

FRANKFORD TOWNSHIP LAND USE BOARD
SEPTEMBER 28, 2005 –6:00 P.M.
MINUTES OF THE REGULAR MEETING

CALL TO ORDER

The meeting was called to order by the board Vice Chairman, Mr. Ayers, by announcing that notice appeared in the New Jersey Herald and the New Jersey Sunday Herald in accordance with the requirements of The Open Public Meetings Act.

Flag Salute

ATTENDANCE

Those Present were: Mr. Ayers, Mr. Hahn (arrived at 6:55 p.m.), Mr. Risdon, Mr. Zappile, Mr. McDowell, Mr. Martin, Mr. Nadolny, Mr. Gstatenbauer and Mrs. Caldwell. Also present were Mr. Clark, the board attorney and Mr. Pellow, the board engineer.

Those absent: Mr. Hatler and Mr. Romania (excused).

BOARD BUSINESS

Town Center Review – Master Plan Amendment Housing Plan & Fair Share Plan:

Appearing before the board was the board planner, David Troast.

Mr. Troast handed out to the board a Master Plan Amendment to the Housing Plan and Fair Share Plan to address the Growth Share requirements that have been recently passed by the State of New Jersey to provide Affordable Housing within Frankford Township based on anticipated growth. The first couple pages of the plan are background information. At a later date, he indicated that the board should discuss the objectives. A lot of the objectives listed are out of Frankford Township's existing housing plan. There is updated census data.

Mr. Troast reviewed the Fair Share Obligation for Frankford Township for Rounds One and Two. The township originally had a total of 76 Affordable Unit, of which 46 units should have been rehab units, the balance being new construction under the old plan. Under the recalculated prior round obligation it is now 29 for new construction and 0 for rehab. The reason is when the census was done it did not show a regional need for rehab.

Mr. Troast reviewed the Third Round which is based on the actual growth that will take place. However, as part of this plan, we have to base our calculations on what is perceived and what is real. The way the calculations works is: For every 8 residential units receiving a Certificate of Occupancy in a Municipality between 2004 and 2014, 1 Affordable Housing Unit must be provided; For every 25 jobs created in a Municipality, the Municipality incurs an obligation of 1 Affordable Housing Unit.

Mr. Troast reviewed Section 1.04 – Affordable Housing Inventory which lists some items that the township could gain credit for Round 3.

Mr. Troast reviewed The Residential Growth Projections. He indicated that COAH is relying on the Metropolitan Planning Organization Residential Growth Projections as the baseline data to calculate its growth share. Their estimated population for 2015 for Frankford Township is 6,450. Their population in 2005 was 5,710. This gives a population change of 740. The household size, according to the census is 2.81 which equates to approximately 264 housing units over the next ten years. Dividing this figure (264) by 9, this gives the township the projected Affordable Housing Unit obligation for residential growth share of 30 units. This figure (30 units) gets added to the 29 Affordable Units from rounds one and two.

Mr. Troast reviewed the Anticipated Developments and Number of Residential Units. The township has to come up with: Approved Development Applications, Pending Development Applications and Anticipated Development Applications. The township has to come up with a projection of how many units, based on historical data, and

based on the zoning, how many units are going to be produced to compare with the number that the Metropolitan Planning Organization put out.

Mr. Troast noted that Frankford is obligated to 79 COAH Units between Rounds 1, 2 & 3.

Mr. Troast reviewed the Compliance Plan Summary. This states how Frankford Township is going to comply with the growth and the existing rounds 1 and 2. He indicated that the Growth Share Ordinance the township just passed will account for the residential and non-residential growth. He indicated that there are 3 group homes submitted in the township's previous submission which all have been confirmed as credit worthy which total 18 units. He further indicated that the township owns a 2 family house. He is recommending that this house become deed restricted and then become a rental for low and moderate income, which will give the township 4 credits. He indicated that the County owns a parcel of land and there is a senior project which will yield 10 affordable units. He stated that the Methodist Manor project which will yield 10 Affordable Units. At this point, the Frankford Town Center should be included in this projection. At this point Frankford Township has 42 existing credits.

Mr. Troast reviewed the Projected Growth for Non-Residential Growth. The projection is 480 jobs projected between 2005 and 2015. This calculates to 20 Affordable Units (480 Jobs divided by 25).

A discussion was held with regard to the Public Hearings of the Town Center. The board also put together a sub-committee to discuss with David Troast the Housing Plan & Fair Share Plan. The sub committee will be: Mr. McDowell, Mr. Ayers, Mr. Nadolny and Mrs. Caldwell. The sub committee will meet at 5:30 at the township hall before the October 19, 2005 Land Use Board regular meeting.

A Motion was made by Mr. Nadolny and seconded by Mrs. Caldwell to schedule the public hearing for the town center and master plan on October 26, 2005 at 6:00 p.m. Roll Call:

YES: 8 Ayers, Risdon, Zappile, McDowell, Martin, Nadolny, Gstattenbauer and Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

Town Center Review:

Appearing before the board was Janice Tally of H2M Associates, Inc.

Ms. Tally reviewed the Frankford Center Plan dated September 28, 2005 with the board. She also submitted to the board a map of the Frankford Center, which includes 8 districts (Center Residential, Mixed Use Core, Commercial Recreation, Conservation, Buffer, Utility, Highway Commercial and Single Family Houses). The area fronting on Route 206 which is existing is considered Highway Commercial. The intent there is to maintain the setbacks that characterize the development. She indicated that they refined the boundaries of the center. They took out from the center the wetlands that are located in the northwestern portion. The entire area of the town center proposal is approximately 240 acres. She referred to the light orange section of the center which is the mixed use area. The permitted uses in the mixed use area are: Professional and Business offices, Governmental Offices, Food/Grocery sales/ Retail Sales, Hotels, Movie Theaters, Residential dwelling units above first story commercial for properties that front on the boulevard, multi-family residential buildings for properties that front on local street and public buildings. They have also included in the requirements of the mixed use district that 20% of the Gross Floor Area be residential. Eighty percent would be commercial use. She further stated that under the Floor Area Ratio requirement, they have an option for transferring development rights from one lot in the mixed used district to another lot in the mixed used district provided that both lots are in the same ownership.

Ms. Tally reviewed the street pattern of the town center with wider streets at the boulevard and narrow streets as

the local streets. At the boulevard street, there is a "0" foot required front yard setback along the boulevard. She noted that on the local streets there is a 5 yard, front yard setback.

Ms. Tally indicated that the existing Skylands Stadium is the Commercial Recreation area.

Ms. Tally reviewed the utilities area of the map, which is designated in pink on the map. She also reviewed the conservation area, which is designated in green on the map. There will be no building on the utilities and the conservation area.

