

**MINUTES OF A REGULAR MEETING  
OF THE PLANNING COMMISSION  
CITY OF INDEPENDENCE, OHIO  
Held in the Council Chambers at City Hall**

**7:00 P.M., JUNE 5, 2007**

Chairman Lytkowski called the meeting to order at 7:06 p.m., June 5, 2007 and the following responded to Roll Call:

**PRESENT:** Dale Lytkowski, Chairman  
Fred P. Ramos, Mayor  
Gregory Kurtz, Vice Mayor  
Jack Shallcross  
Tom Narduzzi

**OTHERS**

**PRESENT:** Gregory J. O'Brien, Law Director  
Don Elewski, City Engineer  
Ron White, Economic Development  
Jeff Markley, City Planner

**AGENDA:**

**Old Business:**

**Approval of Minutes of Regular Planning Commission Meeting held on May 1, 2007.**

**Approval of Minutes of Continuation of Public Hearing regarding St. Maron's held on May 1, 2007.**

**Old Business:**

- 1. St. Maron's Church** – Approval for Special U-3 Permit to operate a church and community center on the property located 7800 Brookside Road.
- 2. Acorn Drive, PPN 562-29-057** – Motion for reconsideration for lot split.

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3. **Chapter 1143A, Section 1141.021 of Codified Ordinances** – Approval of Ordinance amending the Zoning Code to create a senior citizen residential development district in a certain designated are of the City.
4. **6303 Granger & 6415 Granger Road, PPN 561-02-004, 013 & 027** – Proposed lot split and consolidation of property.
5. **6957 Brecksville Road & 7211 Cherry Street, PPN 564-01-016 & 018** - proposed lot split and consolidation of property.
6. **6990 Brecksville Road, PPN 563-06-002, 141 & 142** – Lot split and consolidation to create four parcels.

**New Business:**

7. **7120 Brecksville Road, Hillside Plaza** – Proposed multi-tenant sign for shopping center.
8. **6491 Brecksville Road, Spa K-9 LLC** – Proposed dog grooming spa and dog day care.
9. **6046 Brecksville Road, MSZ Limited Partnership** – Proposed office campus consisting of five mid-rise buildings with parking.

Chairman Lytkowski asked for the approval of the minutes of the Regular Planning Commission meeting of May 1, 2007.

**A motion was made by Tom Narduzzi, seconded by Jack Shallcross, to approve the minutes of the Regular Planning Commission meeting of May 1, 2007.**

**ROLL CALL:           Yeas: Narduzzi, Shallcross, Kurtz, Lytkowski, Ramos  
                              Nays: None  
                              MOTION CARRIED**

Chairman Lytkowski asked for the approval of the minutes of the Continuation of Public Hearing regarding St. Maron’s held on May 1, 2007.

**A motion was made by Jack Shallcross, seconded by Mayor Ramos, to approve the minutes of the Continuation of Public Hearing regarding St. Maron’s held on May 1, 2007.**

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**ROLL CALL:           Yeas: Shallcross, Ramos, Narduzzi, Kurtz, Lytkowski  
                              Nays: None  
                              MOTION CARRIED**

Chairman Lytkowski stated that they are going to change the order of the items this evening due to a request.

**6303 & 6415 Granger Road** – Vice Mayor Kurtz stated that he would recuse himself from this matter. Mr. Simon Caplan was in attendance with regard to this matter. They are requesting a lot split to take .8 acres from Parcel 2B and adding it on to Parcel 2A to allow access of a building on Granger Road to use the truck docks which are on the west side of the building. The property line doesn't allow that now. Mr. Caplan stated that the drawing has been approved by the City Engineer, and they are just asking approval from the Planning Commission. Mr. Caplan stated that they want the lot split to give access to the truck docks on the west side of the building. Mr. Caplan stated that the land to the west is going to be purchased by the TPL and will eventually be part of the West Creek Preservation and will become a public park that will be donated to the City of Independence. There will be some costs by the City of Independence, the EPA and some other entities to put that together. It will be a wetland area and a park. It will connect to the towpath project on Canal Road.

Mr. Shallcross stated that the property is actually the old Value City building that will be turned over.

Mayor Ramos stated that this was an opportunity for the City. The West Creek Preservation purchases land and puts it in trust for purposes of storm water and for purposes of park land, preservation and things like that. West Creek Preservation starts in the Ridgewood Parma area and comes down through and will be joining the canal. As part of this, the City is being asked to donate a maximum of \$650,000 towards the purchase of the property. In exchange, and this depends whether or not they receive approval from Council, the City will be getting \$4.5 million dollars that will include the cost of the land. Plus, the sewer district will be putting in \$3 million dollars towards renovation, mitigation and things like that. Several of the businesses down there do have some storm water runoff concerns. The City feels that by doing this project, it may help the situation. It is not going to cure the situation completely, but it may help the situation in part.

