

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 13, 2008

Pursuant to notice by publication and certified mail, a special public hearing was called to order at 7:32 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass. The following matters were then heard:

Secretary's Note. Ms. Lorrie Sass was appointed to fill the unexpired term, of the late Mr. Donald Takacs. Ms. Sass was a member of the Zoning Commission.

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

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

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

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

Mr. Lamanna noted that this application is a continuance.

Mr. Charles T. Riehl, of Walter & Haverfield, LLP was present on behalf of the Bainbridge Township Board of Trustees.

Mr. Gary Werner of Berns, Ockner & Greenberger, LLC was present on behalf of the applicant Voproco Properties Limited. Also present for the applicant was Mr. Mark Iacona, Preferred Development, Mr. Thomas Vokas, Voproco Properties Limited Property, Mr. Ed Janoviak, Landsong Engineering, Mr. David Hartt, D. B. Hartt Planning and Development Consultants, and Mr. Roger Ritley of Charles M. Ritley Associates, LLC.

Mr. Gary Werner testified that he has another witness here who will need to be sworn in and that is Mr. Iacona.

Mr. Lamanna said he will swear in Mr. Iacona when he arrives.

Mr. Werner asked Mr. Hartt to pick up where he left off at the last meeting and to re-introduce himself to the board.

Mr. David Hartt identified himself and testified that he is the president of D. B. Hartt Planning and Development Consultants.

Mr. Werner stated he believes where they left off with Mr. Hartt's testimony is they were about to discuss the specifics of the variances that have been requested and he would like to start with the perimeter variances and he referred to the screen. He asked Mr. Hartt if he is familiar with this drawing that is depicted on the screen in the room.

Mr. Hartt said yes he is.

Mr. Werner asked Mr. Hartt if he can identify that.

Mr. Hartt said it actually comes from the Cuyahoga County or Geauga County GIS or auditor's website, he is not sure which but it shows the southern property line of the subject site and the proximity of the closest house to subplot 24.

Mr. Werner asked if he can just identify some of the relevant distances between this house and the boundary and how it affects the variances being requested.

Mr. Hartt said the actual distance from the house to the nearest point of the house in subplot 24 is about 300 feet and that is actually the lot where the setback variance is being requested and that is actually a farther distance from the house than subplot 21 which is actually in compliance with the regulations and the house on subplot 21 is about 240 feet away.

Mr. Werner said the house on subplot 21 would be due north of the structure located on the drawing.

Mr. Hartt said that is correct.

Mr. Werner asked if it is actually closer to the house depicted on this picture than is subplot 24.

Mr. Hartt said that is correct.

Mr. Werner asked even with the variance for subplot 24.

Mr. Hartt replied yes.

Mr. Werner asked Mr. Hartt to draw his attention to this next slide.

Mr. Hartt said the upper square is the house north of the site closest to Savage Road and then the lines are pointing or indicating the distance from that house and the related property line to subplot 11 which again is another one of the lots for which a setback variance is being requested. He said in this case, the closest point from the house is subplot 12, the existing house north of the property is about 340 feet and again that is the subplot on which the variance is being requested and yet the house that is in compliance with the code, subplot 18, is only 190 feet from the house on the adjacent property due north.

Mr. Hartt continued by saying again the house that is in compliance with the code is closer to the existing house north of the property than the house on the subplot for which the variance is being requested.

Mr. Werner said your (Mr. Hartt's) determination is that the two perimeter setbacks that we have looked at thus far are not substantial.

Mr. Hartt said that is correct.

Mr. Werner then asked if they do not result in structures being any closer to perimeter structures than what is permitted on the property under the cluster regulation.

Mr. Hartt said that is correct.

Mr. Werner asked Mr. Hartt if he could draw his attention to this next slide, and added that this is Exhibit B in the recent packet that was submitted by the applicant.

Mr. Mark Murphy asked if that is the newest exhibit that was E1 to clarify.

Mr. Werner said right.

Mr. Murphy said to clarify, we are talking about Exhibit E1 and we just got that two days ago and asked if that is what we are going to talk about, E1.

Mr. Werner said yes.

Mr. Murphy asked if that is the view up there, not this one, the one before this.

Mr. Werner said yes, these exhibits were filed as requested by the Board Chairman on Monday of last week.

Mr. Murphy said he wanted to make sure.

Mr. Werner said yes, subplot 12.

Mr. Hartt said the second one he referred to was E1.

Mr. Murphy said yes, subplot 12 and asked if they have subplot 18 for that same property and are they going to see that coming up next.

Mr. Werner said no because subplot 18 complies.

Mr. Hartt said that is the one that he indicated and then said he is not on the right one.

Mr. Werner said they are depicting only those houses for which a variance has been requested, to the perimeter setback that are closest to the structures across the property line and added that is what these three pictures depict.

Mr. Murphy said okay.

Mr. Werner said if the unit complies with the regulation, it is not depicted and subplot 18 is not depicted.

Mr. Murphy referred to subplot 18 and said in guessing it is a lot closer to that house there, and asked if they are only showing these things because subplot 12 is over the line.

Mr. Werner replied yes.

Mr. Murphy said he wanted to make sure he understands.

Mr. Hartt said the house on subplot 18 which is in compliance is actually closer.

Mr. Murphy said correct.

Mr. Hartt said substantially closer.

Mr. Murphy said thank you very much.

Mr. Werner said in drawing your attention back to the displayed lots, we are now examining sublots five and six and those are depicted on Exhibits E2 and asked Mr. Hartt if he could describe those please.

Mr. Hartt said this is both sublots five and six of the variances that are requested and the house on the property due south of the subject site is approximately 350 feet from the property line or 400 feet from the proposed house on subplot five and approximately 300 feet from the property line or 350 feet from the house on subplot six, so in this case they are about the same distance. He said he thinks it is worth noting in all of these variance requests that the development plan through the cluster zoning, the township has more control about how these buffer areas on the subject site are utilized compared to a standard single family subdivision and as the development plans have indicated, he believes it is a 30 foot buffer area and his understanding is in that area, no vegetation would be cut down so to offset the effect of the reduced distance, the adjacent property to the south actually gets the protection of assuring that existing landscaping vegetation is retained and you don't have that same assurance if it is a standard subdivision in terms of what can happen in somebody's backyard.

Mr. Hartt added that he thinks if a condition of the variance was that the buffer ought to be increased adjacent to these two homes in sublots five and six to a certain degree there is room to increase that buffer area.

Mr. Werner said he would like to talk next about the density variance and just to refresh the board's recollection on this, the current variance request with respect to density would result in 1.51 acres per unit meaning a variance of 1.49 acres per unit so the resulting density would be approximately 1.51 acres per unit. He asked Mr. Hartt if he can discuss the density variance with respect to reasonableness and consistency with what is being developed in Bainbridge Township.

Mr. Hartt said as he mentioned last week and as in his report, there are several developments in this general location that are actually higher than the density that is actually being requested. He said Chagrin Knolls is at 2.5, the overall density for Canyon Lakes is .82 units per acre, the Beech Grove Trail portion of that development is 2.2 units per acre and the approved Meldon project is .8 units per acre and we are asking for .66 or basically 2/3 of a unit per acre so based on several other projects and this isn't all of them that have been approved in the township, we are asking for less of a density variance than has occurred in several other locations.

Mr. Werner said he believes in your (Mr. Hartt's) testimony at the last hearing you worked your way through all of the Duncan factors with respect to these variances.

Mr. Hartt replied yes.

Mr. Werner said before we move back to that, he asked Mr. Hartt to comment briefly on the third variance requested which was for a side yard setback.

Mr. Hartt said similarly the side yard setback request is to have spacing of 40 feet between the units in contrast to the required 60 feet and again Chagrin Knolls is at a lesser setback and he has pictures to illustrate that. He said the Beech Grove Trail development is less than the 60 foot setback and the Lake Lucerne development to the east of the subject site is likewise substantially less than the 60 foot spacing between the units so there is obviously precedent in establishing a lesser setback. He continued by saying that the comment was made last time that we shouldn't be using Lake Lucerne as an example because that is such an old project and that is not what we want and that is why we went to the three acre zoning. He said he would agree with that if that were the only example that was out of sync with the current zoning but given the fact that there are so many other developments and sites in the area that are also a higher density than the one unit per three acres, he does not think it is reasonable then to say we don't like Lake Lucerne or don't count Lake Lucerne because it is different than what we want now. He said he thinks because there are so many other examples of higher density that it is fair to also compare this site with the Lake Lucerne development as well.

Mr. Werner said and finally with regard to the conditional use permit which is part and parcel of the application this evening, he just wants to be sure for the board's sake that you (Mr. Hartt) have worked your way through all the elements of the standards and asked Mr. Hartt if he had that available.

Mr. Hartt said this is very hard, he has those and he did go through those the last time and asked Mr. Werner if he wants him to go through them again.

Mr. Werner said if you (Mr. Hartt) want to check your notes, he wants to make sure that the record is complete on this point.

Mr. Hartt said he thinks so and first of all, the clustering is a specified listed conditional use and either with the variances being granted, it is his opinion and it continues to be that, it will be harmonious with the surrounding area. He said again, given all the other existing conditions that we have referred to, it will be consistent with the existing character of the area, which is essentially along this corridor and in his opinion will not be hazardous or disturbing to the neighbors. He continued by saying based on his experience there is no evidence that such juxtaposition to of the developments as proposed to adjacent properties will not have any material adverse impact. He said it might not meet the neighbors' expectations, but there is a difference between meeting expectations and having a material adverse impact. He said the site will be served by essential utilities and it will not create excessive additional requirements and public costs. He asked, will there be additional service costs because of increased units, the answer is yes. He asked will it be excessive compared to in-service costs that are now associated with other developments based on the density proposed and his opinion is no. He said it will not include uses or activities that are detrimental and the vehicular access will not interfere with traffic on neighboring streets. He continued by saying that most of the traffic was going to Savage, it is a split development so there is no through street so there will not be any material impact on the residents along Tulip and it will not result in destruction of natural historic features of major importance any more than a standard development would and those are the factors.

Mr. Werner said he had nothing further at this time.

Mr. Riehl said to Mr. Hartt, he is probably aware having attended at least the prior meeting on January 24<sup>th</sup>, his name is Charles Riehl and he is an attorney representing the Board of Trustees of Bainbridge Township and to provide full information to the Board of Zoning Appeals, he would like to ask him a couple of questions. He said these are some documents that he would like to ask Mr. Hartt some questions on and first of all, he thinks you (Mr. Hartt) indicated in your testimony last time that you had prepared a land use study for the Citizens Advisory Group and assisted them in 1999 and asked if that is correct.

Mr. Hartt replied yes.

Mr. Riehl asked if this is a copy of that land use study dated November 2, 1999.

Mr. Hartt said no, there is a subsequent one that has January 2000 date on it.

Mr. Riehl asked Mr. Hartt if he had a copy of that with him.

Mr. Hartt said he believed he did, he might have it and that should be 2000, not 2001.

Mr. Riehl said he believes you (Mr. Hartt) indicated in your testimony on the 24<sup>th</sup> that the zoning commission sent a letter to the Advisory Commission requesting substantial changes in your land use report, correct.

Mr. Hartt said he is aware of that now and does not recall saying it exactly that way at the last meeting.

Mr. Riehl referred to Exhibit #13 which the board has in front of them this evening and asked Mr. Hartt if that is the letter that he was referring to, it is a letter dated January 13, 2000 to the Bainbridge Township Trustees from the zoning commission.

Mr. Hartt said he was not sure he referred to a letter last time but this is a letter from the zoning commission to the trustees.

Mr. Riehl said Exhibit #14 is a copy of the minutes of the zoning commission meeting at which they considered your report and the zoning commission did not accept your report, did they.

Mr. Hartt asked what he is referring to.

Mr. Riehl said the proposed land use and zoning policies report.

Mr. Hartt said it says what it is, the zoning commission members reviewed a draft of a letter that will be submitted to the township trustees.

Mr. Riehl said Exhibit #15 is minutes from the Board of Trustees meeting of March 26<sup>th</sup> and the trustees did not adopt your report, did they.

Mr. Hartt said again it says what it says.

Mr. Riehl said they acknowledged receipt of the land use report formulated by the Bainbridge Township Citizens Advisory Committee with technical assistance and report writing provided by D. B. Hartt and asked if that is correct.

Mr. Hartt said that is what it says.

Mr. Riehl said he thinks you (Mr. Hartt) indicated in your testimony last time that you were trying to address a conflict in this report between what the township should do when the sewers and water become available and asked if that is correct.

Mr. Hartt replied yes.

Mr. Riehl said he thinks you (Mr. Hartt) indicated that basically the response that you were getting from the zoning commission was that they did not want to address that issue.

Mr. Hartt said that was very clear, yes.

Mr. Riehl said and in the report that you prepared for the Board of Zoning Appeals you indicate on page two of the report at the bottom of the page that your report further states that the township should emphasize this overriding objective and that is to analyze the impact of sewers regardless of how services are provided and asked Mr. Hartt if that is what he is saying in his current report.

Mr. Hartt told Mr. Riehl he read it and he believes him.

Mr. Riehl said okay.

Mr. Hartt said he believes Mr. Riehl read it correctly.

Mr. Riehl said he would like to hand you (Mr. Hartt) a copy of the 1999 report and refer you to page 23. He said this is where you are discussing the proposed township wide policies and asked if that is correct.

Mr. Hartt replied yes.

Mr. Riehl said and one of the policies in paragraph A which you wrote was to maintain the three acre and five acre residential densities and asked if that is correct.

Mr. Hartt said again, this is what he was testifying to at the last meeting and this was not our policy recommendation in this plan, we worked with the township and this policy statement was very different from the earlier drafts and it was through working with the Citizens Advisory Committee and ultimately with the zoning commission, they chose to write it this way and we did not agree with it. He added that as he said last time, why we changed the wording on the cover of the report that the zoning commission and trustees both took issue with is that we did not want to be viewed as the planning consultants to the township because we weren't accepting sufficiently recognizing that any planning process is a consensus process. He said and we are working with the communities and we don't get exactly what we want as consultants when you are working with the community but in this case, the final recommendations had so deviated from the policies that we thought were appropriate, we put our name on the report as technical writer and not really wanted to be associated with embracing the policies that were in this plan.



Mr. Riehl asked Mr. Hartt to read that entire paragraph so that the board knows what the plan actually advised.

Mr. Hartt said “This policy was established in earlier plans and was primarily based on the capability of the land to support on-site utility (septic and water) systems. Because of these policies and resulting developments, the township’s development character has been molded. Existing and new residents who move to Bainbridge have a right to expect that these prevailing characteristics will be preserved regardless of how future utility services may be provided. This is the same expectations residents have moving into most any community. Therefore, the township should emphasize this overriding objective, but preserving the prevailing residential characteristics and the existing natural resources that the currently permitted densities regarding some of the utilities are provided on-site from central services.”

Mr. Riehl thanked Mr. Hartt for reading the paragraph.

Mr. Werner asked if Mr. Hartt could finish his response.

Mr. Riehl said he just asked him to read the paragraph, he did not ask him to respond to it. He said to Mr. Hartt that attached to the report, there were several maps, were there not.

Mr. Hartt replied yes.

Mr. Riehl said if you could turn to map #8 which he believes is Exhibit #18, this is a map which outlines policies to reinforce defensible zoning.