Ms. Tally reviewed the Single Family Houses area, which is designated in yellow on the map. What they are proposing in this area is a density bonus in this area as part of the TDR program. This area has a base density of 2.0 units per acre. It will have a bonus density of 1.0 units per acre, for a total density of 3 units per acre. In this area the uses are: Mid-rise apartments, town-houses, active adult residents and senior citizen housing. There is a series of bulk requirements. She suggested to the board to have a use-mix requirements such as: Maximum number of units that can be single family residential could be 20%; Minimum percent of townhouses could be 50%; minimum number of multi-family houses could be 20%. She also indicated that there is no required open space figure in this plan and she suggested to the board that a minimum open space requirement should be added; she is suggesting at least 30% of the gross area. They do have maximum impervious coverage per lot. Mrs. Caldwell indicated she would like to see some active recreation component in that open space, not just an open field such as a park.

Ms. Tally indicated that they have included bike lanes on the local streets in the center residential area with the option if they could provide a reasonable alternative to providing bike lanes on the street to integrating it into some kind of open space design, that they can use that as an alternative. This also acts as providing a method of connecting the residential area in northern end of the center to the commercial center.

Ms. Tally indicated that the final portion is the gold area which is located along Northrup Road. This area contains 3 single family houses right now. They have created a single family residential district here. This provides a good edge to the center. This area along Northrup Road is characterized as a rural environment.

Ms. Tally reviewed how the overall plan fits with the State requirements. She indicated that they compared the build out of this plan to the requirements of the State plan. She noted that it is not an exact fit, however, it is close. This plan does not have the population numbers that are required for a Village center. On the other hand, there are more jobs that are required for a Village center. The total development, itself, does meet the requirements of a village center in terms of size and population.

Mr. Nadolny questioned if there is a link from the town center to the fairgrounds. Ms. Tally indicated that that is not shown in this plan, however, a walkway connection could be made from this center. There could not be a road connection because of the wetlands.

Mr. Martin indicated that there should be some requirements for senior citizen housing in this town center plan.

A discussion was held with regard to holding a special meeting to discuss the town center. It was also decided by the board to cancel all applications for the October 26th meeting and dedicate that meeting to the town center public hearing and the Housing Plan and Fair Share Plan only.

A Motion was made by Mr. Hahn and seconded by Mr. Gstattenbauer to amend the prior Motion for the Public Hearing on October 26, 2005 to hold the meeting at the Sussex County Farm and Horse Show in the Farm Fun Building if it is available. Roll Call:

YES: 9 Ayers, Hahn, Risdon, Zappile, McDowell, Martin, Nadolny
Gstattenbauer & Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Risdon and seconded by Mrs. Caldwell to schedule a workshop meeting on October 12, 2005 at 6:00 p.m. at the Municipal Building with H2M to discuss the town center. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Zappile, Martin, Nadolny, Gstattenbauer, Caldwell

NO: 1 McDowell

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Nadolny and seconded by Mr. Gstattenbauer to open this matter to the public. All were in favor. The Motion was carried.

Allen Jones stated that on the residential area, one of the items that they are recommending is that you add a mixed used requirement. He suggested adding this idea to the mixed used area where the commercial development is. He suggested commercial as opposed to retail, office as opposed to retail, recreation such as theaters, hotels – to make sure this is real mixed use area, not just retail.

Marsha Chiffman appeared before the board with Masier Consulting, the Planner representing Sussex Commons. She requested a copy of the plan submitted this evening by the planner. Ms. Tally indicated that she has several copies to be distributed to the public which she will leave with the board secretary.

Michael Gaus appeared before the board as a representative of the Lortherdan Development. In terms of the comment regarding TDR and buying residential TDR and converting it to commercial, he asked Ms. Tally if they would also see the ability to do the reverse of this. Ms. Tally indicated that the answer to this would be in the development of the TDR program. At this point they could not answer this question. Mr. Gaus indicated that H2M pulled the boundary of the town center back to Northrup Road. Ms. Tally indicated that Northrup Road makes a natural boundary. Mr. Gaus indicated that a few months ago the Land Use Board made a motion which was approved to adopt the boundaries of the town center at the stream on the other side of Northrup Road which incorporates approximately another 30 or 40 acres. Mr. Gaus questioned Ms. Tally if the 200,000 gallon sewer plant would not allow for a complete build out of what is proposed for the town center. Ms. Tally indicated that this was true. She further stated that they would have to reduce the density significantly to spread that sewer capacity out for the entire area.

Barbara Kelly appeared before the board and questioned Ms. Tally if she knew how much square feet the commercial section of the plan is.

Paul Sutphen appeared before the board and questioned Ms. Tally if this type of design will move the township in the direction of plan endorsement approval. Ms. Tally indicated that it would.

David Mintz appeared before the board and indicated when he was on the stakeholders committee, the sewer treatment plant was supposed to be designed to service the entire center.

George Schoch appeared before the board and questioned if the existing houses and buildings are figured into the sewer treatment plant. Ms. Tally indicated that they are not figured into it; however, they will be given the option to tie into the sewer.

Dave Miller appeared before the board and questioned Ms. Tally about the lighting plan submitted. He questioned what steps they are taking to safe guard the community against light pollution. Ms. Tally indicated that the street scape lighting is intended to provide for safety and character. She indicated that they recommend that they minimize the height of the light poles – 12 to 15 feet in height, except pole lights and parking lots which shall be a maximum in 20 feet in height. They also made a recommendation that all exterior lights shall be designed and located in such a manner as to prevent objection light and glare spilled past the property lines. This means they

will have to have a cover on the lights so that it directs the light.

A Motion was made by Mr. Gstattenbauer and seconded by Mr. Hahn to close this matter to the public. All were in favor. The Motion was carried.

A Motion was made by Mr. Risdon and seconded by Mr. Zappile to take a 5 minute recess at 8:00 p.m. All were in favor. The Motion was carried.

A Motion was made by Mr. Nadolny and seconded by Mr. Risdon to reconvene the meeting at 8:15 p.m. All were in favor. The Motion was carried.

MINUTES

The Minutes of the August 17, 2005 Regular Meeting, August 24, 2005 Regular Meeting and August 24, 2005 Executive Session Minutes were reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Martin to approve the minutes of the August 17, 2005 Regular Meeting, August 24, 2005 Regular Meeting and the August 24, 2005 Executive Session Minutes of the Land Use Board. All were in favor. The Motion was carried.

PUBLIC PARTICIPATION

A Motion was made by Mr. Risdon and seconded by Mr. Martin to open this meeting to the public. All were in favor. The Motion was carried.

George Schoch appeared before the board and questioned if mother/daughter homes are considered under COAH for credit. Mr. Clark indicated that it could be, however, they would have to get approval from the township and it would have to be deed restricted for 30 years.

A Motion was made by Mr. Martin and seconded by Mr. Hahn to close this matter to the public. All were in favor. The Motion was carried.

ZONING OFFICER'S REPORT

There was no report on behalf of the Zoning Officer this month.

