

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 19, 2019

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Ms. Karen Endres, Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals and explained the public hearing process. He let the record reflect that everyone will be sworn in individually.

Application 2019-45 by Joseph and Mrunali Walter for property at PP#02-262226 Pettibone Road

The applicants are requesting area variances for the purpose of constructing a new single family dwelling. The property is located in a R-3A District.

Mr. and Mrs. Joseph Walter were present to represent this application.

Mr. Lamanna swore in Joseph Walter and Mrunali Walter and noted that Mr. and Mrs. Walter were duly sworn.

Mr. Walter testified that they are looking to build a home on Pettibone Road, there is a vacant lot there now and the setbacks are 50' for the side lines and they are asking for 25' due to the fact that the property is only 166' wide, it is non-conforming to the three acre zoning.

Mr. Lamanna asked if that is a separate detached garage building that he is proposing and you have a garage with the rest of the house.

Mr. Walter replied yes.

Mr. Lamanna said one of the issues here is there is a rule about accessory structures have to be built after the main structure and he understands that you (Mr. Walter) plan to build these things at the same time.

Mr. Walter said yes it can be done together.

Mr. Lamanna said our concern is sometimes people come in and build an accessory structure and then somehow the house never gets built. He said if you commit to when you have the people come in and put the foundation in for the house they put the foundation in for the accessory building and when they do the framing for the house they do the framing for the accessory building so that if they are going together in construction at the same time through the various stages, the board probably doesn't have a problem with it.

Mr. Walter said that was the plan.

Mr. Lamanna said the biggest issue in looking at this is the size of this building.

Mr. Walter said correct.

Mr. Lamanna said that is the concern for two reasons, because of the size of the building and where it is being placed, it is causing the house to be closer to the property lines that would otherwise not be and typically and historically we give relief when you've got a 167' yard for a reasonable house, he thinks the house is a reasonable width but obviously if it was centered we would be looking at a much smaller variance. He asked Mr. Walter to enlighten the board on the use of the building.

Mr. Walter said cars are a hobby of his, he owns six cars and a cargo van and he wants to be able to park everything indoors so nothing is outside.

Mr. Lamanna said okay.

Mr. Gutoskey said it looks like what is driving the side yards is the outbuilding and the position of the outbuilding because if you pulled the house to the 50' side yard on the left side there you would be farther than the 25' on the other side but he thinks the outbuilding is kind of driving the position of the house.

Mr. Walter said the building overlaps the house some, he can't help that.

Mr. Gutoskey said for a side entry typically you need about 32' and 30' to 32' for the driveway so it doesn't affect the driveway turn-around at all so that would add another 11.2' so it could go from 25' to 36'.

Mr. Lamanna asked if there are elevations for this site and asked if this building is 40' x 60'.

Mr. Walter replied yes.

Mr. Gutoskey said the house is 2,151 sq. ft. and then the attached garage is 901 sq. ft.

Mr. Lamanna said this is a really big structure and just for the size of this lot at 2,400 sq. ft. the accessory building is pretty large and it also starts to belie the concept of "accessory structure", it is an accessory to the main use and it is as big as the house.

Mr. Gutoskey asked Ms. Endres to go to ReaLink and show the board the surrounding properties.

Ms. Karen Endres, Zoning Inspector testified that every once in a while for some reason we lose the internet connection here, it appears that today we don't have it.

Mr. Gutoskey brought up the property on ReaLink on his laptop.

Ms. Endres said it was working earlier.

The board reviewed the parcel on ReaLink.

Mr. Lamanna stated that the board is looking at an aerial photo of the property and we are seeing where the adjacent structures are and we are also looking to see what other outbuildings there are in the area and there doesn't seem to be any this significant in size.

Mr. Lewis said without making accommodations for access to the accessory building, this house is 80' wide and lot is 167' which leaves 40' and 40' on both sides at least for the location of the house so the house is being shifted, it appears, to accommodate a driveway going into the accessory building.

Mr. Gutoskey said if it was centered the house would have enough room for a driveway or you can get at least 50' on one side.

Mr. Lewis said there is room to go 40' and 40' for the house with 32' for the driveway turn-around and then if you are shifting the house over it is not like you are spoiling the view because by shifting it over the accessory building will still be pretty much behind the garage.

Mr. Tom Allison of 18743 Sharon Drive stated that that cursor is on his house on Sharon Drive.

Mr. Gutoskey said it looks like the house is 80.8' wide and if you split it it would be 43.1'.

Mr. Lewis said and still enough room for this. He said the house can certainly be shifted to reduce the size of the area variances on the sides.

Mr. Lamanna asked who else is here that is interested in speaking on this application.

Mr. Lamanna swore in Mr. Tom Allison and noted that Mr. Allison was duly sworn.

Mr. Tom Allison testified that he is here with his wife Sharon and they have lived at 18743 Sharon Drive for the last more than 34 years. He said that is the property right below where that blue line is. He said in the time that they have lived there they have had the opportunity to enjoy the property behind them because there was nothing there, the lot that is the issue that is for sale covers a substantial portion of their backyard and also there is a lot that belongs to Leonard and Nancy Liptak that is also involved as an adjoining lot in this matter. He said for some reason they never received any letter or notification of this proceeding and fortunately Mr. and Mrs. Liptak were good enough to contact us earlier this week and let us know that this would be going on.

Secretary's note: Mr. and Mrs. Allison at 18743 Sharon Drive were sent a notice of this hearing via ordinary mail.

Mr. Allison continued by saying that he doesn't have a lot of issues with the setbacks on the sides of the property, they don't really directly concern him but what he is very concerned about is the 40' x 60', 2,400 sq. ft. outbuilding and what is called a barn and in the drawings he saw it is called a garage and as he looks at it on the site drawing he only sees one door on the side and one door on the other side so his concerns are that thing is going to severely impact the use of the back of our property including not only during the summer but also during the winter when the trees are bare and we spend a substantial amount of time in the back of our house and looking over there all they will be looking at is this huge barn. He said his understanding is that the accessory building rule is 300 sq. ft., this is eight times bigger than that and he has driven all over this area looking for anything close in size of that structure and there is nothing on an acre and one-half lot that would even come close to that. He said he thinks that the size of this thing is such that it is going to have an impact on not only what he is doing on his property it would also affect the value of his property because when they are in the back of their house they will be looking at this great big huge barn back there. He said it would seem to him that and his understanding of the zoning rules that there was a reason for this 300 sq. ft. accessory building code and to allow them to build a building of this nature, this size, would surely not comport with the spirit and definitely not with the rules of the zoning committee so he thinks it is totally inappropriate for them to build a structure of that size on a lot of this size and he respectfully suggests that if they want to build a 2,400 sq. ft. garage that they go find three, five or ten acres and put it on that, not try to squeeze it into an acre and one-half lot in a rural residential area such as this. He said if in fact the board should determine that they can build some nature of structure there he would suggest that they should comply with the 300 sq. ft. rule and he would also suggest that the height of this building be such that the upstairs that will be attic space in his mind would not be habitable but rather it would only be attic storage space and that this not be a two-story structure and they are asking for a variance to 21' from 15'. He said the other thing he would suggest is if the board allows them to building any such structure on this lot, the 90' setback which you can see on the drawings be restricted so that trees cannot be cut, that it has to stay just as it is to provide some barrier, some buffer between that property and the properties behind, mine and the Morrisons and the homes on the side towards the Liptaks.

Mr. Allison continued by thanking the board.

Mr. Lamanna said just a point, the 300 sq. ft. limit was really put in there for the purposes of not causing anybody who wanted to put an accessory structure on a pre-existing lot of record to have to come before the board and what they did was set it at 300 sq. ft. because this applies to all the way down to the quarter acre lots that are down on Pine Street and by the village down there so that is where the 300 sq. ft. comes from and that is why it is in there so it really wasn't there to limit it to 300 sq. ft. and once you get past that you have got to come to the board and we have to look at it on an individual basis. He told Mr. Allison that his other points are well taken and just so you understand where that number comes from and how we hear a lot of these types of applications and the big question is what does the neighborhood look like, what is already in the neighborhood, how big is the actual size of the lot and how big is the actual size of the building.

Mr. Allison said he understands that and appreciates it but he just wants to say eight times the 300 sq. ft. building.

Mr. Lamanna said the board is concerned with the size of the building and that is why he wanted to see how the neighbors feel about this and about how you would be impacted by it.

Mr. Lamanna swore in Mrs. Nancy Liptak and noted that Mrs. Liptak was duly sworn.

Mrs. Liptak testified that she lives at 7997 Pettibone Road on the east side of this property and she doesn't have any facts except that the 25' side easement would affect them, they do own the other lot and they do have the right to sell that lot at some point and she thinks that this plan for this structure could affect the value of that lot when it goes and the other thing is they built their home 37 years ago, they are part of the Riversedge Development and we were to be a neighborhood of homes. She said putting a structure up of this size for the purpose of storing automobiles is going to change the face of their neighborhood, we are not only going to be homes with garages as Mr. Allison said he has driven around and hasn't seen any buildings this large anywhere around and this is going to change the neighborhood and so she kind of likes the fact that we belong to Riversedge and they are homeowners and we raised families there and not that you wouldn't raise a family there but she just thinks that this is and like she said this is not a fact it is an opinion, but she was told that she was allowed to give her opinion, she thinks it is too much building on an acre and one-half lot and the other thing is you cited that the side setbacks are at 25' at this point or it didn't go along with three acre lots, we are an acre and one-half and she thinks that they still have the right to ask for 50' on each side of the lot line so it sounds to her like the biggest problem with this is this large building has caused the house to be moved over and this large structure that is going to be on the property is affecting all of us around so she would be much happier if this didn't happen.

Mr. Lamanna swore in Mr. David Ducas and noted that Mr. Ducas was duly sworn.

Mr. David Ducas of Woodbridge Homes testified that he is working with the family over here, the Walters, trying to help them get this moving along. He referred to the people here and said he understands when something has to do with the adjacent property next to yours, it changes things that can always make all of us uncomfortable, he grew up on a culdesac and some guy came and took all of their woods away when he was a kid and started building homes which that is what he does now but he wanted to say that most of the houses that if you look at the GIS actually are a lot less than 50' on the offsets and it is a pretty common thing, he is not going to say all of them but if you look closely some of them are closer to the property lines and this zoning occurred long after these lots were platted and this zoning was to prevent some of the growth Bainbridge was seeing and that is why the zoning was enacted over some of these lots. He said the Walters want to build a large barn building and he understands it is restricted in size. He said correct him if he is wrong but if this garage building was attached to the house would it fall under accessory structure.

Ms. Endres said if it was attached to the house she could apply the criteria that was in effect prior to 1978 which would permit a 20' sideline setback.

Mr. Ducas said so if this building was actually attached to the house it would allow a 20' setback.

Ms. Endres said that is correct, sideline setback.

Mr. Ducas asked if that would allow the other side of the house to be 20' as well.

Ms. Endres said she is wrong, let me restate that, this is not a pre-existing house, you are building a new house.

Mr. Ducas said yes.

Ms. Endres said so none of that applies, the 20' setback applies for pre-existing houses.

Mr. Ducas said understood.

Ms. Endres said that 20' was what was in effect prior to 1978.

Mr. Ducas said if the Walters were to attach the accessory building to the house.

Ms. Endres said the house had to have been constructed prior to 1978 for that to apply.

Mr. Ducas said not asking for any sideline variances, is there any issue facing sideline variances if the building is attached to the house.

Ms. Endres said this house needs to meet the 50' sideline setback, there is no grandfathering.

Mr. Ducas said he understands but the new house and garage together as one structure has to comply with 50' on both sides.

Mr. Lewis said it is too big.

Ms. Endres said they would still need a variance on lot coverage though.

Mr. Ducas asked what the lot coverage is.

Ms. Endres said 10% so there would still be a variance involved.

Mr. Ducas said and we are at slightly more than 10%.

Ms. Endres said a little more than 14%.

Mr. Ducas said he just wanted to clarify, he wasn't sure and with respect to the concern about the view from the neighboring gentleman in the back, obviously you don't have any trees in the back of your lot and he understands that you have a clear line, all of the trees are gone from the back of your yard.

Mr. Allison said they are not all gone but there is a line of trees there.

Mr. Ducas said he would suggest that certainly the intent is to not disturb neighbors or tick the neighbors off and they would like to have their privacy and certainly he doesn't think it was Mr. Walter's intent to clear cut but there is a septic system that needs to go in so they couldn't leave all of the trees but in his discussions with Mr. Walter is they would be more than happy to come to a mutual agreement within reason for a large landscaping of trees whether they are Junipers or whatever they might be that would create a clear coverage of the building and he thinks that that is acceptable to them if a variance is granted for this. He said he would also suggest that in the event that a variance for the 25' is not granted or for the accessory building there might be a compromise that might be acceptable to the board and he doesn't know if that is something that needs to occur here or if that is something we need to continually come back with additional variances.

Mr. Lamanna asked if Riversedge has any limitations.

Mr. Ducas they are technically not in the subdivision, that was his understanding.

Mr. Gutoskey said they were frontage lots split off.

Ms. Endres said they are not sublots.

Mr. Gutoskey said he does have a question, the lot that is directly to the south of this, is that a tennis court.

Mr. Allison replied yes.

Mr. Gutoskey said and a swimming pool.

Mr. Allison replied yes, built in 1978.

Mr. Gutoskey said that is probably why you don't have any trees.

Mr. Allison said true.

Mr. Ducas said he would suggest to the lady that was up here before, if you were to sell your lot you would probably benefit from at least the ability or potentially because you will find that the 50' is extremely restrictive and again he does not think it was initially intended for these lots, he thinks these lots fell under that and grandfathered under the new zoning that came out and if you go to sell that lot he thinks you will find that you will be challenged to sell it as this lot owner with 50' sidelines.

Mr. Lewis said if you center the house, the lot is 167' wide, the house is roughly 80' wide you are roughly at 43.1' centering the house on the lot so that substantially reduces the side yard variance requests and moves it from 25' at least on the one side up to 43.1' so now we get into the issue of this accessory structure that appears to be bigger than the house and also way too close to the side yard. He asked how many cars are you (Mr. Walter) planning to put in this building.

Mr. Walter said at least six.

Mr. Lewis said and the house you are building has a three-car garage.

Mr. Walter said correct.

Mr. Lewis said so you are planning to put nine, ten or whatever cars here.

Mr. Walter said eight and landscaping equipment.



Mr. Lewis asked if he (Mr. Walter) is doing automobile repair work on these.

Mr. Walter said no, just a hobby.

Mr. Lewis said just strictly a collector.

Mr. Walter said yes.

Mr. Lewis asked Mr. Walter if he is buying and selling.

Mr. Walter replied no.

Mr. Gutoskey asked if there is a lift in the garage.

Mr. Walter said yes for storage.

Mr. Gutoskey said not for repair.

Mr. Walter said no it would just be for storage.

Mr. Gutoskey said so you can stack a car on top of the other, so really you can get double what you are saying.

Mr. Walter said he could.

Mr. Gutoskey said getting back to what Mr. Lewis was saying, you could probably cut the size in half if you are going to store them up above and below.

Mr. Lewis said other than your request he has yet to see a practical difficulty for building this big of a structure in this particular neighborhood, whether it is to support your hobby or future growth into your hobby that amount of activity and that amount of storage, he knows there are other resources around to store cars at, you may not have the convenience of being able to pop out into your backyard and pick the one you choose but this is a hugely oversized structure, bigger than your house and certainly appears to be way out of character with what is in the neighborhood so he thinks you (Mr. Walter) have some more convincing to do sir.

Mr. Walter said he does know of a 32' x 60' that is in Riversedge and it also has a 16' wide overhang if you pull up the Auditor's site.

Mr. Gutoskey said that is on how many lots though.

Mr. Walter said it is on 1.56 acres.

Mr. Gutoskey asked how many lots, one lot in one hundred has that. He said that is why we look to see what is around it. He asked Ms. Endres to turn off the aerial and just have the buildings.

Mr. Walter said that is the one he knows of, it is not common like you said and it is on Lori Lane, Constant.

Mr. Lewis said and that abuts Geauga County property, not a buildable home site behind it.

Ms. Endres said it is Cedar Fair property.

Mr. Lamanna said what the board is looking at here is maybe scaling this thing down 25% in each direction, 25% narrower and 25% shorter and 25% less high so we go down to 45' x 30' x about 16'.

Mr. Gutoskey said why not go 40' x 30' so that is 1,200 sq. ft.