Mr. Hartt said in this specific focused area only, not necessarily a defensible zoning policy township wide. He said our basic contract with the township at this point was to look at the necessary land use to be defensible and we talked about that from a broad standpoint. He said he did not agree with the outcome of the plan and then they did focus studies for Rt. 422 and 306, Washington and 306, and E. Washington at the Auburn Township line and Pettibone and Aurora Roads. He said it was within those focus areas which are the subject of the maps that Mr. Riehl is talking about that we did make recommendations that we met the defensible zoning test. He said that does not necessarily say that we were coming up with a policy that acknowledged that every site in the township was going to, ultimately as a result of our studies, have defensible zoning.

Mr. Riehl asked if on this map it shows Tulip Lane.

Mr. Hartt replied yes.

Mr. Riehl asked if that is still classified in the R-3A residential district.

Mr. Hartt said you will notice that it is outside of the boundaries of the specific study area.

Mr. Riehl asked if it also shows part of the boundary of the current site.

Mr. Hartt said no.

Mr. Riehl referred to the map and asked if it was right over there.

Mr. Hartt said yes but that is outside the focus area as well.

Mr. Riehl said that is also listed in the R-3A zoning on this map.

Mr. Hartt said yes.

Mr. Riehl said there was also a map #12 which outlined policies to promote economic development and alternative housing, right.

Mr. Hartt said yes.

Mr. Riehl said and that is Exhibit #19 in front of the board and this lists Tulip Lane.

Mr. Hartt said again these were the same focus areas that were basically dealing with the frontage property on Washington Street and Rt. 306 and not expecting to go beyond those areas at the intersection.

Mr. Riehl asked if Tulip Lane is in the R-3A residential zoning.

Mr. Hartt replied that is correct.

Mr. Riehl said and the current site plan which is under consideration by the board is also shown in the R-3A zoning.

Mr. Hartt replied yes and it is the bubble areas that are actually calling out within the focus area of the changes, it is the bubble areas that are talking about the changed policy within the focus area and some of the zoning designations are actually outside of the focus area, they were just reflecting existing conditions.

Mr. Riehl asked if that is the existing zoning that the Advisory Committee said on page 23, that the township should emphasize as an overriding objective of preserving the prevailing residential characteristics and the existing natural resources at their current permitted densities regardless of whether utilities are provided on-site or through central services.

Mr. Hartt said and as you said neither the zoning commission nor the trustees approved this.

Mr. Riehl said also attached to the report, there was a report by a group known as the Chagrin River Watershed Partners and he believes it starts on page 25 of the report.

Mr. Hartt said page 27.

Mr. Riehl told Mr. Hartt that he has fairly high regard for the professional work of the Chagrin River Watershed Partners.

Mr. Hartt said yes.

Mr. Riehl said in this report, Chagrin River Watershed Partners lists some concerns about the natural resources in Bainbridge Township, correct.

Mr. Hartt said he has not looked at that recently so he will take your (Mr. Riehl's) word for it that that is what it says.

Mr. Riehl said and on page three of the report they state that protection of riparian areas will minimize flood risks, minimize stream bank erosion, protect water quality, enhance quality of life and protect habitat, correct.

Mr. Hartt said yes that is his understanding that those objectives can be achieved regardless even if these variances are approved.

Mr. Riehl said and the Chagrin Watershed Partners indicates that the protection of wetlands is a key element in the township zoning because it will minimize flood risks, protect water quality, protect habitat and discharge and recharge ground water, correct.

Mr. Hartt said again this is an important objective, it has to be satisfied even if the variances are granted.

Mr. Riehl said the Chagrin Watershed Partners report also indicates that hillsides and steep slopes given the soil characteristics of various areas of Bainbridge Township are of prime importance that should be protected.

Mr. Hartt replied yes.

Mr. Riehl said they also indicated that managing impervious cover is something that is of primary importance, correct.

Mr. Hartt said we fully comply with all of the requirements in the code.

Mr. Riehl asked Mr. Hartt if he studied the engineering proposal that has been prepared from Landsong Engineering.

Mr. Hartt replied yes.

Mr. Riehl asked Mr. Hartt if he believes that building a detention basin in the wetlands will advance the principles that Chagrin Watershed Partners indicated.

Mr. Hartt said there was testimony about that the last time and conversation that it could be moved if it had to be if it was compromising any community objectives, as he recalls.

Mr. Riehl asked Mr. Hartt if he believes that building in the riparian corridors will enhance the principles that were advocated by the Chagrin Watershed Partners.

Mr. Hartt said his understanding was they were not building in riparian corridors.

Mr. Riehl asked Mr. Hartt if he believes that building on slopes, building a detention basin on the slopes of the North Ridge and McFarland Creek will enhance the principles that have been advocated by the Chagrin Watershed Partners.

Mr. Hartt said these are issues that can be addressed similarly whether we are under a standard zoning or whether we are under cluster zoning and we still have the responsibility to meet the township's requirements with respect to these natural resources so it is the same issue.

Mr. Riehl asked Mr. Hartt if he believes that building approximately twice the density that would be allowed under the zoning code, even with a cluster development enhances the principles of minimizing impervious cover advocated by the Chagrin Watershed Partners.

Mr. Hartt said we are going to meet the minimum coverage requirements so there is not an issue there and there is no guarantee that a standard development would have less coverage when you are talking about building some parking and tennis courts and long driveways and outbuildings and given all of the other factors that he thinks are important not just limited to the environment factors, he thinks that this is still a reasonable request and the environmental objectives can be reasonably satisfied.

Mr. Riehl asked Mr. Hartt if he has any calculations as to the amount of impervious cover under the proposed plan before the board with variances as opposed to a plan that would meet the zoning code and would cluster with 17 units.

Mr. Hartt said he was here when this conversation came up the last time and he thinks the question was in a cluster development that the requisite number of units to meet the coverage requirements was going to be 20,000 sq. ft. of impervious surface per lot. He said he thinks that is reasonable to expect that could occur given driveways and the houses and the patios and the decks and outbuildings and other things so he does not think it is conclusive to say that a cluster development of fewer units or a standard development of fewer units or a standard development in compliance with the code would necessarily have more pervious surface than this development and added that this development is in compliance with the regulations.

Mr. Riehl said if the board grants variances.

Mr. Hartt said yes.

Mr. Riehl said in the report that you (Mr. Hartt) submitted to the board, you mentioned on page two that there are certain what you refer to as similarly situated developments which the board can look at to see that the density factors are what are established in Bainbridge Township and you mentioned Chagrin Knolls.

Mr. Hartt replied yes.

Mr. Riehl asked Mr. Hartt if there are any special factors that you are aware of in taking a look at Chagrin Knolls to indicate why it developed to the density that it did.

Mr. Hartt said he had indicated last time that it was in industrial zoning at that time or prior to it being developed for residential purposes.

Mr. Riehl said you (Mr. Hartt) mentioned Canyon Lakes and asked were there any special circumstances about Canyon Lakes that came to your attention.

Mr. Hartt said not that he is aware of, no.

Mr. Riehl said you (Mr. Hartt) mentioned the Meldon property and asked are there any special circumstances about the Meldon property.

Mr. Hartt said in some of these cases the approval might have been at the local level administratively or legislatively by the township and in some cases that we know of. He said he does not know if it went to court, whether that is a special circumstance you are talking about, he does not know, but nevertheless, it has still been approved at those densities.

Mr. Riehl asked Mr. Hartt if he became aware of any similarly situated subdivisions that were, in fact, developed in accordance with the zoning code whether they had cluster or not and whether they were sewerred or not that could be looked to as similarly situated subdivisions.

Mr. Hartt said there may be some, he does not know.

Mr. Riehl asked Mr. Hartt if he took a look at the Woods of Wembley.

Mr. Hartt said he did look at that today.

Mr. Riehl said and that is a sewerred subdivision, is it not.

Mr. Hartt said yes.

Mr. Riehl asked Mr. Hartt if he took a look at Bridgeway Estates.

Mr. Hartt said no.

Mr. Riehl said that is right next door, is it not.

Mr. Hartt said it is to the south.

Mr. Riehl said and that is sewerred, correct.

Mr. Hartt said he believes so.

Mr. Riehl said and that was developed in accordance with the zoning standards.

Mr. Hartt said he can't testify one way or the other on that.

Mr. Riehl asked Mr. Hartt if he took a look at Peppermill Chase.

Mr. Hartt replied no.

Mr. Riehl asked Mr. Hartt if he looked at The Sanctuary.

Mr. Hartt said not specifically, no.

Mr. Riehl asked Mr. Hartt if he took a look at the Hawksmoor subdivision.

Mr. Hartt replied no.

Mr. Riehl asked Mr. Hartt if he took a look at Stoneridge.

Mr. Hartt replied no.

Mr. Riehl asked Mr. Hartt if he took at look at Northwood Lakes.

Mr. Hartt replied no.

Mr. Riehl asked Mr. Hartt if he knew whether any of the seven subdivisions that he just referred to were developed after Canyon Lakes.

Mr. Hartt said he did not know.

Mr. Riehl asked Mr. Hartt if he knew whether they were on a previously zoned industrial property like Chagrin Knolls.

Mr. Hartt said he does not believe they were.

Mr. Riehl said in your (Mr. Hartt's) report, he thinks you mentioned that the areas to the north and south of this particular parcel are sewerred, correct.

Mr. Hartt said to the north and south, we just talked about to the south being sewerred.

Mr. Riehl replied yes.

Mr. Hartt said he is not sure what development you (Mr. Riehl) is talking immediately to the north, there is sewer, but to say the developments are sewerred, he is not sure.

Mr. Riehl referred to Exhibit 1A and said this is the most recently adopted 208 plan and asked Mr. Hartt if he knows what the 208 plan is.

Mr. Hartt replied yes.

Mr. Riehl said this shows that the subdivision to the south at least for a portion of the subdivision is sewerred, correct.

Mr. Hartt replied yes.

Mr. Riehl said and this indicates that there is a subdivision on the north side of Tulip Court of which is sewerred, correct.

Mr. Hartt replied yes.

Mr. Riehl asked Mr. Hartt does the 208 plan show that there is any sewerred to the west of the current site.

Mr. Hartt replied yes.

Mr. Riehl asked if it is fronting on Savage.

Mr. Hartt said no.

Mr. Riehl said basically the entire northwest of the current site is unsewerred, correct.

Mr. Hartt said northwest of the subject site on the west side of Savage Road is mostly publicly controlled land by ownership or easement as there is no development potential virtually on the west side of Savage Road.

Mr. Riehl asked Mr. Hartt how he knows that.

Mr. Hartt said because, he has looked at the ownership maps.

Mr. Riehl asked just because it is owned by Chagrin Falls means it is not going to be developed.

Mr. Hartt said at the present time he can't foresee it being developed and there is also a parcel owned by Chagrin Falls north of the subject site as well.

Mr. Riehl said to Mr. Hartt, in your report when you talk about the 208 plan, you indicate that all recent requests for modifications to the 208 plan have been granted and asked what recent modifications he is referring to.

Mr. Hartt said he can't enumerate them right now specifically what they are but he knows that this 208 plan has changed numerous times in the last six or seven years and many of those changes are in response to making existing developments function better, to get rid of the septic tanks or to accommodate new developments.

Mr. Riehl asked Mr. Hartt if he was here when Mr. Gus Saikaly testified at the last meeting.

Mr. Hartt replied yes.

Mr. Riehl said we went through a list of about seven or eight commercial developments where the 208 plan was varied, correct.

Mr. Hartt replied yes.

Mr. Riehl asked Mr. Hartt other than those commercial developments does he know of any residential development where the 208 plan for a recent request for modification has been granted.

Mr. Hartt said for future consideration, he would have to go back, he has some of the other plans but he would have to back and look at the other plans to determine that.

Mr. Riehl asked Mr. Hartt if he has taken a look at the memorandum of understanding between the Bainbridge Township Trustees and the Geauga County Commissioners.

Mr. Hartt said he does not think he has looked at it, but he heard it being testified about at the last meeting.

Mr. Riehl referred to the memorandum of understanding and he thinks you (Mr. Hartt) indicated that you had not specifically reviewed that and if that is correct.

Mr. Hartt said that is correct.



Mr. Riehl said so you could not testify one way or the other as to whether this particular property would come within any of the conditions that would allow for an exception to the 208 plan under that memorandum of understanding.

Mr. Hartt said as he recalls listening to the testimony last time, in his opinion, there was not a reason why there shouldn't be an exception to the 208 plan to accommodate this property.

Mr. Riehl said let's take a look at the memorandum of understanding and that is Exhibit 1B.

Mr. Murphy asked if the board has a revised one from last month or is this still our number two here of the memorandum of understanding.

Mr. Riehl said that is the previous one and he thinks we forwarded to the board Exhibits 1A, 1B and 12 and 1B is the new memorandum of understanding that Mr. Saikaly testified about. Mr. Riehl asked Mr. Hartt if he had an opportunity to review this memorandum of understanding.

Mr. Hartt replied yes.

Mr. Riehl said turning to paragraph two, one of the criteria where sewer service may be provided to properties is where existing contractual obligations would allow sewers to go. He asked Mr. Hartt if he knows of any contractual obligation that this property owner has.

Mr. Hartt said not at this point but if you get those contractual obligations, then you complied with the provisions of this memorandum of understanding so it is kind of a circular argument.

Mr. Riehl said there has been testimony that the trunk sewer going down to McFarland Creek goes through the property, correct.

Mr. Hartt said correct.

Mr. Riehl asked Mr. Hartt if he knows of any reservation in granting that easement for that trunk sewer where the prior property owner created a contractual obligation where the property owner could tie into the sewer.

Mr. Hartt said no, he does not.

Mr. Riehl said paragraph 2B allows for sewer services to be provided on properties which are assessed for such service. He asked Mr. Hartt if he knows whether the current property has been assessed for sewers.

Mr. Hartt said no, but it certainly could be.

Mr. Riehl asked Mr. Hartt if he knows whether it has been.

Mr. Hartt said he did not know.

Mr. Riehl said paragraph 2C provides that sewer services may be provided to properties that are part of an existing service area and he thinks we have already testified that this is not a part of the 208 area and asked Mr. Hartt if that is correct.

Mr. Hartt said no, but we have also testified that the boundaries of the 208 service area have been changed several times in the last several years.

Mr. Riehl said but the memorandum says they are part of an existing service area, correct.

Mr. Hartt said well change the boundaries and it becomes part of an existing service area.

Mr. Riehl said that could apply to any part of Bainbridge Township, couldn't it.

Mr. Hartt said yes, it could.

Mr. Riehl said paragraph 2D indicates that if the property has been determined by either the Ohio Environmental Protection Agency or the Geauga Health District to be in violation of water pollution laws and regulations, and asked Mr. Hartt if he knows if that category applies to this property.

Mr. Hartt said there is not any development on the site so it can't violate any Geauga County Health District codes, but if it is developed with septic systems, it certainly could in the future. He added that it is his understanding that if sewer is available it is preferable that you use the sewer systems because that is more environmentally sound than using on-site septic systems.

Mr. Riehl said he thinks you (Mr. Hartt) testified and in your report you referred to seven factors which have been set forth in considering variances and these are generically referred to as the Duncan factors, correct.

Mr. Hartt replied yes.

Mr. Riehl said and your report lists the Duncan factors on page four and asked Mr. Hartt if he has the report.

Mr. Hartt said he does not have his report with him.

Mr. Riehl said on page four you (Mr. Hartt) have listed the seven Duncan factors. He said there are seven factors which the Ohio Supreme Court has indicated should be considered if a variance should be granted and is generically referred to as the Duncan factors. He continued by saying the first factor is whether the property will yield a reasonable return or whether there can be any beneficial use of the property without variances, correct.

Mr. Hartt said that is correct.

Mr. Riehl said again, you (Mr. Hartt) are making the assumption here that central utilities are available in your answer to this question, correct.

