

**DECISION OF THE ZONING HEARING BOARD OF
EXETER TOWNSHIP, BERKS COUNTY, PENNSYLVANIA**

IN RE: Application dated August 24, 2005, of METRODEV V, L.P. challenging the validity of Exeter Twp. Ordinance No. 596, adopted July 25, 2005, on procedural grounds pursuant to Section 10909.1(a)(2) of the Pennsylvania Municipalities Planning Code in effect in 2005 (the "Application").

DATES OF HEARINGS: June 24, 2015, June 29, 2015, July 21, 2015 and August 25, 2015

**FINDINGS AND CONCLUSIONS OF FACT, DISCUSSION,
CONCLUSIONS OF LAW AND ORDER**

The Zoning Hearing Board of Exeter Township, Berks County, Pennsylvania (the "Board") finds as follows:

A. FINDINGS AND CONCLUSIONS OF FACT

1. The Applicant is METRODEV V, L.P., a Pennsylvania limited partnership (the "Applicant").
2. The subject real estate for this Application is currently located along Old Friedensburg in Exeter Township, Berks County, Pennsylvania and bears Tax Parcel Number 5337-01-19-1629 (the "Property")¹.
3. The Property is comprised of approximately 46.36 acres of unimproved land.
4. The Applicant is the owner of the Property by virtue of a certain Deed dated February 17, 2005 and recorded in the office of the Recorder of Deeds in and for Berks County, Pennsylvania at Record Book 4535, Page 1044 (the "Deed").
5. As of the date of filing of the Application, the Property was physically located in the SRO – Suburban Residential Zoning District pursuant to the Exeter Twp. Ordinance No. 596, adopted July 25, 2005.
6. On August 24, 2015, the Applicant filed the Application challenging the validity of Exeter Twp. Ordinance No. 596 on procedural grounds pursuant to Section 10909.1(a)(2) of the PA Municipalities Planning Code in effect in 2005.

¹ At the time of filing the Application, the Property was numbered and known as 112 Old Friedensburg Road. On or about January 30, 2012, the Applicant sold the portion of the Property comprised of 0.51 acres and the 2 story stone dwelling house to Michael and Laura Bercek (the "Bercek Parcel"). Following this transfer, the Bercek Parcel was assigned the numerical address of 112 Old Friedensburg Road and Tax Parcel Number 5337-01-19-5156 while the Property was assigned the numerical address of Old Friedensburg Road with the original Tax Parcel Number of 5337-01-19-1629. The Board has taken judicial notice that the Bercek Parcel is not included in the scope of the Property for the Application.

7. The Board has jurisdiction to consider the Application pursuant to a remand from the decision of the Pennsylvania Commonwealth Court in the matter of Metro Dev V, LP v. Exeter Twp. Zoning Hearing Board et. al. (No. 1367 C.D. 2013) dated July 24, 2014 (the "Commonwealth Court Order"). See Exhibit 7.

8. A public hearing on the Application was scheduled for June 24, 2015 at 2:00 p.m., prevailing time, at the Exeter Township Municipal Building located at 4975 DeMoss Road, Reading, Pennsylvania 19606 (the "Public Hearing").

9. Public notice of the Public Hearing was timely advertised in the *Reading Eagle*, which is a newspaper of general circulation within Exeter Township, Berks County, Pennsylvania, on June 9, 2015 and June 16, 2015.

10. The Property was duly posted with notice of the Public Hearing on June 15, 2015 by Clarence D. Hamm, who is the Exeter Township Highway Superintendent.

11. A written notice of the Public Hearing was sent to the Applicant, its attorney, the Exeter Township Zoning Officer, Attorney Osmer Deming, Attorney John Miravich and the neighboring property owners (per the listing of neighbors provided by the Applicant's attorney via email dated April 27, 2015) by Michael J. Gombar, Jr., Esquire of Masano Bradley, LLP, who is the Solicitor for the Board (the "Solicitor").

12. The Public Hearing commenced on June 24, 2015 at the Exeter Township Municipal Building at 2:00 p.m., prevailing time, at which time the Board met, heard testimony from the parties and deliberated in executive session. Due to time constraints and requests for subpoenas, the Public Hearing was continued by public announcement to June 29, 2015 at 6:00 p.m., prevailing time, at the Exeter Township Municipal Building.