Chairman Lytkowski stated that he spoke at the caucus with regard to the landowners down there helping to contribute to this process, he thinks the City will be appreciative of that. He thinks it would be great for the City of Independence.

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Mayor Ramos stated that this is something that has been being worked on for the past 12 to 18 months. Once again, it is a matter that is in front of Council. They will be discussing all the merits of the project and then make a decision.

Law Director O'Brien stated that the motion should be made subject to the conveyance of Parcel 2B as identified on the plat to the Trust for Public Land or their successors or assigns.

**A motion was made by Jack Shallcross, seconded by Tom Narduzzi, to approve the lot split subject to the conveyance of Parcel 2B as identified on the plat to the Trust for Public Land or their successors or assigns.**

**ROLL CALL:           Yeas: Shallcross, Narduzzi, Ramos, Lytkowski  
                              Nays: None  
                              MOTION CARRIED**

Chairman Lytkowski stated that the next Planning Commission meeting will be Tuesday, July 3, 2007, not Thursday as it had been initially scheduled, at 5:00 p.m. in Council Chambers. The caucus will be at 4:30 p.m. The reason being is that on Thursday, July 5, 2007 there are a couple of Planning Commission members that have some out of town commitments. They will have a full complement of Planning Commission members on Tuesday, July 3, 2007.

**A motion was made by Jack Shallcross, seconded by Tom Narduzzi, to schedule the next Planning Commission meeting on Tuesday, July 3, 2007 at 5:00 p.m., with caucus starting at 4:30 p.m.**

**ROLL CALL:           Yeas: Shallcross, Narduzzi, Kurtz, Lytkowski, Ramos  
                              Nays: None  
                              MOTION CARRIED**

The Mayor stated that he sees several residents that are here tonight regarding the MSZ Limited Partnership at 6046 Brecksville Road. That is the last item on the Agenda. The Mayor just wants everyone to know that the Planning Commission will be setting up a work shop session with the developer and with the property owners so that they can devote more time to the issue. Consequently, the Secretary will be surveying the Planning members to determine a date when a work shop can be held. The Mayor stated that everyone is welcomed to stay, but he can assure them that all the Planning Commission will be doing is setting up a work shop session involving all the Planning Commission members as well as the property owners in about two to three weeks. Vice

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Mayor Kurtz stated that at that meeting all the neighbors will be invited since it does directly affect a number of the residents. The purpose is to interact with the neighbors in the neighborhood as well as just to go through the legal process.

**St. Maron's Church, 7800 Brookside Road** – Mr. Sheldon Berns spoke on behalf of St. Maron's. The church has been before the Planning Commission for approximately 10 months. They have answered every question that has been asked. They have tried to cooperate in every way they can with regard to the plan for the church even though a plan for the church often comes after the permit is received. Nonetheless, they have done what they have been requested to do. The problem is from the church's standpoint, that they cannot build the church until they have the permit. They cannot start the site plan process until they have the permit. Therefore, they cannot conduct worship in the City. They have members in this City, and they need to move forward. They are asking as politely as they can and as insistently as they can, to please vote on this matter, either up or down, whatever the Commission thinks is appropriate. They would hope that the Commission would vote in favor of it simply because it is the right thing to do. This property was used for a sanctuary. The sanctuary is still there. The sanctuary was open to the public in general. It was not only confined to Marycrest. Mr. Berns is not going to go into a dissertation of the law. Mr. Berns has enough confidence in the Law Director's knowledge that he knows what Mr. Berns knows.

Mr. Berns stated that he sat as a City Councilman for seven years. He knows that sometimes doing what needs to be done is difficult because people who want you to do things (inaudible). This church has a constitutional right to exist and occupy this property. They have worked with the Planning Commission, and they are working with the Planning Commission. They want to be a good neighbor while they are in Independence. The time has come for the Planning Commission to make a decision. They ask the Commission to make that decision this evening.

Law Director O'Brien stated that he disagrees with Mr. Berns that this matter has been pending for 10 months. The public hearing has actually been open for 9 months. The first time it has been before this Commission for consideration would be tonight. That is when the applicant is presenting it for the first time. Mr. Berns asked if they should make a full presentation this evening. They are prepared to do that. Law Director O'Brien stated that they prepared a Findings of Fact. Mr. Berns stated that he has had an opportunity to review them. Law Director O'Brien stated that the Commission could accept those as St. Maron's application. Mr. Berns doesn't think there is anything more. Chairman Lytkowski stated that they would need a motion to accept the Findings of Fact as part of their . . . Law Director O'Brien stated that he thinks it is prudent to put into the record that each member of the Planning Commission has reviewed the Findings of Fact,

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and assuming they have, they could vote to adopt them and place them into the record. Chairman Lytkowski stated that each member has received these Findings of Fact as prepared by the Law Director. The Chairman asked if there were any additions, comments or corrections to the Findings of Fact. The Chairman asked for a motion to accept the Findings of Fact and put them into the Minutes of the Regular Meeting of June 5, 2007.