Mr. Hartt replied yes.

Mr. Riehl asked Mr. Hartt if he analyzed whether there can be a reasonable return on the property under the existing R-3A zoning with cluster.

Mr. Hartt said he has looked at that with Mr. Iacona in conversation looking at some data that he has prepared and based on the equipment costs and land values and sales prices, it was his understanding from the information that we reviewed together that it could not be.

Mr. Riehl asked Mr. Hartt if he made an independent analysis.

Mr. Hartt said no, he did not.

Mr. Riehl said the second factor is whether the variance is substantial and again if you (Mr. Hartt) make the assumption that central utility services are available.

Mr. Hartt said they are.

Mr. Riehl said it is not in the 208 plan.

Mr. Hartt said they are on the site and in his opinion, they continue to be available.

Mr. Riehl said until we get into the semantics of what is available, correct.

Mr. Hartt said yes.

Mr. Riehl said just in raw numbers, the density of development of the units is about twice what would be allowed under the current zoning and asked if that is correct.

Mr. Hartt replied yes.

Mr. Riehl asked absent any consideration of central utilities, would you (Mr. Hartt) consider that to be a substantial variance.

Mr. Hartt said no, given all the factors that he has taken into account and that he has testified to before this board, given the sewer availability, in his opinion, given the other developments that have been approved by the township or, and given the density.

Mr. Lamanna said timeout and he thinks we are getting a little far ahead here, and we are arguing over the ultimate findings of fact that this board is going to make on these issues and his (Mr. Hartt's) expert opinion on these things frankly is you are trying to usurp our decision making authority on those and whether he thinks something is substantial or not is really of very little interest to the board. He said the factual nature of what the variances, are, their size and their relevance in all of that is wonderful but whether his opinion is that they are substantial or nor frankly goes beyond his competence as an expert and it really impinges upon our authority to make that decision and that is a decision the board has to make and if we are not making that decision, there is no point in us being here. He said thinks we (the board) are the final arbitrators of what is reasonable and not reasonable so a long drawn out discussion of his opinion on reasonableness or not reasonableness, you can talk about the facts and you can talk about the objective issues in comparisons, but there is no use having a long discussion over his opinion as to whether it is reasonable or not.

Mr. Riehl said okay.

Mr. Lamanna said the factual details and how it may relate relatively to other things but not sit here and argue about whether he thinks it is reasonable.

Mr. Riehl said one of the other factors that has been utilized to analyze the granting of variances is whether the property owner purchased the property with knowledge of the zoning restriction and asked Mr. Hartt if he knows when this property was purchased by the current property owner.

Mr. Hartt said the applicant doesn't own the property yet and regarding the current property owner, he does not know.

Mr. Riehl asked Mr. Hartt if he knows when Voproco bought the property.

Mr. Hartt said no, he is not aware of that.

Mr. Riehl said he had no further questions.

Mr. Lamanna said that as a matter of fact on that issue, he (Mr. Hartt) is not even really an expert on that matter, he puts this in his expert report, but I would not recognize him as an expert on issues of buying or not buying the property. He said it is a factor the board is going to consider and a fact that needs to be addressed but it is certainly not a factor for him to be addressing. He added that when we get down to the point of considering this we are just trying to not waste time and to stick to what the witness' relevant field of competence is if they are testifying as an expert and not overlapping into areas that are really beyond their expertise or beyond which may be anything that an expert can be testifying to whether they are actually entitled to any consideration or deference as an expert.

Mr. Werner said as the applicant on this application, we have a burden of proof and if the variances in the conditional use permit are not granted and the matter is taken to a judge to look at, the judge will be looking at what evidence was introduced to support the application to determine whether the decision of the board was supportive by a preponderance of that evidence. He added that he appreciates Mr. Lamanna's observations about wasting time because he would like to get this over as expeditiously as possible

Mr. Lamanna said that is what he is trying to say, let's try to stick to the evidence and not to opinions on things that are either outside the competence of the expert or about things which opinions of the expert impinge upon our understanding or are things which the expert is really not competent to make an opinion on or would not normally be recognized as something that is subject to expert opinion. He added that he does not want to wander off onto collateral topics, let's stick to the evidence.

Mr. Werner said he understands.

Mr. Lamanna said the more stuff that is floating around the edges, the harder it is to separate the wheat from the chaff.

Mr. Werner said right, the applicant is simply cautious as one would expect to make the record complete on all those points.

Mr. Lamanna said right.

Mr. Werner said so that it can be reviewed if it has to be reviewed.

Mr. Lamanna said he understands, you should address the factual issues with all of the points.

Mr. Werner said right.

Mr. Lamanna said let's try to do the factual issues.

Mr. Werner said just to clarify the record and continued by asking Mr. Hartt to give him a sense of what his expertise is and what he is qualified to opine on as an expert.

Mr. Hartt said he is qualified to opine on a variety of land use issues whether he is working for the public sector or the private sector and typically those land use issues have a bearing on zoning whether it is a rezoning or administrative approval, such as a conditional use or a combination of conditional uses and variances which is the subject of this application. He added that this is basically his expertise and he has been doing it for 40 years.

Mr. Werner said to Mr. Hartt that at some point he was hired by this very township to offer some expert opinions about the zoning.

Mr. Hartt replied yes.

Mr. Werner told Mr. Hartt that he was handed his report earlier by Mr. Riehl and if he could turn his attention back to it. He said just wants to make sure we are looking at the same version of it, this is the report that is dated showing receipt of a report by the trustees on January 13, 2001 and if we are looking at the same report.

Mr. Hartt replied yes.

Mr. Werner referred to page 49 and said the heading on the top of page 49 of Mr. Hartt's report says "Summary of Recommended Implementation Measures". He asked Mr. Hartt if he had that in front of him.

Mr. Hartt replied yes.

Mr. Werner asked Mr. Hartt if he can just read into the record the very brief statement in paragraph A1, if he can read the A preface and then number, the very first one of the recommendations that is reflected in his report to this township.

Mr. Hartt said "Amend policies and regulations as appropriate to insure that it is the township's intention to preserve its current permitted density regardless of whether central utilities are available."

Mr. Werner asked Mr. Hartt why he gave this township that advice.

Mr. Hartt said it was not his advice and added that that gets back to the issue. He said the issue was that the township had a policy and it still does of what the land development should be when no sewer and water is available and that is stated in the zoning code and it is still in the zoning resolution that says we shall adhere in an R-3A district to three acre zoning when central sewers are not available.

Mr. Hartt continued by saying the policy question that has not been answered is, and this is the dilemma of why they are here, is what is the policy of the township when sewers are available and what he has been hearing and Mr. Riehl has kind of helped with the testimony is that it is you kind of pick and choose, it is very arbitrary and sometimes the higher density is granted.

Mr. Lamanna said it is way out of balance here and asked where this is going. He said he is at a loss as to the relevance of all this stuff from this previous report and again, now we have got an issue here where he is testifying as a factual witness as to what went on in a township committee that was looking into this thing. He said he is just at a lost to try to figure out where this whole line of discussion is going.

Mr. Werner said the burden of this applicant is to prove that what he is requesting is a reasonable return on this property and the question is what a reasonable return is. He said there are historical facts in this township that relate to the assessment of whether what we are proposing is a reasonable proposal or not and that includes all of the zoning that has gone on in the township for the last however many decades including Canyon Lakes, including Lake Lucerne, including everything that is within a half mile or a mile of this property. He said those are relevant facts and none of this can be determined in a vacuum and this expert who was hired by the township years ago to opine on their zoning code has personal knowledge given his interactions with the township regarding what its code does do and what its code does not do and was hired to make recommendations for amending it. He said that is as relevant to a determination of whether this is a reasonable proposal or not as he can imagine.

Mr. Lamanna said the next question is, is it appropriate for him to be appearing both as a fact witness and as an expert witness if that is what he is doing.

Mr. Werner said he has submitted a report in his expert capacity which Mr. Riehl has questioned him on so there is no dispute about that and as a fact witness, no report was required so there is no problem with him testifying as to the facts. He said and with regard to any representations he makes about discussions with the township, from our perspective, he realizes the chairman has previously identified that as being a potential hearsay issue, but there has been a lawyer in this room for every proceeding relative to this application from the township trustees advocating on behalf of those trustees. He said they are as interested a party here as he can imagine and any statements that are offered as to what they said during meetings related to the zoning all of which ultimately affects the variance application here is not hearsay at all, but a party admission. He said they have as much at stake in this as he can imagine considering that they have sent a lawyer down here to represent their interests here.

Mr. Riehl said he fundamentally disagrees with that train of thought. He said consideration of a variance is unique and to the extent that there may be some tangible relevance to Mr. Hartt to point out other subdivision, we are entitled to cross-examine him on non-similar situations that he did not take a look at but all of his testimony is based on a huge assumption which is not, in fact, that sewers are available to this property. He said they are not, they are not in the 208 plan and it has only been recently that there has even been an application for sewers on this property.

Mr. Lamanna said he thinks the board understands, but he gets back to the point of again, what is the relevance of this planning document that was created but was never adopted.

Mr. Hartt asked if he can try again on relevance.

Mr. Murphy said you (Mr. Hartt) started to say you really don't believe that that is part of the 208 plan.

Mr. Hartt said the point was that he tried to get the township to address the issue with sewer and water, what do you do and what is the policy and the township continued to request and he would say to dictate changes to the report that he couldn't accept because the end result was that the policy of the township is we have a policy when we don't have sewer and water but there is not a policy when sewer and water is available and that is a conflict. He said that is a disconnect between what we tried to do with the township and the end result so we have that dilemma and that is why we are here. He said in some cases you have gone to the higher density, higher than we have approved or we have proposed and in some cases you haven't so what is the policy. He said we are trying to say we are consistent with the past actions that have been taken by the township in the absence of any policy specific to sewer and water being available because the township doesn't have one.

Mr. Lamanna asked isn't the conclusion that the policy is that there is no difference when sewer and water are available.

Mr. Hartt replied no, that is not the policy.

Mr. Lamanna asked Mr. Hartt how he came to that conclusion.

Mr. Riehl said there have been subdivisions that have been very well developed with sewer meeting the zoning code and subdivisions that have been very well developed without sewer.

Mr. Werner said the existence of conforming of R-3A districts in this township have no bearing whatsoever on whether we can satisfy the standard in this resolution regarding our variances.



Mr. Lamanna said he understands, that is a fact and he wouldn't say it has no bearing but it may. He said what bearing it has may be limited, may be big, may be small but he has to look at every and each individual case. He said he is still trying to figure out what this report has to do with this case, and 20 minutes has been spent diddling around with it and we have come to the conclusion that the consultant said there ought to be a different policy for properties with sewer and water and the township decided no, there aren't going to be different policies for sewer and water.

Mr. Werner said here is where this discussion links up to this application because Section 117.10A of this township's zoning resolution requires this applicant to demonstrate to this board whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. He said it further requires that we demonstrate that the intent of the zoning resolution be observed by this variance and that necessarily implicates what the intent of the zoning resolution is. He said he has got in front of him a section from the zoning resolution which sets forth what is allowed or permitted in an R-3A district and he will have it read into the record and asked if he can have the witness testify about this standard.

Mr. Lamanna said we don't have to put the standard into the record.

Ms. Lorrie Sass said it is a public document, it speaks for itself.

Mr. Riehl said it is a zoning resolution, why are we wasting our time, it is a zoning resolution.

Mr. Werner said okay and asked if it is wasting their time.

Mr. Lamanna said no that it is admitted into the record because it is a public document.

Mr. Werner said there is a salutary effect of having this read too, because the people in this room only have it on his word what this says and if he can read it out loud, we will put it out in the air, in the atmosphere and let people decide for themselves what is and is not in the zoning resolution. He said it is one provision, one sentence and that is "Rural residential district R-3A, the purpose of the R-3A district is to permit development and use of land for low density, single family dwellings with lot size sufficient for on-site water supply and sewage treatment facilities." He said that that is what the zoning resolution says for R-3A. He said his question to the witness would be: In your experience as a professional planner, do you interpret this to include districts where water and sewer is available to the property and added he knows what the answer will be.

Mr. Hartt said the answer is no, that's the problem, that's the policy without it but there is no policy with it.

Mr. Werner said and it is relevant.

Mr. Hartt said or the zoning regulation with it.

Mr. Werner said it is relevant because we have to establish that what we are proposing meets the intent and spirit of this resolution and we have to show that and that is why we are digging into this.

Mr. Lamanna asked what is the nexus of all of this and added that he is still not sure of this.

Mr. Robert Carroll of Tulip Lane said that he has a question.

Mr. Lamanna said the board will get to the questions later.

Mr. Riehl said the section that was quoted by Mr. Werner also says, "In accordance with Section 101.02 of the zoning resolution" and that is the purpose for the entire zoning resolution and it is not limited just to where water and sewer are available, it contains a lot of other purposes and it is the entire bedrock and ground on which the zoning resolution takes place.

Mr. Werner asked Mr. Riehl if he wanted to read that now and it is a much longer one.

Mr. Riehl said it is really lengthy, but he would be glad to submit it into the record.

Ms. Sass said it is a public document.

Mr. Werner asked if he should conclude this redirect.

Mr. Lamanna said yes please.

Mr. Werner said to Mr. Hartt that Mr. Riehl had asked him several questions about other developments in the township in the R-3A district which he represents as complying with the R-3A requirements. He asked Mr. Hartt if he recalled that testimony.

Mr. Hartt replied yes.

Mr. Werner asked Mr. Hartt that does the fact that those developments exist, that there are conforming R-3A districts also in the township bear on this determination as to whether this applicant has satisfied the variance standards.

Mr. Hartt said in his opinion, no.

Mr. Werner asked why not.

Mr. Hartt said because of all the things that have been taken into account, the location of the other projects at similar or higher densities, the availability of sewer and water, the virtual no impact on the adjacent property including the fact that much of this property is already in public ownership or easements.

Mr. Carroll asked if they will get an opportunity to ask a question or do we just sit and listen to the testimony.

Mr. Lamanna explained that at some point the board will allow some questions from him.

Mr. Carroll testified that he was just wondering, he (Mr. Hartt) is speaking as an expert but does he have an MAI or actual appraisal qualifications to speak as an expert.

Mr. Lamanna said he thinks that was covered earlier.

Mr. Carroll said no it wasn't he has never said he is an MAI or what his qualifications are as an appraiser.

Mr. Lamanna said the board will give permission to ask questions.

Mr. Carroll said okay.

Mr. Werner said to Mr. Hartt, Mr. Riehl also drew your attention to one of the exhibits that he had submitted to the township as the memorandum of understanding between the township and the county and asked Mr. Hartt if he had that in front of him still.

Mr. Hartt replied yes.

Mr. Werner said Mr. Riehl went over the five categories under paragraph two of this memorandum of understanding which details the circumstances under which sewer services will be provided to properties and asked Mr. Hartt if he recalls his questioning.

Mr. Hartt said he (Mr. Riehl) actually only referred to four of them, he did not refer to the last one.

Mr. Werner asked what the last one is.

Mr. Hartt said the adherence to the township's existing land use and zoning.

Mr. Werner said you (Mr. Hartt) understand that to mean that if the property complies with zoning, it is eligible for sewer, correct.

Mr. Hartt said that is correct.

Mr. Werner asked Mr. Hartt if the variances are granted for this applicant, will this property comply with the zoning.

Mr. Hartt replied yes.

Mr. Werner said likewise, Mr. Riehl also questioned you (Mr. Hartt) about commercial properties that had been added to the 208 plan.

Mr. Hartt said yes.