13. The Public Hearing reconvened on June 29, 2015 at the Exeter Township Municipal Building at 6:00 p.m., prevailing time, at which time the Board met, heard additional testimony from the parties and deliberated in executive session. Due to time constraints and requests for subpoenas, the Public Hearing was again continued by public announcement to July 21, 2015 at 6:00 p.m., prevailing time, at the Exeter Township Municipal Building.

14. The Public Hearing reconvened on July 21, 2015 at the Exeter Township Municipal Building at 6:00 p.m., prevailing time, at which time the Board met, heard additional testimony from the parties and deliberated in executive session. Due to a request for legal briefs/memorandum from the Board to the parties, the Public Hearing was again continued by public announcement to August 25, 2015 at 5:00p.m., prevailing time, at the Exeter Township Municipal Building.

15. The Public Hearing reconvened on August 25, 2015 at the Exeter Township Municipal Building at 5:00 p.m., prevailing time, at which time the Board met, deliberated in executive session, closed the evidentiary record for the Public

Hearing and voted in open session to announce its decision on the Application to be followed with this written decision.

16. The Applicant was present at the Public Hearing and was represented by Jill Nagy, Esquire and Sean Summers, Esquire of Summers Nagy Law Offices.

17. Also present at the Public Hearing were several witnesses² on behalf of the Applicant, as follows:

- a. Brian Kobularcik, who was an employee of the Applicant at the time of the filing of the Application in 2005³;
- b. Cheryl Auchenbach, who is a Planner III for the Berks County Planning Commission;
- c. Catrina Mackes, who is the Law Librarian for the Berks County Law Library; and
- d. Troy Bingaman, who is the Manager of Exeter Township.

18. Also present at the Public Hearing were several adult individuals, who entered their appearance on the record for the Public Hearing as persons affected by the Application and were represented by Osmer Deming, Esquire, as follows:

- a. Sue Davis-Haas and Richard H. Haas residing at 121 Old Friedensburg Road, Exeter Township;
- b. Ida C. Smith residing at 119 Old Friedensburg Road, Exeter Township;
- c. Zildia Perez and Leon Perez residing at 117 Old Friedensburg Road, Exeter Township;
- d. Donna Galczynski and Kevin Galczynski residing at 48 Old Friedensburg Road, Lower Alsace Township, Berks Co., Pennsylvania;
- e. Alan Ganas residing at 4809 Deborah Drive, Exeter Township;

² At the portion of the Public Hearing held on July 21, 2015, Matthew Crème, Esquire was offered by the Applicant as a rebuttal and an expert witness in the processing of zoning ordinance adoption in PA. After the Board deliberated in executive session, the Applicant withdrew the offer and rested its case.

³ Mr. Kobularcik is currently no longer employed by the Applicant.

- f. Renee Froelich residing at 1506 Old Friedensburg Road, Exeter Township;
- g. Scott Matthews residing at 177 Old Friedensburg Road, Exeter Township; and
- h. John J. Miravich, Esquire⁴ and Patricia J. Miravich residing at 123 Old Friedensburg Road, Exeter Township.

19. Also present at the Public Hearing were several adult individuals, who entered their appearance on the record for the Public Hearing as persons affected by the Application but were not represented by legal counsel, as follows:

- a. Bill Ryan residing at 140 Old Friedensburg Road, Exeter Township;
- b. Chris Without residing at 105 Old Friedensburg Road, Exeter Township; and
- c. Thomas Rathman residing at 146 Old Friedensburg Road, Exeter Township.

(the adult individuals listed in Sections 18 and 19 above are hereinafter collectively referred to at times as the "Neighbors").

20. Also present at the Public Hearing were several witnesses⁵ on behalf of the Neighbors, as follows:

- a. John J. Miravich, Esquire in his capacity as a resident of Exeter Township and a party to the Public Hearing;
- b. Paul Essig, Esquire, who is the former Solicitor of the Exeter Township Zoning Hearing Board; and
- c. Greg Koontz, who is the Assistant Zoning Officer of Exeter Township; and

⁴ Attorney Miravich represented himself during the portions of the Public Hearing conducted on June 24, 2015 and June 29, 2015. At the outset of the portion of the Public Hearing held on July 21, 2015, Attorney Miravich retained Osmer Deming, Esquire to represent him for the remainder of the matter.

