



DEXTER TOWNSHIP

ZONING BOARD OF APPEALS

6880 DEXTER-PINCKNEY ROAD
DEXTER, MI 48130

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STEVE BURCH,
CHAIR
JAMES CORMIER,
VICE CHAIR
PAT KELLY,
SECRETARY

BILL GAJEWSKI
DAVE MILLAR, ALT.
WENDELL WAGNER, ALT.
DENETTE BOLYARD,
RECORDING SECRETARY

REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Tuesday, March 14, 2006 7:30 PM

Members present: Steve Burch, Chair, Pat Kelly, Secretary, Jim Cormier, William Gajewski, Wendell Wagner, Alternate

Members absent: None

Also present: Peter Flintoft, Attorney, Steve Piatt, Zoning Administrator, DeNette Bolyard, Recording Secretary, Walter Bolt and Nancy McClain, Mannik & Smith Engineering.

- I. Call to Order:** The meeting was called to order by Chairman Burch at 7:34 p.m..
- II. Pledge of Allegiance:** Secretary Kelly led the Pledge of Allegiance to the Flag.
- III. Approval of Agenda:** Motion by Kelly to move item number 7 to number 6 and number 6 to number 7. Supported by Cormier. Carried. Motion by Kelly, support by Wagner to approve agenda as amended. Carried.
- IV. Public Comment- Non Agenda Items:** None
- V. Action Items:**

Agenda Item: **1**
 Appeal Number: **04-ZBA-601**
 Applicant Name(s): **Thomas Prose**
 Property Address: **9485 Lakeview**
 Property Tax ID (s): **04-06-286-001**

Variations Requested per submitted ZBA Application:				
<u>Section</u>	<u>Current</u>	<u>Requested</u>	<u>Permitted</u>	<u>Description/Notes</u>
18.23.A	--	42'	50' minimum	
18.23.A	--	10.3'	50' minimum	East side from easement to new garage
12.02.E.C.3	--	15'	30' minimum	West side
12.02.E.C.3	--	15'	30' minimum	South side
12.02.E.4	--	27.2%	25%	
Purpose: Allow destruction of existing single family home and detached two-car garage and construction of a new home with attached three car garage.				

Agenda Item: **2**
 Appeal Number: **05-ZBA-612**
 Applicant Name(s): **Cindy White**
 Property Address: **8401 Thurston**
 Property Tax ID (s): **04-03-300-007**

Variations Requested per submitted ZBA Application:					
No.	Section	Current	Requested	Permitted	Description/Notes
1.	18.23.A	20'	5'	50'	From Thurston Drive to new garage overhang.
2.	18.23.A	16'	10'	50'	From the undefined easement
3.	12.02.E.3.C	14.3'			From existing home to property line on the west side.
4.	12.02.E.1				Recognize. less than one acre
5.	12.02.E.2				Recognize less than 150' wide.

Purpose: to construct a 24' x24' garage with attic storage.

Previous ZBA action:

- July 12, 2005 – motion passed to table consideration of the request for one month to allow the applicant the opportunity to research information regarding an access easement and “gap” adjacent to the property.
- August 9, 2005 – at the applicant’s request, a motion passed to table consideration of the request until September 13, 2005.
- September 13, 2005 – the applicant requested the appeal be tabled until further notice. The ZBA approved a motion to table the appeal to a date no later than January 10, 2006.
- January 10, 2006 – motion passed to table the appeal until no later than the July 2006 meeting.

3)

Property Tax ID **04-20-100-012**
Appeal Number: **06ZBA 621**
Applicant Name(s): **International Transmission Company**
Property Address: **5555 Madden Road**

Variations Requested per submitted ZBA Application:				
Section	Current	Requested	Permitted	Description/Notes
12.01.E.5	Over 100'	90' and 78'	35'	To allow for the addition of two new poles .One is to be 90' tall and the other is to be 78' tall.

Purpose: To allow for construction of two new power poles at the majestic power station.

Persons notified were read into the record by Chair Burch.

Jamie Kryscynski, ITC Representative, 39500 Orchard Hill Place, Novi, MI 48375 was present and explained that by adding these two towers and additional lines this would enable power to be “dropped off” at this location should DTE choose to use it.

PUBLIC COMMENT:

Alice Witherspoon – 6744 Madden Rd. Dexter, MI - Questioned how that would benefit the people in Dexter Township or on Madden Rd. - ITC Representative, Jamie Kryscynski again explained that it would allow power to

be dropped off at this station and used if DTE needed to which would mean possibly less power interruptions for people in the area.

BOARD COMMENTS:

Bill Gajewski commented that Stormwater Management would not be an issue based on the amount of acreage.

Kelly commented that the ZBA was reviewing only the height of the proposed structures and that the Planning Commission would be reviewing the site plan for all other aspects of the plan.

The following preamble and resolution was offered by Member Kelly and supported by Member Gajewski:

Whereas, on February 6, 2006, Jamie Kryscynski, Permit Coordinator for International Transmission Company, filed a Notice of Appeal (06-ZBA-621) requesting variances from specific site development requirements of the Dexter Township Zoning Ordinance to permit expansion of an electrical substation, known as Majestic Station, on property located at 5555 Madden Road, Parcel ID 04-20-100-012, and;

Whereas, on February 6, 2006, Jamie Kryscynski also submitted applications for expansion of an approved special land use and an amended site plan for Majestic Station and the Dexter Township Planning Commission is the approving body for these applications, and;

Whereas, at a duly noticed public hearing before the Zoning Board of Appeals on March 14, 2006, application materials were reviewed and public comments were entered into the record, and

Whereas, per section 4.05.C.1, the Dexter Township Zoning Board of Appeals has the authority to authorize the requested variances from site development requirements provided that all of the following required findings are met and the record of the ZBA contains evidence supporting each conclusion:

1. 4.05.C.1.a - It is the finding of the ZBA that conformance to the maximum height restrictions of the Ordinance, as evaluated in terms of the electrical substation special land use of the property, creates a practical difficulty since high voltage electrical lines should be located a safe distance from the ground and the expanded infrastructure must tie into existing lines.
2. 4.05.C.1.b – It is the finding of the ZBA that the genuine practical difficulty created by the intended use of the property does not apply to other property or uses in the Rural Residential zoning district and will not be recurrent in nature since this is the only electrical substation in the township and there is no expectation that another will be needed.
3. 4.05.C.1.c – It is the finding of the ZBA that the special conditions are not the result of any action of the applicant.
4. 4.05.C.1.d – It is the finding of the ZBA that the requested variances will apply only to the property under the control of the applicant as the proposed plans indicate that the expansion will be located entirely on parcel 04-20-100-012.
5. 4.05.C.1.e – It is the finding of the ZBA that the requested variances will be in harmony with the general purpose and intent of this Ordinance since the availability of electricity promotes the public health, safety, comfort, convenience and general welfare and the expansion of the substation facilitates adequate and economical provision of the distribution of public services and facilities.
6. 4.05.C.1.f – It is the finding of the ZBA that strict compliance with the maximum height would prevent the owner from using the property for the previously permitted special land use of electrical substation.
7. 4.05.C.1.g – It is the finding of the ZBA that the requested variances are the minimum amount required to mitigate the special condition.
8. 4.05.C.1.h – It is the finding of the ZBA that the variances will not permit the establishment of a new use which is not a permitted use and that the special land use of electrical substation has been previously approved.

Be it therefore resolved that the following variances are approved:

1. From Section 12.01.E.5 to construct a 70' high transmission tower.

2. From Section 12.01.E.5 to construct a 90' high transmission tower.

Be it also resolved that the following conditions shall apply to the issuance of these variances:

1. Planning Commission approval of the submitted amended site plan application (06-PC-125).
2. Planning Commission approval of the submitted special land use application (06-PC-125).

Roll Call Vote:

Yeas: Wagner, Cormier, Kelly, Gajewski, Burch

Resolution adopted

4)

Property Tax ID **04-17-400-014**
Appeal Number: **06ZBA 622**
Applicant Name(s): **25240 Lahser Road Southfield, Michigan 48034**
Property Address: **Madden Road South of north Territorial Road.**
 Known as Dexter Township Estates

Variiances Requested per submitted ZBA Application:				
Section	Current	Requested	Permitted	Description/Notes
6.09.B				To request relief from Section 6.09B.
Purpose: To request relief from this section, And to allow for the preliminary site plan to move forward to final.				

Persons notified were read into the record by Chair Burch.

Member Kelly called attention to the called attention to the March 2, 2006 memo from Steve Piatt to the ZBA outlining the past history regarding this development. She also explained the township board's role in the process of completing a development agreement for the project.

The following preamble and resolution was offered by Member Kelly and supported by Member Gajewski:

Whereas, on January 27, 2006, Lou Iordanou, representative for Dexter Township Estates, LLC, submitted a final site plan application for Dexter Township Estates (the Project), a 19-unit site condominium project located on Madden Road, Parcel ID 04-17-400-014, and;

Whereas, the Project received conditional preliminary site plan approval on February 24, 2004, said approval granted under the provisions of the 1973, as amended, Dexter Township Zoning Ordinance (ZO), and;

Whereas, on February 7, 2006, Steve Piatt, the Dexter Township Zoning Administrator, declined to accept the final site plan application for the Project, citing the expiration of the previously granted preliminary site plan approval per Section 6.09.B of the current ZO, and;

Whereas, on February 7, 2006, Lou Iordanou filed an administrative appeal of Mr. Piatt's decision to refuse acceptance of the final site plan application for the Project, and;

Whereas, per section 4.05.A, the Dexter Township Zoning Board of Appeals has the authority to hear and decide appeals where it is alleged by the appellant that there is an error in a refusal made by the Zoning Administrator, and;

Whereas, at a duly noticed public hearing before the Zoning Board of Appeals on March 14, 2006, application materials were reviewed and public comments were entered into the record,

Be it therefore resolved that the decision of Mr. Piatt to refuse the final site plan application for the Project is overturned for the following reasons:

1. Timely submission of a final site plan for the Project was delayed by actions of the Dexter Township Board. Specifically, the Township Board did not present a development agreement addressing site impact issues to Madden Road for one year and one month after preliminary site plan approval.

2. The provisions of 6.09.B were not administered equitably to all plans under review. Specifically, West Lake Hills, LLC, was allowed to proceed with preliminary site plan approval for up to 1 year and two months “after” the May 1, 2004 intended expiration date for site plans being reviewed under the 1973 ZO.

Be it further resolved that the Zoning Administrator shall accept and process the final site plan application for the Project using the procedures and substantive standards of the 1973, as amended, Zoning Ordinance.

Be it further resolved and that the Dexter Township Planning Commission shall review the final site plan for the Project using the procedures and substantive standards of the 1973, as amended, Zoning Ordinance.

