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### **INVESTIGATION OF MAYOR TOM RICE**

Officials from The Ohio Ethics Commission requested that I investigate allegations against Tom Rice, the current Mayor of the City of North Canton, Stark County, Ohio. The purpose of this investigation was to determine whether any criminal offenses were committed.

I have been provided with the following documents or information:

- "Summary and Analysis" from Ohio Ethics Commission
- Minutes from certain North Canton City Council meetings
- Minutes from certain North Canton Planning Commission meetings
- Correspondence from Attorney Mike Russell to Richard Heiser
- Over 60 other documentary exhibits
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In order to evaluate and determine the issues presented, I will present my findings as follows:

- A. Background
- B. Topic of Investigation
- C. Facts
  1. North Canton Government
  2. Background on Mayor Tom Rice
  3. Planning Committee activities
- D. Application of the law to facts
  1. Participation, negotiation and voting on Heiser property
  2. Adverse Possession
- E. Conclusion

## **A. BACKGROUND**

In addition to reviewing the information provided to me as described above, I have conducted independent interviews of approximately 18 potential witnesses. The facts presented will be examined as they relate to possible criminal violations of sections of the Ohio Revised Code, particularly R.C. Sections 102.03(D) and 102.03(E) entitled "Conflict of Interest Statutes". (See Exhibit 1.) I also reviewed similar cases involving public officials under these statutes. I ordered a private appraisal of the property in question. Finally, I met with Mr. Rice's attorney, Lee Plakas, on two separate occasions.<sup>1</sup>

## **B. TOPIC OF INVESTIGATION**

On Thursday, July 17, 2003, I met with officials from the Ohio Ethics Commission regarding their investigative report of Tom Rice, Mayor of North Canton. The Commission requested that I determine whether Rice's actions were criminal in nature.

The applicable sections of the Ohio Revised Code read as follows:

Ohio Revised Code Section 102.03(D) states:

No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. (M-1)<sup>2</sup>

Ohio Revised Code Section 102.03(E):

No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. (M-1)

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<sup>1</sup>Mayor Rice was offered the opportunity to meet with me in a letter dated July 21, 2003, informing Rice of the investigation.

<sup>2</sup>M-1 refers to a criminal degree. Misdemeanor of the first degree has maximum penalties of six months in jail and a \$1,000.00 fine.

## **C. FACTS**

### **1. NORTH CANTON GOVERNMENT**

North Canton is a charter government. A pertinent portion of the Charter is Article VI, Section 6.01 of the North Canton Charter, which addresses conflicts of interest for purposes of the Charter. It states in pertinent part:

No elected or appointed officer, official or employee shall hold any incompatible office... nor have any financial interest, direct or indirect and any contact or proceeding to which the municipality is a party, or any expenditure of money by the municipality other than the fixed compensation in traveling or other expenses incidental to the authorized furtherance of the interest of the municipality. Any willful violation of this Section shall constitute a malfeasance in office. Any violation with the knowledge, expressed or implied, of the person or corporation contacting with the municipality shall render the contract or proceedings voidable by the Mayor or Council. (See Exhibit 2.)

North Canton voters elect the seven City Council members and the Mayor for two year terms. The Mayor appoints the five members of the Planning Commission and the five members of the Zoning and Building Standard Board of Appeals. The Director of Administration and one Council member serve as non-voting members in an advisory capacity on each of these two boards. The Mayor appoints the Director of Administration, who is confirmed by Council. The decision of the Mayor regarding the removal of the Administrative Director is final. The Director of Administration appoints, subject to the Mayor's approval, the managers of the Administrative Department and other officers and employees of his Department.

### **2. BACKGROUND ON MAYOR TOM RICE**

Tom Rice and his wife, Jennifer, purchased their home at 1123 Linwood Avenue, North Canton, in June, 1981. Their residence is adjacent to the Heiser development property. Rice ran for City Council in the fall of 1983 and served a two-year term. He was re-elected in 1985 and 1987. In the fall of 1988, he ran for Stark County Commissioner and was elected. Rice lost his re-election bid for Commissioner in 1992.

In 1999, Rice was elected to City Council in North Canton. At that time, the Heiser rezoning issue had already been discussed with Heritage Estates Homeowners Association and had been presented to the Planning Commission and to City Council.

During his first year on Council, Rice was appointed as the Chairman of the City Council's Community and Economic Development Committee. This Committee discussed issues similar to the Heiser property before it was proposed to Council. Rice would have been the member of this Committee to bring such issues to Council.

Rice was voted President of Council in December, 2000, during his second year in office and subsequently ran the Council meetings. During his second year, Rice was only a board member of the Community and Economic Development Committee. Rice assumed the office of Mayor in July, 2001, when Mayor Daryl Revolt resigned to take a position with the Governor's Office. Rice ran for re-election in the fall of 2001 and Rice was re-elected as Mayor of North Canton. His term expires in December, 2003.

### **3. PLANNING**

Richard Heiser owned a large parcel of property adjacent to Rice's neighborhood called the Heritage Estates Subdivision. Heiser wanted to develop this adjacent parcel and lease it to an auto dealership. In theory, this would provide additional jobs to the City of North Canton and financially benefit North Canton by increasing tax revenue. In order for this venture to be possible, the property had to be rezoned. Heiser hired Oxbow Engineering to apply to the City for rezoning 23 acres of the parcel so that it could be developed.

George Smerigan, from Oxbow Engineering, Inc., states that the rezoning issue for the Heiser property began sometime in 1997. In November, 1999, shortly after Rice was elected to Council, Smerigan spoke with Councilman Jon Snyder and raised the issue as to whether Rice would recuse himself on the Heiser issue. A regular City Council meeting was held on November 8, 1999, where a Motion was made to pass the first reading of the Ordinance regarding the recovery of the property. (See Exhibit 3.) The first reading of Ordinance Number 111-99 was held. Rice was sworn in as a Council member on December 1, 1999.

After the elections, Rice was appointed to the Community and Economic Development Committee. This Committee oversees development of the City and reviews zoning issues and economic investments. Council member Snyder stated that he asked Rice if it would be a problem for Rice to be appointed to chair this committee because of the Heiser rezoning issue. Upon receiving this request, Rice advised Snyder that he did not believe it would be a conflict of interest. From December, 1999 to November, 2000, Rice was the chairman of City Council's Community and Economic Development Committee.

At the Council meeting on December 15, 1999, the third reading of the Heiser Ordinance was discussed. Council member Snyder asked Rice as the Community and Economic Development Committee Chair to begin any discussion on this issue. Rice asked Council to table the issue until the January, 2000 meeting. (See Exhibit 4.)

At the January 24, 2000 Council meeting, Snyder asked Rice if there had been any new developments on the Heiser property issue. The residents voiced dissatisfaction over the proposed landscaping. The pertinent portions of the proposal are as follows:

1. Mr. Heiser would deed approximately 8 of his 23 acres to the City to be rezoned as Parkland (PNI); approximately 4.92 acres was to be deeded on the east side of Zimber ditch and 3.1 acres on the west of Zimber ditch. This acreage runs behind 15 homes on Linwood. It would remain undeveloped and serve as a buffer between the homes and the Heiser development.
2. Mr. Heiser would build a large mound (14 ½ feet high at its highest point) to serve as a sight and sound barrier between his 14.9 acres and the Lindy Lane residents.
3. Mr. Heiser would develop a storm water retention basin in the 4.1 acre portion of the property to be deeded to the City of North Canton.

After the January 24, 2000 Council meeting, Council member Snyder asked Rice if there were any other new developments on the Heiser property issue. A discussion between Smerigan and Law Director William Hines took place regarding landscaping modifications. At this meeting, there was a general discussion that homeowners should receive copies of the restrictions and the plans so that they would feel comfortable with the plans. Rice asked that everything be in order in two weeks so that the vote could take place in three weeks.

Prior to the members' discussion of the Ordinance at the February 14, 2000 Council meeting, Council member Rice asked Law Director Hines:

The other question I just want to ask for the record, myself being a property owner adjacent to this tract of land, does that represent any conflict of interest in voting on this item?

Law Director Hines replied,

You are not going to benefit either way, one way or another, so no.

Rice said:

I just want that on the record. (See Exhibit 5.)<sup>3</sup>

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<sup>3</sup>William Hines was in poor health and passed away less than ninety days later on May 3, 2000. In addition, several Council members claimed they questioned Rice about a conflict of interest prior to the vote. However, there is no record of any objection or concern from any Council member noted in the Council minutes.

A regularly-scheduled Council meeting was held on September 11, 2000. When Council members were asked for reports, Rice brought up the Heiser property. Rice commented that the residents were complaining that construction on Heiser's property was beginning at 7:00 a.m. daily and Saturday. Rice was also concerned regarding the mound being built on Heiser's land. Rice instructed the Phil Roush from the City Engineer's office to make sure that Heiser was grading the mound properly in accordance with the plan that had been approved by Council.

At the City Council meeting on October 9, 2000, Rice again brought up the issue of the grading on Heiser's property. According to Rice, many Heritage residents had contacted him and expressed how unhappy they were with the development of the Heiser's property.

Rice was elected as President of Council at the organizational meeting held in December, 2000. At the regular Council meeting on February 12, 2001, Rice stated to City Engineer Jim Benekos "Jim I got your letter in regard to the Heiser's property, I definitely would like to talk to you about that in preparation for their plans and that type of thing." City Engineer Benekos sent a letter to Rice as Council President and to Snyder as a Council representative for Heritage Estates. Benekos mentioned that in speaking with Heiser's engineer, a site plan was being developed to submit to the Planning Commission. (See Exhibit 6.)

The issue of the Heiser property and Auto Nation-Mullinax Ford was brought back to the Planning Commission on April 4, 2001. The meeting minutes, under the heading of Council members, Rice is listed as being present. Rice was no longer a member of the Planning Commission. At that meeting, discussion was opened to the floor and Rice was the first person to speak. The majority of the discussion involved issues of a significant sight and sound barrier for the homeowners to protect them from the new development. (See Exhibit 7.)

According to Smerigan, Rice attended the Planning Commission meetings as a Council member and was active in discussing the concerns of the residents. Smerigan also claimed that Rice advocated for items as a Council member that he had requested as a private citizen. In addition, Smerigan states that Rice would stay after these meetings for at least one-half hour to discuss the issues and plans with Oxbow representatives. (During this time, however, Rice was not a member of the Planning Commission.)

On July 16, 2001, Rice as Council President assumed the role of North Canton Mayor. Rice ran for Mayor in the fall of 2001 and was unopposed.

## **D. APPLICATION OF LAW TO THE FACTS**

### **1. PARTICIPATION, NEGOTIATION AND VOTING ON HEISER PROPERTY**

Smerigan of Oxbow Engineering claims that Rice advocated for a wider and higher buffer, a bigger mound at his end of the property, and for Heiser to donate 10 acres instead of 8 acres to the City. Without Rice's involvement, Smerigan stated that the buffer would have been smaller and less plants and trees. The height of the buffer was a compromise between Heiser and the homeowners. Smerigan believes that the City would have approved a smaller mound. Smerigan claims that Rice made threats about getting the project stopped if he did not get the modifications he wanted, and if this occurred, Rice would then craft a referendum. Heiser claims those changes cost him several hundred thousands of dollars.

Lynn Egensperger, President of Oxbow Engineering, claims that Rice attended the neighborhood meetings regarding the Heiser property. Egensperger says that she was part of the meeting on July 21, 1999, which included Council member Snyder and Rice. Rice claimed, "he was not a public official and he attended as a homeowner." At that meeting, there was a disagreement between Egensperger and Rice, and Rice "blew up at her and stormed out of the meeting." Egensperger states that Rice was very involved with the mound wall, specifically the design specifications as both a resident and a Council member.

Former North Canton Mayor Daryl Revolt pointed out that anyone in the neighborhood could have argued the issues that Rice had spoken out about. Rice was one of the primary advocates in the neighborhood. When the third reading of the Heiser rezoning Ordinance was tabled at City Council, Revolt stated that Rice began to participate in a more aggressive fashion.

According to Jon Snyder, City Council President, Rice was vocal at Planning Commission meetings after the site plan was first introduced for approval. He said that the July 21, 1999 meeting erupted into a real donnybrook. Rice and other neighbors put pressure on Smerigan to build the mound higher because they could see through Heiser's property from their back windows. Mullinax then threatened to move the business to Jackson Township. Snyder became angry when Rice took over at public meetings.

At the July 21, 1999 meeting, Wendell Horn, President of the homeowners association, was prepared to speak on these issues. Instead, he was surprised when Rice took over the meeting and spoke on behalf of the residents.

The witnesses feel that while dealing with North Canton during the development of the property, Rice's involvement was like having a "gun to their heads."

In determining whether Mayor Rice's participation, negotiation, and voting on the Heiser issue rises to the level of a criminal offense, it is axiomatic to determine whether the alleged actions are within the statute of limitations. R.C. Section 102.03(D) and (E) are misdemeanors of the first degree. Under R.C. Section 2901.13 It states in pertinent part:

... a prosecution shall be barred unless it is commenced within ...  
(b) for a misdemeanor other than a minor misdemeanor, two years.

Rice's critical vote on the Ordinance took place on February 14, 2000. The meetings regarding the planning and modifications of the Heiser property occurred in late 1999 through the early part of 2000. When Rice took over as Mayor on July 16, 2001, the alleged criminal behavior had already been concluded.<sup>4</sup> Therefore, R.C. Section 2901.13 which addresses the time period for bringing criminal actions bars the filing of criminal charges at this time.

## 2. ADVERSE POSSESSION

On the other hand, Rice's actions in May, 2002, are ripe for review and are within the statute of limitations. On May 29, 2002, Tom and Jennifer Rice had their attorney, Mike Russell, send a letter to Heiser. The letter requested a quit claim deed for the part of Heiser's land that abuts Rice's backyard. The letter states that since Tom and Jennifer Rice have been homeowners for over 21 years they owned Heiser's property by way of adverse possession. (See Exhibit 8.)

Heiser's attorney responded that the Rices had not and could not meet the Ohio requirements for adverse possession. Heiser did not agree to meet the demand of the Rices. Heiser offered to grant a revocable license to the Rices for the use of land for the same purposes as in the past. (See Exhibit 9)

On July 15, 2002, Rices' attorney, Mike Russell, sent another letter to Heiser indicating that the Rices rejected the offer and they were beginning to work on an adverse possession complaint. The letter also stated that Heiser should be aware that the land in question was to be donated to the City and would be of no value to the City. (See Exhibit 10.)<sup>5</sup>

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<sup>4</sup> I did not receive this inquiry before the expiration of the statute of limitations, therefore, I will not conclude whether Rice violated this statute.

