

Bainbridge Township, Ohio
Board of Zoning Appeals
January 24, 2008

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:38 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier. The following matters were then heard:

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals. He then explained the hearing process and swore in all persons who intended to testify.

Application 2006-33 by Voproco Properties Limited for property at 16941 Savage Road
– Continuance

The applicant is requesting a conditional use permit with variances for the purpose of constructing single family cluster homes. The property is located in a R-3A District.

Ms. Mary Bolas-Dietz of K.K Foxx Court Reporters was present for this application.

Mr. Lamanna noted that this application is a continuance.

Mr. Charles Riehl was present to represent the Bainbridge Township Board of Trustees

Mr. Gary Werner of Berns, Ockner testified that he is here this evening on behalf of the applicant and introduced the following: Mr. Ed Janoviak of Landsong Engineering, Mr. Steve Ryder of Atwell-Hicks, Mr. Mark Belmont of Atwell-Hicks, Mr. David Hartt of D.B. Hartt Planning and Development Consultants, Mr. Tom Vokas of Voproco and Mr. Mark Iacona of Preferred Development. He said to get the process and keep a cleaner record they discussed with the township's attorney that they will have somebody speak and the township's attorney will question them so we can try to conclude it by moving through instead of coming back in halves.

Mr. Lamanna said yes, let's do it person by person.

Mr. Werner said they are here for a conditional use permit and associated variances for this 50 acre parcel on Savage Road and will personally introduce Mr. Mark Iacona to talk a little bit about the background of this parcel and bring us up to speed as to where we are.

Mr. Mark Iacona testified that the property they are working with is 50 acres in size, it has frontage on Savage Road to the west and a temporary culdesac on Tulip to the east. He said the property is almost bisected with a good size ravine with the McFarland Creek running through it and the current zoning is R-3A which is one lot per three acres and the plan they submitted has 33 lots which represents the density of 1.51 acres per lot with an average lot size of one acre. He said they are requesting a variance from Section 139.04 (B) with the difference in the density on this section and they are requesting additional approval for a cluster development, it is an allowable use under the R-3A zoning. He said cluster developments require several things and one is to have minimal open space of 25% of the total site and they exceed that a little bit with 25.84% which is 12.94 acres, there has to be a natural buffer around the perimeter of the site and they meet that and actually exceed that on most of the sites. He said the maximum site coverage on this project allowed is 15% of the site which amounts to 7.5 acres and will adhere to that. He continued by saying that the front setback is 50' and they will comply with that, the rear setback is also 50' and they comply with that also, the maximum building height is 35', they don't have any of the houses shown as yet but they will comply with that also. He said the side yard setback is 30' and they are requesting a variance of 10' from Section 135.04 to allow for a 20' side yard setback so they are asking for a variance of 10' in that area. He said the building setback from the perimeter of the project and one of the requirements on the cluster zoning is a 100' setback from any building perimeter and they are requesting some variances from Section 135.04. He said there are six lots they are asking variances for, subplot 5 and 6, 11 and 12 and 24 and 25. He said for subplot 5, the setback is 50' so they are asking for a variance of 50', subplot 6 they have a 50' setback and they are asking for a variance of 50', subplot 11 they have a setback of 75' so they are asking for a variance of 25', subplot 12 they have a setback of 75' so they are asking for a variance of 25', subplot 24 is 30', they are asking for a variance of 70' and subplot 25 is 30' with a variance of 70' He said the areas where these sublots are, they made sure where they were asking for the variances from, the setback of 100' from the side property line, they made sure that there were no houses immediately adjacent to those areas for minimal impact on the neighboring properties. He referred to the site plan and said initially they had the fear of asking for a variance on these lots also, and pushed those back in so they do have more than 100' actually so the neighbors will not be impacted as much. He said the regulation requires that they have 691,942 sq. ft. of perimeter and they comply with 91% of that so they are requesting a variance of 9% of that area setback. He said this project will have dedicated roads and they will be built as per Chapter 135, Table 1, with no curbs and will be built to Geauga County code. He said the project also will be served by sanitary sewer and public water and the sewer lines and water lines run right through the middle of the property.

Mr. Werner asked Mr. Iacona to talk briefly about where the application started in terms of density and how he got to the point where he is.

Mr. Iacona said initially the application was for 49 home sites on this, there were 44 home sites on one side and 5 or 6 on the other side.

Mr. Werner asked about the next generation of the plans.

Mr. Iacona said when they got involved they looked at it and had to minimize the number of units because they knew density was an issue and so they factored a number that said where can they go and still make it viable so they submitted a plan that showed 34 home sites. He said the ones they submitted had setback issues from the neighboring houses that became an issue so in order to adhere to that, they lost a lot and that is how they arrived at the 33 lots they have today.

Mr. Werner asked Mr. Iacona if he received a copy of a memorandum from Mr. Frank McIntyre, the township zoning inspector.

Mr. Iacona replied yes.

Mr. Werner said it is dated September 13, 2007 and Mr. McIntyre brought up some issues in terms of compliance with this proposal and asked Mr. Iacona to address those.

Mr. Iacona said one of the things he had mention is the dimension of the houses and total square footage of the homes and on this plan he put an example of the houses to demonstrate that there is plenty of house envelope there to fit the homes they are talking about, they are going to be custom homes and when it comes time to actually build them, the setbacks on the lot and the location on the lot may vary, the actual footprint on the lot may vary but in the end they will adhere to the lot coverage of 10%. He said he had asked to show the topography and we had done that, the location and dimensions of the fire protection pond but typically if there is not city water, a fire pond would be required but we are proposing city water throughout the project so he did not think that is required. He said Mr. McIntyre asked for the building setbacks and he brought up some of the areas of variances that the initial plans called for which were a lot more setback variances than he is showing here today and he pared it down to six lots.

Mr. Werner asked if it is 11 lots that he was seeking a perimeter variance for.

Mr. Iacona said that is correct.

Mr. Werner said so in the process of changing from the 34 units to the 33 unit plan, you eliminated five of those.

Mr. Iacona said right they got down to six and those six they shrunk the amount of variances they were looking for to begin with.

Mr. Werner asked if in doing so it cost him one of the lots in the 34 unit plan.

Mr. Iacona said that is correct. He continued by saying one of things they were talking about was the ownership of the association and explained the valley area that would be owned by the association. He referred to the construction drawings and said the road will be built to Bainbridge Township code and Geauga County code also. He said he had brought up erosion and sediment control plans that they had and initially they did not have any but we're showing two basins on either side of McFarland Creek and they weren't shown originally, but they have included those. He continued by saying that he also had brought up a point as far as the site plan indicating crossings and we said we would provide proof of conforming to the applicable Nationwide Permit and that is dealing with the streams and the Nationwide Permit allows for 200 linear feet of perennial stream crossings and another 300 feet for ephemeral and based on their calculations they will adhere to that and for some reason if they could not they would have to go and get the appropriate permits from the Army Corps of Engineers but their plan shows they will adhere to that.

Mr. Werner said in any case that is a matter to be reviewed by a different body.

Mr. Iacona said exactly and he goes on to talk about buildings or structures being used or occupied prior to getting the approvals they need here but as far as front yard setbacks, they will conform to the zoning except for the various items on those six lots.

Mr. Werner said an issue came up along the way about the coverage calculations and the impact that the detention basins might or might not have on the calculations and asked Mr. Iacona to address that.

Mr. Iacona said as he mentioned initially the basins were not there but there is some allowance in the Bainbridge code that the basins won't have to be calculated as part of that coverage and added that they are not there as far as engineering and they may very well be accepted but even if they are not, even if they have to be considered and calculated into that 15% lot coverage, they are not going to ask for a variance in that area, and if that is the case they will reduce the site coverage on each individual home site to make sure they conform with the 15%.

Mr. Werner said regardless whether those lots are calculated as part of the coverage calculation or not, the coverage requirements will be met.

Mr. Iacona replied yes.

Mr. Werner said there is also an issue about the conservation easement with respect to the open space and asked Mr. Iacona to address that as well.

Mr. Iacona said the idea of a conservation easement being put there is that nothing could ever be done down there as far as building or disturbing the area and leaving it a natural state and they are open to that, they don't want to see anything as much as anyone else and they are open to a conversation about having a conservation easement there and who holds the easement.

Mr. Werner said he wanted to talk a little bit about economics of the project and asked Mr. Iacona how he arrived at the 34 units after he got involved.

Mr. Iacona said knowing how sensitive the density issue was, they said what is the minimum number of lots they could put there and still have a viable project and basically what they did, they started doing some layouts and did some calculations as far as what the costs and improvement costs would be and the land costs from that standpoint so when you put their construction costs, land costs and calculation for carrying cost together, they knew what the numbers are and now they have to do a study of the market to see what the lots are going for and different lots are going for different dollars so they have to look long and hard to make sure that the number of lots they are showing have a price attached to them that is real and make this project viable and 34 seems to be the bottom line to move forward with it.

Mr. Werner asked Mr. Iacona what information he used to draw his conclusions about the price of the houses he intended to build and the price of the lots he intended to develop.

Mr. Iacona said he talked to a couple of realtors initially but the bottom line is what lots sell for and there are a lot of lots out there for sale but that is not indicative of what the values are so he went through the county website and pulled up actual transfers that have taken place in the market of comparable lots and he used that as his criteria.

Mr. Werner asked which comparable lots he used.

Mr. Iacona said they went to Canyon Lakes, they looked at Wembley initially but with Wembley the sales are a little bit older and Canyon Lakes is more recent so they were more useful for what they were looking for so they went with Canyon Lakes and the general area.

Mr. Werner asked what the price point is for the intended homes in here.

Mr. Iacona said the homes will be probably about \$750,000.00.

Mr. Werner said an exhibit (Development Viability Worksheet) was handed out to the board members and also to the attorney for the township which was an attempt to summarize what he just said about the viability of the project and asked Mr. Iacona to work his way first down the 34 unit proposal which was how he originally designed this and tell how he realized these numbers.

Mr. Iacona stated that they started out with 34 units and the top line shows the land costs, the improvement costs on the second line include everything from pavements, utilities and the right-of-ways, the demo and re-construction, the culdesac, the water and sewers from the present sewer and water line to the home sites, the water quality ponds, clearing, engineering, surveying, studies, inspections and permits, the demolition of the existing abandon house on Savage Road, engineering design and landscaping, project management and legal costs.

Mr. Iacona continued by saying also in there they included their carrying costs and after that they totaled up and of course there is a profit factor in there and they are showing 21% there, but most projects take two years to build and in this market, it may take a little longer so if you analyze the 21%, that is 10.5% per year, you are likely to get more than that, but on this project right here with the market conditions what they are, that is where they are on that.

Mr. Werner asked how that number relates to the attractiveness of a development like this to potential investors.

Mr. Iacona said it is an 11% return on an investment and if they get below that, they might as well put their money in a money market fund that is maybe a little less risky where they can get a comparable return. He continued by saying that carrying costs are shown at 15% and that represents interest on the loan for the project, there will be real estate costs on that and some additional fees, insurance, taxes etc.

Mr. Werner taxes etc.

Mr. Iacona said they show the total cost on there and the line just below that they are showing a \$185,000 projected sales on an average per lot basis.

Mr. Werner asked if the total of the costs which include the rate of return and carrying costs, if that is divided out among the lots that he is planning to sell if these are just the improved lots, before houses are built.

Mr. Iacona said that is correct.

Mr. Werner asked Mr. Iacona how the research that he conducted regarding area market price for improved lots compares to the price he established for the 34 unit subdivision.

Mr. Iacona said in the Canyon Lakes Subdivision, the average lot size from the auditor's website and they did not want to guess at the land values but they pulled the most recent ones in 2005 through 7/23/2007, the average lot size was .93 acres and our project here, the lot size is one acre so size-wise they are comparable. He said the actual sale price is \$181,521 on those lots and they came pretty close as far as what they thought they would be worth.

Mr. Werner said so you knew the ballpark for the market for improved lots in this area.

Mr. Iacona said correct and Mr. Werner asked him to finish that column.

Mr. Iacona stated that they show 34 lots there and the bottom line shows what a house may be selling for there typically and in real estate, the rule of thumb is 25% of the house value would be for land so again after they took their number it equates to about where they would want to be for the whole package and they are projecting \$750,000.00 between the 7.19 in twenty years so they would know where they were at.

Mr. Werner said so that is based on the 34 units.

Mr. Iacona said that is correct.

Mr. Werner said when the one lot was lost as a result of the reduction in the perimeter variances that Mr. Iacona is seeking, he asked him to explain how that effected the calculations here.

Mr. Iacona said everything in the white column is pretty much the same until they get down to the per lot cost and one of two things have to happen there, either their profit goes down by losing a lot or they could raise the value of all of the 33 lots to make up for the one they lost. He said when they start pushing that up it really affects the sale price to \$191,000.00 and there is no easy way to do it, the market is what the market is and they are showing \$185,000.00 and the comps are \$181,000.00 and they are pushing their projections up to \$191,000.00 it is not the ideal way to do the comp thing.

Mr. Werner said with regard to the ultimate home price, the house prices under the 33 unit proposal, there are in fact some natural barriers to how high you can go with these prices, right.

Mr. Iacona said the market is fixed and two things happen and one is if the price keeps going up you exclude more and more potential buyers but in order to go a whole lot higher in a house, it also affects the site coverage, if you go to bigger houses, we are battling against the different aspects of this project moving forward.

Mr. Werner said the plan is currently designed for a 34 unit development but this is still going to be developed with 33 units.

Mr. Iacona said that is right.

Mr. Werner said but other than that, the incentive would be gone.

Mr. Iacona said they are at 21% with the hope of getting \$191,000.00 but if you go below that, he can't do that and have a viable project.

Mr. Werner said okay.

Mr. Charles Riehl testified that he is here representing the Bainbridge Township Trustees and said that he would like to ask Mr. Iacona a few questions and if he does not understand he should ask to have them clarified. He handed Mr. Iacona the variance application that was filed in September of 2006 and said it was signed by a representative of Voproco Company and asked Mr. Iacona if that is right.

Mr. Iacona said that is right.

Mr. Riehl said the representatives of Voproco certified that the information in that variance application was true and correct did he not.

Mr. Iacona reviewed the application and said yes and added that he was not involved with this part of the project, it was before his time.

Mr. Riehl said he wanted to ask Mr. Iacona about one of the pieces of information that was furnished to the zoning inspector and ultimately to the board and that is question 3A and the question there was whether the property in question would yield a reasonable return or whether there can be a beneficial use of the property without the variance and asked Mr. Iacona if he sees that question.

Mr. Iacona replied yes.

Mr. Riehl asked Mr. Iacona what the answer was to the question.

Mr. Iacona said the three acre density requirements of Chapter 139 are unconstitutional if applied to the property which has both central sewer and central water service and prohibition of the proposed use of the property as set forth in the attached drawing is unconstitutional.

Mr. Riehl said to Mr. Iacona so you would agree with me they didn't provide any of these costs that you amplified to the board tonight in his answer.

Mr. Iacona asked Mr. Riehl if those were his (Mr. Iacona's) costs.

Mr. Riehl said yes.

Mr. Iacona said he generated those.

Mr. Riehl asked Mr. Iacona if he would have any reason to disagree with him when he indicated to him that he first received those costs that he (Mr. Iacona) testified to the board about at 5:55 tonight in an email from his attorney Gary Werner.