Roll Call Vote:

Yeas: Wagner, Kelly, Cormier, Gajewski, Burch

Resolution adopted

5)
Property Tax ID **04-10-100-006/009**
Appeal Number: **06ZBA 623**
Applicant Name(s): **Patrick and Joan Thompson**
Property Address: **8129 Toma Road**

Variances Requested per submitted ZBA Application:				
Section	Current	Requested	Permitted	Description/Notes
18.18.C.	458'	434'	Not in front	To allow garage to be closer to the road than the home.
18.18.D.1	1678 S.F.	3186 S.F.	2000' S.F.	To allow a total of 3186' S. F. where 2000' total is allowed.
				(Note: The Planning Commission has been working on changing this figure, and if adopted this would be allowed and a variance would not be needed.)
Purpose: To allow for the construction of a 25' x 54' garage and workshop.				

Persons notified were read into the record by Chair Burch.

PUBLIC COMMENT: None

BOARD COMMENT:

Cormier questioned where the propane tank would be located.

Kelly stated that Steve Piatt indicated on the application that if the Planning Commission adopted a change pertaining to this section of the zoning ordinance that a variance wouldn't have been needed. She asked Mr. Piatt to explain the proposed amendments.

The following preamble and resolution were offered by Member Gajewski and supported by Member Wagner.

Whereas, on February 16, 2006, Patrick and Joan Thompson filed a Notice of Appeal requesting variances from specific site development requirements of the Dexter Township Zoning Ordinance to permit the construction of a 25' x 54' garage/workshop on property located at 8129 Toma Road D-04-10-100-006, 10.23 acres.

Whereas, a public hearing before the Dexter Township Zoning Board of Appeals held on March 14, 2006, was attended by the applicant, and members of the public and application materials were reviewed and public comments, were entered into the record and,

Whereas, per section 4.05.C.1, the Dexter Township Zoning Board of Appeals has the authority to authorize the requested variances from site development requirements provided that required findings are met and the record of the ZBA contains evidence supporting each conclusion and,

Whereas, in compliance with section 4.05.C.1.a, conformance to the strict letter of the Ordinance as applied to the single family home use of the property will create a non-economic practical difficulty due to the fact that the standards of the Ordinance are being applied to an existing condition and,

Whereas, in compliance with section 4.05.C.1.b, preservation of natural features including a nature area, that will be dedicated to a land conservancy and run with the land represent unique circumstances or physical conditions that do not generally apply to other property in the rural residential zoning district that will not be recurrent in nature and,

Whereas, in compliance with section 4.05.C.1.c, the physical condition do not result from any action of the applicant and,

Whereas, in compliance with section 4.05.C.1.d, the requested variances will apply only to property under the control of the applicant and,

Whereas, in compliance with section 4.05.C.1.e, the variances will be in harmony with the general purpose and intent of the Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or and,

Whereas, in compliance with section 4.05.C.1.f, strict compliance with area and setbacks, would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome. and,

Whereas, in compliance with section 4.05.C.1.g, the variances requested are the minimum amount necessary to overcome the inequality inherent in the applicant's particular property. and,

Whereas, in compliance with section 4.05.C.1.h, the requested variances permit only single family home, which is a principally permitted use in the rural residential zoning district.

Be it therefore resolved that the following variances are approved:

From Section 18.18.C. to allow the placement of a garage/workshop in the front yard setback.

From Section 18.18.D.1. to allow a lot coverage of 3186 square footage by accessory buildings on a 10.3 acre parcel where 2000 square feet is allowed. (Note the Planning Commission has been working on changing this figure and if adopted this would be allowed.

Be it also resolved that the following conditions shall apply to the issuance of this/these variances:

- Submission to the Zoning Administrator of all required Plot Plan data per Sections 6.03.A.1.a thru 6.03.A.1.k of the Zoning Ordinance prior to issuance of a zoning permit.
- Conformance with all applicable provisions of Article 18, General Provisions and Article 24, Environmental Protection of the Dexter Township Zoning Ordinance prior to the issuance of a final certificate of zoning compliance.

Roll Call Vote:

Yeas: Burch, Cormier, Gajewski, Kelly, Wagner

6)

Property Tax ID **04-30-300-004/04-30-400-002/04-31-200-008/04-31-100-007**
Appeal Number: **05 ZBA616**
Applicant Name(s): **John Sinanis West Lake Hills LLC**
Property Address: **Waterloo Road between Werkner and McKinley**

Variations Requested per submitted ZBA Application:				
<u>Section</u>	<u>Current</u>	<u>Requested</u>	<u>Permitted</u>	<u>Description/Notes</u>
4.04				
Purpose: To appeal the decision made by the Dexter Planning Commission on July 26, 2005.				

The official transcript will be inserted here.

1

1 ZONING BOARD OF APPEALS
2 DEXTER, MICHIGAN
3 -----
4 In the Matter of
5 04-30-300-004/04-30-400-002/
6 04-31-200-008/04-31-100-007
7 05-ZBA 616
8 John Sinanis, West Lake Hills, LLC
9 Waterloo Road between Werkner and McKinley
10 -----

11 PROCEEDINGS HAD in the above-entitled matter
12 before the ZONING BOARD OF APPEALS at the Dexter
13 Township Hall, 6880 Dexter-Pinckney Road, Dexter,
14 Michigan, commencing at 7:30 p.m. on Tuesday, March 14,
15 2006.

16 APPEARANCES:

17 ZONING BOARD OF APPEALS MEMBERS:

18 Mr. Steven Burch, Chair
19 Mr. James Cormier, Vice Chair
20 Ms. Pat Kelly, Secretary
21 Mr. William Gajewski, Member
22 Mr. Wendell Wagner, Member

23 ALSO PRESENT:

24 Ms. DeNette Bolyard, Recording Secretary
Mr. Steve Piatt, Zoning Administrator
Mr. Peter C. Flintoft, Township Attorney
Ms. Nancy M. McClain, P.E., Mannik & Smith
Mr. Walter J. Bolt, CPG, Mannik & Smith
Mr. John Shea, Planning Commission Chair
Ms. Kate Bond, Washtenaw Engineering
And Others

25

REPORTER: Lynne Marie Zakrzewski, CSR-3179, RMR, CRR, CPE, CLR

25 Certified Realtime Reporter

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1 I N D E X

PAGE

1 Dexter, Michigan
2 Tuesday, March 14, 2006 - 8:28 p.m.
3 CHAIRMAN BURCH: Next item on the agenda this
4 evening, 05-ZBA 616, John Sinanis, West Lake Hills, LLC.
5 The purpose of this request is to appeal the
6 decision made by the Dexter Township Planning Commission
7 July 26, 2005, denying approval of the preliminary site
8 plan application.
9 Jurisdiction: As defined in Section 4.04 of
10 the Dexter Township Zoning Ordinance, adopted May 1,
11 2003: The Board of Appeals shall not have the power to
12 alter or change the zoning district classification of
13 any property, nor make any change in the terms or intent
14 of this Ordinance, but does have the power to act on
15 those matters for which this Ordinance provides an
16 administrative review, interpretation, variance, or
17 temporary zoning permit.
18 Within this capacity the Zoning Board of
19 Appeals may reverse or affirm, wholly or partly, or may
20 modify the order, requirement, decision, or
21 determination of the Zoning Administrator, Planning
22 Commission, or any official body administering or
23 enforcing the provisions of this Ordinance as set forth
24 in Section 4.05.
25 Section 4.05, Paragraph A: Administrative

4

1 Review, reads: The Zoning Board of Appeals shall hear
2 and decide appeals where it is alleged by the appellant
3 that there is an error in any order, requirement,
4 permit, decision, or refusal made by the Zoning
5 Administrator or by any other official or by the
6 Planning Commission in administering or enforcing the
7 provisions of this Ordinance.
8 Previous ZBA Action: October 11th, 2005, the
9 Dexter Township Zoning Board of Appeals heard an appeal
10 to the decision made by the Planning Commission on
11 July 26, 2005, denying preliminary site plan approval to
12 West Lake Hills, LLC. A resolution from that meeting
13 states in part: Whereas the Dexter Township Zoning
14 Board of Appeals is unable to render a decision due to
15 the absence in the record of findings of fact per
16 Section 9.08 and the 1973 Dexter Township Zoning
17 Ordinance, be it therefore resolved that the Dexter
18 Township Zoning Board of Appeals remand the matter of
19 West Lake Hills site condominium project to the Dexter
20 Township Planning Commission to document findings of
21 fact, per Section 9.08; and be it further resolved that
22 the Planning Commission provide a written report of
23 their findings of fact by December 7, 2005, for a
24 hearing at the December 13, 2005, regular meeting of the

25 ZBA.

5

1 The hearing of the findings of fact did not
2 occur at the December 13 meeting of the ZBA. This was
3 because although the Dexter Township Planning Commission
4 did provide the written report of said plans on
5 December 7, it was simply not possible to distribute
6 these findings to the members of the Dexter Township
7 Zoning Board of Appeals such that those members would
8 have sufficient time to adequately review said findings
9 of fact.

10 With concurrence of the parties concerned, the
11 hearing of the findings of fact was placed on the agenda
12 of the January 10, 2006, meeting of the Dexter Township
13 Zoning Board of Appeals.

14 As the Zoning Board of Appeals is not
15 accustomed to hearing administrative appeals, the
16 township attorney, Peter Flintoft, was present at the
17 January 10th meeting to explain the ZBA's role in
18 hearing and ruling on the appeal. Mr. Flintoft stated
19 that the ZBA should review the entire record "de novo"
20 or "fresh and anew." Then the ZBA must decide, based on
21 the record and any additional evidence presented, if the
22 applicant has persuaded the ZBA that he deserves
23 preliminary site plan approval.

24 Mr. Flintoft also noted that the applicant
25 must demonstrate by a preponderance of evidence that he

6

1 complied with the Zoning Ordinance and that a majority
2 affirmative vote of the appointed members of the ZBA was
3 required to overturn the Planning Commission decision to
4 deny preliminary site plan approval.

5 Mr. Flintoft reminded the ZBA that they would
6 be considering the appeal under the 1973 Zoning
7 Ordinance and recommended proceeding in the following
8 manner:

- 9 1) Enumerate all documents in the West Lake
10 Hills file into the record;
- 11 2) Applicant addresses ZBA;
- 12 3) ZBA members question Planning Commission
13 members;
- 14 4) ZBA members question members of the
15 public;
- 16 5) ZBA members call witnesses.