EXTENSIONS

Frank Dayon – LUB 04-35 – Block 31, Lots 7 & 7.05 – Hyatt Rod/South Dory Road/Gunn Road –Preliminary Major Subdivision:

A letter was received from the applicant's attorney requesting an extension of time to file the deeds for this application. The deeds were to be filed by November 3, 2005. A Motion was made by Mr. Gstattenbauer and seconded by Mr. Hahn to extend the time to file the deeds for 60 days. All were in favor, except Mr. Zappile, who abstained. The Motion was carried.

CONCEPT APPLIATIONS

Sam Haubrach/123 Auto Sales – LUB 05-21 – Block 50, Lots 3.02/3.03-354 US Highway 206 – Concept Application:

Appearing before the board was the applicant and his engineer, Jack O'Krepky and Sam Haubrach, the property owner.

Mr. O'Krepky indicated that they are submitting a concept plan for discussion only and realized that there is no binding position on behalf of the Land Use Board. This property is between the boat place and Ridge Road and fronts on Route 206 and Cook Road is behind the property. He indicated that there are 3 issues that they would

like to discuss this evening: 1) The present site plan requirements indicate that you have to be 100 feet from parked cars; 2) The site plan requirements talk about a 4 foot berm; and 3) the fact that they are building right up to the wetlands.

Mr. O'Krepky indicated that according to the wetland regulations, the applicant is exempt from the buffer. Mr. Pellow disagreed. Mr. O'Krepky indicated that the applicant would like to go forward without getting anything from the State on the wetlands. Mr.

O'Krepky furnished the board with a document from the State which states if you have an approval while the land use code was in affect, which is 1976, and before the buffer was invoked by the DEP, which was 1988, you are exempt from the buffers. Mr. Pellow indicated that he feels that a site plan has to be approved. This applicant had a subdivision approval in 1976, not a site plan. A lengthy discussion was held with regard to this issue.

The board reviewed Mr. Pellow's report dated September 21, 2005:

Paragraph "1": The applicant is proposing an Auto Sales lot in the C-2 Zone, which may be permitted-Retail-Commercial uses are permitted. The proposed shop may not be permitted in the C-2 Zone. Mr. O'Krepky indicated that the applicant's position is that the shop is an auxiliary function to his retail sales. He is going to detail cars. Mr. Haubach indicated that any car motor repairs and transmission work will be sent out to a mechanic's garage.

Paragraph "2": A major issue with this concept is the wetlands and buffers. The Applicant's engineer states that they are exempt from the buffers, because it was approved under the Land Use Law and before the advent of buffers in 1988. Our office is checking this with the DEP, but we do not think they are exempt. I will know more by the meeting dated of October 28th.

Paragraph "3": Many variances are needed as follows: (a) Parking Setback: 100 feet required; 50 feet proposed; (b) Parking from Building: 20 feet required; 12 feet proposed; (c) Lot Size: 217,000 square feet required; 187,134 square feet exists with both lots; (d) Lot Width at Setback: 300 feet required; 242 feet exists with both lots; and (e) Parking in Side Yard: 25 feet required; 12 feet proposed.

Paragraph "4": The 12 foot aisle width is too narrow for vehicles backing out of the sales display.

Paragraph "5": The architectural plans to conform to the Township Ordinances for the C-2 Zone.

Paragraph "6": Landscaping to conform to the Township ordinance.

Paragraph "7": The proposed improvements have been proposed adjacent to the wetland areas with no buffers. The applicant stated they are exempt from buffers.

Paragraph "8": What will take place in the proposed shop?

Paragraph "9": Where will signs and lighting be located?

Paragraph "10": I do not think any application can be submitted until a determination on the wetland buffers is made by the DEP.

Mr. O'Krepky indicated that the highway right of way is 120'. The first car for display will be 105' feet back from the road. This is one of the justifications that they hope the board will look at in granting this as a variance. Mr. O'Krepky submitted to the board copies of photographs for all the car dealers in the area. Everyone uses the highway right-of-way to park their display cars. No one within 50 miles of this sight parks their cars in their own property. They do not propose to park cars in the right-of-way, they are parking their cars 50 feet from the property, which 100 feet is required. The reason why

they are proposing this is that they feel the 100 feet is too restrictive in this case for the conduct and success of his business. If the cars were set back 100 feet, there is a 4' hump and you would never be able to see the display of cars which will restrict his trade.

Mr. Nadolny indicated that he agrees with Mr. Pellow that the DEP issues should be resolved first before coming to the board.

Mr. Risdon indicated that he feels that the 4' berm does not work with car dealerships. Mr. Clark indicated that the 4' berm is a variance situation.

APPLICATIONS CARRIED FROM PREVIOUS MEETING

18 Plus, Inc (High Ridge Properties) – LUB 05-04 – Block 1, Lot 10 & Block 4, Lots 2 & 4 – Final Major Subdivision:

Mr. Ayers stepped down from this application. Mr. Nadolny will be acting Chairman for this application.

Appearing before the board was Patrick Dwyer, the applicant's attorney, and Owen Dykstra, the applicant's engineer.

Mr. Dwyer indicated at the last meeting it was suggested by the board that the proposed signs be staked at the property for the board to review the size of the sign. The board members indicated that they did do an on site inspection of this sign. Mr. Dwyer further indicated that there was a concern at the last meeting with regard to the water availability for the proposed landscaping. They did receive today a copy of the revised report from Penelope Althoff, the hydrologist, indicating that the water for the irrigation proposed was sufficient. Mr. Dwyer further stated that the final issue at the last meeting if the applicant had any similar signs from other developments that the board may view. He submitted to the board two pictures: Exhibit "A-1" is a sample of a sign from a development the applicant built in Edgewater; Exhibit "A-2" is a sample of a sign from a development the applicant built in Montvale.

Mr. Nadolny questioned the applicant what the size of the wall is in the exhibit from Edgewater. The applicant indicated that it is approximately 35' to 40' wall, which is equivalent to what they are proposing on this application.

Mr. Nadolny questioned Mr. Pellow if he had an updated report with regard to this issue. Mr. Pellow indicated that he submitted a new report dated September 23, 2005 which states that the applicant is installing lighting at the boulevard island and indicated that no lights should be installed until the board approves a proposed plan. The applicant should provide the Land Use Board with a lighting plan, details, catalog cut-sheets and shop drawings for the Board's review. The applicant indicated that he was not aware that the low (18") lighting he was installing required approval by the board. This lighting is only to light up the landscaping. He will submit whatever the board requires.

Mr. Martin indicated that he drove up to High Point Country Club in Montague and they have a sign which is 45 feet long and 10 feet high. He feels this sign is very attractive and similar to what the applicant wants to do. However, there is only one sign, not two like the applicant is proposing which is on a main road.

