



Law Director Kerner stated a point of order regarding procedure that was followed during the meeting last month. It has come to my attention late this afternoon that when we were considering the case for the RangeMax matter that after a fair amount of contention and discussion it came to a vote for granting extension. The vote resulted in two (2) Ayes's and three (3) Nay's. The counsel for the applicant Mr. Hunt asked me at that time since it was a positive motion with a negative result should we have another vote in a negative fashion. I said no, because I thought under the circumstances with the applicant having the burden of proof, he did not have sufficient votes to pass it anyway, so we left it at that. The minutes do not say one way or another that this item has passed; it just gives an indication of what the vote was. Subsequent the applicant filed a notice of appeal to Common Pleas Court of Lorain County on the disallowance. This afternoon as I was preparing for this meeting tonight I reviewed in more detail the bylaws, the Rules and Regulations of the Planning Commission, which has in rule number seven the following statement. "An affirmative vote of a majority of the members shall be required for action. In event a question does not receive a majority vote so as to constitute action thereon, then it shall be tabled to a subsequent meeting for further consideration." What this means to me is that you have a seven member board and you need four (4) positive votes to pass a particular motion. We didn't have four, but we did not have four negatively either. This vote that we had last month was sort of a no vote at all in a sense and what we are left with is having to consider that case as being tabled for re-consideration at the next meeting; that is, this meeting tonight. An error was made and I apologize for not catching that, however we have the chance to correct the error and I suggest that it be incumbent on this board, this commission to amend the agenda to include on the agenda the RangeMax case and we could then re-consider it and give it the proper attention and proper vote one way or the other. I would also suggest that because this is a contentious case and because at the last meeting we did not have seven members present and we only have six members present now that we reschedule the case to be heard later in the meeting and hope that Mr. Knilans makes it to the meeting and have the chance for a better vote.

Mr. Fell offered a counter view, "An affirmative vote of a majority of the members shall be required for action" in my opinion the three out of the five members that were here at the meeting was a majority. The vote was a majority of the members present.

Mr. Simonovich stated I would agree to that if the statement stated a majority of the members present, but the statement just states a majority.

Mr. Fell stated that it also doesn't state a majority of the total members of the board.

Mr. Simonovich stated that he knows that, but feels it is subject to interpretation. I think it has been a very long time since anything like this has happened to this board.

Law Director Kerner stated he served on the Zoning Board of appeals for almost twelve years. The this issue comes up a lot with the Zoning Board because there are only five members on the board not seven. We ran into this situation lots of times, and it has always been that if we did not get three out of the five members on a vote the cases were always tabled to the next meeting. I believe that the City Council handles these situations in the same way.

Mr. Zilka stated that we have the opportunity this evening to correct this situation. I accept Mr. Kerner's recommendation and feel we should do whatever we have to do to make the agenda reflect that we acknowledge what happen last month was not according to the rules and regulations and would support putting the case later on the agenda to allow time for Mr. Knilans to arrive to the meeting for this case.

Mr. Fell asked if in your legal opinion Mr. Kerner that there is proper notice for anyone that might attend this meeting.

Law Director Kerner stated that he looked at the Ohio Sunshine Law rule with that in mind, and my understanding of the Sunshine Law is that where you have a regularly scheduled meeting you need only give notice of the time and the place. If you have a special meeting, which this is not, then you also have to give notice of the items at that meeting for the items being discussed. So, this is a regular meeting and I think we can just go ahead and make the adjustment to the agenda without violating the Sunshine Law.

Mr. Fell stated that his question was more of about the neighbors, 300 feet surrounding and their notification of the meeting.

Law Director Kerner stated that they have all been notified of the meeting because of the second case regarding this same issue that was on the agenda.

Ms. Spring stated that the second case on the agenda was not a public hearing and notification was not made to neighbors 300 feet surrounding. The original case, a tabled case or the new case, would not have been a public hearing. No public hearing for this type of case is needed.