17 The January 10th, 2006, meeting of the Dexter
18 Township Zoning Board of Appeals meeting is well
19 documented in the minutes of that meeting. Those
20 minutes, having been approved, are available in the
21 Township office, and I will not repeat them here, except
22 for the final resolution regarding the West Lake Hills
23 appeal, which I shall quote:

24 Motion by Kelly, support by Cormier, to table
25 the appeal until March 14th, 2006, meeting to allow the

7

1 applicant time to work with the Township to ensure the
2 record is complete and to allow the ZBA time to review
3 the record.

4 After discussion by the Board, Kelly amended
5 the motion by adding the applicant must complete the
6 review of the record by January 24th, 2006. Gajewski
7 supported the amendment.

8 It was noted that the matter could not be
9 placed on the February 14th, 2006, meeting due to the
10 fact that the agenda for that meeting was already full.
11 Motion carried. End of quote.

12 Ms. Bond, are you satisfied that the record is
13 complete?

14 MS. BOND: Yes.

15 CHAIRMAN BURCH: Thank you.

16 Mr. Shea, Planning Commission Chair, are you
17 satisfied the record is complete?

18 MR. SHEA: I think it's -- I don't know. I
19 placed a call to Ms. Bolyard earlier today. Item
20 No. 25, a March 9 letter --

21 MS. KELLY: This is from the January 10th
22 minutes?

23 MR. SHEA: Correct.

24 MS. KELLY: The appendix?

25 MR. SHEA: Correct.

8

1 Let me say I'm missing -- I'm missing in the
2 appendix a letter from Mark Eidelson to Washtenaw
3 Engineering -- I think Kate was the -- was the
4 addressee -- dated March 10, 2005.

5 Now, there is reflected in the minutes,
6 Item 25, a March 9th letter that says it's from Kate to
7 Mark, but I'm wondering whether that's just a reversal
8 of the letter writer and the addressee.

9 CHAIRMAN BURCH: Mr. Shea, I have in my hand a
10 letter dated March 9, 2005, on letterhead of LandPlan to
11 Kate Bond, RLA, Washtenaw Engineering, RE: West Lake
12 Hills, LLC. Traffic impact study, hydrology study, and
13 revised site.

14 MR. SHEA: Then I would just suggest that the
15 appendix named on the minutes is incorrect in that minor
16 respect. It reflects a letter dated March 9, but it's
17 from Mark to Kate rather from Kate to Mark, and with
18 that cleared up, I don't have any other suggestions or
19 additions to the record.

20 CHAIRMAN BURCH: Thank you, Mr. Shea.

21 For the record, let it be noted that the
22 minutes will be amended to reflect the correct address
23 on that letter.

24 Mr. Piatt, as Dexter Township's Zoning
25 Administrator, are you satisfied the record is complete,

9

1 sir?

2 MR. PIATT: I believe it is.

3 CHAIRMAN BURCH: Thank you, Mr. Piatt.

4 And where did Ms. Bolyard disappear to?
5 Because I feel that I cannot proceed with the
6 presentation of the appeal up to this point without
7 Ms. Bolyard's input, at the discretion of the Chair, I'm
8 going to declare a seven-minute recess if people want to
9 get up, stand up, stretch. We will reconvene at a
10 quarter of 9.
11 (Recess had at 8:39 p.m.)
12 (On the record at 8:46 p.m.)
13 CHAIRMAN BURCH: Ladies and gentlemen, call
14 back to order the Zoning Board of Appeals meeting for
15 March 14.
16 Ms. Bolyard, as Dexter Township's Zoning Board
17 of Appeals Recording Secretary, are you satisfied the
18 record is complete?
19 MS. BOLYARD: Yes.
20 CHAIRMAN BURCH: Thank you. Let the record
21 show that there were no members of the general public
22 making any statements regarding this appeal at the
23 January 10th, 2006, ZBA meeting.
24 MS. KELLY: Mr. Chairman?
25 CHAIRMAN BURCH: Ms. Kelly.

10

1 MS. KELLY: Before we move on to whether the
2 record is complete or not, I'd like to ask Ms. Bond a
3 question, if I may.
4 CHAIRMAN BURCH: You may.
5 MS. KELLY: Kate, part of the purpose for the
6 whole "is the record complete or not" was so that you
7 could work with Mannik & Smith and satisfy yourself that
8 they had benefit of everything you submitted when they
9 made their reports.
10 MS. BOND: Mm-hmm.
11 MS. KELLY: So I'm going to ask the question
12 in a little bit different way.
13 Are you satisfied that Mannik & Smith had
14 everything that you wanted them to have or you thought
15 they had when they made their reports?
16 MS. BOND: No, I'm not.
17 MS. KELLY: Do you want to enumerate what you
18 don't think they had?
19 MS. BOND: Well --
20 MS. KELLY: In my mind, that's what we were
21 waiting this month for is to figure that out.
22 MS. BOND: Well, then I need to provide an
23 explanation.
24 When we met -- first met with Mr. Flintoft
25 with the ZBA and discussed enumerating the record and

11

1 meeting -- my meeting with the Township to determine if
2 the record -- if the record was complete and I asked if
3 I was to meet with Mannik & Smith as well, I was
4 instructed to do that.
5 So I made an appointment with Kim actually at
6 the Township and followed that with a phone call to

7 Nancy McClain actually and set an appointment to meet
8 with them as well, knowing that I had a deadline of, I
9 believe, January 24th to have that completed.

10 When I had further conversations with Kim, she
11 said that actually you had instructed her to advise me
12 not to meet with Mannik & Smith at their office and that
13 I was told not to do that. And so I called Nancy and
14 explained to her I was advised by the Township not to
15 meet with Mannik & Smith. I was to do that at the
16 Township with the Township's record only. And so I
17 cancelled that appointment.

18 MS. BOLYARD: I know what she means.

19 CHAIRMAN BURCH: Ms. Bolyard, please explain
20 this.

21 MS. BOLYARD: When we had asked -- I was on
22 vacation, I, believe that week, and we had asked Kim to
23 kind of take over and sit with Kate and go through our
24 record versus her record as to what she feels she
25 submitted to us.

12

1 According to what Kim had told me and what's
2 in a couple extra pages, there were items that we did
3 not have in our record that Kate felt was there. We had
4 decided we could not add that into that record but that
5 we would put it on the side and let you determine what
6 to do with it after that.

7 That's probably what Kim meant, was do not
8 meet with Mannik & Smith because it matters to us and to
9 Kate what's in the record. And we just went page by
10 page with Kate, I believe, in trying to determine that.
11 So I know what she's trying to explain.

12 MS. KELLY: But if I may explain a little
13 further too, what I think we wanted, Kate, or at least
14 what was in my mind when I talked to Kim about this was
15 that you not meet at Mannik & Smith's site and go
16 through their record; that first we determine if our
17 record was complete, and then we would get with Mannik &
18 Smith and make sure that their record had in it what our
19 record did, if that makes sense. I'm not sure it even
20 does to me, but....

21 It was a moot point of you sitting with them
22 because this is our -- ours is the official record, so
23 it needed to be done here.

24 MS. BOLYARD: Mm-hmm.

25 MS. KELLY: So I'll ask my question again.

13

1 What do you think Mannik & Smith didn't
2 review?

3 MS. BOND: Well, according to Walter, he did
4 not review information that was requested after a
5 May 2nd, 2005, meeting with additional hydrogeo
6 information.

7 MS. KELLY: What additional hydrogeo? Would
8 that be in the appendices?

9 MS. BOND: Appendices.

10 MR. BOLT: Yes. In the September 4th report,
11 and at the May meeting we'd asked for that. Nothing has
12 been -- we just confirmed like you have it in your
13 record --

14 MS. KELLY: Okay.

15 MR. BOLT: -- we had the benefit of reading
16 the Township's record, but --

17 MS. KELLY: It doesn't appear as though we
18 have it in our record either.

19 MS. BOND: But being asked not to go through
20 my submittals to Mannik & Smith, I couldn't tell you if
21 their file is complete or not.

22 After a conversation I had with Nancy
23 following -- and I believe it was in December of 2005, I
24 know that their files are not complete based on some
25 specific questions I had for her: Do you have specific

14

1 Item A and B, for lack of what those items were?

2 She reviewed their files, and said, I'll call
3 you if I have them.

4 I did not receive a phone call back. So the
5 response letter that I sent to the ZBA references lack
6 of information in their files. So I know there are
7 items missing in their file that were sent directly to
8 Mannik & Smith. So I know that --

9 MS. KELLY: Nothing should have ever been sent
10 directly to Mannik & Smith, and if it was --

11 MS. BOLYARD: No.

12 MS. KELLY: -- it's not in our record, and I
13 guess in my opinion doesn't count anyway. Everything
14 needs to come through the Township. I mean we have no
15 way to verify -- I mean you could have sent her a volume
16 of listings, and if we didn't know about it...

17 MS. BOND: Well, so to answer your question,
18 I'm not satisfied that their record is complete.

19 MS. KELLY: Well, I'm -- we don't have the
20 appendices to that report either, so as far as I know,
21 they don't exist.

22 CHAIRMAN BURCH: Ms. McClain?

23 MS. McCLAIN: Just to add to this, I received
24 a letter dated January 20 from Washtenaw Engineering
25 that gave a list of documents, which Kate wished to know

15

1 if we had. I went through our files, and we had from
2 this list --

3 MS. KELLY: This year?

4 MS. McCLAIN: January 20, 2005, I'm sorry.

5 MR. SHEA: 2006.

6 MS. McCLAIN: 2006. I'm stuck in 2005. We
7 had all but one of these items. That item was a
8 March 15th, 2005, DTE letter regarding service to the
9 site, which was not an issue because we had also
10 contacted DTE and determined that service to the site
11 was suitable.

12 That -- those appendices were not listed on

13 this list. I went through this list and checked off
14 what was in our file, and I have those documents with me
15 tonight.
16 MS. BOLYARD: And that's because the Township
17 doesn't have them in their file, right?
18 MS. KELLY: Right.
19 I mean I guess my understanding from talking
20 to Kim and talking to Mannik & Smith is that they have
21 everything that we have, which by definition is the
22 complete file, and -- with the exception of that DTE
23 letter.
24 MR. BOLT: And the appendices to the September
25 report.

16

1 MS. KELLY: Well, we don't have the appendices
2 either, Walter, so it's a moot point.
3 MR. BOLT: Do you have those appendices?
4 MS. BOND: Yes.
5 MR. FLINTOFT: Do you want to give the
6 appendices to the Zoning Board of Appeals?
7 MS. BOND: Are you asking me to give them
8 tonight or...
9 MR. FLINTOFT: Yes; tonight.
10 MS. BOND: I don't know what purpose it would
11 be to give them tonight.
12 MR. FLINTOFT: I mean do you want them to have
13 them?
14 MS. BOND: Yes, I do, but --
15 MR. FLINTOFT: Then you need to get them to
16 the Board.
17 MS. BOND: This minute? I guess, no, I don't,
18 because I don't know that I have everything with me, and
19 I don't know that it's the date of the report that they
20 have, and I don't think that's an appropriate thing to
21 ask me to do tonight.
22 MR. FLINTOFT: Okay.
23 MS. BOND: She asked me if I thought their
24 records were accurate, and I said no. That was an
25 answer in response to her question.