Mr. Clark questioned the applicant which lot will the sign be on. The applicant indicated that the signs will be on lot 1 and lot 21 on the main entrance of the subdivision. Mr. Clark questioned if this sign is going to be on an individual homeowner's lot. The applicant indicated that it will be on the two individual lots and there will be an easement for these entrance signs. Mr. Clark questioned who will maintain this entrance way. The applicant indicated that the homeowner's association will maintain this area.

Mr. Zappile questioned if there will be the same size signs at both locations. The applicant indicated that the second entrance can have a smaller sign because there are only 7 lots at that location. He is requesting that the main entrance have the sign he is proposing.

Mr. Risdon indicated that he feels the sign is too big. He would rather see some more landscaping, some stone, maybe some water instead of all sign.

Mr. Gstatenbauer indicated that he looked at another development on Route 181 in Sparta with homes in the

same price range as this development. Mr. Clark indicated that it was a development by Toll Brothers, however, he does not know the name of the development because he can not see the sign. Mr. Gstattenbauer indicated that the sign is 4' x 6' Gold Leaf, one sign. He feels this is suitable.

The applicant indicated that he is willing to spend the extra money to build this main entrance way. He is, as required by the board, repairing Pelletown Road and he installed trees along the road which was not required. He would like to develop a subdivision with an image of a professional subdivision.

Mr. Risdon indicated that something large would be alright, but more in a natural way.

A Motion was made by Mr. Hahn and seconded by Mr. Martin to open this matter to the public. All were in favor. The Motion was carried.

George Schoch appeared before the board and was sworn in by the board attorney. He indicated that Route 181 is a 50 mph road, which is why you can not see what that development sign says; this development is only a 30 mph road with very little traffic. He went to the sight and saw the proposed sign. He feels that one sign at each entrance with some landscaping would look nice; however, he does not feel that 2 signs are required at each entrance.

Thelma Rooney appeared before the board and was sworn in by the board attorney. She indicated that she is in favor of the proposed sign.

Nancy Crow appeared before the board and was sworn in by the board attorney. She feels the sign should be on a smaller scale.

A Motion was made by Mr. Risdon and seconded by Mr. Hahn to close this matter to the public. All were in favor. The Motion was carried.

The applicant indicated that he will agree to a 10% reduction in the sign or a percentage agreed upon by the board. He also indicated with regard to the lighting, it is not street lighting. The lighting is in the middle of the island for the green of the landscaping. It is low voltage so you can see it at night. Mr. Risdon indicated that the board should have a plan. The applicant agreed to submit a plan. Mr. Pellow indicated that it is low profile lighting. The applicant indicated that the association will maintain the lighting. He further stated that the lighting is only 18" and it can not be seen in the daytime. Mrs. Caldwell questioned what the voltage of the lighting was. Mr. Dykstra indicated that that the lighting was 10 voltage. Mr. Pellow questioned if the applicant had pictures of the lights. The applicant indicated that he did not have it with him this evening; however, he can submit a picture of the lights at a later time. Mr. Clark questioned the applicant if there is landscaping on the boulevard that has to be maintained and is that maintenance going to be the responsibility of the township. He also questioned if this is in the right of way which will be dedicated to the township. Mr. Pellow indicated that this landscaping is all within the right of way. Mr. Clark questioned if an agreement has been met with regard to the storm water management. Mr. Dwyer indicated that the applicant is proposing that it be maintained by the homeowner's association.

A Motion was made by Mr. Gstattenbauer and seconded by Mr. McDowell to approve the application for a sign variance upon the following conditions: (1) The sign is 25% smaller than the proposal submitted this evening (34' sign); (2) That there be only one sign at each entrance or 2 signs at the main entrance; (3) The applicant to incorporate architectural landscaping; (4) stone as opposed to brick which was proposed; (5) and applicant to submit a revised plans with the new sign and lighting to be reviewed at next meeting. Roll Call:

YES: 6 Mr. Hahn, Mr. Risdon, Mr. McDowell, Mr. Martin, Mr. Nadolny
Mr. Gstattenbauer

NO: 2 Mr. Zappile, Mrs. Caldwell (because she felt that the applicant
should have 2 signs at each location)

ABSTAIN: 0

The Motion was carried.

Mr. Ayers returned to the meeting.

Gregg & Jeanine Paschenko – LUB 05-07 – Block 266, Lot 4 – 36 Bonning Road –“C” Variance & Planning Variance:

A letter was received from the applicant's attorney requesting that this matter be carried to the October 26, 2005 Land Use Board meeting without further notice. A discussion was held with regard to this. It was noted earlier in the meeting that no applications will be heard during the month of October, therefore, this application will have to be carried to the November 21, 2005 Land Use Board meeting. A Motion was made by Mrs. Caldwell and seconded by Mr. Risdon to carry this application to the November 1, 2005 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

Sussex Commons Associates, LLC – LUB 04-41 – Block 11, Lots 13, 13.04, 13.05, 13.06, 13.07, 13.09, 13.11, 13.12, 13.13, 13.14, 13.15 & 15 – Preliminary Site Plan, Variance & Preliminary Major Subdivision:

A discussion was held with regard to the November 21st meeting that since there is only one meeting in November and no applications will be heard at the October 26, 2005 Land Use Board meeting, that the application for Sussex Commons will not be heard in November. A Motion was made by Mr. Risdon and seconded by Mr. McDowell that the Sussex Commons application will not be heard during the Month of November, 2005. All were in favor. The Motion was carried.

NEW APPLICATIONS

Rebecca L. & Brian F. Schundler – LUB 05-12 – Block 215, Lot 4 – 177 East Shore Lake Owassa Road –“C” Variance:

Appearing before the board was the applicant's attorney, William Haggerty, and representing the applicants, Bruce Schundler, the applicant's father, Mr. Schundler was sworn in by the board attorney.

Mr. Haggerty indicated that this application is for a classic application for a small lake front house at Lake Owassa. The applicant proposes to extend an existing area on the road side in the front yard of the house to accommodate a septic system that exists and the incline or pitch of the pipe that would be needed for proper operation for a bathroom in this section to that septic system. That extension would only propose to be a 2 foot extension. The reason the applicant is here this evening is because of this aspect. The other aspect of the application, there is already an enclosed area that the applicant proposes to do internal renovations to expand a proposed room. They did not believe they would have to be before the board on this at all. The Zoning Officer suggested to the applicant that as long as they are coming before the board for the 2 foot extension in the back, they should also apply for a variance on the lake side of the house where they have the porch area and they want to enlarge a room.

Mr. Haggerty reviewed Mr. Pellow's report dated August 5, 2005:

Paragraph "2": A "C" Variance is requested for the following zoning requirements (references Section 30-403.5): Minimum Lot Areas – 7,500 sf is permitted, 5,847 sf is existing and 5,847 sf is proposed; Minimum Lot Width – 50 ft is permitted, 27.84 ft is existing, 27.84 ft is proposed; Minimum side yard – 15 feet is permitted, 1.2 ft is existing, 1.1 ft is proposed; Minimum rear yard – 50 ft is permitted, 15 ft is existing and 15 ft is proposed. All of the variances are existing conditions.

