

DOVER TOWNSHIP
YORK COUNTY, PENNSYLVANIA
ORDINANCE NO. 2006-06

***AN ORDINANCE OF THE TOWNSHIP OF DOVER, COUNTY OF YORK AND
COMMONWEALTH OF PENNSYLVANIA, AMENDING THE ZONING MAP OF THE
DOVER TOWNSHIP CODE OF ORDINANCES, CHAPTER 27, ZONING, AS AMENDED,
BY REZONING CERTAIN PARCELS OR PORTIONS OF LAND FROM CONSERVATION
DISTRICT TO INDUSTRIAL DISTRICT***

BE IT ORDAINED AND ENACTED by the Board of Supervisors of Dover Township, York County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same, as follows:

SECTION 1. The purpose of this Ordinance is to amend the Zoning Map of the Dover Township Code of Ordinances, Chapter 27, "Zoning," as amended, in order to provide for the reasonable development of minerals in the township by rezoning the following parcels from the present Conservation District to the Industrial District:

1. A tract known as the Dover Quarry, located north of Canal Road between Fox Run Road and Bull Road consisting of one parcel of land consisting of 59.21 acres, more or less, (including land sold to Northern York Regional Police) as more fully described and bounded at Deed Book 43Q, Page 79, Tract Two of the York County Records, being Tax Parcel Numbers KG-94 and KG-94G and one parcel of land consisting of 99.67 acres of land, more or less, as more fully described and bounded at Deed Book 61 H, Page 266 of the York County Records, being Tax Parcel Number KG-93, all as shown on the attached map marked Exhibit One;
2. A tract known as the Binder Quarry located west of Bull Road and north of Canal Road, consisting of 38.5 acres of land, more or less, as more fully described and bounded at Deed Book 670, Page 936 York County Records, being Tax Parcel Number LG-74, as shown on the attached map marked Exhibit One;
3. A tract known as the Lamparter Tract, located adjacent to the Dover Quarry on the south and the Binder Quarry on the east, consisting of 71 acres of land, more or less, as more fully described at Deed Book 249, Page 1063 York County Records, being Tax Parcel Number LG-148, as shown on the attached map marked Exhibit One.

SECTION 2. Upon adoption of this ordinance, the Zoning Map of the Township shall be so modified and the Township Secretary shall so certify such changes and modifications of the Zoning Map.

SECTION 3. All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed insofar, but only insofar, as the same are inconsistent herewith.


SECTION 4. The provisions of this Ordinance are severable, and if any provision or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not effect or impair the remaining provisions or parts thereof, of this Ordinance.

SECTION 5. This Ordinance shall take effect five (5) days subsequent to its passage.

ORDAINED AND ENACTED by the Board of Supervisors of Dover Township, York County, Pennsylvania, in lawful session duly assembled, this 25th day of September, 2006.

ATTEST:

**BOARD OF SUPERVISORS OF
DOVER TOWNSHIP**


Dawn D. Slegel, Secretary


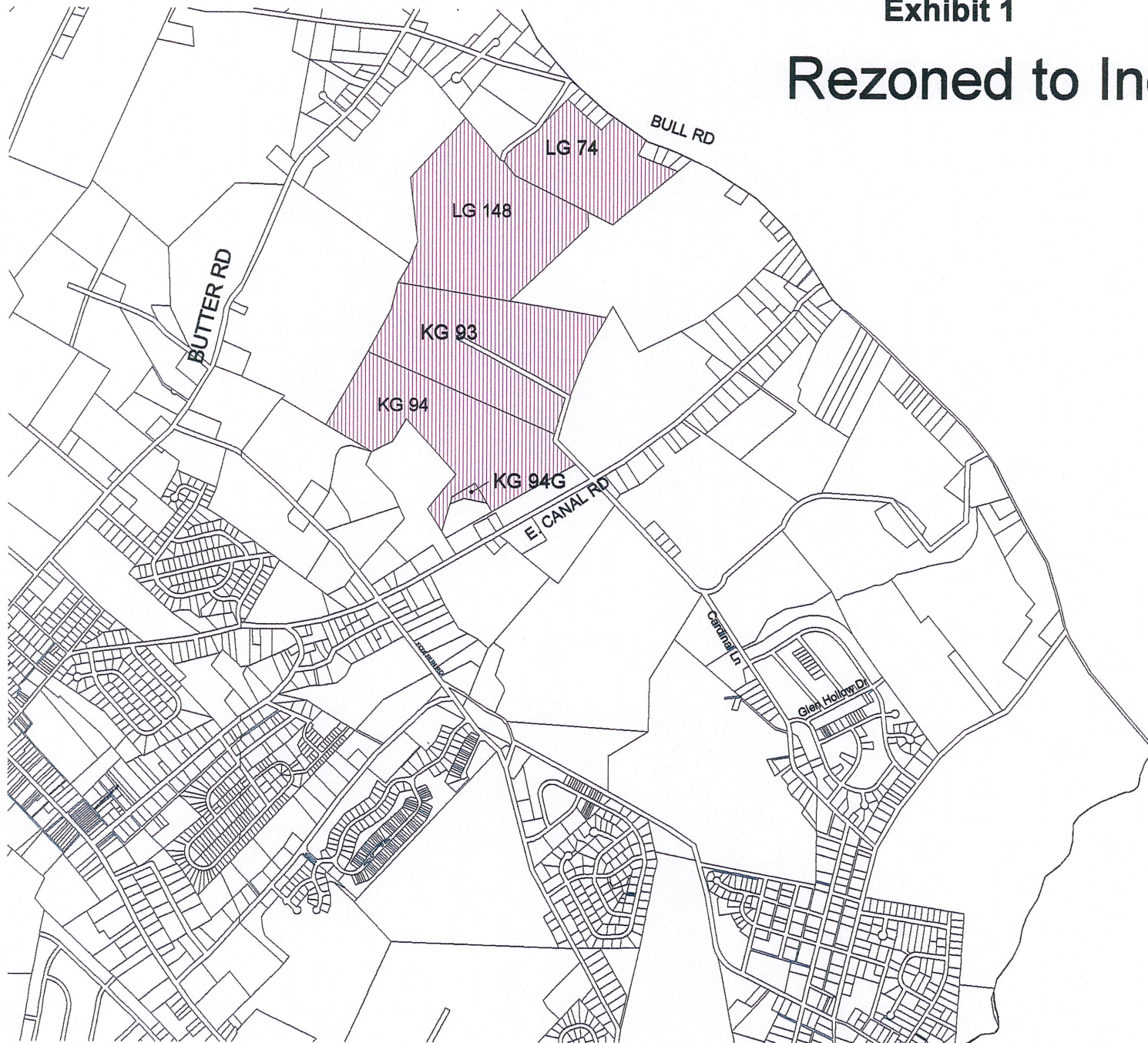

Shane H. Patterson, Chairman

Exhibit 1

Rezoned to Industrial



Work Session

Meeting Minutes 09/25/06

The Dover Township Board of Supervisors regular meeting for September 25, 2006 was called to order at 7:08 PM by Chairman Shane Patterson in the Meeting Room of the Dover Township Municipal Building. Supervisors present were Shane Patterson, Duane Hull, Michael Husson, Madelyn Shermeyer, and Curtis Kann. Other Township Representatives in attendance were Atty. Charles Rausch, Township Solicitor, Terry Myers, Township Engineer, Karen Wilson, C. S. Davidson, Laurel Wilson, Township Manager, Georgia Sprenkel, Zoning Officer, and Dawn Slegel, Recording Secretary. Also in attendance were approximately 82 citizens and 1 reporter. This meeting has been recorded for minutes purposes only. The pledge of allegiance to the flag was recited.

Chair Patterson announced that an executive session was held from 6 to 7 PM this evening dealing with personnel matters and the Glen Gery litigation.

PUBLIC HEARING

Chair Patterson opened the public hearing at 7:09 PM. Atty. Rausch introduced and submitted into record the following documents. As a part of public hearing certain notice requirements must be met under State law. A proof of publication was received as a part of the legal advertisements for the summary of the proposed ordinances in the York Daily Dispatch on September 8 and 15, 2006. The proposed ordinances were submitted to the Law Library, the York County Planning Commission, and the Dover Township Planning Commission as required. The properties were posted and there was an affidavit to that effect. Written notices were sent to surrounding property owners of the proposed parcels to be rezoned. Dover Township complied with all of the notice requirements for the consideration of the proposed changes to the Zoning Ordinance. The purpose of the hearing was to discuss the term of shallow resource recovery and to provide for the use of shallow resource recovery as a permitted use in the Industrial District under certain requirements as proposed in the first ordinance. The second ordinance proposes a shallow resource recovery overlay district. The third proposed ordinance rezones the Dover Quarry property, the Binder Quarry property, and the Lamparter Tract from conservation to industrial. The Township has proposed these changes because they have been subject to two types of challenges under State law which are the procedural validity challenge and the substantive validity challenge. He gave a brief overview and history of quarrying in Dover Township. The issues are if there is enough land zoned industrial in the Township and when applying the setbacks to the existing industrial land is there land to actually do quarrying. As a result of hearings held, the Board began negotiations with Glen Gery Corporation to see if there could be a global resolution of all of the issues. The parties reached an agreement. The issue of the amount of industrial land in the Township was of serious concern to the Board. If Glen Gery prevailed on their challenge, they could do what they want on the Davidsburg Road land which they

recently purchased without any restrictions, other than the State's. The procedure is called "Site Specific".

Atty. Rausch explained the first proposed ordinance which amends the text of the Zoning Ordinance to allow for the definition of shallow resource recovery which is non-coal surface mining. It is **Meeting Minutes of 9/25/06 - Page 2**.

subject to the following restrictions, which are the limitation to daylight hours of operation; no blasting; no hauling through the Borough of Dover unless road closure or other emergency; follow EPA, DEP, and the Bureau of Surface Mines of the Commonwealth regulation for all activities and uses; and storage of quarry related materials and equipment and raw materials shall be considered accessory uses. He further explained the process for shallow resource mining as performed by Glen Gery called rolling reclamation. This ordinance would add the shallow resource recovery use to the Industrial Zone.

Public comment was taken on this proposed ordinance pertaining to the shallow resource recovery use in the Industrial Zone.

Lori Kopp, Schoolhouse Road, asked what zone pertained to the shallow resource recovery.

Atty. Rausch responded that this is the text amendment for shallow resource recovery. It will apply to both the overlay and the rezoned parcels.

Larry Rinehart, Clearview Road, questioned the depth and amount of shale allowed to be extracted, the reclamation process, and the future site condition back to agricultural farming.

Chair Patterson replied that a difference in the topography of the property is evident. Glen Gery will mine the veins of shale and refill with topsoil. There will not be any pits. The area will be leveled off.

Atty. Rausch added that the area will convert back to farmland. The quarry area behind Northern York County Regional Police Department has been reclaimed by Glen Gery. Twenty five acres of that area has been proposed for donation to the Township as a part of the settlement.

David Grange, 3310 Schoolhouse Road, inquired on preciseness of the hours of operation and the blasting.

Atty. Rausch answered that there will be no blasting. The hours of operation are daylight hours.

Chair Patterson added that they will work the normal business operation hours for the company.