Mr. Lewis said that works.

Mr. Gutoskey said or any combination thereof at 1,200 sq. ft.

Mr. Ducas said the roof will be 16-1/2' or 17' and we did have an alternative plan at 32' x 60' which got us to about 17' high, they are trying to stay with a 5/12 pitch just because of the snow loads.

Mr. Lamanna said he is just assuming you can figure that out.

Mr. Ducas said it sounds foolish not to have some space up there with a truss roof and it is a flat ceiling so there was no intention to use the space above it.

Mr. Gutoskey asked where the board wants to set if off the side line.

Mr. Lamanna said his inclination would be to give a little bit more on the east side because the house on the west side that is already there is pushed over. He said keep it away from the vacant lot because the house to the west is already pushed the other way and that is the side where the accessory building is going to be.

Mr. Lewis said that is the living quarters side of the other house.

Mr. Lamanna suggested adding 5' equally on each side so it would be 32' on one and 30' on the other.

Mr. Ducas said their goal was to try not to push the garage directly behind the living space of the house, obviously if it is blocking some of the garage it is not such a big deal.

Mr. Lamanna said at this point there is already a little bit of a step back there so we are picking up 10' from shrinking the size of the garage so he was thinking to add 5' to each side so the house would move a little bit.

Mr. Gutoskey asked if the board is talking about centering the house.

Mr. Lamanna said yes, centering the whole mass, all of the construction will be centered so we would leave a little bit more on the other side, it would be 32' on one side and 30' on the other. He said there is no house on that other property at this point in time so it would allow a little bit more over there.

Mr. Gutoskey said if we center the house it is 43.1' so how far is the shed or garage going to be off the west property line.

Mr. Lamanna said 30', you could push it a little bit more behind the garage but he would suggest 30' on one side and 32' on the other side, 32' on the vacant lot side.

The board discussed the setbacks and calculations.

Mr. Gutoskey said it will be 31' to the outbuilding so it will put the lot coverage around 13% with a 1,200 sq. ft. outbuilding.

Mr. Ducas said there is more concrete showing from the garage than they actually intend on putting so that would actually reduce their coverage as well.

Mr. Lamanna said we will probably do 13% so if you want to put a patio in or something or if you want to add a little walkway somewhere.

Mr. Lewis said if you are going to put a substantial deck or patio on you are going to exceed what we are allotting so please don't build it without visiting us first. He said if we have 31' we can definitely put some screening in on that side.

Mr. Lamanna said both sides.

Mr. Lewis asked evergreens.

Mr. Lamanna said yes.

Mr. Lewis asked quantity and height. He said if it is 30' wide that would be facing the neighbor behind. The board discussed planting five and seven trees.

Mr. Lamanna said five evergreens on the back and seven on the side, six feet tall.

Mr. Gutoskey said so there will be a variance to 31' on the east side, 31' to the shed, 1,200 sq. ft. and then what height.

Mr. Ducas said it will be approximately 17' and they are trying to keep a 5/12 pitch for snow loads.

Mr. Lewis asked if there will be gutters and downspouts.

Mr. Ducas said yes there will be gutters and downspouts.

Mr. Lewis asked and where is that rainwater exiting to.

Mr. Ducas said it goes out to the street.

Mr. Allison asked just so he is clear he thinks we were talking about a 1,200 sq. ft. structure, is that right.

Mr. Lamanna said down to 30' x 40' and 17' high.

Mr. Allison said and with respect to the screening, he appreciates that on the back side, and he is also curious to know again, we've got a 90' setback between the back line where the septic is and the back lot line, is that going to remain uncut, the trees that are there.

Mr. Gutoskey said he doesn't think the board can do that because the placement for that mound is probably continuing south and typically when you build it you build it from the upside so the replacement mound will be right next to that to the south if you ever have to replace it.

Mr. Allison said so the septic system is north of that 90' setback line correct.

Mr. Gutoskey said yes.

Mr. Allison said so when you talk about an interim between that and the back property line.

Mr. Gutoskey said if it fails you have to have a replacement area equal to the size of the one that is there on the lot and normally when you build a mound you build it on the high side and if you have to replace it you replace it on the low side.

Mr. Allison asked if that will require cutting those trees now or in case.

Mr. Gutoskey said no, in case they would have to replace it.

Mr. Allison said that is his question but he is not going to live forever so the trees will be there until it is necessary to replace that septic system.

Mr. Lamanna said as a matter of course we are not going to try to put a restriction like that on, it is impossible for us to enforce that because trees die, things happen, it is just not something that is easily enforceable so we have to have something that is clear cut and somebody can easily enforce it in the future. He said we have specific plantings around the building in question and we have never gotten into trying to do broad generalities of no you can't cut any trees in this area because it is such a vague concept that we are not going to try to monitor that in the future.

Mr. Allison said he respectfully disagrees and he would be happy to let you know if they cut all of those trees down so that wouldn't be an issue so until it is necessary for them to cut them down why can't they just remain.

Mr. Gutoskey said we really can't control that.

Mr. Allison said that is not really acceptable but he understands.

Mr. Lamanna said just as a point when you look at the aerial picture you've got a tennis court on your property and there is nothing there, it goes all the way to your back lot line.

Mr. Allison asked what is the relevance to that of what he just asked.

Mr. Gutoskey asked why don't you keep a buffer on your property for the guy behind you.

Mr. Lamanna asked if he has a variance for his tennis court.

Mr. Allison said he is sure he does. He said he didn't build the house, he bought the house.

Mr. Lamanna said you can't expect your adjacent property owner to be maintaining trees that you don't have on your own property, you bought it that way but somebody took down all of the trees so your equity in this position isn't all that good. He said we are trying to be reasonable and protect your interests as much as we can.

Mr. Allison said he understands what you are saying but five 5' trees behind that structure are not going to provide any kind of coverage.

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

Motion BZA 2019-45 – PP# 02-262226 Pettibone Road

Mr. Lamanna moved to grant the applicant the following variances for the purposes of constructing a new dwelling and an outbuilding. The new dwelling will be in accordance with the plans that have been previously submitted. The outbuilding will be in accordance with the revised plans to be submitted by the applicant to the zoning inspector prior to issuing a zoning certificate.

1. The outbuilding will be reduced to 30' wide by 40' deep by 17' high for a total of 1,200 sq. ft.
2. The house and outbuilding will be repositioned so that they will be set back on each side 31' from the property line for a variance of 19' from the 50' required.
3. A variance from the maximum lot coverage of 10% to 13% for a variance of 3%.
4. In addition the applicant will plant 6' evergreens, five on the rear, 30' side and seven on the 40' side of the outbuilding.
5. The board also notes that the applicant has indicated that this structure, (outbuilding) is solely for storage and it will not be used for other purposes except otherwise what is allowed by the zoning laws such as home occupations will require a separate permit for that and no other business will be conducted nor will it be used for dwelling purposes.
6. A variance to Section 161.05 of the zoning resolution to allow the accessory building to be built concurrently with the house.

Based on the following findings of fact:

1. A practical difficulty exists because this is a pre-existing lot of record.
2. It is only 1-1/2 acres for this zoning area.
3. Given the width of the lot of 167' it is reasonable to reduce the side yard setbacks to 31' which is also consistent with the character of the neighborhood and will not adversely affect the neighboring properties.

Motion BZA 2019-45 – PP# 02-262226 Pettibone Road - Continued

4. Also with respect to the accessory building, given the size of this lot, a 13% area variance and the larger allowance on the accessory building is consistent with the character of the neighborhood and will not adversely affect the neighbors.
5. The board also notes that the applicant has agreed that there will be concurrent construction of the house and detached garage so that they will be staged at a similar level of construction throughout so that they will be completed at or about the same time.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Application 2019-44 by Kelly's Working Well Farm dba Chagrin Valley School for property at 16519 South Franklin Street

The applicant is alleging error by the zoning inspector. The property is located in a R-3A District.

Those in attendance as witnesses for the appellant were: Ms. Kelly Clark; Mr. Ian Mungall; Mr. Chris McClellan and Mr. Jim Demko. Ms. Emily Collins of Fair Shake Environmental Legal Services was present as counsel for the appellant.

Those in attendance as witnesses for Bainbridge Township were: Ms. Karen Endres, Zoning Inspector; Mr. David Sage of the Geauga County Health District and Mr. William Lovell, Assistant Chief of the Bainbridge Township Fire Department. Ms. Linda Applebaum, Assistant Prosecutor for the Geauga County Prosecutor's Office was present as Counsel for Bainbridge Township.

Mr. Joseph H. Weiss, Jr. was present as Counsel for the Bainbridge Township Board of Zoning Appeals.

Mr. George Staiduhar, Court Reporter from Fincun-Mancini Court Reporters was present for Bainbridge Township.

Mr. Lamanna stated that the applicant is alleging error by the zoning inspector and noted that the board will allow Counsel who is representing the applicant to give a short opening statement and then proceed to call in her witnesses.

Ms. Emily Collins stated that she is from Fair Shake Environmental Legal Services, a non-profit law firm located in Akron, Ohio at 647 E. Market Street, Akron, Ohio 44304 and she represents Kelly's Working Well Farm doing business as Chagrin Valley School and we are here tonight to present evidence to the board on whether Kelly's Working Well Farm constitutes a school or a daycare under the zoning resolution and our position is it is not and that it constitutes the agriculture and agritourism operations under the headings of education agritourism and recreational agritourism and as you can see there are a lot of people here tonight and it shows just how passionate people are about this particular operation and how vested it is in the context of an agricultural operation. She said she will call her first witness Ms. Kelly Clark.

Mr. Lamanna swore in Ms. Kelly Clark and noted that Ms. Clark was duly sworn.

Ms. Kelly Clark testified that she lives at 16495 S. Franklin Street.

Ms. Collins stated that they are going to try to share the microphone. She said as a matter of housekeeping, Chairman, she just wanted to note that they do have exhibits, they are not numbered exactly in the context of the appeal but will be given to the board in succession.

Mr. Lamanna said if they match up, if you can refer us to the submission and mark them so they are identified for the record.

Ms. Collins said that Ms. Clark stated her name and address for the record but asked Ms. Clark if she would state the address of the farm.

Ms. Clark said it is at 16519 S. Franklin Street.

Ms. Collins asked Ms. Clark to tell what her educational background is.

Ms. Clark stated that after high school she attended the US Naval Academy for two years and then she ended up at the University of Chicago graduating with a Bachelor degree in Physics and she also attended the University of California to earn a Master's in Physics.

Ms. Collins asked Ms. Clark to give a quick summary of her work history as well.

Ms. Clark stated that in education since she graduated from college she taught mainly high school level physics but she also really taught all ages from preschool to college and some math at times.

Ms. Collins asked Ms. Clark when she acquired the farm at 16519 S. Franklin Street.

Ms. Clark stated that they purchased the property in 2012, in July.

Ms. Collins asked Ms. Clark when she incorporated the farm as a non-profit corporation, did she recall.



Ms. Clark responded yes, shortly after that in December of 2012.

Ms. Collins stated that she is going to hand you (Ms. Clark) and hand the board what is marked as appellant Exhibit 1. She asked Ms. Clark if she can state that she recognizes it.

Ms. Clark said she does.

Ms. Collins submitted Exhibit 1 to the board a “State of Ohio Certificate #2161584 for Domestic Nonprofit Corp – Articles – Document ID 201236600399, dated January 2, 2013. She asked Ms. Clark what it is.

Ms. Clark stated that it is a Domestic Nonprofit Articles of Incorporation.

Ms. Collins asked Ms. Clark if she filed this with the state, correct.

Ms. Clark replied yes she did.

Ms. Collins asked Ms. Clark if she can read in that document what she included in services for which the corporation was born.

Ms. Clark said to create a small scale diversified educational farm based on principals that would serve as a model of sustainable community based agriculture while teaching about providing food and other products to the community.

Ms. Collins asked does that original purpose still reflect the purpose of the client.

Ms. Clark said yes.

Ms. Collins asked Ms. Clark if she invited the community onto the farm when she started her operations.

Ms. Clark said yes we did.

Ms. Collins asked why did she do that.

Ms. Clark said they wanted to be a community source and example of educational agriculture so we started doing workshops and so on.

Ms. Collins asked what were those community workshops.

Ms. Clark said they did workshops on various agricultural and permaculture such as gardening in the backyard, food preservation and things like that.

Ms. Collins asked Ms. Clark if she also offered camps to children.

Ms. Clark said yes they did.

Ms. Collins asked Ms. Clark if she was a full-time farmer prior to 2016.

Ms. Clark said no she was still teaching at Hawkins School until 2016.

Ms. Collins asked what happened in 2016.

Ms. Clark said they started Chagrin Valley School.

Ms. Collins asked if she founded the tradename of Chagrin Valley School in 2016.

Ms. Clark said no, not right away.

Ms. Collins asked when she did that.

Ms. Clark said they did that in the spring of 2018.

Ms. Collins said she is handing out appellant Exhibit 2. She asked Ms. Clark if she recognizes it and if so what it is.

Ms. Clark stated she does and it is a trade name registration.

Ms. Collins said and you filed this with the state right.

Ms. Clark said yes we did.

Ms. Collins submitted Exhibit 2 to the board a "State of Ohio Certificate #4215804 for Trade Name Registration (RNO) – Document ID 201821302056, effective date August 1, 2018.

Ms. Collins asked based on their records and to the date of this document when was the trade name of the farm Chagrin Valley School first used.

Ms. Clark said in the spring, it says, March 15, 2018.

Ms. Collins asked Ms. Clark to state the nature of the business on the registration form.

Ms. Clark said agriculture and education.

Ms. Collins asked if the filing of the trade name registration in anyway changed the purpose of the farm.

Ms. Clark said no it did not.

Ms. Collins asked Ms. Clark if to her knowledge did her 2018 trade name filing roughly correspond at the time Ohio adopted its agritourism protections for educational and recreational for adding the farms.

Ms. Clark said yes it did.

Ms. Collins asked Ms. Clark if she could tell us her best description of the Chagrin Valley School.

Ms. Clark said this is a question she gets a lot. She said Chagrin Valley School is, it is a program that we created that gives children, participants, an opportunity to be in what we call a certain mini society, it is not a school in any kind of a normal sense of a school so we have no curriculum, we have no agenda for the kids other than they are there to explore their learning on their own. She said what they are creating is a mini society that is in the context of a farm so she thinks she needs to step back and describe what permaculture is. She said what permaculture is is a design philosophy that uses nature as its model so when they started the farm what we are doing is we are putting a lot of elements in place that can work together so rather than, for example in the garden, planting rows of vegetables or rows of corn they are really focusing on creating ecosystems that primarily that are sort of perennials rather than annuals so you are starting something and putting into place and you are putting elements that work with it together so we take that as our design principal for the farm and then what we need after that is community so the farm requires a community of people to maintain it and also their mission is to be connected to community resource so bringing people onto the farm is a very big part of designing the farm so that is why we started with it and she knew that animals would really be interesting to the public especially the kids. She said so the next step is to sort of create that community and make it more resilient and offer an opportunity for people to have a real authentic experience of being on the farm and so the only way you are going to have an experience of being on a farm is to be on a farm on a regular basis. She said you can't just go and visit a farm and look at it, that is not really experiencing it so what we have created is a community in which our participants can be involved in the day-to-day activities of the farm and that is what we offer at the school.

Ms. Collins said thank you. She said so you (Ms. Clark) are telling me that it is not a school, the Chagrin Valley School is not a school but you use the name school in the name, in the trade name. She asked Ms. Clark to tell her why she did that.

Ms. Clark said first of all, all of their participants are registered as homeschoolers so they do not report to the state about any of their student attendance, they do not do any assessments, they do not do any curriculum particularly curriculum that would prepare them to meet state determined objectives.

Ms. Clark continued by saying so the question was why do we call it a school and we did think about that when we came up with the name and really it is important for us to be able to reach out to the community and appeal to families that don't necessarily think of themselves as really being to a farm or might not consider or consider themselves homeschoolers for example so by calling it a school is to convey to families that this is a viable educational option for their kids and so that is why we call it a school.

Ms. Collins said you (Ms. Clark) mentioned that you don't really seek to meet any kind of standards, is it correct that you don't seek to meet state educational standards at all.

Ms. Clark said not at all.

Ms. Collins said in your on-line materials and handbooks you use the term enrollment and students which are terms commonly associated with schools, why call them students.

