

Bainbridge Township, Ohio
Board of Zoning Appeals
April 10, 2008

Pursuant to notice by publication and certified mail, a special public hearing was called to order at 7:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier, Mr. Mark Murphy and Ms. Lorrie Sass. The following matters were then heard:

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.

Mr. Lamanna noted that this is a continuation and said this may be the 6th hearing on this application and he is hoping to follow through and get as much of the evidence and testimony in tonight that we can and we hope to maybe even finish off all of that or part of it.

Ms. Mary Bolas Dietz of K.K. Foxx Court Reporters was present.

Mr. Charles Riehl of Walter and Haverfield was present to represent the Bainbridge Township Board of Trustees and Mr. Gary Werner of Berns, Ockner & Greenberger, LLC was present to represent the applicant. Also present to testify was Mr. Michael Joyce, Bainbridge Township Zoning Inspector, Ms. Kyle Dreyfuss-Wells of the Chagrin River Watershed Partners, Mr. George Smerigan of Oxbow Engineering and Mr. Paul Van Curen of Paul O. Van Curen Company.

Mr. Riehl testified that they do have one procedural issue that he would like to bring up at this time and he would like to apologize to Mr. Werner and to the board, they do have an expert report from an appraiser, Mr. Paul Van Curen and their goal was to get that in last week but unfortunately there were some family health issues that developed with Mr. Van Curen and he did not see it until Monday and immediately got it to Mr. Werner and then Mr. Van Curen came out and filed it on Tuesday morning and he does know that the board very much wants to get materials ahead of time and he would suggest that the materials probably don't cover any new material, it is really kind of an analysis that he did based on an analysis that the board heard from the property owner's expert, Mr. Roger Ritley. He said Mr. Van Curen is here this evening and we would be prepared to go ahead and hear him and he thinks they probably will finish up all of the testimony this evening and he is not advocating but he knows that the board has scheduled, if it is necessary a continuation of this hearing at its regular meeting next week and we would be prepared to present Mr. Van Curen then, but if we could we would like to hear his testimony this evening.

Mr. Werner testified that the applicant submitted a written objection to the report which sets out the grounds for objecting to it because we have not had an opportunity to show it to our consultants, it is an appraiser's report and it has comps and factors and other assumptions and it is much later than the board's deadline, he appreciates the personal situations last week, but it is the applicant's position that whoever is here to testify the documents should be in the evidence and given that we are in the sixth round, the applicant wants to stipulate to continue this hearing to permit this gentleman to testify next week.

Mr. Lamanna said in this point in time, as far as continuing the hearing for another week is hardly a burden on anybody other than maybe the people sitting at this table but certainly we do like to have these in hand in advance and we have done this mainly to make sure everybody has an opportunity to hear and respond to this type of information to give the board an to take a look at these things at least a little bit hopefully before our meeting and in this case we are looking at sort of the rebuttal appraisal issue since we have already heard some expert testimony on this so you have had the advantage of at least looking at this. He said he thinks what the board will do is go ahead and allow Mr. Van Curen to testify, Mr. Werner will have the opportunity to cross-examine and at the end of that if you (Mr. Werner) feel that you have not had sufficient opportunity to respond to this report, we will allow you at our next meeting to either request further examination or to present a further rebuttal to this report and he thinks that should give you an adequate opportunity to respond and the concept is not a new concept, you have already presented an expert on this very subject and it is a fairly narrow subject and if we go ahead quickly, we can keep this hearing moving and make sure that all of the appropriate evidence gets before this board so we will continue forward.

Mr. Riehl stated that he will have four witnesses this evening, Mr. Michael Joyce, Ms. Kyle Dreyfuss-Wells, Mr. George Smerigan and Mr. Paul Van Curen. He called Mr. Joyce as his first witness.

Mr. Riehl asked Mr. Joyce to tell the audience his name.

Mr. Joyce said he is Mike Joyce and he is the Zoning Inspector for Bainbridge Township.

Mr. Riehl asked Mr. Joyce how long he has held that position.

Mr. Joyce said in Bainbridge since November 26, 2007.

Mr. Riehl asked Mr. Joyce who he was employed by prior to Bainbridge.

Mr. Joyce said Chester Township as a zoning inspector for approximately ten years.

Mr. Riehl said he asked Mr. Joyce in this matter to prepare an analysis of some of the subdivisions in Bainbridge Township.

Mr. Joyce said yes.

Mr. Riehl said he wants to show the board Exhibit #4 which is a letter from David Dietrich of the Geauga County Planning Commission in which he references subdivisions that have been developed in Bainbridge under cluster zoning and based upon that, he asked Mr. Joyce if he had asked him to make an analysis of those subdivisions.

Mr. Joyce replied yes.

Mr. Riehl asked Mr. Joyce to please tell which subdivisions they are.

Mr. Joyce said they are the Woods of Wembley, Bridgeway Estates, Peppermill Chase, the Sanctuary, Hawkmoor, Stoneridge and Northwood Lakes.

Mr. Riehl said in turning to Exhibit 12, is this the same exhibit that is shown up there on the screen.

Mr. Joyce said yes it is.

Mr. Riehl said with respect to the Woods of Wembley, asked Mr. Joyce to show where that is on the map.

Mr. Joyce said that Mr. Wrench is pointing to it and it is number one on the screen.

Mr. Riehl asked what zoning that subdivision is located in.

Mr. Joyce said the R-3A District.

Mr. Riehl asked if that subdivision is sewerred or unsewerred.

Mr. Joyce said it is sewerred.

Mr. Riehl asked about Bridgeway Estates and where that is located.

Mr. Joyce said where Mr. Wrench is showing you and referred to the map.

Mr. Riehl asked what zone that is in.

Mr. Joyce said it is R-3A.

Mr. Riehl asked if is sewerred or unsewerred.

Mr. Joyce said it is sewerred.

Mr. Riehl asked about Peppermill Chase.

Mr. Joyce said it is where Mr. Wrench is again pointing and referred to the map.

Mr. Riehl asked if it is near Pettibone and Rt. 306.

Mr. Joyce said yes it is.

Mr. Werner said he is objecting to the line of questioning because of irrelevance of complying R-3A developments in the Township of Bainbridge with respect to the standards that this applicant has been held to, to establish whether the variances he has requested and the conditional use permit he has requested are justified under the circumstances pertaining to this property but the fact that there are complying developments in the R-3A District developed under cluster standards has no bearing at all on whether this applicant and his property under these circumstances have shown justification for the variances and the conditional use permit.

Mr. Riehl said one of the key pieces of evidence that was offered on behalf of this property was the fact that sewer and water are available to this property and therefore they would be available despite our 208 plan and would justify the higher density. He said the whole purpose of this is tremendously relevant to show that subdivisions in Bainbridge have been developed very successfully under the cluster zoning either with or without utilities so we think it is tremendously relevant.

Mr. Lamanna said he thinks there has already been some testimony by your experts concerning other developments and how they are developed and ultimately the board will decide what weight this is and your argument certainly will be considered into what relevance this has but, at this point we will treat it as a matter of what weight we will give to it and will hear it to see whether or not it does have relevance in the final analysis.

Mr. Werner said he appreciates that and the second concern is if the board is recognizing this as expert testimony then we are entitled to a report which is exactly what we were told with an engineer we had testify earlier in this matter so if we are into a realm of expert testimony by the zoning inspector we should have a report disclosed to us so we can have an opportunity to respond properly and reject it on that basis as well.

Mr. Lamanna said at this point so far he has not seen anything that says this is an expert report, just a factual report of what exists.

Mr. Riehl asked about Peppermill Chase and if it is basically located in the proximity of Pettibone and Rt. 306.

Mr. Joyce said yes.

Mr. Riehl asked what zone that is located in.

Mr. Joyce said R-3A.

Mr. Riehl asked if that is sewer.

Mr. Joyce said is it is not sewer.

Mr. Riehl asked about the Sanctuary.

Mr. Joyce said the Sanctuary is R-3A and is non-sewer.

Mr. Riehl asked about Hawksmoor.

Mr. Joyce referred to the map and said again where Mr. Wrench is pointing it is R-5A and is sewer.

Mr. Riehl asked about Stoneridge.

Mr. Joyce said again where Mr. Wrench is pointing on the map, it is R-5A and it is sewer.

Mr. Riehl asked about Northwood Lakes.

Mr. Joyce said again it is R-3A and it is non-sewer.

Mr. Riehl said prior to you (Mr. Joyce) being appointed as the Zoning Inspector for Bainbridge Township, who was the zoning inspector.

Mr. Joyce said Mr. Frank McIntyre.

Mr. Riehl said as far as the board has filed in this matter and asked if there was a letter dated September 13, 2007 by Mr. McIntyre to the board.

Mr. Joyce said yes there is.

Mr. Riehl asked if that is Exhibit #7.

Mr. Joyce said yes.

Mr. Riehl asked what Mr. McIntyre did do with that.

Mr. Joyce said he reviewed the application for compliance with the Bainbridge Township Zoning Resolution that was in effect at that time.

Mr. Riehl referred to Exhibit #8 and asked Mr. Joyce if he can tell us what that is.

Mr. Joyce said it is a letter from myself to the BZA and which he also went through and looked at it and re-evaluated the application as it was amended from when he first came on board here.

Mr. Riehl asked what the date of the letter is.

Mr. Joyce said it is December 10, 2007.

Mr. Riehl asked what section of the Bainbridge code did you (Mr. Joyce) make an analysis of.

Mr. Joyce said he went through the entire code, he looked at what Mr. McIntyre had done and he added additional interests in the areas that had been amended by the applicants in the areas of the ponds, the definition of the resolution, structures, he went through the definition of structure and he went through the lot coverage percentage that was on the application and he found what he considered to be a deviation of approximately 3%.

Mr. Riehl said in turning to page two of your December 10th letter, he asked Mr. Joyce to point out to the board what section of the code he relied on.

Mr. Joyce said Section 161.13 (B).

Mr. Riehl asked Mr. Joyce to read that into the record.

Mr. Joyce said the installation of a basin with these design regulations shall not be considered for exclusion from the lot area coverage. He said it lists a number of exclusionary reasons but he has seen nothing on the ponds that indicates to him that any of these exclusions were applicable there, he counted the approximately 1.5 acres of the ponds as lot coverage as directed to do so by the resolution.

Mr. Riehl asked Mr. Joyce if he agrees with the conclusions of that report.

Mr. Joyce said he did.

Mr. Riehl said he would like to show similar other documents for the purposes of the record and referred to a map and asked Mr. Joyce to describe what that map is.

Mr. Joyce said the map is the signed version of the 208 plan and referred to the draft plan over in the corner of the building, it is a larger copy, but this is the signed version as the trustees signed off on it and obviously there were no changes from the draft to the accepted.

Mr. Riehl said as part of the documentation in Exhibit 1A, the board has previously been furnished a copy of the unsigned 208 plan, correct.

Mr. Joyce said that is correct.

Mr. Riehl said Exhibit 1B is a signed copy of the Memorandum of Understanding.

Mr. Joyce said that is correct.

Mr. Riehl asked Mr. Joyce if he has seen a copy signed by the Geauga County Board of Commissioners.

Mr. Joyce said he has.

Mr. Riehl said he had no further questions.

Mr. Werner said he had two questions of Mr. Joyce and asked in regard to the Memorandum that Mr. Riehl was questioning you about, Exhibit 8 in the township's exhibits, this is a memorandum regarding coverage calculations, and it had to do whether or not you count detention ponds in coverage as a structure.

Mr. Joyce said that is true.

Mr. Werner said the applicant followed up with you with regards to this memorandum that you put together and if that is correct.

Mr. Joyce said he does not have any written documents that he can recall.

Mr. Werner said if he may, he is handing the witness a letter dated January 15, 2008 from Mr. Mark Iacona of Preferred Development and asked Mr. Joyce to take a look at that please.

Mr. Joyce reviewed the document.

Mr. Joyce said he sees the letter.

Mr. Werner asked Mr. Joyce if that refreshes the question that the applicant did follow through with you (Mr. Joyce) with a memo.

Mr. Joyce said he followed up with a conversation and a letter, it is true, but he does not see anything in there that would indicate the engineering requirements that would refute it other than he says he is going to do it.

Mr. Werner asked Mr. Joyce if he sent a letter to him indicating that.

Mr. Joyce said no.

Mr. Werner asked Mr. Joyce if he has been present for all of the prior hearings on this BZA application.

Mr. Joyce said yes sir, I have.

Mr. Werner asked if he was present when Mr. Iacona stated that whatever coverage calculation is required of him, that adjustments would be made to meet it.

Mr. Joyce said yes he was.

Mr. Werner referred to the zoning map displayed on the board and asked if the yellow area is the R-3A District.

Mr. Joyce said that is correct.

Mr. Werner asked if the white area is the R-5A District.

Mr. Joyce said that is also correct.

Mr. Werner said the first is three acres per unit instead of five acres per unit.

Mr. Joyce said that is correct.

Mr. Werner asked if the developments within those areas, the R-3A and R-5A where the residential units are built to density exceeding what the zoning permits.

Mr. Joyce said yes.

Mr. Werner asked, as the zoning inspector for the township, do you have any idea how many units are presently in the R-3A and R-5A districts and if they have looked at densities greater than what the zoning permits.

Mr. Joyce said he does not, he does not have enough experience on this job to answer that question.

Mr. Werner said fair enough. He referred to Exhibit 12 which is displayed on the screen and asked how this information was compiled for Mr. Riehl and if he made the determination of how old the various developments are.

Mr. Joyce said no.

Mr. Werner asked Mr. Joyce if he made the determination as to whether any of these developments involved variances.

Mr. Joyce said no.

Mr. Werner asked Mr. Joyce if he is aware as he stands here if any of the developments were built with variances issued.

Mr. Joyce said he cannot say.

Mr. Werner said that is all he has.

Mr. Riehl said he had no further questions and at this time he would like to call Ms. Kyle Dreyfuss-Wells.

Mr. Riehl asked her to state her name for the record.

Ms. Dreyfuss-Wells testified that she is Kyle Dreyfuss-Wells.