<sup>5</sup>Rice claims that these letters were sent out by his wife without his permission. There is no record that Rice subsequently provided any type of written notification to Council, Heiser or Oxbow Engineering that these two letters were unauthorized.



According to Heiser and others, the portion of the buffered tract adjacent to Rice could only benefit Rice. City Engineer Benekos claims that this additional parcel of land would increase Rice's property value by \$20,000.00-\$30,000.00. The approximate square footage of Rice's property is close to 14,000 square feet. The approximate square footage of the land Rice attempted to claim by adverse possession was approximately 4,300 square feet.

However, a neutral private appraiser, hired as a part of this investigation, valued the land at approximately \$1,500.00. The parcel is in a flood zone and the parcel of land would be landlocked. This parcel has very limited usage because of flooding from the nearby creek.

### **E. CONCLUSION**

While it would be easy for someone in a position such as Mayor Rice to assume that because his interest in protecting his home is the same as his neighbor, careful consideration is critical because the circumstances can (and did) change such that Mr. Rice's personal interest diverged from that of his constituency.

When this type of conflict arises, it is nearly impossible for the elected official to claim he is acting in either the role of public officer or private citizen. It is equally difficult for those who deal with the official, for they cannot see a literal or figurative "change of hats." Consequently, others cannot make decisions without speculating if they will suffer the wrath of an angered official. This is fundamentally unfair and it is the very reason for the complicated codification of rules and laws.

Fairness is the gravamen of the instant matter. Fairness demands that an elected official have only his constituents' interests as his polestar when doing their public's business. And when there is even a possibility that interests may conflict, fairness demands that the public official refrain from directly, or even through implication, or abuse of power that government wields.

Based on the analysis above, however, Rice's conduct, while acting with conflicting motives, does not meet the prerequisites of R.C. Sections 102.03 (D) or 102.03(E). Rice's conduct demonstrates a conflict of interest, but it does not rise to the level of criminal conduct under R.C. Sections 102.03(D) or 102.03(E).

Initially, Rice's actions appear to be motivated by the desire to protect the interests of the property owners near the Heiser property. It is logical that neighboring property owners would look to Rice more than other city officials, because he stood to be adversely affected in the same way.

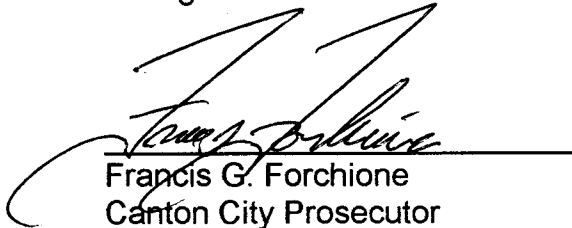
But, the point at which Rice could obtain for himself a parcel of land, the nature of his involvement changed. It could no longer be clearly seen that Rice's actions were for

the sole benefit of his constituents or whether the opportunity for personal gain guided his conduct. As the Mayor and long-time public official, Rice should have recognized this. But, viewing these events in the perspective in which they occurred, it would be too great a leap to conclude that Rice's sole motive during an extended period on a controversial and complicated matter was driven by the "knowing" state of mind required to prove criminal conduct.

In this case, Rice, as Mayor of North Canton, was demanding a parcel that was designated as part of a park for the citizens of North Canton and threatened litigation as the alternative. When the public becomes aware of public officials' actions that appear self serving, the public loses confidence in government.

A better alternative would have been to forward a request to Council to purchase the property as a private citizen. The property could have been appraised to determine a fair value. Rice's interest would be publicly disclosed and Council would be the ultimate authority to approve such a transaction. Rice's reliance on Law Director Hine's opinion was based on the premise that Rice received no benefits. Yet, Rice's conduct went beyond the framework established by Hines.

Because the questioned conduct is not criminal in nature but present ethical concerns, any consequence for the conduct of Mayor Rice would be better addressed through remedies available to The Ohio Ethics Commission.



Francis G. Forchione  
Canton City Prosecutor

FGF/sks

## 102.02

### Note 8

## STATE GOVERNMENT

prior to, or at the time of, the receipt of the item or benefit does not receive a gift for purposes of RC 102.02(A)(7), and the official or employee is not required to disclose the name of the private citizen as the source of a gift on his financial disclosure statement. Ethics Op 96-003.

### 9. Fees

A board of county commissioners may not authorize the use of county funds to pay on behalf of all elected county officers the fee that must accompany a county officer's financial disclosure statement pursuant to RC 102.02(E)(2). OAG 00-002.

## 102.021 Disclosure of political contributions by deputy registrars—Repealed

(1994 H 285, eff. 3-2-94; 1988 S 1, eff. 11-28-88)

### Historical and Statutory Notes

**Ed. Note:** Former 102.021 amended and recodified as 4503.033 by 1994 H 285, eff. 3-2-94.

## 102.022 Disclosure of sources of income and gifts

Each person who is an officer or employee of a political subdivision, who receives compensation with that political subdivision, and who is required to file a statement under section 102.02 of the Revised Code, and each member of the board of trustees of a state institution of higher education as defined in section 3345.011 of the Revised Code who is required to file a statement under section 102.02 of the Revised Code, shall include in that statement, in place of the information required by divisions (A)(2), (7), (8), and (9) of that section, the following information:

(A) Exclusive of reasonable expenses, identification of every source of income over five hundred dollars received during the preceding calendar year, in the officer's or employee's own name or by any other person for the officer's or employee's use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code or patients of persons certified under section 4731.14 of the Revised Code. This division shall not be construed to require a person filing the statement who derives income from a business or profession to disclose the individual items of income that constitute the gross income of the business or profession.

(B) The source of each gift of over five hundred dollars received by the person in the officer's or employee's own name or by any other person for the officer's or employee's use or benefit during the preceding calendar year, except gifts received by will or by virtue of section 2105.06 of the Revised Code, received from parents, grandparents, children, grandchildren, siblings, nephews, nieces, uncles, aunts, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, or any person to whom the person filing the statement stands in loco parentis, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor.

(1997 S 6, eff. 6-20-97; 1994 H 492, eff. 5-12-94)

### Ohio Administrative Code References

Financial disclosure filing requirements, OAC Ch 102-5

### Library References

Officers and Public Employees ⇄110.

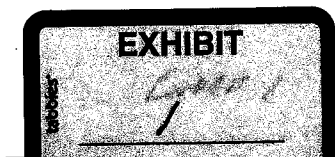
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C.J.S. Officers and Public Employees § 197-204.

Ohio Administrative Law Handbook and Agency Directory, OAC Vol. 17, Text 9.4.

## 102.03 Restrictions during and after employment; bribery prohibited; honorarium for personal appearance; reimbursement for travel expenses; membership in organizations

(A)(1) No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity



for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(2) For twenty-four months after the conclusion of service, no former commissioner or attorney examiner of the public utilities commission shall represent a public utility, as defined in section 4905.02 of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency.

(3) For twenty-four months after the conclusion of employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section 3734.01 of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which the public official or employee personally participated as a public official or employee.

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section "person" does not include any state agency or political subdivision of the state.

(5) As used in divisions (A)(1), (2), and (3) of this section, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in division (A)(4) of this section, "matter" includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

(7) Division (A) of this section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the

public official or employee or immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee or the public official's or employee's immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging that sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code.

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

As used in this division, "contributions," "campaign committee," "political party," "legislative campaign fund," "political action committee," and "political contributing entity" have the same meanings as in section 3517.01 of the Revised Code.

(H) No public official or employee, except for the president or other chief administrative officer of or a member of a board of trustees of a state institution of higher education as defined in section 3345.011 of the Revised Code, who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium. This division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in section 3345.011 of the Revised Code, pays membership dues. This division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is not required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from promising or giving to that public official or employee an honorarium or the payment of travel, meal, and lodging expenses if the honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission,

authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. The house of representatives and senate, in their code of ethics, and the Ohio ethics commission, under section 111.15 of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section 102.08 of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on the public official or employee with respect to that person's duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use his official position with regard to the interests of the organization on the matter if the public official or employee has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, pecuniary interests.

(K) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with division (B) of section 309.06 and section 2921.421 of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections 733.621 and 2921.421 of the Revised Code, for a township law director appointed under section 504.15 of the Revised Code to appoint assistants and employees in accordance with sections 504.151 and 2921.421 of the Revised Code, or for a coroner to appoint assistants and employees in accordance with division (B) of section 313.05 of the Revised Code.

As used in this division, "chief legal officer" has the same meaning as in section 733.621 of the Revised Code.

(2001 H 94, eff. 9-5-01; 1998 S 134, eff. 7-13-98; 1997 S 6, eff. 6-20-97; 1996 H 408, eff. 5-8-96; 1995 S 8, eff. 8-23-95; 1994 H 285, eff. 3-2-94; 1994 H 492, eff. 5-12-94; 1992 S 359, eff. 12-22-92; 1990 S 382, H 610; 1988 H 592; 1986 H 300; 1982 S 378; 1980 S 425; 1976 H 1040; 1973 H 55)

#### Uncodified Law

1995 S 8, § 10, eff. 8-23-95, reads: If a section of the Revised Code is amended or enacted by this act and the same section is amended or enacted by a law proposed by initiative petition filed with the Secretary of State and transmitted by him to the General Assembly prior to the effective date of this act and if the proposed law is approved by a majority of the electors voting on it, the

section that is amended or enacted by this act is repealed, and any corresponding penalties in any other section that is amended or enacted by this act are repealed thirty days after the election at which the law proposed by initiative petition that amends or enacts the same section is approved by a majority of the electors voting on the proposed law.

## Cross References

- Penalty: 102.99(B)
- Agricultural commodity handlers, financial information, confidentiality of information, 926.06
- Bribery, 2921.02
- Housing finance agency members, exemption, 175.03
- Joint emergency medical services district board of trustees, conflict of interest, 307.053
- Joint self-insurance pools, participation by public official or employee, 2744.081
- Low-level radioactive waste facility development authority, applicability, 3747.05
- Metropolitan housing authorities providing free housing or other benefits to law enforcement officers, 3735.43
- Probate judge and appointees, dealing in estate assets forbidden, 2101.40
- Probate judge and clerks, law practice limits, 2101.41
- Soliciting or receiving improper compensation, 2921.43
- Solid waste management districts, interest in contracts, 343.01

## Ohio Administrative Code References

- Personal information records, OAC 102-1-07
- Restrictions on ODHS employees and contractors/grantees, OAC 5101-9-52

## Library References

- Attorney and Client  $\Leftrightarrow$ 19.
- Bribery  $\Leftrightarrow$ 1(2)-3.
- Officers and Public Employees  $\Leftrightarrow$ 29.
- WESTLAW Topic Nos. 45, 63, 283.
- C.J.S. Attorney and Client § 150.
- C.J.S. Bribery § 4, 9, 12-13.
- C.J.S. Officers and Public Employees § 23-24.
- OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 259, 282, 412, 414, 418, 419; 22, Courts and Judges § 84; 37, Elections § 242; 84, State of Ohio § 89
- Am Jur 2d: 63A, Public Officers and Employees § 73, 78
- Gotherman & Babbit, Ohio Municipal Law, Text 5.11, 5.14, 9.24; Form 5.11, 5.14, 9.24.
- Ohio Administrative Law Handbook and Agency Directory, OAC Vol. 17, Text 9.1, 9.2, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16, 9.17, 9.18, 9.26, 9.28, 9.31.
- Meck & Pearlman, Ohio Planning and Zoning Law (2001 Ed.), Text 8.49.H
- Baldwin's Ohio School Law, Text 45.6.
- Baldwin's Ohio Township Law, Text 6.3, 6.18, 8.11, 9.4, 10.3, 20.2, 20.17, 30.5, 38.6.

## Law Review and Journal Commentaries

- Employing (former) board members, Van D. Keating. 37 Ohio Sch Boards Ass'n J 2 (February 1993).
- Ethical Restrictions on Travel, Meal and Lodging Expenses, John Rawski. 38 Cities & Villages 12 (June 1990).
- Financial Disclosure Requirements—City Elected Officials, Jennifer A. Hardin. 43 Cities & Villages 13 (January/February 1995).
- General Rules for Officials of Political Subdivisions Under the Ethics Bill, Stanley J. Dobrowski. 6 Gotherman's Ohio Mun Serv 27 (May/June 1994).
- Return to the Ethics Rules as a standard for attorney disqualification: Attempting consistency in motions for disqualification by the use of Chinese walls, Randall B. Bateman. 33 Duq L Rev 249 (1995).
- Who must file financial disclosure forms?, Richard J. Dickinson. (Ed. note: School boards are discussed.) 41 Ohio Sch Boards Ass'n J 2 (March 1997).

## Notes of Decisions and Opinions

**Ed. Note:** *Casenotes with the citation "Elections Op" are decisions of the Ohio Elections Commission. Casenotes with the citation "Bd of Commrs on Grievances & Discipline Op" are opinions of the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline. Copies of these decisions and opinions may be obtained from the Court, Commission, or purchased from the Publisher by telephoning (800)362-4500 extension 5586.*

## Abuse of confidential information 3

## Bribery 8

## Conduct not found improper

Business or employment relationships with possible interest 17

Contracts with possible interest 20

De minimis gratuities or expenses 6

Freedom of speech 22

Public records disclosure 18

Salary changes 19

Speaking or lecture fees 21

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## Votes with a possible interest 15

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## Constitutional issues 1

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## Financial disclosure 11

## Honorarium 12

## Improper influence or use of authority 10

## Improper representation of client 2

## Remedies 13

## Seeking improper advantages 5

## Travel expenses 9

# CHARTER

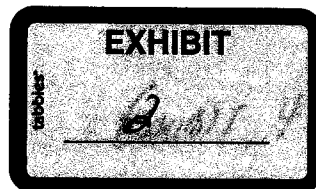
of the

Municipality

of

North Canton, Ohio

2002





days nor more than seventy-five (75) days after the date of such delivery. At such recall election, this question shall be placed upon the ballot: "Shall (naming the officer) be allowed to continue as (naming the office)?" with provision being made on the ballot for voting affirmatively or negatively on such question. If a majority of the votes cast at such election shall be voted affirmatively, such officer shall remain in office. If a majority of the votes cast shall be voted negatively, such officer shall be considered as removed, the office shall be declared vacant, and such vacancy shall be filled as provided by this Charter. The officer removed by such recall election shall not be eligible for appointment to the vacancy created thereby.

## ARTICLE VI

### GENERAL PROVISIONS

**Section 6.01. Conflict of Interest.** No elected or appointed officer, official or employee shall hold any incompatible office under the national, state and county government, nor shall have any financial interest, direct or indirect, in any contract or proceeding to which the municipality is a party, or in any expenditure of money by the municipality other than the fixed compensation and traveling or other expenses incidental to the authorized furtherance of the interests of the municipality. Any willful violation of this section shall constitute malfeasance in office. Any violation with the knowledge, express or implied, of the person or corporation contracting with the municipality shall render the contract or proceeding voidable by the Mayor or the Council.