Ms. Clark said the term student online simply refers to being a learner so in that context actually we are all students so even as staff we call ourselves staff we don't call ourselves teachers. She said the staff are often in that student roll just as the students are often in a teacher roll and even an administrative roll so we see with the members or participants in our program they are actually teaching themselves more often than they are getting any teaching from us as the adult members. She said they consider themselves more as models for the children, models of passionate, lifelong learning, models of working and developing our own skills and sharing those with the kids so we use those for our students, teachers and administrators really to apply to all of the members of our community.

Ms. Collins asked Ms. Clark if they offer any kind of programming to put on for the students during the summer.

Ms. Clark said they do have summer camps, they are different in the enrollment too and she thinks one of the reasons why we use the term enrollment is because our program depends on having that consistency of members there on a regularly basis because it really depends, our participants are given a great deal of freedom and that really again depends on the respect and trust that we can develop with the members of our community so it is really important to them that they are there on a regular basis and we get to know them and they get to know us and they get to know the farm very intimately and that is the way you can really be very effective and in knowing that they will have to keep themselves safe, we watch them when they first come so the summer program is different because we often just have kids there with us for a week so we really need to have a more structured program for them.

Ms. Collins asked Ms. Clark if any of the participants in her program are registered as a homeschooled child.

Ms. Clark said yes, absolutely.

Ms. Collins asked if the program is restricted to homeschooled children.

Ms. Clark said yes it is.

Ms. Collins asked if her program is the equivalent to what is known as homeschool co-op.

Ms. Clark said yes it is.

Ms. Collins asked how people become members of the school.

Ms. Clark said in order to become a member of our school the potential member attends school for a couple of weeks under total observation by the staff and the other students and so we observe that person to make sure that they have personal responsibilities, that they are able to keep themselves safe and that they are able to understand rules, rules of safety, rules of getting along with each other and we have a preamble which is a statement of accepting the responsibility for freedom, respect and trust and we explain that to them and then at the end of that sort of practice period that if we all agree then they sign the preamble in accepting that responsibility.

Ms. Collins said that preamble is something for a family member, correct.

Ms. Clark said yes it is.

Ms. Collins said she is presenting appellant Exhibit 3 and asked Ms. Clark if she recognizes it and what it is.

Ms. Clark said this is their enrollment contract.

Ms. Collins submitted Exhibit 3 to the board "Enrollment & Tuition Contract between parent(s) or legal guardian and Chagrin Valley School".

Ms. Collins asked if your number of families notice that the Chagrin Valley School doesn't provide any form of educational accreditation.

Ms. Clark said absolutely, we are very clear on that.

Ms. Collins asked where is that in the contract.

Ms. Clark said point 11 and 12 she would say.

Ms. Collins said she just wanted you (Ms. Clark) to point it out to the board, so 11 and 12. She asked in that language is there a statement that all learning is self-directed.

Ms. Clark said yes it does.

Ms. Collins said in moving away from the contract do you (Ms. Clark) understand them, what other reasons to choose membership in Chagrin Valley School for families that homeschool.

Ms. Clark said there are a variety of reasons that families choose Chagrin Valley School, some families are choosing it explicitly because it is a farm-based program, other families are looking for an opportunity for their children to spend a significant amount of time outdoors, as much as they would like. She said she thinks other families have difficulty with traditional education, their child may be unhappy in a traditional school environment, they may not be thriving, they may have abilities and talents and interests that are not nurtured in a traditional school.

Ms. Collins asked is it possible to operate the Chagrin Valley School on a permaculture farm.

Ms. Clark said their school really comes out of the farm, the farm provides a context for participants or she would say meaningful, meaningful purpose outside of just being educational institutions so for example at previous schools where she has worked they have been notably progressive and interested in providing problem-based learning or experiential learning but in those cases what happens is they may take interest of a student and then craft a curriculum around them so the student can create logics and experiences and assessments based on that. She said they do kind of the opposite of that, what we are creating with the farm is a context environment which means work is happening so staff members volunteer so that other people who come in are doing stuff on the farm, they are working with the animals, they are planting crops, harvesting crops, making crafts out of farm products, do food preservation, all of these things are happening on a farm and the program participants are there to participate in those activities to the extent of their interests so like she said it is sort of a mini society where the kids are there and observing these authentic activities and participating in that to the extent that they are willing so for example they will often start a little, they might pick some herbs from the garden and make some lemonade and try to sell it up front of the property or we have some that are interested in the animals and to be honest they are more attentive to the animals than she is so she actually relies on them to tell her when a chicken is not doing well or when a rooster is bullying some of the other hens and she relies on them and in fact they will tell her for example if a rooster is bullying one of the hens and we will have a meeting and we will get the school together and talk about it and what we are going to do about this rooster and we have had to make a decision to say that we can't have that rooster on the farm anymore and they know that and sometimes they become attached to these animals but they have to grapple with that decision, it is not in the best interest of the rest of the flock to keep that rooster and so the decision is made we may have to actually slaughter that rooster and we don't force any kids to take part in any of this at all but it is part of the farm so they are making those decisions literally and they are part of that.

Ms. Collins said so it sounds like it is very difficult to operate the Chagrin Valley School outside of the context of a permaculture farm but are you (Ms. Clark) doing that right now.

Ms. Kelly said they are keeping the group together, we have lost a few families who have pulled out for the time-being until they can get back on the farm because the farm is so important to them but most of their families are still with them, we have been holding our meetings, there are various Geauga Park lodges, we are currently meeting at the Federated Church in Chagrin Falls but it is very difficult, the kids are used to being able to just go out the door and be outside and run around when they feel like it, now they've got kids running around on the third floor of the Federated Church and then someone is coming up and telling us they have to stop running around, that is the whole point of their school, we are not teaching kids stuff indoors and we have that situation right now.

Ms. Collins asked Ms. Clark to describe the farm property for the board.

Ms. Clark said the property is six acres, we have a very wide frontage on S. Franklin and then it narrows down and that last strip at the end is wooded so it kept our buildings more toward the front of the property and then the middle between the woods we support the animal focus with a pasture and the chickens and things like that.

Ms. Collins asked Ms. Clark if she welcomes members of the public onto the farm under normal circumstances.

Ms. Clark said yes we do.

Ms. Collins asked why they do that.

Ms. Clark said we have always wanted to be open to the public so that people can come by and enjoy being there, a lot of the people get really attached to the chickens or the sheep or the goats and other times we have people bring their grandchildren when they come to town, and then we have our workshops.

Ms. Collins said so in addition to the homeschool co-op educational you are describing the farm, does the farm offer in addition recreational and educational activities for adults.

Ms. Clark said yes we have hosted a Yoga teacher training and we also host Northeast Ohio time bank which is a community building project.

Ms. Collins asked Ms. Clark how many buildings were on the property when she bought it.

Ms. Clark said she would say two, the original house was there still although it hadn't been lived in in seven years and there was a large shed.

Ms. Collins asked how many buildings are on the property now.

Ms. Clark said ten she believes.

Ms. Collins said she is going to hand you actually a provision of the Ohio Revised Code Section 519.01 and it relates to township zoning authority when it relates to agriculture and asked Ms. Clark to read that definition of agriculture out loud.

Ms. Clark stated the following – “As used in sections 519.02 to 519.25 of the Revised Code, “agriculture” includes farming; ranching; algaculture meaning the farming of algae; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops; tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.”

Ms. Collins said thank you and asked if there is anything listed in that definition there relative to your farm.

Ms. Clark said there are a few but we do of a lot of them, permaculture involves doing a lot of things at once so she would say they do not do algaculture.

Ms. Collins asked if they will be hosting that in the future.

Ms. Clark said in the future they are doing that and no tobacco and no sod, that is it.

Ms. Collins said okay and asked are these things you do at the Chagrin Valley School.

Ms. Clark replied yes.

Ms. Collins said she is going to refer to another provision of the Ohio Revised Code that relates to what is call Agritourism in Section 910.80 and she is going to direct your attention to Subsection A, Paragraph 2.

Mr. Lamanna said just a point here, you can have her testify to what they do, he would rather you have her testify to what they do and not be reading from a statute because now you are asking her to give an opinion as to whether or not what is in the statute is what she is doing and he is not sure she is qualified to do that. He said plus it is very difficult for the record when you are saying all of these things but then we are going exception, exception, exception, it is just a lot easier to say, tell us what you do at the farm. He said you can ask the question but let’s have a positive recitation of what is done not a here the statute says this and yes I do this.

Ms. Collins said okay, she understands.



Mr. Lamanna said we are crossing and blurring lines here to exactly what is in the record.

Ms. Collins said okay. She asked Ms. Clark what she grows on the farm.

Ms. Clark said we've had beekeeping, we have annual vegetables and fruits, we have perennial fruits, nuts, we have sheep, we have goats, we have chickens, ducks, goats, sheep, rabbits, we have ornamental shrubs and trees, we have flowers, perennials and annuals, mushrooms, we do mushrooms and she thinks that is mostly it.

Ms. Collins said and you have poultry on the farm.

Ms. Clark said yes, ducks, chickens, rabbits.

Ms. Collins said and you also grow grapes, right.

Ms. Clark said yes, they have a couple of grape vines.

Ms. Collins asked Ms. Clark if she would say her education on the farm is agricultural related.

Ms. Clark said yes, absolutely.

Ms. Collins asked in what way.

Ms. Clark said she thinks as she said before the farm context is something that even though you may have participants who come in and they have no special interest in the farm or farm activities, they may come for other reasons, the farm context is there throughout so we have things happening on the farm so for example, any day now we should be getting a new lamb and in the spring we sit and discuss among our members, do we want to get chicks this year, how are we going to that and all of these things that everyone ends of being connected in some way, there is also the seasonality of being on the farm in the fall and winter and spring and seeing the different kinds of activities that go on and participating in different kinds of activities that go on.

Ms. Collins asked about recreation, are there recreational opportunities that you provide agriculturally related.

Ms. Clark said yes, that is why they come to be on the farm.

Ms. Collins said you (Ms. Clark) got township approval of one of the buildings on your property, is that right.

Ms. Clark said the building we call a tree barn.

Ms. Collins asked Ms. Clark what type of authorization did she seek.

Ms. Clark said they were registering the building that we were going to build as an agricultural building.

Ms. Collins said and you were one of the people who interacted with the township to seek that application, correct.

Ms. Clark said yes.

Ms. Collins asked Ms. Clark if she recalls how she described the use of the tree barn.

Ms. Clark said they described the barn as a place where they could have agricultural teaching, people could come and learn about the farm.

Ms. Collins said and the zoning approved that application correct.

Ms. Clark replied yes they did.

Ms. Collins asked could we spend a moment to go through each of the buildings on the property and their uses and starting with what you call a yurt.

Ms. Clark said the yurt is the round building on the north side, it is a 200 sq. ft. building that we currently use as the home base for preschool and outdoor learning program so they are not in there a lot when it is not going to rain but they use it for a home base.

Ms. Collins asked if it is used for education, recreation and a gathering place.

Ms. Clark said yes.

Ms. Collins asked if you call its use as agricultural.

Ms. Clark said agricultural education.

Ms. Collins said we were just talking about the tree barn, could you tell us about that building.

Ms. Clark said the tree barn is the middle building, the largest one in the middle right next to the parking lot and that building is about 800 sq. ft. total and it is a pole barn structure but it has straw bale walls for insulation and so that building serves as a gathering place, a meeting place and it is also kind of our, it is a very big example of permaculture in that it is constructed of largely locally produced materials, locally source materials and actually built with a lot of volunteer labor.

Ms. Collins said the next building you described to her was this building.

Ms. Clark said the tree barn is an example of permaculture that a lot of people are interested in seeing so we do get a lot of people come in to tour that building and ask questions about it.

Ms. Collins said the next building you described to her is called the red cottage, can you tell us about that.

Ms. Clark said it is 144 sq. ft. and it is directly below the tree barn so take the tree barn and go down (she referred to the aerial photo), there are two buildings there, the red cottage is the one above it so the red cottage is 144 sq. ft. and we keep our craft materials there.

Ms. Collins asked who uses that building.

Ms. Clark said people who are interested in doing different crafts, but everyone who goes in that building needs to be certified that they are responsible and not go in there and mess everything up.

Ms. Collins said the next building is what you call the library and asked Ms. Clark to describe that and show us where it is.

Ms. Clark said the library is right below or east of the red cottage and the library has a 200 sq. ft. footprint and that is where they keep a lot of books and that is where they store them for all members of the community and it is also a place where they might want to meet in small groups.

Ms. Collins asked about the pavilion, what is that and how is it used.

Ms. Clark referred to the aerial photo and said the pavilion is that building right there, it is the second large building and that one is about 700 sq. ft. or something and that is where we have a kitchen for personnel to cook for ourselves and the kids can learn how to cook, they want to cook their own meals and they do food processing in there, jams, hydrating, products from the farm and it is also a gathering space.

Ms. Collins asked Ms. Clark if she can describe just generally how that building is built.

Ms. Clark said that has a more conventional traditional, it is a pole barn structure also and it has got the wall in the back and the three sides are open although they do have these vinyl curtains in there to help the season for the use of it.

Ms. Collins asked what about the tool shed.

Ms. Clark said the tool shed is going to be left of this picture, she referred to the aerial photo. She said the tool shed was a shed that was on the property when they bought the property and she is not sure but it is 600 sq. ft., 12' x 24', and we moved it from its original location to that current location.

Ms. Collins asked how it is used.

Ms. Clark said as a tool shed and we are converting it to a woodshop.

Ms. Collins asked about the animal feed shelter, where is it located.

Ms. Clark said the animal feed shed is right behind the pavilion, to the left, it is very small and that one is pretty small, it is about 150 sq. ft. and basically just holds feed and some other halters and things like that, brushes for the animals.

Ms. Collins asked about what you call the farm store.

Ms. Clark said the farm store is out front, it is pretty small so the square footage of that is a little over 100 sq. ft. something like that so at this point we haven't been actively using it but we are planning on having that be like a roadside farm stand starting this spring.

Ms. Collins said you also have a bathroom building correct.

Ms. Clark said correct.

Ms. Collins asked if it is used for staff.

Ms. Clark said yes, it is very small.

Ms. Collins asked where that is located.

Ms. Clark said it is sort of in between, sort of right in the middle.

Ms. Collins said and it is only used as a restroom correct.

Ms. Clark said yes, and washing hands.

Ms. Collins said and you also have a port-a-potty and a building that covers the water well, is that right.

Ms. Clark said yes, correct.

Ms. Collins said she is going to shift gears from the map and ask some questions about the stay. She asked Ms. Clark if she knows who Bill Lovell is.

Ms. Clark said yes, he is the Assistant Fire Chief.

Ms. Collins asked how she knows him.

Ms. Clark said Mr. Lovell showed up at the barn saying that he was just driving by and happened to see a sign out front and was curious and wanted to see what was going on.

Ms. Collins asked Ms. Clark when she recalls approximately when he stopped by.

Ms. Clark said it was about September 24<sup>th</sup> or something like that.

Ms. Collins asked Ms. Clark how she responded to what you described as an impromptu visit at your farm.

Ms. Clark said we wanted to know what we needed to do to alleviate his concerns, what actions we could take.

Ms. Collins said the same day that he had showed up to the farm, did he come again.

Ms. Clark said yes he returned with the fire chief and the zoning inspector.

Ms. Collins asked did he or anyone else take any action at that time or provide you with any kind of guidance.

Ms. Clark said we walked around and looked at everything and they were actually very positive about what we were doing which was nice but the only action that they or only advice that they gave us was to figure out what kind of licensing we needed.

Ms. Collins asked Ms. Clark if she contacted an electrician in response to that visit.

Ms. Clark said yes within a week we contacted an electrician because we wanted to see what we could do because most of the things he was talking about had to do with the electrical system.

Mr. Lamanna asked Ms. Collins where are we going with this, how is it germane to, we only have a limited amount of time here and he sort of let you (Ms. Collins) go along here and the issue before the board is did the zoning inspector make an error, it has nothing to do with the fire department, please understand that that is out of our jurisdiction, we have nothing we can do here, whatever they say as far as this board is concerned is the law, we can't second guess that or do anything about that, you have to appeal that to a second board.

Ms. Collins said she doesn't disagree with that but each of these visits included the zoning inspector.

Mr. Lamanna said okay.

Ms. Collins said she promises that she will move very quickly.

Mr. Lamanna said meanwhile, if it has something to do with the zoning inspector why don't we cut to the chase and say okay, the zoning inspector came on this date and we don't have to discuss what the fire chief was doing or what these other people were doing because it is not really germane.