17

1 MR. FLINTOFT: Do you think it would -- do you
2 think it's important to your presentation that the Board
3 have the appendices?
4 MS. BOND: Yes, I do, but just as in the
5 previous agenda item, they weren't prepared to answer a
6 question, and I don't know that I am prepared to answer
7 that question. If you want to give me ten or fifteen
8 minutes to dig through my files, I'm happy to do that,
9 but just this second, no.
10 MR. FLINTOFT: No. I mean tonight. If you
11 can get them to them tonight.
12 MS. BOND: Sure.
13 MR. FLINTOFT: Because they should have them.
14 MS. BOND: Sure, but I'd also then like to
15 have access to your copy machine so that I can copy them

16 and give them a copy.
17 MR. FLINTOFT: Sounds fair to me.
18 MS. KELLY: Could I ask that --
19 CHAIRMAN BURCH: However, even if we were to
20 get them tonight, in fairness to the Board, if they're
21 going to be relevant to the decision that we make
22 regarding the overturning of the Planning Commission's
23 decision, we will have to have time to review them, and
24 I am very skeptical that that will occur -- that review
25 would occur this evening.

18

1 MS. KELLY: May I ask another question,
2 Mr. Burch?
3 CHAIRMAN BURCH: Ms. Kelly?
4 MS. KELLY: It's relevant, I believe.
5 Kate, do you think these appendices -- and I'm
6 hoping that's all it is. Do you think having them would
7 have changed the report that Mannik & Smith submitted?
8 MS. BOND: I guess I don't know how to answer
9 that immediately because I guess I would like to know --
10 in short answer, yes, possibly, but I would like to know
11 what question it is they're looking to answer.
12 MS. KELLY: I mean what I'm getting at here is
13 if we're arguing about portions of the record that any
14 reasonable person could say wouldn't have made a
15 difference to the outcome anyway, it would seem more --
16 MS. BOND: In deference to the decision you're
17 trying to make tonight, I don't know because there are
18 more basic issues at hand, I guess. So, no.
19 But I would not like that answer held against
20 me later on. I mean I'm happy to -- if you give me the
21 opportunity to provide them, I'm sure I have them with
22 me, and I'm happy to do that tonight, but if it's my
23 only copy, I don't appreciate being given a couple
24 minutes to give them up, you know.
25 But I don't think your decision tonight is

19

1 going to be based on those appendices alone.
2 CHAIRMAN BURCH: For my benefit, Ms. Bond,
3 were these appendices to the Canopus report, per chance?
4 MS. BOND: Yes, correct.
5 CHAIRMAN BURCH: Okay. Well, speaking for
6 myself and myself only, the Canopus report I found to be
7 very favorable to your position, and the appendices --
8 and I made that finding without the appendices. I doubt
9 the appendices would have changed my mind in that one
10 specific area anyway.
11 Having said that, I am now in a quandary as
12 can we proceed with this situation this evening, knowing
13 full well that the applicant does not feel that the
14 record is complete.
15 MS. BOND: I -- can I answer that? I would
16 like to proceed.
17 CHAIRMAN BURCH: You would like to proceed.
18 MS. BOND: Yes.

19 CHAIRMAN BURCH: Mr. Flintoft?
20 MR. FLINTOFT: That's fine.
21 MS. KELLY: Well, may I just state that the
22 record is as complete as the record is. I mean Ms. Bond
23 has confirmed that we have everything she submitted.
24 What's confirmed is that Mannik & Smith had everything
25 that Washtenaw Engineering wanted them to have, and

20

1 that's a different thing than our record not being
2 complete.
3 MS. BOND: May I --
4 CHAIRMAN BURCH: Yes, ma'am.
5 MS. BOND: I believe that Mannik & Smith and
6 the Planning Commission had everything they needed in
7 order to make a decision for preliminary site plan
8 approval. So I believe everybody has everything they
9 need in order to proceed forward tonight.
10 CHAIRMAN BURCH: Thank you.
11 MS. KELLY: Thank you.
12 CHAIRMAN BURCH: On that note then, we shall
13 proceed.
14 To reiterate my last statement, let the record
15 show that there were no members of the general public
16 making any statements regarding this appeal at the
17 January 10th, 2006, ZBA meeting.
18 These next comments, I want to ensure that
19 everyone understands that I am now speaking not as a
20 chairman of the Zoning Board of Appeals but as a member
21 of the Zoning Board of Appeals, and my next comments are
22 my personal opinion and are not in any way intended to
23 represent the opinions or attitudes of the Board of
24 Appeals.
25 MR. BURCH: As I began my review of the record

21

1 for this appeal, I did so keeping in mind the intent of
2 the 1973 Zoning Ordinance, which states, quote: In
3 furthering the objectives of this ordinance, it is
4 recognized that there is value to the public in
5 establishing safe and convenient traffic movement within
6 sites and in relation to access streets; that there is
7 value in encouraging a harmonious relationship of uses,
8 buildings, and structures within a site and in relation
9 to adjacent and neighboring sites; that there is value
10 to the public interest and health and determining that
11 needed facilities and improvements will be properly
12 provided; and that there is value to the public in
13 conserving and protecting natural resources in
14 development. Towards these ends this ordinance requires
15 a site plan review and approval by the Township Zoning
16 Board for certain uses, buildings, and structures that
17 can be expected to have a significant impact on natural
18 resources, traffic patterns, and adjacent properties and
19 on the character of future development.
20 I address this here because in addition to the
21 general required data for preliminary site plan approval

22 specified in Section 9.04 and Standards For Site Plan
23 Approval specified in Section 9.08 of the Zoning
24 Ordinance, the Planning Commission at its September 2,
25 2003, meeting approved a motion for additional

22

1 information. To me, this entire appeal hinges on the
2 question of whether or not the Planning Commission had
3 the authority to require such an extensive examination
4 of the concerns raised in this motion for additional
5 information.

6 Considering that this development is arguably
7 the largest single development in the history of the
8 township and the fragile nature of the environment of
9 West Lake, I feel that the Planning Commission not only
10 had the authority to ask such questions, but in keeping
11 with the intent of the Zoning Ordinance, the Planning
12 Commission had the responsibility to require that the
13 applicant address the issues raised in the request for
14 additional information.

15 In addition, in the ensuing two years and ten
16 months between this request and the Planning Commission
17 hearing, the applicant should have been well aware as to
18 the extent these concerns would have to be addressed to
19 gain Planning Commission approval.

20 Regarding traffic on Waterloo Road, which was
21 the first of the six findings which we were asked to
22 investigate, I feel that Waterloo Road in its present
23 configuration and condition is inadequate to support the
24 additional traffic that would result from a 90-unit
25 subdivision. This concern was addressed as early as

23

1 July 31, 2003, in a letter from Bruce Smith of The
2 Mannik & Smith Group to Mr. John --

3 MS. KELLY: Can I interrupt?

4 MR. BURCH: I'm sorry. Thank you.

5 To Mr. John Shea, Chairman of the Dexter
6 Township Planning Commission, and copied to Kate
7 Drueke -- is that the proper pronunciation?

8 MS. BOND: (Nodding head up and down.)

9 MR. BURCH: -- Washtenaw Engineering.

10 Quoting this letter: The proposed project
11 will increase traffic on Waterloo Road. This traffic
12 will utilize two entrances to the project, and the
13 traffic will split in two directions, east or west, on
14 Waterloo Road. As per the vicinity map, the project is
15 approximately one half mile east of Werkner Road. The
16 project is expected to generate approximately 900 trips
17 per day based on current projections. Waterloo Road is
18 a gravel road maintained by the Washtenaw County Road
19 Commission, WCRC.

20 The above information is provided as
21 background information. Waterloo Road is servicing
22 additional traffic every year as new homes continue to
23 be built on it. The project will significantly impact
24 the existing road and require excessive maintenance to

25 be performed if left to remain gravel. Waterloo Road

24

1 needs to be improved in order for the Township to
2 minimize their maintenance costs paid to Washtenaw
3 County Road Commission and to maximize their obligation
4 to provide emergency service access to the project.

5 The Township has wrestled this issue many
6 times in the past. Please note that the county will not
7 improve Waterloo Road on their own initiative. They
8 must be petitioned by the Township or affected
9 landowners, establish a Special Assessment District, and
10 then make the improvements. This process could take
11 years, if it happens at all.

12 There are other avenues available to improve
13 roads, which the Township may wish to consider. It
14 should be noted that the following applies to several
15 ongoing projects within the Township and is not limited
16 to West Lake Hills. The most obvious would be to
17 require the project developer improve Waterloo Road as
18 part of this project. This has the effect of putting a
19 large, upfront, financial burden on the developer, which
20 could seriously impact the project.

21 A second opportunity to finance the road
22 improvements exist within the development. A Special
23 Assessment District could be established within the
24 project itself. Funds could be collected annually until
25 such time as Waterloo Road could be paved. This Special

25

1 Assessment District could even utilize a graduated scale
2 in which the amount of the tax levied could vary from
3 year to year. Of course, any Special Assessment
4 District would have a limited duration and would not be
5 a permanent obligation.

6 Other funding mechanisms, including
7 development agreements, may exist as well. I recommend
8 that the township attorney be consulted regarding this
9 matter as this situation continues to come up on a
10 regular basis within the Township. It is hoped that a
11 policy could be developed to address this issue.

12 Further, in a letter over the signatures of
13 Nancy McClain and Walter J. Bolt of Mannik & Smith Group
14 dated April 4, 2005, addressed to Mr. John Shea and
15 copied to Kate Bond of Washtenaw Engineering, the
16 Waterloo Road situation was again spoken to. Quoting
17 the summary: The following issues should be clarified
18 or revised by the applicants to the Planning
19 Commission's satisfaction: 1. The Planning Commission
20 should consider how improvements to Waterloo Road may be
21 made with regard to funding and construction phasing of
22 the work.

23 And the conclusions: With discussions and
24 clarifications of the above items, the plan may,
25 emphasis added, be acceptable for preliminary approval.

26

1 The Planning Commission must be satisfied by the efforts
2 of the applicants and the impacts of the project prior
3 to preliminary site plan approval.

