

Etna Township Board of Zoning Appeals

Held

October 24

2008

ADJUDICATORY HEARING**Kessler Sign/The Pataskala Banking Company**

The adjudicatory hearing was called to order by Chairman Cox on October 24, 2008 at 7:05 p.m. at the Etna Lion's Club on 9286 York Road. The meeting was audio and video taped for township records.

Court Reporting for this hearing was provided by Celeste Dawley, RPR of Fraley Cooper and Associates of Pataskala, Ohio. Fraley Cooper and Associates can be reached for a complete transcript.

Roll Call: Mrs. Weber, Mr. Goll, Mr. Cox, Mrs. Rogers, Mr. Johnson, and Laura Brown present.

The purpose of the hearing was to consider a variance submitted by Kessler Sign Company representing The Pataskala Banking Company. The variance is for a sign to be located on the property at 9038 Hazelton-Etna Road, Pataskala, Ohio.

Chairman Cox explained the hearing process. Doug Gabriel of Kessler Sign Company, Deborah Scott of Chester Willcox & Saxbee, and Stan Robinson, Etna Township Zoning Inspector were sworn in.

Doug Gabriel with the Kessler Sign Company out of Zanesville, Ohio has been contracted by The Pataskala Banking Company for the development, marketing study, manufacturing and installation of a main identity ground sign in Etna Township. The sign development shows sixteen foot height but the sign will be reduce to fifteen foot height to comply with Etna Township's Zoning Resolution. They are not asking for a height variance. It will comply with setbacks. They are asking for a variance for the installation of an electronic changing message sign. The messages will be for services the bank offers. It may add to the community with time and temperature and also public service announcements and community events. It will not be used for any off premises advertisements of any other business or services.

Stan Robinson, Zoning Inspector, referred to Etna Township Zoning Resolution Section 1202 – General Requirements for All Signs and Districts Item 2 states no sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light or lights. This is the section Kessler Sign is requesting a variance from.

David Goll asked how bright the lights would be. Doug Gabriel stated they are two fold, they are brighter during the day. He does not have the exact lumens but could provide later if needed. The sign also contains a photo cell that dims the lighting during the evening and also is computer driven and at certain times of the evening and year it will go off completely.

Cheri Rogers inquired if Etna Township has any lighted signs and Stan Robinson is not aware of any. Doug Gabriel stated that Pataskala Banking Company has a time and temperature sign but does not have the capability of messaging. He knows of some in Newark and Reynoldsburg, but he is not from this area.

Cheri Rogers inquired if Pataskala Banking Company has this same sign at their other locations. Doug Gabriel stated Summit Station is similar but only has the digital time and temperature and the downtown Pataskala branch has a mechanical clock.

Doug Gabriel stated the lights on the sign will be red. It will most generally be on during business hours but not later than ten or eleven o'clock.

Michelle Weber inquired if this type of sign was the intention of the bank when the property was purchased. Doug Gabriel stated until Kessler Sign inquired about permits that the bank did not know this type of sign was not allowed in the township. Mrs. Weber asked if not having this type of sign would change their desire for this location for the bank. Doug Gabriel stated it would only limit them to how they can advertise from a marketing standpoint. Cheri Rogers is concerned that drivers on State Route 310 would be reading the sign and have an accident. Doug Gabriel stated along the Interstates business are going to this type of sign.

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Cheri Rogers inquired if the sign could be used for Amber Alerts. Doug Gabriel stated he did not see why they could not be and it would be up to the bank to decide.

David Goll made a motion since the sign is within the guidelines as far as height and setbacks that it would be an asset to the community to have the ability of such a sign that we grant the variance.

Rick Cox asked if any of the public had evidence to present.

Gary Burkholder of 254 Trail East was sworn in. Mr. Burkholder stated during the rezoning hearings last year the neighbors were concerned with lighting from the property.

David Goll stated the sign would be turned off during the night and this should elevate some of the lighting concerns.

Jeff Johnson asked what the height is where the lighting would be on the sign. Doug Gabriel stated the lighting would be about eleven feet. Mr. Johnson inquired how high the building would be and if it would be in between the sign and the houses. Mr. Gabriel stated it would buffer the sign from the residential property. The sign is a back-lit sign and the lettering is red and does not light an area.