Mr. Riehl asked her by whom she is employed.

Ms. Dreyfuss-Wells said for the Chagrin River Watershed Partners.

Mr. Riehl asked her what the Chagrin River Watershed Partners is.

Ms. Dreyfuss-Wells said the Chagrin River Watershed Partners is a non-profit organization that was formed in 1996 by the communities in the Chagrin River drainage of which Bainbridge Township was, she thinks, a founding member and they were formed by the communities to provide them technical assistance on flooding, erosion, site design and ways to maintain their low cost infrastructure.

Mr. Riehl asked her to describe what some of her duties are with the Chagrin River Watershed Partners.

Ms. Dreyfuss-Wells said she is the Director of the Chagrin River Watershed Partners and so she both runs the organization and provides technical advice to the 36 member community regarding on-site design.

Mr. Riehl asked her on a yearly basis how many assignments she receives from the 36 members.

Ms. Dreyfuss-Wells said that is not a calculation she has ever done, it is a lot, they have built up over the 10 – 11 years they have been around and basically all of the members see them as their technical staff so we work with them quite a lot.

Mr. Riehl asked who else is on the staff.

Ms. Dreyfuss-Wells said she has Amy Holtshouse-Brennan who is the Associate Director of the Watershed Partners and before working with us, she worked with Ohio EPA in their 401 water quality division and she has Rachel Webb who is their low impact development coordinator and answers a lot of questions about site design and they have administrative support.

Mr. Riehl asked her if she prepared a report dated October 11, 2007 to Mr. Frank McIntyre and himself performing an analysis of this subdivision.

Ms. Dreyfuss-Wells said yes, we were asked by both Mr. McIntyre and you as well just to look simply at the basins and how they were laid out on this initial site plan.

Mr. Riehl asked her if she personally participated in that analysis.

Ms. Dreyfuss-Wells said yes, her staff prepared it and she reviewed it.

Mr. Riehl asked if that would have been Ms. Holtshouse on her staff.

Ms. Dreyfuss-Wells replied yes.

Mr. Riehl referred to a report that has been marked as Exhibit 9 in this case and asked her if that is their report that she prepared.

Ms. Dreyfuss-Wells said yes that is their report.

Mr. Riehl asked her what she took a look at in preparing this report.

Ms. Dreyfuss-Wells said they were asked specifically by the township to look at the basins in terms of how they were related both to the north branch of McFarland Creek and how they were related to the township's existing riparian setback resolution and so we did that and the way we divided and the nomenclature that we gave it, we called this (she referred to a site plan) Basin A here which is near Wetland C and behind Lots 9 and 8, and we called this Basin B which is near Wetland M and it is behind lot 27 and essentially all they had to go on was the placement that was provided for us, the Geauga County Soil Survey which talks about the soils that are there and then our staff's expertise with both wetlands and our information on the high quality of the north branch of McFarland Creek so the bottom line is that this basin here (she referred to the site plan) is very close to some steep slopes and some questionable soils and this basin here (she referred to the site plan), Basin B does appear to impact Wetland M and it is also in a very flat area and it appears to be in a floodplain of that north branch.

Mr. Riehl asked her what she discovered about the wetlands on this property.

Ms. Dreyfuss-Wells said the applicant has done a great wetlands inventory by a very well respected engineering firm which is Chagrin Valley Engineering and the wetlands inventory location map and analysis report for the fifty acres, they essentially found that there are 18 wetlands total, you can see by that site that there is not much going on here (she referred to the site plan) there is a big or significant amount of stream here, you have the north branch of McFarland and you can see that the way each delineations are done is that the streams are marked here and this is the riparian setback per the township zoning and then the wetlands are all marked off and they are each given a letter, so there is a total of 18 wetlands, totaling 3.23 acres, the largest of these and really the one that comes into question most is Wetland M which is in this floodplain area of the north branch and aside from the fact that there is no FEMA delineation on this floodplain but it does not matter, all streams flood, that is the nature of streams and so the largest wetland is Wetland M and it is about 2.25 acres and this report does not actually go out and categorize those wetlands per Ohio EPA's application but her staff which is skilled in doing that was able to do that just from the data here and from our knowledge of this site and this Wetland M would score either in the high category 2 or category 3 wetlands. She read from the report "The majority of wetlands on site have multiple sources of hydrology, high buffers, low intensity of surrounding land use, in combination with a minimal amount of invasive species indicates these are high quality wetlands. As such the wetlands will most likely score as within the range of high Category 2 and potentially within the Category 3 wetlands range." She referred to Wetland C and said we don't know that much about but it does not appear to be a high quality.

Mr. Riehl said some of us are not as used to the nomenclature as you (Ms. Dreyfuss-Wells) are and asked her to tell us as far as categories of wetlands 1, 2 and 3 what it means and what does it mean if it is a high category 2 or low category 3.

Ms. Dreyfuss-Wells said category 1 wetlands are cattails so we are not interested in category 1 wetlands, category 2 are generally what you have in most areas, category 3 are the best, they are the best wetlands out there and when you have multiple sources of hydrology which is water flow, high buffers which means a lot of surrounding land area and completely different on category 3 wetlands than it is on the other categories.

Mr. Riehl asked why it is important to protect wetlands.

Ms. Dreyfuss-Wells said it is important to protect wetlands both for their flood control and erosion control, there are essentially three stormwater infrastructures and it is also of the Ohio EPA's perspective they are for water quality and habitat.

Mr. Riehl asked her if she analyzed the riparian setbacks on the proposed plan.

Ms. Dreyfuss-Wells said yes and from their review the riparian setback issues does not appear to be the major issue, the riparian setback appears to be shown per the township's code and she thinks there are two issues that come up with the wetlands and the streams on this site, if this basin is in fact impacting Wetland M, the applicant would need an individual permit and whether it is a category three wetlands you would need an individual permit to do that so that is the one question, is this a category three wetland or not, if it is a category three wetland, that basin could be quite tricky and then the other issue is it appears that the number of stream crossings that are necessary would be fine with a Nationwide Permit but the question is once people come in to build in this subdivision and they want to put in their driveway crossings, the driveway crossings plus the crossings shown in the subdivision plan could need individual permits so those are unknowns.

Mr. Riehl asked her if she made an analysis of the soils and topography on the site.

Ms. Dreyfuss-Wells said yes they did look at the available information and the soils and topography issues appear to be with Basin A in terms of being pushed into that slope and she knows that they have heard some testimony about the fact that those could be dealt with but the more difficulty you have on the site the more sensitive it is to build on.

Mr. Riehl referred to the soils in Basin A asked her why she thinks it is important to have a careful treatment of that area.

Ms. Dreyfuss-Wells said she thinks it is very important because the infrastructure that is built today becomes a cost to the township tomorrow and it is important to make sure that things are built and designed for low maintenance. She said the other point is now the requirements are higher from the Ohio EPA for the maintenance of these stormwater and best management practices. She said Bainbridge Township is a Phase II NPDES under the Ohio EPA designation which means any basins that are built in the township are required to have long term operation and maintenance plans and some kind of funding mechanism to do that, so building tricky basins means money going forward.

Mr. Riehl referred to her report of October 11, 2007 on page one, and asked her if she reached any conclusions concerning Basin A.

Ms. Dreyfuss-Wells said they did reach a conclusion about Basin A.

Mr. Riehl asked her to share her conclusions.

Ms. Dreyfuss-Wells said their basic conclusions on Basin A is that it appears to impact Wetland C, it appears to be built on an area with steep slopes and erodable soil and the construction of that would require permits from the Army Corps and potentially the Ohio EPA, we just don't know what category so it is hard to know whether the 401 would kick in or not and we have no information on the capacity of Basin A to meet the water quality and quantity requirements.

Mr. Riehl asked her if she reached any conclusions in her report concerning, on page two, Basin B.

Ms. Dreyfuss-Wells said yes, they also looked at Basin B as it is over here (she referred to the site plan) on the other side of McFarland Creek and they talked about the fact that it appears to be in a very low lying area, potentially in a floodplain of the north branch of McFarland Creek and building stormwater basins in floodplains are sort of two things that don't go that well together because at some point you are going to have a flood and then you no longer have a basin and then it attacks the wetlands and which appears to be a high quality category three and again they could not make any determination about its ability to be a quality or quantity basin.

Mr. Riehl asked her if she made an analysis of the stream that runs through the property.

Ms. Dreyfuss-Wells said yes they did and this is actually quite interesting because the north branch of the McFarland Creek, Ohio EPA just completed testing and monitoring of the north branch of McFarland and it comes out as a coldwater habitat quality which is the highest quality in the State of Ohio.

Mr. Riehl asked what that means.

Ms. Dreyfuss-Wells said coldwater habitat per the agency basically means that there is a collection of macro-invertebrates which is little bugs and fish that rely on cold water and the thing about coldwater means it is ground water fed and it has a good vegetative riparian area which is shading that stream and what that also means is that the stormwater infrastructure that you would need to be able to build to maintain the coldwater habitat is going to basically have to get the water back in the ground which is very hard to do.

Mr. Riehl said in designating the stream as a coldwater habitat, asked her if she is familiar with the methodology of the EPA and how they go about doing it.

Ms. Dreyfuss-Wells said yes they pass the sampled water through a series protocols and collect fish and they measure it with something they call index of biology.

Mr. Riehl said so this is not just some computer model it is based on actual on the ground sampling.

Ms. Dreyfuss-Wells said right.

Mr. Riehl referred to Exhibit 11 and asked if that is an excerpt of the OEPA manual that you have there with respect to the designation of the coldwater habitat.

Ms. Dreyfuss-Wells said right, she believes that is the Ohio Administrative Code section that has the coldwater habitat designation.

Mr. Riehl said to Ms. Dreyfuss-Wells in preparing her report she indicated an analysis of the stream crossings specifically as they might affect the 404 permits from the Army Corps of Engineers and the individual 401 water quality certification.

Ms. Dreyfuss-Wells said yes and that is the issue, the stream crossings that are shown on the subdivision development plan, it appears it would come under the Nationwide Permit but the bottom line is the Nationwide Permits are easy to get, individual permits are harder to get and it appears that you could get the Nationwide Permit with the subdivision stream crossings and throw the driveway crossings in there, it could come down to the fact that the individual homeowner would then be stuck getting an individual permit from the Army Corps and the Ohio EPA which is something she does not wish on anybody.

Mr. Riehl said to Ms. Dreyfuss-Wells given her analysis of the soils, the topography, the wetlands, the stream analysis and the other environmental considerations in her report, did she have an opinion as to whether a less dense development would help protect the environment.

Ms. Dreyfuss-Wells said she thinks the issue of density is for good storm water management and this density essentially squeezes any of the stormwater management that you would do into this very tricky spot of floodplains and wetlands and there is really no reason to do this because in Bainbridge Township you have got the low density which gives the room for stormwater management, the best storm water best management practices is low density.

Mr. Werner said that testimony is in excess of this report, those conclusions and that analysis that she just gave is not mentioned in this report anywhere, you are listening to conclusions based on her analysis that were not disclosed in her report and at least not at this moment disclosed to us.

Mr. Riehl told Mr. Werner that he has had this report for at least six months and it is subject for cross-examination here.

Mr. Werner said he has not had this conclusion for 60 seconds.

Mr. Riehl said it is not an ideological conclusion from the analysis that is in the report.

Mr. Werner said then this report is on squeezing and the effects of the increased density on the inability to manage these environmental issues and it is not in this report.

Mr. Riehl told Mr. Werner that fair is fair and he put on experts and did the same thing, you asked them conclusions and I was able to cross-examine.

Mr. Lamanna stated that in looking at this report, we do seem to be getting a bit farther a field, the report is primarily dealing with the basins and the crossings and the 401 and 404 issues and the stream issues and now we are kind of leap-frogging a little bit beyond the basin area and getting into a more overall opinion of other means of controlling this thing in which he thinks are not addressed in this report at all and he does think it is really a bit unfair.

Mr. Riehl said the conclusions he asked Ms. Dreyfuss-Wells are really the conclusions this board is going to be reaching in its ultimate decision.

Mr. Lamanna said okay.

Mr. Riehl said he had no further questions.

Mr. Werner asked Ms. Dreyfuss-Wells if she is with the Chagrin River Watershed Partners.

Ms. Dreyfuss-Wells replied yes.

Mr. Werner asked her about her personal educational background.

Ms. Dreyfuss-Wells said she has a Masters in Public Affairs and a Masters in Environmental Science from Indiana University.

Mr. Werner asked her if she is a Civil Engineer.

Ms. Dreyfuss-Wells said no, she is not a Civil Engineer.

Mr. Werner told Ms. Dreyfuss-Wells that she was here for the testimony that Mr. Mark Belmont of Atwell-Hicks gave and this was probably at least three hearings ago asked her if she has been coming to most of these hearings.

Ms. Dreyfuss-Wells said yes.

Mr. Werner asked her if she heard his testimony in regard to her report.

Ms. Dreyfuss-Wells said yes she did.

Mr. Werner asked her if she heard his responses to the individual concerns that was raised in her report.

Ms. Dreyfuss-Wells said yes.

Mr. Werner said and Mr. Belmont stated that all of the issues that are raised in your (Ms. Dreyfuss-Wells) report are issues to be considered later in the development process by the Ohio EPA and the Army Corps and perhaps at the local county level and asked her if that is correct.

Ms. Dreyfuss Wells said she heard him say that and she has a reply to that, but she heard him say that.

Mr. Werner said okay and asked Ms. Dreyfuss-Wells if she agrees with the point that Mr. Belmont made that at the end of the day, the Ohio EPA will determine whether the proposed environmental plan on this site is satisfactory or not.

Ms. Dreyfuss-Wells said she does not agree with that, you laid out a scenario where the Ohio EPA and the Army Corps, a group of professionals would somehow descend upon Bainbridge Township to make sure that these things work and that is simply not the case. She said the impact they are proposing here, if they went under a Nationwide Permit, the Army Corps really would not give that a full level of review, not what you would do with an individual permit, the general construction site permit that he referred to in terms of the stormwater quality basins, the Ohio EPA does not regulate stormwater quantity, that is something that would have to be regulated at the local level, Ohio EPA does not have the manpower to review that and does not do that on a regular basis.