4 I have gone through this rather lengthy
5 discussion to demonstrate that the Waterloo Road
6 condition was an important issue in the preliminary site
7 plan approval process and that the applicants were, or
8 should have been, well aware that mitigation efforts on
9 Waterloo Road would be important to approval. An
10 extensive review of the information provided finds the
11 matter discussed on several occasions. However, during
12 my review of the available information, no place could I
13 find a plan, proposal, or schedule of necessary events
14 sufficient to demonstrate to my satisfaction that the
15 applicant had addressed the mitigation of Waterloo Road
16 limitations adequately to satisfy Planning Commission
17 concerns for preliminary site plan approval.

18 Regarding the issue of West Lake Hills and
19 surrounding wetlands, referring to the Planning
20 Commission Meeting Minutes of December 6, 2005: On
21 August 26th and September 2nd, 2003, the Planning
22 Commission advised the applicant that it was concerned
23 about the impacts that such a large development would
24 have on the lake and surrounding wetlands. The Planning
25 Commission requested that the applicant present a lake

27

1 impact study addressing the potential impact a
2 development of this character may have on West Lake and
3 the sources of such impacts and proposed design measures
4 to eliminate or minimize such impacts.

5 This study should address both surface water
6 and groundwater concerns. The Planning Commission also
7 requested that the applicants submit a hydrogeologic
8 study that addressed, quote, the potential for
9 groundwater transmission of septic tank drain field
10 leachate to West Lake and/or the Wetlands, close quote.

11 Addressing groundwater concerns, the applicant
12 submitted a Report of Hydrogeologic Investigation
13 prepared for West Lake Hills, LLC, by Canopus
14 Environmental Group, Inc., dated September 20, 2004.
15 This report, although challenged by the Township
16 engineering consultants, concluded that the proposed
17 development should have no adverse impact on West Lake
18 or on the wetland areas that are not immediately
19 adjacent to West Lake.

20 Surface water concerns, however, are another
21 matter. The applicant did not submit any information
22 for the July 26 Planning Commission meeting regarding
23 surface water impacts of the proposed development on the
24 lake or the wetlands, either identifying those impacts
25 or proposing mitigation measures.

28

1 In my review of the literature provided, the
2 most comprehensive discussion of surface water issues
3 occurs in a document entitled "West Lake Hills

4 Condominium Responses to Report of Findings of Fact
5 December 15, 2005," provided to the Dexter Township
6 Zoning Board of Appeals on the January 10, 2006,
7 meeting. In this document, the applicant's consultant
8 states:
9 Washtenaw Engineering Company has indicated to
10 the Planning Commission both verbally at Planning
11 Commission meetings and in written responses to the
12 Planning Commission that surface water contaminates will
13 be treated through best management practices acceptable
14 to the County for soil erosion control. Further detail
15 will be provided during the preparation of final site
16 plans through soil erosion control plans and
17 specifications which are not required, per the
18 ordinance, for preliminary site plan approval.
19 It is my feeling that the Planning Commission
20 was not asking for soil erosion control plans and
21 specifications, which are not required at this point,
22 but was asking for an impact study and proposed design
23 measures to minimize such impacts.
24 Regarding impact on existing wells: Again
25 referring to Planning Commission Meeting Minutes of

29

1 December 6, 2005:
2 On August 26, in the September 2, 2003,
3 Planning Commission identified concerns that the
4 proposed development could adversely impact existing
5 users' water supply and requested that the applicant
6 submit a hydrogeologic study 'addressing the
7 characteristics of local groundwater conditions as they
8 pertain to the availability of an adequate supply of
9 potable water to serve the project while not undermining
10 the integrity of existing local wells....
11 While the applicant submitted a hydrogeologic
12 study that concluded proposed wells would not adversely
13 impact existing wells in the vicinity, the Township's
14 engineering consultants concluded that it was not clear
15 on how the cone of influence was calculated.
16 The proposed development is only 3/4 miles
17 east of the Old Chelsea Dump, which was identified by
18 the applicant's hydrogeologic consultant as, quote,
19 representing a potential to adversely impact groundwater
20 quality at the subject site, end quote.
21 The applicant subsequently submitted
22 information to the effect that the dump had not impacted
23 the groundwater at the site and concluded that the dump
24 has a relatively low potential to impact the site. The
25 Township's engineering consultants were not so sanguine

30

1 about the potential, pointing out that the drift aquifer
2 beneath the dump is unconfined and the direction of
3 groundwater flow combined with insufficient or
4 nonexistent protective clay could facilitate future
5 groundwater contamination on the site.
6 The Report of Hydrogeologic Investigation

7 prepared for West Lake Hills, LLC, by Canopus
8 Environmental Group, Inc., referred to earlier also
9 addressed these issues. The report does present fair
10 and compelling evidence that the existing local wells
11 will not be affected; although, the disagreement
12 regarding the calculation of the cone of influence is
13 beyond my expertise to evaluate. To quote the report
14 concerning the Old Chelsea Dump: The results of on-site
15 groundwater quality testing indicate that a potential
16 site of environmental contamination, Old Chelsea Dump,
17 does not appear to have resulted in impact to the
18 groundwater quality at the subject site.

19 Does this mean because it hasn't contaminated
20 the groundwater it won't do so? I am not really
21 comfortable with that position, and in light of the
22 Township's engineering consultant's concern on this
23 issue, I believe this requires further investigation.

24 Regarding excessive gradient, cuts, and fills,
25 quoting the Planning Commission Meeting Minutes of

31

1 December 6, 2005:

2 On August 23rd, 2003, the Planning Commission
3 advised the applicant that it was concerned about the
4 impacts the proposed grading, cuts and fills would have
5 on the environment and the existing natural resources
6 due to erosion and the loss of integrity of the wetlands
7 and the loss of trees. The applicant agreed that it
8 could alter proposed grades to more closely follow
9 existing topography, eliminate wetlands crossing by
10 utilizing cul-de-sacs, and save more trees.

11 On September 2nd, 2003, when the Planning
12 Commission adopted the motion seeking additional
13 information from the applicant, it included the request
14 that the applicant provide an updated road alignment
15 showing all proposed cul-de-sacs and a more accurate
16 depiction of road grades and elevations in coordination
17 with existing topography to minimize cut and fill and
18 also a clear graphic indication of the boundaries of
19 existing tree stands, but not individual trees, and
20 their general character by average size, species, and
21 condition, and the anticipated boundaries of specific
22 tree stands upon completion of grading and road
23 construction.

24 The amended preliminary site plan and
25 accompanying reports submitted by the applicant on

32

1 May 18, 2005, continues to reflect excessive grading and
2 fails to incorporate any of the assurances given in
3 response to the Planning Commission's previously
4 communicated concerns including the promised elimination
5 of the wetlands crossing. The amended plans and reports
6 either entirely ignore the previously tendered
7 assurances, e.g. failing to even discuss the cuts/fills
8 issues, the concerns about existing topography, the loss
9 of trees, or the applicant's assurances to mitigate

10 same, or brazenly recast its assurances as mere
11 agreements to look into the issue and then rejecting the
12 fix. The most egregious example of the letter involves
13 the wetlands crossing, regarding which the applicant's
14 consultant states: There was no request to provide
15 cul-de-sacs. The request was to look into the matter.
16 The applicant has done so and chooses not to pursue the
17 use of cul-de-sacs.

18 The applicant's consultant responded to these
19 allegations in her Response to Report of Findings of
20 Fact December 15, 2005. In her response to Finding
21 No. 4 she states:

22 The Planning Commission's request for an
23 updated road alignment showing all cul-de-sacs implies
24 that there are more recent plans with a layout that
25 included cul-de-sacs. That is not the case.

33

1 Cul-de-sacs were considered in early design states and
2 reconsidered when the use of private road standards were
3 also being considered. In discussion with the Township
4 whereby the applicant's consultant asked about the
5 possibility of variances for cul-de-sac length and in
6 turn being told that the approval would likely not be
7 granted, the use of cul-de-sacs was removed from
8 consideration. The Planning Commission asked for an
9 updated road alignment showing all proposed cul-de-sacs.
10 There were no proposed cul-de-sacs.

11 Three paragraphs later in this document, the
12 applicant's consultant states: The Township's Planning
13 Consultant further states in his review letter dated
14 June 23, 2005, on page 3, second paragraph, that all
15 requirements for additional information appear to be
16 met, and he defers to the Township Engineer for
17 engineering-related items.

18 This is a true quotation. However, on page 5
19 of the Township's Planning Consultant's letter he
20 states, quote: Road Layout/Cul-de-Sacs. During
21 preapplication meetings, the applicant was advised to
22 consider use of cul-de-sacs. Strategically located
23 cul-de-sacs could minimize impervious surfaces and
24 resulting stormwater impacts, while minimizing clearing
25 and maximizing the preservation of environmental

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1 resources, including avoidance of wetlands crossing.
2 The applicant has continually advised that cul-de-sacs
3 would be difficult to pursue because 1) the cul-de-sacs
4 would not enable the project to be phased in an
5 appropriate manner; and 2) the current, new,
6 administration at Washtenaw County Road Commission does
7 not support cul-de-sac road for reasons of improved
8 access and road maintenance, snowplowing. I believe
9 that both of these reasons are no longer applicable
10 given the proposal for private roads. For instance, the
11 avoidance of the wetland crossing can be accomplished by
12 cul-de-sacs to either side.

13 Phase II is to consist of 24 lots, and the
14 Planning Commission has authorized cul-de-sacs serving a
15 comparable number of lots in the past. The completion
16 of Phase III would then provide a complete loop system.
17 In addition, there may be an opportunity to shorten
18 Honey Bee Drive between West Lake Hills and Willow Creek
19 Drives through the use of a cul-de-sac.

20 As an alternative, consideration can be given
21 to maintaining the wetland crossing but deleting the
22 segment of West Lake Hills Drive between Lots 20 and 40,
23 but ensuring access to Lots 38 and 39 through specially
24 configured lots with minimal frontage on such
25 cul-de-sacs. This alternative would provide for a

35

1 continuous expanse of open space from the site's
2 principal wetland area to West Lake.

3 Continuing to quote: No residential project
4 has been proposed in Dexter Township in the past ten
5 years, and possibly much longer, of such intensity and
6 scale. Given the character on the site and its natural
7 resources, including the proximity to West Lake, whether
8 hydrologically connected or not, the above options seem
9 to have an environmental benefit that does not undermine
10 reasonable and emergency access, and warrant further
11 consideration.

12 While the resulting length of the cul-de-sacs
13 near West Lake may require a waiver from the private
14 road standards, the necessity for such a waiver, which
15 may or may not be granted, should not preclude
16 consideration of the cul-de-sacs.

17 I have rather extensively quoted these
18 passages to demonstrate that even in the mind of Dexter
19 Township's Planning Consultant, cul-de-sacs are a viable
20 option and should not have been dismissed quite so
21 quickly.