Mr. Iacona asked did he know that.

Mr. Riehl said yes.

Mr. Iacona said he was not sure but that could be possible.

Mr. Riehl told Mr. Iacona that he was here last September and testified to the board and did not testify about land costs did he.

Mr. Iacona said no.

Mr. Riehl told Mr. Iacona that he was here in December and did not testify about land costs did he.

Mr. Iacona said he did not think so.

Mr. Riehl asked Mr. Iacona when he first discovered that the property in question would not reasonably yield a return without the variances.

Mr. Iacona said he knew that early on.

Mr. Riehl asked why information was not provided to the board about that.

Mr. Iacona said he had had an ongoing conversation with the board and presentation so as those issues come up he was more than willing to address it and provide anything they wanted.

Mr. Riehl told Mr. Iacona that he indicated that he had made research about costs of lots in some subsequent and additional subdivisions and he mentioned Canyon Lakes.

Mr. Iacona said yes.

Mr. Riehl said he believes Mr. Iacona mentioned The Woods of Wembley.

Mr. Iacona said yes.

Mr. Riehl said because they just got this information tonight, we don't have an opportunity to verify those costs, do we.

Mr. Iacona asked if he meant the values of the different lots in those subdivisions.

Mr. Riehl said correct.

Mr. Iacona said he has the parcel numbers if Mr. Riehl would want those supplied, he would be happy to.

Mr. Riehl said he is here on a hearing before the board and he wants to get as much information as he can to the board but they can't verify those without having that information before the hearing can they.

Mr. Iacona said he understands.

Mr. Jim Norbuta testified that he believes the GIS system will allow you to verify that.

Mr. Lamanna said we are not going to sit here and verify that and said he wanted to make one point here. He said technically he is trying to testify as an expert and by the board's rules, we should have had a report to the board and to opposing counsel prior to the meeting the number of days as stated in the board's rules just so we don't have this type of situation because now we have got essentially what is an expert report, we don't have all the details of what that report is, he has testified that he has looked at a lot of properties but the board should have had the report that has a list of the properties so he could have it summarized. He said what was in the report, he could have told us and said this is his conclusion, we would have had the documents, opposing counsel would have had the opportunity to review it and determine whether or not he wanted to challenge any of those things or put in any opposing evidence so now we are in kind of a difficult situation here. He said he thinks what is going to have to happen is all of this is going to have to be all of the underlying information on which his testimony is based and it is going to have to be written down and submitted to the board and submitted to counsel and the board is going to have to allow him the opportunity to present on these findings.

Mr. Riehl said he will stop the line of questioning but he does have a couple more questions.

Mr. Werner said that most of what Mr. Iacona is testifying to is on the basis of his knowledge as the applicant, he is the developer of the property and it is in response to issues that were raised, reports that were submitted by the township, particularly their expert Mr. Smerigan so these are actually responding to issues that were raised and Mr. Smerigan said there is no proof that we have not demonstrated any cost figures relative to the development so we came up with cost figures.

Mr. Lamanna said he understands that it is in response but the response has to be the proper response and the proper response where you are trying to say that there is a cost factor here, somebody is testifying essentially as an expert, they are not testifying to a purely factual basis, they are trying to justify here that they are an expert developer and can say these are the costs and everything else and the board should have more than a single page here backing that up. He said they should have the improvement costs and at least some kind of break out of what those improvement costs are at least by general categories like roads, engineering etc. if we are going to come up with a comparable lot price, we should have had a list of the data points from which that conclusion was drawn.

Mr. Werner said at both of the prior hearings before the board, they had Mr. Ed Janoviak present who engineered this project who did not submit a separate report but who was questioned and testified regarding details of reports and we have two others.

Mr. Lamanna said the board has been a little flexible on this thing frankly in terms of expert testimony and in his view if there is a difference between an engineer getting up and saying here is how he engineered the project, we did this, we did this, he is testifying pretty much factually for what he did, it is different when we are dealing directly with the issue of whether or not there is commercial viability here for the project, that to him moves it from somebody testifying about factual things to somebody trying to testify to an expert opinion so that is where he would draw the line, an engineer just talking about general engineering and how he did it unless they get down to the point where there are two guys and one guy is saying he thinks this is a sufficient way to control erosion and somebody else comes up and says no it isn't then maybe we are off in a different avenue then because then you have to switch over to what is sound engineering practice and then it becomes expert versus somebody saying here are the steps he took to design it and here is where the pipes run and here is how the grading is done, so that is where he draws a distinction between professionals testifying in one capacity and professionals testifying in another. He said the board tries to be a little flexible on this and they are willing to be reasonable but the board wants to make sure everybody gets an opportunity to evaluate the evidence that is presented before us.

Mr. Werner said he understands and to prevent potential flooding, they have two engineers here from Atwell-Hicks who did not prepare reports but read through the report prepared by the Chagrin River Watershed Partners and are here to respond to it, they did not make separate reports because they are responding to the report that was prepared and it seems to him now that the board would have preferred that they also introduce alternative reports evaluating the issues that were raised by the Chagrin River Watershed Partners.

Mr. Lamanna said he assumes we are looking at the Chagrin River Watershed report as an expert report so then it is their counter expert report.

Mr. Werner said he wants to be clear, he does not want to waste the board's time and if the board's disposition is that such issues have to be presented in a report form and disclosed beforehand, they don't have a problem doing that, but based on their experience they did not realize a report was required.

Mr. Lamanna said the board will listen to what they have to say and depending on what is underlying, then the board may say they need a report so they can address that. He said it is a little bit easier if they are commenting on an exhibiting report, because the board has already had obviously a basis of fact and knowledge already to compare it.

Mr. Riehl said that they said they were going to testify.

Mr. Lamanna said that is a little easier situation for us to deal with from the standpoint that there is already something there in place so we are not starting in a vacuum but again the board should have some ability to comment from the existing report to what they are saying or measure what they are saying against the existing report and we begin to have a problem if they bring lots of external factual evidence, then it is a little bit of a problem to try to deal with like here, when they reference a whole series of property sales and the board does not really know what they are or know when they were or where they were to some extent but the board does not have any way to evaluate the underlying aspect of that.

Mr. Riehl said they talked a little bit about some of comparable subdivisions in which Mr. Iacona made an analysis and he mentioned Canyon Lakes and Woods of Wembley and he would like to mention a couple of the other subdivisions to see if he made a comparable analysis of development costs, carrying costs etc. He asked Mr. Iacona if he did an analysis on Bridgeway Estates, Peppermill Chase, The Sanctuary, Hawksmoor, Stone Ridge and Northwood Lakes.

Mr. Iacona said no.

Mr. Riehl asked Mr. Iacona if it would surprise him to know that the Bridgeway Estates Subdivision was developed with sewers in a cluster zoning and it is practically adjacent to the current property.

Mr. Iacona said he knew of the location to the property but the property sales there were long enough in the past, so he was trying to find something more current.

Mr. Riehl said one of the other questions was asked of Voproco in the application is whether there can be any beneficial use of the property without a variance and asked Mr. Iacona if he made a similar analysis of the development of this property without a variance.

Mr. Iacona said he did.

Mr. Riehl asked if he had that with him.

Mr. Iacona said he had the drawing but he does not think he has his projections, he does have the drawings and he looked at what other three acre projects were yielding. He said he looked at Amber Trails, the Reserve at Brighton and he looked at Chagrin Oaks Subdivision which is around the corner and he used those as his comps but he does not have the actual projections with him.

Mr. Riehl asked if he had the hard numbers.

Mr. Iacona said no and it lost money big time.

Mr. Riehl asked whether the developer of Bridgeway Estates lost money.

Mr. Iacona said he did not know.

Mr. Riehl said one of the other questions that the applicant was required to fill out was question 3B and it is whether the variance is substantial and his answer to that was no.

Mr. Iacona said yes.

Mr. Riehl said you are asking for the board to approve a density that is about ½ of what is allowable under the code.

Mr. Iacona said correct.

Mr. Riehl said three acres versus 1.5 acres and asked Mr. Iacona if he considers a 50% increase in density as being substantial.

Mr. Iacona said on a relative basis they looked at what some of the surrounding projects were on lot size and density and when he got involved, that was an acceptable density and lot size configuration so he did not see that as being prohibitive, no.

Mr. Riehl told Mr. Iacona that he testified with respect to the 100' setback requirements that he had variances that varied from 25% to some that were 50% to one that was a 70% variance.

Mr. Iacona said that is right.

Mr. Riehl asked Mr. Iacona if he wouldn't consider those to be substantial.

Mr. Iacona said on a per lot basis, especially the 70' ones, yes some are substantial but as he pointed out he made sure they were butted up to an open area, there are no houses in that general area and whenever you calculate that factor on a whole, they call for a 100' setback from any building and around the entire perimeter, they adhere to 91% of that regulation so they are asking for a 9% variance on a whole which is not substantial.

Mr. Riehl said Mr. Iacona also indicated that he was seeking a variance of 10' from the side yard.

Mr. Iacona said yes.

Mr. Riehl asked Mr. Iacona if he is asking for that on all of the lots.

Mr. Iacona said yes.

Mr. Riehl said so that would be 100% of the lots that would require that kind of a variance.

Mr. Iacona said is correct.

Mr. Riehl asked Mr. Iacona if that is not substantial.

Mr. Iacona said yes but the variance is one-third or 30%.

Mr. Riehl said but each one of the lots would require a variance.

Mr. Iacona said correct.

Mr. Riehl asked if a wetlands delineation was performed for this property.

Mr. Iacona said yes.

Mr. Riehl said so on the plan, it shows what it refers to as proposed water quality ponds and asked if that is correct.

Mr. Iacona replied yes.

Mr. Riehl said there is one on the east side of the creek and one on the west side.

Mr. Iacona said correct.

Mr. Riehl said those are in the wetlands are they not.

Mr. Iacona said the water quality pond on the west side is in a small area of wetlands and it is not that big and the one on the east side does show in an area of wetlands also and by law they are allowed to impact a 10th of an acre and under the right code they are allowed impact up to ½ of an acre under the permit. He said they designed them in of those areas, the water quality ponds, they made sure they were under the ½ acre.

Mr. Riehl said Mr. Iacona commented that even if the retention ponds were in a wetlands that he could still meet the coverage requirements of 7.5 acres.

Mr. Iacona said he did not think he said they were in the wetlands, he said if he water quality ponds are calculated into that 15% site coverage, they would still adhere to that 15%.

Mr. Riehl asked Mr. Iacona if he made an analysis of the Bainbridge Zoning Resolution to see whether those detention basins could be located in wetlands.

Mr. Iacona said he does not recall.

Mr. Riehl asked Mr. Iacona if he made an analysis on whether those detention basins would affect aquatic or natural, geologic or vegetative features of the property.

Mr. Iacona said as part of the wetlands study, it would identify the area of wetlands and at the end of the day, if there is no reason to put anything in that spot, they will have to go through the Geauga County Soil & Water Department, the Ohio EPA and the Army Corps of Engineers and they will have to comply with all of their regulations to begin with so that is not part of the process here.

Mr. Riehl said he understands but the Bainbridge Zoning Regulations, Chapter 161.13 which provides exception to lot coverage calculations does not allow an exception to lot coverage calculations for retention basins if they would affect wetlands, aquatic or natural geologic or vegetative features, so he asked Mr. Iacona if he made an analysis of that.

Mr. Iacona said if they need to relocate the basins or reconfigure the basins to conform to the Bainbridge code, they absolutely would.

Mr. Riehl told Mr. Iacona that he might lose some lots if he had to relocate these basins in this area or this area. (He referred to the site map on display).

Mr. Iacona said this will test the ability of their engineers to see what they come up with and at this point, losing lots is not an option as far as he is concerned.

Mr. Riehl said one of the other questions that had to be filled out on the application was section 3C and it is whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance and the answer to that is no.

Mr. Iacona said correct.

Mr. Riehl asked Mr. Iacona if he asked the neighboring subdivision whether they felt that the essential character of the neighborhood would be substantially altered by his development.

Mr. Iacona asked if is talking about Bridgeway.

Mr. Riehl said yes.

Mr. Iacona said no.

Mr. Lamanna said he has a couple of questions and asked Mr. Iacona on this viability sheet he prepared, you started off with the first number as land costs of 2.8 million dollars.

Mr. Iacona said correct.

Mr. Lamanna asked where that number came from.

Mr. Iacona said that came from the contract that they have to purchase the land.

Mr. Lamanna said so it is an arbitrary number.

Mr. Iacona said he is not sure how arbitrary it is but it is a hard number as far as his function with it.

Mr. Lamanna said you will admit that if you are the developer, the value of the piece of land is determined, one, on how much it is going to cost to develop it. He said if he has a piece of land that is perfectly flat, nice soil, no adverse features and the sewer and water are right there and the road is right there, it is not going to cost him a whole lot to develop but if he has a thing with crags and steep canyons and streams to cross, it is going to cost a lot more to develop and the one that is nice and flat is going to be worth more than the other one right.

Mr. Iacona said he disagrees on that one because these days people love ravines.

Mr. Lamanna said the value of the land depends on what you can sell the lots for so in fact the value of the land is dependent upon what you can sell the developed lots for and if he is a business man he would start from the premise that if he is going to buy something with ten lots at the end of the day, he would say it would cost him this much, A. to develop the property, B. to buy the property, add A. plus B. together and divide the property by ten and if he can sell all of these lots for \$150,000 each, it is going to pretty much determine what he is going to pay for the property.

Mr. Iacona said correct.

Mr. Lamanna said he did not come up with a number he is willing to pay for the property, based on any arbitrary number that he selects here from the 16 houses that could be built here up to what ever number you want to try to squeeze on the property, he could come up with a different number answer for what the value of the property is so that is why he is saying it is arbitrarily set.

Mr. Iacona said that is true and for his purposes, the development is driven by the bottom line so as far as what the value is there, is based on what the market says the lots are on that site.

Mr. Lamanna said and how many lots you put on the piece of property and now at 2.8 million, it works out to about \$56,000 per acre and asked Mr. Iacona if he looked and did a study to see what similar properties in this area are being sold for, for a development.

Mr. Iacona said he did and it was tough because there did not seem to be all that much being sold recently so he was having a hard time with that and also he did it the other way and looked at what other properties/lots were selling for and he looked at some that were for sale that haven't sold and got a good indication of what property values are but some were even higher per acre so it didn't scare him away.

Mr. Lamanna said he could put any number he wants on that lot and the fact that somebody is foolish enough to overpay for a piece of property, he does not see it as any compunction or reason to compel the board to allow them a higher density development to bail them out because they are paying too much for a piece of property and likewise if somebody decides that they can put more houses on their property, then they can charge more, so again it is the same problem, it is an a priori argument to come up and say they are putting down 2.8 million dollars to start with so if they start with an a priori argument at the top of their chain, the rest of the structure is built on no foundation.

Mr. Iacona said he is not sure what that word means but one of the things he did initially is, he looked at the current zoning and if it is a lot easier to go with the current zoning and there is a deal to be made there, he would rather do that but there still was not a price to be had there based on the current zoning and based on the comparables that are out there today on acre lots and he did it that way too and would have rather have done it that way, the numbers just did not support that development.