Mr. Werner said that Mr. Riehl said that all of the other references that were made to properties added to the 208 were commercial properties and asked Mr. Hartt if he remembers that questioning.

Mr. Hartt said yes.

Mr. Werner asked Mr. Hartt if he sees anywhere in this memorandum of understanding in section two where it lists commercial properties as entitling an owner to connect to sanitary sewer and water.

Mr. Hartt said it doesn't limit it to commercial properties.

Mr. Werner asked does it even mention commercial properties as a qualifying aspect of a property owner.

Mr. Hartt said no.

Mr. Werner said that is all he has.

Ms. Sass said that she had a question and that is in early 2006 she believes the township trustees adopted a comprehensive land use plan update and asked Mr. Hartt if had had an opportunity to review that document.

Mr. Hartt replied no.

Ms. Sass asked Mr. Hartt if he knew if there was any kind of policy adopted in that document.

Mr. Hartt said he did not know.

Ms. Sass said okay, thank you.

Mr. Riehl said he had no further questions.

Mr. Lamanna stated that people can now have a couple of minutes for questions.

Mr. Carroll testified that he would like to ask a question to this man (Mr. Hartt).

Mr. Lamanna said the way the board handles it is you direct the question to the board.

Mr. Carroll said he would like to know what his appraisal qualifications are.

Mr. Lamanna said he is not here as an appraiser.

Mr. Carroll said no, but he is giving values, he is saying this project is worth this amount of money and he is giving an estimate of value and stating that this is not feasible without, so he must be qualified to give value and asked Mr. Hartt what his qualifications are to give value.

Mr. Lamanna said he hasn't given us any qualifications.

Mr. Carroll said Mr. Hartt said the project could not be developed without the current density and that shows value and he wants to know what his basis for that is.

Mr. Lamanna said he hasn't given us any.

Mr. Carroll said but I'm saying he is an expert and asked what his expertise is in.

Mr. Lamanna said he has presented to us as an expert in planning and stated that that is his expertise.

Mr. Carroll said but he is giving value and asked if there has been an appraisal on this property to show what value is that he is using to determine value.

Mr. Lamanna said he is not here to testify as to value. He added that to the extent that he is testifying as to value or to things that are outside of his expertise, the board is not going to consider that as an expert opinion so we don't have to deal with it.

Mr. Carroll said if he is testifying as to the feasibility, he has either got the appraisal qualifications or he has reviewed appraisals and if there is an appraisal on this property that shows specific values, he would like to know if one exists.

Mr. Lamanna said it doesn't matter to the board because that is not what his expertise was nor did he submit that as part of his report.

Mr. Carroll said the township should ask if he has revised an appraisal then to determine what the value of this property is and if we are throwing out values here, he can throw out a value.

Mr. Lamanna said this witness isn't the one discussing values.

Mr. Carroll said he was discussing values and number one, he said the property was not developable unless it had this current value and I am stating how does he come up with that value. He said he is testifying it is not feasible if it is not developed at this density and I am saying where does he get that information, it is a simple question, let him answer.

Mr. Lamanna asked Mr. Hartt if he had an answer to the question.

Mr. Hartt said first of all, as the board knows, he is not an appraiser.

Mr. Lamanna said right.

Mr. Hartt said as a planning consultant dealing with land use and zoning and land planning matters and development matters over the years, you have a working knowledge of the implications of various development alternatives on property values of surrounding properties from a non-appraisal standpoint. He said when he talked about the value issue and he didn't talk about numbers, he did specifically refer to the conversations he had with Mr. Iacona in terms of the information that he (Mr. Iacona) had and I had reviewed to come up with my general opinion, not value, that the project could decipher not to be feasibly developed under the current zoning and that was in a conversation with him, not my own, and Mr. Riehl asked me if I had done an independent valuation of that.

Mr. Carroll said okay, he would just like to know more about it.

Mr. Lamanna said the board is done with that topic. He told Mr. Carroll that the board had given him an opportunity now and it has to move on, there are other people that may want to ask questions.

Mr. Carroll said he would just like to know if one exists.

Mr. Lamanna said the board is done.

Mr. Carroll said he still wants to know.

Mr. Lamanna told Mr. Carroll that he is going to ask him to leave in a minute.

Mr. Carroll said okay.

Mr. Lamanna asked if anyone else had something to say.

Mr. Werner said thank you, nothing further.

Mr. Werner introduced Mr. Roger Ritley and asked him what he did for a living.

Mr. Ritley testified that he is the president of Charles M. Ritley, Associates, a real estate appraisal and consulting firm located in Beachwood, Ohio.

Mr. Werner asked Mr. Ritley if he could please describe what it is he does for a living.

Mr. Ritley said his firm devotes itself to assisting in a number of valuation and types of assignments for their clients which would be composed of municipalities, of individuals, of developers and litigators and he has worked for various units of government, federal, state and local. He said most of their work is confined to northern Ohio and they work on properties from small single family lots when there would be an occasion for that and they are also involved in improved properties, residential subdivision development in terms of valuation and all the way through multi-family housing, office parks, downtown office buildings, such as the BP tower and buildings of that scale and also suburban commercial properties including large shopping center properties. He said every year he signs off on approximately a billion dollars worth of real estate and they do 250 to 300 assignments a year in his office and he is proud of his staff, they do a great job and they have been in business, this is their 50<sup>th</sup> year.

Mr. Werner asked Mr. Ritley if he can briefly summarize his educational and professional qualifications.

Mr. Ritley said yes, he has an undergraduate degree in urban land economics from the University of Pittsburgh and his specialization and his major was urban land economics then he spent a year abroad studying in his field and then returned to the United States and went to the University of Wisconsin where he majored in real estate investment analysis and appraisal.

Mr. Werner asked Mr. Ritley about his professional certifications.

Mr. Ritley said he is an MAI and he is also an SRBA and an SRA and ASA and those are different appraisal designations. He said he is also a member of The Counselors of Real Estate in which he was given a designation of a CRE counselor and he belongs to CABOR which is the Cleveland Area Board of Realtors and state and national affiliations and he also has an associate membership in the Urban Land Institute and several other professional organizations.

Mr. Werner said okay and asked Mr. Ritley if he is an appraisal expert.

Mr. Ritley said he has been qualified in a number of jurisdictions in various courts and also as a land use expert.

Mr. Werner asked Mr. Ritley if he prepared a report in this matter.

Mr. Ritley said yes he did.

Mr. Werner said for the board's reference, that is Exhibit D and asked Mr. Ritley if he had a copy of that report handy.

Mr. Ritley said he did.

Mr. Werner asked Mr. Ritley what work he undertook relative to that report.

Mr. Ritley said not too long ago he was asked to investigate this property to see whether or not it was suitable for residential development as is zoned today without any variances to determine in his opinion whether or not under those circumstances could maintain a value with underdevelopment that would support a land value. He said in the course of this study they looked at demographic information which they got from a number of sources, both private things that they paid for as subscription services and also from the Census Bureau. He said they examined flood wetlands documents, reviewed sales and listing data from multiple listing services and also some of the courthouse records that would be for single family residences and for lot sales and for acreage. He said they also used another service that they have which is called Metroskan which is documents that they transfer to real estate. He said they also used the Geauga County GIS system to access that information and they relied on past interviews and research with various developers and also another one of those national services that they get that concentrates on national statistics as well as regional statistics meaning the State of Ohio. He said they also looked at cost information prepared by Project Development, Incorporated and looked back at some of the reference material that they had from actual cost of subdivisions so that they could correlate that with the information that they were given regarding this.

Mr. Werner asked Mr. Ritley if he reviewed the question as to whether this property could be developed in an economically reasonable or viable way under its current zoning.

Mr. Ritley said it is his opinion that it cannot be developed in an economic way under its current zoning for a number of reasons.

Mr. Werner asked Mr. Ritley to explain how he came to that conclusion.

Mr. Ritley said one of the reasons is that as we all know, the housing bubble has burst and the LCM days of the past from the time leading up toward the end of 2005, that's over. He said in areas where you don't have significant job growth, you don't have the kind of demand pressure that will drive values so that you can keep up with the cost of construction as it continues to escalate and we have been students of what happens to construction costs over long periods of time and this area that really is lagging in growth, it does not escape the problem of having ever-escalating costs and we don't control steel either in our backyard, we don't control the price of steel and we don't control the price of concrete. He said we don't control lots of the building construction components and that is a major portion of what shelter costs today. He said the land is not the big component so without some of these drivers of demand in place and with escalating costs, the further out you push into the future, the worse the situation becomes and we also have ecological problems. He said we have problems with the way land use has been conducted in the past and the people generally are awakening to wasteful practices with land development.



Mr. Ritley continued by saying we also have the problem of trying to give habitation to people who's lifestyle is changing, for example, in Bainbridge Township, the average age there is about 40, almost exactly 40 years which is older than a lot of the growth and if you go to the growth areas in this United States you are going to see average age of residents in different census tracts or political subdivisions, they are going to be in the early thirties or high twenties, between 29, 30, 31, 32. He said those are the people who are in the family-rearing stages and their form of habitation is different than it is here. He said you look at the number of developments that have been occurring where density has been increased, Auburn Lakes, Sterling Lakes and some of these other communities, Canyon Lakes, it seems to be rampant with lakes he guesses, but he thinks that the lessons there are that there is a need for a different form of habitation than we have been accustomed to. He said the large lot zoning with long streets wasting a lot of the infrastructure, creating a future cost because we all know what the burdens of retaining this kind of infrastructure are going to be in the future that these are not the kinds of things that families who are trying to control some of their costs as there are boomers and everyone eventually will move into later years where they need dependable, affordable type of shelter. He said he is talking about a community that has very high median and average incomes, 80 some thousand dollars is the average household income in Bainbridge and for families with children, it is well over \$100,000 a year so this is a very wealthy community, but it doesn't escape the demography, because we are all moving through this life cycle of these life stages at one time or another and we are going to have needs for different kinds of habitation in that regard. He said with this price of property to try to build it the old way is fighting a lot of those factors and it is not where he thinks the value will lie to escape these rising costs that he referred to earlier. He said if these costs keep going up, you have got to make some economical use out of something and you can't burden the rest of the community with some of these diseconomies that are becoming more and more prominent. He said those are the background aspects of this and the other problem is when you start to focus in on how will this property be developed in a fashion of either 14 lots or 17 lots or 33 lots, whatever it is, it is going to take some time to develop. He said if you look at your housing starts in Bainbridge and you look at them over a period of time, it has been going down and he is not talking about it's been going down for the past six months or 18 months or whatever, he is talking about going back to 1990 when you look at your housing starts here, it is going down. He asked does that mean it is a disaster, no but it does mean though when we talk about the lakes that we referred to earlier, you are talking of the other subdivision here like Wembley and so on, you are talking about very, very high unit cost for those places that have larger lots and sewers and so on. He said you are talking about a \$600,000 to \$850,000 to \$900,000 homes and asked how many people can afford that kind of housing in here. He said that is not to say we are going to say the developer would build at the bottom end of the market and he is talking about very nice homes, but he is trying to deliver a product that the people will have a lot of discretionary income that will choose to occupy and you can't build something that doesn't fit the marketplace.

Ms. Sass asked Mr. Ritley if he has those housing starts.

Mr. Ritley said he can give them to the board and if there is a copy machine here tonight, he will run a copy.

Ms. Sass asked if he has them with him and if he can get them to the board afterwards.

Mr. Ritley said he will do that and asked Mr. Werner to make a note of it.

Mr. Werner said absolutely and asked Mr. Ritley in his analysis of the viability of this development under its current zoning, how many units did he determine could be developed on the property under the R-3A calculation.

Mr. Ritley said the model that we developed was the 33 lot cluster type development that has been proposed because it is something that had some certainty. He asked is it 32, is it 34, how does it fit in and there was a land plan that was developed and it has those units on it. He said whether or not there are any engineering or environment impediments to doing that, he does not know. He said he is not that expert, he has this model and he is using this model and it makes good use of the land in the sense that it takes full advantage of the buildable areas under the assumption that there is nothing in the middle area there that is being impinged upon.

Mr. Werner asked Mr. Ritley if he assumed in his analysis that the 33 unit plan was the proposed plan for this development.

Mr. Ritley replied yes.

Mr. Werner asked Mr. Ritley what he concluded with regard to it being a reasonable use of this property.

Mr. Ritley said if it were developed in that fashion, he thinks we can all cross our fingers and hold our breath about the future, but if things work out, it's about a 66 month, in their opinion, development period for this property because for about 12 months, you really can't do anything. He added that this market is dead and we are in un-chartered territory with respect to that. He said let's forget about that first year and move out from that first 12 months that we are just sort of a standstill at a little bubble of some pent up demand as people start to get excited again about development and we move forward with a steady pace of sales in this marketplace. He said now looking at the pace of sales at the price level that is being talked about, you have to recognize that there is a lot of volatility, because when you stretch out over a five or better year period of time, you may start developing some economic conditions that can throw you a bit off and that is why developers didn't have the rates of return that they do because when they put their money up, that is their seed capital and the only thing that they can use into the future and if they lose it because they made a bad bet on how they handle their development practice, then they are out of business and they are known as former developers.

Mr. Werner said your (Mr. Ritley's) report indicates on page one that you analyzed the development of the property for 14 residential lots.

Mr. Ritley replied yes.

Mr. Werner asked Mr. Ritley if his conclusion was that it would exceed the value of income which could be received from selling those lots.

Mr. Ritley said that is because he did not believe it is a product that is economically viable and there are other properties in the community that have been on the market that have not sold. He said when you think about this property and this cookie-cutter type of approach to its development, you are not creating any scale, you don't have any sense of place when this is done, you are just another spot along the road.

Mr. Werner asked Mr. Ritley if he is now describing the development of this property.

Mr. Ritley said for 14 lots on the one side and perhaps three on the side, with just that small number of lots over there, you are really fighting against a subdivision where he is sure a lot of fine people live there, but they are modest homes and now you come in and build at today's costs so you need to support something that has some scale so that you can stand up against that and say we have this environment here and also from a community standpoint, it does add to the longevity of a community when you start to develop newer housing that is better tuned to the needs of the populous that either resides here or would move into that kind of space or comes into the community and wants to be a part of this community, but you need to have some scale here. He said you have site lines and so on that make it to tie these parts together somewhat, but it remains that you will come into Tulip Drive and that is the only way you are going to get through there on this easterly side of the property. He said the westerly side of the property coming off Savage Rod again needs to have some scale or your are not going to have any significant value to the homes there and you need to be able to stand up and say "we are a neighborhood".

Mr. Werner asked Mr. Ritley if he has a conclusion then based on his research as to whether the 33 lot proposal for this property is the minimum needed to return a reasonable investment back to expectation of the investor and/or property owner.

Mr. Ritley said that is an interesting part about this exercise because when you use 33 lots as a development model, what happens is you can support back a land value worth \$1,100,000 which is about \$22,000 an acre rounded which is a land value that is appropriate to the community at large for residential development. He said to think that this is \$5,000 an acre or \$1,500 an acre is not at all appropriate and we are talking about almost agricultural or a truck farm what land values and to talk about it at \$80,000 an acre we might as well move down into Pepper Pike with central water and central sewer and one acre lots and so on and so forth and access right onto 271 and all those other type of higher density aspects but this seems to fit. He said it seems to work very well again given the need to have scale, to have a sense of place and the opportunity for a community to merge here but it seems to tie the two together so this is not sacrificed completely that any investment in this rather substantial amount of usable land back here can be justified because there is an association, not an intimate one, but certainly one you can see back and forth that you feel that you are part of something that is larger.