Ms. Collins said we can say it is germane because the general description is meeting licensing and it caused a zoning inspection response and interpretation of your resolution and the ultimate decisions that were made by the fire chief which we will not address of course.

Mr. Lamanna said okay, continue on but let's try to say something germane here.

Ms. Collins said we understand but we are trying to create a record as well. She said in response to the question about licensing that was brought up, did the Ohio Department of Job and Family Services come by your farm.

Ms. Clark said yes, about a week or so later we did get a visit from the Ohio Department of Job and Family Services interested in determining whether we were a daycare center.

Ms. Collins said and you (Ms. Clark) made the township aware of that visit, correct.

Ms. Clark said yes she was in contact with Bill Lovell back and forth and he came for another visit and she told him they had a visit from the Ohio Department of Job and Family Services and he had not arranged that but he had contacted the Ohio Department of Education or the Superintendent of Kenston Schools or something like that so he was trying to figure out what our licensing needed to be as well.

Ms. Collins said and you ultimately did hear back from the Ohio Department of Job and Family Services, correct.

Ms. Clark said yes so their concern was we were open beyond 4:00 in the afternoon because those are school hours so we have arranged with them that we are no longer going to be doing that and our school hours will close at 4:00 starting in January and they accepted that and they said they are not going to pursue questioning us as a daycare center.

Ms. Collins said she will get to that in just a moment, related to their determination and just to keep things in order you (Ms. Clark) ultimately received an in person letter from the zoning inspector about your status as a school and if she recalls that.

Ms. Clark said from the zoning inspector, so they requested that we apply for a conditional use permit to operate as a school.

Ms. Collins said she is submitting appellant Exhibit 4 to the board and asked Ms. Clark if she can tell us if she read it and what it is.

Ms. Clark said yes she does and it is a letter saying that we are operating as a school and a daycare and that we need to seek a conditional use permit and in the meantime we need to cease operations.

Ms. Collins asked Ms. Clark how she responded to that.

Ms. Clark said we met that afternoon and made a quick plan to cease operations starting on Monday and started finding other places to meet.

Ms. Collins asked if there were other meetings with the zoning inspector and fire chief after that date.

Ms. Clark said that date when she went, she came here when she handed this letter to me and at that point Mr. Lovell said he would return the following Thursday to meet with her to go over the various issues that we need to address.

Ms. Collins asked Ms. Clark if she recalls being served with a warrant for inspection.

Ms. Clark said no.

Ms. Collins said an administrative one.

Ms. Clark said not the first time.

Ms. Collins said okay but later in time you were served the warrant.

Ms. Clark said yes.

Ms. Collins handed Ms. Clark appellant Exhibit 5 and submitted it to the board and asked her if she recognizes it and what it is.

Ms. Clark said yes this is a warrant to conduct an administrative search.

Ms. Collins asked Ms. Clark if she could turn to paragraph five in the affidavit for her.

Ms. Clark said yes.

Ms. Collins asked Ms. Clark to read it out loud.

Ms. Clark stated “On September 23, 2019, the Fire Department received a complaint of potentially significant fire safety concerns at a school operating on the premises known as Kelly’s Working Well Farm, d/b/a Chagrin Valley Schools (“premises”), located at 16519 Franklin St., Chagrin Falls, Ohio.”

Ms. Collins asked Ms. Clark if she recalls ever knowing about a complaint being made about the operations.

Ms. Clark said no, no one had told them about that.

Ms. Collins said looking at paragraph seven of this same affidavit she is just going to summarize the remarks that you stated that she runs a private school to Mr. Lovell.

Ms. Clark said no he did not know that I was not a school.

Ms. Collins said so you disagree with that.

Ms. Clark said she disagrees with that statement.

Ms. Collins said okay. She said after execution of the warrant did the zoning inspector take action.

Ms. Clark said yes, they shut down the school.

Ms. Collins said she is handing you (Ms. Clark) what has been marked as appellant Exhibit 6 and submitted it to the board and asked Ms. Clark if she recognizes that and tell us what it is.

Ms. Clark stated that this is a revocation of a zoning certificate.

Ms. Collins asked if that relates to the tree barn that we were talking about earlier.

Ms. Clark said yes this is about the tree barn.

Ms. Collins asked Ms. Clark if she could read the reason for the revocation stated in the letter.

Ms. Clark stated “The work or use is not being conducted in accordance with the approved application and plans.”

Ms. Collins asked Ms. Clark to remind us of the original use that she remembered submitting to the zoning inspector for construction of the tree barn.

Ms. Clark said agricultural education.



Ms. Collins asked if there have been any other inspections since the execution of that warrant at the facilities.

Ms. Clark said not to her knowledge.

Ms. Collins said you (Ms. Clark) earlier referred to having contacted the Ohio Department of Job of Family Services to determine whether you need a license and does she recall that.

Ms. Clark said yes.

Ms. Collins said it is marked as appellant Exhibit 7 and submitted it to the board. She asked can you (Ms. Clark) tell us what that is.

Ms. Clark said this is a licensing determination questionnaire that when they visited that ODJFS left with her and that is what she filled out and sent back to them.

Ms. Collins asked if it describes her operations at the time that she was applying for licensing determination.

Ms. Clark said yes.

Ms. Collins asked if anything changed since then.

Ms. Clark said they have changed their hours to operate between 8:30 and 4:00.

Ms. Collins said and finally appellant Exhibit 8 and asked Ms. Clark if she recognized that.

Ms. Clark said yes this is an email from Valerie Keller of ODJFS.

Ms. Collins asked Ms. Clark if she could read for the board your November 6<sup>th</sup> email that was from you. She said it is on the third page of the exhibit.

Ms. Clark stated yes, "Thank you for your help on the phone yesterday. As per our discussion, we will notify our school families as soon as possible that we will be changing our school hours. Our school has been operating from 8:30 am – 5:30 pm, and our new operating hours for the school will be from 8:30 am – 4:00 pm which will go into effect on January 1<sup>st</sup>, 2020. Our outdoor preschool's capacity will remain at only six 3-5 year olds for the time being. In the future we may want to expand the preschool at which point we would seek licensure from ODJFS. Our preschool will continue to operate from 9 am - 3 pm on Mondays, Tuesdays & Wednesdays. The preschool will continue to operate out of their own building on our campus, a 200 sq. ft. yurt, which is a dedicated space."

Ms. Collins said Ms. Clark can stop there and then go to the first page of that same exhibit and tell her what the ODJFS response was.

Ms. Clark stated that she wrote “Good Morning, As they have approved the timeline for your plan, you most likely will not see myself and Krystal again until after January 1<sup>st</sup> to complete our second visit and to close the case. If you do have any other questions before then, please do not hesitate to reach out to me. Kind Regards, Valerie Keller.”

Ms. Collins said so is it your (Ms. Clark) understanding at this age you do not need a license as a childcare center by ODJFS.

Ms. Clark replied yes.

Ms. Collins asked if you or one of your staff members contacted the Department of Education to determine if you need any kind of approval from them.

Ms. Clark said yes we have.

Ms. Collins asked who that is.

Ms. Clark said Ian Mungall, a staff member.

Ms. Collins said thank you and she is done with this witness. She asked the board if they have questions of this witness.

Mr. Lamanna stated that we will let the Counsel representing the township go first and then the board will ask any questions they have.

Ms. Linda Applebaum, Assistant Prosecuting Attorney for the Geauga County Prosecutor’s Office stated that she represents the zoning inspector in this matter and also the fire department and Bill Lovell in the injunction case which is not before this board but it is related. She stated that she has a few questions and will try not to be repetitive. She asked Ms. Clark, when she rolled out her school there as an article, she believes that is Exhibit 9 that was in the Chagrin Valley Times.

Mr. Lamanna asked what is Exhibit 9 of.

Ms. Applebaum said Exhibit 9 is right there. She said there was an article in the Chagrin Valley times dated August of 2015 and asked does that sound correct.

Ms. Clark replied yes.

Ms. Applebaum said so you contacted a reporter about the opening of your school, is that correct.

Ms. Clark said yes.

Mr. Lamanna reminded everyone that all responses have to be done verbally.

Ms. Applebaum said so this article was around August 2015, correct.

Ms. Clark said yes.

Ms. Applebaum said she is trying to get the timeline down. She asked Ms. Clark when she approximately started collecting tuition opening her school.

Ms. Clark said they started in the fall of 2016.

Ms. Applebaum asked Ms. Clark if there were other founders or organizers in addition to her husband.

Ms. Clark said they had two other staff members in the school.

Ms. Applebaum asked who are those people.

Ms. Clark said actually Zoe and Matt who are not with us at this time.

Ms. Applebaum asked why did Matt leave.

Ms. Clark said he wanted to pursue his own business.

Ms. Applebaum said it sounds like you had attracted some students from homeschools and high schools, is that correct.

Ms. Clark said yes.

Ms. Applebaum said when you opened your school you never contacted the county building department, the fire department, the Ohio EPA, the health district or any other relating agencies regarding this safety at your school, is that right.

Ms. Clark said that is correct because we are not an actual school by the definition in the Ohio Revised Code.

Ms. Applebaum asked if that is because she (Ms. Clark) believes that you fall under agritourism.

Ms. Clark said no it is because we are a homeschool co-op.

Ms. Applebaum said but you are a tuition collecting school, correct.

Ms. Clark said yes.

Ms. Applebaum said she doesn't think you (Ms. Clark) told the representative of the fire department that there are 35 – 40 students, is that correct.

Ms. Clark said more like 35.

Ms. Applebaum asked if that is as high as her enrollment, 35.

Ms. Clark replied yes.

Ms. Applebaum said and the ages are 3 through 17, correct.

Ms. Clark said they have a small preschool which is 3 to 5 and the Chagrin Valley School is 5 through 17.

Ms. Applebaum said after the serious hazard order was issued by the fire department you said you relocated your school to the church, correct.

Ms. Clark said that is where we are currently.

Ms. Applebaum said and you are still collecting tuition at the church.

Ms. Clark said yes.

Ms. Applebaum asked if she is providing instruction in the church.

Ms. Clark said actually no, we do not provide instruction, that is explicitly in our enrollment contract.

Ms. Applebaum said what are you doing in the church with students.

Ms. Clark said they are providing environment for the students and it is self-directed learning so we do not agree to provide any specific instruction to the parents, we do help the students if they have questions, we can help them with projects that they are interested in but we don't do instruction.

Ms. Applebaum asked Ms. Clark if she would enroll students if they are interested at the church at this time, correct.

Ms. Clark said yes.

Ms. Applebaum said in your student handbook, that is page 26, and that is Exhibit 5, it states the enrollment is full-time, five days a week or part-time 3 to 4 days a week, correct.

Ms. Clark said that is correct.

Ms. Applebaum said and parents are to notify the school in advance if there are changes, is that right.

Ms. Clark said that is correct.

Ms. Applebaum said and the parents pay, do they pay yearly or monthly, how is tuition paid.

Ms. Clark said they have an option to pay what is convenient to them.

Ms. Applebaum said if a day is missed by these students the parents don't get compensated correct.

Ms. Clark said correct.

Ms. Applebaum said and the school hours currently are 8:30 to 5:30, is that right.

Ms. Clark said starting in January, 8:30 to 4:00.

Ms. Applebaum said on page 27 of your student handbook, Exhibit 5, it states "School members are required to pack a lunch including preschoolers. There often is food available at the school however it is not consistently provided..." so you do serve and prepare food from your kitchen at times.

Ms. Clark said no we actually don't, the food that you are talking about would be like yogurt or something they would prepare themselves.

Ms. Applebaum said in the kitchen.

Ms. Clark said yes.

Ms. Applebaum said under tuition that is the same page it says "The school is funded through preschool and school tuition, summer camps and occasional small fundraisers and grants." She asked Ms. Clark what grants she has received since she opened.

Ms. Clark said they actually haven't applied for grants but people have donated grants to them and she can't remember exactly what they were.

Ms. Applebaum said so your school is mostly funded by the tuition of the parents, correct.

Ms. Clark said correct and then summer camps.

Ms. Applebaum said it also states first child \$6,500, second child is \$5,000 and third or more \$4,000. She asked what term is that over.

Ms. Clark said she thinks those are monthly.

Ms. Applebaum said those are monthly.

Ms. Clark said monthly rent.

Ms. Applebaum asked under staff in the handbook, further down, how many full-time staff do you have at the school.

Ms. Clark said we have three full-time staff.

Ms. Applebaum asked how those individuals are paid.

Ms. Clark said she doesn't understand the question.

Ms. Applebaum asked how they are compensated.

Ms. Clark said with money.

Ms. Applebaum asked if they are employees or are they working off their labor.

Ms. Clark said they are employees, we do do some tuition reduction for one of our employees.

Ms. Applebaum said who has a student.

Ms. Clark said yes.

Ms. Applebaum said on your IRS 990 forms which are attached here to the package as Exhibit 7, first off, the forms, they show a dramatic increase, income jumped up 15% and this is 2016-2017 after you enrolled your school.

Ms. Clark said yes.

Ms. Applebaum said and then from 2016-2017, 67% so what were you doing before you opened your school.

Ms. Clark asked personally.

Ms. Applebaum said there is no 990 form so the assumption is it is below \$50,000, there is no 990 form before 2016 so what were you doing.

Ms. Clark said she was working at Hawkins as a teacher full-time.

Ms. Applebaum said and what was the revenue of the school or the school didn't exist.

Ms. Clark said right.

Ms. Applebaum asked what was going on on the farm.

Ms. Clark said the only revenue generation we would have would have been from the summer camps which was lower.

Ms. Applebaum said it was below 50.

Ms. Clark said yes.

Ms. Applebaum said because you didn't have to report it, correct.

Ms. Clark said right.

Ms. Applebaum asked Ms. Clark how many students has she had graduate from her school.

Ms. Clark replied none have had graduations yet.

Ms. Applebaum asked Ms. Clark if she anticipates.

Ms. Clark said yes, eventually.

Ms. Applebaum said in the near future.

Ms. Clark said yes.

Ms. Applebaum said now it states under self-directed model of instruction, this is page 30 of your handbook, it states "In our self-directed model there are no traditional classes but students may request a specific way to learn any subject they are interested in. Students may decide that they want to take a class in a particular subject, academic subject like chemistry, Spanish, English Literature so how does that work.

Ms. Clark said if students are interested in and they ask for it we can help them and we can work with them ourselves if we have that in our toolbox or we can help them find someone to help them with that but it definitely has to come from the kids, if it is coming from the parents it doesn't work because we are not going to make them attend any kind of class, they really have to initiate it so if they want to meet on a regular basis they need to be telling us they want to meet with us, we are not going to chase them down for it because it is really coming from them and their desire to learn.

Ms. Applebaum said but you have provided traditional instruction at times, it sounds like in math and your expertise in physics it sounds like the sciences.

Ms. Clark said she wouldn't necessarily call it traditional education but she works with students and helps them pursue their interests.

Ms. Applebaum said she had no further questions.

Mr. Lamanna said alright, he has some questions. He said in looking at these exhibits, just for the record Exhibit 4 that has a brochure and Exhibit 5 he believes is your handbook.

Ms. Collins said Chairman she believes there are a number exhibits from both parties.

Mr. Lamanna said right so what he is trying to do is he is trying to establish what exhibits are where and also wants to establish that at least these two exhibits are things of her organization and he wants her to establish that they are in fact true and accurate copies of those documents and that there is not anything in there that she would dispute or that is not an actual reflection of what is said.

Ms. Collins said those are not exhibits that she presented to her, she thinks those are exhibits that were represented on cross-examination and if you want to mark them Township Exhibit 4, that is fine with her.

Mr. Lamanna said you have been numbering.

Ms. Collins said she has been numbering.

Ms. Applebaum said she believes the appellant exhibits are letters.

Mr. Lamanna said yes but we started off with numbers and they should have been letters, you are right.

Ms. Applebaum said she doesn't have a problem using numbers or letters.

Mr. Lamanna said since we already started with numbers for the appellant we are going to have to use letters for yours and/or the board's.

Ms. Karen Endres, Zoning Inspector asked if she should be sworn in to clarify the exhibits.

Mr. Lamanna swore in Ms. Karen Endres, Zoning Inspector for Bainbridge Township and noted that Ms. Endres was duly sworn.



Ms. Endres testified that she is the Zoning Inspector and when you see the appeal packet from Kelly and her attorney, when she submitted the form for Zoning Inspector Error those forms or Exhibits were A, B, C, D, they were letter exhibits so when she put together the packet for her defense she chose to use numbers to avoid this confusion, she didn't know they were bringing new exhibits today, numbered, so it might make sense to, she doesn't want to tell the board what to do here, but it might make sense to continue using letters for the appellant's exhibits and numbers for the township.