Mr. Werner asked her does the Chagrin River Watershed Partners regulate those environmental impacts.

Ms. Dreyfuss-Wells said they do not, they advise their members on how best to handle that at the local level realizing that if you want it done, you really have to do it at the local level.

Mr. Werner asked her does the Chagrin River Watershed Partners issue Nationwide Permits.

Ms. Dreyfuss-Wells said they do not.

Mr. Werner asked if they issue individual permits.

Ms. Dreyfuss-Wells said they are a non-profit so they have no regulatory authority at all.

Mr. Werner said you have an opinion on these environmental matters though.

Ms. Dreyfuss-Wells said she has an opinion based on ten years of experience and her staff which actually did issue those when working for the Ohio EPA.

Mr. Werner said but you have no regulatory control over how these official authorities, Ohio EPA and Army Corps address these environmental issues at the end of the day.

Ms. Dreyfuss-Wells said no but we see them in action on a regular basis and that is why we recommend best practices to our member communities many of which Bainbridge Township has adopted.

Mr. Werner asked are the opinions of the Chagrin River Watershed Partners binding on the Ohio EPA.

Ms. Dreyfuss-Wells said in no way, we are non-profit with no regulatory authority at all.

Mr. Werner asked if they are binding on the Army Corps of Engineers.

Ms. Dreyfuss-Wells said no.

Mr. Werner said if he understood your (Ms. Dreyfuss-Wells) testimony, you did not actually physically go on this site in preparation of your report.

Ms. Dreyfuss-Wells said they did not go on this site, but her staff has walked the north branch of McFarland Creek and the areas surrounding that and she thinks it is important to highlight that much of the sub-watershed of the north branch of McFarland Creek is not developed and has generally low intensity land uses and that is why we have such a high quality resource there.

Mr. Werner said so you actually have not personally seen the slopes along McFarland Creek on this property.

Ms. Dreyfuss-Wells said she has not been on this property.

Mr. Werner referred to the proposed basins and asked if she has done any soil testing.

Ms. Dreyfuss-Wells said they do not do soil testing, we have the Geauga County Soil Survey that is very accurate and they have an extensive GIS system, geographic information system, which shows the aerial photography with streams and the area and her staff is trained and expert in analyzing that information.

Mr. Werner said you said you are relying on the soil survey of Geauga County.

Ms. Dreyfuss-Wells said yes.

Mr. Werner said and you reported in your report that the soils in Basin A have slopes from 18 – 70%, that is in your report, correct.

Ms. Dreyfuss-Wells said that is what came out of the soil survey.

Mr. Werner said you did not get that information by looking at the slopes there.

Ms. Dreyfuss-Wells said no, they did not go on this property.

Mr. Werner said you heard Mr. Belmont testify that the fact if you look at the contour map of this property the slopes are closer to 13%.

Ms. Dreyfuss-Wells said and he testified that you could then engineer a structure and she is not arguing that you couldn't do the engineering, she is arguing that that engineering would be expensive.

Mr. Werner said he is just pointing out that the information that you (Ms. Dreyfuss-Wells) relied on to draw your conclusions with regards to the slopes in Basin A are contrary to the facts on the ground and asked her if she agrees with that.

Ms. Dreyfuss-Wells said they used the soil survey, they did not go on the site.

Mr. Werner said to Ms. Dreyfuss-Wells that as she has testified here tonight, you don't know one way or the other whether the Ohio EPA will regard this as a situation requiring a National Permit versus and individual permit.

Ms. Dreyfuss-Wells said the Ohio EPA has not made that call, the call as to what kind of permit is made initially by the Army Corps and we don't have the information on the final impact, what she is raising is the fact that this site design has impact.

Mr. Werner said he is just saying that you (Ms. Dreyfuss-Wells) don't know as you stand here today how the Army Corps or any other regulatory agency reviewing this plan will evaluate this impact and whether or not it requires a National or individual permit, you can't say that here today.

Ms. Dreyfuss-Wells said she knows what the triggers are for those two permits and she knows what this proposed site design shows and it is not a mystery where the triggers are for those permits.

Mr. Werner said you pointed out that the Ohio EPA now has higher requirements with regard to management plans and asked if that accurately summarizes what she said.

Ms. Dreyfuss-Wells said the Ohio EPA under their stormwater management program has requirements on communities such as Bainbridge to do better stormwater management.

Mr. Werner said and at the end of the day this applicant would have to comply with those higher standards, right.

Ms. Dreyfuss-Wells said not those higher standards, this applicant will have to comply with the general construction site permit which sets sub-standards for stormwater quality which can be met with high costs, complicated prone to failure basins.

Mr. Werner asked if she made that assessment with measures suggested for this development at this point.

Ms. Dreyfuss-Wells said the assessment that she has made is that you have two basins squeezed into tricky spots.

Mr. Werner said his question is based on what you know so far can you determine this evening whether proposed mechanisms for addressing environment conditions on this property are going to be prone to failure.

Ms. Dreyfuss-Wells said she does not have the information on those basins to make that assessment but we also don't have any information to know that they won't.

Mr. Werner asked her if she has some familiarity with the impacts of septic systems on environmental areas like we are talking about this evening.

Ms. Dreyfuss-Wells said yes but she is hesitant to get into septic systems and wastewater management as her expertise is in site design and stormwater management but if you want her to go there, she would be happy to.

Mr. Lamanna told Mr. Werner he can ask her questions on what is in her report and what she has testified to, you can't ask her questions on other matters that she might be expert on, she is not here to be your expert on some other issue.

Mr. Werner asked how many driveway crossings are going to affect streams.

Ms. Dreyfuss-Wells said they did some analysis of that to the point that her staff had worked in the Ohio EPA 401 unit, did raise the concern about potential for this to push this into an individual permit and she believes that would be over 200 linear feet of stream impacts or 300 linear feet of ephemeral stream and kick it into that individual permit.

Mr. Werner said the question was you (Ms. Dreyfuss-Wells) do not have the information as you stand here this evening to the extent if any of what driveway crossings have on streams in this development.

Ms. Dreyfuss-Wells said what she knows is that concerns were raised by this site design so they don't know if there wouldn't be an impact.

Mr. Werner asked if concerns are always raised when there are driveways in areas with these environmental features.

Ms. Dreyfuss-Wells said it is quite interesting, often these are not looked at and then individual homeowners do get stuck with these questions about it and it depends on how the court system decides to enforce their regulations.

Mr. Werner said that would be up to them won't it.

Ms. Dreyfuss-Wells said it will but that is why local governments need to watch it at the local level.

Mr. Werner said he had nothing further.

Mr. Riehl said unless the board has questions, he had no further questions.

Mr. Lamanna said he had one question and that is in terms of the Ohio EPA 401 and the stream thing, does that only come into play really if that had to get individual permits.

Ms. Dreyfuss-Wells said that is right, Ohio EPA only comes to the table if you are proposing impacts at the individual level, if you can fly under a Nationwide permit, none of this matters and there is very little watching.

Mr. Riehl said as the next witness he would like to call Mr. George Smerigan and asked Mr. Smerigan to state his name and business address.

Mr. Smerigan testified that his name is George Smerigan, Vice President of Oxbow Engineering and the corporate offices are at 10 West Erie Street in Painesville Ohio.

Mr. Riehl asked what is Oxbow Engineering.

Mr. Smerigan said Oxbow Engineering is an interdisciplinary consulting firm and provides urban planning and civil engineering and traffic engineering services to both public and private clients.

Mr. Riehl asked him to tell the board and audience a little bit about his educational background.

Mr. Smerigan said he holds both a Bachelors and a Masters Degree in City and Regional Planning, he has taught urban planning to undergraduate students at the college level, he has provided courses at seminars in urban planning, he has worked in the field of urban planning both as a public official sitting on that side of the table and as a private consultant for over four years.

Mr. Riehl asked him if he has also had experiences as a developer.

Mr. Smerigan said as consulting to developers, they designed projects, they handled zoning, they handled the development design and taken projects all the way through to completion.

Mr. Riehl asked if he has provided advice both as a planner and advice to developers for communities here in Geauga County.

Mr. Smerigan said yes he has.

Mr. Riehl asked him to tell us some of those properties.

Mr. Smerigan said they have done commercial projects in Geauga County, they have also done residential developments in Geauga County, a subdivision in Hambden and they have done retail developments in several locations.

Mr. Riehl referred to the exhibits that have been submitted in this matter and said Exhibit 10 is a report from George Smerigan of Oxbow Engineering to the Board of Zoning Appeals dated October 12, 2007 and asked Mr. Smerigan if he had a copy of that report in front of him.

Mr. Smerigan said yes he did.

Mr. Riehl said and this was prepared at my request.

Mr. Smerigan said yes it was.

Mr. Riehl asked Mr. Smerigan what he did to prepare that report and asked him to take a look at it.

Mr. Smerigan said there were a number of things, he reviewed the application that was submitted for the variance request, he reviewed the supporting documentation that accompanied that application, he also reviewed the development plans and there were several development plans, different iterations with different number of lot counts, he reviewed each of those development plans, he visited the site and looked at not only the subject property but the surrounding area, he reviewed the zoning resolution and zoning map for the township, he also reviewed an opinion report that was prepared by Mr. Hartt of D. B. Hartt Inc. and he reviewed a review letter that was prepared by Michael F. McIntyre who was at that time the zoning inspector for the township.

Mr. Riehl asked him from his research did he ascertain that the applicant is asking for three variances in this matter.

Mr. Smerigan said yes he did.

Mr. Riehl asked what those variances are.

Mr. Smerigan said the three variances are a variance relative to the permitted density on the property, the R-3A District permits or requires that there be one unit per three acres and that would yield approximately 17 units on the site and the applicant is asking for 33 units which is an increase in the overall permitted density. He said the applicant has also requested a variance to the perimeter setback requirement and in the R-3A cluster developments there is a requirement for a 100' perimeter setback and the applicant has requested that on six lots that the setback be reduced and to various levels to 50' in some cases 30' in some cases and they have also requested a reduction in the side yard setback from 30' to 20' for a 10' reduction in the side yard setback on all of the lots so those are the three variances that are part of the application that is in front of the board tonight.

Mr. Riehl asked Mr. Smerigan if he is familiar with the term "use" variance and "area" variance.

Mr. Smerigan said yes he is.

Mr. Riehl asked what they are.

Mr. Smerigan said they are differences between the type of variance that would be required, a use variance would be a variance that would alter the permitted uses on the property and it has a certain standard in terms of the requirement for approval and that standard is unnecessary hardship, area variances are variances that deal with the other measurable requirements in the code, setbacks, heights bulk etc. but that deals with modifications to those area requirements as opposed to a permitted use on the property and there has been a separate standard established for that, the practical difficulty standard.

Mr. Riehl asked are the variances that the applicant is asking for here area variances or use variances.

Mr. Smerigan said they are area variances.

Mr. Lamanna said timeout, that is a legal issue, and you are asking him to give an opinion on a legal issue, if you want to brief as a question as to whether this is an area variance or a use variance, it is a difficult question because the board has wrestled with it before but he does not think it is an expert testimony question, it is a legal question.

Mr. Riehl said you (Mr. Smerigan) indicated that there are standards that professional planners look at in analyzing variances such as this.

Mr. Smerigan said that is correct.

Mr. Riehl asked him if he is familiar with the term the Duncan Factors.

Mr. Smerigan said yes he is.

Mr. Riehl asked him what the Duncan Factors are.

Mr. Smerigan said they are criteria for evaluating area variances that were established by the Ohio Supreme Court in the case of Duncan versus Middlefield.

Mr. Riehl asked Mr. Smerigan, in his report did he make an analysis of the proposed variance based on these Duncan Factors.

Mr. Smerigan said yes he does, and actually the analysis is based not only on the Duncan Factors that the township has in Section 117.10 of the zoning resolution where they essentially parrot the Duncan Factors and then added one or two of their own.

Mr. Riehl referred to page two of Mr. Smerigan's report and asked him to go through the seven factors and provide his analysis and conclusion on this.

Mr. Smerigan said the first factor is whether the property will yield a reasonable return or whether there can be any beneficial use of the property without the variances. He said in analyzing this the issue is of course the ability to use the property under the current provisions of the zoning resolution and the applicant is claiming that is not possible however the only plan that is provided is a plan that shows the 33 lot proposed development as part of the application and there is no presentation of a conforming plan and an analysis of that conforming plan.

Mr. Smerigan continued by saying when he says conforming plan, there is the issue of a standard subdivision with three acre lots under your R-3A provision but there is also the provision in R-3A to be permitted to do a cluster development as long as the density does not exceed one unit per three acres and those cluster plans were not in essence analyzed so there is, in his professional opinion, there is no evidence in the record that indicates that the cluster alternative is not a reasonable and viable use of the property and he has in fact found someone else, not just his own, to determine as far as he is concerned this professional who deals in this field everyday that in fact a cluster development with 17 lots would be a reasonable use of the property and would provide for an appropriate return.

Mr. Riehl said we will get to that analysis at a later point and referred to factor #2 on page three.

Mr. Smerigan said the second issue is whether or not the variances are substantial and would say that anytime that you take and double the density on a property virtually a 100% increase from 17 to 33, that is a substantial variance. He said the perimeter setback variances in his opinion are also in some instances substantial, you take a required 100' setback and you reduce it to 30', that is a 70% reduction in the setback and in his opinion it is also a substantial variance.

Mr. Riehl asked Mr. Smerigan when he reached his conclusion that under the cluster provisions of the Bainbridge Township Zoning Resolution, this property could be developed with 17 lots, did he round up or round down when he made that conclusion.

Mr. Smerigan said he rounded it up but when you do the math it comes out to be 16 and change and he gave the benefit of the doubt and made it 17.

Mr. Riehl referred to paragraph three on page three and asked Mr. Smerigan what his conclusion was with respect to that factor.

Mr. Smerigan said that factor is whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. He said it is his opinion that growing the density on the property would in fact alter the character of the neighborhood and that the substantial reduction in the perimeter setbacks would adversely affect the adjoining properties.