Mr. Michael Joyce, Zoning Inspector testified that he did not get a copy of the sheet handed out (the Development Viability Worksheet) and not having one before the meeting he could not analyze it and would like a copy for his files.

Mr. Lamanna said the board will make sure Mr. Joyce receives a copy.

Mr. Werner said the issue that was just talked about is addressing whether the property has a beneficial use without variances and asked Mr. Iacona if he would agree or necessarily suggest there is some sort of economic value to the project.

Mr. Iacona said he would agree.

Mr. Werner said so at the end of the day, the value of this land and the value that it could be used for bears on the question of whether the variances are necessary for a beneficial use right.

Mr. Iacona said that is correct.

Mr. Werner said the amount Mr. Iacona was discussing with the chairman about for the price of this land it is a contract number right.

Mr. Iacona said correct.

Mr. Werner said it means if you get this approved, that is what you will pay.

Mr. Iacona said right.

Mr. Werner said the denomination of this land was based in fact on Mr. Iacona's projection of what this land can be used for.

Mr. Iacona said and it is based on other subdivisions in the general area in the community.

Mr. Werner said that Mr. Riehl asked a few questions about whether you (Mr. Iacona) had mentioned this viability issue at the last two hearings, they had one in October and one in December and his recollection is they did not, they weren't putting on any case at the last two meetings.

Mr. Iacono replied no and said he did not think they talked about that.

Mr. Werner said Mr. Riehl also asked Mr. Iacona if he thought that the request for density variance to permit 1-1/2 acres per unit was substantial and asked Mr. Iacona if he is aware what the density is in Canyon Lakes.

Mr. Iacona said he knows the lot sizes but he is not sure of the whole subdivision.

Mr. Werner asked Mr. Iacona if it would surprise him to know that it is .82 units per acre and there are over 600 some units over there.

Mr. Iacona said he knew there are a lot.

Mr. Werner referred to the Lake Lucerne Development which is adjacent on the southeast corner and asked Mr. Iacona if he was aware of the density there.

Mr. Iacona said he was not.

Mr. Werner asked Mr. Iacona if it would surprise him to know that they permitted 1.24 units per acre and if he knows about the Meldon property.

Mr. Iacona said that is on Chagrin Road.

Mr. Werner asked Mr. Iacona if he knows the density that is allowed on that property.

Mr. Lamanna asked Mr. Werner if he knows he is testifying here because he is asking Mr. Iacona questions he does not know and then Mr. Werner is answering them so if he is attempting to get that information for the record, it is really not a proper way to get it into the record. He said he does not want to get too picky but if someone is going to put it into the record, they at least have to say how they came up with that calculation because on the Canyon Lakes thing, that number strikes him as being different from the numbers and they had another whole hearing on Canyon Lakes and that number strikes him as being different than the number that they came up with in that hearing by people who spent a lifetime looking and calculating the numbers and you are asking him and he is saying he doesn't know, and then if you are trying to get that information into the record it is really not in the record.

Mr. Werner said it will come into the record and with due respect to the board, he is never certain how strict the board's rules are being enforced.

Mr. Lamanna said that is why he mentioned it because you are going to go and think the board is accepting it but in this case that is the kind of thing, the board does not try to be overly strict, but when it comes to something like that, we really need to have somebody putting into evidence that can identify how they came up with the calculation and where they got the new data from so the board can either verify it or somebody can challenge it if they made a mistake.

Mr. Werner said they have such witnesses.

Mr. Joe Oberle of Tulip Lane asked if the audience can ask questions now.

Mr. Lamanna said generally the board does not allow people from the audience to examine the witnesses, but what the board will do is let everybody talk because the question might get answered later and that way we don't get everything run out of sequence and after that the board will allow people in the audience to raise questions which if the board finds it appropriate, we will ask them to respond to them and that is the most orderly way to do it and your question may get answered by some later witness and we won't have to spend time on it and also we just need to do that to keep a little bit of order in the process. He added that the board will give everyone a chance if they have a question to make sure that it is responded to.

Mr. Werner asked Mr. Steve Ryder to step up. He asked Mr. Ryder to introduce himself to the board.

Mr. Steve Ryder testified that he is with Atwell-Hicks and is a wetlands consultant and he has been involved in that field for about ten years now and his main duties are wetland delineations, site layouts, wetland studies and coordinates with agencies in order to obtain permits for land developers. He added that he has a Bachelor's Degree in Geology from Kent State University.

Mr. Werner asked if the board will advise if they cross the line with whether this is a report of this or just a rebuttal of this.

Mr. Lamanna said the board will let them know.

Mr. Werner asked Mr. Ryder if he had a chance to review a report that was prepared by the Chagrin River Watershed Partners.

Mr. Ryder said correct.

Mr. Werner told Mr. Ryder he has been asked to come here this evening to address some of those issues as they relate to the environmental impacts from this development on this property and said if he has that memo handy, it might be helpful to him.

Mr. Ryder referred to the site plan that was displayed and said as you can see the streams running through here and he identified McFarland Creek and these streams are considered intermittent or perennial which have regular or intermittent flow at certain times of the year and some are also ephemeral based on the report. He said the project is designed so that the streams remain open to most of the project area and the only places where there are some enclosed streams areas are under the roadway and where there will be proposed driveways. He referred to the streams and said they are fairly minimal, they calculated them to be less than 200' stream impacts. He said now the wetlands are concentrated in this area (he referred to the site map displayed) along McFarland Creek, there are two major wetlands here (he referred to the site map displayed) and then there is this body of wetlands within the stream corridor here (he referred to the site map displayed) and said there is a total of 3.23 acres of wetlands on the site. He again referred to the site map and noted where the small wetlands are located where the basins are and said they are under ½ acre and essentially what that means, being 100 to 200 linear feet of stream and under ½ acre of wetland impacts, you can obtain a Nationwide Permit through the Army Corps of Engineers. He said the Nationwide Permit process works through the Army Corps of Engineers and it requires a review and they determine the physical, biological and chemical impacts that is on not only the stream and wetlands that are impacted but the receiving waters so they will do a full evaluation on the quality of the wetlands, overall impacts and decide on whether or not we have taken all measures possible to avoid and minimize the impacts on the site and only after they have demonstrated that, will they give us approval and issue a Nationwide Permit. He said the EPA is sometimes involved with this process and their responsibility is to determine the quality of that wetland and some of the water quality issues that may result as part of the impact to the wetland and stream. He said one other thing that will be required in order to get the Nationwide Permit is that you have to mitigate for any impacted wetland or streams therefore you have to provide some kind of compensation for the loss of those systems.

Mr. Werner referred to the memorandum that was provided with the report that raised certain concerns about the water quality issues on the property and the effect of the mitigation or management practices reflected in the plan and their ability to address those. He asked Mr. Ryder to talk about the relationship between what is proposed for this development and how it will address the concerns raised in the report regarding water quality.

Mr. Ryder said essentially the water quality in respect to the impact of these wetlands will be evaluated by the agencies, the Army Corps of Engineers will determine what is acceptable and what isn't and they will pretty much hold us to or the developer to BMPs or certain measures to minimize or reduce those impacts to the water quality.

Mr. Werner asked Mr. Ryder to explain what a BMP is.

Mr. Ryder said there are detention basins on site and they are designed to detain the run-off from the property and by doing so it eliminates pollutants and reduces the rate of discharge so they will determine if we adequately addressed the run-off and able to provide some water quality treatment by putting these detention basins in. He said there are other things they can incorporate into that design.

Mr. Werner asked Mr. Ryder to say what BMP stands for.

Mr. Ryder said it means Best Management Practices.

Mr. Werner asked who they are designed by.

Mr. Ryder said those would be designed by the engineer.

Mr. Werner asked what the purpose is.

Mr. Ryder said the purpose is of treating water.

Mr. Werner said okay and if he is going to talk about other measures that have to be implemented or are implemented.

Mr. Ryder said he could probably defer some of that to his colleague, Mr. Mark Belmont.

Mr. Werner asked if there is a process later on in terms of developing this property where these issues will be scrutinized.

Mr. Ryder said yes, typically the Army Corps of Engineers has some say in what BMPs are acceptable and the Ohio EPA also and the Soil & Water Conservation District will provide some also.

Mr. Werner asked Mr. Ryder if he reviewed the plan and a concern was raised in the memo that was submitted and if he has a general idea on whether this proposal incorporates Best Management Practices that he is familiar with.

Mr. Ryder said he does not see a lot of issues that would raise any red flags with the agencies on this project and obviously they have taken into consideration some of the riparian setbacks on these streams, the wetlands and stream impacts are minimal so that you could essentially get this thing permitted under a Nationwide Permit so in his opinion he thinks they have taken considerable measures to obtain a Nationwide Permit from the Army Corps of Engineers.

Mr. Riehl directed his question to Mr. Ryder and said as he understands it, you have done wetlands delineation on this property.

Mr. Ryder said no, he did not have anything to do with wetlands delineation on this property.

Mr. Riehl said you reviewed the wetlands delineation.

Mr. Ryder said yes he has.

Mr. Riehl asked Mr. Ryder what a wetlands delineation is.

Mr. Ryder said it is the practice of identifying wetlands, flagging them, flagging the boundaries of the wetlands and determining the areas that will be considered jurisdictional under the Army Corps of Engineers and the Ohio EPA.

Mr. Riehl said just because a wetlands delineation has been performed by a certified engineering firm, that is not a guarantee that the delineation is going to be approved or affirmed by the Army Corps of Engineers.

Mr. Ryder said right, a jurisdictional determination has to occur before the delineation is considered validated.

Mr. Riehl said we don't know whether the Army Corps would affirm that wetlands delineation.

Mr. Ryder said we do not.

Mr. Riehl asked Mr. Ryder if he made an analysis whether those retention basins, they were referred to on the map as water quality ponds, whether they have been properly engineered.

Mr. Ryder said no.

Mr. Riehl said so you are not offering any information to the board on whether they have been properly engineered.

Mr. Ryder said they are more or less just shown on there, but they are not properly represented.

Mr. Riehl said you are not offering any information to the board as to the cost of construction of the basins.

Mr. Ryder said no.

Mr. Riehl asked Mr. Ryder if he knows who is going to maintain those basins.

Mr. Ryder said no.

Mr. Riehl said so you are not offering any information to the board as to whether the basins will be properly maintained so as to not have an effect on McFarland Creek.

Mr. Ryder said typically they are maintained by the developer or the homeowner's association but he is not sure.

Mr. Riehl said you don't have any information on that.

Mr. Ryder said no.

Mr. Riehl asked Mr. Ryder if he is aware that the EPA has recently classified McFarland Creek as cold water habitat.

Mr. Ryder said he is not aware.

Mr. Riehl said to Mr. Ryder if he told him it was recently classified as a cold water habitat, what would that mean to him.

Mr. Werner said to Mr. Lamanna that these are the same kinds of questions he was told that he could not ask and just wants to make sure we are going both ways.

Mr. Lamanna said if he wants to ask him what a cold water habitat means that is fine but if he wants to get into facts that it is a cold water habitat, he will have to introduce cold water habitat somewhere else. He said in this case if he asked him to explain what that would mean in this case, he is competent to testify as to what that would mean but whether it is or not is not in evidence, you see the distinction I am drawing here and you see why I am drawing a distinction, but in this it is appropriate to let him ask that question because he doesn't really need that as a foundation.

Mr. Ryder said a cold water habitat is considered a high level stream that provides habitat for fish and invertebrate.

Mr. Riehl asked if the detention ponds were removed to a different location on the site they could be moved to a place that they wouldn't impact the wetlands at all and asked if this is correct.

Mr. Ryder said he is not sure, that would be up to the engineer to determine where they go.

Mr. Riehl said in addition to the action of the Army Corps which is an agency of the Federal government they may take and it was also mentioned the Ohio Environmental Protection Agency.

Mr. Ryder said correct.

Mr. Riehl asked what their interests are in reviewing this plan.

Mr. Ryder said the Ohio EPA typically, if these are considered Federal jurisdictional waters, the Army Corps of Engineers is responsible for regulating them, the EPA gets involved and what they would do is perform a quality assessment to determine the quality of the wetlands and streams on the property.

Mr. Riehl said the nature of the permit that they would issue would be a 401 permit.

Mr. Ryder said it would be a 404 permit, the Nationwide Permit, and the 401 would be the individual permit.

Mr. Riehl said and you are not offering any information to the board that the EPA would grant such a permit in this situation.

Mr. Ryder said he is not saying they would but he does not see any reason why they wouldn't on the project as it's designed.

Mr. Riehl said but they have not made that review yet have they.

Mr. Ryder said no they haven't.

Mr. Riehl said he had no further questions.

Mr. Werner said he had a couple of questions for Mr. Ryder. He said you (Mr. Ryder) weren't asked by me or anyone to determine whether those basins were properly engineered were you.

Mr. Ryder replied no.

Mr. Werner said you (Mr. Ryder) weren't asked by me or anybody else to determine how much they would cost to install.

Mr. Ryder replied no.

Mr. Werner said you (Mr. Ryder) weren't asked to determine who was going to maintain them.

Mr. Ryder replied no.

Mr. Werner said what you (Mr. Ryder) was asked to do you just did, right.

Mr. Ryder said correct.

Mr. Werner said as far as predicting what the EPA will do if you get that nailed down, let everybody know.

Mr. Murphy asked who did delineate these wetlands and has anybody at this point flagged the wetlands on this property.

Mr. Iacona said Chagrin Valley Engineering did the wetlands study.

Mr. Murphy asked who Chagrin Valley Engineering is.

Mr. Iacona said they are the company we hired to delineate the wetlands.

Mr. Murphy said okay, so what we see on this map, mapped out.

Mr. Iacona said they submitted reports that show them.

Mr. Murphy said okay.

Mr. Werner introduced Mr. Mark Belmont.

Mr. Mark Belmont testified that he is Civil Engineer with Atwell-Hicks and has been practicing engineering for a little over ten years now, he is licensed in Ohio, Kentucky and Pennsylvania as a professional engineer and the majority of his work has been in Northern Ohio working on residential subdivisions but he has also done a large amount of commercial and industrial development and had dealings with similar subdivisions and project development like this and added that he has a Bachelor of Science degree from West Virginia University.

Mr. Werner asked Mr. Belmont if he was asked to look at some of the engineering issues that were raised in the Chagrin River Watershed report, correct.

Mr. Belmont said yes.

Mr. Werner asked him to go ahead and look at the report and work his way through some of the issues that were raised and his theories on those issues.

Mr. Belmont said he thinks that the majority of the comments made by the Chagrin River Watershed Partners are really engineering questions more than environmental questions but the Chagrin River Watershed Partners basically named out the two water quality ponds as Basin A which is located to the west of McFarland Creek and Basin B. He said they broke it out and discussed Basin A first and one of the items of concern and what they did on the soil survey from the Geauga County soil survey maps, the maps are fairly accurate, it is not exact to say that is truly what is there and what soils they are, regardless they noted it was Lordstown Rock Outcrop Complex which is as they noted 18 – 70% slope.

Mr. Werner said you (Mr. Belmont) are quoting from a report prepared from the Chagrin River Watershed Partners.

Mr. Belmont replied yes.

Mr. Werner said with regard to the slope in this particular basin.