Mr. Lamanna said we already have a whole bunch of exhibits that have already been offered and admitted and technically as yet none of these have actually been offered and admitted.

Ms. Endres said so we will just need to renumber them.

Mr. Lamanna said as we go through these things. He said he is going to offer these two exhibits. He asked Ms. Collins if she has seen these exhibits, copies.

Ms. Collins said she has not.

Ms. Endres said she didn't mean to interrupt, she was just trying to make sure all of the exhibits were there.

Mr. Lamanna asked if we have another set of these exhibits that we can give the appellant.

Ms. Applebaum said re-mark.

Mr. Lamanna said he would like to get the Counsel for the appellant a copy of this.

Ms. Applebaum asked of this, are these exhibits, they already have them because they are in the packet and listed on the second page.

Mr. Lamanna asked Ms. Collins if she got a copy of these.

Ms. Collins said she does not have a package everyone is talking about.

Ms. Endres said she doesn't think the appellants have this copy.

Mr. Lamanna said that is why is saying, do you have an extra copy that we can give to the appellant. He said he likes to be very careful about making sure these things are marked and entered.

The secretary gave her copy to the appellant.

Ms. Collins said thank you.

Mr. Lamanna said he will break up his copy so at least what he would like to do at this point in time is and he doesn't know if other ones of these are going to be offered but the reason he is asking her is because she is here and these relate to what looked to be documents that were produced by her organization that she runs so what he would like to do is have her look at what will be marked A and B in this packet so for initial reference it is 4 and 5 and these will become Exhibits A and B.

Ms. Clark said yes she recognizes number 4 and she recognizes number 5.

Ms. Collins said and those will be marked A and B.

Mr. Lamanna said A and B and you have identified those, those are your documents produced by your organization and accurately reflects what is contained in there and with respect there is nothing you would say that is wrong, you have no corrections at all.

Ms. Collins said right.

Ms. Applebaum asked which exhibits the board is referring to because she is totally confused.

Mr. Lamanna said he is referring to Exhibits 4 and 5 in the Zoning Inspector's packet which will now be marked A and B which are an advertising brochure and the handbook. He said he is going to hand a copy of those to the secretary that are marked Exhibits A and B and noted that those are corrected. He said just to clarify, Job and Family Services, up until just today you are changing your hours, up until today you were not, they have alleged that you are under their jurisdiction at least as far as they define daycare.

Ms. Clark replied yes.

Mr. Lamanna said you used the term homeschool co-op.

Ms. Clark said yes.

Mr. Lamanna asked if that is a term of art, is that a defined term anywhere in the Ohio Revised Code or Administrative Code.

Ms. Clark said not to her knowledge.

Mr. Lamanna asked Ms. Clark if she has ever been advised.

Ms. Clark said no, she doesn't know that there is a term that describes a homeschool group other than homeschool co-op.

Mr. Lamanna said there is no trade organization or anything like that that has some kind of definition.

Ms. Clark said no, not to her knowledge.

Mr. Lamanna said there is nothing that is defined with that. He said he is not familiar with the whole homeschooling thing, the requirements but you said all of the people at your school are homeschooled. He asked do they have to report these activities to the state as part of their demonstration.

Ms. Clark said homeschoolers, to her understanding, is they have three options, they can have their children take a standardize test at the end the year, they can also prepare a portfolio of their work or they can have their student interviewed by a certified teacher and that person can sign off of the estimate according to their ability, those are the three options in the Ohio Revised Code for homeschooled parents.

Mr. Lamanna said but your program is designed to help them meet the requirements.

Ms. Clark said no it is not designed to help with any of those requirements.

Mr. Lamanna asked not even to progress.

Ms. Clark said no our philosophy is that the students do it on their own with self-directed learning but we do not direct them and asked Mr. Lamanna if he understands what she is saying.

Mr. Lamanna said you aren't presenting the curriculum for them.

Ms. Clark said not at all, correct.

Mr. Lamanna said but you are providing a learning experience for them.

Ms. Clark said correct.

Mr. Lamanna said his question is and maybe it is such a highly technical question that you (Ms. Clark) can't answer it and again he has a limited knowledge of homeschooling but whether if somebody says okay your child is getting this learning experience, you homeschoolers are now helping to satisfy the state to say that is a good thing and asked her if that is the case or not, if you don't that is fine.

Ms. Clark said if they do one of those three methods she doesn't think it is part of that, do you understand what she is saying, they can take a standardized test, they can do a portfolio or be interviewed by a licensed teacher.

Mr. Lamanna said in theory being interviewed by a licensed teacher their learning experience might.

Ms. Clark said it is not something we have directed.

Mr. Lamanna said right, okay. He said this may be unrelated but asked if there is a septic system on the property at all.

Ms. Clark replied no.

Mr. Lamanna asked Ms. Clark if she originally filed an IRS Form 1023, he believes it is to obtain your tax exemption from the IRS 501(c)(3).

Ms. Clark said she imagines she did, we have that status.

Mr. Lamanna asked if they also have the determination letter from the IRS granting that status.

Ms. Clark said yes but she doesn't have it with her tonight.

Mr. Lamanna said he didn't expect that but he would like you (Ms. Clark) to produce those to the board because he thinks they may be germane. He said he is assuming you claimed it as educational.

Ms. Clark said agricultural education.

Mr. Lamanna said an exemption is granted for educational purposes, agricultural is not, they don't care one way or another, they don't care what you are educating.

Ms. Clark said they got the exemption before they started this school so they got the 501(c)(3) status before they started the school for agricultural education.

Mr. Lamanna said but it is germane to this issue as to what you are doing as certainly what representations you made to the IRS to obtain that exemption that is why we would like a copy of that form and the determination letter from the IRS.

Ms. Clark said sure, yes.

Mr. Lewis stated that he is done for now so if somebody else wants to take the lead for a minute that is fine.

Mr. Lamanna said this is not a high structured process and because of the inter-relations between all of these things it is probably going to be necessary as we work through these things that people may want to come back and comment on.

Ms. Collins said they have three witnesses that will be much quicker.

Mr. Lamanna said let's move on but he does have one question. He asked what the gross receipts from the farm activities were last year from agriculture production to be more specific.

Ms. Clark asked for agriculture productions for 2019.

Mr. Lamanna said for what you actually sold.

Ms. Clark said about \$2,600 or something like that.

Mr. Lamanna asked if that is reflected on the tax return or other documents.

Ms. Clark said they don't have any of that for 2019.

Mr. Lamanna asked about the year before that.

Ms. Clark said it was much lower than that she would say \$1,000.

Mr. Gutoskey said we probably would like to know the last three years.

Ms. Clark said typically she would say \$1,000 a year.

Ms. Collins said if you are asking for us to submit additional evidence for the record at a later time because we do not have those documents.

Mr. Lamanna said the last three years would be fine if you have them, if you only have two years that is fine, you haven't been operational that long.

Ms. Clark said the first year they tried to operate a farm market but she realized that it was going to take a significant amount of time before and since they are based perennials that it is going to take a significant amount of time before the farm started bringing in income and really that hasn't been happening until she really anticipates this coming year we are going to have a lot more revenue from the farm products so if you are asking about the CAUV we haven't qualified for that but we will be able to easily do that next year she is sure.

Mr. Lamanna said just to the point, if you have not qualified for the CAUV and you don't meet that income level you realize that you are not a farm for agritourism purposes.

Ms. Collins said she understands the definition of agritourism if that is what you are asking her and she is not going to testify tonight.

Mr. Lamanna said he is not asking you to testify he is just making a point that we now have on the record something that says it is not a farm.

Ms. Collins said if you wanted her to do a legal argument she is happy to do that at this point.

Mr. Lamanna said he thinks on the legal arguments we are probably going to ask you to brief the legal arguments because he thinks that would be easier than having a lot of people listen to a lot of stuff and have them wondering what these people are talking about.

Ms. Collins said she does have her next witness Mr. Ian Mungall.

Mr. Lamanna swore in Mr. Ian Mungall and noted that Mr. Mungall was duly sworn.

Mr. Ian Mungall stated that he lives at 12845 Morning Glory Trail, Chesterland.

Ms. Collins asked Mr. Mungall if he could state what his roll is at the Chagrin Valley School.

Mr. Mungall testified that he has been a staff member for Chagrin Valley School for three of the school's four years of operation.

Ms. Collins asked Mr. Mungall as part of his roll did he contact the Ohio Department of Education to determine if the school needs any kind of approval from them really to the educational programming needs for the farm.

Mr. Mungall said yes, he emailed them and explained their program and had correspondence with a woman named Beth Lewis who is an educational program specialist.

Ms. Collins submitted appellant Exhibit 9 to the board – email from the Ohio Department of Education, dated December 11, 2019.

Ms. Collins asked Mr. Mungall if he recognizes it and to tell us what it is.

Mr. Mungall said yes, this is an email correspondence he had with Beth Lewis from the Office of Nonpublic Educational Options. He said he initially emailed her explaining their school, what they do, how their students are registered as homeschoolers, they do not have to teach any form of curriculum, the school is run with a self-directed educational philosophy and the children are allowed to spend their time however they decide, we do not prepare students for state evaluations or standardized tests of any kind. He said meeting the requirements of the state is up to the children's parents so while we call ourselves Chagrin Valley School we are actually a community homeschool co-op program so he described a recent legal situation here and asked for clarification on our status and what the regulations may be.

Ms. Collins asked Mr. Mungall to describe what their response is as reflected in the email chain marked as Exhibit 9.

Mr. Mungall stated that she said a homeschool co-op does not have to be in compliance with the same laws as a public or private school and does not need health inspections, fire inspections, occupancy permits.

Ms. Collins asked Mr. Mungall if he recalls what prompted him to reach out too Ms. Lewis and the Department of Education.

Mr. Mungall said yes we learned of another similar homeschool group called Solid Ground School located in Athens who we reached out to and explained our situation and they shared theirs, they took this course of action and shared it with their local authorities.

Ms. Collins said thank you and that is all she has for this witness.

Ms. Applebaum said the only question she has is that statement, The Ohio Department of Education is not the fire marshal, correct, of the State of Ohio.

Mr. Mungall said correct.

Ms. Applebaum said it is not Bainbridge's fire department,

Mr. Mungall said correct.

Ms. Applebaum said it has no authority trained in Ohio Fire Code, correct and environmental health inspections, whatever that means and that certainly is not the Geauga County Health District, you understand that right.

Mr. Mungall said yes but.

Ms. Applebaum said this is an email coming from its education program specialist with no credentials there, they may not even have a degree and just an off the cuff comment.

Mr. Mungall said she said anyone can contact her.

Ms. Applebaum said okay and she is done.

Mr. Lamanna asked if anyone else had any questions.

Mr. Lamanna swore in Mr. Chris McClellan and noted that Mr. McClellan was duly sworn.

Ms. Collins asked Mr. McClellan to state his name and address for the record.

Mr. McClellan stated his name and that his address is 14427 Parkway Drive, Burton, Ohio.

Ms. Collins said your (Mr. McClellan) youngest child she believes is enrolled in Kelly's Chagrin Valley School and is that correct.

Mr. McClellan testified by saying correct for three years.

Ms. Collins said and you are registered as a homeschool family.

Mr. McClellan said correct.

Ms. Collins asked Mr. McClellan to describe what some of the requirements are for your family as a homeschool family.

Mr. McClellan said as a homeschool family we are required to have him assessed on an annual basis to determine, by a licensed teacher, to determine his progress and it doesn't have anything to do with Kelly's Working Well Farm, it is something that the state requires for all homeschooled children.

Ms. Collins asked does that mean that your family is obligated to meet those requirements and you don't expect Chagrin Valley Schools to do that.

Mr. McClellan said that is correct.

Ms. Collins said you are also a national builder, is that correct.

Mr. McClellan said that is correct.

Ms. Collins asked if he in any way assisted Kelly in seeking approval for what we are referring to as the tree barn on her property.

Mr. McClellan said he did, he helped fill out the forms for the exemption for Ms. Endres and with the discussion of this building and what we were doing here following under the auspices of a community farm and agriculture with community participation.

Ms. Collins asked Mr. McClellan if there is anything else he can tell us about the process of seeking agricultural.

Mr. McClellan said when they researched, he helped Kelly in the process of researching the rules for a barn and its relationship to township zoning and county code enforcement and what the requirements were if she is going to have people on the farm for a community farm experience and then we filled out the agricultural exemption paperwork and submitted it for that particular building.

Ms. Collins said and you actually built the tree barn, correct.

Mr. McClellan said that is correct.



Ms. Collins asked Mr. McClellan to describe how it is built.

Mr. McClellan said the very short version is that it is a natural building with the idea to produce an environmentally low impact building from as many local materials as possible so for instance the straw bale walls were straw bales from a farm about 30 miles from here and the wood that you see wrapped around the building is from the site, there are some things that we can't leave that with for instance the pole barn, it is a pole barn in structure with a pressure treated pole barn frame and concrete footings and so forth in the sense of the structure of the building and it is finished out with the soil from the site and earthen clay, clay and sand fire reinforced shell that gives it a two hour commercial fire code rating.

Ms. Collins said thank you. She asked if he worked with other local governments to obtain approval for similar buildings in Ohio.

Mr. McClellan said he has worked with several other people including himself to obtain approval, yes.

Ms. Collins asked were those buildings that he worked on approval for in the past for the purpose of education and recreation of farms.

Mr. McClellan said most no, the ones that weren't went the standard zoning and code compliance and county code compliance and the ones that were for a farm went through an exemption process and for this one, after we filed the exemption we called the county asking what is the inspection process and they said there is no inspection process, it is a farm, they have nothing to do with this and that was the end of it.

Ms. Collins said she has no further questions.

Ms. Applebaum said when the county told you there was no inspection process, did you tell them that there were children in and out of these buildings at the school.

Mr. McClellan said no, he told them the building was a farm.

Ms. Applebaum asked him if he pulled any permits for this building and said you don't have occupancy permits right.

Mr. McClellan said the county told him there was none.

Ms. Applebaum said that you didn't need one.

Mr. McClellan said that is right.

Ms. Applebaum said again, you didn't represent that there were children in school in and out of this building correct.

Mr. McClellan said this building was on a farm, they said there is nothing they could do.

Ms. Applebaum said you didn't tell them about the school.

Mr. McClellan said he told them the building is agriculture and they said nothing.

Mr. Gutoskey asked Mr. McClellan if he is a structural engineer.

Mr. McClellan said he is not a structural engineer.

Mr. Gutoskey asked Mr. McClellan if he is an architect.

Mr. McClellan said he is not an architect.

Mr. Gutoskey asked Mr. McClellan if he is a professional engineer.

Mr. McClellan said he is not.

Ms. Collins said for the record she was not offering this witness as an expert, just having him state the facts of what happened.

Mr. Gutoskey said he was describing some of the construction as far as fire ratings etc.

Mr. McClellan said he is something of an expert on that for instance twenty minutes ago a building with earth was added to the appendix of the 2021 international building code and he was part of the effort, that is how he found out about it. He said he works with the industry of people desiring to have ecological buildings to raise awareness and raise funds and test, he is not an engineer, he is one of the people who helps organize those testings so he can tell you what the results were.

Mr. Lewis asked who verified these buildings for snow load and structural integrity.

Mr. McClellan said no one, it is a standard pole barn construction framing technique.

Mr. Lewis said so there were no building permits, no inspections, no as-builts, no designs, no architectural drawings, he thinks he understands.

Mr. McClellan said yes, the county said they don't have anything to do with that.

Mr. Lewis said thank you.

Mr. DeWater said he had a question, that tree barn is a place of assembly where people gather right.

Mr. McClellan said yes, it is the same as any barn that a farmer would have with the same standards for barn access, agritourism.

Mr. DeWater said but it is a place where people gather.

Mr. McClellan said yes, with a certain standard per number of people would go in.

Mr. DeWater asked did anybody ever give an occupancy load of the amount of people allowed in that structure.

Mr. McClellan said no, in fact he would be very interested to hear what the importance of the fire marshal's job is.

Mr. Lamanna said we are not here to discuss the fire marshal. He said you are here to testify, you are not here to ramble.

Mr. McClellan said the occupancy of who can be there, there is a state standard for farm buildings and he would be the one to tell us what that is and we would be the one who would advise the number.