Mr. Ritley continued by saying it does respect the corridor through here so all these planning and economic reasons cause me to conclude that this is an appropriate sized development and it does conform with our goal for development in the community and it comes from the north and it sweeps down towards the southwest through Canyon Lakes.

Mr. Werner referred to Mr. Ritley's conclusion in the report, on page four, that says quote, "Based on the foregoing considerations as well as planning reasons, maintenance of the current zoning renders the land useless." He asked Mr. Ritley if that is his opinion on this.

Mr. Ritley said in his opinion you can't sell these if you put a street in, you couldn't sell these lots in the length of time that would be necessary to get a reasonable investment back, rate of return, and it would be very sub par and it would never attract any use.

Mr. Werner said to Mr. Ritley among the assumptions that you make in your report, still on page four, you identify a market based return rate of 30 percent and that seems pretty high and asked Mr. Ritley to explain how that factors into the development of real estate for projects like this.

Mr. Ritley said he is sure everybody in the room would like to get 30 percent year in and year out and we would all be probably driving home in our Rolls Royce's but that is not the way it works, that is the calculated rate of return because it means that there is a larger measure of nonperformance and if you can discount this income stream at 30 percent, you will be alive at the end of the day and you will have prospered relative to the risk you have taken. He said the outcomes especially in this part of the country are far from that because of what has happened with our job growth but you need to target that way and you need to plug those things in. He said it comes from rates of return that range from 20 percent to 30 percent land use with developers and also from published figures we get through our subscription services which are based on actual interview with developers and lenders for this kind of property. He said the banking business has kind of shut down for the land developer. He continued by saying that suddenly we are looking at this as a need at this moment and it would be difficult to get a loan on this property because there has been a shrinkage in capital available for this kind of development and that is particularly problematic in the northern Ohio area so that is an appropriate rate. He said he has discounted rates as high as 37 percent in this region from developers so it is not an atypical calculation.

Mr. Werner asked if that is a rate of return to acquire the interested investors in funding a project like this.

Mr. Ritley said if you don't get that, you don't have a rate of return, you don't calculate that kind of rate of return and there is even a one year change in your absorption period since you are only dealing with relatively short periods, then it can just really be damaging to that kind of an expectation so you have to use these high discounted rates.

Mr. Werner said the counsel for the township provided some additional exhibits to the board in a packet, he believes just today and we (applicant) did not receive these until last night. He said he objects to the submission of these on the same basis that our last minute report was objected to last time and we did our best to come prepared to respond to it but the rules should apply, he believes, to both parties. He said nevertheless, without waiving that objection, Exhibit 20 in that supplemental packet from the township, there was a one page development analysis and he believes it was prepared by George Smerigan.

Mr. Ritley said let it be said that Mr. Smerigan is a friend so let me look at this.

Mr. Werner said okay.

Mr. Riehl said while you are looking at it, let me just say that this is in response to the material that we received from Gary Werner with Mr. Ritley's report last Thursday so we apologize to everybody for not being able to get our numbers out sooner, but we did the best we could in about a three or four day turnaround time.

Mr. Werner asked Mr. Ritley if he has seen that report before.

Mr. Ritley said he saw it very briefly this afternoon and it is the same, yes, around 4:00 this afternoon.

Mr. Werner asked Mr. Ritley if his expertise encompasses the kind of an analysis that is to reflect in this one page analysis.

Mr. Ritley said he has also been involved in this line of work in terms of he has participated in residential development and that he just purchased 70 acres, not in this area, but for residential, actually a mixed use development, some residential development rather and he participated in some subdivision activity as far back as sometime in the late 1980's and thinks it was his first exposure to that area but in the course of our real estate appraisal work, we see lots of this kind of analysis and get involved with the engineers on it, not only in eminent domain cases, bank loan situations, not anymore but at least there was a period of time where there are situations like this type of issues.

Mr. Werner said to Mr. Ritley that the report he submitted indicates in his opinion a 66 month absorption period for development like this under current market circumstances.

Mr. Ritley said correct.

Mr. Werner asked Mr. Ritley what absorption period is reflected as he can tell from reviewing this report by Mr. Smerigan.

Mr. Ritley said one year.

Mr. Werner asked Mr. Ritley how he concludes that.

Mr. Ritley said because the last two lines described a net profit and relates that net profit to the cost of putting the project together and it concludes a rate of return of 41 percent and if it was put on an annual basis, it wouldn't be 41 percent. He said in fact if it went to two years, it would fall below that he would call minimum standard for any reasonable investment and he does not think you are ever going to find a subdivision that would be along the lines that we proposed here for 14 lots or 17 lots . He said he is sorry that would sell out in 24 months looking at the kind of building starts that have occurred here in the community over the past several years and again, you will have that information. He said you are not going to own the market when you come on stream with some lots, you are going to be competition with other people but you are not going to sell all of these lots in one year, and in this market, you are not going to sell them in two years or three years. He said it is going to take a long time to do this and he thinks the return will go down so low, you might as well put the money in the bank and asked why you would take all this risk.

Mr. Werner said to Mr. Ritley that Mr. Smerigan incorporated into the land sales calculations part of this analysis the figures that were listed in your report for the lots on either side of the creek and asked Mr. Ritley if he sees those at the bottom.

Mr. Ritley replied yes.

Mr. Werner said now those values were established relative to the 33 unit development, correct.

Mr. Ritley said yes.

Mr. Werner asked is it technically proper to just plug those numbers into a development that is proposing only 17 units.

Mr. Ritley said those are the values that he ascribed to in a different kind of product that has a totally different character associated with it and he has not appraised these lots. He said Mr. Smerigan is proposing to run 14 on the west side and three on the east side but again, it goes to the scale He said he thinks if you put three lots over there, you are going to get a \$107,000 average plus for those lots and he thinks if you put cookie-cutter lots in here that don't have that kind of scale that you need so that you have a sufficient value reinforcing effect, then you are not going to get the \$175,000 a lot that he would forecast for this kind of standards that the developer has proposed.

Mr. Werner said that Mr. Smerigan also identifies a 15 percent figure for operations, marketing and carrying costs and in your opinion as an appraiser, does that 16 percent really encompass carrying costs.

Mr. Ritley said no he does not believe that it can given the fact that you already specified operations and marketing and if by doing it, it gets down to your organizational costs, accounting fees, legal expenses and so on, and what it takes to have personnel or some person sign for this to carry forward with this development and someone who is putting a marketing package together making sure the marketing is appropriately handled that there is nothing in preparing the costs. He said he does not know but it may be that Mr. Smerigan has a different definition and he is misinterpreting what he is saying. He said he does not know, but there is certainly not any interest to carry the project over.

Mr. Werner said there is evidence to the effect that the units to be built in this 33 unit plan would average \$750,000 and that is the target for the market based on similar residential development elsewhere in this vicinity. He asked Mr. Ritley, in his appraisal experience can he describe what, if any, effect units of that value in this location would have on the neighboring units along Tulip Lane.

Mr. Ritley referred to the site plan and said it would definitely have an upward valuation effect on those residences and what he would anticipate is that the high value homes would be in this area and there would be a set of homes here and again to have value, you have to have something into this, you can't sell a dream to somebody, you go to actually give them some physical substance to justify the cost of doing this road and the beginning construction and development of residences in there, there has to be something significant and it is a well known fact, he lives in Moreland Hills, one of the neighboring communities and they have homes that have been taken down in the area, the more modest earlier homes have been taken down and the reason that happened is because the lot values got high enough that the people wanted to be in that location and they wanted a new home and they would come in and they would buy the house, take it down and build a new home but he does not know whether that is going to happen here. He said his prediction of \$107,000 per average lot in here is correct but over time he thinks it is definitely going to add to the longevity of the existing part of Tulip Lane and he thinks that Eaton is the little street in that area and will definitely help add to the life of that neighborhood. He said he thinks that is another planning issue as well as something that happens before development.

Mr. Werner asked Mr. Ritley if his appraisal opinion is this 33 unit development will not adversely affect the values of those homes.

Mr. Ritley said he does not believe that will be the case, they are few in number so you are not talking about traffic generation and what you would be talking about is newness, higher values and the draft effect of that holding those values up.

Mr. Werner asked Mr. Ritley if he had an opportunity to examine a one page summary pro forma essentially prepared by Mr. Iacona for this development.

Mr. Ritley said very briefly, yes.

Mr. Werner said and we had some discussion about that.

Mr. Ritley said we did.

Mr. Werner said there is a discrepancy between the land value reflected in Mr. Iacona's report and he sees that he has a contract number here of 2.8 million and 1.1 million that you (Mr. Ritley) indicated as a result of your appraisal analysis. He said the evidence has already shown too that he incorporates a two year build-out period in his analysis where you are assuming 66 months if you (Mr. Ritley) can reconcile those two views of this development on the assumption that this was prepared roughly one year ago.

Mr. Ritley said because he has been involved in the end of the business of Mr. Iacona and he can tell you that one of the biggest dangers is believing so deeply and so passionately in your project and for all the value that brings to a community to hopefully to keep them all happy there is still a great danger associated with that. He said if you start romancing the numbers, you can start seeing profit where there may not be any and over the past year or so, actually a little more than a year, when the market cracks and things have tumbled out of control. He said you heard me say at the beginning that the housing bubble has burst, we never had a real bubble here and that is supposed to make us happy. He said there is a big reason why we don't have a bubble here on this scale to magnitude the experience of other parts of the country and that is because we don't have job creation and because we don't have the dynamics in this economy and we have lost our way a bit and we are trying to find our way and he thinks with the energy that some people have been applying now that we will find our way, a new way, but it is a tough road to travel so we are going to be dropping back into what we experienced in perhaps a time like the 1960's where you have a very flat housing market that lasted for almost a decade.

Mr. Lamanna said he thinks we are getting a little off.

Mr. Ritley said he is trying to set a stage for why.

Mr. Lamanna said but you have been over this about three times.

Mr. Ritley said that is fine.

Mr. Lamanna said he is ready for the violins to start playing.

Mr. Werner told Mr. Ritley to get to the punch-line on connecting his assessment from an appraisal standpoint and Mr. Iacona's full growth and development.

Mr. Ritley said he thinks a reassessment by Mr. Iacona would be appropriate relative to the affordability of the land at that price and our value, as he said a few minutes ago is based on what this community should bring for residential land value of this type when you are faced with its scale and so on. He said the larger the scale of the property, of course, the further down acreage value would go and smaller but at this scale 50 acres is an appropriate number.



Mr. Ritley continued by saying 1.1 million dollars is a market value for the property, not the number that was originally forecast for this when everybody thought they could sell everything in no time at all and that is not what Cleveland is all about and all the outlying areas. He said that is not the economics of this kind of situation.

Mr. Werner said two final points and one, Mr. Iacona in his projections for this project calculated this as a return on investment of 21 percent in three years which is annually seven percent.

Mr. Ritley said he has no comment on it, he just does not understand the calculation whether it is based on the amount of equity that he would have personally in it after they drew down salaries and one thing or another. He said he does not know enough about those numbers to really comment deep enough, but anything on what he said he believes.

Mr. Werner said but your (Mr. Ritley's) indication that a much more reasonable marketing expectation for annual return would be closer to 30%.

Mr. Ritley said that is with equity invested, yes.

Mr. Werner said that is all he has.

Mr. Riehl said to Mr. Ritley that they have known each other for a long period of time and they have both been on the same side in friendly adversary.

Mr. Riehl said yes.

Mr. Riehl said so what he would like to do is just ask him a couple of questions to clarify his report and added by the way your (Mr. Ritley's) report is not in a technical prism, is it.

Mr. Ritley said no, it is an analysis of a development proposal and it uses or it comes to a conclusion about an underlying land value which is correlated with the land values that would be typical of what you would find for this type of tract in the Bainbridge Township area and a couple of the township's neighbors.

Mr. Riehl asked Mr. Ritley if it is boiled down to the bare minimum if what he has indicated in his report is that the costs of development have still gone up, but the market stinks and if that is correct.

Mr. Ritley said the market is not supporting absorption at the rates that it did before and there is no expectation for that to occur for quite sometime and when it does, reoccur in any significant measurable way, it is going to a relatively low manner.

Mr. Riehl said now let's break the proposed development down into two phases and he thinks Mr. Iacona has actually done that, the phase off of Tulip Court and then the other phase off of Savage Road. He said Mr. Iacona is estimating that there is going to be 900 lineal feet of roadway off of Tulip Court, correct. He said if you look at the proposed development here that is laid out by Landsong, just eyeballing it, it looks like there is about a 900 foot culdesac off of Tulip Court, correct.

Mr. Ritley said approximately, he does not have a scale and he has not measured it himself.

Mr. Riehl said if that were developed in accordance with code, couldn't you save 900 lineal feet of construction by just putting the lots off of a new culdesac, maybe a 100 foot culdesac.

Mr. Ritley said according to the information he saw for Mr. Smerigan, he has got about 1,100 lineal feet of road coming and he thinks the way you are addressing it is under the existing zoning.

Mr. Riehl said no, he thinks there was a sketch that was attached to Mr. Smerigan's report in which he indicates that the 1,100 lineal feet of roadway is coming in off of Savage Road, not off of Tulip Court.

Mr. Ritley said he thought it was Tulip Road.

Mr. Riehl said let's say that the new culdesac is 100 feet long instead of 900 feet long.

Mr. Ritley said okay.

Mr. Riehl said even if you take your assumption which Mr. Iacona set forth that it would cost 500 feet per lineal foot for the construction.

Mr. Ritley said for the articles, yes.

Mr. Riehl asked would that mean that the cost of that new culdesac would be somewhere around \$50,000 for 100 feet.

Mr. Ritley said yes, if that were, in fact, the case and if one would then sell lots for \$107,000 when you have homes that will sell for and have sold for \$200,000 or so on Tulip. He said there is a mix here, there is some chemistry and he thinks you have to respect that the cost against three lots may not mean very much at all.

Mr. Riehl said to Mr. Ritley that he did indicate that on page two of his report that based on his analysis of recent residential sales, the average price of \$107,000 per improved lot under the present three acre zoning would be a reasonable factor in Bainbridge Township.

Mr. Ritley said that is correct based on it is an average.

Mr. Riehl asked Mr. Ritley if he recalls what the recent residential sales were that he used as a comparison.

Mr. Ritley said he did not know right off the top of his head and whatever sales there were of residential lots, those are the ones that we pulled together for our analysis and we looked at the more common type of a lot and we looked then at some of the higher end lots like the ones that have taken place in Canyon Lakes and Wembley and those kinds of areas.

Mr. Riehl asked if he is correct that at least as far as the portion of the development, you (Mr. Ritley) did not make an analysis of the economic viability under the current zoning.

Mr. Ritley said he does not think it is a saleable product and he does not think either coming off of Savage Road or coming off Tulip, there is a saleable product, not in this market, not in the market that he foresees in the future for the next several years. He said if you want to give the lots away, if you want to sell them for \$75,000 or \$60,000, you will find buyers for them, but he does not know how anybody is going to make out with something like that and it would cost you more to develop the property with water and sewer. He said if you put septic tanks and wells in you have got all kinds of other problems. He said as a community stand point, he does not think that is the way to go when you got water and sewer right there.

Mr. Riehl said on page three of your report, you indicated that it would probably take at least ten to twelve months for the market to improve given the current state of marketing conditions, correct.

Mr. Ritley replied yes.

Mr. Riehl said hopefully.