⁵ At the portion of the Public Hearing held on June 29, 2015, Attorney Deming requested the Board issue a Subpoena for John Hoffert, Esquire, who was the Solicitor for Exeter Township at the time of enactment of Ordinance 596, to attend and testify at the July 21, 2015 portion of the Public Hearing. The Board issued this Subpoena as requested. At the portion of the Public Hearing held on July 21, 2015, Attorney Deming withdrew the Subpoena request for John Hoffert, Esquire. See Exhibit 32.

d. Bill Ryan⁶ in his capacity as a resident of Exeter Township.

21. Also present at the Public Hearing was Exeter Township, a Pennsylvania second class township, which was represented by and entered its appearance on the record for the Public Hearing by and through its Solicitor, Michael G. Crotty, Esquire of Siana Bellwoar & McAndrew I.L.P.

22. A stenographic record of the Public Hearing was made.

23. All witnesses and parties, who testified at the Public Hearing, including those identified in Sections 17, 19 and 20 above, were duly sworn according to law prior to giving any testimony, except as otherwise provided in Footnote 6 for Exhibit 40.

24. At the outset of the Public Hearing, the Board, by and through the Solicitor, introduced and, with the consent of all parties, entered certain exhibits into the evidentiary record of the Public Hearing, as follows:

- a. The Application – Exhibit 1;
- b. Proof of Publication of Public Notice of the Public Hearing in the *Reading Eagle* – Exhibit 2;
- c. Proof of Posting of the Property with notice of the Public Hearing – Exhibit 3;
- d. Proof of Mailing of notice of the Public Hearing – Exhibit 4; and
- e. A letter from the Applicant's attorney addressed to the Solicitor dated May 7, 2015 pursuant to which the Applicant waived the requirement for the commencement of the Public Hearing within 60 days of the filing of the Application under the Pennsylvania Municipalities Planning Code – Exhibit 5.

25. Also, at the outset of the Public Hearing, the Chairman of the Board introduced and read into the record for the Public Hearing, as Exhibit 6, an email from himself to the parties dated May 16, 2015 pursuant to which he outlined a potential conflict of interest relative to his service as a member of the Board for the Application. Following this, all parties noted on the record that they had no objection to and/or consented to the Chairman serving as a member of the Board for the Application notwithstanding the potential conflict of interest.

⁶ Due to his unavailability to attend the portion of the Public Hearing held on July 21, 2015, Mr. Ryan submitted an unsworn written statement dated July 12, 2015 to the Solicitor which, in summary, expressed his opposition to the Application. This statement was introduced during the Neighbors' case-in-chief and read into the record for the Public Hearing, as Exhibit 40, without objection from any parties.

Procedural Adoption of 2005 Zoning Ordinance

26. In 2005, Exeter Township undertook a project to amend its zoning ordinance.

27. After various meetings, Exeter Township decided to advertise for public hearing and enactment a proposed ordinance to amend and restate the Exeter Township zoning ordinance and the zoning map in their entirety (collectively, the "Draft Ordinance"). See Exhibit 15.

28. Exeter Township caused a notice to be advertised in the *Reading Eagle*, which is a newspaper of general circulation in the Exeter Township area, on June 29, 2005 and July 6, 2005 (the "Reading Eagle Notice") (see Exhibit 12), which read as follows:

"The Exeter Township Board of Supervisors will hold a public hearing at 7:00 P.M. on July 18, 2005 to hear Public Comment on the Proposed Amendment to the Zoning Ordinance and Zoning Map (the *Draft Ordinance*). The Board will consider adoption of the Ordinance and Map (the *Draft Ordinance*) at their July 25, 2005 meeting. Full text of the Ordinance (the *Draft Ordinance*) is available for public inspection at the Township Office, 4974 DeMoss Road, Reading, PA 19606. If you require special accommodations in order to attend Township meetings, please call the Township office at 610-779-5660. The Township will make every reasonable attempt to accommodate you. By: Troy S. Bingaman, Manager/Secretary."

29. The Reading Eagle Notice does not provide 'the time and place' of the meeting on July 25, 2005 that the Exeter Township Board of Supervisors would consider the enactment/passage of the Draft Ordinance.

30. The Reading Eagle Notice does not provide either 'the full text' of the Draft Ordinance or 'a brief summary which lists provisions in reasonable detail' of the Draft Ordinance.