**Section 6.02. Separability of Sections.** If any section or part of section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter, nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

**Section 6.03. Interpretation.** The Article and Section headings herein have been inserted for convenient reference and are not intended to define, or limit the scope of, or otherwise affect, any provision of this Charter.

**Section 6.04. Charter Review.** In January, 1967, and in January of each tenth year thereafter, the Council shall appoint a commission of fifteen (15) electors of the municipality who hold no other municipal elective or appointive office, except on advisory bodies of the municipality, as members of a Charter Review Commission. Such commission shall review the Municipal Charter, and within five (5) calendar months after such appointment, recommend to Council such alterations, revisions, and amendments, if any, to this Charter, as in the judgment of the Charter Review Commission are desirable. The Council shall cause the recommendations of the Charter Review Commission to be published in a

newspaper of general circulation within the municipality on two successive weeks, and Council shall hold a public hearing on such recommendations within one week after the second publication thereof. Meetings of the Charter Review Commission shall be public meetings.

**Section 6.05. Amendments.** This Charter may be amended in accordance with the terms and provisions of the Constitution of the State of Ohio. If two or more inconsistent proposed amendments on the same subject shall be submitted at the same election, only the one of such amendments receiving the largest affirmative vote, not less than a majority, shall become a part of this Charter.

## ARTICLE VII

### TRANSITIONAL PROVISIONS

**Section 7.01. Effective Date.** The effective date of this Charter shall be January 1, 1961, for the division of territory into wards, the nominations and election, and fixing of compensation of elected officials, the Director of Administration, Director of Finance and Director of Law. For all other purposes this Charter shall be in effect on and after January 1, 1962.

**Section 7.02. Creation of Wards.** Upon the adoption of this Charter by the electors of the municipality, and at least sixty (60) days prior to the last date fixed by this Charter for filing nominating petitions for terms of office beginning on January 1, 1962, Council shall enact an ordinance dividing the municipality into four (4) wards according to the manner prescribed in Section 2.02 of this Charter.

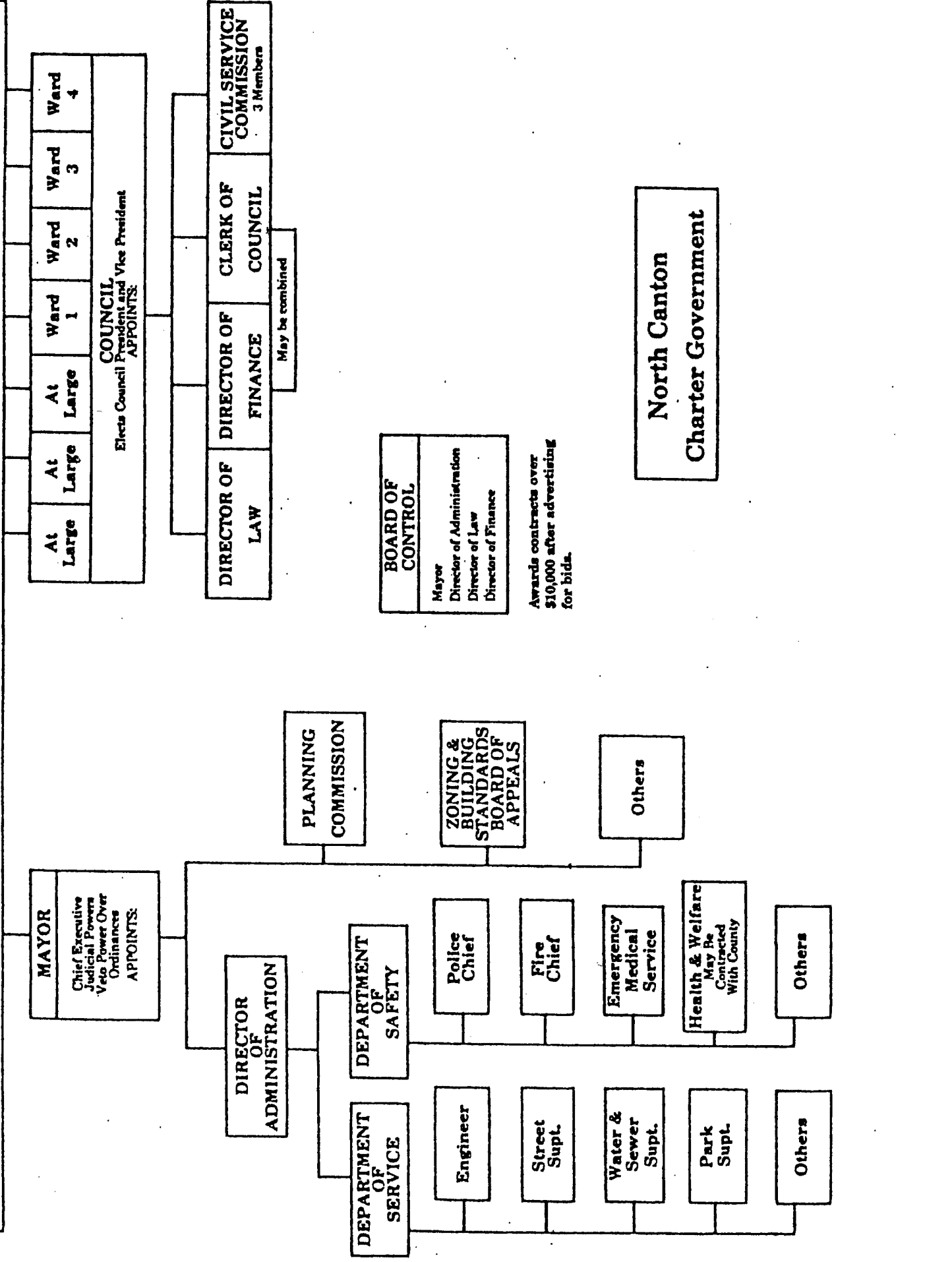
**Section 7.03. Fixing Compensation.** The present Council shall on or before July 1, 1961, fix the salaries and bonds required of all elective officers assuming office under this Charter January 1, 1962.

**Section 7.04. Continuance of Contracts, Public Improvements and Ordinances.** All contracts entered into by the municipality, of and for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws existing at the time this Charter takes effect may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws.

No action or proceeding, civil or criminal, pending at the time when this Charter shall take effect, brought by or against the municipality or any office, department or agency or officer thereof, shall be affected or abated by the adoption of this Charter or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that the functions, powers and duties of any office, department or agency or officer a party thereto, may by or under this Charter be assigned or transferred to another office, department or agency or officer, but in that event, the same may be prosecuted or defended by the head of the office, department or agency to which said functions, powers and duties have been assigned or transferred by or under this Charter.

# NORTH CANTON VOTERS ELECT

For Two Year Terms



**North Canton  
Charter Government**

CANTON LEGAL BLANK CO. FORM NO. 1014

Held Monday, November 8,

19 99

**Ordinance No. 107-99 - Third Reading**

An ordinance authorizing the Mayor of the City of North Canton, through the Board of Control, to enter into a contract by and between the City of North Canton and the Stark County Public Defender Commission for the purpose of providing legal counsel to indigent persons in Canton Municipal Court.

Mr. Wernet: Chairman Snyder.

Mr. Snyder: Thank you Mr. President. Again, this is required by both statute and ordinance that we provide legal counsel to the indigent. It's \$190.00 per case, the same as it was last year. And that's basically it.

Mr. Morrow: I think Bill read it best--better the first time, much better.

Mr. Snyder moved and Mr. Morrow seconded to adopt the third reading of Ordinance No. 107-99. All members present voting:

Yes: McLaughlin, Morrow, Snyder, Thomas, Wernet and Foltz.  
No: 0

**NEW BUSINESS:**

10. Mr. Snyder moved and Mr. Foltz seconded to read by title only, first reading of Ordinance No. 111-99. All members present voting:  
Yes: Morrow, Snyder, Thomas, Wernet, Foltz and McLaughlin.  
No: 0

**Ordinance No. 111-99 - First Reading**

Mr. Hines: We ready for this?  
Mr. Wernet: We're ready.

An ordinance amending Ordinance No. 2940, Zoning Ordinance of the City of North Canton, to change the zoning district of the premises situated on the east side of Whipple Avenue N.W. and known as part of Out Lot 212 (Parcel No. 57-00038) in the City of North Canton from GB-A, General Business-A, district and RMF-A, Residential Multi-Family A, district to GB-B, General Business-B, district and P&I, Parks & Institutional district, respectively.

Mr. Wernet: This is the property known as the Heiser property. And we all are familiar with this; this is second time around. Do we have any comments or questions?

Mr. McLaughlin: I do. First of all, I don't think the issue of the mound or the hill or whatever you want to call it has been settled with some of the people over there; I think it's still an up issue. I ask that we table all these three new--these three ordinances here: 111-99, 112-99, and 113-99, until the new Council sets in. And that gives him some time to get his plans together out there on how that mound is supposed to be. I'd feel a little bit more better or feel a lot better knowing what the plans were, rather than going ahead and okaying it for two and tabling it on the third until we're definitely sure of what that mound and everything else in that area out there is going to protect those constituents from.

Mr. Morrow: What does that have to do with the other two Rick?

Mr. McLaughlin: Well, if you're going to do them all, you're going to do them all at once. I just think that it would be better for--rather than reading the two and...

Mr. Wernet: We'll just hear these separate. Mr. Snyder.

Mr. Snyder: Thank you Mr. President. Councilman McLaughlin, I did subsequent to talking to you on the telephone relative to that, I did have conversation with Mr. Smerigan of Oxbow Engineering and he has offered to send me the topography map, which will address those questions. I think of the residents in that area--and I will before this--actually, the way the new Council reads, the third reading will not come on till approximately the 13th of December, which would give adequate time that the--with the permission of the Council people, the new as well as the old, I'll meet with Mr. Rice and Miss Magel and Greg Sarbach and we'll address that so they are familiar with that prior to the reading, and that way they'll be knowledgeable, along with the people of Heritage, if they would meet with us so that we're all on the same page.

Mr. Wernet: And I don't see any reason to table at this time, since we're six weeks away.

Mr. Hines: Is there a motion to table?

Mr. Wernet: No.

Mr. Hines: Is that a motion Rick?

Mr. McLaughlin: No, I was just saying I'm just going to throw it out to see if anybody--if I had any backing on it or whatever. I'm still concerned, like I say, that--about the mounding issue and see where we're going to go with it and everything else. I don't think anything was settled last week and it's still kind of up in the air about who, what, when and where.



Held

Monday, November 8,

19 99

Mr. Foltz: Phil, quick question for you. This was just a zoning matter, correct?

Mr. Roush: That's correct.

Mr. Foltz: They need to come back with building plans and show an outlay of...

Mr. Roush: The site plan would have to go to the Planning Commission.

Mr. Foltz: Okay, and that's something there where we can also review that buffer at that time?

Mr. Roush: Well, the site plan doesn't have to come back to Council, it only has to go to the Planning Commission.

Mr. McLaughlin: But I think the constituents were concerned—they wanted to know up front before this thing was passed if I'm not mistaken; that they want to know what the plans are going to look like before hand, rather than going ahead and passing it—the issue.

Mr. Roush: The a--yea, my understanding is that there was going to be some agreement between...

Mr. Snyder: That's correct.

Mr. Roush: the Heiser group and the property owners and I'm not sure whether Council was going to have to approve that or not.

Mr. Wernet: I think they want it written in the record to protect their mound and the trees...

Mr. Snyder: I feel at this point, prior to the second reading, which will be about the 21st or 2nd of this month, I will have in place to give to Council of the represent--of the residents of Heritage Estates the proper language that will actually go into the deed of the property...

Mr. Roush: Deed restrictions.

Mr. Snyder: and they'll provide that. And I think some of the residents are questioning the height and the topography of the mound, which I would hope by Wednesday or Thursday of this week to give to those residents and to the new Council people.

Mr. Roush: Yea, I guess I'd defer to the Law Director on proper mechanism for this to be implemented. I'm not sure that's there Council action, but other than to insure that it's in the deed record or deed covenants or whatever. Is that right Bill?

Mr. Hines: You can make the reading contingent on this—an acceptable deed restriction.

Mr. Morrow: I think we've done that before haven't we?

Mr. Hines: Right. And I haven't seen anything so this is just...

Mr. Snyder: And the park—who ever represented Mr. Heiser can concur with that, that would be no problem. So if that—I would defer to Council but I—if you'd like that in there we'll put that in.

Mr. McLaughlin: Please, I really would. I think some of the constituents down there are concerned about it and I think it'd be better if we did have that in there.

Mr. Wernet: I think there's several other items, isn't there that...

Mr. Snyder: Yes. And there's—I believe there's about two pages, which I have and they will send it for—as a matter of fact, they did say they faxed them to me today, but unfortunately I didn't have them. And I'll see that each member of Council gets one prior to the next reading.

Mr. Hines: What you probably should do, is give this a first reading and refer it back to committee so we can get legislation cut that includes the deed restriction; because it doesn't now.

Mr. Wernet: Okay.

Mr. Snyder: And that will keep it moving along then that way. Okay.

Mr. Wernet: That satisfactory?

Mr. Snyder moved and Mr. Foltz seconded to adopt the first reading of Ordinance No. 111-

99. All members present voting:

Yes: Snyder, Thomas, Wernet, Foltz, McLaughlin and Morrow.

No: 0

11.

Mr. Snyder moved and Mr. Foltz seconded to read by title only, first reading of Ordinance

No. 112-99. All members present voting:

Yes: Thomas, Wernet, Foltz, McLaughlin, Morrow and Snyder.

No: 0

#### Ordinance No. 112-99 - First Reading

An ordinance amending Ordinance No. 2940, Zoning Ordinance of the City of North Canton, to change the zoning district of the premises situated on the east side of Whipple Avenue N.W. and known as Lot No. 4745 and house number 6006 in the City of North Canton from GB-A, General Business-A district to GB-B, General Business-B district.

Mr. Wernet: Is there any comments on this one?

Mr. Hines: Well we should change the house number 6006 Whipple Avenue.

Mr. Wernet: 6006?

Mr. Hines: And we give a house number, I didn't catch that. Just add Whipple Avenue after the house number.

Mr. Wernet: Oh yea, okay.

DAYTON LEGAL BLANK CO. FORM NO. 1012E

Held Monday, December 13,

19 99

Mr. Snyder: I'll call a three minute recess while we clear the audience here. I'll reconvene the meeting. My apologizes on Ordinance 111-99, I'll defer to Chairman Rice on that.