Mr. Riehl asked about factor number four.

Mr. Smerigan said it is whether the variance would adversely affect the delivery of governmental services. He said he indicated that there wasn't really any evaluation provided with regard to impact on governmental services and while there is obviously some impact associated with any kind of increase in the density of dwelling units, there is insufficient evidence to determine that that would substantially alter the township's provision of those services.

Mr. Riehl asked about paragraph number five on page four and asked him what his analysis is.

Mr. Smerigan said that fact is whether the property owner purchased the property with knowledge of the zoning restriction and the applicant noted in the application that in fact the property was purchased with knowledge of the zoning requirements.

Mr. Riehl referred to factor number six on page four.

Mr. Smerigan said whether the property owner's predicament can feasibly be obviated by some method other than a variance. He said it is his opinion that while there may very well be a practical difficulty with developing the property with a conventional subdivision of three acre lots, there is in fact an alternative available to the applicant which is the cluster provision in the zoning resolution and that represents a way of achieving the density without having to deal with the shape of the property but what it allows is one to work around the shape of the property and large ravine and environmentally sensitive areas in the middle and allows the property to be developed at its full density in a fashion that is both reasonable and acceptable.

Mr. Riehl referred to factor number seven on page four.

Mr. Smerigan said that factor is whether the spirit and intent of the zoning requirement would be observed and substantial justice done by granting the variances. He said it is very clear in reading the Bainbridge Township Zoning Resolution that there is a desire to maintain the rural character of the township and preserve it in a fashion that reflects how the majority of the township is developed which is three and five acre lots and with substantial amounts of open areas. He said he believes that permitting a cluster development on the site that is conforming to the regulations would be consistent with that and he thinks that when you double the density on the property and you reduce the perimeter setbacks that you are in fact no longer following the spirit and intent of the zoning resolution.

Mr. Riehl referred to factor number eight on page five.

Mr. Smerigan said it is kind of a catchall that indicates that the board is able to review other criteria in determining whether or not the zoning regulation is equitable and one of the things he looked at is there was a question of the claim of the availability of water and sewer and in fact there has been testimony previously the property in question is not currently within the 208 area and therefore does not currently have sanitary sewer service available to it and he understands representations about making it available to it however he thinks that it is very clear in the resolution and very clear in proper proceeding that the board can only deal with the facts and evidence before it and the fact and evidence is that presently the property is not within the district and not served, you can't assume that other agencies are going to act in a certain way and change that set of facts.

Mr. Riehl referred to category number nine on page five and asked Mr. Smerigan what is the analysis is there.

Mr. Smerigan said that factor is whether the granting of the variance would be contrary or derogate from the general purposes of the zoning resolution as provided in Section 101.02 and from the Township's Guide Plan and he thinks it is very clear as he stated earlier, if you read the purpose and intent statement of the zoning resolution that the rather significant change in overall development density and the resulting net density on this site are not consistent with the furtherance of the purpose and intent outlined in the zoning resolution so it would not be consistent, it would be contrary to the general purposes that are outlined there.

Mr. Riehl asked Mr. Smerigan to summarize his professional opinion.

Mr. Smerigan said it is his opinion that the variances as requested do not meet the practical difficulty criteria set forth in the zoning resolution.

Mr. Lamanna said you are testifying to the ultimate finding by this board and asked Mr. Smerigan to leave it as it is now and added that the board has raised the same objections with other experts that were testifying as to the final conclusion that the board is going to have to make in the rendering of its decision.

Mr. Riehl said to Mr. Smerigan that he indicated that he had experience in developing in Geauga County.

Mr. Smerigan replied yes.

Mr. Riehl said based on that experience, do you have an understanding of the cost factors that are entailed in developing a residential subdivision under the Geauga County Subdivision rules.

Mr. Smerigan said yes he does.

Mr. Riehl said he would like to hand you (Mr. Smerigan) Exhibit 20 and asked him to tell us what he did on Exhibit 20.

Mr. Smerigan said it is just a sketch plan that he uses as a yield plan to layout how the property could be developed following the standard provisions of the R-3A cluster regulations.

Mr. Riehl said with respect to the second document that is attached to Exhibit 20, what was done there.

Mr. Smerigan said this was a preliminary cost analysis that based on that general layout indicates the estimated cost of providing the necessary improvements to yield that subdivision.

Mr. Riehl asked him if he could tell us what analysis was made with respect to the costs of the project.

Mr. Smerigan said what he did was to determine the length of roadway necessary to adequately meet the requirements for 17 lots to provide that service and in doing this analysis they looked at the typical roadway section that is permitted under the Geauga County Subdivision regulations and cost it out what it would take to develop the roadway under those provisions and he also looked at providing water and sanitary sewer service to the western portion of the development where the higher cluster lots are provided and the cost of that, what providing those utilities would take and on the eastern side he anticipated it would not for those three lots instead of water and sewer, those would have on-site systems and factored in the cost of providing the necessary storm sewers and detention basins and water flowing provision and then put in the various soft costs associated with the improvements that were projected.

Mr. Riehl asked what his study shows.

Mr. Smerigan said it indicates that if you did a development of that sort that the costs of installing the improvements and for financing those improvements would be somewhere in the neighborhood of \$600,000 for the construction costs, he factored in a land cost based on the report that Mr. Ritley prepared at 1.1 million dollars and when he put all of that in the soft cost area you would end up with a total cost of about 1.9 million or just under 2 million dollars.

Mr. Riehl asked if there is anything else he would like to tell the board about that report.

Mr. Smerigan said based on that and based on what was indicated as the market costs of the lots that it appears from that report that there is in fact an ability to do this and do this in a profitable fashion and he would point out a couple of things. He said number one, this is done with 17 lots which is in complete conformance with the zoning resolution as a cluster development, it requires no variances, no density variance because of the nature of the way it is set up, it doesn't require setback variances from the perimeter either and one of the issues is always whether or not the variances requested are going to be the minimum necessary to obviate whatever practical difficulty there might be.

Mr. Smerigan continued by saying even if one assumes that the absorption time would be extended there is a substantial difference between this cost and the cost that is presented for the 33 unit plan and there is absolutely no evidence provided that he believes that with the 17 lots that you have a viable development but clearly there are options between 17 and 33 that could also be viable and one of the issues is, is the variance the minimum necessary and despite Mr. Hartt's testimony that 33 lots is the least number of units that you could put on this site and have a viable development he strongly disagrees with that and it is his professional opinion that you can do this development with substantially fewer lots and return a reasonable return to the developer. He said the issue of market conditions is market conditions, the market conditions are going to get better, they are going to get worse, they go up and down and frankly he thinks it is ludicrous to contend that because we are in a down economic time, we are in a recessionary period that that renders zoning inappropriate or warrants to grant the variances. He said if he is having difficulty selling his house in a poor housing market that doesn't mean that his house is not zoned properly it simply means that we are in a poor economic condition and those conditions will change over time and one thing we know for sure is that they do change so he does not think there is any relationship between the current economic condition and whether or not there is in fact a practical difficulty that would justify a variance.

Mr. Werner said he wants to start with Mr. Smerigan's report that he prepared and review the Duncan Factors and referred to page three of the report and the top paragraph about half way down towards the right side and it begins with the words "While some adjustment to the permitted density may be warranted or appropriate if the Board determines that central water and sanitary sewer services are available to the site, it is my professional opinion that it is possible to develop the subject site and obtain a reasonable return without the variances to the 100 foot perimeter setback as requested by the applicant." He asked Mr. Smerigan if he read that correctly.

Mr. Smerigan said yes you did.

Mr. Werner asked him what he means when he talks about an appropriate adjustment based on the availability of water and sewer.

Mr. Smerigan said as he testified, it is clear at this point that the site is not within the district and therefore at the present time as it sits in front of the board, it does not have sanitary sewers available to it and obviously that is a condition that at some point could change, the board is not in control of that, but that is an issue that they obviously need to deal with. He said the second thing he is referring to is the fact that there really wasn't at the time he wrote the report any analysis that indicated that 17 lots was in fact undoable on the property and so he took the position that if there were in fact sufficient evidence to indicate that 17 might not be a reasonable number then obviously one needs to look at what the reasonable number would be, maybe it is 18, maybe it is 19 but there wasn't any evidence one way or the other because there was no analysis provided as part of the application that went through a cluster subdivision scenario.

Mr. Werner said you have behind you on the screen a picture of the proposed development and asked Mr. Smerigan if he has seen this before.

Mr. Smerigan said yes he has.

Mr. Werner said and it is a scaled drawing with some detail showing riparian areas, showing relative positions with lot lines etc. etc. and asked Mr. Smerigan if he has looked at all of that.

Mr. Smerigan said that is correct.

Mr. Werner said the property is what 50 acres.

Mr. Smerigan said 50 acres.

Mr. Werner said 50 or so and the zoning is one unit per three acres.

Mr. Smerigan said correct.

Mr. Werner said so if you divide 50 by 3 you should find out how many units you can put on this property right.

Mr. Smerigan said yes.

Mr. Werner said okay and by dividing 50 by 3 you can't get 17, I can't build 17 units on the property each with three acres if I only have 50 acres.

Mr. Smerigan said it is 16 and change.

Mr. Werner said what he is saying is at 50 acres he can't build 17 homes there because he can't make that last 17th unit appear on a three acre lot, that is a matter of mathematics.

Mr. Smerigan said you are correct.

Mr. Werner said he would need a variance to get that 17th lot wouldn't he.

Mr. Smerigan said it is a question of interpretation of the zoning resolution as to whether or not, it is unclear and the reason he went to 17 is it was unclear to him in the zoning resolution whether or not if when you did a density analysis of that nature whether or not you were given credit for a partial lot like that or a partial unit and so he obviously took the conservative approach and said that you are.

Mr. Werner asked what it says.

Mr. Smerigan said it does not say one way or the other.

Mr. Werner said it is a fact though that that 17th unit would not be on a three acre parcel, you couldn't do it with 50 acres.

Mr. Smerigan said that is correct.

Mr. Werner said what he is really talking to you (Mr. Smerigan) about is 16 units that we know of for certain.

Mr. Smerigan said you can't get 16 on three acre parcels.

Mr. Werner said if you can't get 16 you plainly can't get 17, right.

Mr. Lamanna said rather than continue on this discussion, from the board's standpoint it is 16, you have a 50 acre parcel you have got 16 unless you have a variance and that is the way the board has consistently interpreted it even under the cluster. He said there is no point in you two guys arguing over what is allowed without a variance, he is just saying, 16 would be allowed unless you get a variance so let's move forward on that assumption.

Mr. Werner said to Mr. Smerigan that he has previously advised this township with respect to this three acre zoning, has he not.

Mr. Smerigan said yes.

Mr. Werner said and they asked you as a professional, as a planner to comment on what their three acre zoning says and perhaps what it ought to say right.

Mr. Smerigan said he was hired by the township in another matter of litigation but they did not hire him to do an analysis of their zoning resolution, they hired him as an expert in another legal matter, another case relative to variances.

Mr. Werner said it was another case involving a parcel within a mile of this in a three acre zone, it has sewer running through it where the property owner was looking for an increase in density and relying on the fact that sewer was available to do so and asked Mr. Smerigan if he recalls that.

Mr. Smerigan said yes he does.

Mr. Werner asked in the context of that case did you give advice to the township in regards to its three acre zoning.

Mr. Smerigan asked advice to the township.

Mr. Werner said yes.

Mr. Smerigan said yes he believes he did.

Mr. Werner asked what advice did you give them with regard to the residential zoning in 2004 with respect to this three acre zoning.

Mr. Riehl said he is going to object to that as a very general vague question, if Mr. Werner has the report that Mr. Smerigan provided, he can ask Mr. Smerigan to give him the report and then they can focus in on exactly what the advice was.

Mr. Werner said he has the transcript from the deposition that Mr. Smerigan gave on that matter when he testified under oath and he was going to use it appropriately to impeach him if he didn't give the testimony here this evening and if the board would prefer he could read the sworn testimony from Mr. Smerigan about the advice that he gave the township regarding their three acre zoning.

Mr. Riehl asked if he gave his answer to this question at this particular deposition.

Mr. Werner asked Mr. Smerigan if he recalls the deposition that was taken by Sheldon Berns four years ago with respect to the Meldon matter.

Mr. Smerigan said he does indeed.

Mr. Werner said and the Meldon matter is the one that we were referring to that you worked with the township previously.

Mr. Smerigan said that is correct.

Mr. Werner said Mr. Berns asked you questions and did you give recommendation to the trustees with regards to their residential planning that existed at that time. He said he is going to read the answer and asked Mr. Smerigan if this is the correct answer. He said the answer is "I suggested to them that in light of the fact that this is not the first litigation regarding density matters and utilities that they should consider modifying some of the language in their zoning resolution to more directly reflect what they intended to have happen and to provide a stronger basis for maintaining the rural character that they want to."

Mr. Riehl said he is going to object to any questioning along this line because it deals with general recommendations as far as legislation and not the specific issues that are in front of the board with respect to this particular property and he thinks every variance is unique and it is simply not known.

Mr. Werner said he fundamentally disagrees, the burden that this has to have to establish what we are proposing is consistent with the spirit and intent of this resolution and this expert advised this township that its R-3A zoning will not withstand challenges, it is vulnerable to challenges on the basis that it was designed to preserve three acre zoning when septic systems and well water were an issue and that it did not address, at least efficiently in this expert's opinion residential densities when water and sewer are present and he thinks that that is directly relevant to the burden that we are here trying to sustain.

Mr. Lamanna said he will agree that for what you are saying is admissible, he agrees with Mr. Riehl on that but it is certainly admissible to impeach his conclusions as an expert if he is on one hand saying he believes you (the township) should be changing your zoning but the fact that some expert came in and made some recommendation to the township, he does not think is supportive one way or the other as to your application in chief but he will agree that the board will consider it on impeachment of this expert witness because it does go to his credibility as an expert witness that he is possibly in one case making one recommendation and now coming back with something that may be contradictory but the board will certainly evaluate it on the standpoint of his credibility but in this matter it would be questionable for you to be admitting trying to admit this on a cross-examination of an expert witness as part of your case in chief any way and he has a problem with this just from a procedural standpoint.