Mr. Zilka stated I was commenting, but I would be glad to make a motion, based on what I just heard, it appears to me, if the proper interpretation prevailed last month, we would be sitting here again with the item on the agenda, we would not have another public hearing, we would not go through the notification because we had done it the month before, the audience clearly shows that residents in the area are privy to this, are informed about it, and those who have an interest have shown up to express their views, so it appears to me that we should be able to proceed with this this evening and again I would support to putting it later in the agenda to allow time for Mr. Knilans to arrive and I will move to do that.

Mr. Zilka moved to amend the agenda to include case 026-08 RangeMax Properties to be heard as a tabled case from last month. Mr. Simonovich seconded the motion.

Mr. McNamara clarified that there was never a public hearing on this issue. Ms. Spring stated that the original case 026-08 did not require a public hearing, wouldn't have required a public hearing if it would have been tabled and the new case 028-08 wouldn't have required a public hearing.

**AYES: McNamara, Simonovich, Zilka, Zuber**      **NAYS: Brightwell, Fell**

Mr. Fell stated that the motion has passed.

Law Director Kerner suggested that the tabled case and the new case be considered for moving to the end of the agenda to allow Mr. Knilans time to arrive to the meeting and hear the cases. This is an unusual situation now; we will hear a tabled case on the issue and since the last meeting the applicant has applied for a second case to be heard tonight on the same issue of a time extension. If the first case is not voted upon in a favorable motion, then the second case can still move forward to be heard.

Mayor Zuber moved to amend the agenda to have case no. 026-08 RangeMax Properties and case 028.08 RangeMax Properties heard as the last two items on the agenda. Mr. McNamara seconded the motion.

**AYES: McNamara, Simonovich, Zilka, Zuber**      **NAYS: Brightwell, Fell**

Mr. Fell stated that the motion has passed and the items will be heard at the end of the meeting.

Mr. Fell asked Law Director Kerner to look at the language in the rules and regulations to have something better for us to look at when these issues arise.

**NEW CASES:**

**CASE NO. 027-08  
SHAW-NEE BUILDERS, INC.  
PIN OAK PARKWAY  
INDUSTRIAL SITE PLAN**

**REQUEST OF SHAW-NEE BUILDERS, 33801  
LEAR INDUSTRIAL PARKWAY, AVON FOR  
A RECOMMENDATION OF APPROVAL FOR  
A ONE-ACRE INDUSTRIAL SITE ON THE  
NORTH SIDE OF PIN OAK PARKWAY WEST  
OF AVON BELDEN ROAD.**

Mr. Reitz stated the proposed project is for a 5,240 square foot warehouse with a 3,560 square foot office building. This project is part of the overall industrial development discussed at the July 1, 2008 Planning Commission Work Session. The building will have access to Pin Oak Parkway with another truck access temporarily to Pin Oak Parkway which will provide permanent access to the new industrial parkway once completed.

Mr. Walt Nickel, Nickel Engineering was present tonight to represent this case and answer any questions the commission may have.

Mr. Nickel stated that with this site plan only one of the 4 acres will be developed. The additional cul-de-sac acreage will be developed at a later date. The applicant has a tenant for the first building and would like to get started on this unit while working on the tenants for the additional four buildings. The buildings will be for office/warehouse space.

Mr. Zilka stated that in the application paper work for this case it stated that there were no comments from the work session about there being no sidewalks on the cul-de-sac. I would just like to go on record that I did have comments about not having sidewalks on the cul-de-sac. I would like to see sidewalks on both sides. Any new buildings/properties in the City require sidewalks and I feel the sidewalks should be put in with the development.

Mr. Nickel stated that there would be sidewalks on Pin Oak Parkway, just not on the inside cul-de-sac.

Mr. Fell stated that there were concerns about the drives as well, but stated that the commission would be looking at the number of drives when the balance of the development comes to us for approval.

Mr. Tom Kilbane, Titus Hill Lane asked where the property is on Pin Oak Parkway.

Mr. Nickel showed the resident on the over head projector where the property is located.