Mr. Rice: Well, thank you Mr. President. I would respectfully request that the Council consider tabling these: Ordinance 111-99, 112-99 and 113-99; all in regards to the rezoning issues on Whipple, due to the fact one of the most significant parcels there, the rezoning is contingent upon numerous deed restrictions that have been promised-proposed to the residents of Heritage Estates. And in consulting with the Law Director, as of now those documents are not fully prepared and in the hands of our Law Director. So, that's a critical part of that rezoning, being able to be considered for that area, and therefore, would request a tabling of these until our January meeting.

Mr. McLaughlin: And I will second that for the fact that I think it gives our new council people another couple weeks just to look this over again and feel comfortable with it.

Mr. Rice moved and Mr. McLaughlin seconded to table Ordinance Nos. 111-99, 112-99 and 113-99.

All members present voting:  
Yes: Rice, Sarbach, Snyder, Thomas, Foltz, Magel and McLaughlin.  
No: 0

Mr. Rice: Thank you Mr. President.  
Mr. Snyder: You're welcome.

- 9. Ordinance No. 112-99 - Tabled (Refer to above listed transcript)
- 10. Ordinance No. 113-99 - Tabled (Refer to above listed transcript)

NEW BUSINESS:

- 11. Mr. McLaughlin moved and Mr. Thomas seconded to read by title only, first reading of Ordinance No. 120-99. All members present voting:  
Yes: Sarbach, Snyder, Thomas, Foltz, Magel, McLaughlin and Rice.  
No: 0

Ordinance No. 120-99 - First Reading

An ordinance amending Ordinance No. 2940, Zoning Ordinance of the City of North Canton, to change the zoning district of the premises situated on the West side of Market Avenue North and known as part of Out Lot 286 in the City of North Canton from RMF-A, Residential Multi Family-A, district to OB Office Building, district.

Mr. Snyder: As you know, we met last week as a Committee of the Whole, we discussed that property at the Washington Square. It's basically--everyone got a map of that--came as a positive recommendation of the Planning Commission. That's about it. Is there any comment on that? Clerk call the roll on that one too. We need a motion don't we--excuse me.

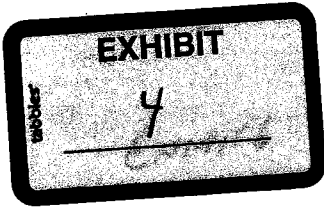
Mr. McLaughlin moved and Mr. Foltz seconded to adopt the first reading of Ordinance No. 120-99. All members present voting:  
Yes: Snyder, Thomas, Foltz, Magel, McLaughlin, Rice and Sarbach.  
No: 0

- 12. Mr. McLaughlin moved and Mr. Sarbach seconded to read by title only, first reading of Ordinance No. 121-99. All members present voting:  
Yes: Thomas, Foltz, Magel, McLaughlin, Rice, Sarbach and Snyder.  
No: 0

Ordinance No. 121-99 - First Reading

Ordinance No. 121-99 amending Appendix "A" of Ordinance No. 157-98, Appropriation Ordinance of the City of North Canton, by the addition of \$6,428.30 to account 5150, to allow for additional expenses in connection with the purchase of new cruisers for the police department and declaring the same to be an emergency.

Mr. Snyder: Again, last week we met as a Committee of the Whole; that \$6,428.30 covered striping, transfer of radios and equipment into the new seven police cruisers and we needed that additional money. Any questions on that?



DAYTON LEGAL BLANK CO., FORM NO. 10124

Held Monday, December 13,

19 99

Mr. Roush: The asphalt on the first phase is complete except for grading.

Mr. McLaughlin: Right.

Mr. Roush: ...(Inaudible)...

Mr. McLaughlin: So, we're in good shape for the winter time and hopefully we can start that after sometime when the weather breaks with the phase 2.

Mr. Roush: We're opening bids on Friday for the next part.

Mr. McLaughlin: I appreciate that. Just to remind everybody that Friday is the Christmas party for the City. I would like to wish everybody a happy and safe Christmas and New Years. And I am glad to see Kathy is up and kicking around; she looks pretty good.

Mrs. Magel: Thanks.

Mr. Snyder: Mrs. Magel.

Mrs. Magel: Well, I just would like to say I'm looking forward to the new year and starting in a little better than I finished this year. John, I would like to personally thank you for the tour you took me for the assets of the city. I learned a lot and I really appreciated it. Marge, I would like to thank you very much for all the time you spent on the budget and preparing all this, it really helped me. Also, I would like to comment that we're speaking of water at the end of this year and not '2K and that's—I really appreciate how much you've done and you've solved the problem and it's really, really good work, it really was.

Mrs. Loretto: ...(Inaudible)...that paper.

Mrs. Magel: Happy holidays.

Mr. Snyder: Mr. Rice.

Mr. Rice: Marge, I'm going to withhold judgement until after the first of the year. But, the only thing I've got—want to make comment is certainly wish our retiring police chief, who is here with us tonight, Chief Lindower, who has been a fabulous servant to the City of North Canton and the residents in the city, the best in his upcoming retirement. We won't have another meeting before he goes off to enjoy himself more. Chief, I do, I'm sure, speak for everybody else up here...

Mr. Boyajian: Have him stand.

Mr. Rice: That would be just fine.

Mr. Foltz: Please stand.

Mr. McLaughlin: Please stand.

Mr. Rice: You've been a fabulous chief and we appreciate your dedication and all the hard work and service you've provided to the City of North Canton and best of luck to you.

Mrs. Loretto: Dave, when is your going away party down at the Civic Center?

Chief Lindower: I'm told the 30th.

Mr. Roush: One to three p.m. on the 30th at the Civic Center.

Mrs. Loretto: Yea, in case you guys want to stop in.

Mr. Boyajian: He probably won't be there.

Mr. McLaughlin: Make sure you turn in your handcuffs before you leave.

Mr. Snyder: Your bullet.

Mr. Hines: Your bullet.

Mr. Snyder: Mr. Thomas.

Mr. Thomas: Just happy holidays to all.

Mr. Snyder: I would echo that, happy holidays to all.

#### FINAL CALL FOR NEW BUSINESS:

Mr. Snyder: Final call for new business. Mrs. Fosnaught.

Nancy Fosnaught: on Whipple Avenue. If I missed this I apologize, but the tabling for the Whipple Avenue project, you said you were going to do that in January? What day in January, do you know which meeting?

Mr. Sarbach: It would be the second meeting, would it not.

Mr. Rice: The second Monday.

Mr. Thomas: The tenth.

Mr. Rice: I'm not sure what that date is Nancy.

Nancy Fosnaught: Okay, the second Monday.

Mr. Rice: Second Monday, yes mam.

Nancy Fosnaught: Thanks very much.

Mr. Snyder: Anyone else?

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON REGULAR

Meeting

DAYTON LEVY BLANK CO. FORM NO. 10448

Held Monday, December 13, 19 99

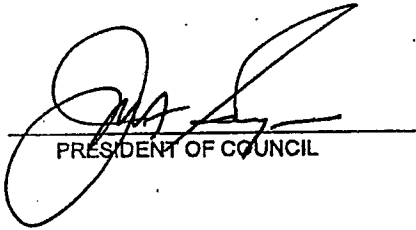
ADJOURN:

Mr. Thomas moved and Mr. Sarbach seconded to adjourn the meeting. All members present voting:

Yes: Foltz, Magel, McLaughlin, Rice, Sarbach, Snyder and Thomas.

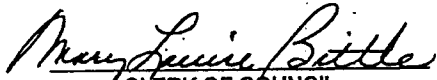
No: 0

The meeting ended at 7:45 p.m.



PRESIDENT OF COUNCIL

ATTEST:



CLERK OF COUNCIL

Held

Monday, February 14,

19 2000

surrounding area and all the other businesses currently existing on Whipple Avenue. Four, the fastest way to change the current usage of the area would be for this zone change. And five, I want you to remember that the North Canton Planning Commission, back in 1999, did recommend approval of what is now Ordinance 113-99. Thank you.

Mr. Snyder: Thank you Mr. Williams. Is there anyone else wishing to speak before this body? Seeing none we'll move along to old business.

OLD BUSINESS:

Mr. Snyder: The first thing is Ordinances 111 through number 113. May I have a motion to remove from the table?

Mr. McLaughlin moved and Mr. Foltz seconded to remove from the table Ordinance Nos. 111-99, 112-99 and 113-99. All members present voting:

Yes: Rice, Sarbach, Snyder, Thomas, Foltz, Magel and McLaughlin.  
No: 0

8. Mr. McLaughlin moved and Mr. Foltz seconded to read by title only, third reading of Ordinance No. 111-99. All members present voting:

Yes: Snyder, Thomas, Foltz, Magel, McLaughlin, Rice and Sarbach.  
No: 0

Ordinance No. 111-99 - Third Reading

An ordinance amending Ordinance No. 2940, Zoning Ordinance of the City of North Canton, to change the zoning district of the premises situated on the east side of Whipple Avenue N.W. and known as part of Out Lot 212 (Parcel No. 57-00038) in the City of North Canton from GB-A, General Business-A, district and RMF-A, Residential Multi-Family A, district to GB-B, General Business-B, district and P&I, Parks & Institutional district, respectively.

Mr. Snyder: Chairman Rice.

Mr. Rice: This is the--better known as the Helser property on Whipple Avenue that's been discussed and worked on for quite some time. I guess at this point I'd ask--I've got a couple questions for the Law Department before we vote. Bill, is it true that we have all the legal documents necessary and in our possession signed by the property owner?

Mr. Hines: We have the executed restrictions ready to record it. Assuming this passes, it will be recorded within thirty days after the passage. Now there's a--we'll have to go to the Planning Commission for the actual description for the hill or the tract. It has to be cut out from the other part. But, we have everything that we requested.

Mr. Rice: We have all the legal--or the deed restrictions ready to file?

Mr. Hines: Correct.

Mr. Rice: Signed...(inaudible). And it's at your satisfaction that these are completely enforceable...

Mr. Hines: Yep.

Mr. Rice: by the city?

Mr. Hines: Yep.

Mr. Rice: Okay. The other question I just want to ask for the record, myself being a property owner adjacent to this tract of land. Does that represent any conflict of interest in voting on this item?

Mr. Hines: You're not going to benefit either way...

Mr. Rice: Right, okay.

Mr. Hines: one way or another, so No.

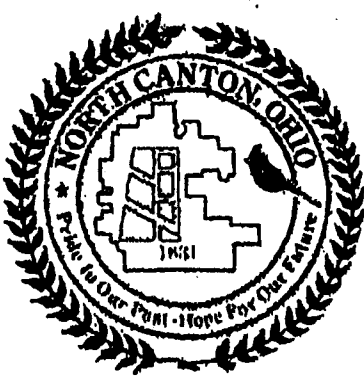
Mr. Rice: Just want that on the record. Any other questions?

Mr. McLaughlin: I think--excuse me--the last question I had was you answered already that nobody from down there--I guess everybody agrees to the changes. And everybody agreed to the change and there's nobody coming up to Council tonight to...

Mr. Rice: Yea, the residents have reviewed this for quite some time. There were several people here last night. I would say they're not--I wouldn't characterize it as they're not concerned with it. I think to a lot of people as I am, with reservation, willing to accept this. I certainly don't like it being an adjoining property owner. However, my concern is with the depth of the GB-B going as close to the properties as it does. But I think all in all the property owners are willing to accept that with the concessions and the deed restrictions and the good faith of the developers to uphold their promises and commitments to the residents of Heritage Estates. And to protect them as much as possible from the sound and sight problems that are going to occur from... So with reservation and concern, I plan on voting for the middle ground I guess... about it. But we think it's the best Anything else?







# City of NORTH CANTON, OHIO

145 NORTH MAIN STREET  
NORTH CANTON OHIO 44720-2587  
ENGINEERING DEPARTMENT  
JIM BENEKOS P.E., P.S.

February 7, 2001

TO: Council President, Tom Rice  
Councilman, Jon Snyder

RE: HEISER DEVELOPMENT

As a point of information, I have recently had discussions with the engineer for Mr. Heiser regarding his development east of Whipple Ave.

They are in the process of developing a preliminary site plan to submit in about 2 to 3 weeks for staff review and probably plan to go to Planning Commission in April.

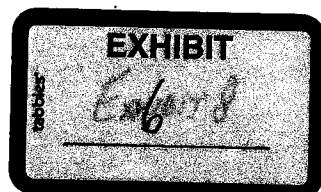
It is my understanding that the two of you were active in rezoning of this parcel. Please let me know what level of involvement you would like in the site plan review process.

Sincerely,

James J. Benekos, P.E., P.S.  
City Engineer

JB/ar

c: Mayor  
Administrator





City of NORTH CANTON, OHIO  
145 NORTH MAIN STREET  
NORTH CANTON OHIO 44720-2587

PLANNING COMMISSION  
Minutes of April 4, 2001

Council Chambers

Present Members: Flechtner, Pachmayer, Vignos, Shanabruch  
Also Present: Director of Law, Batista; City Engineer, Benekos  
Council Members: Magel, Snyder, Rice, Wiley

Chairman Flechtner called the meeting to order.

Mrs. Reikowski called roll call.

Ch. Flechtner: The first item on the agenda are the minutes of our March 7, 2001, meeting.

Mr. Pachmayer: Mr. Chairman, I make a motion that we accept the minutes as presented.

Mr. Vignos: I will second that.

Ch. Flechtner: Any corrections or additions?

Mr. Vignos: Absolutely perfect.

Ch. Flechtner: Roll call please.

Vote: 4 - yes, 0 - no. Minutes approved.

Ch. Flechtner: Next item on the agenda is the YMCA Community Building site plan phase I. Is there someone here representing the YMCA?

Mrs. Reikowski: If you could state your name for the record please, and spell your last name.

Robert Chordar: I am with T.C. Architects. What I would like to do is briefly explain to you what we are doing and get comments or questions you might have. I think this is the site plan we submitted. It is page 2 of 2. It may be a little bit difficult to read. Currently this is Main Street, Bitzer and McKinley Avenue in the back. Currently the YMCA is right here. Currently there is a set--couple of sets of stairs out of the front entrance here, down to the parking lot area. What we are trying to do here is create a two-high story space, kind of in a shape of a rotunda, that will present an on-grade entrance from the parking lot to take care of the ABA issues that the building has always had, and also make more convenient. So, now as you come in here on the grade you come into a controlled "S" and you can go straight into the locker rooms and the workout spaces. The addition's approximately 12,000 square feet, primarily on the first floor with a partial second floor. In that, we are calling the fitness loft that is adjacent to the glass. I will show you in a minute (inaudible) basically, and it's all glass down here. It will create excitement for Main Street and also from the parking lot area. You will be able to view it from both directions. It is going to be very well lit. There will be people working out basically on two different levels. You'll be able to see in and see out. All the activity that's going on in the building. Basically, we are redoing a little bit of the grading out here to meet up with the lower level of the YMCA and then re-ripping this area back here to relocate the handicapped accessible parking spaces. The intent here is to tie into the existing building here. Currently the existing building really stops at this point here. Here on out would be the addition. We are matching the brick. We actually have a very good match being manufactured so the brick will match. We're matching a lot of the stone detailing on the fr (inaudible) details, and the windows are basically matching



the intent of the building--existing windows. As it turns the corner more toward the parking lot it starts to break away and starts to create more open--with a curtain wall system and introduction of brick and some brick detailing as well. On the upper level, the rotunda will have clear (inaudible) glass in the two-high story space to let light into this open workout area that we're talking about. With that I will take any questions or comments.