Mr. Haggerty indicated that the home is currently a 3 bedroom home. The applicant wishes to convert the home from a 3 bedroom home to a 2 bedroom home. There would be a reduction in the intensity of the use of the home. The applicant will convert a room inside the home to make a larger bedroom, which is the internal modification.

Mr. Haggerty further stated that since this is a small house, the applicant's comply with the Floor Area Ratio Ordinance which is noted in Mr. Pellow's report Paragraph "3".

Mr. Risdon questioned the attorney if it was advertised properly. Mr. Clark indicated that the advertisement was done properly.

Mr. Pellow continued reviewing his report dated August 5, 2005:

Paragraph "4": The application is not complete unless the following items are either waived or the Applicant provides the items at least 10 days prior to the meeting:

Item "7": Compliance with legal notice requirements. Mr. Clark confirmed this earlier that it was correct.

Item "75": building floor plan, elevation views and first floor elevation with overall building height. All renovations should be shown including room layout and elevations. Mr. Haggerty indicated that they do not propose to change of the house, itself, except for internal and moving the back section back 2 feet. They do have a simplified floor which he presented to the board.

Item "83": Copy of current deed and all easements/restrictions. Mr. Haggerty indicated that there is an easement on this property. There is a common well that is located at the back of this property. This well services the 3 surrounding properties off this well. Mr. Haggerty submitted a copy of this Deed which was marked as applicant's Exhibit "A-1".

A Motion was made by Mr. Risdon and seconded by Mr. Nadolny to deem this application complete. All were in favor. The Motion was carried.

Mr. Haggerty submitted several photos to the board which were marked as follows:

"A-2": Photograph of house. Mr. Schundler indicated this photograph was taken from above the house from the street side. He noted that this photograph also shows the bathroom that was discussed earlier. The roof was repaired a few years ago with the proper permits. He indicated that the septic is currently about 4 feet from the back, they are trying to get about 2 feet from the septic. The reason for this they were told years ago when the septic tank was put in and they did not fill it with water right away so it went up a little bit, higher than what it was originally intended. What the previous owners did was build up the floor of the bathroom so you would always have to step up into the bathroom which gave them the right pitch. They are simply trying to make it so that the bathroom would be at the same elevation as the rest of house for safety reasons. By moving it back, they could get the proper pitch. There is only a 5 ½ inch variance in the elevation between the top of the floor level and the bottom of the inlet into the septic. Mr. Haggerty indicated that the house is currently on an angle on the lot so the addition would project slightly away from the adjoining lot.

Mr. Pellow questioned Mr. Haggerty that the area of the floor of 794 sf. does it include the deck or is this just the house. Mr. Haggerty indicated that it should not include the deck because it is open.

"A-3": Photograph of the septic area.

"A-4": Photograph of house from Lakeside which shows a portion of the porch.

"A-5": Photograph of house showing the porch from the west side of the property. This pictures shows that the porch is open with a roof. He indicated that the porch used to be fully enclosed.

"A-6": Photograph of house from the east side of the property. This is the area that the applicant's are proposing to completely enclose. It is half enclosed now. It is completely boarded up.

"A-7" & "A-8": Photograph of front porch.

"A-9": Photograph of front porch to show cut on front porch to keep the porch on the applicant's property line.

"A-10": Floor plans of proposed renovations. This exhibit consisted of three pages: 1) Floor plan of house prior to 6/17/03; 2) House as is on 6/17/03; and 3) Most current working plan dated 6/22/03 which is proposed before the board this evening. This proposal shows creating a bedroom on the lakeside and a bedroom behind it. Mr. Schundler indicated that the bedrooms inside this lake house were 9' x 8' and 8' x 8' and they could just fit a bed in them. They are planning to put sliding glass doors on the side where the bedrooms exist at the present time in the front of the house and move the bedrooms to the back of the house.

Mr. Haggerty indicated that Mr. Pellow's report addresses parking as an issue. He questioned Mr. Schundler about the topography of the lot. Mr. Schundler indicated that they do have a parking area up on Lake Owassa Road and it could be expanded, however, it would require fill and a creation of a berm of some sort. At the present time there is barely enough parking there to get a car in; it is more like a landing. Most people park their cars on the street on the weekends. It is a very steep slope. Mr. Schundler indicated that he has owned his house, next door the applicant's property, since 1983 and there has never been a problem with parking. The applicant's property he purchased 5 years ago. He further stated that many of the lots on East Shore Road do not have parking on their lots. Mr. Haggerty questioned Mr. Schundler as to what they propose to do with the pedestrian access from the landing area down to the house. Mr. Schundler indicated that this access (stairs) would have to be repaired.

Mr. Haggerty questioned Mr. Schundler about the condition of the septic system at the present time. Mr. Schundler indicated that it was pumped, the company inspected the septic system and a representative from the Department of Health was there and they were not concerned with the condition of the system at that time. They have poured water into the septic system to make sure the pump was still working. He indicated that the pump does turn on and pumps the water from the reservoir tank up the hill. The septic is completely operational.

Mr. Haggerty indicated that on the plan on the lakeside it is labeled as "proposed addition". It is not an addition as it exists now. The applicant wants to install a glass door in the front. It is enclosed now except for the glass door. The variance before the board is on the roadside with the 2 foot extension.

Mr. Ayers questioned Mr. Pellow about the septic system. Mr. Pellow indicated that the house is currently a 3 bedroom home and the applicant is proposing a 2 bedroom.

Mr. Haggerty indicated that by removing part of the enclosed portion of the porch, the applicant will be removing part of an encroachment of the adjoining lot.

Mr. Haggerty questioned Mr. Schundler what kind of stair access they have going down to the property. Mr. Schundler stated they have taken some cast off red painted wood and stairs and put them down where they could and stone in between. Basically what they plan to do is improve the stairs. He further stated that the easements on these 3 properties permit the use of each others walkways down to get to the septic and to access the lake.

A Motion was made by Mr. Risdon and seconded by Mr. Nadolny to open this matter to the public. All were in favor. The Motion was carried.

Appearing before the board was Leonard Tandul, a surrounding property owner and his son, Jeffrey Tandul (owners of Lots 5 & 6). Mr. Leonard Tandul and Mr. Jeffrey Tandul were sworn in by the board attorney. Mr. Jeffrey Tandul gave his qualifications to the board as a landscaping architect. The board accepted Mr. Tandul as an expert witness. Mr. Tandul submitted to the board the following documents and they were marked as exhibits: "O-1" – Mr. Jeffrey Tandul's Resume for his qualifications and "O-2" – Landscape Architect Publication by Mr. Tandul.