Mr. Ritley said that is in all capital letters, hopefully and as he said earlier, we are in uncharted territory and we have never had such a difficult situation arise where the combination of sub prime loans being dressed up to be a triple A credit to function to be sold all over the world for the railroad nonsense that we are one and we are talking about hundreds of billions of dollars of value. He said they have taken the banking system and it has imploded to a large degree in terms of real estate so everybody is trying to get a handle on this and where is the value and credit ratings and how do we proceed from here He said you got congress looking at things and you got all these other issues and you may say wasn't this unusual or what does it have to do with Bainbridge but we are all on the same boat sailing in the same direction whether we like it or not and it is affecting what people do when they make a decision whether they are going to buy a lot and build a home or buy a home and just build on the lot or buy a used home or add a room on the existing home or do nothing.

Mr. Ritley continued by saying this whole capital market situation has to be solved and people in the United States over the past century have responded to population growth, but they are controlled by interest rate structure and availability of the capital and that is why we have these ups and downs of the housing market. He said we are in that situation now and it will push itself out into the future until this thing gets regulated. He said so you have to have a product that meets the basic demographic needs of the population that is here and here we don't have growth to any extent, we have cross movements in population as boomers are retiring and they want to downsize. He said they want to move into certain kinds of housing and they want to stay in a community that they are in and while other people who are outside this community will come here for that kind of habitation.

Mr. Riehl said and that is the reason he is asking for a yes or no answer and you (Mr. Ritley) predicted that a developer would have to wait at least ten to twelve months for the market to improve before he or she could begin gainfully marketing new residential lots, correct.

Mr. Ritley said it would be his own words at least, yes.

Mr. Riehl said now, the developer is not ready to begin construction at this very moment, is he.

Mr. Werner said objection.

Mr. Ritley said it is in their model.

Mr. Riehl said there are a number of permits that there has been prior testimony that he is going to have to obtain.

Mr. Ritley said correct.

Mr. Riehl said the Army Corps of Engineers acclamation of wetlands perhaps and the Ohio EPA 401, approval by the Geauga County Planning Commission, approval by the Geauga County Engineer, all of that takes time and asked would it be unreasonable to say that even obtaining an Army Corps of Engineers acclamation of wetlands would take a year.

Mr. Ritley said it depends on what it is that needs to be done with the Corps and it can be done in 120 to 180 days.

Mr. Riehl said and it could take up to three years, right.

Mr. Ritley said it depends on what you got.

Mr. Riehl said to Mr. Ritley if he told him that these have been testified to as being category three wetlands and those are the highest of pristine type of wetlands, correct.

Mr. Ritley said they are and he does not have any information with respect to that and this is an engineering area that would have to be addressed but it does not matter because once you set this model running and you look at the risk that is associated with this in terms of that if it takes another six months or so, throwing this out that far is not going to be the detrimental kind as a 33 development or 33 lot development and what it means is that it gets pushed a little further into the future and again, you got cost pressures. He said you got all those things to bear, but they are not fatal to this because they are going to meet the demographic needs of the population that is out there today in some way, shape or form. He said the product can always be fine-tuned as you move forward in time and you see how these things are evolving. He said sometimes your competitors are the best teachers that there are out there, for example, all over the metropolitan area about what works and what doesn't work. He said he does know that for older people, people who don't have a large family size, if you go one way in that regard, you are watching family sizes drop and drop and drop from thousands and he thinks it was over three persons per household in 1980, it was 2.98 persons per household in 2000 and in 2007 the estimate was 2.78 and he believes that is the right number and the forecast for 2012, five years out is one hundredth of a point lower than that. He said it is flattening out down at the bottom, but you have got very small households and 60 percent of the households in Bainbridge don't have children, they are married without children, single without children and these are important numbers so you don't build four bedroom, three and a half bath houses and so on. He said you start to build what kind of housing that is when the kids come to visit, they've got the bedroom or bathroom, maybe there is a loft for the kids or whatever, but it's a very loving home and it's very gracious and it's got the great room and all the other things that people want to have.

Mr. Riehl asked if he could direct another question and said he thinks you (Mr. Ritley) pointed out the portion of your report where you indicated that there is an implied land value for the raw undeveloped land at one point, correct.

Mr. Ritley said developing it in this fashion, 33 lots there as implied, the land value is 1.1 million dollars which correlates on an acreage basis with other land values that have realized before of plots in this size category.

Mr. Riehl said and you (Mr. Ritley) mentioned in Geauga County and asked do you recall what those comparables are.

Mr. Ritley said for this type of work he didn't put them in there because he was satisfied that he had reached that threshold where you have got a supportable value based on those comparables and if he had found that those land values were much higher than that, then we would have plugged them in and it would have had an impact on that model. He said this thing seems to be in balance.

Mr. Riehl said he thinks you (Mr. Ritley) indicated that Mr. Iacona's estimate of land costs is 2.8 million was certainly unsupported by the market.

Mr. Ritley said he doesn't believe it is supported by the current market, and that is correct.

Mr. Riehl said he thinks you (Mr. Ritley) also attached to your report some improvement cost analysis that was on the letterhead of Preferred Development and asked do you have that in front of you.

Mr. Ritley said he can get it.

Mr. Riehl said just so everybody is on the same page, this is an undated analysis by Preferred Development, Mr. Iacona's company. He said and by the way, the development of this development proposed is to be under the Geauga County rural roadway standards, correct.

Mr. Ritley said he is not quite sure of all the specifications that are required for this particular development and he assumes that they would meet all the requirements for roads that he has seen in the community in new developments.

Mr. Riehl said he thinks you (Mr. Ritley) said that you reviewed the cost factors that Mr. Iacona set forth and you felt that they were reasonable.

Mr. Ritley said the factors that were shown there, the unit values associated with it he thinks were appropriate.

Mr. Riehl asked doesn't it make an awful lot of difference what the road standards are to figure out what work is intended.

Mr. Ritley said it would but at the state that we are looking at this and the reasonableness associated with these unit costs there is and looking at some of the other developments that he has been involved in, in terms of providing appraisal services or consulting, those values appear to be appropriate.

Mr. Riehl said suppose I told you (Mr. Ritley) that the proposal is to develop this within 20 foot wide width in pavement, no sidewalks, no lighting, no requirement for curbs and ditches, do you feel that the cost factor of \$550 per developed lineal foot is reasonable.

Mr. Ritley said it would be high, but he doesn't think that that is what a 33 unit community should be developed, he thinks that you need some lines of demarcation where you have curbing and you will have some way that the children might be able to travel safely on a bicycle or in fact, if he can throw a little advertising to this, don't build communities that don't have sidewalks unless they are very small and there is very few houses because kids are in danger when they are out in the streets. He said the best subdivisions he has seen have somewhere for the kids to ride their bicycles, bike paths or somewhere.

Mr. Riehl said on this analysis under the \$770,000 category includes utilities and asked Mr. Ritley if he knew what he was including in utility.

Mr. Ritley said water and sewer, the full complement of utilities he would be responsible for.

Mr. Riehl said two categories down, he also lists an additional \$197,000 for water to lots at \$100 a lineal foot and asked why he is including that if the utilities were included up above.

Mr. Ritley said his understanding is that he is bringing water to the location and sized appropriately to serve both parts of the subdivision.

Mr. Riehl asked 1,470 lineal feet.

Mr. Ritley said he does not have the specs from the engineer, he just has this and he did not rely on this calculation specifically in terms of each one of these unit values, we get all done with this thing and there is unit costs that are associated with a per lot basis as well as the individual categories. He said he has specified in his report that this is based upon Preferred Development's numbers and he thinks Mr. Iacona is here to talk about these numbers.

Mr. Riehl said and he also lists the next category down of \$322,000 for on-site wastewater treatment, 14 lots times \$23,000.

Mr. Ritley said that is correct for this type of a development.

Mr. Riehl said so that would imply on-site septic, correct.

Mr. Ritley said that would imply that, that's correct and asked if there is some kind of a central plant or something and added that he is not sure how he was going to handle it.

Mr. Riehl said but it says 14 times \$23,000.

Mr. Ritley said the \$23,000 is the kind of a cost figure that you would relate to individual facilities on each lot.

Mr. Riehl asked why would he included that if he included utilities in the \$770,000.

Mr. Ritley said you will have to ask him when he gets up here.

Mr. Riehl said and typically for septic, that is a cost that is borne by the builder not the developer, correct.

Mr. Ritley said that is correct and ultimately by the homeowner.

Mr. Riehl said incidentally did you (Mr. Ritley) asked Mr. Iacona for what the cost would be for development on 17 lots under the cluster development.

Mr. Ritley said he did not and he sees no difference in looking at Mr. Smerigan's plan which he believes is slightly oversized but he thinks under the code, the 16 lots could be accommodated on the site but whatever it is, 14 lots or 16 lots, he sees the same marketing problems that he talked about earlier.

Mr. Riehl said he understands but you can make a substantial savings in your cost of development at 1,100 lineal feet of roadway versus 2,100 lineal feet of roadway, correct.

Mr. Ritley said yes you can, that is correct.

Mr. Riehl said he does not believe he has any further questions and thank you.

Mr. Lamanna said he has a couple of questions and you (Mr. Ritley) said you believe that we were entering uncharted waters as far as what is going to be happening with property values and that sort of thing, right.

Mr. Ritley said yes, that is correct, for a time.

Mr. Lamanna said for a time, so that says at this time the prior comparables that you were talking about from property in Geauga County may not have a whole lot of meaning given current market conditions.

Mr. Ritley said he thought about that and what he has done in this model that is in here for this 33 lot development that he looked at and asked what does that mean. He said we are going to come to that, those land values so that the land value that is in here is appropriate for this model and he has not given up anything and he hasn't overreached on anything with respect to that.

Mr. Lamanna said when you say we are gong to come back, you mean eventually the market will right itself.

Mr. Ritley said and it should not be that long because developers anticipate and they try to get in at an appropriate time to get through their entitlements to make sure that things move forward and that is one of the reasons why he doesn't think that one-half a year or something would make any difference because all you are doing is taking this model and just shifting it forward but the same problems are there. He asked what kind of product are you going to be able to market and are you going to be in sync with the market or are you going to be yesterday's news and he doesn't say that about anybody's home or anybody's lot, what he says about it is that there are changing demographics and because developers are at the edge of these changes because they are offering new products, they have to be very much in tune with that.



Mr. Ritley continued by saying that there is still a lot of opportunities for people who have to sell their homes or buy homes if they have those families that will model that or after that kind of housing but to catch the demand that is out there that is emerging at these current prices or future prices, you have to be very sharp if you throw down the money with what you are doing.

Mr. Lamanna said let me also understand one other thing from the way this analysis works is that the longer the period of time it takes for the development to sell out, the more money you have to make.

Mr. Ritley said or the less.

Mr. Lamanna asked if that is from the sale of the lot.

Mr. Ritley said or the less you can pay for the paving of the land or the landscaping or whatever you are doing.

Mr. Lamanna said and the riskier the market the higher rate of return that somebody wants.

Mr. Ritley said correct.

Mr. Lamanna said so a deteriorating market at some point in time it becomes infeasible to do anything with the property.

Mr. Ritley said while it is that state.

Mr. Lamanna said the argument would become if it is a deteriorating market, you would have to put more and more lots on the property to be able to generate a reasonable rate of return.

Mr. Ritley said he thinks he appreciates what Mr. Lamanna is saying but that is not the argument, the argument is how do you have a product at the end of the day that matches the demography that is out there towards these prices.

Mr. Lamanna said and the other side of the argument that is coming this way is what people would be willing to pay for whatever you are creating.

Mr. Ritley said and if you think about it what has been the most recession proof aspect of our culture, it has been people in higher income groups, they continue to have sufficient income to be able to pay for that kind of product and if it is there, they are in a position where they can buy it. He asked now is that going to be true tomorrow or the next day and the next day and the next day.

Mr. Lamanna said one final question and that is you have made this point over and over again about the changing demographics and everything else and that being the case, how is this property different from any other piece of undeveloped property in Bainbridge Township.

Mr. Ritley said he thinks it ties into the fact that this is part of that curve of development where you see a pattern where there is that kind of density that is associated with parts of properties whether it is in Lake Lucerne where people have been improving their homes, whether it is in Canyon Lakes where they are building a brand new home, you have got those densities and this is congruent with that type of activity.

Mr. Lamanna asked how does this property differ from the next property on Savage Road and beyond that or the one down on Chagrin Road across the street.

Mr. Ritley said he thinks Mr. Lamanna's question is a very interesting one and he thinks that it is appropriate and all he can tell you is that earlier in my remarks, I said that we must do sensible development and the direction of this community is one that reflects that.

Mr. Lamanna said everything he has heard and that all the points you (Mr. Ritley) made are generally applicable to most of the undeveloped property in this township.

Mr. Ritley said except that this one does have sewer and water passing through it and you may not have heard these other comments about it. He said he is not opining on that at all, but he is saying it does have that attribute, it does conform in the sense that you have got this squeak of density that runs through the community at that point so if you were looking on planning in the community and say okay, so we are going to have lower density development over here or here, but we do have this arc that's adverse and there is one piece that is within that sweep, it makes sense to have that kind of continuity. He said we can add to the longevity of this neighborhood over here, increase values for the homeowners over there and give them that benefit and we can create another neighborhood in our community that has some high values in it. He said and with that he knows about school age children generation in households today, this is going to be a tax plus for the school district because they will be high value homes and he thinks that Mr. Hartt has some very good statistics to show you on that.

Mr. Lamanna said okay.

Mr. Thomas McGlenn of 8386 Tulip Lake testified that Dalebrook is a transitional community right now and the sales are going as home-starters for young people, it is not a growing, yuppie community and he personally can't imagine himself driving through 30 or so \$200,000 to \$300,000 homes to get to his \$750,000 home.

Mr. McGlenn continued by saying he could move to Wembley or to Canyon Lakes and he is right that sidewalks and lighting is great for children, it is going to be great for children in the \$750,000 homes, it is not going to be great for the starter homes that people are getting in Dalebrook now on past sales. He said he begs to differ with him that 17 homes in a 45 home development is not a substantial increase, it is a 40% change to the community down a chipped and sealed roadway to the \$750,000 homes. He said he will keep his money in the money market account to invest in something like that, but he would like to know how he reaches an appraisal value and says that this is going to become a community of \$300,000 homes linked to \$750,000 homes down a two lane chipped and sealed roadway, it does not make sense economically or community-wise and he would just like his opinion.

Mr. Ritley said he thinks that perhaps something he said earlier or perhaps omitted or he implied that these are going to be the lower value lots and they are not going to sell like the homes that would be built at the \$750,000 price class. He said all of these homes up here, the 18 or so homes up here are the ones that are going to be the highest valued homes, because they don't have this impediment, but when you get up into the old \$400,000 and \$450,000 range he thinks you can have a product there that will sell and that is a loaded house that has all the bells and whistles in it and he thinks it would be a very good benefit to the rest of the street. He said he thinks as long as you keep architectural controls and have some compatibility between the two pitches of the roof, shadow line and that sort of thing these will relate well and will play as one neighborhood so he thinks it will work, and added please don't think that he is talking about \$750,000 homes and he does not think the developer is talking about \$750,000 homes in the back, but he will have a chance to talk about it.

Mr. Steve Sandler of Westhill Drive testified that he lives in Lake Lucerne and he is the victim of a development called Bridgeway Estates. He said he moved here in 1985 and moved into a house with a pristine pond, his neighbor had a pond across the street and they were part of a flood control situation that he thinks you are probably all aware of and as his history recalls, all of the water that drains from E. Washington Street and the old industrial plaza, Lake Lucerne and unfortunately Bridgeway flows through our property into the Chagrin River and what that has meant is the loss of our ponds. He said they have filled up with silt and noxious weeds and his pond bank collapsed after a heavy May rainstorm and he is sure that the developers of Bridgeway never dreamed that they would cause so much havoc by putting up magnificent Canyon Lake type homes in Bridge way and there aren't that many of them, but when you cover up land with homes and streets, the water has to go someplace. He said unfortunately it doesn't go into the ground, it goes through his property and he has had Westhill Drive closed because of high water and he has had flooding in his basement and he just wanted to make the board aware of the fact that there are some unknown factors at work here when you are messing with Mother Nature.