Mr. Werner said this is not our case in chief.

Mr. Lamanna said to be trying to advance that argument as part of your case in chief is a justification for asking the question to impeach him, not to present evidence to support your case in chief.

Mr. Werner asked Mr. Smerigan if it is his opinion that densities of plus three acres per unit is appropriate when water and sewer are available.

Mr. Smerigan said as he indicated at that time that they can be but he didn't indicate that the regulation wasn't appropriate, he indicated that he had made a recommendation that they might want to enhance and clarify what the intent of the regulation was relative to water and sewer.

Mr. Werner said so your testimony is that you did not advise the township that there was anything inappropriate by having the three acre zoning resolution provisions that they have and asked Mr. Smerigan if that is his testimony.

Mr. Smerigan said their R-3A zoning district is not unreasonable or an inappropriate zoning district, you asked me is it possible to have higher density if water and sewer is available and obviously it is but that doesn't make the R-3A district wrong or inappropriate and if you recall, that is what my testimony equaled.

Mr. Werner said now we have something for legitimate impeachment purposes here. He said this is your testimony from the deposition that you gave in the Meldon matter on November 11, 2004, the question put to you by Mr. Berns was "Did you have any further discussions on that score?" and your answer was "Well I did indicate to them that I felt that there was probably some need to make an adjustment to the density in those areas where there was arrangements to have public utilities available, yes." Question, "Did you tell them what adjustments you thought were appropriate?" Answer "I indicated that the one unit per three acre density was probably overly restrictive in areas where utilities were available and I suggested that something at some greater density would be appropriate in those areas."

Mr. Smerigan said it is not any different from what I just said.

Mr. Werner said you pointed out to the board earlier that based on the evidence they have supported sewer and water has not been established it is available for this property.

Mr. Smerigan said that is correct.

Mr. Werner asked why he did not make a conditional recommendation to this board in this matter as to an appropriate density should water and sewer ultimately prove to be available.

Mr. Smerigan asked was he required to do that.

Mr. Werner said you have done it in the past.

Mr. Lamanna said he does not understand the question, he did what he did, you can ask him did you do this or didn't you do this but it is a factual question of did he or did he not perform the other obligations, he certainly has no requirement to do that, you can ask the question of whether he performed any analysis whether he made recommendations, he is not making any recommendations here, if you want to ask the question did you make an analysis of other situations and other densities, fine, ask that question, that is relevant.

Mr. Werner said in the Meldon matter, the recommendation that you made to this board of zoning appeals in the Meldon matter, did you not make a recommendation that if water and sewer proved available, you actually suggested a different density if water and sewer are available did you not.

Mr. Smerigan said yes I did.

Mr. Werner asked why you (Mr. Smerigan) did not do that in this matter.

Mr. Lamanna said he has no obligation to do that in this matter.

Mr. Werner asked Mr. Smerigan if he was instructed by anyone at the township not to make a recommendation as to an appropriate density if water and sewer were available to this property.

Mr. Smerigan said no.

Mr. Werner said in your report on page three under item number 2, whether the variances are substantial, your conclusion is that the subject variances have the potential to substantially alter the impact of the cluster development on adjacent properties and must therefore be considered substantial variances. He asked what substantial impacts are these variances likely to cause on those neighboring properties.

Mr. Smerigan said they change the character of the neighborhood and they change the living environment for those properties, when you place something closer to those homes than what they anticipate they would have under the normal provisions of the regulations they would have an impact on them.

Mr. Werner said he will direct Mr. Smerigan's attention to the sketch plan he prepared and you don't show any units on that sketch plan.

Mr. Smerigan said no.

Mr. Werner asked if it would be permissible under the zoning resolution to place units on your sketch plan closer to the perimeter than the regulations affecting the cluster development that the applicant has proposed.

Mr. Smerigan said you lost me.

Mr. Werner said the perimeter requirements applicable to a cluster residential development, correct.

Mr. Smerigan said yes.

Mr. Werner asked Mr. Smerigan if he knows what those are.

Mr. Smerigan said they are 100'.

Mr. Werner asked are there perimeter zoning resolution provisions applicable under the design that you have sketched.

Mr. Smerigan said they would be the same.

Mr. Werner asked if they would be 100' perimeter on both districts, the one you proposed.

Mr. Smerigan said any cluster development has to have that.

Mr. Werner asked if this is a scaled drawing.

Mr. Smerigan said no.

Mr. Werner asked if it has even any of the detail that is proposed on the applicant's, in other words, do you have any idea where the units are going to cross riparian districts in this sketch drawing.

Mr. Smerigan said it wasn't drawn for that purpose no it was simply the units.

Mr. Werner said you were not expected to know what you were proposing if you knew how the units had to be placed with respect to riparian districts.

Mr. Smerigan said it is possible but if you could place 33 units on this site and not affect the riparian areas you can put 17 units on the site and not affect the riparian areas.

Mr. Werner said the question is did you do that.

Mr. Smerigan said he didn't site the units.

Mr. Werner referred to Mr. Smerigan's report again on page three, paragraph three and it says that this has to do with whether the essential character of the neighborhood would be substantially altered and asked him if he is familiar with the Lake Lucerne development.

Mr. Smerigan said yes.

Mr. Werner asked him if he knows where that is relative to this property.

Mr. Smerigan said it is slightly to the east.

Mr. Werner put a map on an easel and asked Mr. Smerigan to identify Lake Lucerne on the drawing and asked if it is just off the southeast corner of this development and asked what the density is of that development. He asked Mr. Smerigan if it is more dense in terms of residential density in terms of what is being proposed here and his answer was yes. He asked if this plan will substantially impact Lake Lucerne.

Mr. Smerigan said no.

Mr. Werner said how about directly east of those two properties and asked Mr. Smerigan if he is familiar with that area.

Mr. Smerigan said the Tulip Lane area, yes.

Mr. Werner asked if he knows what the densities are there.

Mr. Smerigan said he does not remember the numbers off the top of his head and added that he is sure he has them somewhere.

Mr. Werner said so you don't know if the lot sizes or densities proposed on this plan would be compatible with those on Tulip Lane.

Mr. Smerigan asked the 33 unit plan. He said the density in the 33 unit plan is higher than what exists in the area.

Mr. Werner said we are talking about substantial impacts, Tulip Lane is directly north of Lake Lucerne and asked Mr. Smerigan if he agrees.

Mr. Smerigan said yes.

Mr. Werner said his question is what substantial impact would 33 units have on the Tulip Lane development.

Mr. Smerigan said it changes the nature of that neighborhood, you've got many more homes that are going to be utilizing their streets coming through that neighborhood, those folks have the right to expect that the property adjacent to them would be developed in conformance with the zoning regulations within a certain density and changing that density changes the character of their neighborhood and he considers that change to be substantial.

Mr. Werner referred to Mr. Smerigan's report, page four, item four and whether the variance would have an adverse effect on the delivery of governmental services and you (Mr. Smerigan) say there has been no evaluation to determine the extent of any impact and asked him if he knows as he stands here how many households there are in Bainbridge Township.

Mr. Smerigan said he does not have that number memorized.

Mr. Werner said assuming the other plan was approved with the 16 units could be identified under the current zoning, those 16 units could be built without any regard to impact on governmental services correct, they are not constrained by this variance to be built.

Mr. Smerigan said that is correct, the zoning anticipates that number of units on that property, it has already been allocated and therefore the assumption is that the governmental services were planned to accommodate development at that level.

Mr. Werner said this plan is an additional 17 units correct.

Mr. Smerigan said that is correct.

Mr. Werner asked Mr. Smerigan if his professional opinion as a planner is that the addition of those 17 units would adversely affect the delivery of governmental services.

Mr. Smerigan said he did not say that, what he said was that, well I will say this, any change in density is going to have some impact on the cost of providing governmental services, would one house break the township, no but we can keep slicing the bologna thinner and thinner and thinner and one more and one more and one more and at some point, it will have an impact, what that magic number is, I haven't done that analysis and he can't testify and that is why if there isn't information available to determine whether this variance would in fact have a governmental impact, he is not saying it would.

Mr. Werner said his question is simple, will the addition of 17 units in this development adversely affect the delivery of governmental services.

Mr. Smerigan said he did not answer that and he can't tell you that.

Mr. Werner referred to the proforma Exhibit 20 (township's) and said he is looking at the list of costs that you put together for the project and you established that you are over by one unit by what this would be permitted under the zoning regulations. He said so that reduces the revenue generated by your proposed development by \$175,000 if we take out that 17th unit.

Mr. Smerigan said it depends on the size lot that you have.

Mr. Werner said lets assume we are taking one out on the west side so that means that your analysis overstates revenues by at least \$107,000 and possibly by as much as \$175,000 and would you (Mr. Smerigan) agree to that.

Mr. Smerigan said if you are going to eliminate one lot, then the revenue would change by that amount.

Mr. Werner said your cost breakdown does not include the costs for demolition of the existing structures.

Mr. Smerigan said it does not identify it separately no.

Mr. Werner asked if it is in here.

Mr. Smerigan said there is a miscellaneous item in there.

Mr. Werner asked where that is.

Mr. Smerigan said right under the construction subtotals.

Mr. Werner said miscellaneous and contingencies.

Mr. Smerigan said right.

Mr. Werner asked him if he designed that to include the demolition costs.

Mr. Smerigan said in order to do the development we would have to clear a substantial area on that west side, his roadway includes all of that excavation and all of that kind of stuff, and yes they can anticipate that would have to come out of there, it includes a lot of stuff, he didn't break everything down.

Mr. Werner asked how much the demolition costs would be to do the demolition required for your plan.

Mr. Smerigan said he does not recall the number.

Mr. Werner said you also did not factor in costs to extend the street to Tulip Lane, the culdesac.

Mr. Smerigan said yes it is in there.

Mr. Werner asked where that is.

Mr. Smerigan said it is up in the roadway item and that is all of the streets, both sides.

Mr. Werner asked where does that identify the work performed on Tulip Lane.

Mr. Smerigan said under roadways.

Mr. Werner said he is looking at the explanation and asked where do you identify that in here.

Mr. Smerigan said he is not understanding the question. He said that is all of the roadway based on the layout he prepared.

Mr. Werner asked if he separately determined the cost to demolish that culdesac that extends through.

Mr. Smerigan said all of that is factored into that number.

Mr. Werner said his question is again, did you separately calculate the number to extend that culdesac.

Mr. Smerigan said he does not understand what you are trying to identify.

Mr. Werner said there will be a cost associated with converting the culdesac at the end of Tulip Lane into a through street connecting it into this development and asked Mr. Smerigan if he separately calculated the cost of converting that culdesac into a through street.

Mr. Smerigan said he included that cost in his total cost.

Mr. Werner said there is also no separately identified costs for entranceways either on the east end or west end of the development and asked Mr. Smerigan if he separately identified those costs.

Mr. Smerigan asked him what he means by entranceways.

Mr. Werner said the landscaping and entrance monuments at the east and west ends of the development.

Mr. Smerigan said the level of landscaping at the entranceways, there is no requirement for that so it is whatever you do so did he factor in a special landscape feature, no, did he figure in the necessary grading and seeding etc. to accomplish the develop with the deed requirements, yes.

Mr. Werner asked Mr. Smerigan if he had an opportunity at this point to review a report that was prepared by Mr. Van Curen.

Mr. Smerigan replied no.

Mr. Werner said he has been put forth by the township and he is proposing to testify here and he submitted a report. He referred to Mr. Van Curen's report, paragraph four, page three and said just to clarify, your (Mr. Smerigan's) sketch plan, you designed it to have sewer and water on the west end and septic and well water on the east end of the creek.

Mr. Smerigan said that is correct.

Mr. Werner said your costs in your proforma did not include extending water and sewer to the east side of the creek.

Mr. Smerigan said water and sewer are already on the east side of the creek but he did not extend it to the residences.

Mr. Werner said you did not include costs to extend those services to service those residences on the east end.

Mr. Smerigan said that is correct.

Mr. Werner said you also did not factor in the cost to extend storm sewers to the east side of that property, isn't that also true. He referred to Mr. Smerigan's proforma on the storm section and asked him if he used the same lineal foot measurement he used for the roadway.

Mr. Smerigan said that is how he calculated it, his road number included the roadway on both sides, the storm sewers included storm sewers on both sides and the answer is yes.

Mr. Werner said lets go back to page three of Mr. Van Curen's report, last paragraph. He said the first sentence in the last paragraph ends with assumptions that he made and he identified the cost of marketing and sales of 14% per annum and asked Mr. Smerigan if he sees that number.

Mr. Smerigan said yes he does.

Mr. Werner said the marketing and sales costs are 14% and if you look back at your proforma right below where it says subtotal you have operations, marketing and carrying costs at 15%.

Mr. Smerigan said right.

Mr. Werner asked which of those two estimates regarding marketing are correct.

Mr. Riehl said he objects, you can ask him how he justifies one versus the other but not what is correct.

Mr. Werner said fair enough and asked Mr. Smerigan how he allocated between operations and marketing and carrying costs in his 15%.

Mr. Smerigan said that number is a number that we have used in any number of projects that we have done when we are preparing proformas for developments and any number of projects have gone forward on that basis and in any given point in time, those numbers are going to vary because the market always varies, interest rates vary, everything varies so any of these things is at best an estimate and a projection and everything is going to change over time no, it all depends on when you do it.

Mr. Werner said my question to you (Mr. Smerigan) is what is your estimate of the marketing costs on this project.

Mr. Smerigan said I have shown you what I have provided there, I have not broken it down separately, I didn't do that for this and it is not there.

Mr. Werner said you had to separately evaluate what the marketing costs would be for this project.

Mr. Smerigan said he did not provide for that in the report.

Mr. Werner asked Mr. Smerigan if he separately calculated what the carrying costs will be for this project.

Mr. Smerigan said those are lumped together, that is how he provided it.

Mr. Werner said his question is you haven't separately calculated it though.