Ch. Flechtner: Jim, do you have any comments?

Mr. Benekos: I just have a few questions. Is there going to be a sanitary sewer line that needs to service this area? Are there facilities in this area?

Mr. Chordar: They are going to tap into the existing one.

Mr. Benekos: The existing, that existing now goes where?

Mr. Chordar: Mckinley.

Mr. Benekos: It will tie in through the building, under the building?

Mr. Chordar: Yes.

Mr. Benekos: Then as far as parking. The way the parking is set up along the south line, is that the way it is existing?

Mr. Chordar: Yes.

Mr. Benekos: Okay.

Mr. Chordar: It is being re-stripped is all.

Mr. Benekos: Okay. Over in that south west corner is four straight-in parking spaces. That third one--that fourth one on the right, it looks like it would be difficult to get in with that curb island. If it is being done now than I don't have a problem with it. The isle way on that south lane there 17' wide. If that's existing then that's no problem. It should be 20' if you move everything up, but if it is existing then we don't have a problem.

Mr. Chordar: That curb island that you're seeing there--

Mr. Benekos: Right, that was the--

Mr. Chordar: That's existing right now, and that's exactly how it is currently.

Mr. Benekos: Right.

Mr. Chordar: Basically it's one way. It's not both ways. That's why it's 17'.

Mr. Benekos: I know with the angle. The code requires a 20'. If it is existing at 17' then we would leave it at that.

Mr. Chordar: That is the way it was built originally.

Mr. Benekos: Other than that, no comments.

Mr. Pachmayer: Are you going to lose any parking places?

Mr. Chordar: No.

Ch. Flechtner: With the addition of 12,000 square feet are you providing--you're not providing any new parking?

Mr. Chordar: Mike will speak.

Mike Sumser: The parking situation that--as you may know, we purchased a home that separated the YMCA parking from the Hoover Company parking off of Hartman Street. The fire department burnt that house down for us last fall. That will be prepped for parking, for additional parking during construction of phase I. Then we will be coming forward to you with an overall parking plan. We have negotiated an agreement with the Hoover Company where the YMCA parking will be totally connected from McKinley going right back beyond the property that we just purchased. That will be another phase for additional parking. That will give the "Y" 128 additional parking spots over what it has today. I think the number today is about 142 total between the two lots. It's going to be quite an addition to the parking lot.

Ch. Flechtner: Have you done the calculations to see what's required based on the building square footage that exist now?

Mr. Sumser: The parking spaces?

Ch. Flechtner: Yes.

Mr. Sumser: No.

Ch. Flechtner: You might want to do that before you submit the--

Mr. Sumser: On the other one--

Ch. Flechtner: The other one. So we can see where we are. I know parking has been a premium and a concern from day one with that facility. To put 12,000 square feet more at the site, it's just going to compound. I am glad to hear you are taking steps toward--

Mr. Sumser: That is going to make a--not only an increase in the parking dramatically but it will also be increasing the safety dramatically of the people coming across.

Ch. Flechtner: Other questions, comments? Do you know about when that parking lot may come to (inaudible)?

Mr. Sumser: 2002.

Ch. Flechtner: What's your pleasure gentleman?

Mr. Shanabruch: I move for approval as presented.

Mr. Vignos: Second. Do you think we ought to say something about parking in there? Just approve this (inaudible), because you're right--

Ch. Flechtner: This is going to be well completed before that, so I don't know what you could do.

Mr. Vignos: I don't really have that much of a problem with it, to be honest with you.

Ch. Flechtner: I don't think you're going to get 200 new members because of this. You've already got the members and you're just providing space to accommodate the people that are currently using that facility.

Vote: 4 - yes, 0 - no. Motion approved.

Ch. Flechtner: Thank you gentlemen. The next item on the agenda is: AutoNation - Mullinax Ford plans, located on the northeast corner of Whipple Avenue and Heiser Way.

Mr. Vignos: Did you want to take that (inaudible).

Ch. Flechtner: Let's get this (inaudible).

Lynn Egensperger: Hi, my name is Lynn Egensperger with Oxbow Engineering. I am here representing AutoNation - Mullinax Ford. With me tonight are John Strautman and Bob Olafs also, from AutoNation. They are here from Florida. What we have tonight proposed is that new Mullinax Ford dealership on the north side of Heiser Way on the east side of Whipple Avenue. It's

proposed a 52,000 square foot show room and service area and 11,000 square foot auto shop. As you all remember, the site--we did the re-zoning. That is what the aerial shows over there. The parcel we are talking about tonight is the twelve-acre parcel mostly shown in grey, cause it is mostly going to get paved. That is what is on that site plan. The remaining, the green in back was the property that was going to be deeded to the City. Around is the creek, the Zimber Ditch creek, through there. The remaining yellow parcel is just 1.8 acres for future development and still would be zoned GB-B. Shown on that, showrooms, autobody will provide about 922 parking spaces. The parking spaces are for customers, employees, new car display, and new car storage. They would like to use the back part just for storage. The customers really don't go back there and see the cars. The front part is the display area. This board has preliminary--it shows the ponds. We did rough calculations for the drainage and this would be the area needed for detention, then it will be outlet into Zimber Ditch. Landscaping is shown on the mound with the mound being built up a little bit from what is out there now. Dirt was been moved around late last fall. There will be some more grading there on the east end of the property to build up that mound and then do the plantings on it. Along with this, and it is also part of the next item, is the cul-de-sac. It has been shown on this drawing that end of the cul-de-sac has to be constructed. That would be prior to the building construction. Then we also brought the building elevations, the front view, on the top, to be seen from Whipple Avenue and then the next one is the view from Heiser's Way. As it goes down, that is the view from the north, which is the hillside. That's where most of the doors are and that's the rear view. We also have a board showing the elevations for the autobody shop in the back. Along with these are the floor plans. The floor plans are not included in the packet but we do have those. I think that's all I have for the presentation part, any questions?

Ch. Flechtner: I am sure there will be, many. Jim, your comments?

Mr. Benekos: Several I guess. A lot of them are based on not being here for the original. Trying to go back into the records and figure out what was agreed to, approved back then, and what we have now. I think I had a copy for each one of you, the September 1, 1999, letter. The one item in there is referring to the retention basin. I think the request was in there, Item A, on the first page, that request is for the City to allow storm water retention to be put on the P&I parcel. What actually got recorded is not in there. I would have to defer to somebody who was here. If it is still intended, whether that would go in there or not. How you went from that, to not being in the declarations that were recorded? If you want to hit them one at a time we can do that.

Mr. Snyder: Originally, the retention basin was to be put in the P&I district and that's not how it turned out?

Ms. Egensperger: Yes it is.

Ch. Flechtner: There's two.

Mr. Snyder: There was originally one. Now we must have gotten the second one--

Ms. Egensperger: No, no, no.

Ch. Flechtner: Yes.

From Audience: Originally there was one larger one and one smaller one.

Ms. Egensperger: I don't think that is what he is asking.

Mr. Benekos: Originally, in their letter requesting it, it says "Mr. Heiser or his designee, may construct a storm water detention basin on the portion of the site to be zoned parks and institutional." In the declarations that got recorded there's nothing in there that states that.

Ms. Egensperger: It's just not mentioned.

Mr. Benekos: Right. It's not mentioned. Is there a problem with it going in there?

Mr. Snyder: The problem is, unfortunately we insisted on that and we would like to have that as part of the addendum because it's the only protection to the people that live along the Zimber to assure that runoff water does not end up in their back yards. We would like that recorded in the actual deed that's given over to us. Is that the question?

Mr. Benekos: Retention is required. Are you going to want it on the P&I zoned property or do you want it on their zoned property?

Mr. Snyder: We had no problem initially that it be put on the P&I for two reasons. Number one, I don't think the City has any intention, at least it's my understanding, of ever letting (inaudible) to use that property. It's going to be for the enjoyment of the people that live in that allotment. They will either allow it to grow up or whatever they do with it.

Ms. Egensperger: As far the one basin or two, or the size, it--at that stage we had no idea of the area it would take to do it, and how the lay-of-the-land would work as to where the drainage could collect. It was just the fact that we would have basins in that--we had drawings. There were many versions of many things that showed one and--

Mr. Snyder: I don't think there is a problem, to my knowledge, that ends up in the City's own land.

Ms. Egensperger: Right, that's--

Mr. Snyder: That's not a, I don't think that's a problem.

Ms. Egensperger: Jon, as we are shown, at these two blue areas--

Mr. Snyder: Yes, I noticed that there are two now.

Ms. Egensperger: The possibility of two. With the more detailed preliminary calculations on the size, we feel the two are necessary.

Ch. Flechtner: Whether you go with two small ones or one big one you need--

Mr. Snyder: Yes, I don't know that, that is a problem.

Ch. Flechtner: Cubic feet. We will get to you eventually. Continue Jim.

Mr. Benekos: Along with that we talked to Lynn. She mentioned of course that they haven't submitted the details for the storm water drainage or the design, where the pipes are coming in and going out. That would need to be forthcoming. Also, along with that, again I am trying to put together a history of deceleration. What's the mechanism that will require the property owner to turn that over to the City. Is it--it wasn't in the deceleration. Is it just when he feels like it or--

Mr. Snyder: The zone change itself, from the existing GB-A, is not, as I understand according to the minutes, does not become effective until that parcel of land is deeded to the City, as well as when the mound and the plantings are all in place. If I can remember, my memory serves me. That is part of the thing, is it not?

Ms. Egensperger: Right, and so it's the whole thing--

Mr. Snyder: They have no effective zoning until the City does receive title to that property.

Ms. Egensperger: If the site plan is approved, and if this site plan is not approved he can go back to the old zoning.

Mr. Snyder: Exactly, that was the--

Ms. Egensperger: Right, so it was with the approval of this site plan and the--going forward with permits.

Mr. Benekos: Is that a separate ordinance? I have the ordinance that changes it. It doesn't--

Mr. Snyder: I think the Planning Commission minutes reflect that. If you go back to--

Mr. Shanabruch: I don't think so.

Ch. Flechtner: Those conditions were created when it left here and was pertaining to Council and the property owner/developer. We are not a party to any of those discussions.

Mr. Snyder: You know, actually, I had numerous meetings with residents of that allotment. I think at that point is, when we agreed upon it. We said that we would--I might have some documentation to that effect. That is, in effect, how it was. When it would be--when the preliminaries were approved Dick Heiser would then deed the property to the City.

Mr. Benekos: From my understanding that's what was discussed but is there anything, formal documentation that requires him to do that? My understanding, the way this ordinance reads that's the way the zoning is right now.

Mr. Snyder: Other than, I think I have a letter from Lynn, or her company, or from George Smerigan, that they would do that as well as, unfortunately, during that time Bill Hines was the law director and Bill has since passed away. We did talk to him on several occasions and I think he assured us that we were in good standing. That, as well as Dick Heiser's word, that I am sure at this point is valid. There's not going to be a problem there. Of course if we need some type of documentation we could--

Ch. Flechtner: I would say you have the final control by issuing a building permit or zoning certificate. I think the City has the last say before construction can occur and--

Mr. Benekos: When is that parcel supposed to be deeded over to the City? At what point--

Mr. Snyder: I believe if they get preliminary approval, am I not right Lynn, that we--at that point Dick would be in a position to deed that over to us.

Mr. Benekos: Is that when the grading is done? When all the work is done on the property and an occupancy permit is issued. Prior to an occupancy permit, or we don't want to take the deed over then --

Mr. Snyder: I would say at this point, I would defer to you, to set the time table.

Ms. Egensperger: We could establish that sequence now or this week or whenever.

Mr. Snyder: That would be incumbent on them to make sure that they again--so far they've kept their word. I am sure it will continue. I hate to make you a policeman on that but if you could do that.

Mr. Benekos: Okay.

Ms. Egensperger: If we outlined, as conditions or stipulations.

Mr. Benekos: That's fine I just wanted to--

Mr. Snyder: If I may say so, and Mr. Chairman please bear with me, I apologize. The previous two owners of that property, prior to Mr. Heiser, had made promises, as well as promises in writing, to the neighbors and unfortunately, they were never kept. They are very, I might say, gun-shy, and that's the whole problem. At this particular point every--all words have been kept and it's fine. In prior times, the previous owners did not in fact, keep their word. That's why they want to be assured they are getting their bite of the apple the right way.

Mr. Benekos: I just want to make sure if there was a prior agreement or understanding when that would transfer. If there isn't then we can work it out.

Mr. Snyder: I appreciate that, thank you.

Mr. Vignos: Did you say you are going to raise the mounds? You are going to raise the mounding there?

Ms. Egensperger: We are going to add it. What's currently out there right now.

Mr. Vignos: It's pretty good--

Ms. Egensperger: On the north end.

Ch. Flechtner: Okay, how much?

Ms. Egensperger: The high point on the existing, what's out there right now, is about 6' more. It will be wider too.

Mr. Vignos: How high would it be then? About 6' tall?

Ms. Egensperger: No, higher than it is now. I don't think I can read it on that plan.

Ch. Flechtner: It appears to be about 4/5' now.

Ms. Egensperger: The same as we turned in. That high point is going to be the same elevation that was on our plan.

Ch. Flechtner: It's about 5' now, 4/5'.

Mr. Vignos: This said low maintenance mound.

Ch. Flechtner: That's low.

Mr. Vignos: Low maintenance.

Ch. Flechtner: It's going to about 11'. Well 84' to 74', it's going to 10'.

Ms. Egensperger: Right, 10' to 11' on the west side--

Ch. Flechtner: It's four to five now.

Ms. Egensperger: Right, and the east side is just continuous up from the bank from the water. To say how high it is there, it starts at the water.

Mr. Benekos: The hill that you did--put there is going to remain, on the east side?

Ms. Egensperger: On the north end.

Mr. Benekos: On the south end.

Ms. Egensperger: The south end, he does have a mound there, but that's going to have to come out to fit that pond. To be taken out a little bit. What's currently out there, it's been acting as a retaining wall for the storm water runoff right now.