Mr. Belmont said correct. He said he understands where they came up with saying 18 – 70% slopes because that is what it said in the soil survey book where those types of soils are found but if you analyze that pond though from the contour maps that should be shown here, you will see 13% of slopes maximum with an average slope around at 8 – 9% through that basin so we are really not looking at extreme slopes where this was laid out on this plan. He said with regards that even if there were steeper slopes, it is a very common practice in the construction world today to use filter fabrics or just seeding methods that will ensure that these areas do not erode during construction, post construction and in the future and he thinks that the Chagrin River Watershed Partners would agree with that because it is a very common practice, it was noted by them and as noted in their report, construction on the soil type is difficult and erosion is a severe hazard if vegetation is removed. He said what he would like to add to that comment, although he may agree with part of it, is that it is very feasible to do and a very common practice.

Mr. Werner asked how one would do that.

Mr. Belmont said through the use of seeding, filter fabrics, very standard and not even expensive construction methods, and really basically a filter fabric is an interwoven fabric that helps hold the soil in place, helps ensure vegetation seed does not wash away when storms are coming in and it will maintain that permanently even when the vegetation comes in, it helps stabilize those roots and that vegetation so it doesn't get ripped out when we do have a heavy storm.

Mr. Belmont continued by saying the next comment on Basin A was dealing with the final proposed elevation of this basin that will be between 1082 and 1058 and it is a large basin and there is a lot of variation in the elevation which he just mentioned with the slopes but this indicates the potential for it to be constructed on a significant slope as with this soil type construction on such a steep slope may compromise the long term integrity and viability of detention Basin A.

Mr. Werner asked him if he is quoting from the report.

Mr. Belmont said correct, that was their comment and he had the same exact response to the first comment they had although he agrees there is a significant slope there with the standard construction practice and the method he has used, many times standard use in construction and engineering to do this in this type of an area so it is not an unfeasible thought that a detention basin could be put in here and done responsibly. He said the next comment really dealt with the wetlands which he believes Mr. Ryder addressed and the fact that there is an isolated wetlands in this detention basin area and one thing he would like to add to Mr. Ryder's comments is the fact that yes you can obtain a Nationwide Permit from the Corps of Engineers and at this time he sees this as a site plan layout, this is a concept. He said that detention basin has not been final engineered and there is a great possibility that this detention basin could be done without impacting that wetland at all and that would need to be analyzed by the engineer and when he does his design it is obviously something that he could try to avoid. He said also it is important to note that the detention basin design will be reviewed on several different levels, you are going to have reviews from the Soil & Water Conservation District of Geauga County, OEPA and their standards are being enforced by Geauga County Soil & Water and by the OEPA, it is not a regulation it is the law that you have to follow and they will have to meet their requirements and which will go further into saying they are not allowed to discharge more water from the site than currently does today and they also have to detain that water for a certain amount of time, it varies whether it is a dry basin or whether it is a wet basin, which is commonly referred to as a retention basin versus a detention basin and that water as it discharges from a storm has to be released over 24 to 48 hours depending on if its a dry basin or a wet basin and the purpose and reason of that besides controlling discharge and the water that is coming out of it, the rate coming out of there, also the slow release rate will control erosion as far as sediment not making it into a stream or into the neighboring wetlands or the receiving waters of that retention basin.

Mr. Werner asked if he is looking at pond A and said the ponds are designed to regulate the velocity of the flow off the site, the quality of the flow off the site and to filter the silt and other chemicals from the water as it moves into the creek.

Mr. Belmont said correct, they will be required to design them to those standards. He continued by saying the last comment on Basin A is the same conclusion that was made by them is the same conclusion he came to as well, without additional information, they cannot comment as to the capacity of Basin A and its ability to adequately meet applicable water quality and quantities. He said he can agree with that but he also thinks based on his general knowledge of doing subdivisions like this an adequate area has been set aside for a detention basin and water quality pond to perform and meet those requirements. He said obviously, as he mentioned before regarding the permit processes and if for some reason whoever is doing the reviews that this site plan, when you are in subdivisions and developments with lots of this size, you have a lot of open space on those lots as well and residual land here that allow you to do the measures to meet those requirements. He said there is a lot more to water quality ponds for water quality and best management practices which Mr. Ryder briefly touched on. He said regarding the water quality ponds, there can be a lot of other measures implemented and would be very easily managed with swales which are a very common practice and knowing Ohio's rainwater levels to alleviate the pollutants that could make it into the stream, it is going to be a requirement, there is no way around it.

Mr. Werner asked Mr. Belmont if he is aware that a water main and a sanitary main run through the middle of this property and he believes it is inevitable to drill under the creek so that those utilities can be extended to both the east and west side of the creek.

Mr. Belmont said correct.

Mr. Werner asked Mr. Belmont to comment on the practice of drilling under the creek and its potential impacts on the ecology in this area and what is his experience in terms of that method of distributing utilities.

Mr. Belmont said as far as the connections to the existing sanitary and water in this area that bisects the site, permits to install will be required from the Ohio EPA for both of those connections. He said to perform any crossings in these areas, first off, you are going to have an evaluation from and coordination with your environmental teams which Mr. Ryder could probably go a little more into on that item but you are also going to have to meet the approval of the OEPA and anytime you do a stream crossing it sends it into another level of review with the OEPA on the permits to install, it is a very common practice because of the fact that sanitary sewers commonly follow streams, they are low lying areas and the natural flow of the land and they make the most sense for public sewers. He said each connection would be public connections and they would have to go through the OEPA, they are not easy reviews, there are standards that are put in place for a reason to ensure responsible development and he thinks that through those requirements there is no way around doing this responsibly.

Mr. Werner asked Mr. Belmont if he finished his review of the report.

Mr. Belmont said the next item is water quality Basin B and the first comment there was that McFarland Creek has not been delineated by the Federal Emergency Management Agency (FEMA) which he believes is correct. He said one though is that they also said a comment that "Construction of a storm water management basin in a floodplain is strongly discouraged due to the high probability of damage that may occur to the structure during large rain events." He said he can agree with what was stated here, it would have to be examined for this job to be permitted whether or not that is a floodplain, it was not determined by us or by FEMA whether it is or isn't and what he would have to say is if it is not, the site plan does lend itself to alternate locations for water quality ponds and for detention basins so therefore it is his professional opinion that the same measures that they are trying to show and referred to a location of a proposed water quality pond, could be implemented elsewhere on the site so he does not think that whether or not this pond is placed here or anywhere else on the site that it is still not functional. He said the next item that was noted in this memo deals with the wetlands again and basically this area is a delineated wetland and this water quality pond area (he referred to the site map) and he has the same type of response that as he did to the other isolated wetland here. He said this isn't the final design of the water quality pond by any means and there is a final shape of this and may determine that we can not impact any of that wetland and we are looking at what we felt would be the worse case scenario and the maximum amount could impact on the issue of that permit. He said regardless of that it was also mentioned that the soil types in this wetland and whether it would be feasible to put a water quality pond with this type of soils and he has the same response. He said if you are going to do geotechnical borings, check the soils, evaluate them sensibly and determine that it is not a good location for this water quality pond, this plan lends itself to a lot of other alternatives to accomplish that same final conclusion to basically permit which is going to be necessary by the developer and the engineer. He said the last question, he thinks he answered already with Basin A and that is they couldn't comment on the capacity of this basin as well he agrees, that is something that needs to be done and further down the line, when they actually get into the designs of this study, they will have to meet those capacities, there is no way around it and you have to meet the permits and requirements of theirs.

Mr. Werner said okay, having reviewed the report by Chagrin River Watershed Partners and the site plan, is it fair to say that you don't believe any of the concerns that they flagged are impediments at all to proceeding with the development.

Mr. Belmont said no, he concurs with a lot of their comments and thinks they are very gentle comments that if he was to review this he would bring them up as well and what he is saying is that these are items that can be and will be investigated and have to be addressed during the design phase of this job and will also have to be permitted so everything that is noted by them is part of the permitting process that we have to go through and just on a day to day basis every engineer knows the exact issues and it is a very common practice.

Mr. Riehl asked Mr. Belmont if it would be fair to say that there is going to be some risk of the ability of these detention basins to handle the storm water run-off.

Mr. Belmont said until you come to a final conclusion and a final design that is always the case and it is his professional opinion that there is adequate area to accomplish that.

Mr. Riehl said part of the analysis that would go into the final engineering of these detention ponds would be an analysis of the upstream impervious surface, correct.

Mr. Belmont said correct.

Mr. Riehl said if there was less upstream impervious surface that would reduce the need of the size of the ponds, correct.

Mr. Belmont said it would reduce that but there is a function of any development he thinks if it was analyzed versus what some of the conditional uses are in this area, you would end up with a lot higher impervious areas versus a subdivision development of this type.

Mr. Riehl asked Mr. Belmont if he made an analysis of any other subdivisions in the area and how they handle storm water run-off.

Mr. Belmont said he didn't in this exact area but he can say he has been involved with probably 40 – 50 residential subdivisions, similar, that are regulated under the same regulations and permits and based on that knowledge and his experience, the site plan at this point in time, was adequately thought out.

Mr. Riehl said but it has not been final engineered.

Mr. Belmont said no

Mr. Riehl said he thinks the reviewing agencies have approval of the final engineering drawing.

Mr. Belmont said correct.

Mr. Riehl asked what a cold water habitat is.

Mr. Belmont said that would be a question he thinks that Mr. Ryder already answered and he is not truly qualified to answer that.

Mr. Riehl asked if he made an analysis of the level of underground rock in this area.

Mr. Belmont said no, he has not.

Mr. Riehl asked if that would affect the capacity of upstream soils to absorb water run-off and affect the ultimate size of the retention basin.

Mr. Belmont said the size of the retention basin is not going to be designed and analyzed based on sub-surface conditions, it will be designed based on what is existing on the site now and what is going to be there in the future. He said you have an engineer crunching the numbers but you have run-off coefficients associated with different types of land use where it is porous or grass, pavement, rooftop etc. and you are really dealing with what is on the surface, and it does not take into account and its not analyzed by that especially on the post side of these, it would tend to be taken into most of the water. He said when you get into the developed stage of the property it is going to flow to storm water pipes, obviously it is going to come from the back of the lots down through the road, you don't take into consideration once again the fact that certain impervious areas is what we are going to be adding.

Mr. Riehl asked if you don't take into consideration absorption rates of the upstream property.

Mr. Belmont said in some of these designs, if you are being conservative you assume that none of the water absorbs into the ground and you may oversize your pond some but yet you are ensuring a more adequate design.

Mr. Lamanna said in doing all of this calculation and run-off and that sort of thing it is his understanding that the rate of run-off in the developed state cannot be any greater than the undeveloped state, right.

Mr. Belmont said correct.

Mr. Lamanna said but that does not take into account that the rate of run-off can continue for a lot longer because you have stored up the water and are metering it out later than it would in a natural state.

Mr. Belmont said we are getting into a matter of definition and terminology, we are not allowed to discharge a number of cubic ft. per second, it is a rate, and we are controlled to that rate and one of the constraints by the Ohio EPA for any site is that you, at least for large construction, and what they determine as large construction activity over five acres, is that you need to retain that water and release it slowly over 24 hours if it is a retention basin and 48 hours if it is a detention basin or dry basin and the whole reason there is to allow time for any pollutants to settle out so you are going to see a slower discharge rate from this creek.

Mr. Lamanna asked if they look at all existing downstream issues with run-off.

Mr. Belmont said there are two things he will touch on and one would be erosion and yes that is part of the reason that they use the water quality ponds and Best Management Practices to ensure that we are to responsibly develop and to engineer a site like this and to consider what makes it a receiving waters and to ensure we do that OEPA has placed them to.

Mr. Lamanna said there are fixed standards for that but what he is talking about is do you ever actually investigate or in this case have you investigated any existing downstream issues and his recollection is somebody from Bridgeway from one of our previous meetings indicated that they in the past have had some serious erosion issues on that same stream and asked does anybody specifically go and look and say hmm, there have already been reported run-off issues on this watercourse downstream of us and therefore do we need to evaluate what our impact will be even meeting the standards.

Mr. Belmont said his answer to that is no.

Mr. Lamanna said meeting the standards does not mean no impact on the downstream.

Mr. Belmont said whether there is anything developed here or not any land flowing into there has some impact, there is water coming off of there obviously.

Mr. Lamanna said right now there is water coming off there and he is not looking for a differential.

Mr. Belmont said if you evaluate any of these slopes along in this area, there are areas where it is currently eroding, that is just nature doing that, there are constant changes and things are happening and look to responsible development and what permits are set into place to control that.

Mr. Lamanna said but you haven't actually looked at actual effects downstream or looked to see whether there are existing problem areas downstream and evaluated whether or not this project would adversely affect the situation. He said you already identified a problem area.

Mr. Belmont said no, but with any development, he thinks it is the developer's responsibility to ensure they aren't negatively impacting the receiving waters which is what they will be required to do. He said if there is existing problems, it is probably hard to say that those are existing, they aren't per this development.

Mr. Lamanna said he does not want it exacerbated and part of the issue here is your developer is asking for a density increase over what is normally allowed, therefore it is incumbent upon the applicant to demonstrate that that increase in density is not going to adversely impact downstream drainage areas, if we are going to allow him to have a higher density and that is more than just saying, well look, they have these standards we are meeting these standards and in theory the original zoning was based on those standards, therefore the zoning is okay and we determined that that is a copasetic situation for downstream people along the stream below this but here you have got an issue that we are going to be doing something different than what the zoning allows and therefore we are creating a bigger burden on the stream and we have already identified an area where there is a problem downstream and the question is if anybody looked at what is going on there and determined whether or not this would not have any adverse impact on that.

Mr. Belmont said he would like to comment on that.

Mr. Lamanna said if you haven't, you haven't.

Mr. Belmont said whether the developers wanted to do three acre lots, ten acre lots or ¼ acre lots they are going to be required to do the same, whatever development you place on this whether it is a church with a big parking lot here if that was allowed by the zoning, you are going to be required to the same requirements, whatever development goes on this site whether it is ½ acre lots or three acre lots, you will be held to the same standards and the impacts in his professional opinion would be the same regardless of what that is because the more you develop it the more pervious area you add, the more water quality measures you have to put in place so therefore the Ohio EPA and their regulations, they take that into account and he does not see that doing higher density here under the rules and regulations that exist now would adversely impact this anymore than a lower density subdivision.

Mr. Lamanna said he understands that the rate of run-off is going to the same.

Mr. Belmont said the treatment of the water quality has increased as well and you have to increase the amount of water quality, there is a specific calculation on top what the rate of discharge is and it applies to the water quality pond and that is really based off of the amount of pervious area you have, the time of concentration of that water and how fast its getting in there and the run-off coefficients and the amount of impervious that is there so the water quality is also determined by the amount of impervious area.

Mr. Lamanna said this isn't an issue of water quality it is an issue of water volume and the problems people are having are erosion and those types of things.

Mr. Belmont said the permits do address the quality and they measure quality and volume and you are going to have to have increase and if we made this all pavement you would have to allot for it.

Mr. Lamanna said yes if you have a bigger pond a lot more water would run off, it would not run off any faster, but it would run off for a much longer duration and in a natural state, a storm comes, the rain comes down, the water runs off and the storm leaves and within a very short period of time, no more run-off occurs. He said if you got these retention basins to collect all of the excess water and you discharging for next six, eight, ten, twelve and 24 hours, you're continuing to discharge water into the stream so you are continuing to add water to the stream more than was there before.