Maureen Donohue, Mountain Road, asked about setbacks from the roads.

Atty. Rausch referred the question to Shawn Frye from Glen Gery Corp. Mr. Frye stated that the State regulations are 100 feet from the outside of any public right-of-way.

Atty. Rausch added that Glen Gery uses the topsoil as a berm to visually separate its operations from adjacent properties.

Pat Tomes, Clearview Road, questioned any allowable provision for lighting at nighttime.

Atty. Rausch replied that they will not be working at night. The settlement agreement will be adopted by court order. Should there be a breach of the agreement, it can go back to court with a quicker resolution.

Terry Brenneman, 5610 North Salem Church Road, requested clarification that the whole overlay district could be subject to the shallow mining if Glen Gery owned it.

Atty. Rausch answered affirmatively assuming that they owned all of it. The overlay district would allow Glen Gery, if they owned the property, to conduct shallow resource recovery operations within that quadrant.

Mr. Brenneman was not pleased with his new home investment adjoining the Glen Gery mining operations and within the proposed shallow resource recovery overlay district. He asked if it was a "done deal".

Atty. Rausch explained that it will happen if the Board adopts the ordinances. The ordinances are advertised for adoption this evening, if the Board so chooses.

Jay Bollinger, Clearview Road, asked who has the responsibility of policing Glen Gery.

Atty. Rausch responded that would be the Department of Environmental Protection (DEP). Glen Gery is required to bond their operations. If they do not comply with DEP regulations, DEP can revoke their bond.

Mr. Bollinger questioned the responsibility of any contaminated water from the local stream. He asked if the Township would back the residents in fighting them.

Atty. Rausch replied Glen Gery would take care of that. If it can be traced to Glen Gery's operations, they will be responsible. DEP monitors all the streams in the Township.

Chair Patterson stated that as part of the testimony, testing is done of area wells. They test it premining and throughout the mining process. If there would be any

detrimental impact on a well from the operations on that property, they would be required by DEP to remedy the situation.

Mr. Bollinger inquired if their trucks were permitted to use Clearview Road and drive through the village of Davidsburg.

Atty. Rausch said that they can use any road except travel through Dover Borough.

Randy Sands, Schoolhouse Road, asked how much truck traffic this operation would generate.

Atty. Rausch responded that Glen Gery would first complete quarrying in the Dover and Binder Quarries, and then Lamparter Tract.

Chair Patterson informed Mr. Sands that the Board has a notebook of information from the Glen Gery Hearings that included the number of estimated trips in and out of the quarry, as well as coverage of the transportation of equipment. The shale will be taken to their plant in Spring Garden Township.

Supervisor Shermeyer further explained that Glen Gery will not quarry in a specific area every single day. They stockpile the shale on site. It is not a day in, day out, weekly, or monthly operation.

Chair Patterson related that the specific information can be supplied through the Township Office at their request.

Gary Peck, North Salem Church Road, commented on his concern for his well.

Chair Patterson stated that the wells in the vicinity would be tested prior to the mining and would also be tested throughout the mining process. Any deterioration in the quality of the wells would be the liability of Glen Gery Corp. to make sure the problem is remedied.

Supervisor Shermeyer reminded Mr. Peck that this is surface resource recovery. They will not be digging deep pits.

Atty. Rausch added that they can't go below the water table.

Tom Green, 1071 East Canal Road, asked who monitors the hours of operation and the dust.

Supervisor Shermeyer noted that the people will monitor the time closely.

Supervisor Hull added that DEP will monitor the air quality.

Atty. Rausch said that it is in Glen Gery's best interest to not violate any regulation set by the Township or DEP.

Maureen Donohue, Mountain Road, inquired about chemicals used in the mining process. She also asked about the benefit to the taxpayers in regards to revenue.

Chair Patterson stated that the Board was not made aware of any chemical usage. No explosives are used. They use a bulldozer with a ripper to tear up the clay and remove it with a scraper. The benefits are monetary and the donation of land which are listed in the settlement agreement. He added that future development of the additional industrial land would be beneficial to the tax base.

Atty. Rausch noted the royalties will be paid and a nasty lawsuit will be ended. This is sort of a way to preserve farmland. It will return to its prior use. They will stockpile the topsoil on site and it must be put back.

Chair Patterson informed the public that, to date, the Township has spent over \$100,000 of the taxpayers' money going through this legal process. Part of the agreement is that Glen Gery will be reimbursing the Township for those legal expenses to defend the Township Ordinances.

Dan Reeser, 3205 West Canal Road, questioned whether the stripped mined land will be able to be built with houses in the future.

Chair Patterson replied that the land will be returned to agricultural land. His response was that it would be suitable for housing.

Supervisor Shermeyer added that there are other areas that Glen Gery has reclaimed naming one area on Fox Run Road which contain homes.

The Township Engineer explained that the current zoning regulations allow one new building lot per twenty-five acres. At 200 acres, they could put eight houses on the Davidsburg Road property.

David Grange, 3310 Schoolhouse Road, asked after they turn it back to agriculture if they would build homes there.

Chair Patterson stated in the past, the company has sold the properties to other individuals who then developed the land.

Mary Fisher, Clearview Road, commented that this operation at this location could go on for years. The overlay properties could end up being sold to Glen Gery.

Chair Patterson answered her stating that if property owners would choose to sell their property to Glen Gery Corp., then Glen Gery would have a right to quarry those properties in that zone.

Steve Hartman, Schoolhouse Road, was concerned about being in the overlay district. He wanted to know if they zone the land commercial, would the taxes increase.

Chair Patterson replied that the overlay district is not being zoned commercial. It will stay agriculture with a shallow resource recovery overlay.

