LEET TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF:

SPECIAL EXCEPTION APPLICATION
OF QUAKER VALLEY SCHOOL DISTRICT

STATEMENT OF REASONS FOR DECISION

The Quaker Valley School District (*QVSD*) filed an application for special exception under Leet Township Ordinance 2019-02 for construction of a new public high school carrying a price tag of between $95 Million and $97 Million according to current estimates. About 650 students would attend it. QVSD owns about 159 acres of land here, at the top of a steep hill consisting in part of landslide-prone Pittsburgh Red Bed clay that is common throughout much of Western Pennsylvania. About 108 of those acres are in Leet Township's AAA zoning district. Of those 108 acres, about 47 acres will be cleared for the school project. Ten percent (or roughly $10 Million) of the price tag is for contingencies and possible increases in the scope of the project.

The first zoning hearing in the case took place on June 28, 2021. The hearings resulted in over 2,500 pages of transcripts.

According to the evidence received, the school would be served by only one road, Camp Meeting Road. There would be two access driveways off Camp Meeting Road into the school. Concerns were expressed that Camp Meeting Road was already congested during times of shift changes at nearby employers and that, with the addition of two-third more student drivers and school buses (it already carried one-third of the student drivers and school buses), first responders would be delayed in reaching the school. The current high school has two roads serving it—Ohio River Boulevard and Beaver Street—that are available to first responders.

Of particular concern was the tragically ever-present risk of active school shooters using automatic weapons. First responder delays of minutes or seconds in reaching the school can cost students and faculty members their lives. In the recent past, a bullet was found at the current high school and the school was shut down. (Gatesman Tr. 11/16.21 p. 37).

Although ZHB reminded everyone of the availability of its subpoena power upon request, no first responders or emergency management experts testified.

But when QVSD called its own traffic expert, Charles Wooster, to testify, he told ZHB that he has not consulted local police about whether this traffic plan makes sense in the event of a catastrophe at the school such as a shooter or an explosion He testified that he was not asked to identify whether there might be some other access to the site for an EOR. (Wooster Tr. 6/30/21 p. 113). He further

testified that he did not conduct [a study on] and [he] renders no opinion on how much time it would take or how emergency access vehicles would access the school normally or in event of Camp meeting closure. (Wooster Tr. 11/9/21 pp. 12-13, 23). He said that first-responders will figure out a way to manage it, and he is not concerned that they will be able to reach the school sooner or later. He testified that a simple emergency-only road could be accomplished and that it might involve eminent domain. He testified that its costs are not known, and it is not shown on the plans. He testified it would be gated for emergency access only. (Wooster Tr. 11/9/21 pp.39-42). In short, his testimony focused on whether first responders could get to the school somehow, someway, in some undetermined amount of time. (Wooster Tr. 11/9/21 p. 25) . He said that, if everything went well and as expected in an emergency, the first responders handle it, but he could not render an opinion about how they would do it or how long it would take. (Wooster Tr. 11/9/21 p. 23).

His somehow-someway-in some amount of time testimony was in response to this pointed question:

> Q. God forbid, if there were an active shooting incident at that new school, do you have any expert opinion about how that would be -- how Camp Meeting would accommodate it if it happened at a peak time, when school was letting out or school was starting?
> (Wooster Tr. 11/9/21 p. 34)

ZHB also found the following additional “God forbid” exchange with Mr. Wooster to be important in its thinking:

Q. God forbid there would ever be a catastrophe at the school, a shooter, an explosion, something like that, but if that were to happen, what do you foresee happening here in terms of emergency vehicles? And in connection with that -- and I apologize for the two parts of the question -- have you talked with the police in Leetsdale, Sewickley about, gee, guys, does this from a traffic standpoint make sense if we have that kind of catastrophe?