Mr. Tandul indicated that on the applicant's site plan it shows 3 encroachments and adverse possession of Mr. Leonard Tandul's property. This is along the northern or eastern property line. There were two pre-existing conditions which were part of the building, one area where the applicant wants to expand and the other area is a new expansion of the so-called deck. The deck would more characterize as a porch, it was a closed in porch. He submitted to the board photographs showing what the conditions were before Mr. Schundler began work.

Mr. Tandul indicated when he reviewed the survey; the western most property line does not match with his survey and deed that they had done when the property was conveyed in 1973. He submitted a survey which was done in 1973. Since that time there has been additional work done to the house; they added on a dining room and deck. They have also installed a septic system since then. They have not had the property surveyed since 1973. He also submitted to the board a copy of his deed, which includes a written description of the property. The bearings and distances do not match. He indicated that he has not had a chance to go and research the map to see whether Mr. Schundler's property actually extends further back from the lake as their property. Typically this does not happen; there is usually a hub that meets both property lines. It is possible this is where the discrepancy is. He believes this needs to be clarified. The Deed was marked as Exhibit "O-3" and the survey was marked as Exhibit "O-4".

Mr. Tandul questioned why the applicant is not here this evening representing himself. Mr. Schundler indicated that Brian Schundler works in New York City in the theater district and works until 9:00 p.m. He further stated that his daughter, Rebecca Schundler, is a graduate student and nurse practitioner and is involved in school and was not able to make it. Mr. Tandul indicated that the work being done on the property is done by Mr. Bruce Schundler.

Mr. Tandul indicated the owners of Lots 5 & 6 strenuously object to any project alteration, scheme or repair or reconstruction that does not include the removal of the several encroaching portions of the house.

Mr. Haggerty indicated that the survey submitted as Exhibit "O-4" certainly substantiates the applicant's depiction of their dwelling house and the encroachment. He feels it matches remarkably well.

Mr. Tandul indicated that the owners of Lots 5 & 6 made it clear to Mr. Bruce Schundler that the applicants, he or any of their agents do not have permission to access the project from Lots 5 & 6. Because of the several encroachments, and the proximity of the existing house on Lot 4 to the property line, the only way work can be performed is to trespass upon Lots 5 & 6. This is unacceptable. Mr. Clark indicated that the board does not have any say about this situation. Mr. Tandul indicated that this does affect whether the applicant or future owners can maintain the property. This does affect public health, safety and welfare.

Mr. Tandul stated that as the owners of Lots 5 & 6, they strenuously object to the continued attempts to enact an adverse possession of Lot 5. Minimal information has been provided by the applicant in an attempt to simplify a very complex existing condition. Mr. Clark indicated to Mr. Tandul that he should tell the board what the complex information is or ask questions of the applicant.

Mr. Tandul indicated the first issue is the property line. He stated that this needs to be clarified by the surveyor, whether that bearing change is due to a change in declination over time since the surveys were done so far apart.

Mr. Tandul indicated that there are items noticed on the applicant's plan at the ends of the Eastern line of lot 6 as found Iron caps. He indicated that those iron caps that were located there were originally set by a licensed surveyor. The prior owner of that property subsequently concreted around those iron caps; these may be off which may be affecting the accuracy of the survey. Mr. Tandul stated that the bearings do not match and the distance does not match. Mr. Pellow indicated that the bearings hardly ever match. He further stated that it is not up to this board to determine if the survey is accurate. Mr. Pellow noted that the applicants submitted a survey which is certified. Mr. Clark indicated that Mr. Tandul has the right to go to court and handle this matter.

Mr. Tandul indicated that on the applicant's site plan it states "Lot 3" – The item labeled "Frame Dock" should be labeled "Frame Deck". He also stated that on the applicant's site plan it states "Lot 4" –The item labeled "Frame Dock" should be labeled "Frame Deck". Mr. Tandul indicated that these were both built on solid land and over time the soil eroded, but it was not intended as a dock.

Mr. Tandul indicated that on the applicant's site plan item labeled "framed deck" should be "framed porch". He stated that the eve lines have not been shown on the survey; therefore, it is not clear what the encroachment is.

On the survey he (the objector) submitted the eve lines are shown.

Mr. Tandul indicated the existing cesspool that serves lot 3 should be shown. It is directly above the existing well that services 3 families. Mr. Clark questioned Mr. Schundler if this is true. Mr. Schundler indicated that the tank is there and it gets pumped up a hill to the leach field. He indicated that there is a septic cover shown on the map, which is where the septic tank is. Mr. Tandul indicated that he is not referring to the septic system on Lot 4, he was referring to Lot 3 which is the applicant's other property. They did not show the septic for Lot 3. The septic system for Lot 5 is shown. Mr. Tandul indicated that if the applicant decides to replace this septic system, this will affect what happens with the property in question. Mr. Clark indicated that he understands Mr. Tandul's point; however, Lot 3 is not in question this evening.

Mr. Tandul indicated that the item labeled "Cover" on Lot 5 is irrelevant. It is a plastic tarp covering some rocks and bricks. It is not a part of any structure or septic system.

Mr. Tandul indicated that Lot 4 the area labeled "Framed Deck", which was a screened porch at the time of purchase by the applicant; this omission is misleading and not representative of the existing conditions.

Mrs. Caldwell questioned Mr. Tandul what the difference is if it is a "deck" or "porch". Mr. Tandul indicated that it is enclosed and it could be enclosed in the future. He stated that Mr. Schundler had discussed that at one point that he wanted to enclose this front porch and put windows in.

Mr. Ayers indicated that the Floor Area Ratio has been met. Mr. Clark indicated that the applicant will need a variance for the setbacks.

Mr. Tandul indicated that before any improvements to this house were made, this house use to heave like ship in the ocean and it still does. The previous owners had placed some so called footings underneath the house that are basically surface footings. There is no continuous load path from the footing up through to the roof. He further stated that the current owner also put some similar footings in front of the house and posts without

any permits. Mr. Clark indicated that this is a construction issue and it is not for the board to decide.

Mr. Tandul submitted photographs to the board which showed the existing conditions similar to what they were when the owner purchased the property. These pictures were taken a few years before the applicant took possession and some may have been taken actually around the time of the transfer. The photographs submitted were marked as Exhibits "O-5" (package of 10 photographs), "O-6" and "O-7".

Mr. Clark questioned Mr. Haggerty when the photographs were taken that the applicant submitted as exhibits. Mr. Haggerty indicated that his photographs were taken last week.