Mr. McNamara moved to approve the request of Shaw-Nee Builders for a one-acre industrial site on the north side of Pin Oak Parkway west of Avon Belden Road. Mr. Fell seconded the motion.

**AYES:                    All                                    NAYS:                    None**

Mr. Fell stated that this case has passed.

**CASE NO. 029-08  
KOPF BUILDERS  
AQUA MARINE LOT SPLIT  
AND CONSOLIDATION**

**REQUEST OF KOPF CONSTRUCTION, 420  
AVON BELDEN ROAD, AVON LAKE FOR A  
RECOMMENDATION OF APPROVAL OF A  
LOT SPLIT AND CONSOLIDATION FOR  
PROPERTY TO BE ADDED TO FUTURE  
PHASES OF THE MULTI-FAMILY  
DEVELOPMENT.**

Mr. Reitz stated this proposal will split 1.01 acres from the rear of the two existing business properties on the northwest corner of Miller and Walker Roads. Portions of the split property will be added to the Multi-Family Developments in Phases 2 and 3. The consolidation shall add the appropriate property to the different development phases.

Mr. H.R. Kopf, Kopf Builders, Jim Sayler, Reitz Engineering and Doug Baldi, Baldi Design were present tonight to represent this case and answer any questions the commission may have.

Mr. Sayler stated that the lot was being split as a matter of book keeping records. The lot split is to separate two of the parcels from the golf course and consolidate with the properties for the apartments.

Mr. McNamara asked if all of the comments regarding the lot descriptions have been taken care of.

Mr. Sayler stated that all the comments of the department head review have been taken care of.

Mr. Simonovich asked Mr. Sayler to better delineate the lot splits and consolidations on the plans so it is easier to read and know what lots are being separated and what lots are being consolidated.

Mr. Sayler stated that he would do that on the plans he submits in the future.

Mr. Simonovich moved to approve the request Kopf Construction for a lot split and consolidation for property to be added to future phases of the multi-family development. Mayor Zuber seconded the motion.

**AYES: ALL NAYS: NONE**

Mr. Fell stated that this item has passed.

**CASE NO. 030-08  
KOPF BUILDERS  
AQUA MARINE  
REZONE**

**REQUEST OF KOPF CONSTRUCTION, 420  
AVON BELDEN ROAD, AVON LAKE FOR A  
RECOMMENDATION OF APPROVAL TO  
REZONE 1.0103 ACRES OF LAND FROM B-2  
BUSINESS TO R-3 MULTI-FAMILY FOR  
FUTURE PHASES OF THE AQUA MARINE  
DEVELOPMENT.**

Mr. Reitz stated this request is to rezone the 1.0103 acres split off in the previous case from the existing B-2 Business to R-3 Multi-Family. The property is currently undeveloped and will be added to the Aqua Marine project.

Mr. H.R. Kopf, Kopf Builders, Jim Sayler, Reitz Engineering and Doug Baldi, Baldi Design were present tonight to represent this case and answer any questions the commission may have.

Mr. Zilka stated that it looks as though the site is less dense of a population with the changes that have recently been added. Is that true?

Mr. Sayler stated that yes the complex is less dense and is well under the density allowance per code.

Mr. Simonovich moved to approve the request of Kopf Construction to rezone 1.0103 acres of land from B-2 Business to R-3 Multi-Family for future phases of the Aqua Marine Development. Mr. McNamara seconded the motion.

**AYES: All NAYS: None**

Mr. Fell stated that the case will now be forwarded on to City Council for approval.

**CASE NO. 031-08  
MARILYN ZEIDNER  
31950 KREBS ROAD  
LOT SPLIT**

**REQUEST OF MARILYN ZEIDNER, 31950  
KREBS ROAD, AVON LAKE FOR A  
RECOMMENDATION OF APPROVAL FOR A  
LOT SPLIT OF AN 8.58 ACRE PARCEL OF R-1  
RESIDENTIAL PROPERTY.**

Mr. Reitz stated a new site plan and lot descriptions have been distributed to members tonight at the meeting. This new plan will create three individual lots from an existing 8.58 acre lot on the north side of Krebs Road. The plan now conforms to all code requirements and the comments of the Law Director relating to the originally submitted plan have all been taken care of.