Supervisor Shermeyer noted that a property owner is not taxed on how a property is zoned. The tax is on how the property is used.

Atty. Rausch explained the second proposed ordinance pertaining to the creation of the overlay district. The overlay district is bound on the north by Schoolhouse Road, on the south by Canal and Davidsburg Road, on the east by North Salem Church Road, and on the west by Clearview Road. It allows shallow resource recovery operations only in the overlay district and not any other type of quarrying.

Maureen Donohue, Mountain Road, questioned the duplication of another company from attempting this legal procedure.

Chair Patterson commented that the increase of the industrial land should eliminate that possibility.

Atty. Rausch stated that the Township is at risk unless they do something.

James Miller, 3291 Schoolhouse Road, asked if DEP is the only governing body who deals with diesel fuel or oil spills leaking into veins and then into the wells along Clearview Road. He discussed OSHA regulations for industry, but was not sure the regulations followed for miners.

Chair Patterson said that everything Mr. Miller mentioned would fall under contamination and that would be DEP's responsibility.

Atty. Ober, Attorney for Glen Gery, answered also MSHA for miners.

Patty Keenan, 5820 North Salem Church Road, questioned the large size of the overlay district, the setback for the gas line, and Clean and Green property.

Chair Patterson answered the setbacks are 100 feet. The size of the overlay district was to preserve the agricultural land and allow adequate space for future surface mining.

Atty. Rausch stated there is also legal consideration as to whether or not doing a site specific parcel would be sufficient and with expansion to protect the Township from another legal challenge by other brick competitors.

Steve Beam, 3036 Schoolhouse Road, noted that Glen Gery is trying to use agricultural land for a prohibited use. Since the Board is considering rezoning this other area to industrial land, he asked the reason for the overlay district.

Atty. Rausch explained that Glen Gery had bought the property on Davidsburg Road. If they win the challenge, they get to do whatever they want on the property.

Mr. Beam suggested allowing the surface mining only on the property they bought stating that the Township made an effort.

Atty. Rausch responded that is what has happened. Right now, that land is the only land Glen Gery can use. They can only use another piece of land if they acquire it and if it has what they want underneath of it. The legal problem is if doing that is enough. The Township should do it right in order to eliminate any possible future attack on the ordinances.

Mr. Beam said that he heard enough people that do not want the overlay district.

Atty. Rausch replied then they should not sell their property to Glen Gery.

JoAnn Brenneman, North Salem Church Road, inquired about the acreage of the Davidsburg Road tract that Glen Gery currently owns.

Atty. Rausch said that it was approximately 233 acres.

Terry Brenneman, North Salem Church Road, asked about the timeframe to mine that entire Davidsburg Road tract.

Jerry Carrns of Glen Gery stated that there are many factors involved and they have not made that determination.

Mr. Brenneman asked if Glen Gery requested that entire parcel be rezoned in that manner.

Atty. Rausch answered affirmatively.

Lori Kopp, Schoolhouse Road, commented on the Stambaugh Farm having no road frontage.

Atty. Rausch disagreed stating that there is road frontage.

Mrs. Kopp commented that they do not have enough right-of-way to get back to the property.

Atty. Rausch said that if they do not have sufficient right-of-way to get back there, then that is Glen Gery's issue. That is not the Township's concern right now.

Mrs. Kopp added that this surface mining will go on for years. She and her neighbors' whole environment will change. She asked the Board if they would want this next to their home. She expressed her frustration.

Chair Patterson related that the Board has sat through 1 ½ years of testimony on their processes and the thresholds met for DEP requirements. He would not have a problem living next to them. He can understand that this is change and change is often resisted. He said that Glen Gery has been a good corporate citizen.

Mrs. Kopp asked if the abutting properties to the existing Glen Gery properties had their wells tested.

Shawn Frye responded that DEP requires a sampling of wells for testing. They do not require every well be tested.

Mrs. Kopp further inquired about the Glen Gery's responsibility in remedying well contamination if proven.

Shawn Frye replied that the law requires Glen Gery to replace if the wells are affected by quality or quantity with a source of equal or better quality performance by whatever means have to be taken per DEP.

Dan Reeser, 3205 West Canal Road, commented that there is no one living near Glen Gery's current quarries here tonight saying it is a bad thing. He expressed that he thinks it is a good thing and is not opposed to it.

Doreen Hayes, Schoolhouse Road, asked if the shallow resource areas are being the sacrificial lambs if there is not enough property zoned.

Supervisor Shermeyer stated that the properties would have to sell to them. You cannot be forced to sell your property.

Mrs. Hayes was concerned about her property value.

Chair Patterson noted that through testimony it was stated that the properties near their quarries are not negatively valued. The reason is that the properties they own will not be turned into additional residential developments. The properties would be returned to agricultural uses just like they are today.

Supervisor Shermeyer discussed that properties cannot be taken by eminent domain. They cannot acquire a property by eminent domain for their own personal use.

Chair Patterson mentioned that Glen Gery is going through the process in Conewago Township in which the shale formation also runs. They should have significant resources. He explained that there is also a natural resource of some value for area residents, as well to some company.

JoAnn Brenneman, North Salem Church Road, asked about the application of the agricultural land regulations.

Atty. Rausch said that the current agricultural requirements still apply. That does not go away.

Steve Beam, 3036 Schoolhouse Road, questioned the history of environmental impact of tainted water sources to adjoining properties from quarrying.

Chair Patterson cited that during the hearing, the Board invited area residents to express their concerns with Glen Gery's operations in the Dover area and they were not overwhelmed with complaints or concerns.

Atty. Rausch noted that Glen Gery has not been cited by DEP.