Mr. Tandul indicated that the pictures he submitted show a new encroachment at the northern corner of the applicant's survey. The applicant extended what is called the "front deck" on his survey another 4 to 6 feet closer to the lake and also put a new structure which was done shortly after the purchase by the applicant. Mr. Schundler indicated what Mr. Tandul is referring to is when they purchased the property, the front porch extended approximately 8' out and it was enclosed and it was roofed. However, it was in an unsafe, bad condition, so they took down the side walls and replaced all the flooring. It used to have an additional 4' out landing and stairs going down to the deck. Mr. Clark questioned Mr. Schundler if they obtained a permit for this. Mr. Schundler indicated that they did not, they just repaired and replaced. What they did do then is cantilevered the deck out where the landing had been, they did not change the extension of where the footings are. The footprint of the footings where not changed. The roof is in exactly the same position. The footings are no farther out than where it was. What they did was—they don't have stairs going out—they just cantilevered out. Mr. Tandul indicated that they dispute that it was not extended further out including the footings. He indicated that if you go out to the site, you can see and if you look at the photographs submitted it will show some trees that were in front of the property that were cut down by the applicant or Mr. Bruce Schundler. You can see that the footings have been moved out from where the original line was. The footings would not be out passed where the eve line is, which they are now. One of the footings is placed up on a tree stump that was cut down, which is not adequate. The footings that were placed

there were placed without any permits or foundation inspection.

Mr. Clark questioned Mr. Tandul if he is against the two different extensions the applicant is proposing. Mr. Tandul indicated that they are against both extensions. Mr. Clark indicated that some of the encroachment the applicant is proposing to remove if Mr. Tandul will let them do it. Mr. Clark further stated that it is the general idea that there has been a lot of activity on this property without the benefit of a building permit, demolition permits and the structure is not very sound and it was testified and noted in the board engineer's letter. Mr. Clark indicated to Mr. Tandul that the only recourse the board has at this point is not to improve the property. The board can not act on the survey issues or the permit issues. Mr. Tandul indicated that he would suggest to the board that the applicant not improve this property. He indicated that the applicant has submitted no alternatives and there is many. Mr. Tandul first referred to the septic tank issue. He indicated he was there when this was constructed between 1973 and 1975. He noted that the area that was noted as the "bathroom" on the plan was originally a screened in porch. It was closed in by a previous owner. The height of the septic tank is due to high water table. Mr. Tandul questioned the applicant if they are going to extend this house, how does he intend to maintain this septic tank. Mr. Clark indicated that the board can not deal with septic issues. Mr. Tandul indicated that there is a solution to the septic issue, the applicant can purchase a toilet with a built in macerator pump, all they need is an outlet. It gets plugged in and it pumps it up, it will pump up to 10 feet. Mr. Tandul indicated that the applicant is stating the reason for the extension of the bathroom area is to improve the pitch to the septic tank and he is suggesting this as an alternative.

Mr. Tandul submitted to the board a document with all his objections and suggestions stated. This document was marked as Exhibit "O-8". He also suggested that Mr. Schundler submit to the board plans drawn by a licensed Architect.

Mr. Tandul indicated that Mr. Schundler is proposing to move the bedroom into the old kitchen area, which is near the proposed addition on the lakeside of the property. If he changes this into a sleeping room, they have to have some means of egress and a rescue window. You can not have any type of openings within 3 feet of the property line. There can not be windows, door or vents with the exception of foundation vents. The other requirement is, if you are within 3 feet of the property line, this entire wall must be fire rated for 1 hour on both sides. If this is the case, it does not meet this criteria now and in order to bring it up to that code, Mr. Tandul will be looking at a blank wall on this side which is going to make the conditions even worse.

Mr. Tandul indicated the extension of the deck on the front, which is the porch, also affects his privacy on Lot 5.

Mr. Tandul reviewed the zoning issues. He stated that the applicant does not meet the criteria for granting this variance. The extension of the bathroom does not in any way improve and simplify the design of plumbing and soil lines. The previous and now demolished bathroom, worked more than adequately for 3 previous owners. It was large enough to comfortably accommodate a toilet, lavatory, shower and cloths washer and dryer. He further stated that the claim that moving the bathroom to improve and simplify the design is nullified by the proposed relocation of the kitchen to the northwestern corner of the house.

Mr. Tandul indicated that the applicant should consider other alternates.

Mr. Tandul indicated that the applicant has a propensity for expanding towards or onto other people's property. On the survey that was submitted by the applicant, it shows a reconstructed deck on Lot 3. This was expanded. The previous owner had small steps leading up to each of small sheds for storage under the house. They then subsequently built a small deck, but kept it away from the property line. Mr. Schundler chose to expand it towards each property line, both to the west and north to 2 unrelated property owners. At this time Mr. Schundler's son and daughter did not own the property.

Mr. Tandul stated that the intent and zoning plan was discussed in the application. He stated that zoning was originally introduced in 1920's to assure public health, safety and welfare. This is to be accomplished by allowing for proper air and light and not infringing on the rights of others. Any plan that allows this scheme to be approved violates this intent. This proposal is encroaching onto the neighboring property and new additions made without approval are further encroachment and further attempt at adverse possession of the property of the owners of Lots 5 & 6. This is a major infringement on the owners of Lots 5 & 6. He further stated that both proposed

additions also block the light and air of Lots 5 & 6 and imposing a windowless structure with no buffer. The further illegal extension of the front porch with the associated encroachments also affects the privacy of the owners of Lots 5 & 6. There is substantial detriment to the public good and that it sets a dangerous precedent that it allows other applicants to apply for similar zero lot zoning. It is also substantial detriment in that it permits and encourages the

adverse possession of one owner's property by another. This is substantial to the public good because it exposes the applicant, the township, and the officials of the Land Use Board to substantial legal action from the owners of Lots 5 & 6. He further stated that the applicant states to encourage municipal action to guide the appropriate use of development of all lands in the state in a manner which will promote the public health, safety, morals and general welfare. The applicant's inadequate construction already performed without approvals and permits does not in any way promote the public health, safety, and general welfare. Clearly the applicant's expansion of the house prior to this application is in violation of zoning and building codes without permits or approvals and continued attempts to adversely possess portions of lot 5, does not promote morals and general welfare.

Mr. Tandul further stated that the applicant's explanations claimed by the applicant that the applicant's property is in keeping with the dwelling houses in the area of the applicant's home is fundamentally flawed. He indicated that one can't use a lot's own condition to defend the condition. Mr. Clark indicated that Mr. Tandul is not a professional planner and he is testifying as to positive and negative criteria and he does not believe that he is qualified. He suggested to the board to not accept this as expert testimony.

Mr. Leonard Tandul stated as a surrounding homeowner that this property is not in keeping with the surrounding properties. The property in question has 35' frontage. He noted that his property has 60' frontage. The remainder properties on the street have between 90' and 100' frontage. He feels this is not in keeping with the surroundings other than the 3 people on these easements and these overlapping deeds.

Mr. Tandul further stated that the current bylaws of the Lake Owassa Community Associates require that owners have a minimum of 100 feet of lake frontage, in order to have access rights to the lake. The only exceptions, are properties that were "grandfathered in", which this is, some time before the period of 1930's to 1950'. This was in recognition of protection of the lake from over development.