Ms. Marilyn Zeidner, 31950 Krebs Road was present tonight to represent this case and answer any questions the commission may have.

There being no comment from members, Mr. Zilka moved to approve the request of Marilyn Zeidner, 31950 Krebs Road for a recommendation of approval for a lot split of an 8.58 acre parcel of R-1 Residential property. Mr. Brightwell seconded the motion.

**AYES: All NAYS: None**

Mr. Fell stated that this item has passed.

Mr. Fell stated that there is not a representative for case no. 032-08 present.

Mayor Zuber stated that he had spoken to Mr. Paul Pustay this afternoon regarding this case and told Mr. Pustay that his case may be heard later in the evening due to the RangeMax cases ahead of his. I did not know we would move the cases to the end of the meeting. I would assume Mr. Pustay will be here shortly for his presentation.

Mr. Fell moved to postpone case 032-08 Paul Pustay Miller Road Site Plan to the end of the agenda. Mr. Zilka seconded the motion.

**AYES: All NAYS: None**

Mr. Fell stated this item has passed.

**TABLED CASE:**

**CASE NO. 026-08  
REBECCA LANE  
TIME EXTENSION FOR  
FINAL PLAT**

**REQUEST OF RANGEMAX PROPERTIES, 2  
BEREA COMMONS, SUITE 1, BERE A FOR A 24  
MONTH ADDITIONAL TIME EXTENSION TO  
PLAT THE APPROVED SUBDIVISION. THIS  
REQUEST IS FOR A P.U.D., IN AN R-1  
RESIDENTIAL ZONING DISTRICT. A  
PREVIOUS EXTENSION WAS GRANTED AS  
CASE 005-07 IN MARCH 2007.**

Mr. Reitz stated per the Planning and Zo months from the Preliminary Plan approval, in this case a General Development Plan, to submit an application for plat approval. Under 1216.08(b)(1) this submittal shall be after improvements have been satisfactorily installed. At this time no improvements have been started on this site.

The applicant had received an additional 18 month time extension from the approval date of 9/19/2005 by City Council. The current deadline to Plat the subdivision is 9-19-2008.

Mr. Tom Simon, RangeMax Properties and Todd Hunt, 1301 E. 9<sup>th</sup> Street, Cleveland, Attorney for RangeMax Properties were present tonight to represent this case and answer any questions the commission may have.

Mr. Hunt stated that he did not believe that he or the applicant had anything to add to this case. It is the same argument and facts and testimony that we had stated at the last meeting.

Mr. Fell checked with Mr. Zilka to see if he were comfortable with that seeing that Mr. Zilka was not at the last meeting.

Mr. Zilka did state he was fine with that, I have heard the testimony of the last meeting, however I was uncomfortable with the format. I felt as though I were sitting at a deposition, and do not know if that is appropriate for an attorney to question a client at this meeting. I clearly understood what was going on, and felt that the chair should be directing the questions.

Mr. Hunt stated that this is a quasi judicial body and I certainly have the right to question my client and cross examine witnesses. However I do not feel that there are any changes, and we do not have anything to add from the meeting last month. We do not feel the purpose of the time limit or changes to the area do not warrant not extending the time limit. The purpose of the time limit in the code is for if there have been changes in the area, rezoning, changes to the comprehensive land use plan, things of that nature. We have put forth testimony that several changes that have been made would warrant a time extension, the R-2 rezoning to the west of the property and the industrial changes to the south. We do not feel there is much of a need to put forth more evidence. We are sorry to see that Mr. Knilans has not made it to the meeting yet, but feel that it should just go to a vote.

Mr. McNamara stated that he went both ways with this issue because the residents spoke up and it is risk on their part of if this case does go to court. I have spoken to several people that I know

in the Webber Road area and they are just as torn on the issue as I am, so I am still torn as to how I feel on the issue tonight.

Mr. Simonovich stated that he feels this is a strange situation and doesn't really have any new comments on the case tonight.