Shawn Frye's recollection was that Glen Gery has had only one violation at the Dover Quarry in the past fifty years. They have not had any incidents with adjoining properties environmentally. Comparing the industry as a whole, they have an exemplary environmental record.

Atty. Rausch explained that one of the reasons that the settlement agreement is to the Township's benefit is that Glen Gery agrees to abide by all State regulations. If they do violate it, not only can DEP come down on them, but the Township can take them to court and shut them down. **The Meeting Minutes of 9/25/06 - Page 9.**

Township could not do that if Glen Gery won the lawsuit.

The Township Engineer added that the process would be much longer through DEP. The Township will have some local control.

Mr. Beam asked again if there was consideration to only take the Davidsburg Road tract without the overlay involved.

Chair Patterson answered with his opinion stating it was done in order to plan for the future, so that enough land would be available for quarrying in Dover Township.

Terry Myers, 1146 Cherry Orchard Road, questioned if it was possible to make these overlay areas a special exception use so that as each parcel comes into the Township it could be reviewed for the access and the traffic.

Atty. Rausch responded no because Glen Gery would have to go to another body in order to get that approval. The special exception route was not available.

Mr. Beam commented that the Board had proposed this district.

Atty. Rausch replied that the overlay district was developed to solve the issue on the site specific relief problem. The Township Solicitor was not comfortable from a legal standpoint because it would raise the question of "spot" zoning. By expanding the area, it solves that legal problem. Glen Gery does not want to go through this again.

Monica Love, 1540A Butter Road, commented that she has lived across from Glen Gery's existing quarry for eight years. Her parents and grandparents owned a farm across Butter Road from Glen Gery's quarry since 1943. There has never been an environmental problem with Glen Gery.

Supervisor Shermeyer asked her if she has heard of anyone in the area having any type of problems with them.

Ms. Love stated that she has not. The only problem she had was a dump truck driver who ran a stop sign on Fox Run Road. She called and spoke to the Manager at Glen Gery and the man was reprimanded. She is not happy with the whole situation, but she does not want another lawsuit for the Township.

Janet Keeney, Old Carlisle Road, commented on her attendance at the Glen Gery hearings and stated that the man with all the questions should have been there. She lived closed to Glen Gery and they never had any problems, except some dirt bike problems after the area had been backfilled.

Atty. Rausch and Supervisor Shermeyer both commented that all of the hearings were advertised for public attendance and posted on the Township office's door.

Terry Myers commented that as a use by right nothing is established for access. If someone else takes over the operation and wants to strip the area in a short period of time and use other local roads, they will destroy the Township roads such as Clearview, North Salem, and Schoolhouse Road. Consideration should be given to access for this type of use.

Pat Tomes, Clearview Road, thanked Mr. Myers for his comment. She also asked for a comparison of the overlay district acreage to their current use on Canal Road.

Supervisor Husson stated that the overlay district acreage is 1,500 acres.

Supervisor Shermeyer added that the current use is approximately two hundred acres.

Mrs. Tomes inquired as to their schedule to begin operations.

Chair Patterson responded that DEP requires some type of activity at the quarry site. There is a minimum amount of shale that must be extracted. They cannot let it sit indefinitely. They are running out of the shale material to manufacture the Dover brick.

Shawn Frye noted the regulations define an active permit as 500 tons per year.

Chair Patterson questioned whether the DEP Permit has been approved for the Davidsburg Road tract yet.

Shawn Frye said that it has not been approved yet.

Mrs. Tomes asked if restrictions could be put on the agreement to protect the secondary roads.

Chair Patterson replied that they will be using Davidsburg Road and state roads to transport the materials to their manufacturing facility.

Supervisor Shermeyer expounded on Mr. Myers' previous comment about someone else wanting to mine in that area. She stated according to the geologist's report, there is nothing else there to mine.

Doreen Hayes, Schoolhouse Road, questioned the reason for choosing the overlay district instead of the other rezoning area.

Chair Patterson responded because Glen Gery owned the Davidsburg Road tract.

Atty. Rausch explained that the problem remains to increase the Industrial Zone in the Township. In the overlay district, the underlying zoning, which is agriculture, is preserved.

Chair Patterson added that Glen Gery bought the Davidsburg Road property. The option was there to continue to battle with them in court and try to prevent them from mining that property. He did not believe that the court would be on the Township's side in the end.

Supervisor Hull said that the overlay was done to prevent "spot" zoning.

Supervisor Shermeyer added that the Township did not want to rezone just the Davidsburg Road property. That would have been "spot" zoning. It could have been zoned industrial.

Supervisor Hull commented that Glen Gery uses independent haulers to transport their product. At the price of diesel fuel, he believes that they will take the shortest route possible to get to Spring Garden Township, which will be Davidsburg Road to Carlisle Road and then Route 30.

Nan Herbst, Clearview Road, commented that the quarrying operation will deteriorate the property value of her land and home. All of her neighbors are here tonight.

Chair Patterson questioned the basis for her information.

Mrs. Herbst thought that the adjoining farms will be bought by Glen Gery.

Chair Patterson assured her that the Township received testimony during the hearings that the property values are not negatively impacted.

Lori Kopp, Schoolhouse Road, commented that it may not depreciate the value of the homes, but people do not want to move into this area because of what is going on. It may be difficult to sell a home in this area. She wanted to know specifics of their one DEP violation.

Shawn Frye explained that the one violation was for suspended solids and discharge from the sediment basin. In this circumstance, Glen Gery is required to meet Federal criteria. There was runoff from the backfill as they were trying to reclaim a large area. The affluent limitations they are subject to are stricter than for new homes, farms, or in building a mall.

Mrs. Kopp questioned any changes with the wildlife.