A. Not yet. Again, that's part of the I'll call it event contingency plan. So you need to create an event plan to have a plan for all events. I will say that in my history I've not been approached to say, what do we do from a traffic standpoint to handle an active shooter situation? It's normally outside of my issue. So that's emergency management issue. We can certainly assist in it, whatever they are doing, but that's usually unique.
(Wooster Tr. 6/30/21 pp. 191-192)

In much the same way, QVSD's school feasibility expert, Jon Thomas, testified the new school will be ¾ mile farther away from Leetsdale Police Department and 1 mile farther from Edgeworth Police Department and 1 mile farther away from Sewickley Police Department, but he does not know how these additional distances will affect police response times to the new school. (Thomas Tr. 7/15/21 p. 53).. He said he has not looked into this in connection with preventing a serial killer from being able to take advantage of it to shoot all the students in the school (Thomas, Tr. 7/15/21 p. 56).

Based on Mr. Wooster's testimony, Mr. Thomas's testimony, and the objectors' testimony on the EOR issue, ZHB determined that it was an abnormal risk for a school not to implement an emergency management plan that included an

EOR if reasonably recommended by the first responders. ZHB determined this, based on Mr. Wooster's above testimony that normally first responders—not traffic experts—create the emergency management and event contingent plan.

ZHB also decided that if that were not done, the risks to public safety and welfare would be substantial, serious, highly probable and virtually certain. We live in a tragic age of active school shooters using semi-automatic weapons. *Accelerated Enterprises Inc. v. Hazle Township Zoning Hearing Board,* 773 A.2d 824 (Pa. Cmwlth. 2001) (affirming ZHB denial of special exception. "The jurisprudence of this Commonwealth clearly contemplates that the Board, as fact finder, is in the best position to observe the manner and demeanor of witnesses appearing before it, to sift through the evidence, and to draw conclusions regarding credibility."); *Servants Oasis v. Zoning Hearing Bd. of S. Annville Twp.,* 94 A.3d 457, 466 (Pa. Cmwlth. 2014).

Leet Township's special exception ordinance shifts the burden of persuasion in proving issues addressing risks to health, safety and welfare from the objectors to the applicant. (Ordinance 2019-02 §D). Case law permits doing so. *Greaton Properties, Inc. v. Lower Merion Township,* 796 A.2d 1038 (Pa. Cmwlth. 2002) (where the ordinance specifically places the burden on the applicant to show that the proposed use will not have a detrimental effect, the applicant only retains the burden of persuasion—objectors retain initial presentation burden with respect to

detriment to health, safety and general welfare; evidence presented by objectors must show a high probability that the use will generate adverse impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community).

The EOR issue is matter of health, safety and welfare. As a result, ZHB concluded that QVSD had failed to meet its burden of persuasion to prove that, if first responder reasonable EOR recommendations were not implemented, the risks would nevertheless be normal for a school without a resulting substantial risk of harm to public health, safety and welfare. As a result, under the case law, which does not permit a condition to rectify a failure to meet a burden of proof, ZHB could not simply grant the application with the EOR condition attached. Instead, it had to deny the application altogether. *Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Township Zoning Hearing Board*, 934 A.2d 759 (Pa. Cmwlth. 2007) (proper function of conditions is to reduce the adverse impact of a use allowed under a special exception, not to enable the applicant to satisfy its burden of showing that the use is allowed). And even if ZHB was mistaken about the burden shifting, the only evidence it had—coming from both QVSD and objectors—was that the risk was abnormal for a school and to the public, so objectors satisfied the burden of persuasion anyway had it been on them.

But ZHB had another option available. It could deny the application orally but offer QVSD the opportunity to amend it to include the EOR provision before ZHB rendered its written decision. On February 9, 2022, ZHB made its public oral decision denying the application but giving QVSD thirty days to amend the application to address the EOR.

ZHB went further on February 9. It said that if the EOR amendment were made, it would convert the denial into an approval subject to the condition that the EOR would be implemented if and as reasonably recommended by first responders, and subject to several other conditions involving safety measures for landslides, water runoff, Camp Meeting Road, insurance, monitoring of conditions and other matters unrelated to the EOR. In case an EOR amendment would be filed, ZHB scheduled a final public hearing on March 9 to receive it.