Gilbert Guttentag of 70 Runkle Drive was sworn in. Mr. Guttentag has concerns with the bank providing ATM service that it will be open twenty-four seven and if the sign would be on all the time. If the variance is approved would there be a condition on the time the sign could be on. Mr. Guttentag has concerns that the residents do not have a watch or clock and need the public service of the time and temperature. He has concerns with drivers being distracted.

Doug Gabriel stated the variance could be stipulated to hours. Cheri Rogers stated the hours the sign is on could be a condition of the variance.

Michael Hockman of 34 Runkle Drive was sworn in. Mr. Hockman's property is adjacent to the bank and he has concerns regarding the buffering around the bank and for the neighbors having to view the sign from their homes. Mr. Hockman would support the sign but not the lighting on the sign.

Cheri Rogers moved to close the hearing. David Goll seconded. Motion passed 5-0. The hearing for testimony was closed at 7:30 p.m.

David Goll rescinded his early motion.

David Goll moved to recess to deliberate in private. Cheri Rogers seconded. Roll call: Michelle Weber, no; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 4-1. The board recessed at 7:32 p.m. to deliberate.

The meeting was brought out of recess at 7:50 p.m.

Michelle Weber moved to approve the variance, they are asking for a variance from Article 12 of the Etna Township Zoning Resolution asking for a variance from our resolution stating no sign shall be illuminated or containing flashing, intermittent, rotating, or moving lights.

Michelle Weber moved to approve the variance with the conditions The Pataskala Banking Company is to send a letter to the Licking County Sheriff's Department and to Etna Township asking them to notify Pataskala Bank any time they are notified of an Amber Alert. Their response to Pataskala Banking Company also needs to be sent to Etna Township. Also the sign is to be off at 10:00 p.m. and not turned back on until 6:00 a.m. seven days a week. Cheri Rogers seconded. Roll call: Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. The motion passed 5-0.

The variance is granted with the above conditions. The final order will be mailed after the minutes are approved.

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Doug Gabriel stated he will research the Amber Alert and believes the alert can be instantly posted to the sign without notification from the Sheriff's office by using the internet. Mr. Gabriel will follow-up with a letter to the township regarding the capabilities regarding the Amber Alert.

Mrs. Rogers motioned to adjourn the meeting. Mr. Goll seconded. Roll Call: Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Mr. Cox adjourned the hearing at 7:55 p.m.

Laura Brown

Laura Brown, Clerk

Approved as read 11/28/06

Approved as corrected/amended _____

Frederick M. Cox

Frederick Cox, Chairman

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ADJUDICATORY HEARING**Appeals of Stop work order and notice of violation**

The adjudicatory hearing was called to order by Chairman Cox on October 24, 2006 at 7:58 p.m. at the Etna Lion's Club on 9286 York Road. The meeting was audio and video taped for township records.

Court Reporting for this hearing was provided by Celeste Dawley, RPR of Fraley Cooper and Associates of Pataskala, Ohio. Fraley Cooper and Associates can be reached for a complete transcript.

Roll Call: Mrs. Weber, Mr. Goll, Mr. Cox, Mrs. Rogers, Mr. Johnson, and Laura Brown present.

The purpose of the hearing was to consider two appeals of the Zoning Inspector's decisions submitted by Scott Hayes representing The Pataskala Banking Company. The purpose of the first appeal is for the issuance of a stop work order on the property commonly known as Reserve B, Cumberland Trails located next to 9038 Hazelton-Etna Road, Pataskala, Ohio. The purpose of the second appeal is for the issuance of a notice of violation on the property commonly known as Reserve B, Cumberland Trails located next to 9038 Hazelton-Etna Road, Pataskala, Ohio.

Chairman Cox explained the hearing process. Connie Klema legal counsel representing The Pataskala Banking Company, Scott Hayes legal counsel representing The Pataskala Banking Company, Deborah Scott of Chester Willcox & Saxbee legal counsel for Etna Township, and Stan Robinson, Etna Township Zoning Inspector were sworn in.