31. Although the Reading Eagle Notice does indicate that copies of the Draft Ordinance may be obtained at the Township Building, the Reading Eagle Notice does not state that "copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost hereof."

32. The Reading Eagle Notice was prepared by the Exeter Township Manager and not the Exeter Township Solicitor.

33. The Draft Ordinance provided for changes to the Zoning Map that were not comprehensive rezoning in nature as only a few, certain areas of the Township were rezoned.

34. A notice of the public hearing on July 18, 2005 and proposed enactment at the July 25, 2005 meeting was not conspicuously posted along tracts of land within Exeter Township that were the subject of zoning map changes under the Draft Ordinance.

35. A notice of the public hearing on July 18, 2005 and proposed enactment at the July 25, 2005 meeting was not mailed to the owners of the tracts of land within Exeter Township that were the subject of zoning map changes under the Draft Ordinance.

36. An attested copy of the Draft Ordinance or any revised version thereof was not filed in the Berks County Law Library at any time prior to July 25, 2005.

37. A copy of the full text of the Draft Ordinance or any revised version thereof was not filed in the *Reading Eagle* at any time prior to July 25, 2005.

38. On July 18, 2005 at 7:00 P.M., the Exeter Township Board of Supervisors held a public hearing at which time the Draft Ordinance was reviewed.

39. At the July 18, 2005 public hearing, the Exeter Township Board of Supervisors made several substantial changes to the Draft Ordinance including, but not limited to, changes to uses within zoning districts, changes to definitions and changes to objective criteria for uses. See Exhibits 14 and 15.

40. The Draft Ordinance with the changes recommended at the July 18, 2005 public hearing was reviewed by the Exeter Township Planning Commission at a workshop meeting on July 20, 2005 at which time the Exeter Township Planning Commission recommended additional changes to Sections 400 and 500 of the Draft Ordinance. See the meeting minutes at Exhibit 24.

41. On July 25, 2005, the Exeter Township Board of Supervisors held a public meeting at which time the Draft Ordinance (with the changes recommended at the July 18, 2005 public hearing and the July 20, 2005 Planning Commission workshop meeting) was considered for adoption.

42. As a result of public comment rendered at the July 25, 2005 meeting of the Exeter Township Board of Supervisors, the Draft Ordinance (with the changes recommended at the July 18, 2005 public hearing and the July 20, 2005 Planning Commission workshop meeting) was revised again to add 'State Licensed Schools, public and parochial, K through 12, as a Conditional Use under the Agricultural Preservation District.' See the meeting minutes at Exhibit 23.

43. On July 25, 2005, the Exeter Township Board of Supervisors adopted Ordinance No. 596, which was in the form and content of the Draft Ordinance with the changes recommended at the July 18, 2005 public hearing, the July 20, 2005 Planning Commission workshop meeting and the July 25, 2005 Board of Supervisors meeting and served to amend and restate the Exeter Township zoning ordinance in its entirety ("Ordinance 596"). See Exhibit 16.

44. Between July 18, 2005 and prior to adoption of Ordinance 596 on July 25, 2005, neither any of the revised versions of the Draft Ordinance nor the final version of Ordinance 596 were:

- a. submitted to the Berks County Planning Commission for review;
- b. except for the consideration at the July 20, 2005 workshop meeting, submitted to the Exeter Township Planning Commission for review of the changes made at the July 25, 2005 meeting;
- c. submitted to the Berks County Law Library to be available for public inspection;
- d. submitted to the *Reading Eagle* to be available for public inspection;
- e. re-advertised for public notice in the *Reading Eagle* for a public hearing or enactment at a public meeting;
- f. posted conspicuously along tracts of land within Exeter Township that were the subject of zoning map changes; and/or
- g. mailed to the owners of the tracts of land within Exeter Township that were the subject of zoning map changes.

45. Pursuant to Section 1002 of Ordinance 596, said Ordinance 596 became effective on or about August 5, 2005, which was ten (10) days following its passage by the Board of Supervisors of Exeter Township on July 25, 2005.

46. On August 24, 2005, the Applicant filed the Application with the Township within thirty (30) days of the effective date of Ordinance 596.

B. DISCUSSION

The Applicant has filed a procedural validity challenge to Ordinance 596. On this issue, this Board must decide whether or not there were any procedural defects in the enactment process of Ordinance 596.