When ZHB announced its decision on February 9, QVSD's solicitor said on the record that QVSD did not currently own land for an EOR that abutted any public street but that the exercise of eminent domain and its costs were not problematic for QVSD in this project. (Tr. 11/30/21 pp. 34-35)[1].

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[1] Nor does the record reflect any reason why eminent domain for a gated, vehicular easement would not be possible to accomplish an EOR, if reasonably recommended by the first responders. *Council Rock School District v. Wrightstown Township Zoning Hearing Board*, 709 A.2d 453 (Pa. Cmwlth. 1998) (school board may also condemn property to acquire real estate for school purposes. Section 703 of the School Code, 24 P. S. § 7-703; the zoning board board could even require Council Rock to obtain more land to satisfy the health, safety, and general welfare requirements of the Ordinance before it may erect a school upon the property, citing *Department of General Services v. Ogontz Area Neighbors Ass'n,* 505 Pa. 614, 483 A.2d 448 (1984)); *Upper*

During the time between February 9 and March 9, ZHB through its solicitor offered QVSD the opportunity at the March 9 hearing to request reconsideration of the February 9 oral decision on any basis whatsoever.

During the hearings, QVSD frequently argued that once it proves—and it did prove it—that this school will be a regular public high school with a normal curriculum and normal extra-curricular activities and sports, there was nothing more for ZHB to do. But the law says it is not the curriculum or activities or sports that control the zoning analysis under the public health, safety and welfare standard. Instead, it is whether the *risks* created by the school are abnormal risks when compared to the risks created by other schools and, if so, whether those abnormal risks pose a serious danger to the public. The issue is not whether the use is normal but whether the *risk* created by that normal use is abnormal. *Council Rock School District v. Wrightstown Township Zoning Hearing Board,* 709 A.2d 453 (Pa. Cmwlth. 1998) (school board's position that all it had to prove is that the use would be a public school was close to an impermissible claim of complete exemption from all zoning requirements).

Perkiomen Sch. Dist. v. Giansante, No. 260 C.D. 2018, 2019 WL 1556209 (Pa. Cmwlth. Apr. 10, 2019), (school district condemnation for easement must be for proper school purpose); *Northwestern Lehigh School District v. Agricultural Lands Condemnation Approval Board,* 126 Pa. Cmwlth. 325, 559 A.2d 978 (1989) (agricultural lands can be exempt from condemnation); *Connelly Foundation Appeal,* 437 Pa. 536 (1970) (Public School Code provision bars condemnations for school purposes of land "belonging to any . . . religious association, which land is actually used or held for the purpose for which such . . . religious association was established").

During the hearings and in briefing, QVSD frequently argued that much of the evidence went to issues that did not involve zoning but instead were details for the Planning Commission and Township Commissioners to consider during the development phase of the project. But, in fact, ZHB did not impose details for the EOR. *Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Township Zoning Hearing Board*, 934 A.2d 759 (Pa. Cmwlth. 2007) (ordinarily, many of the types of details are addressed further along the permitting and approval process because zoning only regulates the use of land and not the particulars of development and construction; *Schatz v. New Britain Township Zoning Hearing Board of Adjustment,* 141 Pa.Cmwlth. 525, 596 A.2d 294 (1991). On the contrary, it specifically left the resolution of those details for a later time in the project's evolution. During the period from February 9 to March 9, ZHB through its solicitor asked QVSD if it would make the EOR commitment to the Planning Commission and Township Commissioners rather than making it to ZHB. QVSD responded that it would commit to collaborate with first responders and considering their recommendations in its plan. It stopped abruptly short of committing to implement the first responders' reasonable recommendations concerning an EOR. See, emails: March 3, 2022 (Restauri to Palmer), March 4, 2022 (Palmer to Restauri). *Edgmont Township v. Springton Lake Montessori School, Inc.,* 154 Pa. Cmwlth. 76, 622 A.2d 418 (1993) (reversing zoning board

acceptance of applicant's promise that a school would be in compliance with all requirements prior to its opening, in contrast to promise to fulfill specific, achievable requirements).