Chair Patterson mentioned that the Board had asked after the reclamation process was complete, as to what form of farming that would sustain. They were told that it should be able to sustain the same farming/planting that it had been in the past.

Mrs. Kopp spoke with a farmer who assured her that in this reclamation process, there are no changes in the ability to farm that land again.

Charles Rudy, Staunton Avenue, inquired about a corporate takeover. He asked if they are required to live up to the agreement.

Atty. Rausch answered absolutely. He added that any new company would be subject to the settlement agreement and all the requirements.

Atty. Rausch explained the third proposed ordinance which involves the rezoning of five parcels from Conservation to Industrial.

Sharon Sadek, Cherry Orchard Road, commented that she received information from two Township Officials that indicated the rezoning was done as a requirement for the Glen Gery settlement. When she asked the reason for the rezoning, she was told that there was not enough land zoned for quarrying; that it was already written in the contract with Glen Gery; and for strategic reasons.

Atty. Rausch stated that she should have read the settlement agreement.

Mrs. Sadek asked previously for a cost benefit analysis for the assessment of the potential benefits such as tax revenues, etc. She was told that this was not being done for tax reasons and later she was told it was a minor reason. She asked for the potential costs and was told there were no costs. She was told that the Township did

not have an analysis to show the benefits and the potential costs. She requested detail regarding Dover Township compliance with the State Municipal Planning Code. She was told that the State does not give out percentages. She feels that the Township has not presented a clear basis for this rezoning and that the Township has not demonstrated that an analysis was done on the cost method. She claimed that the Township residents were not adequately informed of the matter.

Chair Patterson instructed her that all of the legal requirements were followed as part of the public notification. He explained to her that there is no cost benefit analysis because it does not matter if the property is zoned since it is undeveloped land. The developer pays for streets, water, etc. The property taxes, sewer, and water bills thereafter go toward the maintenance of those systems.

Atty. Rausch added that Industrial land will be a better value from the Township's prospective. This use will not be a strain on schools and homes. That is why there is a mix between residential and industrial/commercial ideally. He explained that the reason for the rezoning is because there is not enough industrial land. It is his legal opinion that this land to be rezoned to industrial would survive a court challenge if any type of industrial use came in and tried to make a similar claim. The Township would be in a much stronger position to defend.

Mrs. Sadek questioned Atty. Rausch whether it was a legal requirement to rezone that land in order to comply with the Glen Gery settlement in order to allow Glen Gery to quarry.

Atty. Rausch replied that the point he thought she was trying to make and that the agreement makes clear is that the agreement states the Board will consider these ordinances. It is not a requirement to adopt them. If they do not adopt them, then Glen Gery is not obligated to proceed with the settlement agreement. The approval of the ordinances is part of the overall settlement. This Board is not obligated to go through with the rezoning under the agreement.

Mrs. Sadek asked if an overlay district could be done rather than the rezoning.

Atty. Rausch responded that yes that could be done, but then Dover Township is still at risk by not having enough industrial land. The overlay only applies to shallow resource recovery. If there is not enough land zoned industrial and a company picks land right next to your house, they get to do what they want right next to your property.

Mrs. Sadek inquired if the Township did not approve the rezoning would Glen Gery rescind.

Atty. Rausch explained that the Township is doing the rezoning to solve the problem. The Board does not have to adopt these ordinances, but if they don't, the fight will continue.

Terry Brenneman, 5610 North Salem Church Road, commented that he does not recall getting a notice from the Township that his land is being considered. In the future, people whose land is being directly affected should be given a notice about this.

The Zoning Officer stated that notices were sent out about a month ago.

Brad Shoff, 1781 Palomino Road, saw the articles in the newspaper regarding the Glen Gery situation. He worked for Glen Gery Brick many years ago. He commented that this concept is better than development. Industry will help the tax base. He feels it is a good thing for the Township.

Judy McIlvaine, 1120 Rohlers Church Road, questioned the adequate land percentage for industrial zoning by parcels in comparison with other Townships.

Atty. Rausch replied that there is no definitive answer to that. He feels that the Township would have a very good argument. The problem is that these cases are very fact specific.

Supervisor Husson added that the Industrial Zone is approximately two percent. It is hard to compare with other similar townships. Planning for industrial is done through access which this zone has to Bull Road and Route 30 or a future access could possibly be from Canal Road to I83.

Atty. Rausch stated for the record that the York County Planning Commission officially provided comments on the three ordinances and recommended adoption of all three as presented. The Dover Township Planning Commission was in favor of the rezoning and the text amendment. In regards to the rezoning, they were not in favor of the overlay district.

Charles Rudy inquired who the owners were of the proposed industrial land.

Atty. Rausch responded that Glen Gery owns all of the parcels except for the Lamparter tract. Twenty five acres will belong to the Township if the agreement is approved.

Georgia Sprenkel read a letter from William Sterling, 5901 Clearview Road, who could not attend this evening for the record. He was not in favor of the rezoning of the areas of Schoolhouse, Canal, Davidsburg, North Salem Church, and Clearview Roads. His concerns were water pollution, the wells and water table, truck traffic on the Davidsburg Road, noise, and the loss of more farmland.

John Lehr, 4650 Davidsburg Road, commented that he attended some of the hearings and they were boring because Glen Gery had the floor most of the time. He was not happy that the Board is making decisions for the people and they don't even live around there.

David Grange, 3310 Davidsburg Road, noted that not everyone received a notice in the mail.

Chair Patterson replied that residents owning property within the overlay district received notices.

Supervisor Husson added that the ordinance states that notices must be sent to adjoining property owners.