Mr. Zilka said as was stated earlier, I was not at the last meeting. I did have the opportunity to hear the recording of the meeting and feel the minutes of the meeting accurately reflect what was said during the meeting. One of the statements from Mr. Simon was that he had spoken to me, which he had, and Mr. Simon quoted me that I supported this. My recollection of the conversation was that I did support the issue, but that I needed to hear from the residents first. That is how I remember that, and someone in the audience did stand up and say that my support was not genuine. I have spoken to the resident who spoke on that issue and I explained the situation. One of the concerns that I did have, that I believe that Mr. Simon and his attorney did bring up at the meeting was that there is land nearby that the City did rezone which I think does have bearing on this situation. We went through a long negotiation with Mr. Simon trying to construct an agreement that everyone could agree with and we required Mr. Simon to purchase an access property at his expense to get to Route 83, Mr. Simon did purchase that access per our request. That access would not only benefit residents of his subdivision but other residents in adjacent subdivisions. My concern is that if Planning Commission does not approve this and this goes to court we will see a plan that will be one that will have much denser housing than this plan is now. We did go thru this process before and had a reluctant compromise and some residents thought this was the best plan we could deal with. This is Mr. Simons land, he does have the right to use his land and the courts have supported that over and over and over again. My concern is if we do not grant the extension, we will end up with a plan that is much less desirable than what was approved several years ago.

Mr. Fell stated that his comments are the same as they were last month. I would much rather see this as woods for the next two years than it be developed and sitting empty. We could end up with a much worse plan than this one.

Mr. Tom Kilbane, 32907 Titus Hill Lane, it was stated a couple of times tonight that the property to the west was rezoned. At the time of the rezoning on Webber Road it was stated that with the rezoning it would be a standalone zoning and any other rezone would be discussed or looked at as needed. Now tonight you say that because that property was rezoned, we will have be careful about this issue and possibly getting a denser plan. I think that any time you have a rezone it makes it that much easier to support new rezoning in the area. I think we need to stop the rezoning and keep the properties the way they are because it looks like we are appeasing everyone but the residents of the City.

Mr. Bernie Backa, 32814 Titus Hill Lane asked for clarification on the majority rule and asked if this had come up any time prior in other meeting that cases would have to be gone back and looked at now.

Law Director Kerner stated that he was unaware of any other time this issue has ever come up.

Mr. Backa asked what the values of the homes proposed at in this development originally. I have done some checking with some builders and have been told that building costs have gone up by as much a 30%, so I can assume that the home values would then have to raise by as much as 30% or the homes will be priced at 30% lower values than originally stated when he came to planning. That is a large concern of the property owners of Titus Hill.

Mr. Simon stated that the housing market is in horrible shape right now. Housing appraisers have troubles appraising any new project right now. But for the most part, they don't have to worry about that right now, because the banks aren't even lending any monies for any new projects right now. It's kind of a moot point right now. The audience was upset that Mr. Simon did not directly answer the question.

Mr. Fell stated that Mr. Simon did not have to answer the question.

Mr. Dave Davis, 32820 Titus Hill, stated that a question was asked of Mr. Simon, and as usual Mr. Simon never answered the question. What are the values of the homes going to be. Mr. Hunt stated that zoning has changed in the area, but the difference with the zoning change was that it was to increase land values, not like this, this will decrease values.

Mr. Harry Shan, 32894 Titus Hill, when this was approved at Planning Commission last time I believe that Mr. Simon stated that the prices would be in the \$200-\$250,000 range. Now he is stating that he has no idea what the house values would be. I think that we need to look into that a little more before we approve this issue.

Mr. Simonovich moved to approve the request of RangeMax Properties, for a 24 month additional time extension to Plat the approved P.U.D.Subdivision in a R-1 Residential Zoning District. Mr. Fell seconded the motion.

**AYES: Simonovich, Zilka, Fell**

**NAYS: McNamara, Zuber, Brightwell**

Mr. Fell stated that the case was a tie vote and will be tabled to the next meeting to be heard again.