ZHB considered QVSD's position that much of the hearing evidence focused on issues within the exclusive province of the Planning Commission and Township Commissioners during development, rather than for ZHB now. But there is a fundamental problem with QVSD's position. In a *special exception* case, the Planning Commission and Township Commissioners have no authority to decide whether a risk is abnormal or not for a particular use. That authority rests with them in a *conditional use* case but not in a special exception case. *Williams Holding Group, LLC v. Board of Supervisors of West Hanover Township,* 101 A.3d 1202, at 1212 (Pa. Cmwlth. 2014)*,* citing *In re Thompson, 896 A.3d 659 (Pa. Cmwlth. 2006).* Giving them that authority in a special exception case converts a special exception into a conditional use.

There is another problem with sending the EOR issue to the Planning Commission and Township Commissioners. The EOR is a private road, not a public road. The SALDO (§ 401(a) does not give the Planning Commission and Township Commissioners authority over private roads. Their authority under the express language of the SALDO covers public streets. *K. Hovnanian Pennsylvania Acquisitions, LLC v. Newtown Township Board of Supervisors*, 954 A.2d 718 (Pa.

Cmwlth. 2008) (applicant not required to submit full land-development detail to zoning board but SALDO violations must not be apparent).

As March 9 approached, QVSD notified ZHB that it would not file an amendment. It did not request reconsideration. It consented to canceling the March 9 public hearing.

Accordingly, on March 28, 2022, ZHB rendered its Decision denying the application.[2]

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[2] Had QVSD amended the application as to the EOR, ZHB would have granted the application subject to a number of conditions. First, all the safety recommendations of ZHB's own traffic expert, Charles Wooster, would be implemented by QVSD. He testified that his recommendations were normal for any *project* in that he followed his profession's computer modeling, PennDOT regulations and recommendations, and his own experience. Traffic engineers like Mr. Wooster are in the profession of protecting the public safety from serious harm resulting from traffic issues. ZHB concluded, therefore, if his safety recommendations were implemented there would not be an abnormal risk to public safety. ZHB credited his testimony and found it substantial, credible, and persuasive in proving that if his recommendations were followed, there would be no abnormal risk from a traffic standpoint comparing this school to other schools and that any additional risk from the school to public safety would not be serious in frequency or impact. His recommendations included, but were not limited to, geometric improvement of the intersection of Camp Meeting Road and Beaver Street, post-construction studies and monitoring, and improvements in signage, guard rails, and possibly a safe sidewalk between the school and lower Camp Meeting Road.

Objectors' traffic expert, Dr. French, provided little, if any, evidence that the traffic risks were abnormal for a school. Instead, he focused on only second required element of the analysis—whether there was some serious risk to public safety. But even on that issue, ZHB found that his testimony went to traffic congestion—which he did not testify would be abnormal for a school--and accidents that will not typically be of a serious nature. And the congestion created by the school would be twice a day, between 15-20 minutes each. *Manor Healthcare Corporation v. Lower Moreland Township Zoning Hearing Board*, 139 Pa. Cmwlth. 206, 590 A.2d 65 (1991) (use that adds to an already-existing traffic congestion problem was insufficient to establish a "high degree of probability" of specific, detrimental traffic effects arising from the use itself; considerations relating to traffic congestion are classified as general "health, safety, and welfare" criteria); *Kern v. Zoning Hearing Bd. of Tredyffrin Twp*., 449 A.2d 781 (Pa. Cmwlth. 1982); *Orthodox Minyan v. Cheltenham Township Zoning Hearing Board,* 123 Pa.Cmwlth. 29, 552 A.2d 772 (1989); *Susquehanna Township Board of Commissioners v. Hardee's Food Systems,*