Mr. Lamanna said that issue is not for us to determine here.

Mr. McClellan said thank you.

Ms. Collins said she has a last witness.

Mr. Lamanna swore in Mr. Jim Demko and noted that Mr. Demko was duly sworn.

Mr. Jim Demko testified that he lives at 61 E. Cottage Street, Chagrin Falls.

Ms. Collins asked Mr. Demko to describe his role at Chagrin Valley School.

Mr. Demko said he is a staff member at the school.

Ms. Collins said in addition to your staff role, your children are also members of the school, correct.

Mr. Demko said that is correct.

Ms. Collins asked Mr. Demko to describe for the board why you decided to have your children attend the school.

Mr. Demko said sure, we value it as a vibrant community of people interested in permaculture, sustaining agriculture and restorative agriculture and we like having it mixed with the farm aspect.

Ms. Collins asked Mr. Demko to describe how the experience of the school has enriched his children's lives.

Mr. Demko said as self-directed learners they have shown a lot of initiative and a lot of interest to direct their own education and what they are really learning, he thinks, behind the scenes is that they can decide what their lives will be and what will fulfill them and not that that decision comes from somebody else so they are learning to be their own people as they come through the world and not learning to simply do what they are told and he thinks we need a lot more methods and creative learners in the world to solve some of the critical problems that we have, science is an important piece of, nothing in diversity of talent skills and interests in our society.

Ms. Collins said in the current context of where the school is being held has that difference in context impacted your children's lives in your view.

Mr. Demko said yes absolutely, he sees them a lot less active, they are outdoors a lot less, there is no opportunity for working with tools and building things, that is something that they were both very active in and the building committee has leaders in helping others learn tools, there are certifications for tools and taking on responsibilities and they are missing that right now, they are a lot less interested in attending the program now that it is not on the farm.

Ms. Collins said thank you and she has no further questions.

Ms. Applebaum said she doesn't have any questions.

Mr. Lewis said he has a few questions for Mr. Demko. He asked what were you doing before you became a staff member of the school, occupationally.

Mr. Demko said he was a chemist.

Mr. Lewis asked if he is working now full-time.

Mr. Demko said he works part-time for the school.

Mr. Lewis asked if he is paid a salary for his time.

Mr. Demko said yes.

Mr. Lewis said you still maintain a full-time occupation.

Mr. Demko said no.

Mr. Lewis said thank you.

Ms. Collins said that was her last witness.

Mr. Lamanna said okay.

Ms. Applebaum called Ms. Karen Endres, Zoning Inspector. She said she does have the Assistant Fire Chief here, zoning rules are grounded in safety and welfare so even though she thinks you are trying to segregate the fire issues completely she believes that it is pretty clear that we regulate schools because of health, safety and welfare.

Mr. Lamanna said he doesn't know if the appeal is founded on the basis that we don't have health, safety and fire, we don't have a basis for regulating fire issues.

Ms. Applebaum said you can regulate the fire but we all know.

Mr. Lamanna said what he is saying is he is not sure that that element is under appeal or challenged as part of the appeal but if you want to put a brief bit in that is fine.

Ms. Applebaum said she will try to be brief because we have already gone over quite a bit. She asked Ms. Endres, just for the record since there is a court reporter sitting there and there is going to be a transcript likely produced to just give her a very brief summary of her educational background and her work in Bainbridge.

Ms. Endres testified that her name is Karen Endres and she is the Bainbridge Zoning Inspector, she regularly attends planning and zoning workshops so she can stay current on the various planning and zoning discussions, things that come up. She said she is a graduate of Leadership Geauga from the class of 2010, she graduated from Cleveland State University's Public Management Academy, she has been a zoning inspector since 2001, she has been the zoning inspector in Bainbridge since 2012 and she has been a member of the Newbury Township Board of Zoning Appeals since 2013.

Ms. Applebaum said we know this is about your letter which is marked as an Exhibit, we already know of your revocation of the agricultural exemption and also your notifying the appellants that they needed to get a conditional use for the property and school. She asked Ms. Endres to tell her what the purpose is behind a conditional use zoning certificate for operating a private or public school.

Ms. Endres said private schools are permitted in the residential zoning district as a conditional use, the purpose of obtaining a conditional use is it may have a higher impact on the community than something permitted. She said conditional uses have a whole series of conditions on which they need to abide in order for them to be permitted.

Ms. Applebaum said and some of those issues are for safety.

Ms. Endres said some of those are related to safety issues.

Ms. Applebaum said such as.

Ms. Endres said she should have been more prepared with all of the conditions. She said they are in the Bainbridge Township Zoning Resolution and there are about ten or twelve conditions relevant to permitting schools as a conditional use.

Ms. Applebaum said and some of those reasons are for safety, health, welfare.

Ms. Endres said that is correct.

Ms. Applebaum said most of them are.

Ms. Endres said they are relevant to health and safety.

Ms. Applebaum said what do you look for when you are granting, if someone applies for an agricultural zoning certificate exemption, what are you looking for.

Ms. Endres said it depends on what kind of exemption they are asking for, if it is an agricultural exemption she verifies that the proposed use is really agricultural, in the case of this tree building she has the application for zoning certificate, it is labeled as Exhibit 1 and on this form, this is the actual application for zoning certificate form, there is a section that says provide a description of the proposed use of the structure or the usable lot. The applicant responded "agricultural storage, seed propagation, animal husbandry, space for hands-on instruction in animal husbandry curriculum (i.e. agriculture based 4H club or other similar farm production based curriculum). Indoor Farm Market for selling site-produced goods such as pasteurized eggs, honey, maple syrup, woolen goods, mushrooms, etc." She said that is from application number 15454.

Ms. Applebaum said at that time that is how the school was represented.

Ms. Endres said that is what was represented to her as the use of the building.

Ms. Applebaum said so you granted it based on the description.

Ms. Endres said that is correct.

Ms. Applebaum asked what the significance is of writing the exemption.

Ms. Endres said when buildings are granted an agricultural exemption the Geauga County Building Department does not perform any kind of inspections, they are not required to pay any application fees.

Ms. Applebaum said the fire code still applies though, correct.

Ms. Endres said the fire code does apply and it applies to health.

Ms. Applebaum said so you decided at some point to revoke the exemption and tell us what happened with that.

Ms. Endres said another piece of the application, the agricultural exemption form was on a letter to Bainbridge Township Zoning Inspector that said "I Kelly Clark of Kelly's Working Well Farm hereby certify that the building for which this application is made will be used exclusively for agricultural purposes (farm market, agricultural storage, seed propagation, animal husbandry, work space for agricultural and animal husbandry, work space for agricultural and animal husbandry group activities and education (such as agriculture based 4H club meetings and hands-on farm education curriculum) and hereby give notice of this Agricultural Exemption from the Bainbridge Township Zoning Code for said proposed building to be located at and then she goes on, the parcel number the owner and location, the acreage, the tract and then the last paragraph states "I acknowledge that if the use or purpose of this building changes in any way, I am required to apply for a change of use permit and will be responsible for any associated fees with said application. Failure to do so will be a violation of the Bainbridge Township Zoning Code and can result in fines."

Ms. Applebaum asked Ms. Endres when she discovered that this was not what was going on.

Ms. Endres said when she was at the property on the 24<sup>th</sup> with Chief Metz and Assistant Chief Lovell.

Ms. Applebaum said that is September of this year.

Ms. Endres said September of this year and again on November 11<sup>th</sup>, she could not see any of the activities or uses in the building that were described in the original application. She said the building appeared to be used now as a classroom and administrative building, there were some little toys and books, the types of things you would see in a classroom. She said she didn't see honey, she didn't see the list of agricultural things cited in the application for the agricultural exemption which is why she revoked the agricultural exemption zoning certificate.

Ms. Applebaum said and you observed students there at the time.

Ms. Endres said she observed students there, yes on the 24<sup>th</sup> and on November 11<sup>th</sup>.

Ms. Applebaum asked Ms. Endres who accompanied her to the site.

Ms. Endres said on the 24<sup>th</sup> she was there with Chief Metz and Assistant Chief Lovell and on November 7<sup>th</sup> she was there with the Ohio Fire Marshal, the Geauga County Health Department, Geauga County Building Department and township representatives from the fire department and police department.

Ms. Applebaum asked Ms. Endres if she had known she was operating a school there would she have ever granted the exemption. She said she thinks you heard her testify earlier that she rolled out her school in the fall of 2016.

Ms. Endres said that is correct, if it was her understanding that it was going to be a school that students were attending day in and day out she would have required a conditional use permit for the private school and her understanding was it was to be an enrichment program for homeschool students and her understanding that it would be students and parents on the property.

Ms. Applebaum asked Ms. Endres why she believes that this falls under a private school, obviously not a public school.

Ms. Endres said because it is tuition based, it is on a general regular basis and they pay tuition.

Ms. Applebaum said and in that definition it says instruction but there is more going on here obviously and you observed books.

Ms. Endres said that is correct.

Ms. Applebaum said it is a classroom. She asked the board if they wanted to authenticate the documents that are there.

Mr. Lamanna said yes, offer them for the record have her authenticate them for the record.

Ms. Applebaum said she will offer them after we are done. She said Ms. Endres, real quick, the four 990 forms, that was marked as 7.

Ms. Endres said yes.

Ms. Applebaum asked Ms. Endres if the 990s are forms used by companies operated under a 501(c)(3) that show their income and expenses. She asked what the forms show basically in a nutshell here.

Ms. Endres said she is not an accountant but it appears that once the school rolled out that the income significantly increased.

Ms. Applebaum said and the expenses didn't go up too much.

Ms. Endres said the expenses did not seem to increase as much as the income increased.

Ms. Applebaum said that is a pretty good business. She said the Chagrin Valley Times article.



Mr. Lamanna said Counsel, that is uncalled for.

Ms. Applebaum said when your revenue goes way up. She said the article from the Chagrin Valley Times that is also in the package and asked the board if they came across that.

Ms. Endres said actually it is provided to her by a reporter from the Geauga County Times, that is where she got the copy she has in her packet.

Ms. Applebaum said it is Exhibit 9.

Ms. Endres said she thinks so.

Ms. Applebaum said the aerial views from ReaLink at 16519, did you Ms. Endres take them off the Auditor's website.

Ms. Endres said some of the pictures came from Geauga County ReaLink and some came from a program called Pictometry.

Ms. Applebaum said there are also pictures.

Ms. Endres said they are the same programs that she is using right now and what you are seeing there is Connect Explorer also known as Pictometry.

Ms. Applebaum asked if that is Exhibit 3 in the package, the pictures or is it 2. She said there were pictures taken September 24<sup>th</sup>, 2019. She asked Ms. Endres if those were taken by her.

Ms. Endres said yes.

Ms. Applebaum said the date on them is September 24<sup>th</sup>, 2019.

Ms. Endres said some were taken on November 7<sup>th</sup> and also some on November 24<sup>th</sup>.

Ms. Applebaum said Exhibit 3 which are pictures taken November 7<sup>th</sup>. She asked Ms. Endres if those were taken by her.

Ms. Endres said yes.

Ms. Applebaum asked if there is a picture representing the building where the exemption was revoked, the agricultural exemption.

Ms. Endres said she believes the top, page 1, top right, page 1, bottom right, page 2 is the front of that building that has the Chagrin Valley School sign and page 2, bottom right demonstrates the posting of that notice and everything on page 3 is from the inside of the tree building.

Ms. Applebaum said and you, Ms. Endres, were there the day that the administrative search warrant was executed.

Ms. Endres said yes.

Ms. Applebaum said she knows you're not trained in fire code or health codes but what are your concerns about the safety on the property.

Ms. Endres said she observed extension cords that were held down by rocks on the outside and concrete bricks, there was straw in the buildings that were heated with wood burning stoves, those are the types of things she observed that would have gotten her attention.

Ms. Applebaum said now you heard the word agritourism and she thinks there has been some agritourism going on on the property, she doesn't think they have been denying that but what would you classify the operations there.

Ms. Endres said she would say there is some farming going on on the property, there is animal husbandry, but it appears to her that the main activity on the property is that of the school.

Ms. Applebaum said and you are basing that from.

Ms. Endres said she is basing it on her observations, most of the buildings were used for the students, the yurt was what she understands now is for daycare, the arts and crafts building, the tree building is used as a classroom and it appears to be the administrative building and then there is the cafeteria building, that is where the kitchen is, those are all buildings that are used in conjunction with the school.

Ms. Applebaum said in addition to the income coming in, the increase in income per the 990 situation, correct.

Ms. Endres said in addition to the information on the 990s it appears that they use the property as a school.

Ms. Applebaum asked Ms. Endres if she had anything else to add.

Ms. Endres said not at this time. She said she issued the original letter that she hand-delivered to Kelly because in her opinion what is going on there is a school, it is on their website and the student handbook, it is referred to as a school, tuition is collected by the school. She said the revocation of the zoning certificate was because the use for which it was approved does not appear to be happening anymore, she didn't see vegetables being sold, she didn't see the types of things occurring in that building that were listed on the application.

Ms. Collins said she has some questions. She said you, Ms. Endres, stated in your testimony related to the application for the original agricultural exemption certificate for the tree barn. She asked Ms. Endres if she recalled that testimony.

Ms. Endres said yes.

Ms. Collins asked Ms. Endres that as a result of issuing that zoning certificate does she recall that you inspected or toured the facility after it was built.

Ms. Endres said she toured the facility very shortly after it was built.

Ms. Collins asked Ms. Endres does that sound like it might have been around the spring of 2017, does she recall.

Ms. Endres said she doesn't recall.

Ms. Collins asked Ms. Endres, when she visited could she describe what she did on that visit.

Ms. Endres said when she typically goes on an inspection it is to just verify that it appears that the use in this case she was looking to verify that on that day and time the building conforms with the permit that she issued so obviously at that time it would have appeared at that point that the building was in compliance with the permit that she issued, there was no signage on the property relative to a school so she had no reason to believe there was a school going on, not a school but homeschool kids and parents on the property.

Ms. Collins asked Ms. Endres if at that time she saw children there because according to the timeline provided by her client they should have been there when you inspected.

Ms. Endres said she can't recall right now if there were students there but she would not have been surprised to see students with their parents there because Kelly did represent that this was an enrichment program for homeschool students.

Ms. Collins said thank you, she has no further questions but she is going to have back her witness for the board.

Mr. Lamanna asked if anyone had any questions.

Mr. Lewis asked Ms. Endres on her early visits did she observe the state required posted agritourism sign and if not when did you actually observe that being posted.

Ms. Endres said the first time she observed the agritourism sign was on November 11, 2019 and prior to that visit she doesn't recall seeing any agritourism signs on the property at all, that is something she would have noticed.

Mr. Lewis said he understands that the state requirement is the sign had to be 24 x 36 inches.

Mr. Gutoskey said one inch lettering.

Mr. Lewis said one inch lettering so he will look for a recent photo of whatever is posted to be sure it is making the state requirement.

Ms. Endres said the November 7<sup>th</sup> pictures show the sign.

Mr. Lewis said November 7<sup>th</sup>, thank you.

Mr. DeWater asked Ms. Endres, when the health board was out there and they were doing their inspections, what was there concerns about the septic system and water well, probably tested.

Ms. Endres said we actually have someone from the health department here, would you prefer to ask the health inspector directly.

Mr. Lamanna said we will not get out of sequence here.

Ms. Endres said she does believe that the Geauga County Health Inspector had concerns.

Mr. Lamanna said this property is located in a residential district, correct.

Ms. Endres said that is correct.

Mr. Lamanna said so the only thing that is permitted in this district are residences and he believes township buildings.

Ms. Endres said single family homes are the main permitted primary buildings.

Mr. Lamanna said so no other use is permitted in this district unless it is specifically listed as a permitted use.

Ms. Endres said that is correct.

Mr. Lamanna said so whether or not something was listed as a conditional use is not really material from the standpoint that it is not permitted in the district, for example to get into it specifically, although a particular type of school may be a permitted use if somebody is running a school that was doing educational things but was not a conditional use, that use would still be prohibited notwithstanding that it wasn't defined in the conditional uses.

Ms. Endres said right, any use that is not specifically listed as permitted then is prohibited but we do have a provision that will allow private schools as a conditional use in a residential zoning district.

Mr. Lamanna said you answered the question, thank you.

Ms. Applebaum called Mr. Bill Lovell as a witness.

Mr. Lamanna swore in Mr. Bill Lovell, Bainbridge Township Assistant Fire Chief and noted that Assistant Chief Lovell was duly sworn.