Scott Hayes provided the board, clerk, and court reporter a binder. This would be tagged into the record as Exhibit 1.

Connie Klema reviewed Exhibit 1, evidence including a brief that will summarize their testimony. The table of contents was as follows: Tab 1 Certified deed of 9038 Hazelton-Etna Road to The Pataskala Banking Company; Tab 2 Etna Township Zoning Permit issued on February 21, 2006; Tab 3 certified copy of the variance application and approval from Licking County Planning Commission; Tab 4 certified copy of the deed conveying Reserve B to The Pataskala Banking Company; Tab 5 major development review permit issued September 6, 2006; Tab 6 letter from Licking County Prosecutor's office dated April 2, 2004 addressed to Dallas Maynard; Tab 7 Licking County Commissioners resolution establishing roads in Cumberland Trail Subdivision Section 1; Tab 8 application for tentative approval of Preliminary Plan submitted by Columbia Road, Ltd dated January 29, 1998; Tab 9 section from the 1993 Etna Township Zoning Resolution; Tab 10 minutes from township meetings held on February 25, 1998, March 4, 1998 and April 6, 1998; Tab 11 public records request submitted September 29, 2006 by Scott Hayes to Etna Township; Tab 12 WBJ Planned Unit Development; Tab 13 Cumberland Trail Limitation Text with Master Plan (Exhibit A); Tab 14 letter to MAS Cumberland Corporation from Craig B. Paynter, Attorney for Etna Township dated April 7, 2005; Tab 15 Cumberland Trail East summary of activity of Stan Robinson, Etna Township Zoning Inspector; Tab 16 Cumberland Trail Section 1 Declaration of Covenants, Conditions and Restrictions; Tab 17 certified copies of plats for Cumberland Trail Section 1 through 5; Tab 18 certified copy of the plat for Cameron Chase Section 1 Part 2; Tab 19 one page excerpt of the Preliminary Plan for Cumberland Trail; Tab 20 certificate from the Ohio Secretary of State stating no record of Cumberland Trail Homeowners Association; Tab 21 photograph of State Route 310 and Trail East; Tab 22 resolution to remove Article 13 Planned Unit Development from the Etna Township Zoning Resolution dated July 6, 2004; Tab 23 Zoning Text Amendment to remove Article 13 dated July 9, 2003; and Tab 24 minutes of meeting held on March 1, 2004 by the Etna Township Trustees.

Connie Klema stated that under Tab 2 was a copy of Etna Township's Zoning Permit issued on February 21, 2006. The site plan showed two accesses out to State Route 310. After the zoning permit was granted in accordance with Ohio Law the applicant began working with Licking County on the Major Development of the parcel. Access had to be limited onto State Route 310. The access closest to Trail East under the Licking County Subdivision Regulations was too close

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to an intersection to be permitted. The far North access is considered not to be the proper distance either. A variance was required to have any access onto State Route 310 to the property. To address the issue of access a new site plan was prepared and a subdivision variance was conditionally approved by Licking County Planning Commission on March 27, 2006. Some of the conditions discussed were as follows: The current access point must be closed, the proposed access point will be right-in/right-out only, and the proposed right-in/right-out access must be closed once reasonable access is provided along State Route 310. The supplement to the variance application states Licking County Planning personnel have indicated to the Bank that its plans, as well as use of the existing access drive, are not desirable because of the proximity of the southerly access to the intersection of State Route 310 and Trail East. It believes that it is at least entitled to full, left and right access to 310 at the north of the Bank Property. Such access would be insufficient from a business perspective and because planning personnel favor the same, the Bank is willing to acquire the above described Reserve B to provide the Bank Property at the southwest corner a full access to and from Trail East and revise its request from full access to State Route 310 to right-in and right-out access. The bank purchased Reserve B with Parcel Number 010-017988-00.02 and it was a transferable lot. The bank started construction and received a stop work order on the access to Trail East on September 21, 2006.

Connie Klema reviewed R.C. 519.021 and stated there is no mention of the township having jurisdiction over access, streets, or roads. The reason is the township does not have that jurisdiction. Connie Klema stated for the record the township has jurisdiction over certain parts of the zoning enforcement and the County Planning Commission has enforcement rights over streets and access points.