Inc., 59 Pa. Cmwlth. 479, 430 A.2d 367 (1981); *Berman v. Manchester Township Zoning Hearing Board*, 115 Pa. Cmwlth. 339, 540 A.2d 8 (1988); *Berman v. Manchester Township Zoning Hearing Board*, 115 Pa. Cmwlth. 339, 540 A.2d 8 (1988)(finding of material and significant traffic increase was justified by an engineering study that indicated that the development would result in an increase of over 1800 trips per day (a consistent 79% increase in traffic) on a nearby street); *Archbishop O'Hara's Appeal*, 389 Pa. 35, 131 A.2d 587 (1957); *Appeal of Cutler Group, Inc*., 880 A.2d 39 (Pa. Cmwlth. 2005) (worsening an existing dangerous traffic condition caused primarily by a 90-degree turn in a road providing access to a single-lane bridge rather than by the use itself, held insufficient to deny application); *Appeal of Martin,* 108 Pa. Cmwlth. 107, 529 A.2d 582 (1987) (that a proposed use would contribute to projected traffic congestion at an already dangerous intersection primarily generated by other sources is not a sufficient basis for denying the special exception).

ZHB found that Dr. French did not establish either abnormal risk or a serious risk to public safety. The testimony of objectors' non-expert witnesses on traffic similarly did not address abnormality of the risk comparing high schools. QVSD met its shifted health, safety and welfare burden under the ordinance and objectors did not provide substantial evidence that rebutted it on either abnormality or serious risk.

The same burden-shifting analysis applied to the landslide and water-runoff issues and ZHB found, once again, that QVSD met its burden of persuasion that the risks would not be abnormal for a school if the recommendations of its civil engineer, Mr. Phlllips, and its geo-technical engineer, Mr. Boward, were implemented. But unlike Mr. Wooster on traffic, they acknowledged that their science is based on assumptions about unpredictable Mother Nature. So, while they believed the risks were small and normal, satisfying the not-abnormal risk test—and ZHB agreed—the issue of serious impact was more difficult. Objectors' expert, Mr. Parker, as well as objectors testified that a landslide could be catastrophic and pointed out that in approximately 2004 a hillside a few miles away being developed by or for Walmart had slide into Ohio River Boulevard. They also testified that recently, downhill from the school site, there was some landslide activity that destroyed a garden. In evaluating this potential impact issue, the case law instructs that unless objectors have proven that the impact (even if the risk is normal for the use) is highly probable to materialize, objectors have not met their burden of persuasion, whether primary under a non-shifting health, safety and welfare ordinance or rebuttal in the case of a shifting-burden ordinance. After carefully weighing all the evidence, ZHB was persuaded there was substantial, convincing and persuasive evidence that the risk of serious injury to the public was certainly possible but was not highly probable or a virtual certainty. *Servants Oasis v. Zoning Hearing Bd. of S. Annville Twp.,* 94 A.3d 457, 466 (Pa. Cmwlth. 2014).

All the other issues raised by objectors dealt with §2A of Ordinance 2019-02, Leet Township's special exception ordinance. These deal with traffic congestion minimization, harmony with the neighborhood, most suitable location in the zoning district, and no risk of any kind to any person or property and the like. See, *Archbishop O'Hara's Appeal, 389 Pa. 35, 131 A.2d 587 (1957); Gage Zoning Case, 402 Pa. 244, 167 A.2d 292 (1961) (*availability of other sites or other uses is irrelevant in special exception case). Our Courts have placed these types of considerations in the "general" category in which objectors have a non-shiftable burden of persuasion. *B.A.C., Inc. v.*

Zoning Hearing Board of Millcreek Township, 89 Pa. Cmwlth. 285, 492 A.2d 477 (1985) ("general standards" includes one requiring that the use must not fundamentally alter the character of the neighborhood). See also, *Williams Holding Grp., LLC v. Bd. of Supvrs of W. Hanover Twp.,* 101 A.3d 1202, 1213 (Pa. Cmwlth. 2014) (if a requirement is nonobjective or too vague to afford the applicant knowledge of the means by which to comply, the burden shifts to an objector to prove that the use would constitute such a detriment).