Mr. Belmont replied yes.

Mr. Lamanna said he understands in theory.

Mr. Belmont said if you are thinking of the amount of impervious area that is being added to a subdivision when there are one acre or larger lots it is very minimal and the grand scheme of what your run-off coefficients will increase percentage wise is small and you aren't going to see that percentage just jump extremely, a big jump there versus a three acre versus a one acre and yes when you get into a ½ acre lot or eight acre lot those are tiny inner city lots.

Mr. Murphy asked Mr. Belmont if he was saying that three acres of mature hardwood leaf litter is going to be the same thing as driveways and asphalt and roof.

Mr. Belmont said no he can't say that.

Mr. Murphy said that is part of the thing, the reason there is three acre zoning is that two acres is nice woods and woodland leaf litter and wouldn't necessarily be a bad attempt to try and do what the woods do naturally which is retain the water, keep it, slow it down and don't let it go running off into the thing and it takes weeks to let all of the water out of a mature wood leaf litter of wood so this is just a civilized attempt to try and do the same thing and not let it run off but to say that one acre is not different than three acres, he is not sure he agrees with that.

Mr. Belmont said he is not saying that is not different, he is saying that if you are looking at the grand scheme of things it's not that significant of a change and that is just his opinion. He said granted, he also thinks that it is the intent of the developer to leave this in a woodedstate as much as possible and he thinks the value of the lots would be much higher if they added wooded lots which means vegetation and trees that are there and you are also going to increase the ground coverage and anybody that is going to put in a lot will spend the money that is required on this type of a subdivision is going to have a nice lawn, they are going to have a manicured lawn, heavily vegetative. He said more than a lot of the undergrowth here is in this current woods now so there are some trade-offs there.

Mr. Murphy said to put in a pond like you have got here it's going to be 150' by maybe 100' and he is looking at A, just trying to scale it off and we are no longer talking about that being a reserved portion, we are going to be doing major construction work in that area, bulldozers, etc. and he does not see any that you could possibly unless he is wrong, you've got an 18' fall about that, A, and then you are right up on a 26' or 20' ridge there so you are building right on top of that and basically any trees that are there right now, those are gone and we are doing a lot of bulldozing up on that bit of land and asked if that is the idea of that it's a reserved section where it's reserved while we are doing a major construction project in a part of that and asked if that is true.

Mr. Belmont said we are reserving that and it is correct.

Mr. Murphy said of any work that has to be done at some point in there.

Mr. Belmont said sure.

Mr. Olivier said he has a question and on pond B where we mentioned that there is a potential that this basin is in the 100' floodplain, did you mentioned that there would be ample room to relocate that basin should that be determined that it s in the floodplain.

Mr. Belmont replied yes.

Mr. Olivier asked if that is ample room within the existing green space on the plan as it is currently right now or was that alternate location being taken up and taking the parts of existing lots and thereby potentially shaving setbacks and the dimensions that we are currently looking at to grant variances on or are there alternatives for that pond within the green space as it's allocated on this plat.

Mr. Belmont said he thinks it will make sense for it to be somewhere up in obviously this area (he referred to the site plan) and is the most downstream area outside of the ravine area and maybe there is room on some of the larger lots such as lot 29 and that is almost twice the size of the lot as the other ones. He said it was on 1.9 acres and is some residual land there. He said it is common practice to have an easement over that land as far as the maintenance of it, it it's the homeowner's association or however it is determined, this doesn't mean that this property owner on lot 29, his lot couldn't stay configured, he would just have to do the maintenance over on and that is just something you would assume if you were to purchase that lot and if that is determined through engineering as a place to put that, so there is a potential.

Mr. Olivier said there is a lot of potential but if that basin had to be removed he would have to move some built structures and therefore, setbacks, side yard, rear yard may change potentially if its determined that the 100' floodplain is no longer the basin in that floodplain. He asked if there is no existing green space, dedicated green space in the current development except that basin currently in another location.

Mr. Belmont said without reading your zoning to know if those setbacks apply to detention basins etc. he still thinks that the location of the homes as shown in here and the property line configurations would remain as is and it would just be contained on one of those lots where the building envelope is not if that makes any sense.

Mr. Olivier referred to the structure and said depending on how it is built and it crosses over again these 100' perimeter property lines then you have got a structure outside of the perimeter of what you are trying to do with cluster zoning so he is just trying to understand if you can't go there, where is it going to go and if it's going to impact your layout and development and the setbacks are going to improve, he would like to again determine if its going to have to be moved how the subdivision looks with it removed.

Mr. Belmont said he didn't analyze the zoning, that wasn't part of what he was hired to do so he can't say if it does or not in that aspect but he can say that he thinks the road layout and the home layout could remain as is and still accommodate the detention and the water quality. He said unless the setbacks specifically refer to detention basins and other locations of proximity to the property lot lines, then that would have to be done.

Mr. Olivier said that is what he is saying depending on how they are built depending on how they are constructed they may or may not be constructed subject to the zoning.

Mr. Werner said he had a couple of final questions. He directed his question to Mr. Belmont and said he believes Mr. Riehl was questioning him about the relationship between the impervious surface and the impact in this area here and referred to the site map and asked Mr. Belmont if he recalled those questions.

Mr. Belmont replied yes.

Mr. Werner said there was some questions by the board to the effect that the density also was a factor in assessing the kind of impact that this development will have in this water course and asked if that is correct and if he recalled those questions too.

Mr. Belmont replied yes.

Mr. Werner asked Mr. Belmont if he knew what the coverage limitation is for these 33 units and said he thinks it's up in the left corner of the drawing there.

Mr. Belmont said it is open space and is required to be 25% of the total acreage and is applicable lot coverage of 7.5 acres and 15%.

Mr. Werner asked if there is a 15% coverage maximum.

Mr. Belmont said correct.

Mr. Werner asked if he built these 33 units, can they only cover 15% of this property.

Mr. Belmont replied correct.

Mr. Werner said if they build 20 units, they can still cover 15% of this property.

Mr. Belmont said from what he understands currently, yes.

Mr. Werner said so really, the coverage is not a function of the density, the coverage applies regardless of the number of units.

Mr. Belmont said correct.

Mr. Werner asked Mr. Belmont if he would agree that it is the correlation between impervious surfaces and the water issues versus the density and the water issue that is a concern.

Mr. Belmont said correct.

Mr. Werner said that coverage is going to be limited no matter how many units are on this property and it is ten units, it could still cover 15% of this property.

Mr. Belmont said correct.

Mr. Werner said Mr. Belmont also mentioned that he looked at some of the other conditional uses that are permitted in this district.

Mr. Belmont said briefly yes.

Mr. Werner said and his recollection is that there were different coverage limitations for some of those other conditionally permitted uses.

Mr. Belmont replied yes and said he skimmed through it so he would not want to quote himself specifically on those, as far as the exact percentages.

Mr. Werner asked him if he recalled any of those other conditionally permitted uses permitted coverage in excess of 15%.

Mr. Belmont replied yes.

Mr. Werner said so controlling the coverage really is the issue in terms of the impact of water run-off, volume velocity and quality, when you are analyzing a development such as this.

Mr. Belmont said correct.

Mr. Werner asked Mr. Belmont if it is his experience that the Army Corps and OEPA would approve a water management plan that would have a known adverse impact on downstream locations.

Mr. Belmont replied no.

Mr. Werner said isn't it entirely possible that the efforts to manage the water on this property would, in fact, benefit the downstream properties and added that he has to be careful saying that.

Mr. Belmont asked as far as saying benefit it.

Mr. Werner said yes.

Mr. Belmont said if it adversely affects it, he would say no.

Mr. Werner said okay.

Mr. Belmont said benefit, he is not going to say it is going to improve it, but he would say if it's done properly for permits, it should not adversely affect it.

Mr. Werner said Mr. Riehl asked you (Mr. Belmont) several questions to the effect that the engineering for this water management plan for the property has not been finalized yet, right.

Mr. Belmont said correct.

Mr. Werner said because it does not get finalized at this stage, does it.

Mr. Belmont said it would be pretty much putting the cart before the horse at this point in time.

Mr. Werner said okay.

Mr. Belmont said there is a lot of effort involved with that.

Mr. Riehl said he had a couple of further questions. He said to Mr. Belmont that Mr. Werner had asked him whether in essence the lot coverage requirement is a function of the percentage of the total acreage as opposed to the number of units, so you could have the same coverage whether there were 16 units or 33 units, correct.

Mr. Belmont said if he interprets the code correctly, yes.

Mr. Riehl said if his math is correct, there are 50 acres there and there are 43,480 square feet in an acre.

Mr. Belmont replied yes.

Mr. Riehl said that means that the total square footage on that development is 2,179,000 if his math is correct and 15% of that, again if his math is correct, is 326,850 and asked Mr. Belmont if that is correct.

Mr. Belmont said your math is correct.

Mr. Riehl said that divided by 16 if there were only 16 houses would mean that each house would have 20,428 allowable square feet of impervious surface correct, and asked Mr. Belmont if he thinks it is realistic to have 20,000 sq. ft. houses there

Mr. Belmont said you are talking about a lot of other things in the coverage besides the home too when you are talking roadway and other impervious areas such as driveways. He said he guessed he never calculated that number looking at it or not to putting the numbers to the number of square footage in the lot. He said he knows these are going to be fairly decent sized homes in that area and would assume the square footage is much of the homes but there are a lot of driveways, setbacks etc.

Mr. Riehl said he means common sense, wouldn't common sense tell you that normally 16 lots would have less impervious surface than 33.

Mr. Belmont replied yes.

Mr. Werner said he had one final question. He asked if impervious surfaces includes things like tennis courts, carports, guest houses, and that sort of thing and those all count in terms the impervious surfaces.

Mr. Belmont said impervious surface is defined as whose areas that aren't infiltrated such as pavement and there is also certain levels of imperviousness if you are talking about gravel versus grass and gravel is obviously a more impervious surface than grass or pretty wooded areas etc.

Mr. Werner said okay and he would like to introduce Mr. Gus Saikaly, Director of the Geauga County Water Resource Department. He thanked Mr. Saikaly for coming tonight and asked Mr. Saikaly to introduce himself.

Mr. Gus Saikaly testified that he is the director of the Geauga County Water Resource Department.

Mr. Werner asked him how long he has been doing that.

Mr. Saikaly said in this current position about 12 years.

Mr. Werner said we are here to night to talk about this development plan and asked Mr. Saikaly if he had an opportunity to review the plan.

Mr. Saikaly asked if it is the plan itself.

Mr. Werner said yes.

Mr. Saikaly said no.

Mr. Werner asked Mr. Saikaly if he sent a letter to Mr. Riehl.

Mr. Saikaly said he is aware of the proposal.

Mr. Werner asked in what capacity he is aware of the proposal.

Mr. Saikaly said in his capacity as the manager of the 208 plan for the township.

Mr. Werner asked Mr. Saikaly to explain to the board and the people here what the 208 plan is.

Mr. Saikaly said the 208 plan is a water quality management plan that was developed for the township and the plan essentially decides where sewers may or may not be used for water treatment and wastewater treatment in the township.

Mr. Werner asked who was involved in configuring the 208 plan.

Mr. Saikaly asked if he meant developing the 208.

Mr. Werner said yes.

Mr. Saikaly said it is his department on behalf of the Geauga County Board of Commissioners and the township.

Mr. Werner asked Mr. Saikaly what role those various bodies play in the 208 plan.

Mr. Saikaly said it was a collaborative effort on both parties to develop the plan.

Mr. Werner asked Mr. Saikaly if he had participated in the course of his work for the county in amending the 208 plan.

Mr. Saikaly said yes.

Mr. Werner asked Mr. Saikaly to describe if he would the process by which an amendment might be made to the 208 plan just so we can understand the process.

Mr. Saikaly said a request comes to his department to provide sewer service for a particular piece of property and we examine that in connection with the 208 that we have in place whether it is within or outside the 208 plan and we decide accordingly.

Mr. Werner displayed a 208 plan and said this is an older one and it's dated at the bottom September of 2001 and asked Mr. Saikaly if he recalled that he and I (Mr. Werner) had cause to discuss some of those 208 plan issues with regard to a different matter here in Bainbridge Township.

Mr. Saikaly said at length.

Mr. Werner said and for a couple of days to be exact and this plan has different colored areas on it and asked Mr. Saikaly to explain what those different colored areas represent.

Mr. Saikaly said the green indicates where sewers currently exist, the blue indicates where sewers may be utilized for sewer and service and the balance in white is to be served with onsite systems and the purple properties that are there also indicate they may be sewerred and added that now some of those are already sewerred.

Mr. Werner said so from the last comment you made I gather that this is not static map.

Mr. Saikaly said correct.

Mr. Werner said the properties that are presently white or reflected in white on this map could become blue or could become green eventually.

Mr. Saikaly said correct.

Mr. Werner asked if isn't the process that properties that are presently white are almost continuously in some sense or another being added to this 208 in one form or another.

Mr. Saikaly said at a very slow pace.

Mr. Werner said this is a version of the 208 plan that was a preliminary version, this is an interim version from the last one that we are looking at to the one that succeeded it, just so we know what we are looking at here. He said the discussion that you (Mr. Saikaly) and I had previously had to do with the Meldon property on Chagrin Road and asked Mr. Saikaly if he recalled that discussion.

Mr. Saikaly replied yes.

Mr. Werner said we were discussing the fact that it was not included in the county's 208 plan and in fact this is where it is right here like the Meldon property where this is.

Mr. Saikaly said right.

Mr. Werner said that Mr. Riehl, attorney for the township, recently passed out another 208 plan and asked if it is the one he is looking at in the corner.

Mr. Saikaly said yes.

Mr. Werner said it is not signed over here, and asked Mr. Saikaly if he knows whether this current 208 plan has been adopted.

Mr. Saikaly said the one that was adopted is on the other side, so if that is the same map, then yes.

Mr. Werner said okay.

Mr. Saikaly said it looks the same.

Mr. Werner said it looks pretty close there so you can see then as we're scrolling across these various 208 plans we will try to get the same area on each of these. He said these 208 plans are constantly changing, for example, the earliest one we had here was down here in this corner, (he referred to the 208 plan) and Canyon Lakes and the Meldon property is not part of either to be sewerred or currently sewerred properties and asked if these properties were not included yet in the sewerreding district.

Mr. Saikaly said correct.

Mr. Werner said this property down here (he referred to the map) was simply in the may be sewerred area and you can see on this change here, this one turned green so it is now in the sewerreding area that you can see from this map which is a July 2004 map. He said if you proceed to the next map which is the February 2006, it added all of these areas as either sewerred or to be sewerred and asked if that is correct and that you see these areas that were added.

Mr. Saikaly replied yes.

Mr. Werner said the current map which he assumes is going to be the same one as what is over there, they look about the same and we now have this whole area being sewerred and asked if that is correct.

Mr. Saikaly replied yes.

Mr. Werner said including the Meldon property, it is reflected as that will receive sewers and asked Mr. Saikaly if it is his recollection that there was in fact a sewer main running through that property.

Mr. Saikaly replied yes.

Mr. Werner asked Mr. Saikaly if he is aware that there is a sewer main running through the property we are talking about tonight.

Mr. Saikaly replied yes.