Connie Klema questioned if Cumberland Trail is a Planned Unit Development and is it enforceable as a Planned Unit Development. Ms. Klema presented Etna Township Zoning Resolution adopted September 8, 1987. In Article 13 Planned Unit Development pages 83-91 specifically page 87 and page 88 Procedure for approval of a Planned Unit Development District. Connie Klema then summarized minutes from Zoning Commission discussing a Limitation Plan and the Trustees meeting minutes discussing a final map plan for the first phase and a preliminary plan for the Planned Unit Development. The Trustees approved the Final Map Plan and Preliminary Plan as presented, Phase I Development Plan as the Final Development Plan and the entire area of the development be recommended for approval to the township trustees for a Planned Unit Development on March 4, 1998. Connie Klema stated this is not in accordance with the process. There had not been an approval of a Preliminary Plan and then a re-submittal of the final. The Trustees on April 6, 1998 moved to accept the rezoning to Planned Unit Development.

Connie Klema stated on the March 1, 2004 the Trustees minutes state that President Burkholder asked if there was a final development plan for Cumberland Trails and was told that the preliminary plan was approved as the final development plan. President Burkholder said that Item 8 under Section 1323 has not been met. There are no protective covenants and other legal statements or devices to protect the maintenance of the green spaces. This constitutes a violation of the final development plan.

Connie Klema stated if Cumberland Trails is not a Planned Unit Development then the property had been requested to be a R-3 District (medium density residential). Ms. Klema reviewed the Cumberland Trail Limitation Text Development Plan submitted July 25, 1997 for R-3 (PUD Overlay). This Limitation Text Development Plan stated as a condition of the Planned Unit Development the applicant is required to reserve a minimum of 20% of the gross acreage as common open space or recreational facilities for the residents or the surrounding community, the public golf facility is 52% of the open space and exceeds the specified 20% requirement. The Master Plan Exhibit A was submitted with the Limitation Text as part of the R-3 zoning. There is no mention of restrictions on the reserves.

Connie Klema discussed a letter from Chester Willcox & Saxbe stating it was rezoned in 1997 to accommodate the development of the Cumberland Trail Golf Course and surrounding residential development. Ms. Klema feels this is referring to the R-3 District rezoning submitted July 25, 1997 as stated above.

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Connie Klema stated if Cumberland Trail is not a Planned Unit Development then it is an R-3 with the limitation text and Master Plan A. The Cumberland Trail Section 1 Declaration of Covenants, Conditions, and Restrictions do not define restrictions to Reserve B. The Master Plan A does not mention Reserve B.

Connie Klema discussed the certified copies of plats for Cumberland Trail Section 1 through 5. Rick Cox noted on the Cumberland Trail Section 1 map that the Zoning Inspector that signed the plat was Cheryl Hagy. The bank property was purchased from Charles Hagy.

Connie Klema discussed Cameron Chase and the Reserve A and Reserve B.

Deborah Scott with Chester Willcox and Saxbe represented Stan Robinson, Etna Township Zoning Inspector. The township does not have the authority over streets. They are asking for a driveway over land that is regulated by the township. Revised Code 519.02 states what the township Trustees may regulate by resolution. The use of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township, is the land we are talking about.

The Licking County Prosecuting Attorney has recognized that the Planning Commission has authority over the access points, curb cuts but not over the land. Deborah Scott read from a letter dated October 23, 2006 from the Prosecutors office stating the use of the property will be controlled by the requirements of the township's zoning resolution.

Deborah Scott stated the property is a Planned Unit Development. On April 6, 1998 the Trustees approved the land to be rezoned to a Planned Unit Development. In the Licking County Planning Commission Staff Report from July 25, 2005 number 2005-017-Z applicant being Scott Hayes, states the permitted uses of the proposed PRO district are less intense the current General Business district. The proposed district would provide a transition from the residential Planned Unit Development to the General Business District. The immediate parcels to the north, south, and west are zoned PUD as part of the Cumberland Trail Subdivision. This staff report documents that it was recognized as a Planned Unit Development by the applicant Scott Hayes.