ZHB found that objectors did not meet their burden of persuasion on these issues. Objectors did not present substantial evidence, only personal observations and opinions—which our Courts have said are insufficient to satisfy objectors' burdens of persuasion—that any of those § 2A general matters would be violated by the school's plan. Objectors' commercial development expert, Mr. Zappala, testified that the school would change the essential character of the neighborhood from primarily residential to primarily institutional. Whether a commercial development expert is qualified to opine on neighborhood harmony was not clear, but for argument's sake, giving Mr. Zappala the benefit of the doubt on this harmony-expertise issue, ZHB was not persuaded that, given that other substantial businesses and non-profit corporations employing large numbers of people are already operating in the neighborhood, that its character will, in fact, change when this tree-buffered school is built in the woods. ZHB was also not persuaded that the additional traffic generated by the school will essentially change the character of the neighborhood into one that is institutional. *Archbishop O'Hara's Appeal*, 389 Pa. 35, 131 A.2d 587 (1957) (evidence did not show this school would affect the neighborhood any more than any other school); *Blair v. Board of Adjustment*, 403 Pa. 105, 108, 169 A.2d 49, 50-1 (1961) (finding of the board that the use would create danger and congestion <u>and</u> that it would adversely impact the character of the immediate neighborhood— five gas stations within a radius of 350 feet, and ten within a borough which is only one and one-half square miles in area and neighborhood primarily zoned retail—held reasonable and application denial proper). His testimony, and that of other objections goes, in part, to the issue of reduced property values. But our law is clear that reduced property values generally have no place in a zoning board's analysis. *Mehring v. Zoning Hearing Bd. of Manchester Tp.,* 762 A.2d 1137, 1142 (Pa. Cmwlth. 2000) ("complaints of the noise and their concern over possible diminished property values alone are insufficient to establish a high degree of adverse impact on the public interests, beyond that normally expected for a childcare home."); *Soble Const. Co. v. Zoning Hearing Bd. of Borough of E. Stroudsburg*, 16 Pa. Cmwlth. 599, 606–07, 329 A.2d 912, 917 (1974) ("The burden of showing that a proposed development has a greater-than-normal impact on the community is not satisfied by proof that neighboring property values may decrease").

Section 2A's "may cause risk to any person or property" provision involves an unusual issue in that it now appears only in the application-must-address section, after being removed from a requirements section in the previous version of the special exception ordinance. Read literally, if this provision were nevertheless enforced beyond simply being an application point, it would be contrary to the listing of a school as a special exception, which is fundamentally a permitted use under our case law. While it could be argued that a very small school might present no risk to any other person or property, had the ordinance intended to limit "school" in that manner, ZHB believes, in exercising its authority to reasonably interpret the zoning ordinance, that the ordinance would have included an *express,* maximum size or footprint requirement in the

ordinance. ZHB therefore concluded that this provision must be read in the context of our law to mean that there must be no highly probable or virtually certain risk of any harm to any person or property. As explained above, ZHB found that objectors did not meet their burden of persuasion on this issue.

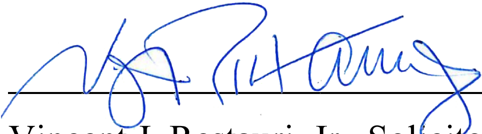
Objectors' commercial development experts, Mr. Zappala and Ms. Truskie, testified that no commercial developer would assume the risks and site development costs (currently approximately $21-22 Million) for a project this size, with a total price tag of about $100 million, at this site. Mr. Zappala testified that, in the final analysis, a commercial developer's analysis applies in a public-school case because the school district taxpayers are, ultimately, acting as developers—the taxpayers absorb all the financial risk, regardless of contractor bonds and insurance and, therefore, their welfare is virtually certain to be damaged if the school is built. While this may be true, the testimony does not address whether the key issue of whether the risk here is abnormal for a school. Rather, it goes to impact. Because this is addressed as a welfare issue (health, safety and welfare), under the ordinance the burden of persuasion shifts to the applicant.