Ms. Applebaum asked Mr. Lovell to give us a little bit of his background, his education, what he does in Bainbridge.

Mr. Lovell testified that he is the Assistant Chief and Assistant Chiefs do everything that the Chief doesn't want to do, a lot of administrative duties. He said in addition to that he is the Community Risk Reduction Officer, he is the Fire Marshal, he has been involved in fire prevention in Bainbridge Township for about 25 years, he has been running the Bainbridge Township fire prevention for at least 20 of those. He said he is also a retired career firefighter for the City of Aurora where he worked as a shift captain for 29 years, he has been involved in the fire service for 35 and he has what is called the Ohio Fire Executive Certification that is fire chief school. He said the fire service has been his career in his life, protecting people has been all he has been doing, he has a lot of experience with tragedies and that is why he does a better job, he believes in his peers in trying to protect people from having these tragedies occur.

Ms. Applebaum asked Mr. Lovell to briefly tell the board what led to the citation everyone knows about the fire citation that was issued, it has been appealed but it is also the basis for the injunction action now with Judge Paschke in the Common Pleas Court. She asked Mr. Lovell to give the background on what happened that day, the investigation.

Ms. Collins said she is going to object to this to answering this question because it doesn't in any way relate to the zoning issue.

Mr. Lamanna said he knows but we have already wandered a little bit off topic, he gave you (Ms. Collins) a little bit of leeway, he is going to give her a little bit of leeway but as he said before, keep it short and again whatever testimony is given ultimately the board will look at and will decide whether or not it is relevant.

Ms. Collins said she understands that.

Mr. Lamanna said and we may discount it completely in our decision but we will allow some leeway here to just set the stage and her basis for doing it was that township zoning is based on health and safety etc., etc. so for that limited purpose we are allowing this to come in and that is the only purpose the fire department will be considered, if it is considered at all in our final decision.

Ms. Applebaum said she might also point out that the appellant did attach the serious hazard order and the citation and a lot of documents to her appeal and the health department so we want to clarify these.

Mr. Lamanna said yes they are in the record.

Mr. Lovell asked what the question is again.

Ms. Applebaum asked what led to the citation attached as an Exhibit.

Mr. Lovell said they were notified by an adjacent community fire marshal that we need to visit this site. He said they attended a fundraiser and observed things that were of a concern. He said this fire marshal happens to be on the executive board of the Northeast Ohio Fire Prevention Association which is 17 counties. He said he notified the other Assistant Chief Wayne Burge who then told him of the complaints so the following day after he received that he went down to the property to see what was going on. He said he got a complaint about a year and a half ago about the same facility where he was told that there were some things going on that didn't look like it was safe so he went to Ms. Endres in Zoning and asked what is going on at this facility and he was told that it was an enrichment program for homeschooled children, it was a destination sort of like a field trip that children would go to and at that point he didn't have any jurisdiction to the best of his understanding at that point so when he got this complaint again for the same facility only this time it was described that it was a fire trap and that people were going to die there from a very reputable person so now we are obligated to investigate and so that is what they did. He said he went down there first to try and determine what exactly was going on at that facility but there was some confusion on his end about what the facility actually was and in asking Ms. Clark about it she was hesitant at first to give him a specific classification, he thinks because she didn't know the specific classification at the time so we both kind of worked together from his impression to try and determine what that specific classification was and he also asked her if there was some kind of exemption that allowed her not to be classified for something and again both of us couldn't determine that so it required him to do some more investigation but as he was given the tour he saw what from a fire marshal's perspective was a significant amount of dangerous situations existing in one facility. He said to sum it up the most amount of dangerous things that he has ever seen at one facility, significantly.

Ms. Applebaum said that is in your career.

Mr. Lovell said that is in his career.

Ms. Applebaum said and just in a general sense what are the type of hazards that could cause a serious injury or death.

Mr. Lovell asked the type he has seen here.

Ms. Applebaum said yes.

Mr. Lovell said he has seen numerous electrical violations, electrocution type potentials, he has seen numerous heating and wood burning type scenarios where the clearance wasn't far enough away from the combustible materials, he has seen cooking hazards in buildings that aren't even allowed to be used to have cooking performed in them. He said he has seen natural gas or propane gas stored in enclosed structures, he has seen numerous electrical violations as far as how they were provided to a structure and questionable building construction as far as structural members being able to support weight on various different things.

Ms. Applebaum asked Mr. Lovell if he has come to believe it is mainly a school after his research and own observation, did he observe children there.

Mr. Lovell said from what he can determine the website says school, the website address says school, they are modeled after a school in Massachusetts, they are calling themselves a democratic school and he can't find anything that says they are not a school that they are exempted from a school.

Ms. Applebaum said so an administrative search warrant was executed and asked Mr. Lovell to talk about that.

Mr. Lovell said he attempted to bring a whole bunch of people after we met on October 25<sup>th</sup>, Ms. Endres and I met with Ms. Clark on October 25<sup>th</sup> and she had a lot of questions about who can help her with moving forward to make these corrections. He said it involves zoning, building, health, there are different things to sign off to get an occupancy permit, see you can't occupy a building if you are a public building without an occupancy permit, no matter what you call yourself you have to have an occupancy permit if you are going to be open to the public and that also subjects you to the fire code so he wanted to bring a whole bunch of people when he made the arrangements after we met with Ms. Endres on the 25<sup>th</sup> so that we could give her the guidance and know which direction to go. He said they were not able to meet with her, we think we overwhelmed her, he thinks that was the case and so she wanted us to come so we started to make arrangements and will try to reconvene the next week. He said when he made the call to try to get that arranged he got to talk to her counsel instead and he was told that he wasn't permitted to talk to her because of what was going on through zoning, he didn't get the memo that he couldn't talk to her about fire code when you are doing something with zoning so we did what we needed to do to be able to get entities in because the first visit when we went there we were able to observe a whole lot more collectively that proved that we needed to do a lot more and document.

Ms. Applebaum said attached to appellants exhibits is Exhibit H as you issued a serious hazard order and asked if that is correct.

Mr. Lovell said yes.

Ms. Applebaum asked what that means.

Mr. Lovell said a serious hazard is, they are distinct hazards, distinct hazards are things that are known to cause fires, there are hazards like exit lights out that identifies how you get out but the distinct hazard says yes this is known to cause a fire, when you have distinct hazards they are also serious hazards, we have a number of, an abundance of distinct hazards or serious hazards in there and in order to protect the people that are inside we have no choice but to kick them out and that is what the serious hazard does, you kick them out until we can get this all corrected.

Ms. Applebaum said Exhibit I is a citation correct, that was issued.

Mr. Lovell said yes.

Ms. Applebaum said and it lists all of the violations.

Mr. Lovell said yes it is a citation, we are obligated to do a citation once we issue a serious hazard.

Ms. Applebaum said and what is the current status now, the serious hazard orders were taken off the building and why was that.

Mr. Lovell said on Tuesday, we were able come to an agreement judgment which afforded us the opportunity to discuss what we were going to get accomplished if we had continued the trial and the agreement judgment says that we can't occupy the structures for public use or for a school, for fundraisers, things like that but that the farm operations can continue and would only be occupied by adults and only the buildings that are related to farm operations.

Ms. Applebaum stated that she had no further questions.

Ms. Collins said to Mr. Lovell that he said that he had received another complaint a year and one-half ago and is that correct.

Mr. Lovell said correct.

Ms. Collins said and you did pursue it then right.

Mr. Lovell said he did, he checked with zoning to find out that it wasn't something that he could do and at that point he believed he couldn't follow up on it.

Ms. Collins said and you (Mr. Lovell) decided that you couldn't do anything, you were taking guidance just from the zoning officer, is that right.

Mr. Lovell said we weren't presented with fire hazards.

Ms. Collins asked was the complaint that you received a year and one-half ago about fire hazards.



Mr. Lovell said no.

Ms. Collins asked what it was about.

Mr. Lovell said it was about a bunch of children being on the property doing things that were not understood.

Ms. Collins said but you didn't pursue it then because the zoning officer told you that it was exempted.

Mr. Lovell said at that point he believed he had no jurisdiction.

Ms. Collins said okay and does she understand you (Mr. Lovell) that you are saying that you received a second complaint about the farm and that was what caused you to inspect this time.

Mr. Lovell said yes.

Ms. Collins said okay and you said that was from an adjacent fire marshal.

Mr. Lovell said correct.

Ms. Collins asked what did that fire marshal tell you.

Mr. Lovell said that we have a school operating on a property that he was surprised that somebody hadn't died yet, he said that somebody is going to die there.

Ms. Collins asked and that was approximately when.

Mr. Lovell said that was, he didn't talk to him, he talked to the other assistant chief and he talked to the other assistant chief on the 23<sup>rd</sup> which that assistant chief told him.

Ms. Collins asked the 23<sup>rd</sup> of September.

Mr. Lovell said the 23<sup>rd</sup> of September, correct.

Ms. Collins said and you also said that you talked to someone else who called it a fire hazard.

Mr. Lovell said no, it was the same person.

Ms. Collins asked the same person called it a fire trap.

Mr. Lovell said yes.

Ms. Collins said and you inspected how many times before turning in the serious hazard order.

Mr. Lovell said we actually officially performed one inspection, basically did site visits beforehand.

Ms. Collins asked how many.

Mr. Lovell said he thinks he was on the property three times.

Ms. Collins said so what you are now calling serious hazards you were on the property three times before issuing the serious hazard complaint.

Mr. Lovell said correct.

Ms. Collins said and somebody told you it was a fire trap and you still waited two to three months to issue a serious hazard order.

Mr. Lovell said correct, we were under the impression, we were misled in what we understood that we were unable to do anything until we actually understood what the classification was. He said if indeed it was a farm we were under the interpretation that we couldn't do anything because it was agricultural but we since have learned that any place that is occupied by the public falls under the fire code and that we are obligated to enforce the fire codes.

Ms. Collins said she had no further questions.

Ms. Applebaum said it took some time to execute the administrative search warrant, is that correct.

Mr. Lovell said correct.

Ms. Applebaum said and this was coordinated between the fire marshal and who were the officials that were out there that day.

Mr. Lovell said the State Fire Marshal's Office, Geauga County Department of Health, Geauga County Building Department, the local fire department obviously, the Police Department and Zoning of course.

Ms. Applebaum said so you acted as swift as you could it sounds like in this circumstance.

Mr. Lovell said he was frustrated in not being able to find out what kind of environment, yes he called the Ohio Department of Job and Family Services, see he thought that he wouldn't have to be the bad guy and take care of this situation because he has a form he has to fill out for every daycare that has a number of things that he has to verify do not exist in a daycare and this facility had all of them so he figured that they would come right out, they would see what is going on and they would start the process where we could get this corrected. He said it took several weeks before ODJFS even visited their site and he has yet to receive any information about this from them but it seems like they had some correspondence and Ms. Clark told him what correspondence they had and advised him that as long as they stay under six children and they are not open the duration then ODJFS would be happy not to have any jurisdiction on that so he went to the State Education Department thinking okay well they are going to be able to help and he went through the ESC the Emergency School Services Center and the superintendent of Geauga and Lake counties and they oversee all of the other schools in Geauga and Lake County and so they were working with the department of education to try to determine what type of facility this was. He said ultimately after three or four weeks of trying to get that determination and at the same time some frustration that he was the only one that seems to be concerned about this other than zoning, they were able to get support from them that said this is a co-op school was the classification that they called it and so that they don't have any regulations for co-op schools, at the same time he went to the State Fire Marshal's Office and asked what do we do with these and that was when he was informed that the fire code would cover no matter what the zoning calls it, any place that is open to the public is covered under the fire code.

Ms. Applebaum said and that makes sense right because the fire code travels with the public to protect the public, right.

Mr. Lovell said yes and when he thought about it he doesn't have jurisdiction over private residences but if you host a bunch of people in a tent, you have to get a tent permit from him.

Ms. Applebaum said she has no further questions.

Ms. Collins asked Mr. Lovell if she understands his testimony to say you instructed the zoning inspector to issue the determination letters in this matter, the revocation and the earlier letter to shut down because they were operating a school.

Mr. Lovell said you are going to have to ask him again, you lost him.

Ms. Collins said she wanted to make sure she understand that your testimony said that you instructed the zoning inspector on what she should do.

Mr. Lovell said no, he doesn't instruct the zoning, zoning is not his scope, zoning was working with him to see if we could solve this problem but he doesn't take instruction from zoning.

Ms. Collins said she thought he said that you told Ms. Endres what to do about it being a school, is that not correct.

Mr. Lovell said he doesn't believe he said that at all.

Ms. Collins said okay, thank you.

The board stated that they had no questions.

Ms. Applebaum said in the spirit of health and safety and welfare he is going to call Mr. David Sage.

Mr. Lamanna swore in Mr. David Sage and noted that Mr. Sage was duly sworn.

Mr. David Sage testified that his name is David Sage and he is the Director of Environmental Health with the Geauga County Health District and he is a registered sanitarian and he is a registered environmental health specialist and he has been a registered sanitarian for 15 years and he has a Bachelor of Science in Civil Engineering.

Ms. Applebaum asked Mr. Sage how he got involved with this situation.

Mr. Sage said he received an email from Assistant Chief Lovell about the situation that was going on out there asking if we had jurisdiction on schools and things that he possibly observed or knew about out there and we had a discussion on the phone and he asked if we could meet out there and on October 25<sup>th</sup> was the first time and at that time we were trying to give Ms. Clark some answers to his previous visit out there and at that time we weren't able to talk to Ms. Clark, she was like Chief Lovell said a little overwhelmed with all of the people there and then we were included in the administrative search warrant on November 7<sup>th</sup> so that is when we were out there and we were able to get into the buildings and around the structures to see what was going on, himself and two of his co-workers, sanitarians were out there with him to look at the facility.

Ms. Applebaum said and no violation notices have been issued yet, correct.

Mr. Sage said correct, we did send Ms. Clark a letter about specifically on the outdoor kitchen and the prep area or that building specifically, he thinks you guys have a copy of that letter.

Ms. Applebaum said it is Exhibit J.

Mr. Sage said some of the health issues related to the food code, they do not have a food license with us so this is not a violation this is just the observations that would be forthcoming if she did have a food license. He said the things that are going on there as far as storing of chemicals above food, near food, you wouldn't want to do that in your own personal home so we are just giving her some guidance on what should be done, it can create a health hazard for the students that are there and even the adults that are there.

Mr. Sage continued by saying some of the other things in here that were noted, there was an outdoor sink where they had a garbage disposal that was not plumbed into an approved septic system, the indoor sink is plumbed into an unpermitted, he doesn't know exactly what to call it, French drain system. He said storage of the food that she has there is subject to rodents, other pests that could contaminate her food source for eating and use.

Ms. Applebaum asked if there are septic issues there.

Mr. Sage said they haven't written violation letters yet, they will need to issue them yes, unfortunately, the outdoor composting toilet, that has to be permitted, that gets permitted through the Ohio EPA, that has no permit, the sink drain in the indoor kitchen sink is going to that French drain that is not a permitted way to do it, it has no permits on it. He asked Ms. Endres to show the picture on Pictometry and asked her to show the storage shed. He referred to the aerial photo and said right around there, it might be that one right there, this is a platform, it has been enclosed with some tarps on four sides and the side facing, that would be west, is like a flat door and inside this enclosed structure is a bucket underneath a toilet seat that is used as a toilet, that is a serious health hazard and again, not permissible by the EPA so we have some septic issues that they are going to have to deal with and it would be with the Ohio EPA, we don't have jurisdictions to permit commercial uses like this so we will be issuing a letter to them but they have some other issues that they need to deal with first that are probably more serious than what we have right now, it is bad, don't get him wrong what else is going on in the buildings is quite a bit more serious. He said yes, that upper left-hand picture is the toilet.

Mr. Lamanna asked if that is page 1 of Exhibit what.

Ms. Endres said that is for November 7<sup>th</sup> at the top of the page.

Mr. Lamanna said in talking about the exhibits.

Ms. Applebaum said it is Exhibit 3 in the package.

Mr. Lamanna said we need to re-mark all of those exhibits, we went through with her identifying them but we need to re-mark them, we need to go through and mark the rest of those exhibits properly but just for the record on this it is picture noted at the top November 7, 2019 – 16519 Franklin Street – Source Karen Endres, Page 1 and it is in the upper left-hand corner of the picture.

Mr. Sage said that is correct.

Ms. Applebaum said she has no further questions.