Deborah Scott stated it is Planned Unit Development because construction has been completed. Legal research shows that zoning becomes effective upon approval of a preliminary plan. Revised Code 519.021 which governs Planned Unit Development and the township's authority to have Planned Unit Development's states once property has been rezoned PUD, at the preliminary plan level, any subsequent approval or disapproval of the use or development of that property is not considered an amendment to the Zoning Resolution. It is the first step that does the rezoning. As the township and the developer work together during the construction phase they know it is rezoned. Zoning vests upon the commencement of construction. An Ohio Supreme Court case regarding a property owner having the right to complete construction pursuant to a Zoning Permit have a limited time to finish. Torok v. Jones Supreme Court noted that the Zoning Permit did not vest and the zoning for the land did not vest unless there had been a substantial change of position or expenditures or significant incurrence of an obligation in reliance upon the zoning permit. Cumberland Trail is complete and people are living in the homes showing that there has been substantial reliance on the Planned Unit Development rezoning and that zoning has vested. Deborah Scott referred to Eastbrook Farms v. City of Springboro Supreme Court Case. The property owner could not claim that the property was not properly rezoned as PUD when it purchased the property knowing it was zoned as PUD and received benefits of the PUD zoning for 25 years because someone did not go through all the requirements it needed to. The PUD zoning has been there for years. The applicant (Pawaskala Bank) knew it was zoned PUD when the property was purchased.

Deborah Scott stated it is zoned as open space. The Zoning Resolution states that open space can not be used for streets or parking and the like. The applicant started constructing a driveway for commercial vehicular traffic that would deposit the traffic across from a home into a residential neighborhood where the streets are not designed for commercial traffic. This construction was

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done without a permit from anyone. The Zoning Inspector was correct in issuance of the stop work order and notice of violation stating Section 300 Zoning Permits Required and violation of the Zoning Resolution. Deborah Scott feels that on this appeal his actions should be affirmed.

Connie Klema feels The Pataskala Banking Company has done research to find out what exists on this property. They have felt the same frustrations as the Trustees and prior Zoning Inspectors on what is approved on this property and what it requires. The open space requires 20% of the gross acreage to be open space the golf course is 52%. There is nothing that has been presented in the record from this township that confirms any limitations on the use of Reserve B. If there is something presented she would like verification of where it was approved in a record which is required in the Ohio Revised Code and the Zoning Resolution.

Deborah Scott showed a map that was prepared for Columbia Road Limited dated August 17, 1998 that note C says Reserve B is to be owned and maintained by Cumberland Trail homeowners association for the purpose of open space and or detention. The actual transfer of the open space to the bank was in violation of the terms of the preliminary plan.

Connie Klema stated in Tab 19 and in the brief in the beginning of Exhibit 1. Is the map they are referring to, this is a preliminary plan for Cumberland Trail and this has not been put into a record or approved. Tab 20 shows there has never been a Cumberland Trail homeowners association.

Chris Cirotto of 24 Dellenbaugh Loop was sworn in. He attended the Licking County Planning Commission meeting where they discussed the right in and right out access to a business property. Licking County Planning Commission stated this is an Etna Township zoning issue. The County has not issued a curb cut. He stated at the Board of Zoning Appeals hearing the public is not permitted to make comments. If this is heard by Etna Township's Zoning Commission the public would be permitted to make comments and the residents should have the right to make comments. It was the understanding of homeowners was that would be open space.

Gary Burkholder of 254 Trail East was sworn in. Stated as a Trustee the Zoning Inspector's decision to issue a stop work order is correct and there is no zoning permit.

Henry DiYanni of DiYanni Homes was sworn in. Mr. DiYanni believes the intent for that property was to be green space and not to have a driveway pointing at their home. He believes this should be sent back through the Zoning Commission and the public should have the right to comment.

Connie Klema stated that Zoning is supposed to give notice of what you can and cannot do on property; there is nothing in writing that says those things are required.

Cheri Rogers moved to close the public hearing. David Goll seconded. Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes; motion passed 5-0. Public hearing closed at 9:17 p.m.