Mr. Smerigan said this estimate is based on experience in doing projects of similar nature over time and these are factors that we use in estimating the costs of doing projects.

Mr. Werner referred back to page three of Mr. Van Curen's report and said he breaks these things out, he shows 8% for interest costs on a construction loan, which I presume you understand to be the carrying costs, right.

Mr. Smerigan said yes.

Mr. Werner said 8% for administration and real estate taxes and asked Mr. Smerigan if that appears in his carrying costs as well.

Mr. Smerigan replied yes.

Mr. Werner said 14% for marketing and sales costs and asked Mr. Smerigan if he sees that.

Mr. Smerigan replied yes.

Mr. Werner said if you add his three percentages 14% and 16% you come up with 30% per year which compares to your 15%.

Mr. Smerigan said yes.

Mr. Werner asked Mr. Smerigan if he has any reason to doubt that your 15% isn't high enough to account for all the things you say it accounts for.

Mr. Smerigan said as he said before, it depends on what the conditions are at the time, it is no different than the fact that Mr. Iacona thought the property was going to take two years to market and Mr. Ritley said five, they disagree on that, who is right, we'll find out. He said it is a matter of opinion projection and a lot of things are to be determined based on when this happens and what the market conditions are at the time that it happened.

Mr. Werner said by comparing the figures in your report and the one I just referred to in Mr. Van Curen's report do you (Mr. Smerigan) now have reason to believe that your 15% is too low.

Mr. Smerigan said he is not prepared to change anything until he can do a further analysis.

Mr. Werner said that is all he has.

Mr. Riehl said he has no further questions unless the board has a discussion.

The board took a short recess.

Mr. Paul Van Curen was introduced by Mr. Riehl and testified that he is a Real Estate Appraiser and his office is at 12768 Chillicothe Road in Chesterland, he has a Bachelor of Arts and majored in Political Science and he is a Certified General Real Estate Appraiser in Ohio since 1990 which is the first date they had licensing.

Mr. Riehl said to Mr. Van Curen that he has handed him what he has marked as township Exhibit 21 and this is a preliminary feasibility report of subject property and attached to that is your resume. He asked Mr. Van Curen to outline the highlights of his resume.

Mr. Van Curen said he has been working in the real estate business since 1982, he has had his own company since 1996 and as an Ohio Certified Real Estate Appraiser he does commercial, residential, he specializes in residential land, he has testified at boards of revision in Geauga, Cuyahoga and Lake counties and the Board of Tax Appeals in Columbus. He said he is on the Ohio Department of Transportation approved list, he does work for municipalities including the City of Cleveland Heights, Pepper Pike, Chagrin Falls, Hunting Valley, Gates Mills, Bratanahl and Bainbridge Township. He said he does a lot of work with conservation groups including Major Conservancy Trust for Public Land, Western Reserve Land Conservancy, Gates Mills Land Conservancy and so on.

Mr. Riehl asked if it would be fair to say that you have done a substantial amount of appraisal work in western Geauga County.

Mr. Van Curen said yes he has, that is kind of where he does most of his work.

Mr. Riehl asked if Bainbridge Township is one of his clients.

Mr. Van Curen replied yes.

Mr. Riehl said in preparing this report what did you (Mr. Van Curen) examine.

Mr. Van Curen said he examined the report that Mr. Roger Ritley had done and he also was provided with the subdivision plan report that Mr. George Smerigan did.

Mr. Riehl said that is presently marked as Exhibit 20.

Mr. Van Curen said yes and it was not the subdivision report, it was the subdivision plan sketch and the sheet with the costs on it.

Mr. Riehl asked what else he took a look at.

Mr. Van Curen said he took a look at the property from the road premises, he looked at the GIS maps and Lake and Geauga County and what he basically did was, he did a basic subdivision approach using the cost figures and the subdivision plan done by Oxbow, Mr. Smerigan, and then with 17 lots, 14 lots on the east side of Savage Road and three larger lots on the extension of the culdesac on Tulip Lane.

Mr. Riehl asked Mr. Van Curen if he also reviewed the materials provided to the board by Mr. Iacona.

Mr. Van Curen said yes he did.

Mr. Riehl asked what else he did in his analysis.

Mr. Van Curen said he did a subdivision plan again using the costs and then the other parameters he used based on an average lot value of \$175,000, a three year absorption time which is an average of a little under six units per year, a 30% discount rate, per the last witness, 8% interests costs and construction loan interest and real estate taxes, and 14% for marketing and sales costs.

Mr. Riehl asked did you arrive at any disposal periods.

Mr. Van Curen said he used the disposal period of three years at about 5.7 lots per year.

Mr. Riehl asked if he factored in an inflation factor.

Mr. Van Curen said he used an inflation factor of 2% per year.

Mr. Riehl asked if he reached any conclusions in his report.

Mr. Van Curen said yes he did, on page four, he ran a discounted cash flow and using those parameters, gives you a value of the raw land of \$1,285,000.00 of which is equivalent to \$25,700.00 per acre.

Mr. Riehl asked how that compares with other raw land prices he has seen in western Geauga County.

Mr. Van Curen said that would be higher than any comparable site acreage that he is aware of in Geauga County although most of the sales do not have water and sewer.

Mr. Riehl said and based on all of your assumptions, did you (Mr. Van Curen) reach a conclusion of whether it would be feasible to develop the subject property under the conditional use allowed in a cluster zoning.

Mr. Van Curen said yes he does believe that it would be feasible to develop the property with the existing cluster zoning using a density of one unit per three acres which was rounded to 17 units.

Mr. Riehl asked Mr. Van Curen if he was made aware that Mr. Iacona has contracted to buy the subject property for 2.8 million dollars.

Mr. Van Curen replied yes.

Mr. Riehl asked Mr. Van Curen what his reaction is to that.

Mr. Van Curen said he thinks that is about \$50,000 per acre which is much higher than anything that has sold in Geauga County for comparably zoned land.

Mr. Riehl asked Mr. Van Curen if he recalls the land cost figure that Mr. Ritley arrived at.

Mr. Van Curen said he believes he was at \$22,000 per acre.

Mr. Riehl said or a sum of 1.1 million.

Mr. Van Curen said correct.

Mr. Riehl asked Mr. Van Curen if there is anything else he would like to tell the board about his report.

Mr. Van Curen said no, that is about it.

Mr. Werner said you (Mr. Van Curen) mentioned towards the end of your testimony that the values that you had checked were on properties that water and sewer were not available for and that would have produced a lower per acre value.

Mr. Van Curen said no what he said was almost all of the sites he is aware of acreage in western Geauga have not had water and sewer and they have been at less per acre than the \$25,000 per acre.

Mr. Werner said because the property is worth more when water and sewer are available.

Mr. Van Curen said correct.

Mr. Werner said you assumed in your analysis that water and sewer are available, correct.

Mr. Van Curen said yes.

Mr. Werner asked Mr. Van Curen if he assumed that water and sewer are available to both the east and the west side of the creek.

Mr. Van Curen said yes he did.

Mr. Werner said you heard the testimony earlier, actually it wasn't testimony, it was a directive from the board that under these circumstances, only 16 units would be allowed on this property and asked Mr. Van Curen if heard that.

Mr. Van Curen said yes.

Mr. Werner said that would reduce the net cash flow generated under your model by \$175,000 wouldn't it.

Mr. Van Curen said no, not necessarily, it would reduce it but probably not by that amount.

Mr. Werner asked by what amount it would be reduced.

Mr. Van Curen said it is going to be discounted, he can't tell without running it through but it would be something discounted from that.

Mr. Werner said in your table that your prepared on page four of your report.

Mr. Van Curen said yes.

Mr. Werner said you have a line in there that says cash flow before discounting and asked Mr. Van Curen if he sees that line.

Mr. Van Curen replied yes.

Mr. Werner said that row would be reduced by \$175,000 right.

Mr. Van Curen said correct but it wouldn't be a deduction of \$175,000 from the 1.185 million.

Mr. Werner said if he understands the methodology, you basically spread that out on a basis of average unit sold per year so it would be factored into the average unit sold per year.

Mr. Van Curen said right.

Mr. Werner said that line in the report that he alluded to wouldn't be \$175,000 because there is \$175,000 fewer dollars coming in for 16 units.

Mr. Van Curen said it would be on that line, correct.

Mr. Werner said you (Mr. Van Curen) just testified that your model assumes that water and sewer are available to both sides of the creek.

Mr. Van Curen said that is correct.

Mr. Werner said but you must be aware that Mr. Smerigan in his estimate assumed that water and sewer will only be available to the west side of the creek.

Mr. Van Curen said that is correct.

Mr. Werner asked where in your cost model you account for the costs of extending water and sewer to the east side of the creek.

Mr. Van Curen said he used his costs.

Mr. Werner said you assumed in your model that sewer and water are available on both sides but did not account for the costs of extending sewer and water to the east side of the creek.

Mr. Van Curen said that is correct.

Mr. Werner said do you (Mr. Van Curen) know what the cost would be to extend water and sewer to the east side of the creek.

Mr. Van Curen said no although you wouldn't actually have to do that because the lots on the east side of the creek are big enough for well and septic.

Mr. Werner said be that as it may your testimony says that under your model you assume that water and sewer would be available to both sides of the creek.

Mr. Van Curen said correct.

Mr. Werner if you look at your (Mr. Van Curen) report, these numbers pretty much are the wholesale numbers of Mr. Smerigan's report correct.

Mr. Van Curen said that is correct.

Mr. Werner said you did however make two changes in the miscellaneous and contingency costs and the engineering and surveying costs and he believes Mr. Smerigan has \$75,000 and you have \$54,600.

Mr. Van Curen said these are his figures and these are the figures that I was provided.

Mr. Werner referred to Mr. Smerigan's proforma with his 17 units and asked Mr. Van Curen if he sees that.

Mr. Van Curen said yes.

Mr. Werner said you have \$54,600 and he has it at \$75,000 and why the adjustment.

Mr. Van Curen said he can't tell you that, this sheet was what he was provided with as to costs, he has not seen this one before right now.

Mr. Werner asked Mr. Van Curen if he did any investigation to verify the cost that Mr. Smerigan was providing.

Mr. Van Curen said if you total up his costs for the roadway, sanitary sewers and water mains and storms it is about \$414.00 per linear foot which tracks with other developments that he is aware of.

Mr. Werner said but you didn't do any independent investigation.

Mr. Van Curen said he is not an engineer.

Mr. Werner said okay so you just took on faith that Mr. Smerigan knew what those costs should be.

Mr. Van Curen said right because that is what he has.

Mr. Werner said on page four of your (Mr. Van Curen) report you have a table and you have done various percentages, a discount rate for half a year of 15%, interest on construction at 4%, etc.

Mr. Van Curen replied yes.

Mr. Werner said those are all half year figures.

Mr. Van Curen said yes these are six month intervals.

Mr. Werner said exactly so the total percentage that you add up for any given year is the sum of all those percentages times two.

Mr. Van Curen said yes.

Mr. Werner said you heard the testimony from Mr. Smerigan regarding his 15% for operations, marketing and carrying costs.

Mr. Van Curen said yes.

Mr. Werner said that is substantially smaller than the estimates that you used on an annual basis for those costs isn't it.

Mr. Van Curen asked Mr. Werner to say that again.

Mr. Werner said for example you have in your marketing sales costs.

Mr. Van Curen asked what he had.

Mr. Werner said he (Mr. Smerigan) put 15% and he categorized that as accounting for operations, marketing and carrying costs all rolled into 15%, he did not break it up, he just used 15% to summarize it. He said your marketing estimate alone is almost the entirety of his collective estimate for his cost appraisal.

Mr. Van Curen said he is not really familiar with how Mr. Smerigan did his costs and he thinks he did it a different way than I am doing it, I am doing a discounted cash flow and I did look at his briefly a few weeks ago and he is not doing it as a discount cash flow so it might be apples and oranges the way you are comparing percentages.

Mr. Werner said we are not talking about the discount rate because you have that listed separately, you have it listed at 15%, I am not referring to that, I am referring to marketing costs, you have it at 14% a year, he has that rolled in with carrying costs and operations at 15% and that is with your experience in residential appraisal and your experience in putting tables like this together, so Mr. Smerigan's 15% seems low to account for all of those factors.

Mr. Van Curen said there are different ways to do these and where it is an estimate and there is no perfect way to do it, it is an estimate and I am not sure exactly for what purpose he was doing it and how precise he was trying to be, the way I did it was, this is a pretty basic subdivision approach and it is just to see what the value would be if you plug in different parameters and a lot of the parameters I used are very close to what Mr. Roger Ritley used.

Mr. Werner said he needs to direct your attention back to Mr. Smerigan's report, actually and your report as well for the sanitary and water mains he has it down to \$78 and \$65 per linear foot respectively for that installation and asked Mr. Van Curen if he sees those numbers.

Mr. Van Curen said yes.

Mr. Werner said he is going to ask you (Mr. Van Curen) to assume that there would be 1,580 feet of sanitary and water mains necessary to extend the sewer from where it is up to the east side.

Mr. Van Curen said he did not think you could do that.

Mr. Werner asked how you would propose to get sewer and water to the east side of the property.

Mr. Van Curen said I did not really look at that, I had thought that he had water and sewer going to both sides, I did not realize until tonight that it was only for the west side.

Mr. Werner said it is safe to assume that the cost understates sanitary and water by the cost required to extend to the east side of the property.

Mr. Van Curen said no because you wouldn't have to extend it to the east side.

Mr. Werner said Mr. Van Curen to explain.

Mr. Van Curen said because those lots are large enough for well and septic.

Mr. Werner said your testimony earlier just moments ago was your model, the model that underlines your report is built on the assumption that sewer and water are being extended to both sides.

Mr. Van Curen said yes, that is what he had thought.

Mr. Werner said okay and there would be a cost associated with extending sewer to both sides.

Mr. Van Curen said there would be if you did it.

Mr. Werner said your model does not account for the costs required to extend water and sewer to the east side of the creek.

