard which is the 24 Code of Federal Regulations (CFR) Part 51 Subpart B, specifically section 51.103. This standard applies to the entire country. Lower Paxton Township has basically adopted this standard word for word. Mr. Neff stated he has seen this issue before with developments close to highways and train tracks. Every time he has seen the issue, the regulations refer to the HUD standards, which are the federal standards. Mr. Neff stated that since Lower Paxton Township has adopted federal regulations, and the application has raised a constitutional issue, the challenge may be more appropriately addressed in federal court. Mr. Schell initially thought it would be cheaper to go to the state court because of the constitutional issue, but he doesn't think he needs to do that and "play that freaking game". Mr. Schell stated he is asking that something be done about the sound level so he doesn't have to fear operating his own vehicle. Mr. Schell stated that no other neighbors heard any sounds. No police officers heard any sounds, only one neighbor. Mr. Lighty stated the police did receive five complaints since March of this year. Mr. Schell stated the police usually respond to calls. Mr. Schell stated that the last officer to come to the house did not hear anything. The only time he did hear something it was 2:00 pm on a Sunday afternoon.

Mr. Schell stated this is nothing but an idiotic situation that has gotten out of hand. He stated that his son can be noisy, but so can his neighbor down the hill when they have outdoor barbeque parties.

Mr. Lighty stated that Mr. Schell is presenting to the Planning Commission a curative amendment. In order to do that, Mr. Schell must prove to the Commission how the ordinance, using substantive grounds, is invalid. Mr. Lighty stated he has heard nothing except that his vehicles are too

loud, his vehicles are louder than permitted by ordinance, but nothing that shows the ordinance is invalid. Mr. Lighty stated that Mr. Schell doesn't have to agree with the levels set by the ordinance, but that does not prove them to be invalid.

Mr. Schell stated that if the police come to his house again and they tell Ms. Mitchell, she will take him to the District Justice because his vehicles make too much noise. Mr. Schell stated he was told numerous times that the Township does not have a noise ordinance. It only has a zoning ordinance which is not enforceable by the police. Mr. Lighty stated it is enforced by the Township. Mr. Schell stated that if someone goes crazy on him and calls the police, he runs the chance of getting himself in trouble with the DJ and fines up to \$500. He stated he can do that just parking his vehicle in the driveway.

Mr. Lighty asked for the grounds on which the zoning ordinance is invalid. Mr. Schell stated it is denying him the right to park his vehicles in his driveway.

Mr. Beverly stated the Commission is trying to explain the process. He noted that Mr. Schell contradicts himself first by saying that he cannot park his vehicles, then by saying he cannot work on his vehicles. Mr. Beverly asked for substantial information to show that the ordinance should be changed. Mr. Schell read the ordinance to the Commission. He stated that the ordinance doesn't say what kind of sound, it only deals with the level of sound. Mr. Beverly stated that the applicant has already indicated that the problems are the car stereo and the revving of the engine. Mr. Schell stated he doesn't rev his truck engine, he only starts it. Mr. Beverly doubted very seriously that someone would complain when you park your vehicle. Mr. Beverly stated that the police wouldn't have been called five times if there wasn't a problem. Mr. Schell stated he truthfully hasn't heard the problem yet. He also noted that a 2-month-old baby isn't bothered by the noise.

Mr. Beverly asked that the discussion refocus on why the ordinance should be changed. Mr. Schell asked what proof is needed, and noted that the Code Enforcement Officer took readings and they all exceeded allowable levels. Mr. Schell offered to take more readings of his driveway. Mr. Lighty stated the applicant has to prove that the ordinance is invalid. The fact that Mr. Schell's vehicle is too loud is not a reason. A substantive reason is needed to show the ordinance is invalid. Mr. Lighty stated that the applicant has the burden of proving it.

Officer Brook, in response to Mr. Schell's comment about her gun, stated she has never responded to the house at 203 Knollwood Drive.

Ms. Tara Mead, 201 Knollwood Drive, presented an 8-page noise log, as well as a statement from her family (attached). She stated she has spoken with other neighbors and although they did not take any action, they hope the issue will go away. She noted that she has no issue with Ross's or Tammy's vehicles starting. She stated that the reason the police officers do not hear the sound when they get there, the noise has dissipated.

Ms. Tammy Schell, 203 Knollwood Drive, stated she has never given decibel levels a thought until she had teenagers. She stated that 60 decibels at certain hours of the day is what is referenced in the ordinance. She stated that car city traffic is 70 decibels, a dishwasher is 60 decibels. She pointed

out that simple traffic is more than allowed by the ordinance. She agreed that noise over a long period of time, and loud noise over a short period of time is a bad thing. She noted that a busy street reads at 80 decibels. Ms. Schell stated that decibel levels should reflect the age of the area, and noted that the property lines in her neighborhood were laid out in the 1950's. She stated that other things should be taken into consideration. She suggested a time limit might be a good way to amend the ordinance. For example, revving the engine for a half hour should be dealt with differently than 10 or 5 minutes. Findlaw.com recommends that time limits be considered when writing a noise ordinance. Ms. Schell stated that police officers and zoning officers deserve more guidance in this area. She stated that other homes have the same issue. She also noted that the Mead's house was built on the property line. Ms. Schell stated that the World Health Organization (WHO) information does talk about length of time in addition to decibels.