Mr. Benekos: That shows about 1075/1076 and then on the final grading plan it still shows that elevation, 1075. Or is this--

Ms. Egensperger: (*approaches Mr. Benekos to review plans*).

Ms. Egensperger: This is going to be cut down, 70. See how this one comes around.

Mr. Benekos: 1070 shows down here--

Ms. Egensperger: No, that's below the pond. That's going to be like our top grade--

Mr. Benekos: 70, so from there how high will it be?

Ms. Egensperger: It is probably going to be like 70 and then start going down. There was never any mound down there. This one, there is no mound down here.

Mr. Benekos: I know there is nothing there.

Ms. Egensperger: He put dirt there.

Mr. Benekos: He put dirt there, that's what you show as existing and it doesn't show it as being removed. I have no idea what final grading is going to be over here according to these plans.



Ch. Flechtner: You want to continue with your questioning, Jim? Let's take them one-by-one. I mean one, individual, at a time.

Mr. Benekos: What we were discussing was the mound to the south and the grading to the south where the larger proposed pond is, existing. There is a mound there and I believe it goes up to about 1076 then it shows--the pond, trying to get an idea of what the grading will be there with the pond there and I don't think this accurately reflects what's going to be there. That mound could stay there. I think that would be a great benefit for the residents.

Ms Egensperger: I just don't think it can for maintenance around the pond. We had tried to keep a flat level so possibly vehicles could get around there, from the City's standpoint. We were trying to leave a shelf around the edge. That's why 70' is there on the west side. Seventy was intended to go around the east side and be the top edge.

Mr. Benekos: That would be the top and then you would drop down.

Ms. Egensperger: Right.

Ch. Flechtner: You say that pond elevation is 1070?

Ms. Egensperger: On the top edge.

Mr. Shanabruch: Top edge.

Mr. Benekos: Top of the bank.

Mr. Shanabruch: You don't have a design for the depth or anything yet?

Ms. Egensperger: No.

Mr. Benekos: On the northern mound there, I think on the plan that was recorded it showed a 10' wide top on there. It doesn't show that width anywhere on the plans other than on the last sheet on the erosion control. That shows a 6' wide top of mound (inaudible) contradictory to what the original intent was.

Ms. Egensperger: That could be widened a little bit.

Mr. Benekos: I know you are going to be having problems with the pond there, and keep that mound up, and reach your slopes, but--

Ms. Egensperger: I think that's what happened to it, (inaudible) the pond area in there. Again, trying to keep the drive area around for maintenance. We could talk about your requirements if you want that.

Mr. Benekos: I personally don't have a problem one way or the other, but what was recorded was 10' and what's show is 6'. Then to the north part of that northern mound on the original it shows tying into the bank from the north, tying into it. This shows a gap there. Was there a problem with tying in with the way it was originally?

Ms. Egensperger: As we got more accurate field data and what this hill was and then as he moved some of it--this was just the grading we came up with to best match that. If--we could try and pull it further to the north.

Mr. Benekos: Yes, tie into the bank coming down from the north.

Ch. Flechtner: Anything else at this time?

Mr. Benekos: Yes I have more but if any body has any comments on the grading and the mounding we can--

J. Snyder: The only comment I may have is; I may make relative that I know that you're gracious enough to promise us about 80 trees on that mound.

Ms. Egensperger: Pardon.

Mr. Snyder: Around 80 trees did you say you would--

Ms. Egensperger: 80 trees--

Mr. Snyder: Yes, I think you said around 80 or 100 trees.

Ms. Egensperger: I don't even remember that.

Mr. Snyder: Anyway, my only--in talking to the constituency from there, maybe I am a little premature in this request, that 10 acres that belongs--that will eventually belong to the city, we just want to know, maybe you could put additional 100/150 nice pines there on the city's property so that becomes very--so that the people that live there will see nothing but the trees. I realize that is a little burdensome cost wise to you. I am sure you could work that out somehow.

Ms. Egensperger: I could talk to Mr. Heiser about it. Some of that is--

Mr. Snyder: I realize that wasn't an initial request. Now with pines, going into the fall and winter, they don't lose their leaves. In the summer time it isn't a problem. I am sure they have lost most of the trees and it's just the sounds of Whipple and the sounds of those thousands of people buying all those beautiful Fords. Gonna make a lot of noise for those people. I am just trying to save myself answering the phone. I thought maybe if I requested that now we could--maybe we could incorporate that.

Mr. Benekos: You wanted to extend the planting all the way to the mound.

Mr. Snyder: Yes, the problem, I understand, talking to the Superintendent of Permits, he's a forestry man himself. The trees on the mound will die at the end of the first season. They just--the way the mound is constructed, the water will run off and someone would have to go over there and nurture those trees and feed them and water them. Really that's an expensive proposition. We need minimal trees on the mound that would survive but the majority of them below the mound to the city's property and adding and additional 100/150 pines. We will dedicate that whole thing to Dick Heiser and I'm sure--a little plaque there or something.

Ch. Flechtner: Let's continue on with your questions. I am sure a lot of this is going to be revisited down the line.

Mr. Benekos: Along that line, what species of trees? We were thinking white pines would be a good tree for that.

Ms. Egensperger: Okay.

Mr. Benekos: Here is something more. Again, in the declaration it says building will not exceed two stories in height and we were trying to discuss what is the height of the building. I think there is only one story but it is an awful high story. Trying to figure out the height of a story. Looking in the Zoning book it doesn't define a story. I do believe it is greater than 24'. When the building plans come in and Gene reviews those how do you want him--or how should we review that with respect to the height restriction. Is there a problem with that?

Mr. Pachmayer: What's a story? It is usually what, 10/12'?

Ch. Flechtner: I would think 12' is a generous story. Two stories would be 24'. I think that is something the City has to work out. That is beyond our--

Mr. Benekos: I don't want them to work on a set of plans and then come back and we say 24' the height, or--

Ch. Flechtner: I don't know as that's an issue the Planning Commission deals with.

Mr. Benekos: Okay.

Ch. Flechtner: That's between the developer and the City when it gets--again that declaration was made between the City and the developer not the Planning Commission. The Planning Commission was not a part of it.

Mr. Vignos: In the new ordinance, didn't we plan for an architectural committee to review stuff like this? There was an architectural committee.

Mr. Benekos: I don't know.

Mr. Pachmayer: There was, we talked about it.

Ch. Flechtner: I'm not sure that got in.

Mr. Vignos: I think it's in the new ordinance. I don't think it is in the old ordinance.

Mr. Shanabruch: The new ordinance isn't passed yet anyway.

Mr. Vignos: Hmmmm.

Ch. Flechtner: No, no, not yet.

Mr. Pachmayer: That was the new one, you're right.

Mr. Benekos: Again, going back to the original, talking about the grading. The grading of the main parcel there shows that at 1070 mean elevation for the site. On the new grading plan that shows about 1074 which would raise the building four more feet. What is the finished floor elevation?

Ms. Egensperger: We are at about 1077.

Mr. Benekos: 1077, so that raises it up even more which means--minimizes the effect of the mound by raising up the finished floor elevations even higher.

Ms. Egensperger: With that, that site with the street, as we got into more of the grading, the street and the elevation of the adjacent property, 1077 is right in the middle.

Mr. Benekos: If you go back to the original plan it shows about 1070 in the middle where the building would be. Shows the street here, 1068.

Ch. Flechtner: Which one you looking at, Jim?

Mr. Benekos: This was on the original. What was submitted and what was recorded. If you look on the recorded, you see that the contour going through the middle was 1070.

Ch. Flechtner: That doesn't agree with sheet C-1 which is supposedly existing conditions.

Mr. Benekos: Right, the existing ground is--

Ch. Flechtner: I don't know when this--what this (inaudible) of. It doesn't appear that it was ever at 1070.

Ms. Egensperger: The grading happened last fall. It was 1070.

Mr. Benekos: They raised it.

Ch. Flechtner: So you felt--I don't remember that--so you filled that property?

Ms. Egensperger: Well, I don't know about filling--

Ch. Flechtner: Well they had too because--

Mr. Shanabruch: It went up.

Ms. Egensperger: It is moved dirt.

Ch. Flechtner: Right now we're--the 1070 went through it's now 1070--no it's still 1070 there.

Ms. Egensperger: You're right about the existing. The very first time it was topo'ed by hand and how much was done was more like the perimeter and stuff.

Ch. Flechtner: I think this drawing here, Jim, probably doesn't reflect an accurate survey. Is that what your saying, Lynn?

Ms. Egensperger: He topo'ed that hill when the hill and the trees were an issue. He went out and did that. We had the street, and it's kind of put together some points. Mr. Heiser did go out there last fall. We are left with the property on the north side is up at 1110. To get the building down to 1070, that's 40'. It's a gradual taper now to get the base of the hill at 1085.

Mr. Benekos: I don't have a problem with it. I am just pointing out that--

Ch. Flechtner: That's a good point.

Mr. Benekos: If the site pad goes up and you're keeping the hill at the elevation you said you were going to the relative difference--

Mr. Vignos: Eating up a lot of that 10'.

Mr. Benekos: Yes.

Ch. Flechtner: The floor elevation at 1077 the top of the bank is 108--

Ms. Egensperger: Eighty.

Ch. Flechtner: Four.

Ms. Egensperger: Eighty-four.

Mr. Vignos: Seven feet.

Ch. Flechtner: Eighty-four, so the top of the proposed bank is only 7' above the first floor. At 24' building--

Ms. Egensperger: That was intent on having the trees planted on the mound for the height of the trees then.

Ch. Flechtner: All right, continue.

Mr. Benekos: I guess we need some more information on the lighting. There is a concern with the lighting in the parking in the rear. The type of lights, where the light actually shines, what the dispersement of the light, where that goes. We will want details on that before we would approve the lighting. One thing we talked about I think several months ago was the possibility of getting some cross-sections broad, basically from the building through the street in the back of (inaudible). To get an idea of the height of the building where the lights would be and the mound and with respect to the houses back there. (And) maybe (inaudible) from the building, four shots, one pretty much going to the east and one to the southeast and on down. Was that ever--were we ever able to do that?

Ms. Egensperger: The aerial went about this far, as far as the aerial. We could get some shots on the street, on the other side of the houses and put it together that way. Again we just wanted to get this as preliminary, get comments, we could still do that.

Mr. Benekos: I think that will help looking--get an idea, get a perspective of the building to the mound and to the houses over there. That's all I've got.

Ch. Flechtner: Okay, at this point, I know the residents are anxiously pacing the floor out there. We will give you an opportunity to speak at this point. Who's on first, Mr. Rice?

Mr. Rice: Tom Rice, 1123 Linwood Avenue, SW. I live at the property at the, everybody's aware, right here at the corner here, adjacent to the proposed development. As we go back to the original request to rezone this property, the people representing Mr. Heiser, represented to the residents, and in good faith the residents of Heritage Estates agreed not to oppose the rezoning of this property on really two key issues; Number one, there would be a significant site and sound barrier to the residents of Heritage

Estates to protect them against this development, as best as possible. With a combination of a significant hill and a significant number in height of trees lining along this creek bed and the area that was currently, and proposed to be, City property. Also, on the condition that 10 acre strip would be deeded over to the City. There are a number of concerns we see after reviewing this preliminary site plan that we received last week. Number one, is the residency, no representation of any significant site or sound barrier in this development. I think you just found that out in the most recent information. If you look very closely, and I urge you to look closely to the topography, as they just represented, if the finished floor elevation is going to be 1077 that is higher than the proposed height of the mound that is supposed to be protecting the residents. Above that you are going to have 24' of building. How is that mound or the trees above it going to protect--provide a barrier to the residents of that area? The other thing, I think the numbers here get a little bit confusing. You got to take it in the overall context. I appreciate the engineer's request for a cross-section. I think it is important to see a cross-section. I wish I had something. I could--I am probably just as good that I don't, because I am not an artist. If you look at the residents in Heritage Estates that live on the east side of that creek, and I know many of you--all of you are probably very familiar with this. If you look at the cross section, you're going to see the resident's homes here. It gradually drops into the creek bed. You've got the creek. It starts coming back up. Yes, if I stand at the creek in my back yard I look at a wall of dirt. If I am right down on the creek bed it goes up but, once you get to the top of that, what was supposed to be our mound to protect us, the residents there felt the mound you were going to do was going to go up one side and come down the other side. It doesn't do that. It comes up and it plateaus out to Whipple Avenue. It's really a plateau that they are creating there and not a mound to protect anything. We were expecting a mound of which this building was going to be hiding on the other side of it. Number one is, the mound is completely unacceptable in its height and it's design. It also does not extend the full length of the property. Not so much myself but the people like Mr. Gonzalez that lives down in the circle, and I am sure he will speak to that, he's getting no protection down there. He's getting no barrier at all, as well as, his neighbors down there. As you can see, the trees and the barrier do not, the hill does not extend down there. It's too low, it's not continuous, and quite honestly, I don't have the exact measurements, but just by going and visiting the two sites, I know this Planning Commission required the North Canton Medical Center to mound dirt and trees around that small little parking lot on Glenwood. I think it happened last year. That was just a little parking lot of what 15/20 cars, or something like that. The hill that protects that little parking lot there from the residents on Glenwood is bigger and more protection than we're getting from a 65,000 square foot building and commercial development. I think it's completely inadequate. The trees are too few. The location of them, again because they do not extend the full length of the development, I think is a problem and we don't know what the height is going to be. I was out there looking at that over the--and also the type of trees. I think they absolutely have to be an evergreen type tree that's going to provide a barrier year-round. Just a suggestion, I was out looking at the property this weekend, I think everybody is very familiar with what was there before that was a very huge mound of trees, what's left there now is, you've got the creek and you've got trees along the creek bed. Obviously those sit very low, they start very low because they are at the lowest point. We're talking about--supposed to go up from there and then on top of this supposed mound get trees. I think an acceptable level, this is my own personal view, we haven't got a vote of the residents, to me the minimum we ought to have is trees and a mound that match the same height of those trees that are at the base of the creek. Number one, you're starting a heck of a lot higher to begin with. Probably some 20' higher to begin with. I don't think that is an unreasonable request. I would encourage everybody to go look at that and see that you think that's a realistic request. The other key thing, other than the barrier, is the drainage. The proposal that was given to us last year, when this thing was agreed to, provided for one large basin down here on the south side of the property. We never were informed of two basins. It appears to me, my own personal opinion, it looks like that basin down there has been minimized and the second one added on the north side. Quite honestly, to create more useable space that could be leased or rented. Being represented here by that yellow area. I don't think it should be the City and the residents burden or concern, quite honestly, about maximizing their use of that property until we make sure that drainage is taken care of. Mr. Shanabruch, I know is very familiar with the problems of the Zimber ditch, living very close to it himself, upstream. I think everybody here is very well aware of the major concerns and problems we already have there. Let alone 15 more acres of asphalt draining into that creek. Yes we have basins, but as I understand it, the water is still going to drain into the creek, is that correct? It is just supposed to let it go in slower and in a more controlled fashion. We're not--that water is still going to go into that creek. That is a major concern for the residents, myself. Already I get water in the spring time up half way to my house. Many of the residents have a--actually residents' further north of me has it worse than that, closer to Glenwood. That's a significant concern and I am not convinced, I am not a hydraulics engineer, but I don't see that those basins are going to be big enough, and if they need to expand they need to expand--and I don't think we should use the excuse "we're not going to expand them just because the creek is there." We need to go to the west and expand them. If that means they have to use more of that property to do it, to build bigger basins and build a bigger mound and barrier there, I think that ought to be required to be done. The lights, the height is a concern. We certainly don't think the height of the light should exceed the height of the barrier. Seems common sense to me that you don't want height--to build a wall of trees and a mound of dirt and then have light standards that are much taller than that to defeat the purpose of that barrier being put there. Also, as I just heard, evidently the back part is just strictly going to be for a storage lot. I guess, to me, that means really all you need lighting there for should be security. Which to me, should be required to be of low level and low brightness, or whatever it is. Also, be concerned about the directional scope of those lights to where they are pointing down and not the lights that spread all over the neighborhood. The other concern voiced by some other residents is the noise. In particular the concern is