Mr. Lamanna said he thinks we have got it, he has answered each time that he hasn't included it. He said he has a couple of questions for his clarification. He said in your (Mr. Van Curen) analysis you included the entire amount that Mr. Smerigan came up with which includes his 12% and 12% on it and then you went on and added all of these other costs as additional costs on top of it.

Mr. Van Curen said his costs were only the construction costs, those were hard costs and I have got soft costs.

Mr. Lamanna said his other question is to resolve this point of whether the water went to the other side of the street if those three lots on the east side did not have water or sewer, does that change your assumption that the average lot value would change from \$175,000 because they didn't have water and sewer.

Mr. Van Curen said they might be slightly lower on that side without water and sewer.

Mr. Riehl said with the board's patience, he thinks that ends the evidence that we want to present.

Mr. Lamanna asked Mr. Werner if he had any other rebuttal evidence.

Mr. Werner said no, he did not.

Mr. Lamanna said he will now move to the other interested parties to see if there is anything they want to say which he would like to preface with a couple of things and one is the board really does not want your comments on what other witnesses have said, what he would like is anybody who can speak to the personal impact on them and their property, you can base that on what other people have said, we just don't want somebody saying they don't agree on somebody's report on engineering or this expert used the right number here because it is advancing the ball, we do want to hear about people's perceived impact of this development on their property including anything that you have heard here, if there is something that someone says that you believe strikes a cord with you and reflects something that you can support personally affects your situation, that would be helpful to the board and please give us your name and address.

Mr. George Quay of 17075 Savage Road testified by asking if the board got documentation from the builder on the cost of being over two million dollars for the property, the board asked for that at the last meeting and did they provide it to the board.

Mr. Lamanna said yes, we have looked at the purchase agreement and we are going to get a redacted copy of that into the record.

Ms. Sass said the board has seen that figure and purchase agreement.

Mr. Quay continued by testifying that he needs to have the aerial map displayed. He referred to the aerial map and pointed out the Voproco property, the first 25 acres of it and this property along here represents my sister's property, this property here represents my daughter's property, these properties here represent my property and this is essentially a family compound. He said it was laid out many years ago with a concept of future development and the way it was laid out, each of these parcels represents a four acre or larger parcel, his property and the Lybarger property, he identified his sister's house, and this property does not have anything on it but a small shed which is a tear down, my property has a house on it, and this property here is vacant, this property up front is 4.19 acres and the other has a house on it. He referred to another parcel and said it has nothing on it and those properties along there were set out and platted many years ago with a plan for future development and they were set up to be much larger than the three acre zoning. He said the setbacks that they are requiring on lot number five and lot number six affect this property here, he referred to the aerial map, and this property here and they present to us a substantial threat in that they are developable parcels as the way they are now, they spent a lot of time drawing angles and feet and all of that from the setback that they are proposing on those two pieces. He said the 30' setback near his sister's house, yes it is 400' or 500' however it severely impacts the marketing ability of that house. He said this lot over here, he referred to the aerial map, severely affects the marketability of this lot.

Mr. Lamanna asked if that 302 and the .95 above it, if that is one lot basically.

Mr. Quay said no, it could be made one lot and this lot here, he referred to the aerial map, was laid out as the future roadway back to each of the parcels and each of those parcels was laid out as a way to bring back mechanicals to the different parts of the property and the reason they are long like that is it is very difficult to develop in the valley but more importantly this area right here is absolutely gorgeous and each of those parcels then allows us to get a view of the valley and the beauty of the valley. He said if you come over here to the other side of the valley you have Bridgeway, that is a cluster housing unit over there, it is back and away from our property, there is a lot of property between our property and that as a buffer, it will never be built on. He said the other piece of the property, the Ullman property, would back up in this area right in here, he referred to the aerial map, and again it allows views that go on forever on the other side of the valley so there was a lot of thought given to the layout of this property and if they get the zoning variance to build with a 30' setback on lots five and six, it effectively destroys two of the plots that we had plotted years ago for future development upon our retirement. He said Mrs. Lybarger's house was built in 1940, it is a tear down, that property again abuts up to the driveway going back so he would like to present to the board, I beg you to not allow that variance, it would destroy the plans that we have had in place as a family for many, many, many years. He said a lot has been said about water run-off and if you restrict this property even for 17 homes in it, we have been through all of this before in the testimony along the way, there is no way they can possibly catch the run-off with all of the rock on that shelf through here, some of it is going to go into the valley, not all of it because they are going to have retention ponds but some of it is going to make it into the valley.

Mr. Quay continued by saying that Mr. Lamanna along the way has discussed what is it going to do downstream if you build on this property and he would like to show the board what it could do downstream. He presented a series of photos to the board and asked that they be submitted into the record. He said the pictures he is presenting show downstream of the property in question and it is through the valley area and the Gloden home is on the south side of Chagrin Road. He said this is what McFarland Creek looks like coming through their front yard (photo #1); this next photo is what McFarland Creek looks like coming through their yard in 1998 (photo #2). He said she was given 15 minutes to evacuate her house because there was fear that the dam at Tanglewood was going to break and if you put a retention pond in the low-lying area in the marshy area or water land area, and that lets loose, the people downstream don't have 15 minutes anymore they have got three minutes, one minute, they don't even get time to give warning. He said the house on the north side of Chagrin Road is owned by the Wright's and this house is about 200 – 300 yards downstream from the subject property and this is what the Wright's backyard looks like on a nice day (photo #3) and this is what the Wright's backyard looked like in the year 2003 (photo #4). He said the Wrights in 1998 were also given 15 minutes to evacuate their house and the reason being, this was trying to be pointed out before, the valley gets smaller and smaller and smaller, it becomes a funnel and all the water coming from up north from E. Washington Street by the developments up there will be compounded by a development farther down. He said he has grandchildren that live on this property and his grandchildren play in the rivers, they were out there the other day, they caught the first frog of the season, but if the kids are in the valley when a heavy rain storm comes and one of those retention ponds lets go who has got the liability for it. He said in terms of liability if you build a retention pond, the one that is up in the area up in here, he referred to the site plan, this one on the west side, that is very unstable land there, I have lived near this property now for about 35 years and know this valley like the back of my hand and if that were to let go, an enormous amount of water would come into the valley, not only the one that is in the valley but the one on the side of the hill, if that would let go, big time problem. He asked who maintains that, does Bainbridge maintain that or will we get another Hawksmoor or another Tanglewood dam or are we going to get another Kenston Lake dam, that has to be defined by the courts on who is going to be responsible for maintaining that. He said that is all he has to say and he would like those pictures he submitted put on the record.

Mr. Joe Oberle of 8197 Tulip Lane testified that he would like to say a couple of things that don't affect his property but will affect him as a citizen of Bainbridge. He said most of the people are taxpayers in Bainbridge and we support the community, we support you guys as a zoning committee, we really appreciate what you do for us, you guys sit through many nights of this as we have had to sit through many nights of it. He said this seems like it is more of an attack on our zoning regulations in Bainbridge than it is about the property that we are talking about off of Tulip Lane between Savage Road. He said we have talked about other developments, we talk about small lots that were developed in the 1920's, Lake Lucerne, and we think that those have some merit in this case, they don't, Lake Lucerne is a private development, the township doesn't maintain the roads, the sewers, the water system.

Mr. Oberle continued by saying we as citizens are going to have to pay for the roadways, all 33 homes will come to you, each one for a variance, as Mr. Quay said we are going to have to be responsible for the retention ponds, and that is big deal to me. He said he knows it is a big deal to everyone in the Dalebrook Association, I speak for them. He asked how this affects his property, his property is directly adjacent to this property, he bought that property twenty years ago because of the community, he likes the neighborhood, he likes the rural environment, he likes the forested area, he likes living on a culdesac, when he bought the home, he wanted to live on a culdesac and typically when you buy a home on a culdesac it is the premium property on the street, I will no longer live on a culdesac, it will devalue the house. He said the property adjacent to this property the average is 6.85 acres, that is every parcel that touches this property, we don't need to talk about small lots when we talk about this property we are talking about the property that is adjacent to this property so any change to the area will be substantial, it is big deal. He said he questions the accuracy of the plan and the statements that were made here for the last several months, he sees some shoddy data, the numbers don't add up and there are errors in that plan, he knows it. He said if you review the legend in this plan and review the legend in the last one, in the upper left hand corner, the first plan which he is calling plan two because it is the second plan that the zoning board has reviewed, there were 34 lots equal into 32.0185 acres and the second plan, plan three the lot size has increased to 33.211 acres, the open space in the first plan called plan two is 12.5367 acres, the open space in plan three is 12.9415 acres so the subtotal for plan two is 44.55 acres and plan 3 is 46.15 acres. He said the roads in the first plan are 5.44 acres, the roads in the second plan are 3.847 acres and if you review the legend in the first plan and you review the legend in the second plan, they are very different so one of the plans is wrong. He said we have heard a lot of expert testimony about the quality of the plans and the expertise of the witnesses, they all attested to that plan and if my hypothesis is wrong it needs to be proven by somebody more expert than he is. He refers to the cost of the basin maintenance on the taxpayer and as a property owner adjacent to it, he has another objection, he has a well, he has no guarantee that high density housing that it will not affect the quality water he has for his home and he is sure all of his other neighbors have that same concern. He said we all have wells and septic systems and high density development is not what he wants or needs in this community. He said he has heard testimony that there is no substantial change in the property or community, he has heard testimony about the size of my property and the property in Dalebrook, the testimony is wrong. He said the reports that have been submitted to the zoning board have been wrong and again the average size of the lots in the Dalebrook Association is 1.98 acres that is the lot size, when you take in the roads and all the area it is 2.15 acres. He said he has seen a report that has been submitted that shows it is less than that and the data is wrong so if we look at the data that was put into testimony here by experts who took an oath like we all did as we speak, I expect that we review the data closely and we review it for errors because I for one don't believe it yet we see this kind of shoddy work in an application, on a developer's drawing, what kind of work can we expect as they do developments, his guess is it is going to be worse and that is his opinion.

Mr. Oberle said as he looked at the plans for Bridgeway and developments that have been done recently, they were done within the zoning regulations of the community, the setbacks in Bridgeway and for any other house that is pre-existing, even Lake Lucerne are somewhere between 300' and 500', they have designated areas of 200' and 100' but if you look at actually where the homes are placed they are between 300' and 500' and his estimate is it is closer to 500', it is a big deal, 15' between homes, homes that are very close together, it is not the community we live in today so there is a substantial change to our community, to the residential neighborhood surrounding this property. He said the variances are very, very substantial it is double the number of houses allowed on the property, we have no access to a sewer, they want access to a sewer and we as a community looked at sewers for Dalebrook, went through the correct policy and we met here in this building, we talked to Geauga County, we know what it will take to bring sewers in and the sewers from Dalebrook would not be coming from the high pressure sewer line that runs by McFarland's Creek, we know the cost of it, it is a big deal. He referred to city water coming into Bainbridge, he has lived on well water and he grew up in Gates Mills in an area that really protects their zoning regulations, they wear six guns every time a developer wants to come in and put a high density development in and he hopes we have that courtesy as well, it is a big deal for us. He said the city water of Cleveland is on the verge of collapse, do we want to extend that in Bainbridge, there are sinkholes in the center of town and that is a big deal. He said what is it going to cost to have water in Bainbridge and again he thinks these variances are very substantial. He asked will our neighborhood be affected, yes, you have heard residences say traffic will go up as well and that is substantial, the housing types that they want to build on the street are completely different from the neighborhood, three to four times the square footage, it is a big deal. He said the lot size is 1/3 of those in Dalebrook and if this variance goes through, and asked can he build another house on his property, that could happen in the future. He asked what precedent we are setting for the future of Bainbridge. He said where our homes are, we love it, it is a curse and a burden when the leaves come down, when trees fall, when you put 33 homes on this property and strip the trees and when you talk about the tree value on this land, we are talking about old growth forestry, its Cherry, Black Walnut, Oak, good hardwood, there is a high value there, especially today. He said you looked at riparian setbacks, somebody had said at an earlier meeting, there are many ravines and gullies on this property and how do you maintain that in the future so the existing neighborhood would be more than substantially affected and that includes Mr. Quay and his property. He said he heard a number of questions tonight about government services and just 17 more houses, he is a taxpayer, it is going to cost us more, we bought our homes for the zoning and this community, not for higher density, you could do it yes, but it is going to cost us more, don't forget it. He asked was the property owner aware, he definitely was, we talked about putting 16 houses on this property tonight or 17 houses, my back property has 50 acres and has a 25 acre lake on it, it has ravines, it has wetlands, it has McFarlands' Creek running through it, he thinks you need to back those out of the calculations when you talk about how many homes you can put on the property, it is a big deal. He said can this property be developed, he heard testimony the other night that when property size goes up it does not necessarily mean that property value goes up.

Mr. Oberle said people want large lots, Mr. Quay developed his lots for a reason, five acres, he saw the future and I wish my lot was five acres and many people pay a lot more for a lovely lot rather than a smaller lot they are worth a lot more if something has a scenic view than the view of the next door neighbor's back door. He said he is not an expert but he has bought several homes in his lifetime and he knows that if this development goes through he will be buying another home. He asked if the spirit of the zoning requirement, the zoning in this community was set aside for three acre and five acre zoning for a reason, it wasn't for sewers, it wasn't for water, we care about what happens in this community and we want it to stay three and five acres and we appreciate your courage and stand up to that for us, we don't want to live in Solon, if he wanted to live in Solon he would have moved to Solon, he lived in Gates Mills and his first home was in South Euclid, and he couldn't stand it, he moved here for the good schools and they have large lot zoning so he would wish and hope that you can support that we will stand behind you to make sure that we stick to the zoning that we have, not 33 homes, not 30 homes, not 23 homes not 22 homes, 19, stick to the zoning we have. Thank you.