22 In my opinion, the applicant has given -- been
23 given clear instructions by the Planning Commission to
24 arrange the proposed roads, cul-de-sacs, proposed
25 grading, cuts, and fills to make maximum use of the

36

1 existing topography and minimize the impacts on the
2 environment and existing natural features. I feel that
3 the applicant did not make an adequate effort to
4 mitigate these concerns.

5 Regarding common use districts: The Dexter
6 Township Planning Commission Meeting minutes of
7 September 2, 2003, identified as additional requested
8 information, Item No. 6, clarification of the intended
9 use program for the CU zone area, such as the
10 anticipated improvements to the area and the type of
11 lake activities involved. The applicant anticipates,
12 upon preliminary site plan approval, applying for a
13 rezoning of the open space that abuts West Lake to
14 Common Use to conform with the 1973 Zoning Ordinance.

15 The problem lies in the fact that there are

16 approximately 2,170 feet of West Lake frontage, which is
17 adequate to provide riparian access to only 67 lots.
18 The applicant has proposed limiting access to only
19 certain lots to provide nonriparian access, but how this
20 is to be accomplished has not been worked out in detail.
21 I do not believe this question has been adequately
22 addressed to permit the Planning Commission to approve
23 the application.
24 Finally, regarding a pedestrian circulation
25 system: The Dexter Township Planning Commission meeting

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1 minutes of September 2, 2003, identified as additional
2 requested information, Item No. 7, preliminary location
3 of trails and/or sidewalks.
4 In her Responses to Report of Findings of Fact
5 December 15, 2005, applicant's consultant states in
6 response to Finding No. 6: The Planning Commission's
7 September 2, 2003, motion requested additional
8 information as related to pedestrian circulation was not
9 a specific request to provide pedestrian circulation.
10 The applicant responded to the request by indicating
11 where pedestrian access through an area of open space
12 would be provided.
13 Section 9.08 of the Zoning Ordinance instructs
14 the Planning Commission to assure that the movement of
15 pedestrian traffic within the site shall be safe and
16 convenient.
17 In light of the Planning Commission's request
18 for additional information and the specific requirement
19 for safe and convenient movement of pedestrian traffic,
20 I consider the applicant's response to this request
21 inadequate.
22 Let me stress that my previous comments and
23 the statement I am about to make are representative of
24 my personal opinion as a member of the Dexter Township
25 Zoning Board of Appeals and not meant to represent the

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1 opinion or findings of the Board in its entirety.
2 Having thoroughly and impartially reviewed all
3 of the information provided to me by the applicant,
4 Dexter Township Planning Commission, and Dexter
5 Township, it is my opinion, based on the record and any
6 additional evidence presented, that the applicant did
7 not satisfy the requirements of the Zoning Ordinance and
8 therefore the Dexter Township Planning Commission's
9 decision to deny preliminary site plan approval should
10 be sustained.
11 Thank you, members of the Board.
12 MS. KELLY: Tough act to follow.
13 MR. GAJEWSKI: Right. Exactly.
14 Mr. Chair?
15 CHAIRMAN BURCH: Mr. Gajewski.
16 MR. GAJEWSKI: While I can't add much as far
17 as maybe to say something in a different way, the goal
18 of the GDP, the General Development Plan, is really

19 sustainable development, and that means not using up our
20 natural resources, not denigrating the natural
21 resources. And the way you do that is you protect
22 sensitive areas within the watershed. You protect
23 natural forces, basins, natural depression; you protect
24 wetlands; you protect natural drainage ways. And what
25 you do is you use natural systems for stormwater runoff.

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1 It's called natural engineering.
2 And, you know, people oftentimes don't realize
3 when you're destroying, you're actually destroying the
4 natural stormwater management system when you clear-cut
5 a healthy tree canopy; that this is really another green
6 technology for stormwater management.
7 By preserving a healthy tree canopy, you can
8 significantly reduce stormwater runoff because trees do,
9 in fact, intercept drain water from leaves, needles, the
10 branches, the trunks, and they reduce stormwater runoff.
11 I mean if you've ever been under -- you know, a natural,
12 young and healthy tree canopy and you dig down in the
13 soil, I mean it's literally almost dry. They really do
14 function, even when there's impervious structures
15 underneath, and that's a fact.
16 And also as far as this development is
17 immediately contiguous to West Lake and so, therefore,
18 protecting the water quality is of utmost importance,
19 and, therefore, an open space community is always the
20 preferred method of development, and when designed
21 properly, a cluster development can actually reduce
22 imperviousness by up to 50 percent.
23 So that's significant in protecting water
24 quality and recharging the groundwater, which is really
25 what our ordinance in Section 24.03 C. states; that

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1 you -- all the water that falls on the site literally
2 has to remain on the site or it cannot impact surface
3 waters that are immediately contiguous to the
4 development.
5 Also, as far as the general objectives and
6 purpose of the Planning Commission are those set forth
7 in Michigan Act 168, 1959, the Township Planning Act,
8 and that's namely to prepare plans and take such actions
9 to promote the public health, safety, and general
10 welfare, to encourage the use of resources in accordance
11 with their character and adaptability, and to avoid the
12 overcrowding of lands by building and people and to
13 lessen congestion and promote safety on public roads.
14 And the ZBA has the authority to interpret the
15 intent of zoning regulations, and that being said, the
16 intent of Section 9.01 of the '73 Zoning Ordinance
17 precludes developments that are not in harmony with
18 public safety and convenient traffic movement, and
19 they're not in harmony with natural resources and
20 natural features -- natural feature preservation, and,
21 therefore, I support the Planning Commission's

22 resolution to deny this proposal.
23 That's all I've got.
24 CHAIRMAN BURCH: Thank you, Mr. Gajewski.
25 MR. WAGNER: Go ahead.

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1 CHAIRMAN BURCH: Ms. Kelly?
2 MS. KELLY: First of all, I just want to
3 reiterate that I support what you read into the record,
4 Steve, and I have a couple other comments that don't
5 have anything specifically to do with the plan but with
6 procedure.
7 Earlier this evening we heard an appeal for
8 administrative review about a plan that had -- where
9 preliminary site plan approval had expired under the
10 provisions of Section 6.09 B. of the current zoning
11 ordinance, and in preparing for that appeal this
12 evening, I had opportunity to read and reread and read
13 again this section of the ordinance, and I'm absolutely
14 convinced and I would interpret it so that had the
15 Planning Commission approved your final site plan
16 approval -- or preliminary site plan approval, it would
17 have been expired the day it was approved.
18 The intent of this section of the ordinance is
19 really clear. No preliminary site plan was to go
20 forward after one year past the effective date of this
21 ordinance. That date was March -- May 1st, 2004. So
22 I'm not sure what it says about procedures around here
23 that we continue to review this site plan, but it, in my
24 view, is a moot point because it was expired and
25 couldn't have gone forward with final site plan approval

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1 without a variance anyway -- or without an
2 administrative appeal as we did tonight and approve to
3 go forward.
4 That being said, you know, in contrast to the
5 one where we actually did grant relief tonight, there's
6 a big hole in activity on this preliminary site plan
7 approval that I'm not aware that the Township was doing
8 anything or requiring anything that created this big
9 hole in time.
10 In other words, it doesn't look like you were
11 diligently pursuing approval of the plan. That's just
12 an observation in going through the record and what was
13 submitted when.
14 So -- and I guess again under this 6.09 D. --
15 or 6.09 B., it says:
16 "Any application for preliminary site plan
17 approval filed with the zoning administrator and
18 containing all information required by the
19 ordinance in effect at the time of submittal and
20 accompanied by all required fees, prior to the
21 effective date of this ordinance, shall be reviewed
22 using the procedures and substantive standards
23 under the ordinance in effect at the time of
24 submission."

25 In going back and reviewing the record, there

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1 were plans submitted before May 1st, 2003, when the new
2 ordinance went into effect, and there was a report
3 generated by Mark Eidelson of LandPlan, a letter dated
4 March 21st, 2003. And the first item he lists in here
5 is the plan appears to meet the submittal requirements
6 of the Zoning Board except as otherwise known or
7 clarified below. And he goes on to list Item A through
8 F of things that are missing. And I can't find anything
9 in the record prior to May 1st where these items were
10 submitted.

11 So to me even -- this should never have gotten
12 out of the starting block as it were because it wasn't a
13 complete application on May 1st, 2003.

14 So I know those are procedural things, but I
15 mention them only because our new ordinance provides so
16 many tools to mitigate some of the problems that this
17 specific site has regarding natural features and so
18 forth, and if there was ever a development that screamed
19 for the provisions about open space, orderly district,
20 this is one of them, and I'm just really saddened that
21 you chose to proceed with this particular plan, and I
22 believe the -- it would have been better all around for
23 everyone if you had chosen to go the open space route.

24 With that being said, I agree with the
25 findings of fact of the Planning Commission, and I see

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1 no reason to overturn their decision.

2 CHAIRMAN BURCH: Thank you, Ms. Kelly.
3 Mr. Wagner?

4 MR. WAGNER: Yes, Mr. Burch. Thank you.

5 I agree both with yourself and Ms. Kelly. My
6 reason is considering the scale of the project and the
7 potential impact on the existing landscape as well as
8 the surface water and stormwater possibilities, not to
9 mention the traffic potentials, I think that in my view,
10 having responsibility to the Township of Dexter, that I
11 agree with the Planning Commission, and I believe that
12 their decision should be sustained.

13 CHAIRMAN BURCH: Thank you, Mr. Wagner.
14 Mr. Cormier?

15 MR. CORMIER: You guys, the rest of the Board
16 has pretty much supported Kate, what I would have
17 supported as well. There's really no -- I don't think
18 most of the concerns were addressed early enough that
19 the Planning Commission has given to the applicant. I
20 don't see any reason why it should be overturned, and
21 that's basically it.

22 CHAIRMAN BURCH: Thank you, Mr. Cormier.
23 Since this is an administrative review on
24 the -- with the mind of either sustaining or overturning
25 the Planning Commission's decision, we are -- as we

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1 would typically do, ask for comment at this point, I
2 don't think that is appropriate because the members of
3 the Board have spoken.
4 I would ask the Board, have we prepared a
5 resolution?
6 MS. KELLY: May I ask a question of our humble
7 counsel?
8 CHAIRMAN BURCH: You may.
9 MS. KELLY: Should we open this up to the
10 public?
11 MR. FLINTOFT: Well, you can if you want to.
12 MS. KELLY: We gave them an opportunity to
13 talk to --
14 MR. FLINTOFT: And the applicant, if they have
15 any comments, based upon these preliminary findings.
16 CHAIRMAN BURCH: Thank you. Thank you,
17 Mr. Flintoft.
18 Therefore, at my discretion I will open the
19 floor to comments from the public and/or the applicant,
20 if anyone chooses to share any information that he or
21 she feels may change the opinion of the ZBA in this
22 matter.
23 (No verbal response.)
24 CHAIRMAN BURCH: Hearing none, Ms. Kelly, are
25 you prepared to presume a resolution?