Mr. DeWater said so they do an EPA inspection on their well.

Mr. Sage said yes they do have a well out there but they do have a potable water supply system.

Mr. DeWater said because it is public they should be doing regular testing on that well because it is.

Mr. Sage said correct, that would be governed through.

Mr. DeWater asked Mr. Sage if he is aware if they actually have any licensed guy testing that well on a regular basis.

Mr. Sage said no he does not know that, we do not see those reports for lab analysis, that would go straight to the EPA.

Mr. DeWater said those he would like to see.

Mr. Lamanna said he wanted it entered into the record that the applicant has indicated that they have those records and the board is requesting that they be submitted as part of the record.

Mr. DeWater said they are concerned that the current septic situation could contaminate that water well.

Mr. Sage said when they were out the saturation distance is 50' and the composting toilet is 50' from it, a little bit more, he thinks it is 52' to 55' and then this structure right here is well over 50' from the well and so is the kitchen issues, it is well over 50' from the well.

Mr. Gutoskey asked Mr. Sage if he knows if there are sanitary sewers on Franklin Street.

Mr. Sage said as far as he knows, yes there are sanitary sewers on Franklin Street.

Ms. Applebaum said that is it for us.

Mr. Lamanna swore in Mr. Chris Courtiol and he noted that Mr. Courtiol was duly sworn.

Mr. Chris Courtiol testified that lives at 8489 Lakeshore Drive, Bainbridge, Ohio. He stated that he thinks it is important for the board to hear this, it might help everybody associated with this case. He said he is a parent of, the father of two girls who attend the school and he thinks it is important to mention that as a parent of two girls who do attend the school that he feels 100% comfortable with the state of the school that exists today and that includes fire safety and health safety, thank you.

Mr. Lamanna swore in Ms. Michelle Nelson and he noted that Ms. Nelson was duly sworn.

Ms. Michelle Nelson testified that she lives at 7107 Oak Street and she goes past it quite often and she has noticed many times she has seen children on the roofs, she has seen children walk to and from town with no supervision and she also knows that something like that outhouse is just shocking and to allow this and she wants to thank Geauga County for actually coming down and doing their job because she doesn't think this should be right down the street in a residential area with farm equipment, the only thing she saw as farm equipment was one red tractor that wasn't even probably working so she begs you to please do something about this. She said she is sure they are wonderful people but this is cult-like behavior and it should stop, thank you.

Mr. Lewis asked Ms. Nelson, as she observed the children off the property, has she ever observed them at the adjacent property of the Judson Retirement center.

Ms. Nelson said yes, they also were in a pond, there is no life guard, during the summer the children go in the pond with no supervision, there is no life guard.

Mr. Lewis asked on the Franklin Circle property.

Ms. Nelson said no they are on the farm property and this is also coming from parents that have had children there, but again, 40 children with three adults supervision, that they say they don't give them direction, they let them do what they want and they are a school but they can do what they want and learn from that, drowning in a pond, would that be learning, hell no, so again she is sorry to be so harsh but it's a cult, thank you.

Mr. Lamanna swore in Ms. Suzanne Galvez and he noted that Ms. Galvez was duly sworn.

Ms. Suzanne Galvez testified that she lives at 6045 Depot Drive in Moreland Hills, Ohio. She stated that her daughter, Marie Gallagher goes to this school and she is very passionately a supporter of this school and she doesn't think anyone would stand here and say it is perfect but she promised her she would get up tonight and speak for her. She said she did not fit into traditional school since she went to this program, this wonderful resource, she has blossomed and it is wonderful. She said she wants the school to know she would do anything to go back to this farm, it is one of the places she feels safe, she loves the animals on it, she feels like it is her family, it has been part of the community and we all support this 100% so Kelly has our support.

Mr. Lamanna asked Ms. Laurel Simkoff if she is going to testify as to something substantive that has not been said.

Ms. Simkoff replied yes.

Mr. Lamanna said okay, fine, he just doesn't want 20 testimonials.

Mr. Lamanna swore in Ms. Laurel Simkoff and noted that Ms. Simkoff was duly sworn.

Ms. Laurel Simkoff of 1624 Compton Road, Cleveland Heights, Ohio testified that she also wants to speak to the fact, she is also a parent and her child needs an emersion pre-school program. She said she is an early childhood educator and she specifically sought out this program because she has done a ton of research on the benefits of outdoor education and democratic schools and she just wanted to say she spends a lot of time on the farm, she also pays for part of the tuition by volunteering there so she wanted to say everyone had mentioned how they expected it to be a homeschool program and there are no parents, she can't tell you how many hours she has been there over the few months that her daughter has been there but it has been at least half the time she has been in person on the farm so the parents are involved and she knows several other parents in this room who are there on a regular basis doing farming activities, picking herbs and canning food and feeding chickens and turning compost piles and changing out the composting toilet and all of the things that go along with horticulture and homeschool, we are there, we are involved and it is just three staff members and 35 children, this is a homeschool resource.

Mr. Ian Mungall stated that he just wanted to address some of the things that their neighbor said, we have like twenty pages of enrollment paperwork that parents fill out, we are not just accepting any children to come and run wild and we have a downtown permission form where children following school procedure, they have to be a certain age and with a certain number of other students and have a parent permission form that notify the staff, they are allowed to sign out from the school and walk down to Chagrin Falls downtown area, it is  $\frac{3}{4}$  of a mile away to go get candy from the Popcorn Shop. He said they have gotten permission from S. Franklin Circle to allow the children to go around their pond area, we have worked together with them on different events and collaborated with them for different group activities and he does not recall children on the roofs. He said on the pump house, the well, they do like to hang out there and now it has been raised up once we got approval from the EPA, but they did hang out there, it was about 3' to 4' off the ground and it was a little hang out space for them but children are not allowed on the roofs. He said this bathroom here was built as kind of a demonstration piece for an event hosted in Ohio called Region Roots and the event used this style of composting toilet for the event held at Camp Whitewood so it is a simple, he believes it is called a Jenkins system where you add sawdust or any kind of carbon materials, grass clippings or ash after you go to the bathroom and there have been books written about humanure and how great it is for, it is compost, so that was a temporary structure that was built and wasn't really used.

Mr. Lamanna said you just said that children can sign out and go into town and asked how old do they have to be to do that.

Mr. Mungall said he believes they have to be nine years old and in a group of three students, similar to how when you go around Chagrin Falls after school has been let out from the public schools you see the kids walking around and going to the park or the Popcorn Shop and no we are not a cult.

Mr. Lamanna said we don't get involved in making that sort of decision, we are just here about the zoning.



Mr. Lamanna swore in Mr. Ryan Rodriguez and he noted that Mr. Rodriguez was duly sworn.

Mr. Ryan Rodriguez testified that he lives at 3714 Runnymede Blvd., Cleveland Heights, Ohio and he simply wants to say that he hopes the spirit of cooperation for all sides involved enables this place to move forward, it is different, it hasn't been around that long. He said he is a professor at Cuyahoga Community College and when he goes, his wife works at the school and wherever he goes people seem to know of it, the idea of it, there are a lot of amazing ideas going on there and he hopes that the city and the other entities involved find a way to work in cooperation to move this forward to the benefit of everyone because it truly can benefit the city, the community and even the disgruntled neighbors.

Mr. Lewis asked Mr. Rodriguez if he said his wife was an employee of the school.

Mr. Rodriguez said she is a staff member, correct.

Mr. Lewis said thank you.

Mr. Lamanna asked if there is anything else.

Ms. Applebaum said other than if you allow us to do a closing.

Ms. Collins said she would be happy to do a closing as part of her briefing.

Mr. Lamanna asked Ms. Applebaum if she minds doing that as part of her brief or how long would she like.

Ms. Applebaum said real quick.

Mr. Lamanna stated at this point we are going to close the public hearing part of this meeting so there will be no further testimony. The public hearing portion was closed at 11:10 P.M.

Ms. Applebaum said she would just like to do the exhibits right.

Mr. Lamanna said we will get that done after.

Mr. Joseph Weiss said Mr. Chairman, you should get a copy of the enrollment package, they say it is 20 pages, he thinks it would be worth looking at.

Mr. Lewis asked if it is on their website.

Mr. Lamanna said you can just provide us with a copy of that.

Ms. Collins said the enrollment contract is not included, it is a 20 page something, it is not included, there is a family handbook that we referred to that as confidential identifying information, student's homes.

Mr. Lamanna asked if they have a blank enrollment form.

Mr. Lewis said you don't have a blank enrollment form, they have to fill out something for enrollment.

Mr. Mungall stated that we understand that we need to make improvements for fire safety, we don't argue that, we are willing to do that, we've been trying to get them started, we have hired an electrician and the permit was denied and we were not able to go on the property to fix any of the citations because of the do not occupy order so our hands have been kind of tied until Tuesday when we had this agreement made but we are more than willing to address safety concerns, that is not an issue for us.

Mr. Lewis asked Mr. Weiss if he had anything else he is looking for.

Mr. Weiss replied no.

Mr. Lamanna stated that before the closing statement, he wanted to make one small comment and in terms of, we had a lot of talk about schools and daycare centers and in terms of the letter written by the zoning inspector on November 25, 2019 where it talks about the conditional use permits and not having them, he thinks we were looking at that in the broader sense of school and daycare center and not necessarily in the narrow sense in which it is described as conditional use in the zoning ordinance so he doesn't know if that affects what you presented at all but he just wanted to make sure that it does and if you think there is something we need to introduce to address that, he would give you the opportunity to do that only because there is perhaps a little bit of confusion over that and he doesn't want to end up in a discussion and an argument over you said this, they meant that. He said when we are looking at this thing we are going to look at it in the broader sense because the discussion he had with her about the fact that if it is not permitted, it is not allowed so technically you can say well I am not a school because I am not a school registered by the State of Ohio, that doesn't mean that you aren't conducting an activity that is like a school that is not permitted in a residential district so from the standpoint of what you can and can't do on that aspect of it we are looking at it in the broader sense.

Mr. Lamanna continued by saying he doesn't think that affects any of the agritourism issues at all, it doesn't affect that issue but he just wants you to be in a position that, he will allow you the opportunity to address that issue if you feel there is something else you need to add or some path you went down you wouldn't have gone down if we aren't looking at this thing in the broad sense of what or how those terms were used and they weren't capitalized in the letter so he could be hyper-technical about it and argue that well you were on notice of that but he doesn't want this thing going and all that is going to do if that happens is you have to go around and around again and be back here two months from now so he wants you to have the opportunity to say okay, I am okay with that, it really doesn't change anything, I am going to say or argue or tell me that I think there is some other piece of evidence I need to offer. He said he really doesn't think there is but he wants to give you the opportunity because he thinks it is the right thing to do.

Ms. Collins said she appreciates that Chairman and she doesn't think there is something they would put on in addition, she will say, and they will address this in their briefing, but the early letter from the zoning inspector's one that said you must cease all operations and we think that is just an over broad abuse of authority statement to make so to the degree that she was interpreting the zoning resolution to include that authority we would disagree with that.

Mr. Lamanna said okay.

Ms. Collins said but she will address it in her brief.

Mr. Lamanna said that is a legal issue.

Ms. Collins said exactly.

Mr. Lamanna said and it may be a moot issue.

Ms. Collins said you're right so in any case she doesn't think they need to provide additional evidence tonight.

Mr. Lamanna said take five minute and then just a short closing statement and then he will ask both parties to provide a brief and we will take care of these exhibits and we will discuss a briefing schedule.

Ms. Collins said thank you Chairman and thank you for all your time tonight, Vice Chairman Lewis, she thinks your term is close to expiring.

Mr. Lewis said no.

Ms. Collins said it is not, it is on your website, she was going to thank you for spending so much time on this.

Mr. Lewis said he appreciates it, they just upped him for another five years.

Ms. Collins said she wanted to thank you for taking on such a novel issue at this state in your term.

Mr. Lewis said he thinks this might be a carryover, but thank you.

Ms. Collins said Chairman, thank you for your time tonight, we think that we presented a case that demonstrates that agriculture and education has been the intended use of this property since Kelly Clark has owned it and since the inception of Kelly's Working Well Farm and under the tradename Chagrin Valley School. She said you heard a lot of testimony that we think might not even be relevant to your decision on whether the use of this property constitutes something that you would regulate differently than agriculture or agritourism, we think that is the main question, is this agriculture and incidental uses as agritourism and we look forward to providing further briefing that cites to the record on all of the instances where we think we did present and she acknowledges that agritourism is not something that you have likely dealt with in this jurisdiction before and it is a very new law so we look forward to providing some level of gloss and a legal argument around what that is, thank you.

Ms. Applebaum stated that she thinks the evidence tonight has shown that what they are doing at this site is clearly a tuition-based school and at some point Bainbridge decided to regulate public and private schools and if you look in the definition section there is a separate definition of a private school and it is this "It is an educational institution which provides fee-based instruction." She said that would also be a martial arts school, a dance school, many different types of schools and obviously this is a different type of school and you are not happy about it but still it fits under our definition of school and she doesn't think the zoning inspector erred in saying this needs a conditional use certificate for a school. She said they are claiming that this may fall under agritourism but if you look at the agritourism definition it means it is "agriculture related educational, entertainment, historical cultural or recreational activities" and the keyword there is activities, there is a start date and an end date so when you do a wine tour, when you do a farm tour, some cherry picking, these are activities that have start dates and end dates, that is not the case with this school. She said this is new, there are not a lot of cases on agritourism but they don't fall within that definition, she doesn't think the state legislature intended this to be agritourism and exempt from zoning. She said also the definition she was given earlier of agriculture, they may do a lot of those activities but they may be an agricultural school but in the definition of agriculture it is not an operating school and that is what they are doing here, they are collecting tuition, they are operating a school, it is a different school, a unique school, it is a democratic school, they say there is no curriculum but it is still a school. She said the certificate that was revoked, the zoning inspector didn't err in doing that either because she came back that it is mostly school. She said they are not a 990 Form with the state at all because their income went up drastically when they opened up the school but if you look at the expense line it hardly went up at all, 13% so take a look at those documents, it is the tuition so mostly what they are doing there is school, maybe a little farming or agriculture but it is mostly a school up until this point so she thinks the zoning inspector got everything right and that should be your decision.

Mr. Lamanna said thank you. He said we are going to have the briefs so in this point in time the board is not going to further discuss the evidence and also we ourselves would like to see the minutes because there is an awful lot of material here to read and digest.

Mr. Gutoskey asked if we are going to get a record of the farm receipts for the last three years because that is one of things we asked for.

Mr. Lamanna said right.

Ms. Collins said she made a note of several things.

Mr. Lamanna said we will make a list.

Ms. Collins said so you are going to give me a list.

Mr. Lamanna said yes, we will go and get you a list that way we won't have any issues over that. The board will give the appellant a list.

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

Motion BZA 2019 -44 – 16519 South Franklin Street (Kelly's Working Well Farm dba Chagrin Valley School

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held January 16, 2020.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Since there was no further testimony, the public hearing was closed at 11:15 P.M.

Respectfully submitted,

Michael Corcoran  
Ted DeWater  
Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman

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

Date: January 16, 2020

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 19, 2019

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:15 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Ms. Karen Endres, Zoning Inspector was present.

MINUTES

Mr. Lamanna moved to adopt the minutes of the November 21, 2019 meeting as written.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

APPLICATIONS FOR NEXT MONTH

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for January 16, 2020 at 7:00 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.

Application 2019-44 by Kelly's Working Well Farm dba Chagrin Valley School for property at 16519 South Franklin Street - Continuance

The applicant is alleging error by the zoning inspector. The property is located in a R-3A District.

Application 2020-1 by Christian Hunter for property at 17157 Sunset Drive

The applicant is requesting area variance(s) for the purpose of constructing a shed. The property is located in a R-3A District.

Application 2020-2 by Steven and Clare Bozarth for property at 17188 Sunset Drive

The applicant is requesting are variance(s) for the purpose of constructing a shed. The property is located in a R-3A District.

Application 2020-3 by Industrial Commercial Properties, LLC for property at parcels with frontage along Aurora Road, Depot Road and Brewster Road

The applicant is requesting use variances to allow heavy retail and multi-family dwelling apartments with first floor residential use, and area variances to allow larger lot area than 50,000 sq. ft. and to allow residential within 500' of the lake. The property is located in the MUP District.

Since there was no further business, the meeting was adjourned at 11:50 P.M.

Respectfully submitted,

Michael Corcoran  
Ted DeWater  
Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman

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

Date: January 16, 2020