Mr. Werner said in fact, you can see from the February 2006 map which is up here that this is Tulip Lane and referred to that development on the map and added that that has been added as a may be sewerred area, correct.

Mr. Saikaly asked if it is Tulip Lane.

Mr. Werner said yes, right here.

Mr. Saikaly said okay.

Mr. Werner said this area here which was on the February 2006 map and these yellow bars are the property that we are talking about.

Mr. Saikaly said yes.

Mr. Werner said that area has been added and that category means future consideration and asked if that is a new category.

Mr. Saikaly said yes.

Mr. Werner asked what the distinction in there is for future consideration versus what may be sewerred.

Mr. Saikaly said these apply to the existing subdivisions that may be facing some problems with their on-site systems in the future and we included them as a category to be considered for sewers and given the fact that they may need under the new septic tank rules and the point of sale program that we have in this county that requires septic systems to be evaluated at the point of sale, and there is a sufficient number of failing systems that would qualify in those areas to be considered for sewers.

Mr. Werner said these properties that we are looking at here in the area of the property that we are here talking about tonight, they are served by a sewer that ultimately leads to the McFarland Wastewater Treatment Plant, correct.

Mr. Saikaly asked the ones in green.

Mr. Werner said yes.

Mr. Saikaly said yes.

Mr. Werner said in fact this property here on Tulip and the other properties in Canyon Lakes, those will also feed into the McFarland plant.

Mr. Saikaly said yes.

Mr. Werner said that plant was fairly recently expanded wasn't it.

Mr. Saikaly said yes.

Mr. Werner said it was expanded from what to what.

Mr. Saikaly said from 1.2 to 1.8 million gallons per day.

Mr. Werner asked why the plant was expanded.

Mr. Werner said they had reached the initial capacity of 1.2 and we still had considerable obligations for service that flowed in the Canyon Lakes area so we took a study that looked down the road for 20 years and we came up with an additional 600,000 gallons as the proper amount to expand the plant by.

Mr. Werner said now when we are talking about these issues previously with respect to the Meldon matter, we talked about who basically has the last word on whether somebody gets added to this map or not in terms of whether they will receive sewerage services. He said he believes he asked you (Mr. Saikaly) whether it was your opinion that a property that had sewer running right through it would and the fact that the sewers were running through the property would be a substantial factor in considering whether sewer service should be extended to that property and I believe your answer was yes and do you recall that.

Mr. Saikaly replied yes.

Mr. Werner said he is asking now that the proposal is for 33 additional units on this property which actually is only, it is how many over and above the allowed zoning, is the allowed zoning 16.

Mr. Saikaly said it is 16.

Mr. Werner said he believes it is basically 17 additional units and the base zoning on this property would permit 16 units, they are proposing 33 so they could build 16 units on this property, they are proposing 33 and that is 17 additional units over and above what the base zoning allows. He asked Mr. Saikaly if he has any reason to believe that the addition of those 17 units would adversely impact the waste that is presently being funneled down to the McFarland treatment plant.

Mr. Saikaly said no.

Mr. Werner said there is capacity down there for those additional 17 units, right.

Mr. Saikaly said yes sir.

Mr. Werner said if this property owner wanted to have this property added to this 208 map, who would they go to.

Mr. Saikaly said they would start with him.

Mr. Werner asked what would they do starting with you.

Mr. Saikaly said they would submit the request to be provided sewer service and we would put that request through the process as we do and we would issue not a ruling but a decision and in this case, as you know, we have already said no to this, because it is outside the perimeters of the 208.

Mr. Werner asked Mr. Saikaly if he also said no on the Meldon property initially.

Mr. Saikaly said yes.

Mr. Werner asked if because it was outside the 208 plan.

Mr. Saikaly said right.

Mr. Werner said it is now inside the 208 plan.

Mr. Saikaly said that is because there was a settlement with the township on that issue.

Mr. Werner said so the township agreed to sewer the property.

Mr. Saikaly said there was a settlement and he believes it calls for that.

Mr. Werner said you (Mr. Saikaly) have to consult do you not with the township when you are presented with a request for sewerage.

Mr. Saikaly said yes we do.

Mr. Werner said if the township agrees to sewer the property, you would process the request.

Mr. Saikaly said if they have capacity and if all the conditions you mentioned earlier and capacity is available, yes.

Mr. Werner asked if it has been determined that capacity is available to serve the additional 17 units that is being proposed here, if the township were to agree to sewer this property, you would acquiesce.

Mr. Saikaly said there are some other factors that we have to consider that being although at this time the line is going through it in this case, but if it wasn't going through it, there has to be access, it isn't obviously going through the property as mentioned, accessible, and also it is consistent but we will have to consider access in a little larger perspective than going right through it which happened in other cases but in this case it happens to go through it and you would say that access is available.

Mr. Werner asked Mr. Saikaly if he can think of a good reason that advances the interest of this community not to extend that sewer service to this property.

Mr. Saikaly said he would have to confer on that line with all of them.

Mr. Werner said you (Mr. Saikaly) in your capacity with the county have to be familiar with the Ohio Administrative Code of Provisions that regulate the distribution of sewer services and/or regulation governing septic systems, correct.

Mr. Saikaly said to some extent.

Mr. Werner said okay.

Mr. Saikaly said that is not his main job.

Mr. Werner said there is a provision and he is just going to read the provision and it is out of the Ohio Administrative Code, Section 3701-29-03 and this is subsection B. He said these are regulations that went back into effect last July, you realize there was some new regulations last January and then they pulled those back and put the old ones back in place, right..

Mr. Saikaly replied right.

Mr. Werner said okay and that happened last July and you are familiar with that.

Mr. Saikaly said yes.

Mr. Werner said this provision states as follows: “No person shall install household sewerage disposal systems in new subdivisions unless it is considered to be impracticable or inadvisable by the Board of Health and the Ohio Environmental Protection Agency to install a central sewage system.” He told Mr. Saikaly that he realizes that he is not on the Board of Health and he is not on the Ohio Environmental Protection Agency, he is not a member of those agencies, but you (Mr. Saikaly) have been dealing with sewerage issues for a long time.

Mr. Saikaly said yes.

Mr. Werner asked Mr. Saikaly in his judgment if there is anything impracticable or inadvisable about extending sewer service to this property.

Mr. Saikaly said to Mr. Werner, you are asking me to express an opinion on this that I can tell you whether sewers are available or not available, but I don't really know how to answer your question that you are asking me unless you want to try and phrase it differently.

Mr. Werner said okay and told Mr. Saikaly that he has considered prior requests for sewer service on properties, right.

Mr. Saikaly said right but there were different conditions involved, for example, the septic system had failed or some other extenuating circumstances for an existing property or existing structure. He said in this case he does not have any structures or failing systems for him to be able to consider.

Mr. Werner asked if there were any failing systems on the Meldon property.

Mr. Saikaly said no, they were added after the matter was resolved between you and the township.

Mr. Werner said right, the township basically said okay, give them sewers and you said okay.

Mr. Saikaly said you know that this is a collaborative effort, if the purpose of this is to protect and not just provide sewers but also within the context of what townships should have, where do they like to have development within the township.

Mr. Werner asked would being near a water source be a factor that you would consider in determining whether it was advisable to provide sewer services to a property.

Mr. Saikaly asked if he is talking about the creek.

Mr. Werner said or from any water source, and if that bears on your thinking on the subject.

Mr. Saikaly said very little, we have considered that in the past.

Mr. Werner stated that Mr. Riehl passed out as part of the exhibits for this evening's hearing a memorandum of understanding which he advised me was formally adopted.

Mr. Saikaly said right.

Mr. Werner said and actually it has been amended, there was a prior one of these too, wasn't there.

Mr. Saikaly replied yes.

Mr. Werner said and the memorandum of understanding is between the township and the county and purports to set conditions for the extension of sewer services to properties in the township and asked Mr. Saikaly if he is familiar with the memorandum.

Mr. Saikaly said yes.

Mr. Werner said before we add the new condition, on the prior version of this memorandum that you (Mr. Saikaly) and I discussed previously there were four conditions.

Mr. Saikaly said correct.

Mr. Werner said the county and the township would agree to extend sewer and water services to a property under the following four conditions. One, if there were existing contractual obligations, two, it was assessed for such service, three, they were part of an existing service area, or four, it was determined by either the Ohio EPA or the Geauga Health District to be in violation of water pollution laws and regulations, and those were supposed to be the conditions under which service would be extended, right.

Mr. Saikaly replied right.

Mr. Werner said okay and you (Mr. Saikaly) testified at the trial of the Meldon matter before Judge Burt that there were at least three or four occasions that we discussed where sewer service was extended to properties even though none of those conditions had been met, correct.

Mr. Saikaly said correct.

Mr. Werner said okay, so they weren't strictly binding, that's the bottom line.

Mr. Saikaly said yes.

Mr. Werner said and the township can basically tell the county, they are okay with this and you guys will help them.

Mr. Saikaly said right.

Mr. Werner said there is now a fifth condition that has been added to this memorandum of understanding that water and sewer services will be extended if the properties adhere to the township's existing land use and zoning and asked Mr. Saikaly if he was part of the negotiations of this final term.

Mr. Saikaly replied yes.

Mr. Werner asked what the purpose is of that final condition.

Mr. Saikaly said so that we would not be working in opposition of the township's wishes in how we would like to see the township develop and grow and we did not want to position ourselves contrary to the township's wishes.

Mr. Werner said unless the township says it's okay to do so.

Mr. Saikaly said correct.

Mr. Werner said he did not expect that you (Mr. Saikaly) would know this, but one of the conditions under the conditional use permit standard that this applicant is here on tonight requires the applicant to demonstrate the availability of water and sewer for this property. He said now you said it's accessible because it runs through the property and you said there's capacity so that's not the issue, but if this means what it says, this fifth condition, this applicant is now in a position where they are required by the local zoning to demonstrate the availability of water and sewer to the property and prohibit it from receiving water and sewer under a condition if they can't show compliance with the zoning.

Mr. Riehl said he is going to object and if he has an answer to that question.

Mr. Werner said the question is how does one go about establishing or demonstrating the availability of water and sewer if the inability to do so prohibits them from receiving water and sewer. He said in other words, this memorandum says unless I can prove we adhered to the township's land use and zoning, we can't get water and I can't prove that we have water and sewer unless I get the township to agree. He said so doesn't that pretty well close down any opportunity that an applicant would have to establish that water and sewer are available.

Mr. Saikaly said this is an opinion.

Mr. Werner said sure.

Mr. Saikaly said he believes that is the reason for this process for you to prove that you can convince this body to get the variances you want and if that happens, then you get the sewer line.

Mr. Werner said okay but you understand and I am sure that the problem is the township will simply say they don't comply with these conditions, therefore they don't get water and asked Mr. Saikaly if he has run into that circumstance before.

Mr. Saikaly said no he has not.

Mr. Werner said okay and noted that Mr. Saikaly was quoted or maybe not quoted but paraphrased in an article in the paper recently, The Chagrin Valley Times, you were interviewed about the updated plan that we are talking about and the paper says that you said, and I understand that this may not be dead on, but the paper said you said..

Mr. Riehl stated that they have great respect for the newspaper and they would never say anything and he is not sure that it's proper to cross-examine somebody based on what is in the newspaper.

Mr. Werner said the newspaper reports you (Mr. Saikaly) as saying that the plant as expanded has capacity for areas to which the county is already committed and to other areas and new areas even if there is no obligation to those areas and asked Mr. Saikaly if that is what he said.

Mr. Saikaly said correct.

Mr. Werner said okay and it said that it adds that it would be done on a first come, first served basis and asked Mr. Saikaly if he said that as well.

Mr. Saikaly replied yes.

Mr. Werner said so if you get inline early enough, you can avail yourself to the excess capacity here and asked if it is still early in that process.

Mr. Saikaly said yes it is still early.

M. Werner asked Mr. Saikaly if he is familiar at all with House Bill 110.

Mr. Saikaly replied yes.

Mr. Werner said it is pending in the General Assembly right now.

Mr. Saikaly said he is familiar with another House Bill 110, but that already took place and it has nothing to do with this plan.

Mr. Werner said ok, this is presently pending in the General Assembly House Bill 110.

Mr. Lamanna asked why pending legislation is relevant to us at this moment if it's pending legislation.

Mr. Werner said well because.

Mr. Lamanna said he does not want to waste time on something that he frankly does not see any relevance and the fact that there may be legislation out there is great, but until the day the governor puts his signature on it or it becomes law without his signature is of no legal import on this or not binding on anybody. He said it can be radically different by the time it is actually adopted so he just does not think it is relevant to what we are doing here unless you can convince him otherwise.

Mr. Werner said he won't try and added thank you very much.

Mr. Riehl identified himself to Mr. Saikaly and said he is representing the Bainbridge Township Trustees and he is going to ask him a couple of follow-up questions based on what Mr. Werner asked him. He said first of all, he would just like to kind of put in front of him a couple of documents and the first is Exhibit 1 and this is the material that we have in front of the board and that is the 208 plan that was in place in 2001, correct.

Mr. Saikaly said yes.

Mr. Riehl said then the second one is Exhibit 1A and this is the 208 plan that you testified to that was approved in 2007.

Mr. Saikaly said correct.

Mr. Riehl said okay and that is the one that has been signed by both the Geauga County Commissioners and the Bainbridge Township Board of Trustees that is up on the map over there.

Mr. Saikaly said correct.

Mr. Riehl said Exhibit 2 is the original memorandum of understanding which Mr. Werner referred to in his questions to you (Mr. Saikaly) that goes back to June 13, 1998.

Mr. Saikaly said correct.

Mr. Riehl said Exhibit 1B is the new memorandum of understanding which was signed by the Bainbridge Township Trustees in October of 2007 and his understanding is that the Geauga County Commissioners just recently signed that memorandum of understanding.

Mr. Saikaly said that is correct, in December.

Mr. Riehl said just to clarify things, you (Mr. Saikaly) personally don't have authority to amend the 208 plan, correct.

Mr. Saikaly said correct.

Mr. Riehl said only the Geauga County Commissioners can amend the 208 plan.

Mr. Saikaly said correct.

Mr. Riehl asked if it is a fair statement to say that the purpose of this memorandum of understanding is to set forth kind of a road map or an understanding between the commissioners and the Bainbridge Township Board of Trustees of conditions that would allow for the amendment of the 208 plan.

Mr. Saikaly said correct.

Mr. Riehl said and the commissioners under this memorandum of understanding have indicated that they would seek the input of the township trustees prior to making any decision that they would amend the 208 plan.

Mr. Saikaly said correct.

Mr. Riehl said it now lists actually five conditions under section 2A which would allow for the amendment of the 208 plan and asked Mr. Saikaly to read those conditions.

Mr. Saikaly stated “Such sewer services may be provided to properties. A. With existing contractual obligations. B. Assessed for such service. C. They are part of an existing service area. D. Determined by either the Ohio EPA or the Geauga Health District to be in violation of water pollution laws and regulations. E. Adherence to the township’s existing land use and zoning.”

Mr. Riehl said and the current owner Voproco, has not made any application to you (Mr. Saikaly) to amend the 208 plan to have the property included within the 208 plan, have they.

Mr. Saikaly said they asked for sewer service.

Mr. Riehl asked when they asked for service and if they made a formal application.

Mr. Saikaly said he did not have the information at this time.