Mr. Jim Toohey of 17141 Hidden Point Drive, Bridgeway Estates, testified that he shares the gentleman's concern and he moved here ten years ago and in the last four years due to increased run-off, he has spent over \$4,000 widening the spillway, which he is sure has not helped Mr. Sandler's property because of the increase run-off. He said that 33 homes and their lot coverage is going to increase run-off far greater than 14 homes if we stay without zoning. He asked Mr. Lamanna if he could ask a series of three short questions and then perhaps a conclusion at the end of Mr. Ritley.

Mr. Lamanna said okay.

Mr. Toohey asked if Mr. Ritley has personally visited Chagrin Oak Subdivision and Amber Trail Subdivision.

Mr. Ritley said no.

Mr. Toohey told Mr. Ritley that he used those comparables.

Mr. Ritley said no he did not.

Mr. Toohey said at the bottom it says comparables.

Mr. Ritley said for lot sales.

Mr. Toohey said yes and asked if the report reflects that three of the four lots in Chagrin Oak Subdivision will face Chagrin Road, a very busy road and hear 422 traffic and was that taken into consideration.

Mr. Ritley said Mr. Huber who is another MAI in his office, got his own material for this report and is a signatory to the report and you will see his information and his qualifications and his certifications in the back of the report. He said he had discussed with him that there seems to be a sort of lots that don't have some kind of impediment such as facing 422 in the back end of the lot, so we did talk about that when we were looking at the pricing on the lots that he had gathered.

Mr. Toohey asked if Mr. Huber visited it.

Mr. Ritley said yes and he would have looked at the GIS system for each of those lot sales.

Mr. Toohey said he was asking if he has visited rather than getting the information off of the website.

Mr. Ritley said he looked at them because he did report back to me and with the GIS system you can get the shape of the lot that you can't see when you are sitting out in front or driving down the streets.

Mr. Toohey said correct.

Mr. Ritley said you get a better look at the topography because the topography is available to you on the GIS system and lots of other information so you try to correlate that with the deed information and put together the package for analysis.

Mr. Toohey said the next question is that his belief is that the location of the land has a lot to do with land value and when he looked at the Amber Trail Subdivision of where that is located versus where the Savage Road development is located, he suspects that there is a great deal of difference between at least implied land values. He said on the other side of the coin, Mr. Riehl asked several questions about the improvement costs in this study and some of those he hit and others he finds curious that for the developer on 33 lots, he will list \$60,000 for an interest, design and landscaping and on 14 lots they list \$80,000 and on project management it is \$70,000 for 33 lots and \$150,000 for 14 lots. He said they use exactly the same titles but there are significant differences so his question is he thought what the gentleman was testifying to was the viability of the project and if he has not been personally involved in the numbers, he has taken the developer's numbers and reached a conclusion and he finds that hard to get his hands around.

Mr. Lamanna said obviously his conclusion is only as good as these numbers that went into it so the value of his report is dependent upon ultimately how good those values are if anything.

Mr. Ritley said he thinks this situation that exists here is one where you must do something to create that level of value that can carry this parcel of land and if you were going to develop 14 or 17 lots here, you are going to have a very difficult time getting the absorption of these lots because you are going to have what is being offered elsewhere in the community and there are lots for sale and why aren't they selling, so here is a situation where we know that we go some strength in the market that we will be emerging in the not too difficult future. He said we can think reasonably about that and you can have a product that will be a good addition to the community and that is not a sales pitch, it is a reality for the developer.

Mr. Lamanna said we understand.

Mr. Ritley said thank you.

A short break was taken.

Mr. Riehl said he wanted to thank Mr. Werner and they have two residents who cannot be here next week and they do have statements and we would like to have them to be able to read the statements into the record.

Mr. Lamanna said that would be fine.

Mr. Joe Lencewicz testified that he is the president of the Bridgeway Estates Homeowners Association and he is here representing all 19 homeowners who collectively have opinions as a result of the trustees, the elected trustees and elected officers reviewing the information that was submitted by the engineers and the other water conservation experts and Mr. Riehl's exhibits. He said they approached it from two standpoints, one, we got together and said what is this doing to our community, what could this do to our community and what is happening currently. He said he wants to read that into the record and then to validate what they believe were their concerns and opinions about this matter, they hired their own counsel to support their positions and analyze the resolutions, the variances and the other data that they had and he has that seven page opinion from their attorney that he would like to enter into the record as well. He said in the interest of brevity which by the way these proceedings are rather short on, he would like to read their positions into the record and perhaps submit their attorney's report without reading it unless it is imperative that he does that.

Mr. Lamanna explained that the board can accept their attorney's report as a legal brief and legal argument and asked if a copy could be furnished and be made to the other represented parties here.

Mr. Lencewicz said he has copies for everyone.

Mr. Lamanna said it can't come in either a factual statement or an expert opinion other than a legal brief or legal argument.

Mr. Lencewicz said then they will submit it as such.

Mr. Lamanna said he has not seen it and does not know what it contains but if it is a legal brief based on his review of the facts, then the board can accept it as a legal brief and legal argument but not as fact.

Mr. Werner stated for the record that he is going to register an objection as to this report because this is a witness that we have had no opportunity to cross-examine.

Mr. Lamanna said that is what he is saying, we are not admitting it as evidence we are just considering it as legal argument ultimately and we will not be admitting it into the record.

Mr. Werner said just for the record, not his objection for the record.

Mr. Lamanna said yes, the board notes your objection.

Mr. Lencewicz said this letter was prepared by him on January 22<sup>nd</sup> as a result of meetings they have had and conferences they have had with their attorney and this subject is the Voproco Properties Application 2006-33 for multiple variances to the Bainbridge Township Zoning Resolution(s) and his letter is to this board.

“Dear Board Members,

I am writing to you on behalf of the entire membership of The Bridgeway Estates Homeowners Association to advise you of our position and concerns and requesting your consideration and support regarding the captioned subject.

As a collective body, we are in no uncertain terms unanimously opposed to any variances to the Township’s current Zoning Resolution(s) as requested and/or resulting from the proposed cluster development plans prepared by Landsong Engineering and submitted by Voproco Properties Limited for the property located at 16941 Savage Road.

First, it should be noted that properties adjacent to the proposed development, including Bridgeway, have been planned and developed in compliance with the spirit and letter of the Township’s zoning resolution(s). Voproco and other developers must and should be held to the same standards in order to preserve the intent and integrity of those Zoning Resolution(s).

Next, documented analysis and opinions by engineering, soil and conservation, zoning inspection, and other professionals establish the fact that the here requested variances would result in irreparable property damage to the development site itself and adjacent properties including Bridgeway. More specifically, certain residents of Bridgeway whose property abuts the undeveloped land in question have and continue to experience property damage from the current run-off. This has resulted in considerable anxiety and expense to those residents. Attached are three letters from Bridgeway residents, James P. Toohey – 17141 Hidden Point Drive; Richard Distad – 17171 Hidden Point Drive ; and David L. Williams – 17191 Hidden Point Drive illustrating and substantiating the point. If extrapolated, this property, if and when developed, will exacerbate these problems even if no variances are granted. Damage will be even greater with the substantial variances being requested.

Finally a current and on-going concern of all residents of Bridgeway is the overall devaluation of our property.

The residents of Bridgeway support development efforts that are beneficial to the Township and its residents. However, such efforts must comport with the zoning requirements and achieve the intended results of nurturing and maintaining the rural, wooded character of the Township. Voproco Property’s requested variances to date are an affront to the Township’s Zoning Resolution(s), the Trustees and the residents of Bainbridge Township.

Based on the foregoing, The Bridgeway Estates Homeowners Association implores the Bainbridge Township's Board of Zoning Appeals to uphold the current zoning resolution(s) and deny the extensive variances contained in Voproco Properties Limited's original and amendments to their Application 2006-33.

Joseph F. Lencewicz, President"

Mr. Iacona asked if Bridgeway was developed under the cluster, R-3A cluster heading.

Mr. Lencewicz said absolutely, we conformed fully.

Mr. Iacona asked if there were any variances.

Mr. Lencewicz said there were no variances, absolutely none.

Mr. Jim Toohey said that he would like to read his letter to Mr. Joe Lencewicz, dated January 9, 2008 and stated the following to be entered into the record.

"Dear Joe,

I am unable to attend the January 24<sup>th</sup> Bainbridge Zoning Board Meeting regarding the requested variances for the Savage Road development, formally known as Voproco Properties Limited and variances application number 2006-33.

My concern is Bridgeway has three ponds and a small stream which runs through half of the 19 residential properties. In addition, the common area has a large pond.

Three times in the ten years we have lived here when we experienced a real down pour, the top two residential ponds have over flown causing damage and further erosion. This past year, I have invested \$4,000 to widen the spill way and further down the stream put in a cement retaining wall with boulders to stop the wash at the turn between our home and neighbor's house, Bill Wagner.

It is only logical to assume there will be increased water runoffs if this proposed zoning variance is allowed with the increased land coverage (Housing, streets, driveways, sidewalks, etc.). Possibly this watershed runoff will be greater than ever and perhaps become on a regular basis equal to the exceptional overflows we have experienced.



Needless to say if the houses on the stream begin to experience wash outs they will incur significant expenses caused by this zoning exception and if left unattended will suffer declines in their home owner value. What recourse would the homeowner or the association have and against whom should these numerous variances be allowed and clearly negatively impact the ponds, dams and streams in our association?

I believe our homeowner's association should take a strong exception to the requested variances. Bridgeway Estates fully complied with every zoning guideline (one house per three acres, etc.) and it only seems fair that those proposed adjacent housing developments should do the same.

Jim”

Mr. Richard Distad of Bridgeway Estates read the following letter that was written to Mr. Joe Lencewicz, dated January 22, 2008 into the record.

“Dear Joe,

The environment-sparing provisions of R-3A zoning created the beautiful wooded neighborhoods that attract people to Bainbridge. The proposed high density Savage development would be out of character with its neighbors.

When we built our house on sub lot 12 in 1994, setbacks located the house next to a stream that drains part of the eastern portion of the Voproco property. Recurring storm water damage requires annual reinforcement of the stream bank nearest the house. Tons of large boulders have been dug into the bank. Truck loads of smaller rock have been added. Annual repair expenses have ranged from \$200 to \$1900.

**The proposed Savage development would dramatically increase storm run-off.**

- Doubling the number of homes allowed under R-3A would double water from driveways and roofs and require extensive clearing of trees increasing run-off
- Some road and driveways are shown crossing stream beds and wetlands. Some building sites are on steep grades. Associated grade changes and tree removal would further increase run-off. The direction of storm water flow could be changed inflicting damage on new areas.
- The proposed drainage basins along McFarland Creek have been found deficient in size and having location and integrity problems. They would pose a serious threat to properties downstream, especially the Gloden property where the owner has faced the possibility of emergency evacuation during a storm.

- Bainbridge Township does not have storm sewers which would be needed to accommodate the run-off from the proposed high density Savage development

We support the Township's R-3A zoning which preserves the appealing character of Bainbridge and helps maintain property taxes.

Sincerely,

Richard Distad"

Mr. Lencewicz said he would like to submit their attorney's opinion for the record and as you jointly pointed out, it is an opinion and nothing more.

Mr. Werner said Mr. Chairman, just note the objection for the record.

Mr. Joe Oberle of 8197 Tulip Lane testified that his property is adjacent to lot 19 on the proposed subdivision and referred to the location of his house. He said he has a letter he would like to enter into the record and it is actually signed by many of the adjacent property owners to this proposed development and it is not everybody but everybody who was here tonight has signed it and he would like to just put that into submission. He said before he starts though, he would like to just say a couple of things.

Mr. Lamanna said he has to note that the board can't take letters into the record for the truth or for evidentiary purposes from parties who are not here.

Mr. Oberle said okay, fair enough.

Mr. Lamanna said to the extent that the letter reflects what you do and what you know, you can summarize that.

Mr. Oberle said he would be happy to submit it, but the people that have signed it are here.

Mr. Lamanna said okay.

Mr. Oberle said there are some unsigned slots that are not here this evening and we have heard from a lot of experts tonight or proposed experts on development and their expertise on land management and he thinks they all suggest that they have a better idea on how we plan Bainbridge and how we should live our lives and particularly the last gentleman. He said he thinks he was talking in hyperboles, he was talking about utopian societies and what people want to do, he was talking like he is an economist and he can predict the future, but we are the residents of Bainbridge and we purchased our properties because they are large lots and he would like his lot to be larger than it is today.

Mr. Oberle said the people that live in this community live here for a good reason, they live here and one of those reasons is the zoning in the community. He said you can say that it is better to plan the community in a different way, but we as residents in this community have rights in this community and we support the zoning ordinances. He said the zoning ordinances are here to protect the community not just to define sewer and water and property development and with that said, this letter is addressed to the Bainbridge Zoning Board and the Township Trustees.

“We the undersigned own property adjacent to the proposed Voproco Properties development. We are opposed to any change in the current zoning regulations as requested in Application 2006-33 by Voproco Properties, for the following reasons.

The proposed “ultra high density” development does not conform to current, township zoning regulations and would cause significant aesthetic and physical damage to the township, neighborhood, and surrounding environment. If the owner and developer would like to develop the property they should do so utilizing the current zoning regulations, which are endorsed and accepted by the community. Any deviation from the current three acre zoning should be denied as it is not in the best interest of the community.

1. The property can be viably developed while meeting current zoning regulations. Recently developed properties in Bainbridge are strong evidence that three acre zoning is not only viable, but preferred by people who desire to live in the community. The owner can sell the property for a substantial return on his investment.
2. The variances requested by the developer are extreme. The average size of the proposed lots are, one third the current regulations, with twenty of the 33 lots less than one acre. Over one third of the homes will deviate from rear lot setbacks. Ten foot side lot setbacks on 100% of the homes are one third the current zoning regulation.
3. Our properties and the character of the existing surrounding neighborhood would be significantly impacted.
  - a. Size, style, and proposed placement of homes compared to those on adjacent properties are inconsistent with the adjacent existing homes.
  - b. Average lot size is one third of the current zoning regulation with two thirds of the lots (20) less than one acre in size. The average size of lots in the adjoining Dalebrook development is 2 acres, granted 53 years ago. The Bridgeway development was built in accordance with current zoning regulations on similar topography to proposed site. The average size of the other eleven adjacent properties is 6.85 acres with a median of 5.01 acres.

- c. Adjacent Dalebrook and Bridge way homes are forested. The extremely small size of the proposed lots in the development would require significant deforestation due to the rolling topography and the larger home size.
  - d. Riparian setbacks are not adhered to in the proposed plan, leading to concerns with local and downstream flooding and the destruction of the McFarland Creek habitat.
  - e. Existing adjacent properties have wells; high density development will likely impact the water table and the quality of the water supply.
  - f. Fifteen additional homes added to Tulip Lane would significantly increase traffic causing additional congestion when exiting to Chillicothe Road. Three minute delays are common now on weekends and during rush hour.
4. Additional homes would add to the requirements of Governmental services. Developers should be taxed to help to help fund current services when adding to the governmental services, not placing this additional burden on the current tax payers.
  5. The property owner was well aware of current zoning regulation when purchasing the property. In conversation with him when he purchased the property he indicated that he would build three homes off of Tulip Lane and considered a larger development off of Savage Road.
  6. The property can clearly be developed to meet current zoning regulations as many recent developments in Bainbridge have. These developments include, Woods Way (Woods of Wembley), Bridgeway, Peppermill Chase, The Sanctuary, Stone Ridge and Northwoods Lake. A high density plan is not required to profitably develop this property. Sewers, city water, and water quality ponds would not be required to develop the property if the owner and developer worked within the zoning regulations.
  7. The spirit of zoning requirements and will of the residents of the adjacent properties and residents of Bainbridge would not be served in granting the variance as it is not in line with the currently accepted zoning regulations. Current residents of the community purchased their homes and property, fully aware of the large lot zoning. These same residents chose not to live in communities closer to their places of employment due to the small lot zoning in those communities.