Jeff Johnson asked if the bank could build the building with right in and right out. Stan Robinson stated they have a zoning permit with access to State Route 310. Jeff Johnson asked if that property has a right to access to Trail East. Stan Robinson stated they started the cut without a permit. Deborah Scott stated the open space prohibits streets, and that specific parcel does not have the right to an access road. What is pertinent here is if they had the right to start the construction without a zoning permit.

Michelle Weber stated there is no permit for the road and that is what the issue is. Connie Klema reviewed the cut onto Trail East. Deborah Scott stated the County is allowed to authorize the curb cut only. Deborah Scott feels the property needs to be rezoned and then a permit issued.

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Deborah Scott stated Section 300 of the Zoning Resolution requires no building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefore issued by the Zoning Inspector.

Connie Klema stated the bank did not do any of those things; they are not building a structure. They are not putting in a road they are putting in a private access. Rick Cox stated from all the facts the property has been referenced as a Planned Unit Development or R-3 Medium Density Residential District, not commercial. Mr. Cox also referenced Tab 16 Article IV Item B regarding right to expand.

The road was dedicated as a public street for residential traffic not commercial.

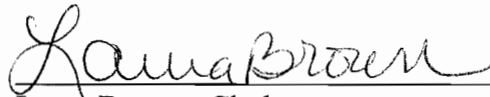
Cheri Rogers stated Section 300 Zoning Permits Required reads no building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit.

Cheri Rogers moved that both appeals be denied, that the stop work order is upheld as well as the notice of violation. Jeff Johnson seconded. Roll call: Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; Jeff Johnson, yes. Passed 5-0.

Chairman Cox stated the appeal is denied for both the stop work order and the notice of violation.

Connie Klema requested a Finding of Facts and Conclusions of Law be presented to them.

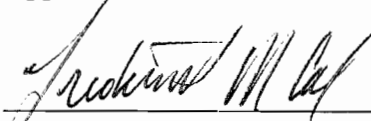
Cheri Rogers moved to close the hearing. Jeff Johnson seconded. Roll call: 5-0.
Hearing was closed at 9:32 p.m.



Laura Brown, Clerk

Approved as read 11/28/06

Approved as corrected/amended _____



Frederick Cox, Chairman

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Etna Township Board of Zoning Appeals

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ADJUDICATORY HEARING

Variance for The Pataskala Banking Company

The adjudicatory hearing was called to order by Chairman Cox on October 24, 2006 at 9:50 p.m. at the Etna Lion's Club on 9286 York Road. The meeting was audio and video taped for township records.

Court Reporting for this hearing was provided by Celeste Dawley, RPR of Fraley Cooper and Associates of Pataskala, Ohio. Fraley Cooper and Associates can be reached for a complete transcript.

Roll Call: Mrs. Weber, Mr. Goll, Mr. Cox, Mrs. Rogers, Mr. Johnson, and Laura Brown present.

This evening we will be considering a variance submitted by Scott Hayes for The Pataskala Banking Company. The purpose of the variance is to allow access to its project across that real property commonly known as Reserve B, Cumberland Trails located next to 9038 Hazelton-Etna Road, Pataskala, Ohio.

Chairman Cox explained the hearing process. Connie Klema legal counsel representing The Pataskala Banking Company, Scott Hayes legal counsel representing The Pataskala Banking Company, Deborah Scott of Chester Willcox & Saxbee legal counsel for Etna Township, and Stan Robinson, Etna Township Zoning Inspector were sworn in.

Deborah Scott questioned if the Board of Zoning Appeals has jurisdiction to hear this request for variance. The township submits that the board is without jurisdiction to hear the variance so therefore because of that jurisdiction the proceedings should not go forward. The basis for why the township does not feel the Board of Zoning Appeals has jurisdiction is several reasons. This is a major change from open space to allow commercial vehicular traffic over. When you have a substantial change it is more appropriate for that decision for change in use of the property to be made by the Zoning Commission and then approved by the Township Trustees rather than a variance approved by the Board of Zoning Appeals.