Mr. Guise stated that a curative amendment is something that is filed when an ordinance's validity is challenged, or when it unduly or improperly restricts the use of property. It is not an issue of whether the ordinance is perfect or could be improved. There may be other avenues to have the ordinance amended. When someone asks for a curative amendment, you shoulder the burden of showing the substantive invalidity in the ordinance that unduly restricts any use or development of the property. Mr. Guise stated that based on the testimony given, the ordinance does restrict the use of the property, but it is not an unreasonable restriction, and it doesn't render the property useless.

Mr. Guise made a motion to recommend to the Board of Supervisors that they not find the noise ordinance invalid, and therefore not grant the request for a curative amendment. Mr. Grove seconded the motion. Mr. Lighty called for comments on the motion. Mr. Gingrich suggested the Township consider the grounds on which the ordinance is based and how the language was arrived at, and consider what adjacent municipalities have in effect in their ordinances. Mr. Gingrich stated that if there is no problem with those items, there is no reason to change an ordinance for the sake of inconvenience. A unanimous vote followed.

**Preliminary / Final Subdivision Plan #08-08**  
**Harold Rudy**

Ms. Moran stated that the purpose of this plan is to subdivide a portion of Parcel 35-070-062 and combine it with Parcel 35-065-102. The newly created Lot 2 will consist of 14,957.79 square feet and the remaining Lot 1 will contain 2.482 acres. These two lots are located at the end of Nittany Lane which is presently a dead end street. The property is zoned R-1, Low Density Residential District and will be served by public water and public sewer.

On January 31, 2008, the Lower Paxton Township Zoning Hearing Board granted a variance allowing the creation of the new Lot 2 with a total area of 14,957.80 square feet.

Ms. Moran stated that the applicant has requested the following waivers: preliminary plan requirement, erosion and sedimentation control plan requirement, curb and sidewalk requirements, and existing contours requirement.

Mr. Harold Rudy Jr., Applicant; and Frank Grotolla, Act One Engineering, were present on behalf of the plan.

Mr. Neff asked if there are currently sidewalks or curbing on Nittany Lane. Ms. Moran answered no.

Mr. Syed suggested that the signature of the future owner of the new lot should also be shown.

Mr. Lighty asked if the applicant has received comments from Staff, HRG, and Dauphin County. Mr. Grotolla answered yes. Mr. Lighty asked if the applicant had any issues with the comments. Mr. Grotolla asked if the Commission saw any comments that were insurmountable. Mr. Grotolla stated that he will remove the line on the plan about the future building so that the land development comments go away, such as sidewalk, curbing and stormwater improvements.

Mr. Grotolla submitted a waiver request for the stormwater plan, since they are not proposing any impervious surface with this plan.

Ms. Wissler noted that the comments on this plan are typical in Lower Paxton Township, and are a result of the subdivision, regardless if there is a land development plan. Ms. Wissler clarified that a land development plan will not be necessary, the applicant is only creating a lot to construct a house on. Once the lot is legally created, the next step is to apply for building permit, so they will not be back before the Commission.

Mr. Guise made a motion to recommend approval of the plan and approval of the five requested waivers, subject to the resolution of the comments and that the developer submit revised plans prior to the Supervisors taking action on the plan. Mr. Gingrich seconded the motion and a unanimous vote followed.

**Rezoning Request**  
**Ordinance 08-06**  
**Crums Mill Road and Doehne Road**

Ms. Wissler stated that the Township has proposed an amendment to the Township's Zoning Map for two properties located on Crums Mill Road (Parcels 35-024-041 and 35-024-056) The properties are currently zoned R-1, Low Density Residential District and BC, Business Campus District. The amendment would rezone these properties to R-1, Low Density Residential District.

Ms. Wissler noted that the subject parcel is abutted to the north and east by the R-1, Low Density Residential District, to the south by the BC, Business Campus District, and to the west is Susquehanna Township. The 2004 Comprehensive Plan's Future Land Use Map shows the area to be Low/Medium Density Residential.

The existing use on Parcel 35-024-056 is a single family dwelling, and Parcel 35-024-041 is vacant.

Ms. Wissler stated that Mike Kurtz was present as an owner of one of the lots, and the other owner does not object to the rezoning.

Mr. Neff asked what the adjacent zoning is on the land in Susquehanna Township. Ms. Wissler did not know. Mr. Neff stated that is important because of the roads and traffic, and to avoid inconsistent curb cuts and problems with reverse frontage. Mr. Kurtz stated that there are houses in Susquehanna Township.

Mr. Lighty suggested the Kurtz property be zoned residential to the north of Doehne Road and remain BC to the south of the road, so it could be developed more homogenously with the tracts around it. Mr. Kurtz stated that the land south of the road is all wetlands and creek, so it is undevelopable.