Mr. Riehl asked Mr. Saikaly to turn to tab six.

Mr. Saikaly he knows he responded so.

Mr. Riehl said tab six is the letter that you (Mr. Saikaly) wrote him on September 7, 2007 and asked if that is correct.

Mr. Saikaly said correct, yes.

Mr. Riehl said that was in response to his inquiry for you (Mr. Saikaly) to comment, correct.

Mr. Saikaly said that is where it came from, yes.

Mr. Riehl said to Mr. Saikaly to the best of his recollection, the property owner has not made any formal application to him.

Mr. Saikaly said that is correct, yes.

Mr. Riehl said if they did make a formal application, it would be referred to the township trustees under the memorandum of understanding.

Mr. Saikaly said that is correct, yes.

Mr. Riehl said the information that is supplied to the board also has a tab three and this is some title work that was prepared at his request and has the actual formal easement by which the sanitary sewer went through this property and asked if that is correct.

Mr. Saikaly said tab three.

Mr. Riehl said again, he is handing you (Mr. Saikaly) a copy of the easement.

Mr. Saikaly said yes.

Mr. Riehl said to Mr. Saikaly in his report and his letter, he indicated that he was not aware of any provisions in the easement which would allow for access to the sewer line from the property.

Mr. Saikaly said that is correct.

Mr. Riehl said he thinks Mr. Saikaly indicated to him previously that in some easements when the county negotiated the original easement, the property owner would reserve the right to tie into the sewer in some situations.

Mr. Saikaly said in some yes.

Mr. Riehl said but that doesn't exist here.

Mr. Saikaly said he does not see it, no.

Mr. Riehl asked Mr. Saikaly if he is of the opinion that there is no existing contractual obligation which would obligate the county to allow tie-in to the sewer, even though the sewer does go through the property.

Mr. Saikaly said correct.

Mr. Riehl said Mr. Saikaly indicated in questions that were directed to him by Mr. Werner that he had testified at a trial that there were some situations where the Bainbridge Township Trustees had indicated that they would not oppose tie-in to the sewer even though it didn't meet those four conditions, correct.

Mr. Saikaly said correct.

Mr. Riehl asked Mr. Saikaly if it would be fair to say that those were conditions or situations where the development was of a commercial nature and not a residential nature.

Mr. Saikaly said most of them were, yes.

Mr. Riehl said for example, the Montefiore Home.

Mr. Saikaly said the Montefiore and Federated Church.

Mr. Riehl said the Federated Church, Judson.

Mr. Saikaly said Judson.

Mr. Riehl asked Mr. Saikaly if he can think of any, and there was a restaurant on Chillicothe Road.

Mr. Saikaly said right, that was the old Hixson property.

Mr. Riehl said and Kingdom Hall.

Mr. Saikaly said Kingdom Hall and that was on East Washington.

Mr. Riehl said so all of these were commercial establishments.

Mr. Saikaly said yes.

Mr. Riehl said until the property owner makes a formal application and under the memorandum of understanding, you (Mr. Saikaly) seek the input of the township trustees, we don't know whether the township trustees would indicate their approval or non-approval of tying into the sewer on this property.

Mr. Saikaly said correct.

Mr. Riehl said that would be a factor that would govern the decision of the County Commissioners as to whether to amend the 208 plan.

Mr. Saikaly said correct.

Mr. Riehl said so we don't actually know as we sit here today whether the Commissioners would amend the 208 plan.

Mr. Saikaly said that is correct.

Mr. Riehl said you (Mr. Saikaly) talked a little bit about water and the water lines that exist and run through the property because of an agreement between Geauga County and the City of Cleveland, correct.

Mr. Saikaly said that is correct.

Mr. Riehl said there is a master meter agreement

Mr. Saikaly said in this case yes, the master meter agreement.

Mr. Riehl said if service were to be provided to this property, there would have to be an amendment to that master meter agreement would there not.

Mr. Saikaly said yes sir.

Mr. Riehl asked Mr. Saikaly if he asked the City of Cleveland on behalf of the County Commissioners whether they would amend the master meter agreement to provide water to this property.

Mr. Saikaly said no we have not.

Mr. Riehl said again that would typically be triggered by a request by a property owner.

Mr. Saikaly said that would start the process, we wouldn't ask for an amendment until we had the approval obviously of the township as well as the Board of County Commissioners instructing us to do that.

Mr. Riehl said he had one further question and that is the current 208 plan, this document right here, 1A has a notation in the lower left hand corner which indicates the percentage of Bainbridge Township that has existing sewers, that may be sewerred, that are up for future consideration, and under the current 208 plan are not scheduled for future service.

Mr. Saikaly replied yes.

Mr. Riehl asked what those percentages are and if Mr. Saikaly could tell the board those percentages.

Mr. Saikaly said these percentages simply indicate that the percentages of existing sewers, may be sewerred, future consideration and no service and asked Mr. Riehl if that is what he is asking.

Mr. Riehl said yes and what are those percentages.

Mr. Saikaly said they are 28 percent for existing sewers, 2.5 percent or may be sewerred, 8.2 percent for future consideration and 61.3 percent for no service.

Mr. Riehl said the current property that the board is considering tonight is within that 61.3 percent of no future service.

Mr. Saikaly said that is correct.

Mr. Riehl said he had no further questions.

Mr. Werner said he would like to ask more questions. He said to Mr. Saikaly that he is tempted to ask which came first, the chicken or the egg, but he thinks that is going to get as far as the questions he has about the service issue. He asked Mr. Saikaly if he did not also or did he recall that with regard to the Meldon issue that the township pointed to the fact that the easement which allowed for access to the sewer main did not specifically provide Mr. Meldon's connection to that sewer main.

Mr. Saikaly replied yes.

Mr. Werner said they made the same argument then too, didn't they.

Mr. Saikaly said he presumes so, yes.

Mr. Werner said right and asked did you (Mr. Saikaly) not also send a letter in the Meldon matter saying that Mr. Meldon did not fall within any of the conditions in the letter of memorandum of understanding between the county and the township.

Mr. Saikaly replied yes.

Mr. Werner asked did you (Mr. Saikaly) also tell the township that Mr. Meldon's property was not within the 208 district for sewerage.

Mr. Saikaly replied yes.

Mr. Werner said so this is really the same process all over again, isn't it.

Mr. Saikaly said very similar.

Mr. Werner said Mr. Riehl created an exception, if you will, to the memorandum of understanding for the properties which you identified at trial as having been extended water and sewer but not satisfying conditions and he said they are commercial properties and isn't it true that they are commercial properties, right and asked Mr. Saikaly if he recalled Mr. Riehl's questioning.

Mr. Saikaly said yes.

Mr. Werner asked if one of the conditions in the memorandum of understanding that you get water and sewer if your are commercial property and asked if that is in the memorandum of understanding.

Mr. Saikaly replied no.

Mr. Werner said Mr. Meldon has water now and sewer that he is eligible for and that is not a commercial property, right.

Mr. Saikaly said right.

Mr. Werner said as far as the water issue goes, that master meter agreement with the City of Cleveland, that has been amended before too, hasn't it.

Mr. Saikaly said yes.

Mr. Werner asked if they ever complain that they don't have enough water to give out.

Mr. Saikaly said they have additional conditions now since the early days of our association with them, but he does not know what that amendment brought.

Mr. Werner said right, it is not a quantity issue.

Mr. Saikaly said no, it is not a quantity issue.

Mr. Werner said it is a poaching issue, right.

Mr. Saikaly said that is true, yes.

Mr. Werner said that is one of them anyway but that agreement was amended too, right and has been amended for property owners in the township.

Mr. Saikaly said correct.

Mr. Werner said when the township and the county agreed that extending water to the property is a good idea.

Mr. Saikaly said that is correct.

Mr. Werner said the applicant will be applying for both water and sewer and he does not want that to be the issue for the board that they didn't apply, therefore they haven't demonstrated the availability of it. He said it is a non-issue so we are going to apply for that.

Mr. Riehl said he hasn't applied.

Mr. Werner said well, it is going to happen tomorrow morning because he is not going to get hung up on this technically he didn't apply issue. He said we are talking about what is available and you told me that based on the pipes running through this property, there is sewer available to this property, at least accessible, right.

Mr. Saikaly said accessible.

Mr. Werner said and likewise with the water if we work it out with Cleveland, water is also available for this property, right.

Mr. Saikaly said yes.

Mr. Werner said if the township approves.

Mr. Saikaly said and if Cleveland approves, yes.

Mr. Werner said that is all he has and thanked Mr. Saikaly.

Mr. Riehl thanked Mr. Saikaly.

Mr. Werner said he had another witness, Mr. David Hartt.

Mr. Lamanna said he has until 11:00.

Mr. Riehl asked if the board can take a short break.

Mr. Lamanna agreed and recessed the hearing.

Mr. Lamanna stated, after a short break, just to make sure everybody understands, the board is just stopping the testimony for tonight and will continue on the hearing for this application and anybody who wanted to have a chance to speak or ask questions about what went on tonight will get a chance at a subsequent meeting, probably the next regularly meeting in February, but the board members decided that we do not want our meetings past 11:00 P.M. because people get too tired and he does not think it is fair to the people who come from the community to ask them to be here in the wee hours of the morning on these things. He said let's proceed.

Mr. Werner said thank you and introduced Mr. David Hartt. He asked Mr. Hartt to take a moment and introduce himself to the board and to the folks here.

Mr. David Hartt testified that he is president of D. B. Hartt Planning & Development Consultants and his offices are in Downtown Cleveland. He said he has been a practicing planner for more than 40 years now since getting a Bachelor's of Architecture and a Master's of City Planning from the University of Michigan. He said he has been working under the banner of D. B. Hartt since 1979 and they basically provide comprehensive planning services and zoning services to both communities as well as private developers. He said over the years, about two-thirds of their work has been public work and about a third of their work has been private work and as some of you know, he did provide some service to the township on or about 1999 and 2000 in preparing the latest land use plan but forgets the title of the report.

Mr. Werner presented a copy of Mr. Hartt's report and asked if this is it.

Mr. Hartt said the land use and zoning report, yes.

Mr. Werner said Mr. Hartt's report is work he did for this township, right.

Mr. Hartt replied yes.

Mr. Werner asked Mr. Hartt why he was retained by the township at that time.

Mr. Hartt said the township basically had a comprehensive plan and they had asked them to look at some key issues so it wasn't geared as a total comprehensive plan, but some key development issues that that plan was the focus on but he can't recall what those were at the present time.

Mr. Werner asked Mr. Hartt if one of the issues was that he examined in the course of that work in the township the issue of the way their R-3A zoning districts were structured.

Mr. Hartt said one of the issues was how the township deals with the presence of sanitary sewers and the sanitary sewers existed at the time and there were more and more areas actually being developed with sanitary sewers and vividly the existence of and a potential for the existing and for more sanitary sewers being requested on more property. He said the contrast with that was that the zoning had been based on three acres or five acres solely on the expectation that the land would be developed without central utilities so the conflict we tried to address at the time or the caution to the township was, what do you do and what is your zoning policy when sanitary sewers are available and basically through the process, the plan, the report that we prepared did not address that issue. He said he believes it was the continued reluctance on this township to recognize that sewers were available and the continuing position that the township wants to take.

Mr. Lamanna told Mr. Hartt not to speculate as to what the thinking of the township was.

Mr. Hartt said that was part of their thinking.

Mr. Lamanna told Mr. Hartt he is not speaking on behalf of the township and he cannot speculate as to what is in their mind and to just testify as to what he knows.

Mr. Werner asked Mr. Hartt, in the course of that work that he did for the township, did he have discussions with the township regarding this issue about the availability of sewer and water.

Mr. Hartt said yes he did.

Mr. Werner asked what was it that these representatives of the township stated with regard to that issue in their zoning.

Mr. Hartt said they stated at the meetings and obviously it came out in the report and then reflected in the fact that the zoning was not changed that even with all those facts, with the presence of sanitary sewers, they do not want to change the zoning to acknowledge that that fact was occurring.

Mr. Werner asked what is the current state of the R-3A zoning district.

Mr. Hartt said that has remained unchanged and its still basically three acre zoning.

Mr. Werner asked keyed to what particular uses.

Mr. Hartt said one unit per three acres.

Mr. Werner said okay and with respect to sanitary and water.

Mr. Hartt said no acknowledgement that that density should change.

Mr. Werner asked Mr. Hartt if he made recommendations to the township at that time regarding that attribute of their zoning.

Mr. Hartt said they discussed at the time that the zoning code is at least structured at the time that said that the zoning applies when sewer and water are not available and the question for the township was okay, then what zoning does apply when sanitary sewer and water are available and the answer was throughout this process, we don't want to address that, we want to continue to believe that it won't be available and we continue to use that language to try to make sure that we get septic tanks on the site and that we never worry about the expansion of sewer on additional properties that weren't sewerred at that time.

Mr. Lamanna said we are having an awful lot of hearsay testimony here to what the township supposedly told you and we will take that for what it's worth, but we may not give it very much evidentiary weight. He told Mr. Hartt if he wants to know what the township said, somebody is going to have to get somebody here from the township who was involved in it and ask them what they said.

Mr. Hartt said he would like to make one other comment on this, because he thinks it is relevant and in the final report that they submitted to the township, there is language on the cover of that report and basically we worked for the Citizens Advisory Committee with our consultation, presumably a consensus came up with the report and it was submitted to the zoning commission. He said there were substantial changes made by the zoning commission and it came back to us and we took the position since we didn't agree with the magnitude of the substantive changes that were made to that report that we were not going to put on our report that we were truly consultants for the township and at that point since we didn't agree with everything that was in the report, we were providing technical services, support services and writing the document that was then reflecting the position of the zoning commission. He said so basically the township went ahead and developed something that we couldn't support from a technical or consulting standpoint or at least embrace it as actually having worked collaboratively with the township to come up with a consensus document.

Mr. Werner said okay.

Mr. Lamanna asked if that document was ever actually adopted by the trustees.

Mr. Hartt said not to his knowledge.

Mr. Werner asked Mr. Hartt what exactly he was retained to do in this matter.

Mr. Hartt said to look at the proposal and determine from his perspective based on all the factors that he thought were important to consider in this matter as to whether the request was reasonable from a general standpoint and then from a specific standpoint whether it met the criteria for the area of variances and whether it met the criteria for conditional use in the zoning code.

Mr. Werner asked Mr. Hartt what is his familiarity with the specific variances that were requested.

Mr. Hartt said he looked at the plan and he is familiar with the property and the surrounding areas and he has obviously been involved with the township over the last eight or nine years or so and he looked at this plan and the surrounding properties and the zoning code. And as a matter of record, he was also involved in the original proposal by Pulte on the subject site with 49 units that was eventually withdrawn before it came to a hearing in front of the board.

Mr. Werner said now they are going to walk through both of the standards that apply to the proceedings tonight based on the two applications, one for the conditional use permit and one for the variances and they will start with the variance standards.