Since ordinances are presumed to have been adopted "in strict compliance with statutory procedure, the burden of proof in such a matter must be satisfied by the party lodging a procedural challenge. Streck v. Lower Macungie Township Board of Commissioners, 58 A.3d 865 (Pa.Cmwlth.Ct. 2012).

In determining the standard of review, it is relevant that a procedural challenge must be brought within thirty (30) days of the ordinance's effective date. *42 Pa.C.S. § 5571(c)(5)*. Accordingly, where the appeal is filed within thirty (30) days of the ordinance's effective date, the party alleging the defect must meet the burden of proving

that there was a failure to strictly comply with statutory procedure. But, where the appeal is filed outside the 30-day deadline, the party must prove a right to an exemption from the deadline. This is done by evidence demonstrating that the municipality's "failure to substantially comply" with the applicable procedures prevented the public from commenting on the ordinance. Hawk v. Eldred Township Board of Supervisors, 983 A.2d 216 (Pa.Cmwlth. 2009).

If the burden of proof is met by the challenging party, then the challenged ordinance is deemed *void ab initio*. *Id.* Void ab initio is a legal theory stating that a statute/ordinance held unconstitutional is void in its entirety and is treated as if it had never existed. Glen-Gery Corporation v. Zoning Hearing Board of Dover Township, 589 Pa. 135, 143-45, 907 A.2d 1033, 1037-38 (2006).

In light of this, the Pennsylvania Municipalities Planning Code (53 P.S. § 10609) establishes the procedures to be followed in the enactment process of zoning ordinance amendments as follows:

“(a) For the preparation of amendments to zoning ordinances, the procedure set forth in section 607 for the preparation of a proposed zoning ordinance shall be optional.

(b) (1) Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice, and pursuant to mailed notice and electronic notice to an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality who has made a timely request in accordance with section 109. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the municipality at points deemed sufficient by the municipality along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing.

(b) (2) (i) In addition to the requirement that notice be posted under clause (1), where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least 30 days prior to the date of the hearing by first class mail to the addressees to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the municipality. The notice shall include the location, date and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this subsection.

(b) (2) (ii) This clause shall not apply when the rezoning constitutes a comprehensive rezoning.

(c) In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least 30 days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.

(d) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, mailed notice and electronic notice, before proceeding to vote on the amendment.

(e) If a county planning agency shall have been created for the county in which the municipality proposing the amendment is located, then at least 30 days prior to the public hearing on the amendment by the local governing body, the municipality shall submit the proposed amendment to the county planning agency for recommendations.

(f) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

(g) Within 30 days after enactment, a copy of the amendment to the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.”

Additionally, in light of § 10609(b) set forth above, the Pennsylvania Municipalities Planning Code (53 P.S. § 10610) also establishes the requirements for publication, advertisement and availability of proposed zoning ordinance amendments as follows:

“(a) Proposed zoning ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than 7 days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and

setting forth all the provisions in reasonable detail. If the full text is not included:

(1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.

(2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

(b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, re-advertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(c) Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.”

Based on this, the Board specifically finds that the Applicant has submitted credible evidence by and through its witnesses and exhibits to meet its burden of proof in establishing that the Application was filed within thirty (30) days of the effective date of Ordinance 596 and that Exeter Township failed to strictly comply with the statutory procedure required due to several procedural defects in the enactment process of Ordinance 596 so as to render Ordinance 596 *void ab initio*.

C. CONCLUSIONS OF LAW

1. The Zoning Hearing Board of Exeter Township has jurisdiction to decide this Application pursuant to the Commonwealth Court Order (see Exhibit 7), which remanded the matter to this Board to decide the merits of the procedural validity challenge under the statutory procedure in effect in 2005 and pursuant to 53 P.S. § 10909.1(a)(2) which, in 2005, vested exclusive jurisdiction for procedural validity challenges with the zoning hearing board.

2. The Application challenging Ordinance 596 was brought on August 24, 2005 which is within thirty (30) days of Ordinance 596's effective date of August 4, 2005 and accordingly, the Applicant must merely establish that there was a failure to strictly comply with statutory procedure in the enactment process under 42 Pa.C.S. § 5571(c)(5).