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1 MS. KELLY: I'm not prepared, but I could work
2 on really quickly.
3 CHAIRMAN BURCH: How much time would you like?
4 MS. KELLY: Give me ten minutes.
5 CHAIRMAN BURCH: Thank you.
6 MS. KELLY: May I make a motion denying
7 overturning the decision and cite the Planning
8 Commission's findings?
9 MR. FLINTOFT: You have to state whether --
10 you made findings, and you have to make a conclusion
11 that the applicant has not persuaded you by a
12 preponderance of the evidence to overturn the Planning
13 Commission.
14 I think -- and you should just put it in that
15 words, the words that find -- based upon your findings,
16 you conclude that they have not persuaded you by a
17 preponderance of the evidence.
18 I guess the other statement you should say,
19 you should say -- if these are your findings, say that
20 the appeal is denied so that they can take the next step
21 in their remedies if they wish to pursue.
22 MS. KELLY: Could we just by reference say
23 that our findings agree with the Planning
24 Commission's --
25 MR. FLINTOFT: You should vote on that.

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1 MS. KELLY: Right.
2 And then we can make a motion to deny their
3 appeal because they haven't persuaded us?

4 MR. FLINTOFT: Yes.
5 MS. KELLY: I guess I can make a motion to
6 accept and concur with the findings of the Dexter
7 Township Planning Commission dated December 6th, 2005.
8 MR. CORMIER: Support.
9 CHAIRMAN BURCH: It's been moved and seconded
10 that we as a board accept and concur with the findings
11 of the Dexter Township Planning Commission,
12 December 6th, 2005.
13 All in favor, aye?
14 Aye.
15 MR. WAGNER: Aye.
16 MS. KELLY: Aye.
17 MR. GAJEWSKI: Aye.
18 MR. CORMIER: Aye.
19 CHAIRMAN BURCH: Any opposed, no. Motion
20 carries.
21 MS. KELLY: I would further make the motion to
22 deny the applicant's request to overturn the decision by
23 the Planning Commission to deny their preliminary site
24 plan approval due to the fact that they have not
25 persuaded us by a preponderance of the evidence to

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1 overturn the decision.
2 Is that acceptable to you?
3 MR. WAGNER: I second it.
4 MR. GAJEWSKI: I second.
5 CHAIRMAN BURCH: It has been moved and
6 seconded that based on the findings of the Planning
7 Commission that the applicant has not persuaded the
8 Board by a preponderance of evidence, that we should
9 overturn the decision of the Planning Commission.
10 Mr. Wagner?
11 MR. WAGNER: Yes.
12 CHAIRMAN BURCH: Mr. Cormier?
13 MR. CORMIER: Yes.
14 CHAIRMAN BURCH: Mr. Gajewski?
15 MR. GAJEWSKI: Yes.
16 CHAIRMAN BURCH: Ms. Kelly?
17 MS. KELLY: Yes.
18 CHAIRMAN BURCH: The Chair votes --
19 MR. GAJEWSKI: Did you?
20 MS. KELLY: Yes.
21 CHAIRMAN BURCH: The Chair votes yes. The
22 motion is carried. The decision of the Planning
23 Commission is sustained.
24 (Proceedings concluded at 9:40 p.m.)
25

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1 STATE OF MICHIGAN)
) SS.
2 COUNTY OF WASHTENAW)
3 CERTIFICATE OF REPORTER
4 I, LYNNE MARIE ZAKRZEWSKI, Certified Realtime
5 Reporter, a Notary Public, do hereby certify that I

6 recorded in shorthand the Proceedings had in the
7 aforementioned matter on the date hereinbefore set
8 forth, and that the foregoing 48 pages comprise a
9 complete, true, and accurate record to the best of my
10 ability of said proceedings.

11
12

LYNNE MARIE ZAKRZEWSKI, CSR-3179, RMR, CRR, CPE

13

Notary Public, Washtenaw County, Michigan

14 Acting in the County of Washtenaw

My Commission Expires: 05/07/2008

15 Dated: This 17th day of March, 2006

7)

04-02-403-025 Remand due to court order

05-ZBA 602B

Robert and Kathy Lane

9558 Winston Drive

Applicant requests relief from:

Section 18.23.A to allow a 12' setback from new detached garage to Winston Drive. (Currently 8')

To allow an 11' setback to Dexter-Pinckney Road from new detached garage. (Currently 7') To allow an 18'8" front setback from the access from Dexter-Pinckney Road to Winston Drive.

Section 12.01.E.3.C to allow a 24' rear setback opposite the access from Dexter-Pinckney Road to Winston Drive.

Section 18.23.A to allow a 5' setback from new attached garage to Winston Drive.

Section 18.23.B to allow a 30.' setback from new home to Portage Lake.

To allow a 26' setback from new deck to Portage Lake.

The official transcript will be inserted here.

ZONING BOARD OF APPEALS

DEXTER, MICHIGAN

In the Matter of

04-02-403-025

05-ZBA 602B

Robert and Kathy Lane

9558 Winston Drive

PROCEEDINGS HAD in the above-entitled matter
before the ZONING BOARD OF APPEALS at the Dexter
Township Hall, 6880 Dexter-Pinckney Road, Dexter,
Michigan, commencing at 7:30 p.m. on Tuesday, March 14,
2006.

APPEARANCES:

ZONING BOARD OF APPEALS MEMBERS:

Mr. Steven Burch, Chair

**Dexter Township
Zoning Board of Appeals Meeting Minutes**

**March 14, 2006
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Mr. James Cormier, Vice Chair
Ms. Pat Kelly, Secretary
Mr. William Gajewski, Member
Mr. Wendell Wagner, Member

ALSO PRESENT:

Ms. DeNette Bolyard, Recording Secretary
Mr. Steve Piatt, Zoning Administrator
Mr. Peter C. Flintoft, Township Attorney
Ms. Nancy M. McClain, P.E., Mannik & Smith
Mr. Walter J. Bolt, CPG, Mannik & Smith
Mr. John Shea, Planning Commission Chair
Ms. Kate Bond, Washtenaw Engineering
Mr. Mark L. Teicher (P34301), Attorney for the Lanes
And Others

REPORTER: Lynne Marie Zakrzewski, CSR-3179, RMR, CRR, CPE, CLR
Certified Realtime Reporter

I N D E X

PAGE

Remand due to court order 3

Dexter, Michigan

Tuesday, March 14, 2006 - 8:08 p.m.

CHAIRMAN BURCH: The next item on the agenda,
05-ZBA 602B, Robert and Kathy Lane, 9558 Winston Drive.

Mr. and Mrs. Lane are represented this evening
by their counsel Mr. Mark Teicher, is that not correct,
sir?

MR. TEICHER: Yes, thank you.

CHAIRMAN BURCH: Thank you, sir.

Before we pursue this item further, I have to
distribute to members of the Board two letters that were
sent to the Dexter Township Offices this last week
regarding this case.

MS. KELLY: For the record, would you state
who these are to and from and the date.

CHAIRMAN BURCH: Thank you, Ms. Kelly.

The first is a fax dated March 9th, 2006, to
Attention Peter Flintoft, Esquire, Dexter Township
Attorney, from the Law Office [sic] of Mark L. Teicher,
4136 Telegraph Road, Bloomfield Hills, Michigan.

And the second letter, dated March 10th, 2006,
from Mr. Peter C. Flintoft, Dexter Township Attorney, to
Mr. Mark Teicher, Attorney at Law, 4126 [sic] Telegraph
Road, Bloomfield, Hills, Michigan. RE: Robert Lane and
Kathy Lane v Township of Dexter Zoning Board of Appeals.

Now, Members of the Board, as I am sure you are aware, our previous decision denying the variance request to the Lanes for their property in Dexter Township was appealed to the circuit court and has been remanded back to the Township Zoning Board of Appeals for further proceedings.

I'd ask Mr. Flintoft, could you give the Board some guidance on where we go from here?

MR. FLINTOFT: Well, I think what you should do is to set a future date in which you're going to consider and look at pursuant to the judge's order.

The order is that there be further proceedings conducted. And he said that the Court found that the current order [sic] does not allow for meaningful judicial review because the Court lacks the required knowledge of the facts justifying your conclusion regarding harmony and grant.

And specifically the Court found that the record was devoid of competent, material, and substantial evidence in support of the conclusion that the size and bulk of the structures proposed would not provide adequate open space for air and light and that the requested five-foot setback could hamper the effective passage of fire protection and public safety apparatus.

The opinion is six pages long, and this is just, I think, the summary on page 5.

And the Court granted the appeal and then remanded it back here for further proceedings in accordance with the opinion and order, and then it said that the Appellee shall forthwith submit to the parties and the Court evidence in support of its conclusion that all of the required findings per section such-and-such have not been met.

More specifically, the Appellee -- and I believe that's you -- shall provide the factual findings underlying its determination that the requirements of the ordinances were not satisfied because of the obvious defects in Appellants' proposal, including 1) elimination of light and air in the side yard; 2) increased fire risk due to the closeness of structures and lack of space for emergency vehicles between the properties; and 3) the general aesthetic impact of a large size home in a lakeside neighborhood of smaller structures.

And I think it's fairly clear that those are the three elements that the Court wants you to make further findings on. And you're a public body, you have to abide by the statute, and you renoticed this matter, and you set it on tonight. I think in fairness to

everybody, you should put this over to another date and -- so Mr. Teicher and his clients know when it's going to happen. Open the record, the court reporter will be here, Mr. Teicher and his clients can give you such further information as you -- as he wishes to, you can bring out other further information, I suppose witnesses could testify, and then you'll have the task of writing his findings again.

You split 3:2 before on this variance, and none of you are bound to take the same position as you did before; however, I suspect that some of you who haven't voted for a position will want to address the Court's findings. Some of you who voted in favor of the Appellant may wish to make findings in support of the Appellant; I don't know. So -- and you might ask Mr. Teicher if he has any different view of what should happen than what I just said.

CHAIRMAN BURCH: Thank you, Mr. Flintoft.

That sounds like a perfect segue.

Mr. Teicher?

MR. TEICHER: Yes. Mr. Flintoft and I have had discussion about this prior to tonight. I don't know if you have both of my faxes. There were two faxes sent to Mr. Flintoft on March 9. I don't know if -- one was handed out to you.

MR. FLINTOFT: That's true. I only faxed -- I may have faxed both. I don't remember faxing the last one.