Ms. Wissler asked if the proposed home will go to the north or south of the road. Mr. Kurtz stated he would build a home to the north, since the area to the south is undevelopable.

Mr. Syed asked if the lot to the north is a buildable lot. Mr. Kurtz stated he can meet the setbacks and build a house about 26x34 in size. The northern portion of the lot is 0.26 acres, and total lot is about an acre. Mr. Guise stated that even though they will build on the northern portion, the southern portion is needed to meet the minimum lot size requirements.

Mr. Guise asked what impact the road would have on the buildability of the lot. Ms. Wissler stated it is one legal parcel, so if they can meet the setbacks it can be built upon.

Mr. Syed stated that if it is zoned R-1, they could build the house on the northern portion, do another subdivision and make a substandard lot. If the northern portion is not buildable on its own, the entire lot should be rezoned R-1. Mr. Guise stated that the lot as a whole is buildable, but not the northern portion alone.

Mr. Syed cautioned that there should be some language that says another subdivision cannot be done in the future and create a substandard lot out of the northern portion. Ms. Wissler stated that a subdivision cannot be done that would create a substandard lot without a variance.

Mr. Neff asked who owns Doehne Road. Ms. Wissler stated it is a Township road.

Mr. Newsome made a motion to recommend approval of the rezoning for Parcels 35-024-041 and 35-024-056 to R-1, Low Density Residential District. Mr. Beverly seconded the motion and a unanimous vote followed.

### **West Hanover Township Comprehensive Plan**

Ms. Wissler asked that the Commissioners forward to her any comments they may have on the revisions to West Hanover's Comprehensive Plan.

**Community General Osteopathic Hospital**  
**Presentation**

Mr. Steve Quigley, H. Edward Black, stated he was before the Supervisors last night and wanted to keep the Planning Commission informed as well. He oriented the Commission to the plan, showing Londonderry Road, Arlington Avenue, the main hospital, the rehab hospital, and the Bloom building. Pinnacle would like to construct a new cancer and imaging center that will attach to the north side of the hospital. That would be about 46,000 square feet, on three levels and will connect to the hospital. The new center will combine cancer centers from CGOH, Polyclinic and Harrisburg Hospital. This will be done in concert with the Fox Chase Cancer Centers in Philadelphia.

The imaging center that was approved to go on the back of the hospital is not going to be built and will be located in the basement level of the new addition. When that happens, the existing MRI center will be demolished for additional parking.

The existing parking will be reorganized so that visitors to the hospital are walking with traffic instead of through rows of parked cars. The drop-off at the emergency room will be reorganized.

There is a 50,000 square foot building behind Bloom that will either be a short-stay hospital in concert with the Susquehanna Surgeons, or it will be an expansion to Bloom as medical offices. If Bloom is expanded, the apartments behind the hospital will come down for more parking and stormwater facilities.

Pinnacle is working on a subdivision plan to bring all of the parcels into one. The land development plan will be in two phases: the cancer center, and the Bloom addition.

Mr. Quigley stated that the traffic study will have to be revisited. Some of the signals may have to have timing adjustments made, and some intersections may require signalization.

Mr. Beverly questioned the construction entrance. Mr. Quigley stated that the construction vehicles will use Arlington Avenue. Mr. Beverly stated there was a frequent dust problem last time the hospital did work, and the trucks were not covered and left waste along Arlington Avenue. Mr. Quigley will make sure the construction manager is aware.

Mr. Neff stated he was glad to see the expansion of the facility. He asked for a longer range plan for the hospital. Mr. Quigley stated there is one, but it changes as the medical field changes, which does change rapidly. Mr. Neff stated that the homes between the highway and the hospital is now zoned IN, and asked what direction the Township should go to facilitate acquisition of grounds for the hospital. Mr. Quigley stated that the church is not opposed to future deals, but that is farther into the future. He noted the hospital has the ability to add two floors above the core of the hospital. When that happens, more parking will be required and a parking deck is being considered over the existing parking lot. The hospital is doing the regrading of the parking lot now so that when the deck is needed, the lot will be ready.

Mr. Neff asked if the hospital owns the apartments to the east. Mr. Quigley stated they only own the ones behind the hospital.

**Public Comment**

There was no further public comment.

**Commissioner & Staff Comment**

Ms. Wissler asked for a member of the Planning Commission to volunteer for the Greenway Committee. They will meet the first Monday of the month at 6:00 pm. Mr. Newsome volunteered.

Mr. Lighty stated that there is a meeting on Tuesday, May 20, 2008, at 5:30 pm regarding the Route 22 Improvement District.

**Adjournment**

The next regular Planning Commission meeting is scheduled for June 11, 2008, at 7:00 pm at the Lower Paxton Township Municipal Center, Room 171.

Being no further business, Mr. Grove made a motion to adjourn. Mr. Beverly seconded the motion, and the meeting adjourned at 8:30 pm.

Respectfully Submitted,

Michelle Hiner  
Recording Secretary