Mr. Richard Distad of 17171 Hidden Point Drive testified by saying he wanted to comment again about the expense for those of us who live on the streams that drain from this area have. He said we live on a stream as one of the feeders into McFarland Creek and annually we have to spend significant amounts of money reinforcing the stream where it comes close to our house and this is an on-going basis and this is an expense that if someone is buying our home, they would need to know that they will have an on-going expense. He said the other thing he wanted to say is that the communities that are successful are the ones that have zoning which blends from one density to another, what is being requested here is essentially spot zoning for 50 acres in the middle of hundreds and hundreds of acres and the line will be forming out there for people who want to develop other acres and they will have some good reason to expect that if this is granted that they come in and get substantial variances for zoning land anywhere else in the R-3A area.

Ms. Anne Patram of 8337 Tulip Lane testified that she is opposed to the proposal that is before the zoning board of appeals and the reason is number one, when they purchased their property they were pleased that Dalebrook which also includes Eaton Drive would remain consistent but with the proposed additional homes under this proposal, it brings with it, increased traffic not only by the residents and their guests but services and deliveries as well adding already to the significant traffic situation at the east end of Tulip Lane. She said there are many reasons how cluster developments impact not only the residents and their properties but the environment too. She said she confers the knowledge of the environmental impacts on the residents of Dalebrook and Bridgeway and the adjoining properties to you, the zoning board of appeals. She said she and her husband 18 years ago decided to add an addition to their home and when the contractor came out and started to build, we hit rock and shale and the only option we had was to dynamite and we decided not to do that and we pushed it all back and forego having a basement. She said she does not know what they are going to hit when they start building all of those homes and they don't know if it will even impact the water levels, but she certainly would not want to think those water levels would mean digging wells for every person who lives in Dalebrook.

Ms. Patram said she also does not think that these developers are unsophisticated developers she thinks they are seasoned in this area and she thinks they fully understood all of the zoning restrictions in Bainbridge Township and they should understand the impact on their own return of investments when building to code. She said in Dalebrook they enjoy the overall atmosphere, they have space between their homes, they have green space which makes Bainbridge a great township. Thank you.

Ms. Leslie Fincum of 8200 Summit Drive testified that she lives on the corner of the Lake Lucerne development and she knows that two homes will be impacted by this, she grew up in Beachwood, her parents lived there for fifty years and grew up most of her life there. She said Beachwood Place and LaPlace were her playground and she watched Beachwood change and North Woodland where she grew up change all around her, she moved out to Bainbridge to recreate for her children and hopefully for generations of children the same experience that she had growing up in Beachwood with woods behind her property and the freedom to roam and the feeling of safety and being able to explore nature and growing up in a beautiful environment and thank goodness that her children did have that opportunity she would hate to see that change and that is why she moved to Bainbridge and she does not want it to become another Beachwood and she is afraid if you permit the zoning changes that that will only open, as he said and bok at Lake Lucerne, they already have small properties, if we do this on this new development then what will the next developer appeal to do with a precedent. She said she would hope that you will consider our current zoning and not change that and she worries about the pristine nature of that ravine and McFarland Creek and if there are homes built on that along that swale that the developer was talking about, they are private owners that can do whatever they want with their property as she understands, what will happen to that and the development of that area and in the future with private ownership all surrounding that beautiful area.

Mr. Bob Carroll of 8196 Tulip Lane testified that he is also adjacent to the property and he has been told that it will not affect his property but the first thing he is told is they are going to put a great big gateway to designate this as leaving the Dalebrook neighborhood and now entering a new neighborhood. He said he is worried about the property to the north of it, you have got 25 acres there on the map that is vacant, you have another ten acres, are those going to be the next target for development, it is raw land next to the sewer, we increased the density to one acre, lets develop some more. He said he thinks it is going to change the neighborhood, it is going to change for the worse and he is against it.

Mr. Jim Toohey of 17141 Hidden Point Drive, Bridgeway Estates, testified that he is a trustee for Bridgeway Estates and they would say three things. One, Bridgeway was developed fully within all the zoning laws and he bought in there ten years ago because of the acreage. He said second, as Mr. Joe Lencewicz pointed out, he was here some months ago, we highly suspect the validity of the numbers and request that if this board is acting upon the proposal that the proposal be vetted for the numbers thoroughly.

Mr. Toohey continued by saying third, we feel that the population in Bainbridge has overwhelmingly in a household survey indicated its desire to remain rural and that was done about four years ago. He said they would also say that exceptions beget exceptions. Thank you.

Mr. Thomas McGlenn of 8386 Tulip Lane testified by saying regarding the quality of life for him personally, he moved out here from New York City 27 years ago and upon arriving he couldn't get to sleep because there were no sirens or traffic noise, he was constantly pressing the snooze button because he thought he was in the twilight zone because when he woke up there is a pileated woodpecker knocking on a tree in his backyard. He said he has gotten used to the quiet and is fast approaching 61, he can see himself being in the city again with heavy construction traffic over multiple years running up and down Tulip Lane over a chip and seal road that the township has to maintain. He said Dalebrook is a pretty stable neighborhood and he thinks most people die in Dalebrook rather than move away and in that respect it is transition and there are more and more children coming into that area and he is concerned about that, the effect of such a development.

Mr. Steve Schwin of 8340 Tulip Lane testified that he would like to say that it personally would affect his family and traffic even though they are a rural community without sidewalks that street is a major form of foot traffic for his children and himself and everybody else in the community and we have a challenge enforcing the 25 mph limit, we have a very limited amount of traffic as it is, but this plan will more than double the traffic when you put in dual income families living in these large houses, and again the services, you can guarantee that the traffic on the road will greatly increase and it will basically be a hazard for my children to step out in that road because even with a limited amount it is still something you have to be very aware of and to double this and during the construction years, being it is a down-hill slope in, a lot of construction vehicles and they are going to timber that and they will be coming out with all that timber and whatnot, this is going to be a nightmare for everybody and it is basically going to shut us off from walking the streets or even thinking about stepping out into that road, so that is how it is personally going to affect us. He said he agrees with everybody in that room and when he moved out here, he doubled his house costs, came out to a higher cost of living to escape the suburbs where houses were 20' – 30' apart and he looked out his backdoor to someone else's backdoor and it was a major, major drawing point for him to move to this community along with the school system which is awesome and he just would hate to see us start giving this up as a township that we would slowly, but if we set the precedent by the time he is 61 or 71 what is this community going to look like if we open the door for this kind of tight development. He said he is all for the zoning as it stands now, he is not against them developing it, putting 17 houses where 16 are called for is a very small variance versus putting 33 where 16 are called for. He said those Duncan Factors basically point that out that the small variance or one additional house versus doubling the amount of houses and that is all he has to say and thanks.

Mr. Lamanna asked Mr. Werner and Mr. Riehl if they want to make their closing statements, he thinks we are done with the factual testimony at this point.

Mr. Werner said he would like to make a brief one. He stated first he wanted to thank the board for taking the time for this application and thanks to Mr. Riehl for being professional as he always is appealing these matters and thanks to all of the folks who have an interest in this who have come here time again and it is a long process, it is an encouraging process too and you folks are here expressing your rights as property owners here in Bainbridge and have every right to be here and have every right to take the position you take on these matters. He said the applicant is also a property owner in this township and the owner of this property is a resident of this township and the property rights that we are here talking about for this applicant are not just this applicant's property rights, they are everybody's property rights in this room, every person in this room has the same property rights, the same rights are the reasonable use of their property and it is the applicant's position that because of problems with this township's zoning resolution with regards to three acre zoning, there has not been sufficient forethought given to residential developments when water and sewer is available. He said it can be fixed, two different experts have told this township how to fix it and the township has not done so. He said he regrets that if this goes south here over the next several weeks or whenever the board makes a decision, regrettably this just might end up in court like a dozen other times that this township has gone to court and the property owner trying to figure out how to put the property to use, it is not a good way to do business, but in any case you heard the applicant with their property rights with their interest to develop this property. He said the proposal that they have in front of this board is actually less dense than many of the residential developments that have gone up recently or have been approved or have been settled by way of litigation in this township. He said the board is not an enforcing arm of this township, the board is a quasi-judicial body and is here to look at standards, take evidence and consider whether the circumstances justify some relief, that is what the board's job is and we expect that they will do that job properly. He said we appreciate the consideration, we have heard all of the evidence and we are available for any further questions regarding the application.

Mr. Riehl addressed the board and said he appreciates the comments and the sincerity of the comments of Mr. Werner. He said it is fundamental that the board consider what we are at here, we are at a request from a property owner to vary the standards that have been set forth in the Bainbridge Township resolution, we are not here as a matter of right we are here as a matter of request that those standards be varied and the standards have been criticized, the standards they say could be more perfect, the standards could be improved but nevertheless these are the established standards, they are the established standards that have been set by the township trustees and they are the guidelines that everybody who has lived in Bainbridge Township has welcomed and lived by and there have been a lot of testimony here that requests for the variance of those standards and at the end of the day are substantial and if granted could change the character of the community and cause environmental problems. He said the burden is not on the township to justify those standards, the burden has always been on the property owner to present evidence to this board to vary those standards and respectfully submit that those standards should not be varied, that they have not met their burden of proof and the evidence before the board would make it one conclusion and that is the variances should be denied and thank you.

Mr. Steve Schwin said he would like to know if it is the board's opinion on when the three acre limit was set that that basically hinged on septic and well versus sewer and with septic and well we need three acres and if we have sewer we go one or do you feel that when that precedent was set or that zone was set that people said that they want a rural community and we can establish it so lets make it three acres.

Mr. Lamanna said one has to look at the underlying basis of how these regulations were adopted, in fact all of the township zoning really is built upon a land use plan and so all of those things are considered and there has to be and there is an underlying justification, you can't just say we want 10 acres, we want 6.3 acres it all is built upon an underlying land use plan and underlying justification and septic, sewer issues and water issues all of that goes into it so we have to go back and look at that and consider all of that, the township just does not say we want X, there has to be an underlying support for how we arrived at the X number of acres.

Ms. Sass said she can expand on that a little bit, townships are what the law says are creatures of statute and that means in order to enact regulations they have to have the authority that is stated in the Ohio Revised Code and that code says that in order to adopt or to have township zoning it has to based on health, safety and morals and there has been some changes to that over the course of the years but originally when that was done and there were specific systems for septic systems or water wells or what have you, again obviously over the course of the years the technology has made some modifications on how those particular systems operate, nevertheless, the township still has to have its zoning grounded in the requirements that are set forth in the law so it is not simply saying this is what the community wants, it is great if that is what the community wants and it is also grounded in the legal authority to justify it.

Mr. Schwin said so they did not say three acre lots for bigger and beautiful, rural.

Mr. Lamanna said it has to be built within this rubric of health, safety and morals and for example, we don't have the authority to zone purely on aesthetics, that has been pretty clear and it is not a basis for township zoning and municipal zoning, villages or cities are a totally different animal, they have much different powers and much greater authority than townships do. He said that is part of what we have to consider because that is one of the ways of attacking it is if there is not a good foundation for it that is how the zoning can be.

Mr. Schwin said as long as we can ask that you do consider aesthetics even though legally you can't.

Mr. Lamanna said to the extent that the board has authority to do so we will do that.

Ms. Fincum asked aren't there environmental concerns.

Mr. Lamanna said environmental concerns are definitely something, you have health and safety. He said he wants to talk about procedurally how the board is going to go forward from here. He said first with respect to the specific parties, the applicant still owes us that contract to be entered into the record and he also asked both Mr. Werner and Mr. Riehl to check to make sure that everything they want in the record is actually in the record, there has been an awful lot of stuff that has gone back and forth and he does not want to find out later on that there was something that somebody thought they put in that wasn't in and we would like that by our next meeting which is next Thursday, April 17th. He said he just wants to make sure the board is in actual possession of everything you want on the record so when we start looking at these things we have them all and to check with the secretary and make sure she has everything you want her to have. He said what the board is going to do is go into executive session to deliberate on this matter and the main reason we are going to do this is we have so much stuff here that we need to sit down and layout all of the testimony and all of the exhibits and just figuring where we are going to begin to wade our way through it. He said we are going to continue that process and we may even meet briefly tonight to just kind of figure out what we need to do, we hope at our next meeting that we can also work on it as well for awhile again depending on how long we have after we dispose of our regular business and at that point in time we will decide when we will finish this matter. He said once the board has organized the documents and put together a plan for addressing this and sort of made some preliminary decisions of how we are going to proceed and what are the relevant issues and what is important and what is not important, his expectation is that at that point we will go back into public session and discuss what conclusions we have come to and why we have come to those conclusions and our rationale behind the decision that we have made so that everybody will have an opportunity to understand what we considered, how we went about the process, what facts were important or not important and what conclusions we came to on the facts and how we arrived at whatever decision we arrived at so you will have at least the opportunity to understand how the process was made but we have the authority to do our entire deliberation in executive session if we want to because of the nature of that deliberation but he thinks that in the past the board has tried to do as much of it in open session as we can and in this case it is just really not practical to do that and also people will be sitting here while we are trying to go around the table and then people will be talking and the board can't pay attention so it is just a feasible way to grapple with the great mass of testimony and evidence we have. He said his expectation is that there will not be any public meeting on this application next week, any time we spend on this will be spent in executive session and the board will set a date at that next meeting when we will meet again to deliberate and he thinks at that point in time the board will probably complete those deliberations and go back into public session so at our next meeting we should have a date at which that will happen so you will all be able to find out when that will be and again we will be back in public session and you will find out what our conclusion was and how we evaluated the evidence and what our findings are at that time. He asked if anyone has any questions on the procedure. He thanked everyone for their patience, you have been very good and he appreciates everyone's professionalism and listening and responding and maintaining good decorum for our meetings.

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

Since there was no further testimony, the public hearing was closed at 10:30 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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Bainbridge Township, Ohio
Board of Zoning Appeals
April 10, 2008

The special meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:30 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass.

EXECUTIVE SESSION

Mr. Lamanna moved that the Bainbridge Township Board of Zoning Appeals go into executive session to consider application 2006-33.

Ms. Sass seconded the motion.

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

The board of zoning appeals recessed its special meeting at 10:37 P.M. in order to go into executive session to consider application 2006-33.

The board of zoning appeals returned from executive session after considering application 2006-33 and reconvened its special meeting at 11:01 P.M.

Since there was no further business, the meeting was adjourned at 11:02 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