MR. TEICHER: But procedurally I want to make sure you understand because I don't know which fax you got; it wasn't identified. But neither my clients nor I received notice of this hearing, and I think it's a major procedural defect.

MR. FLINTOFT: I would agree with him, and I think I'd ask what notice --

CHAIRMAN BURCH: Thank you.

MR. FLINTOFT: -- went out to the owners.

CHAIRMAN BURCH: Thank you, Mr. Flintoft.

And, Mrs. Bolyard, as township clerk, can you address the issue?

MS. BOLYARD: It's right inside the file that I just handed you.

MS. KELLY: That's when it was noticed.

CHAIRMAN BURCH: Okay. And a list of the persons noticed in this: Robert -- Robert W. and Kathleen K. Lane, 4206 Primary Colors, Hamilton, Ohio 45011.

MR. TEICHER: Okay. And when was that mailed out? They didn't receive it, so perhaps it was just a mail problem.

CHAIRMAN BURCH: Ms. Bolyard, can you tell me when this was mailed?

MS. BOLYARD: Is there a -- on the hearing notice, is there a date?

CHAIRMAN BURCH: Notice of Public Hearing, Date, March 14th; however, that's the date of the hearing obviously.

MR. TEICHER: Because the only way they knew of it was on the 9th, that morning, they received an e-mail from a neighbor here that received notice. So, again, it may be a mail problem, but they didn't and I didn't get actual hard copy notice.

MR. FLINTOFT: What do you want to happen?

MR. TEICHER: Well, I just want to point out procedurally that that occurred.

I would tell you that I object to this hearing and I object to another hearing being set. I believe that Mr. Flintoft perhaps misunderstood what the judge's order was. And the judge ordered not further hearings. He granted the appeal and simply wanted to know what were the facts that you based your decisions on, not that there were going to be more hearings. He, the judge, wants you to tell him -- and I intend to ask each of you tonight -- what facts -- or each of you who voted no -- which facts -- as the judge said, factual findings

underlying its determination that the requirements of the ordinance were not satisfied because of the clinical obvious defects in the Township's proposal, including 1) eliminating the air and light in the side yard.

So tonight I'd like to know what factual findings did you use for that determination, and I'd like the three of you who voted no to please tell me that.

So I'd like to know now. Can you tell me what factual findings you used for that determination? That's why I came, besides protecting my clients, because that's what the judge ordered.

MS. KELLY: Mr. Burch, may I ask?

CHAIRMAN BURCH: Ms. Kelly, you have the floor.

MS. KELLY: Mr. Flintoft, I have a question.

MR. FLINTOFT: Sure.

MS. KELLY: You're our attorney and our counsel. We came to this hearing tonight not expecting to do anything other than set a date, as we understood it, our duty -- your opinion of our duty under this court order.

I certainly don't have anything with me prepared to answer your question right now, and in deference to our other applicants tonight, we only put

you on the agenda tonight, which was already an extremely full agenda, to facilitate this happening as soon as it could.

I don't -- I'm not prepared to talk about this stuff tonight, and I guess I would look to you, Mr. Flintoft, for an opinion about whether or not we have to.

MR. FLINTOFT: Well, the Court said that you shall forthwith. But forthwith means it's got to be taken in the light of when you can do it in a properly and orderly manner, and if you don't have the time to do it tonight, I would suggest that you put it off to another date and just tell Mr. Teicher when it is going to be. And there is nothing more than just to put it off and then be prepared to answer the Court's order -- not necessarily Mr. Teicher's questions, but the Court's order -- and you have to conduct the hearing.

CHAIRMAN BURCH: Thank you, Mr. Flintoft.

MR. TEICHER: What I'd like to ask then is if anyone -- I happened to not recall who voted no. I wasn't here at that meeting, so I'd like to know if you could tell me who voted no, and I would like to ask if anyone is ready with any of these answers -- to answer any of the Court's questions in the judge's findings.

CHAIRMAN BURCH: Mr. Teicher, you have

anticipated my next question. I would ask the other two members, in addition to Ms. Kelly, who did vote no on this request if they are prepared to answer this evening.

Mr. Gajewski?

MR. GAJEWSKI: I voted no. As far as -- I'd prefer not to answer as far as just because I -- just because this is a litigation court case and I want to make sure that I answer. I mean I'd rather just pass at this point.

CHAIRMAN BURCH: Mr. Cormier?

MR. CORMIER: I also voted no, but I'm not prepared to deliberate the question at this time.

CHAIRMAN BURCH: Thank you.

MR. TEICHER: Would the three of you then not be prepared to give any factual determination -- I'm sorry -- any factual basis as to 1) elimination of air and light in the side yard. So just the answer is no to that.

No. 2, the judge wanted to know about the same thing for increased fire risk due to the closeness of structure and lack of space for emergency vehicles between the properties.

Does anyone have any factual basis for that?

MR. FLINTOFT: Well, I don't think it's

appropriate that you sit here and cross-examine the Board, Mr. Teicher.

They've indicated they want to put it off to another time, and they are to give findings; they're not supposed to answer your questions.

CHAIRMAN BURCH: Thank you, Mr. Flintoft and Mr. Teicher.

In my role as chairman of the Zoning Board of Appeals, I would also support that opinion in that I believe that the persons who voted no do have the right to have time to review the judge's order, and we'll set another date at which time they will be prepared to defend the opinion.

MR. TEICHER: Well, I would point out, sir, that the judge issued the order on February 14, 2006. It happens to be exactly a month away. It is my opinion that this is way past forthwith, and I'm sorry that no one is prepared today to answer this.

I would point out to you that in my fax to Mr. Flintoft in anticipation of what might happen, I did serve him notice, which puts you all on notice, which puts the Township of Dexter on notice that if it's a hearing that's just dragging feet and everything's getting put off, that I'll be filing a motion with the Court for attorney fees, for costs, for sanctions; that

I don't feel it's appropriate that a month ago the judge issued an order and apparently nothing has happened since then from this Board. I would tell you I am sorry to hear that.

MS. KELLY: Mr. Burch, may I respond?

CHAIRMAN BURCH: You may respond.

MS. KELLY: This is a public body. We're bound by public noticing, and we've done all that. This board meets once a month. This is the first time we've been together to take action on it, so I think it's as forthwith as it possibly could be.

We had it on the agenda at the first possible time that we could. On the advice of our attorney, we are -- came here tonight prepared to set a meeting for a hearing, which I'm prepared to offer a motion for, and I don't know what else we could have done.

So I guess I would object to your assertion that we're dragging our feet in any way in this. I don't believe we are, but -- and I'm prepared to offer a motion --

CHAIRMAN BURCH: Thank you, Ms. Kelly.

MS. KELLY: -- if you're prepared to listen to it.

CHAIRMAN BURCH: Mr. Teicher, I'd also like to point out that the faxes the letters that were exchanged

we had no knowledge of until this evening, nor did we anticipate having -- being faced with the requirement of answering this evening; therefore, I am going to entertain a motion to set this on the agenda at the opportunity as replying by the Board.

MR. TEICHER: I understand that, and I appreciate that.

CHAIRMAN BURCH: Thank you, sir.

MR. TEICHER: But I just wanted to make sure you knew my position. I don't try to tell people what I think sometimes.

CHAIRMAN BURCH: I appreciate that, Mr. Teicher, and I'm sure the Board is very well aware of your opinion, sir.

Ms. Kelly, would you care to offer a motion?

MS. KELLY: I move that we set a public hearing at the next regular Zoning Board of Appeals meeting on April 11th, following the one agenda item that will be lengthy for that night, and this will probably be the second agenda item.

CHAIRMAN BURCH: Thank you, Ms. Kelly.

MS. KELLY: May I just amend that to say meeting beginning at 7 p.m.?

CHAIRMAN BURCH: That is correct, because we are changing our time.

MR. WAGNER: I'll second the motion.

CHAIRMAN BURCH: It is moved and supported that this item will be placed on the agenda for the April 11th meeting 2006. All in favor, aye?

MR. WAGNER: Aye.

MS. KELLY: Aye.

MR. GAJEWSKI: Aye.

MR. CORMIER: Aye.

CHAIRMAN BURCH: Any opposed, no. Motion carries. This item will be heard April 11th.

MS. KELLY: Mr. Burch --

CHAIRMAN BURCH: Yes.

MS. KELLY: -- before we leave this matter, may I ask Mr. Flintoft one more question?

CHAIRMAN BURCH: You may.

MS. KELLY: Do we need to take action tonight to either open the record or not open the record?

MR. FLINTOFT: Well, I don't think the record is -- you can -- you can -- when you say open the record, I don't know what --

MS. KELLY: Or, I guess, accept new evidence.

MR. FLINTOFT: If you have evidence that was -- evidence that's not newly created, but if it was existing and you had it available to you previously, then you can bring it later --

MS. KELLY: Okay.

MR. FLINTOFT: -- at the next meeting. You have to explain the source and where it came from.

MR. TEICHER: And if I may, Mr. Chairman, one item that I believe that is incorrect; that the judge wants to know what evidence you used in your determination.

MR. FLINTOFT: Yes.

MR. TEICHER: Not whether or not it was existing.

MR. FLINTOFT: No, no. I agree with the same thing. If the person says that there wasn't sufficient space to -- for fire protection, they can say why -- why they thought that at the time, but it has to be obviously founded upon something that was in their minds at the time.

MR. TEICHER: Thank you.

(Proceedings concluded at 8:28 p.m.)

STATE OF MICHIGAN)

) SS.

COUNTY OF WASHTENAW)

CERTIFICATE OF REPORTER

I, LYNNE MARIE ZAKRZEWSKI, Certified Realtime Reporter, a Notary Public, do hereby certify that I recorded in shorthand the Proceedings had in the aforementioned matter on the date hereinbefore set forth, and that the foregoing 16 pages comprise a complete, true, and accurate record to the best of my ability of said proceedings.

LYNNE MARIE ZAKRZEWSKI, CSR-3179, RMR, CRR, CPE

Notary Public, Washtenaw County, Michigan

Acting in the County of Washtenaw

My Commission Expires: 05/07/2008

Dated: This 16th day of March, 2006

VI. Public Comment:

VII. Concerns of Board Members, Zoning Administrator, Recording Secretary

Need to discuss meeting schedule - Will put on next months agenda.
Pat Kelly wanted to remind the Board that the new meeting time starting next month is 7:00 p.m.

VIII. Approval of Meeting Minutes- Motion by Kelly, supported by Gajewski to approve the February 14, 2006 meeting minutes. Carried

IX. Adjournment: Motion by Kelly, support by Cormier to adjourn the meeting at 9:55 p.m. **Motion carried.**

Respectfully submitted,

DeNette Bolyard,
Recording Secretary

Pat Kelly,
Secretary