with the body shop. I think most of us have been to a body shop or been around a body shop and they can be pretty noisy places with the pneumatic guns going and things like that, the pneumatic tools going off. That can be a significant problem. We don't know if there is any issue with the speaker. Outside many car lots have that. I think there ought to be consideration given to the noise. The north side cliff running along, I see on the plan that there is a call for a retaining wall, my other concern for that would be, from a personal standpoint, I think the top of that cliff is a safety hazard. There ought to be some requirement for, I would think, some sort of a fence to be constructed at the top of that cliff. Somebody comes over that, some kids playing around, kids do go back there and play in the wooded area along the creek, little kids go up there, especially when it is a little dark or something, and go flipping off the side of that cliff. That's very high, I don't know what the exact height is but it's pretty high. Seems to me it would be a safety issue. Personally, in talking to Mr. Benekos and hearing his concerns tonight and the concerns of the residents, I think other people will speak tonight, personally I think there are way too many unanswered questions to proceed with this preliminary plan tonight until we get more issues, more information for this Planning Commission to review, especially in regards to the sight and sound barrier and the drainage issues. I guess I will leave it at that at this time.

Mr. Gonzalez: I live at 1271 Linwood, SW. We are one of the folks that are down in the cul-de-sac. I'll say that their initial plan here is a good start. They've done a lot of things they've indicated they would do. They've done some things they didn't quite point out that they would do. I am concerned about the drainage basins. Not so much in their functionality but in the location. When they first proposed to us what they wanted to do here, their goal was to have as much property to the north and go as far east as possible to maximize that part of the property. Now it appears by having two different drainage basins they've created this area in the yellow. Which is, who-knows-what is going to go there. Initially we got the impression this was going to be a single one big unit and that the potential buyer needed 11.8 acres or a significant size parcel and that they would be pretty much taking it all up. Now it appears we have the potential for yet another development that who-knows-what that's going to be or what the official definition of a story is now. The other concern is, down on the cul-de-sac, the hill basically that's there now runs out of trees before you even get down into our neighborhood. My back deck, I can look out and see the whole yellow area. If I go out there and stand you can see me there. If you plant some pine trees that aren't even there yet, you don't really block the view. It's not much of a problem during the spring and summer. We have a lot of large trees along the creek and they do a nice job of blocking the view. In the fall and winter, and I guess this winter that won't go away, we get a very good view of everything over here. Tom has done a very nice job of covering a lot of the points that I was going to mention so I don't want to go over to many of them. We are concerned about the lighting in the back lot and how tall those are going to be and if indeed, that is mostly a new car storage area. Is there a need for bright, bright, lights? Will they go out at night, will they be dimmed at night? We have a big concern over outdoor speakers and car alarms. When DIY was located across the street there, on Heiser Way, they had an outdoor speaker and they paged every page outside. Electric was paged outside. When you're sitting in my back yard I can tell you how many phone calls the plumbing section got, the electric section got, everybody. When I asked for help from the City of North Canton they told me there is actually not a sound ordinance in the City of North Canton regarding outdoor speakers. We have a real concern here that every page for the body shop or sales is going to come over some speaker in the back part of the parking lot. With that much asphalt sound really travels. We would like to make sure those are addressed. If there are speakers, that they are aimed away from the residential areas. Let me see here, Tom hit on the body shop as far as fumes and noise go. I know a lot of that work probably done inside mostly these days so I don't think people are going to be outback pounding fenders but it is a concern that we would like to know what the game plan is. I have been by one of the Mullinax dealers up in the Amhurst area and it looks like this design is pretty standard to what you have up there. I think they would be an excellent neighbor for us. This is the type of neighbor we would like potentially, to have but I am concerned about the height of the marquee and the overall height of the building. Pine trees, we talked about the potential of needing more of those and perhaps extending them to more of a southerly direction. Finally, the overall elevation. Jim, you hit very nicely on the fact of the--what's supposed to tie into the north part, what was supposed to tie in with the initial part of the hill and it's not shown as doing that now. I don't think that's much of a problem for them to take care of. More concerned about the mound that's on the south side of the property that apparently is only temporary and will be removed. That's currently at an elevation, according to your map, of about 1074, that is not a bad height for a mound. If that 1074 would continue across the lower areas and meet the other part of the hill and rise up. We would be closer to where we need to be. Then of course, I am concerned that the overall property has gone from 1070 to 1077. There is certainly enough dirt there to make the mound as big as they need to make it. In fact, when they reshaped the land they mostly hauled dirt out of there. If they don't have enough dirt now, it's cause they hauled it away. I think this is a good start. We're not, as a neighborhood, opposed to the development of this. Or opposed to Mullinax, I think they have the potential to be a great neighbor. We want to make sure it's done right. Thank you.

Mr. Pachmayer: I have a question. Are you living behind one of the (inaudible) Mullinax?

Ch. Flechtner: Look on the sheet--

Mr. Gonzalez: I can show you on the aerial photo, sir.

Ch. Flechtner: Last sheet shows the property owners. C-501, he's on the cul-de-sac.

Mr. Pachmayer: I see him. The (inaudible) Mullinax would be due west?

Mr. Gonzalez: It actually would be southwest of us. They are out of our line of sight. They are south of the Gabriel Brothers building now. Even though we can sometimes hear their outdoor speaker too.

Mr. Pachmayer: That is what I was going to ask. You can hear their speakers?

Mr. Gonzalez: Yes we can.

Mr. Pachmayer: How about lights, is there a light problem?

Mr. Gonzalez: The current lights that are there now really don't present much of a problem that are around the Gabriel Brothers store. I haven't found a problem with those lights. I don't know how tall they are or I just haven't noticed at night when I am sitting on my deck that I am getting glares from those lights. Apparently they can design things so it won't be annoying. I am concerned about the height of the lights being significantly higher than the height of the mound and the height of the trees.

Mr. Pachmayer: You're about the same distance away from the new facility and the old I would estimate.

Mr. Gonzalez: We would be, by my measurements, 900' away from the southeast corner of the new body shop. We are probably a ¼ mile or further from the other facility.

Mr. Pachmayer: That much further?

Mr. Gonzalez: Oh yes, can I show you on the aerial photo here?

Ch. Flechtner: It's further south, you can't see it.

Mr. Gonzalez: We're here and the other facility is actually way over here.

Ch. Flechtner: Another gentleman wanted to speak.

Mr. Ron Morris: I live at 1131 Linwood Avenue, SW. Right next to Tom and very close to this development. I would like first to say that I think Mullinax are already good neighbors. I take my car there on a regular basis to get repaired and they do great work, they are courteous, shoot they even made keys for free. They are good people and I don't think--that's the issue. I think, I agree with everything that has been said by Tom and Doug so far but I think we need to put this in perspective. I hope we have good faith and I know that on the part of Heritage Estates property owners, there has been good faith. (But) what we agreed to, and we made a lot of compromises, what is being presented tonight, there is only a superficial resemblance. You really need to look very careful. If we are going to have a real and substantial visual and sound protection. The mound has to be a significant mound. The mound that has been created from day one, I walked there the first day, I was out there when the dozers were out there. This was not the mound that was originally discussed, the mound that we agreed to. It was lower in that last agreement than we had wanted but we said we could live with that. Reducing the height of the mound from 10' to 6' is not a quibble. You need that mound to be as wide as possible so you can get substantial trees to live on top. We're talking about a visual and a sound barrier. We're not talking about something that looks nice from Whipple (inaudible) from houses back there. What we are talking about is not wanting to be aware of that operation. As we were going through negotiations there was a second larger mound of trees, closer to Whipple. We knew we were going to lose those. It was a great visual--we had the mound, the trees by the creek and then we had up higher there were those trees. It was discussed--all that was really going to happen were we we're gonna move that hill back, it's gonna be lower but we are gonna move the hill back. In reality, what happened was this; the hill was eliminated and now we look out and we can see Whipple Avenue. I can see Whipple Avenue from the window of the first story of my house. When I walk over close to Tom's house, I can see a little up and out, there's no visual protection what-so-ever. When you're talking about the difference between 1070 and 1077, this is huge. Then you put the building on it, what we're talking about is going from minimal visual protection to no visual protection. That's where we. The (inaudible) is in the details. The second huge difference was, originally there was one large retention basin. It was not only on City property but it was also on some of the other property. There was a hill, a mound around that so that the people that were most vulnerable would have some protection. Now their talking about reducing it. This is not going to give us much of anything. Now we see in the plans there's several more expansions for (inaudible). These are very critical issues. I think what we need is we need the mound to be higher,

and if you are going to raise the mean elevation 7', well if we are going to talk about being equitable we automatically need to raise the hill 7' more than it is right now before we start moving any dirt. We can make that hill as big as it needs to be. If it has to intrude a little bit, take a few parking spaces out, I think that's fine. We want the top of that hill to be substantial enough to plant very large trees. I don't think--I agree with Doug and I agree with Tom, I think it is a good start. There is no way we can say that what we see tonight is anything more than superficially what Heritage Estates homeowners agreed to. This is not the deal that we agreed to. This gives us no visual protection, sound protection, the hill is lower, it's not all the way across, the elevation has been raised. There is no up and down as was described. I think we really need to work on that. I would like to see that side view where we could show that here's Whipple, here's the building, here's the mound and the trees which are higher than the building. A dense line of trees and there's the houses. You can all visually see it. I've walked that area a year before the first dirt was moved, went through all the tangles, and I know it intimately, and right now we are very, very, exposed. I thank you for the opportunity and we're going to be taking this back to the Property Owners Association and discussing it and Wiley here, is the president of the Property Owners, I am sure it is going to be on future agendas. We are going to be very anxious to see how it moves forward from here.

Ch. Flechtner: Anyone else?

Mr. Wiley: I live at 854 Oakridge, SW. I am in Heritage Estates. I am not here on behalf of the Property Owners Association. I have spoken to a number of my neighbors. We are concerned about the visual and the sound effects and the aesthetics that this business will have on our neighborhood. I would echo many of the thoughts of many of the previous speakers as to our concerns, please excuse my little league attire here. Those are aesthetic concerns and they are important. We are not opposed to Mullinax Ford. Many of us are customers there. They use our streets for their test drives. They seem to be good neighbors and they seem to care. A lot of my neighbors are particularly concerned, and I think could correctly characterize their thoughts, as terrorized by the Zimber ditch. Things we read in the paper, things I've learned on City Council as to concerns about the Zimber ditch flooding and creating a problem in our neighborhood really has us concerned. I would ask that you give particular attention to the drainage and the effect that all this new asphalt is going to have on that ditch. If you ever drive through our neighborhood after a heavy rain, Linwood is a river, it is just up to the curbs in standing water. Water will tend to push up through the manhole covers there and Oakridge and Rose Lane the water just runs down there. You could put a kid in a raft and they could run down it like a river. We are very concerned about any added burden on the Zimber ditch and what that effect will have on our basements and our homes and the physical damage that can cause in addition to the aesthetic changes that this may bring to our neighborhood. Thanks.

Ch. Flechtner: Anyone else? Let me start with a couple of comments and then open it up to the Commission. We heard comments tonight about this being preliminary. It really wasn't presented to us in our agenda, or made aware to the Commission that this was a preliminary. I certainly can see that it is far from being in the final stage and should be only reviewed as a preliminary document. The Zimber ditch, Mr. Wiley has brought up some good points. I would encourage Jim to, once he gets final drainage calculations, and again that is the most important thing, I think, with this issue and probably we shouldn't even be looking at it without drainage calculations. Stark County, and I believe North Canton, are participating in the Zimber ditch project. Those drainage calculations are reviewed with whomever at the County responsible for the Zimber ditch design and study. I don't know, you're taking drainage through that mound that use to be and there's still an embankment down into the Zimber ditch which doesn't get there now. What impact is that going to have on the current study and the current plans that are well under way for that Zimber ditch? I think whatever is done here on detention has to be coordinated with what the County is doing in conjunction with the City of North Canton and other political entities that are tributary to that ditch. That certainly is essential. Both Jim and Mr. Rice have indicated, and the others, definitely a cross-section view through the embankment is critical, so that you can show what the visual line-of-sight would be from Linwood Avenue out to Whipple. I think that is essential. I think there is some confusion on what's going to be their mound. As far as mounding, as everybody has indicated, the northeast part appears to be the only additional mounding that is going to take place as well as the tree, which would be the sight barrier. There is nothing to the southwest that has been brought out this evening. I think an adequate sight and sound barrier requires the entire length of the property. I guess that's all I have. I'll throw questions and comments open to the rest of the Commission.

Mr. Vignos: The only comment I guess I have is this, it appears to me that Mullinax wants to build here. The people do not object to that. All they wanted is for it to be aesthetically pleasant, as it is basically now and some protection against water and the lights and so on. You know, I think we've got a win - win situation here, I really do. If the people, the homeowners can get together with Mullinax. I understand this being a business. Mullinax can only afford so much money. This is all we're talking about. We could be talking about a whole lot of dough here. With trees, and trees, and trees, there not inexpensive. I think this is something that I really would like, if it is possible, to get together the people and Mullinax and show Stark County that here are two entities, each one wanting to do something but are able to come together and do something that is really positive. Not only for both people but for the City of North Canton. I would urge that if their meeting could be, maybe John you could be involved, and Tom, getting



them together and seeing what exactly, can be worked out. Then come back with something that is mutually agreeable to everybody. That's what I would like to see.