Mr. Hartt said he wanted to back up and make some general comments because his report that you have was submitted based on the 34 lot plan and since the plan has been changed and is now before you with 33 lots, he thinks there is some substantial improvements that further support his support of these variances in the conditional use approval in a variety of ways and one is that as Mr. Iacona testified to, the setback variances not only apply to six lots and not the 11, the frontage on Savage Road is totally in compliance with the code of a 100 foot setback and has now been altered in the two plans so it now complies. He said the plan has also been adjusted so it now has similar lot sizes as Tulip Lane is, far to and extended to the west including plans with plans with the side yard setback for those new lots in the proposed development adjacent to the existing Tulip Court development. He said the side yard setbacks have been increased so that the minimum requested now is 20 feet so that the proposed would be a 40 foot setback between buildings. He said he only mentioned that, it is not so much a reflection of the change from the 34 to 33 units, but that is still more of a separation between the units than exists in several developments elsewhere in Bainbridge Township. He continued by saying that before he goes through the criteria specifically, given all the factors, the developments that are previously been approved, his view of the presence of sewer and water, and the accessible availability of sewer and water through this site, this plan does not compromise any health, safety or general welfare objectives and is consistent with the policies that have been established by the township, whether those policies had been established in writing or whether those policies have been established by actions in other projects in the area and he says that based on Lake Lucerne and the testimony of who came up with that before, the Lake Lucerne density is 1.24 units an acre and in all of these projects, we did the research, went to the county, went to the subdivision plats, looked at aerial photographs and did the aerial calculations and estimated the number of units and came up with the gross densities that apply to these areas. He said we have just to the east Lake Lucerne of 1.24, Chagrin Knolls to the north of 2.5, that was one of the industrial areas to residential but nevertheless, it is a significantly higher density. He said the figure of Canyon Lakes, the overall gross density of .82 units per acre and in that the Beech Grove Trail development is about 2.2 units an acre and then the approved Meldon development is .8 units per acre. He said given all of those developments and there are others and the fact that we have the sewer and the water that he believes is fairly accessible and available for this project, we are only requesting .67 units per acre. He said the open character is maintained and we maintain the 25 percent open space, the Savage frontage is protected in compliance with the code, the Tulip Road extension is consistent with the character along Tulip Road and the natural buffers are actually preserved through a conservation development like this and in a more sensitive in a sure way than if this property were carved out as a single family subdivision because you have no assurance that the natural areas are preserved in a planetary unit of a single family subdivision.

Mr. Hartt continued by saying with respect to the specific criteria and this is the variance criteria he thinks of Section 117.10, he believes this is the minimum necessary to permit the reasonable economic return. He said he knows and it will be brought up later, not by Mr. Riehl, but it will be brought up by Mr. Smerigan that I made the same statement in 2006 for the 49 units and Mr. Smerigan pointed that out in his report to you after he had seen my report. He said he believes that is a true statement from both perspectives and these are very, very different projects in terms of the developer who is doing it in terms of their objectives and in the former project, which is really not relevant, but he thinks it is important to go back and refer to it. He said it is not really relevant in this case because the matter now is the economic feasibility and is this necessary to make this project economically feasible. He said the matter of his former statement has come up, the feasibility in the 49 unit plan from a couple of years ago was based on the assumption that if you are extracting units, your improvement costs will be about the same and your development costs would be about the same and the revenue would go down. He continued by saying that based on the conversation with the developers at that time, there was going to obviously be an adverse effect on the feasibility of the project if you extracted units based on the values they had assigned at that time and the improvement costs which they had come up with. He said what was not considered at that time and it is obviously a factor in this case is that if the lots get bigger, the sales price can go up to a point, but now we've reached the point and he thinks in his conversations with Mr. Iacona, he is going back over the last year and a half that he is at the point where the lot size and the sales price of those lots cross at the highest point and they don't go up any further if the lot sizes get bigger, so if the value of each lot doesn't go up and the improvement costs remain about the same, then every time you take out a lot, as was demonstrated in the earlier financial picture, then the economic accessibility of the project based on the facts that have been presented is going to become unfavorable so what was not taken into account when we were looking at the 49 was the fact that the value of the lots was going to go up substantially and again as he stated to the board, that won't go up anymore, that is based on the information that has been collected on lot sales by Mr. Iacona that he reviewed with him, the value of the lots doesn't go up any further than the number of lots drops down. He said that is the basis for continuing to believe that this is, in fact, the minimum economic relief that is necessary to support this project and it is his opinion that these variances, based on all these factors we talked about, are not substantial and he is not basing it on a percentage of relief on each one of them, but he is basing it on the overall total given the development patterns in the area, given the sewer and water and given the development that is being proposed, the buffers that would be provided, it is his opinion that given all those factors that these requested variances are not substantial and similarly this development does preserve the essential character of the area. He said it is similar to densities of other projects and again protected the frontage along Savage and Tulip Road consistency, the coverage of 15% is consistent with the zoning requirements, the spacing of 40 feet between the units is greater than the spacing of other projects in the area, the setback perimeter variances are minor and actually the distances of the proposed homes from the existing homes, the distance from the proposed homes with the variances and the existing homes off-site, are actually greater than the distances from the homes in the development that comply with the setback and the existing homes off-site so the effect of the variances on the lots that the variances are being requested is not in any way putting the homes closer to the adjacent properties than the lots that are in compliance with the code.

Mr. Hartt said so all of this based on the buffer protection and all of the things he has said, it is his opinion that the variances are not going to alter the character of the area. He said the fourth point is it will not adversely affect the delivery of services, the community now has approximately 4,000 households and that study we were talking about, the report, said there was a capacity for about 1,500 more. He said we are now talking about only 16 or 17 more units that are otherwise permitted on this property. He said that is a very small increase particularly in light of the police and fire department if we're looking at just those services, has continued to expand and continues to acknowledge that it needs to be available to support the additional developments and growth that is expected in the township so will there be service increase, yes, is it minor and will they adversely affect or will this development adversely affect the delivery of those services, in my opinion not at all. He added that the property owner to his knowledge did purchase the property with the knowledge of the zoning restrictions, but that fact alone in his opinion doesn't negate the reasonableness of the requested variances. He said the granting of the variances and then the conditional use approval is the only way to overcome the predicament. He said the zoning doesn't reflect or contemplate utilities, the three acre zoning adherence is inconsistent with the facts and the existing development pattern in the area and there is no other zoning classification that is available to the property owner to overcome the existing predicaments and at the risk of sounding very similar to what he has already said, the granting of the variances will be consistent with the spirit and intent of the zoning as it's been applied to the properties in the vicinity and as the facts suggest based on the utilities that are available, so the granting of the variances reflects the existing conditions and the policies that have been established through whatever means. He said it has still resulted in the development's character that exists in the surrounding areas and that this is the minimum relief that is necessary and again, based on all those considerations, the essential character of the area is preserved and the township has made by whatever means similar prolific decisions when sewer and water is available.

Mr. Lamanna said to Mr. Hartt, which you realize is completely irrelevant.

Mr. Hartt said he did not think so.

Mr. Lamanna said prior granting of variances is not argument either for or against the granting of future variances.

Mr. Werner asked Mr. Hartt to address that.

Mr. Hartt said over the years he knows that it is a common understanding just because we granted one variance, we don't have to grant the other variance or the next variance, nevertheless, the practical application is it seems to him that if the same facts exist with the two property owners, they are entitled to the same consideration by the Board of Appeals because of the actions that they have actually taken on other properties in the vicinity so he begs to differ with Mr. Lamanna, as much as the Boards of Appeals try to say that one variance doesn't set precedence a factual situation., the facts that have been created has to a great extent set the basis for subsequent actions by the township.

Mr. Murphy told Mr. Hartt that he keeps bringing up properties that were developed and built before 1960 and 1948. He said Lake Lucerne has nothing to do with current zoning desires of the people of Bainbridge Township. He said Canyon Lakes was before 1971, they sued and they went to court and ended up getting it because of that, it has nothing to do with the current zoning in Bainbridge Township. He said look at some of the properties that are done with our current zoning and then compare those to these.

Mr. Hartt said if you look at the land use pattern and zoning pattern in this area and you take out this land, (he referred to the map on display) which is Chagrin Falls and virtually all of this land which is in public owners' conservation easements of various sorts, there are only a couple of parcels in this area that are basically being denied some higher intensity development and have the sewer and water going through it so it's not like that you have a lot of land on this side of the developed area that starts the slippery slope of violating the three acre zoning if you approved it here. He said approving it here is basically acknowledging the existing facts and giving the same development or less development rights that has been established here and here that now has sewer and water.

Mr. Murphy said Bridgeway is right next to this and he has yet to hear anybody mention Bridgeway tonight or even Brayton Trails that went right up to the Ohio State Supreme Court and they said you can't make the township have a zoning that doesn't exist, they wanted 34 houses in Brayton Trails and instead they ended up with two acre lots.

Mr. Hartt asked two acre lots.

Mr. Murphy said yes.

Mr. Hartt said not three.

Mr. Murphy said that is correct, that is right, but that is after how many legal dollars of your professions and all that we ended up having to spend to do that, so now he is not sure that saying that the other properties right there is a reason to, sorry to interrupt.

Mr. Hartt asked to let him go through the criteria for the conditional uses, that is 117.13 and how the clustering option meets that criteria and first of all the clustering is a specified conditional use and again will be consistent with the existing character of the area. He said he knows he talked about that and he is talking about the broader corridor along Savage Road, both north and to the south and even with this density and the variances that are requested, it is his opinion that this type of a project would not be hazardous or disturbing to the neighbors. He said there is no evidence to suggest that this type of density and this type of contrast between residential uses of this distinction have an adverse impact on the existing developments that may be at lower densities. He said it will be served by the extension of utilities and it is his opinion that those will be provided, area available to be provided and the testimony he has heard earlier tonight, he didn't hear anybody suggest that there was a valid reason why they shouldn't be provided to this property.

Mr. Hartt continued by saying if the zoning is granted, then it complies with the zoning, if these variances are granted for all the other reasons that we have articulated, it will not create excessive additional requirements of public costs, will not include uses or activities that are detrimental. He said the vehicular access is minor, will not interfere with traffic on Savage and will not materially the few units, affect the traffic on Tulip. He said he thinks it has been pointed out but maybe it is worth reminding you here that this is not a through road so there is no access from Savage through the Tulip Court development and will not result, he thinks there has been testimony to that, in the destruction of natural historic features of major importance any more than a standard development could on this site and actually the clustering preserves more natural areas than if it were a standard development with lower density with private yards going into the common areas of the stream beds and common yards going all the way to the perimeter of the boundary and no assurance that any of these natural areas are in the long term protected. He said he will also add and he meant to earlier that the actual setbacks of all the clustering of the developer requires a 100' perimeter setback, the standard development for a side yard only requires a 50' side yard setback, so if we are looking at this development and how it might be laid out in at least some of the lots here or here in a standard development, the houses can actually be closer to the perimeter property than under the clustering option.

Mr. Werner said that he wants to observe the board's rule.

Mr. Lamanna asked Mr. Werner how much longer.

Mr. Werner said he wanted to go through some of the specifics of the individual variances with Mr. Hartt, that is probably 20 minutes if that is not too much.

Mr. Lamanna said no that is too long.

Mr. Werner said okay.

Mr. Lamanna said we will have to be continued.

Mr. Werner said okay.

Mr. Lamanna said because then he is going to have questions and we are going to have questions and we will be here until midnight.

Mr. Werner said he just has a procedural question and in preparation for the next hearing, the issue came up about a report regarding the research Mr. Iacona did on the houses and asked if the board would prefer that something be transmitted to Mr. Riehl.

Mr. Lamanna said yes and to the board.

Mr. Werner said and in accordance with the normal filing deadlines.

Mr. Lamanna said yes.

Mr. Werner said very good.

Mr. said Lamanna if both could review the record and make sure that everything is in there that they want in there and has been properly logged in with the secretary just so we don't have any questions as to exhibits or documents because especially if documents get handed around in the course of testimony, if they don't get to her and marked in, they won't end up being in the record.

Mr. Werner asked if it would be possible to get just a list of the items that you believe were already introduced into evidence.

Mr. Lamanna said yes, just so we have that clear and he does not want to end up with a misunderstanding as to what is or is not on the record here with respect that. He said we have had a lot of papers, make sure they are all up to date as well so that we have the property documents so we don't end up with drawings of different dates. He said he had just had the unfortunate situation of being in a case where there was a lot of drawings that had lots of different dates on them and it was very unclear which one was the finally approved one so he does not want to end up in a situation like that again. He added that the board will continue this application to the next meeting.

Since there was no further testimony, this application was concluded for this evening.

Motion BZA 2006-33 – 16942 Savage Road

Mr. Lamanna made a motion to continue this hearing to the next regularly scheduled meeting to be held in February.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Since there was no further testimony, the public hearing was closed at 11:10 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: June 19, 2008

AUDIO RECORDING ON FILE

BZA PH 1/24/2008

-68-

Bainbridge Township, Ohio
Board of Zoning Appeals
January 24, 2008

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:10 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier.

Meeting Schedule

The board held a discussion regarding holding a special meeting in February for the purpose of continuing the hearing for application 2006-33.

Mr. Lamanna made a motion to hold a special meeting for application 2006-33 on Wednesday, February 13, 2008 at 7:30 P.M.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Secretary's note: All people in attendance tonight will receive notification of the special meeting to be held on February 13, 2008.

Other Matters

Mr. Michael Joyce, Zoning Inspector met with the board to discuss his interpretation of a car wash as a conditional use.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the December 20, 2007 meeting as written.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application for February 13, 2008

Application 2006-33 by Voproco Properties Limited for property at 16941 Savage Road – Continuance

The applicant is requesting a conditional use permit with variances for the purpose of constructing single family cluster homes. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a special public hearing on the above application for February 13, 2008 at 7:30 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising and the services of a court reporter.

Applications for February 21, 2008

Application 2006-33 by Voproco Properties Limited for property at 16941 Savage Road
– Continuance

The applicant is requesting a conditional use permit with variances for the purpose of constructing single family cluster homes. The property is located in a R-3A District.

Application 2008-1 by Cory Corrigan for property at 9380 E. Washington Street

The applicant is requesting a variance for the purpose expanding a legal non-conforming use to establish a retail tack shop. The property is located in a R-5A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for February 21, 2008 at 7:30 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising and the services of a court reporter.

ORGANIZATIONAL SESSION

Sunshine Law

Mr. Lamanna made a motion to adopt the Ohio Sunshine Law (ORC).

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Meeting Schedule

Mr. Lamanna made a motion to set the meeting night of the Board of Zoning Appeals on the third Thursday of each month at 7:30 P.M. at the Bainbridge Town Hall; which meetings may be continued from time to time, at the discretion of the board, to such other dates as set at the meeting; and also that the board may schedule additional meetings during the month upon its motion.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Election of Vice Chairman

Mr. Lamanna made a motion to appoint Mr. Lewis as Vice Chairman.

Mr. Olivier seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Election of Chairman

Mr. Lewis made a motion to appoint Mr. Lamanna as Chairman.

Mr. Olivier seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Notice of Meetings

Mr. Lamanna made a motion to require a \$25.00 fee and 12 self addressed stamped envelopes for notice of public hearings and/or special meetings.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Zoning Secretary

Mr. Lamanna made a motion to reappoint Linda Zimmerman as secretary to the Board of Zoning Appeals.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

By-Laws

Mr. Lamanna made a motion to adopt the following by-laws.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Secretary's Note: Subject by-laws are attached to, and become a permanent part of these minutes.

Since there was no further business, the meeting was adjourned at 11:30 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: June 19, 2008