Zoning is not only a set of rules and regulations to provide order and responsibility in growing communities. It is also a means to protect the rights, property values, and will of the current residents. This application is an outright attempt to abuse the rights and regulation of the community. Financial impact statements supporting the development are misleading, as similar cases can be made for any scenario for development of the property including industrial or high rise, all which are clearly outside of current zoning regulations.

Ultra high-density housing will have serious environmental impact to the existing water table, local fauna and flora, surrounding neighborhoods and McFarland's Creek. We urge the Zoning Board to reject all proposed variances and conditional use permit."

Mr. Oberle said that is all he has and this is signed by Robert and Holly Carroll who are here this evening, Marilyn Ullman signed this, but she is not here this evening, The Bridgeway Association signed this, Joe signed it as president of the Association, Patricia Quay Lybarger signed it, she is here this evening and Ann Patram signed it, she is the vice president of Dalebrook Association.

Mr. Lamanna asked if there was anybody else who has anything they want to say.

Mr. Bob Carroll said he had one question and looking at the map, he sees the ravines going throughout a lot of the lots and the land is full of ravines and yet they have houses built where the middle of the ravines are now. He asked how the land is going to be redeveloped so that houses can be put on those lots with the existing water flow. He said you are going to have to redirect it or pipe it or what and that is the question. He said his lot is going directly onto the lot next door and the water level at that point is probably about 10 to 15 feet below the upper level so he can't see and if you put a house there and if you block it off, where is the water going to go.

Mr. Lamanna said at some point they will have the opportunity to address that and it is not a question that is capable of a quick answer here.

Mr. Carroll said asked if they are going to be requiring more variances.

Ms. Sass said they haven't requested more variances.

Mr. Lamanna said there are locations where these houses are going to be based on, we are not going to look at each individual house's impact. He said the board is looking at the impact of the entire development.

Mr. Carroll said he is looking at deep ravines with houses right in the middle of them and that you are talking about run-off and if you put them in pipes, the water is going to drain a lot faster and it is going to flood a lot more downstream.

Mr. Lamanna said he is just looking at their map and none of those houses are in a ravine, some of them are on a side hill slope, but none of them are actually in any kind of a down and back up again situation.

Mr. Carroll said if you would take a look at lot 33, lot 33 is located right next to the creek.

Mr. Lewis said yes, but it is not in the creek.

Mr. Carroll said that creek last week was flooding over and over the driveway and it was going like a raging river and now he can't see that you would permit a house to be built within 50 feet of that creek which means you are going to have to set it back to the rear, you are going to have to set it to the front, or you are going to have to redirect the stream.

Mr. Lamanna said you can't redirect the stream.

Mr. Carroll said that is what he is thinking you can't redirect a stream so how can you build a house.

Mr. Lamanna said you are not permitted to redirect the stream, you are not permitted to build within the riparian so they are showing it not in the riparian which is the area of the stream. He said the stream occupies in a certain distance on either side depending on the nature of the stream, so no house is shown blocking any stream or straddling any stream and the zoning requires that they don't interfere with the flow of the stream so there is nothing here that really makes that an issue.

Mr. Carroll said all he can say is you have not been on the land and looked at it.

Mr. Lamanna said actually he has been on part of the land.

Mr. Carroll said then you should realize it is not just that stream there. He said on the rear of that lot there is also a small stream that runs through and there are streams running all through that property, little drainage parts.

Mr. Lamanna said he has a map here and it shows seven or eight different water courses not counting McFarland's Creek on the property.

Mr. Carroll said he will guarantee that there is a half a dozen more that they are small enough that they aren't on there but they are drainage.

Mr. Lamanna asked what is next.

Mr. Werner said in discussion with Mr. Riehl, there is a witness who is actually a township witness, Mr. Andy Vidra from NOACA who he thinks we can squeeze in before everybody goes to bed this evening so that he wouldn't have to come back to a next meeting so we are happy to take him out of order.

Mr. Lamanna said okay.

Ms. Sass asked do you want to give them an opportunity to cross-examine any of the witness who have made statements.

Mr. Lamanna asked Mr. Werner and Mr. Riehl if they had any questions.

Mr. Werner said he appreciates that and for the purposes of the board, this is the new housing start information that Mr. Ritley said that he would submit to the board and also the other issue that he wanted to state for the record and that is he was a prior colleague of Lorrie Sass, the newest member of the Board of Zoning Appeals.

Mr. Werner continued by saying they worked together at the law firm Kahn Kleinman for a very short period of time several years ago and that to the extent this matter or any other matter raises any conflict in terms of our participation in this matter on behalf of the applicant, he would waive it.

Ms. Sass asked if she can participate.

Mr. Werner said you can participate.

Ms. Sass said thank you.

Mr. Lamanna said he assumes the township also waives it.

Mr. Riehl said yes.

Mr. Riehl asked Mr. Vidra to please state his name for the record.

Mr. Andy Vidra testified that he is a senior environmental planner with the Northeast Ohio Areawide Coordinating Agency, NOACA. He said he has been there 32 years and prior to that, his first real job was introduced in Bainbridge and the surrounding area with the Silver Creek project that was done back in 1975. He said he also worked on groundwater studies that were done here and he thinks it was in the late eighties with Eleanor Mattson and various other entities so he has been around Bainbridge for quite a while. He said he was hired into NOACA at the very beginning of what is known as their 208 program, their water quality program initiated by section 208 of the Clean Water Act. He said section 208 indicated that in heavily developed municipal areas there was likely to be competition and contention over sewerage issues so the Federal government designated the regional planning agency in each of the major metropolitan areas to have authority and responsibility for coordinating sewer planning in the region and that is how NOACA got involved in the water quality business.

Mr. Riehl said with respect to Bainbridge Township, what is the 208 plan, what are its goals and what is it supposed to accomplish.

Mr. Vidra explained that the whole area of this plan is under an element known as the facility planning area considerations and in that, there is an identified wastewater treatment plant that has carried certain weight. He said the Clean Water Act requires that we maintain the quality of our streams where there is a wastewater treatment plant, and that is the number one tool in the toolbox. He said the Ohio EPA has strict requirements on the performance of those treatment plants and all of our planning is geared to ensure the long-term viability of our existing treatment plants and any new ones or any additions to existing ones out in the future and in that regard, the Geauga County Commissioners are responsible for virtually all of the land area. He said it is the few small villages, Chardon, Middlefield and there is one more, Burton that own their own treatment plants that have responsibilities in the areas that are a tributary to those treatment plants. Mr. Vidra continued by saying Geauga County is a designated management agency for sewer and water planning in the remainder of the county and this has to do with the fact that as the county, they are the ones under Ohio law that are obligated to protect water quality and are responsible for fixing pollution problems that arise. He said when we passed the original 208 plan back in 1979, the sewer planning out here obviously was not very well advanced but things have obviously changed a lot in that time period and NOACA initiated a major update to our water quality plan and that was issued in 2001. He said it is called the Clean Water 2000 Plan and it was because it was completed in 2000 and it took that long to get it approved and since then we did another update in 2005 that had ramifications for Geauga County and we are doing another one now in 2008 which has no impact right now in the Geauga County Plan. He said so the planning effort is a continuous ongoing thing, the development pattern has changed, technology changes and we have to have in place a process to try to bring that all together and make sure that we are making intelligent decisions and protect our environment and make good use of the moneys that we are paying into our treatment plants.

Mr. Riehl said that there has been testimony that the relevant treatment plant in this situation, the McFarland Treatment Plant, was recently expanded in capacity from 1.2 million gallons per day to 1.8 million gallons per day. He asked Mr. Vidra if he foresee based on everything he knows the possibility that there would be a future expansion of the plant.

Mr. Vidra said a future expansion is very unlikely given the existing treatment technologies. He said there was opposition to the plant expanding to its current level at the time because Ohio EPA has some serious concerns. He said the amount of development that is going on in the Chagrin River Watershed is putting stress on what is probably still the remaining best stream in Ohio and those stresses are starting to accumulate to the point where there is concern about the continued viability of water. He continued by saying the rules regarding treatment plant discharges have tightened over the 30 to 40 some years since the Clean Water Act was passed and the chances of getting through an anti-degradation review that would discharge additional pollutants to the Chagrin River are very small.



Mr. Vidra said there is always the likelihood that we will improve our treatment technologies that we have, we have reached a level today that was never anticipated back in the seventies and Geauga County's McFarland Creek Treatment Plant is one of the most advanced plants around and so it is not likely that we will see a significant increase in that treatment plant in the next 20 year time frame.

Mr. Riehl said you (Mr. Vidra) mentioned that the 208 plan is administered by the Geauga County Commissioners and asked if they are encouraged to cooperate with the township trustees.

Mr. Vidra said whenever there is a designated management agency in charge of sewer planning, the Clean Water 2000 Plan encourages them to consult with all local governments that are a tributary to their area so that very specifically means that counties are recommended to work with the townships in order to make sure that the sewer plants are in line and support local zoning. He continued by saying Geauga County did follow through with that and has consulted with every single township within their planning area.

Mr. Riehl asked Mr. Vidra if he is aware of a mechanism where there can be amendments to a 208 plan.

Mr. Vidra said yes, he estimates there have been 25 changes, since the 2000 plan was approved, to the facility planning area boundaries where major changes to sewer planning options.

Mr. Riehl asked are the majority of those changes for commercial establishments or residential development.

Mr. Vidra said they are kind of a split, it depends on exactly which part of the region we are talking about, we haven't changed the facility planning area boundaries in Geauga County to this day and we have changed sewer planning options which is a subset of all of the areas and those are the things where you see that the areas are to remain with on-lot systems or it may be sewerred in 20 years. He continued by saying those sewer planning options come up with a higher degree of frequency and they are kind of split between commercial and residential.

Mr. Riehl handed Mr. Vidra what has been marked as Exhibit 1B and asked him if this is the most recent amendment to the 208 plan for the Bainbridge area.

Mr. Vidra said it appears that it is and we know when we look at these kinds of maps, a five county area, it is hard to pick up the minor changes and if this was supplied by Mr. Saikaly, dated January 2007, this is the most recent and added that there have been no changes since that time.

Mr. Riehl said to Mr. Vidra, again it is your testimony that the 208 plan area envisioned to support the local zoning.

Mr. Vidra said this is the driving force and we have heard some previous testimony where in the past, development was kind of hinged on the expansion of infrastructure and when we started overloading the land with our ability to extend infrastructure, there were other considerations that have come into play and a shift in the philosophy of identifying where we want a community to be out into the future and develop plans that will get us to that spot. He said it took the emphasis off of what happened in post World War II as our population in the region grew astronomically and we built solid development after development to the outskirts and once that changed, we kind of changed the philosophy so zoning and planning issues and wastewater treatment issues now need to be equal partners at the table.

Mr. Riehl said he did not have any further questions.

Mr. Werner asked Mr. Vidra if he recalls about three years ago that he (Mr. Vidra) testified in a matter relative to a different property in Bainbridge Township.

Mr. Vidra said he did.

Mr. Werner asked Mr. Vidra if he testified at a trial before Judge Burt.

Mr. Vidra said correct.

Mr. Werner said you (Mr. Vidra) said a couple of things at the trial and just wanted to make sure that they are still true, okay. He said your testimony at trial was that the Ohio EPA prefers when possible to run things into sewage treatment plants because they can regulate sewage treatment plants much better than they can regulate on-site systems and if that is still true.

Mr. Vidra said that is still true of the majority of the agency.

Mr. Werner said you (Mr. Vidra) also said that all areas within 200 feet of any sewer line in the State of Ohio are required to tie into that sewer and if that is still true.

Mr. Vidra said they are still required to tie into that sewer when it is available.

Mr. Werner asked Mr. Vidra what he meant by when it is available.

Mr. Vidra said there is a series of circumstances that apply if a line is engineeringly unavailable because it is either high pressure, there is bedrock considerations or something that prohibit or make it cost ineffective for a land owner to tie in, there are elements to that or if there is no capacity in the line, it is not available.

Mr. Vidra continued by saying that we maintain that if the sewer planning options don't support a tie-in, it is not available and he has put this question to two different sources within Ohio EPA and gets two different answers on how available lines have to be before tie-ins are ordered. He said and at extreme ends and Mr. Keith Riley, the Assistant Chief in Twinsburg is of the opinion that if the local planning is set up in such a way, the area is not to be sewerred, then it is not available. He said Mr. John Januska on the other side says if the sewer is there and the houses are there, it is available and they need to tie in so the agency itself can't agree on the specifics of that, but again, that would apply only to those dwellings who have the nearest portion of their foundation within 200 feet of that line.

Mr. Werner asked if that applies to existing and to newly developed structures.

Mr. Vidra said it would.

Mr. Werner asked Mr. Vidra if he is personally familiar with the size and capacity of the sewer main that runs through this property.

Mr. Vidra replied yes.

Mr. Werner asked if there is capacity in that line to add 17 additional units to it.

Mr. Vidra said yes.

Mr. Werner asked Mr. Vidra if he is personally familiar with the capacity of the McFarland Creek Wastewater Treatment Plant.

Mr. Vidra replied yes.

Mr. Werner asked if there is a capacity available of that treatment plant to add 17 additional units.

Mr. Vidra replied yes.

Mr. Werner and Mr. Riehl said they had no further questions.

Mr. Murphy asked Mr. Vidra if he can tell from that map there how many of those homes are within 200 feet of that sewer line.

Mr. Vidra said he can't give a precise number, but very few of the 33 homes would be within 200 feet of that line.

Mr. Murphy said thank you.

Mr. Lamanna asked what is left.

Mr. Werner said there is probably an hour left for two witnesses and then Mr. Riehl has a least three others that he wants to call.

Mr. Lamanna asked Mr. Riehl how long they will be.

Mr. Riehl said there will be Mr. Mike Joyce and Ms. Kyle Dreyfuss-Wells and Mr. George Smerigan and he understands from talking with Mr. Smerigan that he has a problem with next Thursday night and asked if the board would consider maybe another special meeting.

Mr. Lamanna asked how long they will be.

Mr. Riehl said they will be an hour each.

Ms. Sass asked if that is an hour for all three of them or an hour for these two.

Mr. Riehl said Mr. Joyce will be short, about 15 minutes and he thinks with examination and cross-examination, it will be an hour each for both Ms. Dreyfuss-Wells and Mr. Smerigan.

Ms. Sass said we will need four hours with public comments so we will need a special meeting.

Mr. Lamanna said we have a small application and we still have plenty to do next Thursday and asked Mr. Werner and Mr. Riehl to give the board some dates and the board can decide on a date next Thursday.

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

Mr. Lamanna made a motion to adjourn this matter until the next regularly scheduled meeting to be held February 21, 2008.

Mr. Lewis seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 11:38 P.M.

Respectfully submitted,

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

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

Date: June 19, 2008

AUDIO RECORDING ON FILE

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