Ch. Flechtner: I think that's essential.

Mr. Pachmayer: I would kind of echo pretty much what Tom said. I think, again the neighbors and the businesses, it's good for the area. I think they could meet and come up with some sort of compromise. Perhaps moving that pond a little bit over onto that future development property. Doing what you can do within your economic means. Raise that mound and have that mound extend all the way down, proper planting of trees to protect those neighbors from lights, noise, and so forth, as much as possible. I know you can't do a 100% because of an economic problem. I guess I would like to ask; if this thing gets approved tonight do we have another crack at looking at the mounds and trees later on?

Ch. Flechtner: I don't see how we can approve this, this evening. I think without the drainage, which is probably number one, and I appreciate the Heritage Estates people concern on sight and sound, that's easier accomplished than the drainage issue. The Zimber ditch, as Mr. Wiley has pointed out, that is a major problem. That existed before this property was even considered for development. Those problems have been lived with for many, many, years. I think that is essential and I really would not want to see this back here until Jim and the City have had the opportunity to review the drainage and that is with the blessing of Stark County or whomever is--I think it is Stark County, would be spearheading the Zimber Ditch Project. Two other issues came to mind, one is even any detention basin I think has got to be fenced. I would defer to Mr. Batista as to what the liability for that might be. Seeing how it would be on City property. I would think that should be fenced. The other issue is, who is really responsible, is it the owner which is Mr. Heiser, or the developer, or Mullinax, who is responsible for doing the mounding, the sight barrier, the drainage improvements?

Ms. Egensperger: That's Mr. Heiser.

Ch. Flechtner: Okay, thank you.

Mr. Shanabruch: I would like to challenge Oxbow to be a little creative in their thinking. I tend to feel that the residents are right. The northern part--trying to force that detention pond makes it almost impossible to create an adequate barrier. I don't know how much surface area and how deep your pond has to be because we don't have a drainage plan. I challenge you to be creative on the southeastern portion of the lot to try to get down to one reasonably large pond that can indeed be created with a nice planting barrier for sound and for visual protection. I really think you got away from that when you tried to force the northern pond in. That creates a lot of these problems. You've got to be creative. I am not saying I've got the answer. You probably don't have it tonight, but be creative don't just give up on it.

Ms. Egensperger: The grading plan that was approved was always based on what the final development plan would be. We did not know what the grading would be all the way to Whipple or to the north to the medical property lines. There was always a note there. There never was a mound down on the south end of the property. Part of the eight acres was intended to be a buffer in itself, as given. Some of this down here on the south end is 300' or better of buffer distance. The mound, as it's out there is not final and we've said that. On the new plans there's new grading to be added. It was already shown on the plans to extend about a 140' further to the north already. So what they are saying is there is an opening there, were already in our plans to be closed in some. Then we talked about, with Jim tonight, that we would close it even more. It does go up and down. That's how the plan is shown, I think it's page 9-1, the landscaping, that is the mound--is shown that way. That was our intent. We were trying to do that, to do a mound that went up and down. The parking lot is lower than that. The drainage from this area has been going in the Zimber ditch. It's our intent to keep that flow, just what goes in there now. I understand about the additional height of the mound as little added into the stream and we will try to work that out, maybe compensate it in other ways. The size of the property when Mullinax needed 12 acres and what is left is less than 2 acres out of what was to be rezoned that is the yellow portion. That's all they wanted was 12 acres and that's the remainder, I just wanted to explain that. John has some comments about the lighting and the sound.

John Strautman: I am with AutoNation, Ft. Lauderdale, Florida. Just a couple of comments. You--I wanted to clarify that--it seems as though about 95% of the things we are talking tonight about that are the legitimate concerns of the neighbors are really not Mullinax's concern but rather the landowner. To tell you the truth I came here tonight all the way from Florida to talk about our 12 acres that we are developing and I think there are only a couple of issues that seems like people really had a concern about. I will address those. One is the lighting. Every place we go people are concerned about the lighting. I think you mentioned that, and you're absolutely correct, the storage area in the back is for storage. Customers aren't going to be back there. That is going to be a much lower lighting level. It is going to be more or less a security (inaudible). Most of those fixtures are going to be 16/18'

high (inaudible) there will be no light shining on adjacent properties or anything like that. I would hope that would address your concerns. On the height of the building, I know you talked about that earlier, there is nothing that's in the code that defines what a story is. I guess, what I would say is; a lot of our buildings, especially when they are one story buildings, the height is dictated primarily from the service area because we need certain height in the service area to accommodate lifts and that sort of thing. What we were proposing is about a 26' high overall height which would cover the height of the marquee. Also, that extends up a little higher than the service to provide a parapet to screen all the equipment. I am assuming that's what we would want to do for the neighbors too, is screen all our roof top equipment. I would ask you to please look at that and hopefully approve that. I think the additional height is just for the marquee along Whipple. It provides a nice statement and presentation to our customers. Really that is it. I would ask you, or would let you know that--oh, one of the things we tried to do is, with technology these days, I am not saying we are not going to have a speaker system but we use it very sparingly. We do a lot of paging systems now in a lot of our new facilities. I think that would address a lot of your guys concerns. One of the things I would ask you for your help is, we are up against a little time crunch. We need to have our facility open February, because it's a commitment from Ford Motor Company in Detroit. I don't know by delaying this approval, which most of the issues are on Mr. Heiser's side, what that is going to do for us. Basically we would really need to start construction, because it's falling at a bad time with Christmas, holidays, winter, we never know what's going to happen. We really need to start construction the first of August or so. I don't know how by delaying this, how that's going to work into accommodating our schedule. I would ask you, if there is anything you could do to help us get going on our portion. Maybe look at these as two separate projects or something. Obviously we will do everything we can do from our end to push and support you in those legitimate issues. I run into that all over the country. Screening issues and things like that. We will do our part. We will help provide some things or whatever we can do. We are here to help to and we want to be good neighbors as well.

Mr. Batista: I got a question for you. I am the law director. The way this thing is shaping up is a follow up to Mr. Flechtner's question. The City has absolutely no leverage with Mr. Heiser to make sure that this mounding and these improvements are done. We have nothing. We have a couple of letters that, in general terms, say they are going to be done. Property transfers to Mullinax, the (inaudible) is still in the name of Heiser, how do we assure ourselves that these improvements are going to be made?

Mr. Strautman: First of all, we are leasing the land. We are not purchasing the land.

Mr. Batista: Oh, it's a lease.

Ms. Egensperger: It is in his interest to get their approval or (inaudible) their approval because it is on his property. What we need is a go ahead on some of the building stuff just to keep going with those plans. The final details of the building and in the mean time Mr. Heiser will go forward with more detailed plans and work with resident meetings or whatever to keep these going as well.

Mr. Batista: My question is, is the lease between Mullinax and Heiser structured so that Mullinax is assured that these improvements are going to be made?

Ms. Egensperger: Eh huh.

Mr. Batista: We are going to have to see that. I think we are going to have to have the City of North Canton made a party to that because I want to be in a position. We were in protracted litigation with Heiser for quite some time. There is no way we are going to approve this unless the City is in a position to compel these improvements. I want--this isn't the Planning Commission talking, I am talking as the law director representing the Council and the City municipal government. We've got to have the vehicle to enforce these improvements being put in. You're going to have to get me some documentation that satisfies me.

Ch. Flechtner: You're concerned that they're--I am not sure the City has bonding requirements for site plans.

Mr. Benekos: We do, we did change that. That portion of the code.

Ch. Flechtner: That was adopted?

Mr. Benekos: Yes.

Ch. Flechtner: Then there will be a bond but again, we can't address your building. The bulk of what this Commission is address-reviews are the things that Mr. Heiser's responsible for. I think as far as, the height of your building I think a cross-section would resolve that issue very quickly. I think if it can be shown to the City and the property owners that a 26' building would not

be seen because of the sound and sight barrier. I think a 26' building could be constructed. I don't think that would be an issue. The cross-section is going to show the feasibility of that. I would like to help Mullinax and you people out but there's nothing really in this plan that we can address that will help you. All the issues that we have the authority to modify and improve is the responsibility of Mr. Heiser.

Mr. Benekos: Would it help the time frame, if you can get that stuff in two weeks that we would hold a special session?

Ch. Flechtner: We have no problem with special meetings. I think this Commission has done it in the past. We would be willing to hold special meetings whenever, if ever, but there's two critical issues, one the drainage has to be submitted, reviewed, approved by North Canton and Stark County. The sight and sound barrier needs to be submitted, reviewed, and approved with the property owners. Those are the two issues. You resolve--well three issues, or two if you include sight and sound, they're collective, you resolve those issues I think you're going to proceed.

Mr. Vignos: Anything we get we're going to have to have in writing. Okay now, but this is all Heiser. This is all Mr. Heiser that has to get this done. Like Denny said, we'll get together. We all live in this area and we are all pretty close, so that's not going to be a problem. How quick could Mr. Heiser work on this? How quickly could you get something from him?

Ms. Egensperger: We could start it right away and, I know he's out of town right now.

Mr. Vignos: When will he be back?

Ms. Egensperger: I am pretty sure the weekend.

Mr. Vignos: Put the pressure on the Planning Commission, huh.

Ms. Egensperger: I think the weekend, we will meet with him and--

Mr. Strautman: Could we set a special meeting in two weeks and see if we have all--

Mr. Vignos: We'd be ready. The last time we did that we were here but nobody else was. We were ready.

Ch. Flechtner: We have--we could set a meeting in three days. I think our only obligation would be a 24-hour notice to the newspaper but I would say--

Mr. Vignos: (And) the people, they have to know.

Ch. Flechtner: They will know. They are going to be a part of the link. They will know when we know.

Mr. Strautman: Or maybe we will wait till Mr. Heiser gets back this weekend. We will chat the first part of next week and then we will call and set the meeting up.

Ch. Flechtner: Call Mr. Benekos and set up the meeting. It would have to be the week of the 23<sup>rd</sup> at the earliest I could make one.

Mr. Vignos: The week of the 23<sup>rd</sup> of April.

Ch. Flechtner: Yes. If you look at that, the next week is our next, normal scheduled meeting, May 1, or 2.

Mr. Strautman: At this stage, a week would be great for Me. We're running--just because we are running so tight with our schedule.

Ch. Flechtner: Again, I think the two issues, we would probably consider, and I would defer to Mr. Batista, whether we could approve the site plan with the sound and sight barrier. If that's approved, and that's probably the quickest thing we'll get approved. I can see time in getting the drainage calculations completed, submitted to the City as well as the County that could go down--that's going to take longer. As far as the building I think that's tied in with the sight and sound barrier that could probably get a conditional approval upon the City approving the drainage.

Mr. Benekos: It is going to be difficult to do the sight and sound without the drainage--

Ch. Flechtner: Well yes, it is with the detention basin. (But) at least we could look at that possibility. I mean that's the best we could do for you.

Mr. Strautman: Okay.

Ms. Egensperger: Can I just have a question about the drives on Heiser? Those look okay?

Ch. Flechtner: Sure.

Ms. Egensperger: They are mostly for the layout of the building, the interior of the building. Where customers come in and where they have some of the service bays.

Ch. Flechtner: Yes, I guess those have gotten overlooked in the big picture. I think those are minor in nature and normally we would defer to the City. If they're satisfactory with the City then we certainly support that. Again, you work that out with Mr. Benekos. When would you say you could have the drainage calculations finalized.

Ms. Egensperger: Two weeks, starting Monday.

Ch. Flechtner: That's the 23<sup>rd</sup>.

Mr. Batista: Their pushing things.

Ms. Egensperger: That's that week.

Ch. Flechtner: What?

Mr. Batista: Their pushing things aren't they.

Ch. Flechtner: Well yes, if you got two weeks, Jim's going to have comparable time and you might alert the County and lay the ground work to get some kind of quick approval. I know they have an engineer--

Mr. Snyder: Is Bruce Conners doing that?

Ch. Flechtner: I think they are managing the construction part of it.

Mr. Snyder: I think they are.

Ch. Flechtner: I think the design of it was M. S. Consultants I believe, designed it. Whoever the County would want to have review that. I would assume they would go back to their design engineer to see if this area was included. I think the critical point is, at what rate of discharge would they want to see the discharge, and that's the main input you would want from the County. How they viewed this acreage in their overall plan. They could give you that now. They could probably start working on that kind of concept. So the preliminary work can be done with the County I would think. I guess, hearing all of this and we still have additional items--

Mr. Vignos: Yes--

Ch. Flechtner: I appreciate the patience of the gentleman in the back that are here for the other two items. Is it in our best interest to--

Mr. Vignos: We can either table this or--

Ch. Flechtner: Defeat this or table it. It is going to be a complete resubmittal.

Mr. Vignos: Why don't we defeat it? Let it come back up.

Ch. Flechtner: It's just a matter of semantics. I don't think--

Mr. Strautman: You mean table it.

Ch. Flechtner: No, defeating it because the plan really is going to be drastically revised.

Mr. Vignos: Not your part.

Mr. Snyder: Just have them withdraw.

Mr. Vignos: That works

Mr. Snyder: (And) resubmit it. Just have you withdraw the plan.

Ch. Flechtner: Oh, yes withdraw.

Mr. Snyder: Withdraw this plan and submit another one.

Ch. Flechtner: Yes, that way if you withdraw it then you don't have a disapproval of it. That might help. Do you have a problem with that Lynn?

Ms. Egensperger: Sorry?

Ch. Flechtner: Do you have a problem with withdrawing and resubmitting?

Ms. Egensperger: It doesn't delay calling a special meeting or anything?

Ch. Flechtner: It has no--

Ms. Egensperger: We just get the same letter in and--

Ch. Flechtner: Yes.

Ms. Egensperger: Okay.

Ch. Flechtner: If you're willing to withdraw we will accept your withdrawal.

Mrs. Reikowski: I need her to officially withdraw that up at the microphone so that I can get that on the minutes.

Ch. Flechtner: Take a note, you got it from me.

Mrs. Reikowski: I can make it, but she's got to say it.

Ms. Egensperger: On behalf of AutoNation and Mullinax we request to withdraw tonight and we will resubmit for plan approval.

Ch. Flechtner: Do you have a comment?

Mr. Shanabruch: It might have had to do more with the voting itself. They can simultaneously submit their building plans for approval separate from the site plan and have the City working on it to cut time.

Ch. Flechtner: Oh, I think so. Yes, yes, yes, the height is going to be an issue and that's going to get resolved with the--

Mr. Shanabruch: It just seemed like the more important thing to get, I realize there is a lot of time in building plan approval. The site plan approval, once you got everything, does not take any amount of time, it's the building plan.

Ch. Flechtner: Right.

Mr. Shanabruch: (And) you don't have to do them separately. They can be done in conjunction. Is that not correct, Jim?