Mr. Tandul reviewed the negative impacts of this application. He stated that the applicant claims the enclosure of the porch would provide the applicant with usable area of the home with a negligible impact as to any adjoining properties is completely erroneous and without merit. The scheme moves a solid wall closer to the adjacent property (Lot 5). Now there is an open screened porch which allows air and light and some relief from the imposing structure.

Mr. Tandul continued with the negative impact of this application. He stated that the applicant claims the impact may actually be lessened through the enclosure of the existing porch defies all logic. The removal of the encroaching frame wall, and now replaced by another encroachment—the illegal extension of the front porch—is hardly an improvement. This extension looms over the property of Lot 5 creating privacy issues, and conflict with existing landscaping.

Mr. Tandul suggested some recommendations to the board. He stated that it is strenuously recommended that this variance be denied for the reasons stated previously in testimony. Furthermore, the applicant should be required to return the property to its original configuration, prior to the illegal construction additions. All of the encroachments should be remedied by the applicant's prior to any future approvals for permits, variances, zoning, septic upgrades, etc.

Mr. Leonard Tandul indicated that he is concerned about the credibility of Mr. Bruce Schundler when a few moments ago he indicated that the footings were in the same place that they were previously. Mr. Tandul indicated that the picture that was submitted shows the original footings and supports. The supports that Mr. Schundler has put in with a new beam across the whole thing goes beyond the existing footings 4 or 5 feet towards the lake. Mr. Tandul further stated that he suggested to Mr. Schundler it might be more feasible and better all around if he thought about removing the bathroom and kitchen from that side of the house, giving him space for maintenance work and moving it to the other side of the house and extending out and getting a variance for this. Mr. Tandul indicated that the encroachment on that side of the house would be encroaching on Mr. Bruce Schundler's own property.

Mr. Haggerty stated that the area to the rear which is the subject of the applicant is 2 feet by 12.3 feet, which is 24.6 square feet. He stated that they have testimony on the record in terms of why they would seek to have this extension. It does project further away from the property line, therefore, it is not encroaching further toward the property line. In terms of the area on the lake side, that area would be a solid wall. He heard concerns about privacy, light and air. Mr. Haggerty stated that if there is a solid wall, it enhances privacy so they do not look from that area onto the adjoining property. They are moving and removing an existing encroachment as is shown on the plan. The applicant's own survey that was provided to the board from 1971 shows the encroachment corresponding with the existing encroachment that they have shown on their survey.

A Motion was made by Mr. Zappile and seconded by Mr. Risdon to close this matter to the public. All were in favor. The Motion was carried.

Mr. Clark summarized that this is an application for "C" Variances with large encroachments. The arguments regarding light and air are valid especially in the lake context. There are alternatives. There other ways to configure the house. The fact that the house has been constructed to some extent without the benefit of permits, this matter should be referred to the construction department. The board may want to do an on site inspection.

A Motion was made by Mr. Martin and seconded by Mrs. Caldwell to grant the "C" Variance requested by the applicant. A discussion was held. Mr. McDowell questioned that Mr. Pellow mentioned the strength of the structure that exists. He questioned what the applicant's are proposing if it will enhance the strength of the structure. Mr. Pellow indicated that he made the comment that the house is in bad shape, however, this is an issue that the building department would have to deal with. Roll Call:

YES: 3 McDowell, Martin, Caldwell
NO: 5 Ayers, Hahn, Risdon, Nadolny, Gstattenbauer
ABSTAIN: 1 Zappile

The Motion was denied.

A Motion was made by Mr. Nadolny and seconded by Mr. McDowell to do an on site inspection and the board will reconsider the application. A discussion was held. Mr. Risdon indicated that he would like to see the applicant return with different options of construction. Mr. Gstattenbauer indicated he would like to see architectural plans. Roll Call:

YES: 5 Ayers, Risdon, McDowell, Nadolny, Caldwell
NO: 3 Hahn, Martin, Gstattenbauer
ABSTAIN: 1 Zappile

The Motion was carried. The application is still open and will be carried to the November 21, 2005 Land Use Board meeting without further notice.

A Motion was made by Mr. Hahn and seconded by Mr. Risdon to have the applicant submit different options for the renovations and a letter stating that architecturally the site is sound from a professional architect. Roll Call:

YES: 6 Ayers, Hahn, Risdon, McDowell, Nadolny, Gstattenbauer
NO: 2 Martin, Caldwell
ABSTAIN: 1 Zappile.

Albert & Agnes Wittenberg – LUB 05-19 – Block 191, Lot 1 – East Shore Lake Owassa Road – "C" & "D" Variance:

A Motion was made by Mr. Hahn and seconded by Mr. Nadolny to carry this application to the November 21, 2005 Land Use Board meeting without further notice due to the late hour. All were in favor. The Motion was carried.

Richard Bell – LUB 05-18 – Block 212, Lots 1, 2 & 3 – Spring Walk Lane – “C” Variance:

It was noted that the applicant never noticed for this meeting and will be appearing at the next regular meeting of the Land Use Board.

RESOLUTIONS:

William Murphy – LUB 03-23 – William Murphy – Block 214, Lot 1 – Lakeview Avenue –Extension of Variance Relief:

The Resolution was reviewed. A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to approve the Resolution for an Extension of Variance Relief. Roll Call:

YES: 6 Ayers, Risdon, Martin, Nadolny, Gstattenbauer, Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

BOARD BUSINESS:

Invoices:

A Motion was made by Mr. Martin and seconded by Mr. Risdon to approve the September 2005 Invoices on the Bill list attached hereto and made a part hereof. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Zappile, McDowell, Martin, Nadolny, Gstattenbauer

NO: 0

ABSTAIN: 1 Caldwell

The Motion was carried.

Meeting Practices:

The Public Hearing Process attached hereto and made a part hereof were reviewed. It was suggested that these practices be attached to each application being handed out and handed out at the meetings. It was also requested that the meeting practices be posted on the website.

A Motion was made by Mr. Zappile and seconded by Mr. Martin to adopt the Public Hearing Process. All were in favor. The Motion was carried.

Return of Bond Money:

It was noted by the board secretary that the 2 year maintenance cash bond for K&B Carwash under application 00-02 (Block 18, Lot 24.05) has expired and she is requesting to return same to the applicant. A Motion was made by Mr. Martin and seconded by Mr. Risdon to return the \$1,500 Maintenance Cash Bond posted by the applicant. Roll Call:

YES: 9 Ayers, Hahn, Risdon, Zappile, McDowell, Martin, Nadolny,
Gstattenbauer, Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

Correspondence:

The Correspondence was reviewed. There was no formal action taken.

ADJOURN:

A Motion was made by Mr. Nadolny and seconded by Mr. Risdon to adjourn the meeting. All were in favor. The Motion was carried.

Respectfully submitted,

SHARON M. YAROSZ
Land Use Administrator