Mr. Simonovich asked if the commission would be hearing case no. 028-08 RangeMax Properties for the 20 month extension if this case was a tie.

Mr. Fell stated that the decision would be made by the applicant not the commission on hearing case no. 028-08.

**CASE NO. 028-08  
REBECCA LANE  
TIME EXTENSION FOR  
FINAL PLAT**

**REQUEST OF RANGEMAX PROPERTIES, 2  
BEREA COMMONS, SUITE 1, BERE A FOR A 20  
MONTH ADDITIONAL TIME EXTENSION TO  
PLAT THE APPROVED SUBDIVISION. THIS  
REQUEST IS FOR A P.U.D., IN AN R-1  
RESIDENTIAL ZONING DISTRICT. A  
PREVIOUS EXTENSION WAS GRANTED AS  
CASE 005-07 IN MARCH 2007.**

Mr. Reitz stated per the Planning and Zoning Code Section 1216.08(b)(3) an applicant has 18 months from the Preliminary Plan approval, in this case a General Development Plan, to submit an application for plat approval. Under 1216.08(b)(1) this submittal shall be after improvements have been satisfactorily installed. At this time no improvements have been started on this site.

The applicant had received an additional 18 month time extension from the approval date of 9/19/2005 by City Council. The current deadline to Plat the subdivision is 9-19-2008.

Mr. Tom Simon, RangeMax Properties and Todd Hunt, 1301 E. 9<sup>th</sup> Street, Cleveland, Attorney for RangeMax Properties were present tonight to represent this case and answer any questions the commission may have.

Mr. Simon requested a motion to table the new case 028-08 until the tabled case 026-08 has been voted upon and a ruling has been made.

Mr. Fell moved to approve the request of Tom Simon to table Case No. 028-08 until the next available meeting. Mr. McNamara seconded the motion.

**AYES: All NAYS: None**

**CASE NO. 032-08  
PAUL PUSTAY  
607 MILLER ROAD  
SITE PLAN**

**REQUEST OF PAUL PUSTAY, 607 MILLER ROAD, FOR A RECOMMENDATION OF APPROVAL FOR AN IMPROVEMENT TO THE FORMER CHEVROLET DEALER SITE ON MILLER ROAD. THIS PROJECT IS ON LAND ZONED I INDUSTRIAL.**

**THE APPLICANT IS REQUESTING THE FOLLOWING WAIVERS UNDER THE EQUIVALENCY PROVISION OF 1217.03(G):**

- 1. Waiver to 1246.04 for the required front parking setback of 20 feet. The request is for a 0 setback against the right-of-way.**
- 2. Waiver to 1264.11 for the installation of concrete curbs.**
- 3. Waiver to 1246.06(b) Fences to permit the installation of an eight (8) feet tall fence around the entire site and within the front yard.**

Mr. Reitz stated this proposed project is on approximately 13 acres, five of which are the former Lupe Chevrolet site. No external expansion to the existing building will be needed but the parking lot shall be expanded for outside storage of vehicles. The proposed tenant does work on Ford vehicles from the plant across the street. The volume of vehicle storage is needed for the anticipated amount of pre and post storage needed for the business. A dry retention area will be installed on the north side of the project site and will serve as both a retention basin and water quality basin to meet EPA requirements.

Mr. Paul Pustay, Avon Industrial Parkway Ltd. was present tonight to represent this case and answer any questions the commission may have.

Mr. Pustay stated that the property was a previous auto dealership. I believe that we have finally found a good match for the use of the property. We will be using all the property and hope to create 20 jobs with the improvements. We are very gratified to have found a tenant for the use of the building and surrounding area. The outdoor hard surfaces will be used for vehicle storage, not a parking lot. The fencing will be twenty feet from the right-of-way, not directly on the property/right-of-way line. Along with the fence we will be installing landscaping to soften the fence. The fence height will be 6 feet not the 8 feet as in the agenda. The stormwater plans have not been approved, but we are working with Bramhall Engineering and Joe Reitz to have them approved before any permits will be issued.