Manager Wilson expounded that the property is posted for that reason. Anyone driving past the property can read the sign and see that there is a hearing on it. It is advertised in the newspaper so that the readers can keep abreast of the situation and can see that there is a hearing on that matter affecting those particular parcels.

Vincent Rice, 3361 West Canal Road, commented that his property adjoins the overlay district. These are elected officials that were voted for and they have done their best to work out a compromise with a corporation which will benefit the Township in the long run. He has not seen anyone here tonight complaining that they do not want to see what is going on the east side of the Township happening on the west side. The Township has tried to enlighten you to the unknown. The Business has tried to enlighten you. It will not have a detrimental effect on properties. In fact, it may have a positive effect because of the mineral rights. He commended the Board for their outstanding job and said he felt he voted for the right people.

Charles Rudy commented that the Board has not talked about rezoning for two years.

Supervisor Shermeyer responded that it resulted from the hearings that the Township did not have enough industrial land. The Board did not discuss the rezoning.

Atty. Rausch clarified that when there is a substantive validity challenge, this Board sits as a judicial body. They must listen to evidence. In this circumstance, they sat as judges on their own ordinances to determine and decide whether their own ordinances are invalid. The applicant always goes first in this type of hearing so Glen Gery had the opportunity to present their evidence. The process was stopped midstream and negotiations began.

Chair Patterson mentioned that over \$100,000.00 of taxpayers' money was spent fighting this already. It was not only the adjoining property owners' money, it was all of the Township residents' money that was used to fight this for the last six years.

Supervisor Hull stated that this settlement agreement, in his opinion, is to the Township's benefit. If it continued, all the things that Glen Gery agreed to would not be there. Glen Gery should be thanked for their contribution to the Township.

With no other comments, Chair Patterson closed the public hearing at 9:51 PM. He requested a five minute recess.

The regular meeting was reconvened into session at 10:04 PM.

WORK SESSION AND MEETING MINUTES FOR SEPTEMBER 11, 2006

Supervisor Husson made a correction to the meeting minutes for September 11, 2006 stating that the meeting was called to order by *Vice Chair Duane Hull*. Supervisor Kann made a spelling correction under Public Comment, Page 2, an *Oregon* company. Motion by D. Hull and second by C. Kann to approve the work session and meeting minutes for September 11, 2006 as corrected. Passed with 4 ayes and 1 abstention by S. Patterson.

TREASURER'S REPORT

Manager Wilson reported that there is no Treasurer's Report tonight because the Treasurer was on vacation.

PUBLIC COMMENT PERIOD

Brad Shoff, 1781 Palomino Road, commented that at the last ATV work session meeting, it was discussed that 150 feet from the offended party's property line was the setback, but the ordinance states from any property line. He has a problem with that setback. Mr. Shoff stated he can stay 150 feet from the complainant's property but not from the others and the complainant might report him for not being 150 feet from the other properties.

Atty. Rausch replied that part of it will depend on how the police will enforce and interpret the ordinance. It should deal from the complainant's own property line and not someone else's. If that becomes an issue, then it might have to be addressed later. A warning will be given first. The police may not even enforce it.

Chair Patterson asked Mr. Shoff if the fifteen minutes testing time was adequate for him.

Mr. Shoff replied that he was okay with that, except that the Township Solicitor added a fifty foot setback. He will have a problem with that setback because of the way his lot is laid out.

Leroy Hake, 32 West Canal Street, inquired about the restriction in the number of riders because there are provisions for noise and dust in the ordinance.

Supervisor Husson responded that the restriction was established because the Board does not want racetracks in residential zones.

Mr. Hake also questioned the hours of operations which are two hours on and two hours off. He suggested one hour on and one hour off.

Supervisor Husson reiterated that this regulation is again mainly to regulate the residential districts.

Mr. Hake commented that it is more of a nuisance ordinance.

ZONING OFFICER'S REPORT by Georgia Sprenkel

Palomino Heights Time Extension - Ms. Sprenkel reported that she received a request for a time extension on the Palomino Heights Subdivision Plan along Palomino Road until December 29, 2006. **Meeting Minutes of 9/25/06 - Page 16.**

The Board acknowledged the Palomino Heights Subdivision Plan time extension as requested.

ENGINEER'S REPORT by Terry Myers

Resolution 2006-16 - Mr. Myers reported that requests have been made for street adoptions in Wandering Streams Phase IV-B for Wyatt Circle, Wandering Streams Phase V for Jules Lane and Rocky Road, and Admire Springs Phase III-A for Natalie Lane and Admire Springs Drive. All of the streets have been inspected and there are some minor items which need to be corrected. He received a sewer report from the Township Sewer Department which has some minor items that need to also be corrected. The maintenance guarantees are in place. Wandering Streams has approximately \$40,000 for Phase IV-B; Phase V has approximately \$57,000; and Admire Springs has approximately \$83,000 of bonding. **Motion** by M. Shermeyer and second by M. Husson to approve Resolution 2006-16 adopting the above listed streets as part of Dover Township's public road system. **Passed** with 5 ayes.

SOLICITOR'S REPORT by Atty. Rausch

Atty. Rausch reported that before the Board tonight are Ordinances 2006-04, 05, and 06. The ordinances have been duly advertised; the public hearing was held this evening; and they are ready for Board action if so inclined.

Ordinance 2006-04 - **Motion** by D. Hull and second by M. Shermeyer to adopt Ordinance 2006-04 the creation of the text amendment for shallow resource recovery use. **Passed** with 5 ayes.

Ordinance 2006-05 - **Motion** by C. Kann and second by D. Hull to adopt Ordinance 2006-05 the creation of the shallow resource recovery overlay district bound by Schoolhouse Road, Canal and Davidsburg Road, North Salem Church Road, and Clearview Road. **Passed** with 4 ayes and 1 nay with opposition by M. Husson.