Deborah Scott stated The Ohio Supreme Court has stated the authority to permit a variance does not include the authority to alter the character and use of the zoning district. This will alter the character and use of the zoning district. Any modification of open space in the Planned Unit Development area would require an amendment to the Planned Unit Development which would also go to the Zoning Commission; which the Board of Zoning Appeals does not have the authority to do. Deborah Scott requested that the Board of Zoning Appeals deny jurisdiction over the variance so the applicant can process with the Zoning Commission to get the rezoning they seek.

Scott Hayes stated the primary purpose in making the variance request is to exhaust the bank's administrative remedies. The Board of Zoning Appeals has heard the evidence. Appellants to the Common Pleas Court have to show that they have done what they needed to do to get this issue before the court. The variance request does not say what they are asking a variance from. The bank is going to have the same arguments whether the land is a Planned Unit Development and to what extent various limitations apply to the property. They are submitting their variance request on paper and take that into account as well as the documents that were provided during the appeals.

The Bank has to present it to the Board of Zoning Appeals to exhaust their administrative remedies.

Rick Cox stated if we do not have jurisdiction to hear this then it goes to the Zoning Commission. The Board of Zoning Appeals felt it should have been stated that the Board of Zoning Appeals does not have jurisdiction before accepting The Pataskala Banking Companies application for a variance.

The binder presented by the bank for the appeals hearings is submitted as Exhibit 1 for the variance hearing.

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Deborah Scott stated the township does not believe a variance should be granted. It is a use variance. There are four standards that must be met for a use variance in revised code 519.14. The variance can not be contrary to the public interest; owing to special conditions, literal enforcement of the resolution will result in unnecessary hardship; the spirit of the zoning resolution must be observed; and substantial justice shall be done. None of those standards can be met.

The zoning resolution is for the safety of the residents. Allowing an access road to be constructed across the open space will cause an increase of commercial vehicular traffic, increased risk of accidents, and there are children playing in this area thus endangering the children. Granting the variance is adverse to the public interest and a violation of the spirit of the township zoning law.

An unnecessary hardship must be related to the property for which the variance is sought not the adjacent property. The hardship the applicant is experiencing is due to the Bank's parcel not the open space parcel. Deborah Scott referred to a court case Brown vs. Canfield regarding a cemetery regarding unnecessary hardship must relate to the property for which the variance is sought. The case of consolidated Management vs. City of Cleveland regarding a purchaser of commercial property acquires premises with knowledge of certain zoning restrictions must accept the limitations on the usage of such property.

Connie Klema stated that they have not applied for a use variance. They do not understand what the variance is for. They have not received the Findings of Fact from the appeal. The appeal was whether a permit was needed for the property not for the use of the property. They disagree with opposing counsel.

Cheri Rogers stated the application is for a variance not an application for a use variance.

Deborah Scott stated in Ohio there are two variances. Area variance or use variance. It is a use variance because they are changing it from open space to an access road.

Chris Cirotto of 24 Dellenbaugh Loop was sworn in. Mr. Cirotto discussed the variance and attending the Licking County Planning Commission meeting regarding a business having a right in and right out. He suggested having an attorney to review the evidence from Connie Klema in Exhibit 1. He does not feel the Board of Zoning Appeals has jurisdiction to hear this variance request.

Gary Burkholder of 254 Trail West was sworn in. He agrees the jurisdiction is more properly with the Zoning Commission. He feels it is a use variance and the public safety will be adversely affected. There are school bus stops there. The spirit of the zoning resolution is to preserve the open spaces in the Planned Unit Development.

Dick Knapp of 108 Longwood Crossing was sworn in. He concurs with his fellow Trustee Gary Burkholder. He does not want the variance granted.

Mrs. Rogers motioned to close the testimony. David Goll seconded. Roll Call: Passed 5-0. Mr. Cox closed the hearing to testimony at 10:20 p.m.

Cheri Rogers moved to deny the variance based on Section 513 Item C (Etna Township Zoning Resolution) the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. David Goll seconded. Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes; motion passes 5-0. The variance is denied.

David Goll moved to adjourn the hearing. Cheri Rogers seconded. Roll call: passed 5-0. Rick Cox adjourned the hearing at 10:22 p.m.

Approved as read 11/28/06

Laura Brown
Laura Brown, Clerk

Approved as corrected/amended _____

Frederick M. Cox
Frederick Cox, Chairman