Mr. McNamara stated that he did not have a problem with the setbacks from the right-of-way or the fence in the front yard. I do appreciate the bushes and landscaping you are willing to put in to lessen the fence look.

Mr. Simonovich also thanked the applicant for the bushes and landscaping to try to help with the long fence areas.

Mr. Fell asked Mr. Pustay to state for the record that there would not be cars around the lot with hoods off, or on blocks, missing tires, or with transmissions lying around.

Mr. Pustay stated that there would not be cars around in that condition.

Mayor Zuber stated he is glad to see a company finally will be in the vacant building. There will be a tax abatement going through the committees after the council break.

Law Director Kerner stated that if the parking setback is a 20 feet then the waiver will not be needed.

Mr. Pustay stated that the waiver for the front building setback will not needed, but the other two waivers will be needed. The curbs will not be needed as this will be used for vehicle storage not a traditional parking lot.

Law Director Kerner asked if the fence will be at 8 feet as stated on the plans or will it be 6 feet.

Mr. Pustay stated the fence will be 6 feet tall all the way around the entire site.

Law Director Kerner stated that he understands the need for the fence around the entire site and the security, but if in the future the use changes the fence will still be allowed. Maybe the commission should look at granting the waiver with a condition that if the use/owner changes the fence comes down.

Mr. Zilka stated that this is an unusual situation and area. With Ford across the street with the same or worse fence as this is I don't feel the fence is that big of an issue.

Mr. Pustay stated that we deal with more than just Ford and this is a very diversified company. I hope that with the renovations and moving the company will be in this location for quite some time.

Mr. Fell moved to approve the request of Paul Pustay, 607 Miller Road for an improvement to the former Chevrolet dealer site on Miller Road with a waiver to 1264.11 for the installation of concrete curbs and a waiver to 1246.06(b) fences to permit the installation of an six (6) foot tall fence around the entire site and within the front yard. Mayor Zuber seconded the motion.

**AYES:                    All                    NAYS:                    None**

Mr. Fell stated this item has passed.

### **INFORMATIONAL ITEM**

None

### **DISCUSSION ITEM**

Mr Fell reminded the commission about having discussions with applicants/public on cases or giving supporting testimony for a vote on cases that are on or have been on the Planning Commission agendas. Members of boards, commissions, council and employees are never to voice opinions to a developer before a meeting or voice opinions on a vote until after a vote has been taken. Members of boards, commission, council and employees are never to accept any gifts, beer, golf, labor, dinner etc.

Mr. Zilka stated that the City has been very patient with T.I.D. and the cell tower progress on Pin Oak Parkway. I believe the City has been negligent in enforcing the code and feel a deadline issued for the light on the top of the tower to be installed and the fencing around the site being installed or the tower should be taken down. I feel by the City being negligent the City has a very large liability if something were to happen at the site.

Mr. Fell asked who should send the letter with the deadline, City Council or the Planning Commission?

Mayor Zuber stated that a letter would go out this week.

Mr. Fell asked that a copy of the letter that is sent be included in our Planning Commission packets next month.

Mr. Zilka asked what the deadline would or should be? We have already given T.I.D. plenty of time but think that September may not give them enough time to get all the work taken care of.

Mayor Zuber agreed that October 1, 2008 would probably be a better time frame for the deadline.

Mr. Fell asked that if any members are not going to be able to make the September meeting please inform him or Coleen at the planning office.

**GENERAL PUBLIC COMMENT**

None

**ADJOURNMENT**

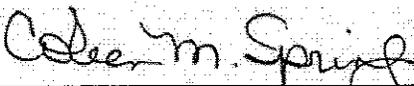
Mr. McNamara moved to adjourn at 8:39 p.m. the August 5, 2008 Planning Commission meeting. Mr. Fell seconded the motion.

**AYES:                    All    NAYS:            None**

The next regular meeting of the Planning Commission will be on September 2, 2008.

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Gary Fell, Chairperson

  
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Coleen M. Spring, Recording Secretary