Ordinance 2006-06 - **Motion** by M. Husson and second by C. Kann to adopt Ordinance 2006-06 to rezone the Dover Quarry, the Binder Quarry, and the Lamparter Tract from Conservation to Industrial. **Passed** with 5 ayes.

D'Altilio Case - Atty. Rausch received a letter today from Atty. Frank Lavery notifying that he closed his file on the D'Altilio matter. The insurance company advised him to send an evaluation form. He stated that Atty. Lavery did a good job for the Township and he will fill out the form accordingly.

MANAGER'S REPORT by Laurel Wilson

Approval of 2007 Minimum Municipal Obligation in the amount of \$108,625.85 - Manager Wilson reported that this is the money anticipated for the 2007 pension plan. She estimated that approximately \$92,000 would be reimbursed through State Aid. **Motion by M. Shermeyer and second by M. Husson to approve the 2007 Minimum Municipal Obligation. Passed with 5 ayes.**

Discussion/Approval of amendment to the T-Mobile Cell Tower Lease for Sky Top & Admire Tanks - Manager Wilson reported that there have been many company mergers in the cell phone industry and tower sites are being sold. The Township has been offered the opportunity to renegotiate with T-Mobile to keep their current sites at Admire Tank and the Sky Top Tank. Currently, the Township receives approximately \$1,700 in monthly rent for their usage of the Admire Tank and approximately \$737 in monthly rent for their usage of the Sky Top Tank. Their proposed new rate would be \$500 monthly for the Sky Top Trail and \$950 monthly for the Admire Tank. They are guaranteeing the rentals for five years and will extend the lease for five renewal terms. In the next five years, she calculated the total rent for the Admire Tank to be \$57,000. The only issue that she had with the lease agreement was the clause expanding their permitted uses. Atty. Rausch agreed with her concern noting that it allows them to "monkey around" with their communication facility. They should have to obtain approval from the Township.

Supervisor Shermeyer inquired as to the downside of not negotiating.

Manager Wilson responded that in the current lease, they could terminate it at any time. The renegotiation affords an opportunity to lock-in at a lower rate.

Supervisor Shermeyer asked if these figures were negotiable.

Manager Wilson was unsure if the lease was negotiable. T-Mobile is expecting a return call from her. She has more of a problem with the language of the lease than the rent money which will grow over time. **Board Consensus** to authorize Manager Wilson to enter into some type of negotiations. Discussion ensued on acceptable figures in which to negotiate with T-Mobile.

OLD BUSINESS

ATV Ordinance - **Motion by M. Shermeyer and second by M. Husson to advertise the ATV Ordinance. Passed with 5 ayes.**

Sign Ordinance - Manager Wilson reported that the sign ordinance has been advertised for a public hearing on October 23, 2006 Board of Supervisors Meeting.

Accessory Family Dwelling Ordinance - Chair Patterson announced that a work session will be held on Monday, October 9, 2006, at 6 PM, to discuss the accessory family dwelling ordinance.

COMMENTS/NEW BUSINESS FROM BOARD OF SUPERVISORS

Supervisor Husson discussed recommending the advertisement of a resolution to state that the Dover Township Board of Supervisors is looking favorably at placing on the referendum for licenses to sell liquor within the Township in the 2007 Spring Election. He spoke to a gentleman at Voters Registration who said that the Board should present this matter into the public arena to obtain comments. He explained that in order to get a referendum a petition is circulated throughout the Township which requires a certain number of signatures based upon the highest number of votes of the municipal election in November of 2006. Twenty five percent of the highest votes must sign the petition in order for the process to continue to the referendum in the 2007 Spring Election.

Supervisor Shermeyer asked if he contacted the Liquor Control Board. She said that licenses are distributed on a countywide basis, which was changed in 2003. No licenses are available and they would have to be bought and transferred.

Ms. Sprenkel commented that a public hearing will only bring out the residents in opposition. It cannot be judged fairly this way.

Supervisor Husson noted that the demographics of Dover Township denotes a much younger age group than when this was tried previously. There is no guarantee that it will pass, but it is worth the chance.

Chair Patterson recognized the request to consider circulating a petition in support of a liquor referendum in the 2007 Spring Election. **A Roll Call Vote was taken: Hull - Yes; Shermeyer - No; Patterson - Yes; Husson - Yes; Kann - Yes.**

Supervisor Husson announced that the Fall Fest will be held at Lehr Park on Saturday, October 7, 2006. Tethered hot air balloon rides will be available, weather permitting.

Supervisor Shermeyer recommended that the Township Picnic be changed from September to June due to the coldness of the rain in September as compared to June. The Board agreed with her suggestion to move the date to June.

Supervisor Shermeyer promoted the Dover Historical Society food stand at the Fall Fest. They will be serving chicken corn soup, bar-b-ques, and hot dogs.

Supervisor Shermeyer gave her pitch on supporting her and State Representative Bev Mackereth at the Dover Jail Dedication on Saturday, October 21, 2006, 9 to 11 AM, by making pledges to get them out of jail or keep them in which ever is preferred. She has made it perfectly clear that no matter the amount of the donations, they will both "bail out" at the same time.

COMMENTS FROM THE PUBLIC PRESENT

Leroy Hake asked when the Board would be voting on the ATV Ordinance.

Atty. Rausch said it will be advertised for the October 9, 2006 Board of Supervisors Meeting.

Chair Patterson added that he should call the Township Office by Friday to check if it is on the agenda for that meeting.

ADJOURNMENT

Motion by M. Husson and second by C. Kann to adjourn the regular meeting at 11:06 PM. **Passed** with 5 ayes.