3. The Board specifically finds that Exeter Township failed to strictly comply with the statutory procedure in the enactment process of Ordinance 596 based upon the following defects:

- a. The Reading Eagle Notice does not provide 'the time and place' of the meeting on July 25, 2005 that the Exeter Township Board of Supervisors would consider the enactment/passage of the Draft Ordinance as required by *53 P.S. § 10609(b)(1)* and *53 P.S. § 10610(a)*;
- b. The Reading Eagle Notice does not provide either 'the full text' of the Draft Ordinance or 'a brief summary which lists provisions in reasonable detail' or even any details of the Draft Ordinance as required by *53 P.S. § 10609(b)(1)* and *53 P.S. § 10610(a)*;
- c. Although the Reading Eagle Notice does indicate that copies of the Draft Ordinance may be obtained at the Township Building, the Reading Eagle Notice does not state that "copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost hereof" as required by *53 P.S. § 10610(a)*;
- d. The Reading Eagle Notice was prepared by the Exeter Township Manager and not the Exeter Township Solicitor as required by *53 P.S. § 10610(a)*;
- e. A notice of the public hearing on July 18, 2005 and proposed enactment at the July 25, 2005 meeting was not conspicuously posted along tracts of land within Exeter Township that were the subject of zoning map changes under the Draft Ordinance as required by *53 P.S. § 10609(b)(1)*;
- f. A notice of the public hearing on July 18, 2005 and proposed enactment at the July 25, 2005 meeting was not mailed to the owners of the tracts of land within Exeter Township that were the subject of zoning map changes under the Draft Ordinance as required by *53 P.S. § 10609(b)(2)*;
- g. An attested copy of the Draft Ordinance or any revised version thereof was not filed in the Berks County Law Library at any time prior to July 25, 2005 as required by *53 P.S. § 10610(b)(2)*;
- h. A copy of the full text of the Draft Ordinance or any revised version thereof was not filed in the Reading Eagle at any time prior to July 25, 2005 as required by *53 P.S. § 10610(b)(1)*;

- i. Prior to adoption on July 25, 2005, Ordinance 596, which contained substantial amendments from the Draft Ordinance, was not submitted to the Berks County Planning Commission for review as required by 53 P.S. § 10609(e);
 - j. Prior to adoption on July 25, 2005, Ordinance 596, which contained substantial amendments from the Draft Ordinance, was not submitted to the Exeter Township Planning Commission for review of all of the changes made at the July 25, 2005 meeting as required by 53 P.S. § 10609(c); and
 - k. Prior to adoption on July 25, 2005, Ordinance 596, which contained substantial amendments from the Draft Ordinance, was not re-advertised for public notice in the Reading Eagle for a public hearing or enactment at a public meeting as required by 53 P.S. § 10610(b).
4. Ordinance 596 is *void ab initio*.

D. ORDER

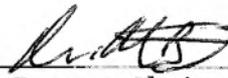
AND NOW, the Exeter Township Zoning Hearing Board, by a unanimous vote of the quorum⁷, rules as follows:

1. The Applicant's procedural validity challenge to Ordinance 596 is hereby granted and sustained; and
2. Ordinance 596 is hereby declared as *void ab initio*.

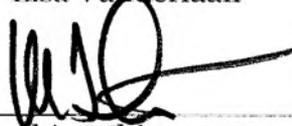
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⁷ At the time of announcement of the oral decision at the portion of the public meeting on August 25, 2015, Lisa Vanderlaan was a member of the Zoning Hearing Board and took part in the vote. Subsequent thereto, Lisa Vanderlaan was appointed to the Exeter Township Board of Supervisors and, due to the incompatibility of offices, Lisa Vanderlaan resigned as a member of the Zoning Hearing Board as of September 8, 2015. As a result, Lisa Vanderlaan did not take part in the drafting and/or issuance of this written decision. Notwithstanding this, the remaining two (2) votes of the three (3) member Board are sufficient to validate both the publicly announced decision on August 25, 2015 and this written decision.

EXETER TOWNSHIP ZONING HEARING BOARD

By: 
Dean Batson, Chairperson

By: ~~~~ SEE FOOTNOTE 7 (MJK)
Lisa Vanderlaan

By: 
Chip White

Date of Issuance of Written Decision: SEPTEMBER 24, 2015

ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, WITHIN THIRTY (30) DAYS FROM THE DATE OF THE ISSUANCE OF THE WRITTEN DECISION.