QVSD feasibility expert, Jon Thomas, testified that Pennsylvania law does impose financial limitations on school boards proposing new school buildings, including, for example, the Taj Mahal Act, and objectors testified that debt ceiling laws apply to school districts. As a result, ZHB decided that Pennsylvania law does not permit the public's "welfare" in a zoning case to add more financial limitations on school districts in new building projects in a field already regulated by other state laws. The record also reflects expert, unrebutted testimony that the site development costs for the school anywhere else in the same district would be more-or-less the same as on this particular site.

Objectors also contended that there will be a serious impact on municipal services, resultant increased costs to the Township, and at the same time a loss in property tax revenue from the 109 acres. The problem with these contentions is that case law instructs that, in most and probably all case, neither is a sufficient ground to deny a special exception application. *Jacobi v. Zoning Board of Adjustment,* 413 Pa. 286, 196 A.2d 742 (1964) (loss of tax revenue does not justify denial of special exception); *National Land & Investment Co. v. Easttown Twp. Board of Adjustment,* 419 Pa. 504, 532, 215 A.2d 597, 612 (1965) (unless the use would be contrary to the orderly and rational delivery of municipal services, the additional burden on those services from the use does not justify denying the application). Equally important, QVSD's expert testified that the school's impact on municipal services will not be abnormal for a school *Archbishop O'Hara's Appeal*, 389 Pa. 35, 131 A.2d 587 (1957). And when the ordinance was adopted, there is no doubt that the Township Commissioners knew that a school would not only create an increase in municipal services and costs but would also take land off the tax rolls. *Archbishop O'Hara's Appeal*, 389 Pa. 35, 131 A.2d 587 (1957).

Objectors also contend that QVSD has demonstrated insufficient management skills in one instance involving a current water-runoff problem for one property owner downhill from the site. See, *EQT Prod. Co. v. Borough of Jefferson Hills,* 208 A.3d 1010, 1028 (Pa. 2019) (poor management by same applicant over same problem in the past is relevant zoning board

LEET TOWNSHIP ZONING HEARING BOARD



Vincent J. Restauri, Jr., Solicitor

March 28, 2022

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consideration). For argument's sake, even if it is true that school district personnel have mismanaged the problem, this contention presupposes that the school district's in-house personnel, rather than its geo-technical and civil engineering experts, will handle any water runoff problems during and after construction of the school. *Iacampo v. Hatfield Township, 99 Montg. Co. L. R. 338 (1975), aff'd 22 Pa. Cmwlth. 206, 347 A.2d 735 (1975)* (when there is already an existing drainage problem affecting a larger area, zoning board may not impose on the applicant the responsibility of disposing of surface water flowing from other lots); *Appeal of Martin,* 108 Pa. Cmwlth. 107, 529 A.2d 582 (1987) (normal run-off from a proposed apartment building will not justify denial of a special exception). The evidence, however, was that experts would be in charge of monitoring, as reflected in ZHB's Decision. See, *In re Application for Conditional Use Approval of Saunders,* 161 Pa. Cmwlth. 392, 397, 636 A.2d 1308, 1311 (1994) (decision that water or sewage disposal system will be harmful to public cannot be based on mere speculation).

Objectors also raised concerns about environmental preservation. ZHB found these claims to akin to the claims addressed in *In Re: Appeal of Drumore Crossings, L.P.,* 984 A.2d 589 (Pa. Cmwlth. 2009) (concerns that DEP might have environmental concerns without proof of DEP refusal, held insufficient to deny zoning board approval).