Mrs. Calabersa stated that the Finding of Facts are fine. She would like to have the actual minutes from all of the previous public hearings entered into the Minutes of tonight's meeting.

**A motion was made by Vice Mayor Kurtz, seconded by Jack Shallcross, to amend the motion to include the Minutes from the previous public hearings with regard to St. Maron's into the Findings of Fact.**

**ROLL CALL:           Yeas: Narduzzi, Shallcross, Kurtz, Lytkowski, Ramos  
                              Nays: None  
                              MOTION CARRIED**

**A motion was made by Mayor Ramos, seconded by Jack Shallcross, to include the Findings of Fact along with all the minutes from the public hearings with regard to St. Maron's into the record.**

**ROLL CALL:           Yeas: Ramos, Shallcross, Narduzzi, Kurtz, Lytkowski  
                              Nays: None  
                              MOTION CARRIED**

Vice Mayor Kurtz stated that he would like to address some of the concerns that Mr. Berns outlined as to the law. He stated that one of the neighbors, and he appreciates the residents' participation in the debate, he thinks they presented a great deal of evidence and information on this issue. Mr. George Naymik stated it best in his letter when he said that this was originally designed, he thought there was an executive estate behind him when he bought the property in 1948. In 1953 Mr. Naymik built his house. His family expected a certain quality of life. He expected the City to protect him for many years. What happened back in the 1950's is there was a change of use of that estate which everyone knows as Marycrest. Marycrest evolved over the years. Quite frankly, there were a number of challenges for everyone who sat up here. It is probably why they are here today because everyone is so sensitive to the issue.

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What was revealed at the public hearings was that the residents had a great deal of concerns and reservations as to what the long term use of the property was going to be. They also exposed the challenges the City faces with its infrastructure – the sanitary sewer system, the storm sewer, the flooding, the road condition – to name a few. What the Vice Mayor is suggesting as a result of the public hearings and result of the input from the residents, the results of what they have learned about the condition of the infrastructure poses a great deal of concern for the Vice Mayor as a member of the Planning Commission. He has his Planning Commission hat on right now, and not his Vice Mayor hat. There is a difference. What he is concerned about is that at this time they are in a position that making the decisions that Mr. Berns asked for. He wants the Planning Commission to make a decision. They have to look at the long term impact on the City residents, on the quality of life and the health, safety and welfare of the people. What the Vice Mayor is going to propose tonight is maybe what some would consider being a leader, some being bold, some being crazy, but the bottom line is that he has been around a long time and wants to still do what he thinks is best for the City of Independence. The Vice Mayor would like to propose that they table St. Maron's request this evening. He is going to respectfully ask his colleagues to table this decision. So next week when he puts his Vice Mayor's hat on, he can introduce legislation authorizing the City of Independence to acquire the property. The Vice Mayor stated that it is a challenge to acquire a property. It would be a multi-step process, and the first step is to introduce the resolution of necessity. He intends to do that next week. At that point, his colleagues, the administration and anyone who will debate the issue, but they will find a way to do what's best to protect the health, safety and welfare of the City people and protect the quality of life.

Vice Mayor Kurtz wanted to make a motion to table this request. Then he will make a motion that Planning support a resolution of necessity to acquire the property. It will then be debated for Council. All the Planning Commission does is recommend. City Council has to make that decision.

Chairman Lytkowski asked if the Commission could go into Executive Session. Law Director O'Brien stated that a motion could be made to table the matter and then make a motion to go into Executive Session. Mr. Berns has already lobbied in public meetings and personally in conversations if the approval does not go forward, he is intending on filing a lawsuit in Federal Court. The Commission certainly has the basis for Executive Session pending eminent litigation.

**Jack Shallcross made a motion, seconded by Tom Narduzzi, to go into Executive Session to discuss this recent proposal.**

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**ROLL CALL: Yeas: Shallcross, Narduzzi, Kurtz, Lytkowski, Ramos  
Nays: None  
MOTION CARRIED**

The Planning Commission then went into Executive Session at 7:35 p.m.

**A motion was made by Jack Shallcross, seconded by Tom Narduzzi, to adjourn from Executive Session at 7:46 p.m. and resume the regular meeting.**

**ROLL CALL: Yeas: Shallcross, Narduzzi, Kurtz, Lytkowski, Ramos  
Nays: None  
MOTION CARRIED**

Chairman Lytkowski stated that there was a motion pending. Mayor Ramos stated that they need a motion to remove from the table the Vice Mayor's motion to table this thing and refer it to Council. The Chairman thought they were going to amend the motion. Vice Mayor Kurtz agreed to substitute his motion. He thinks a motion to substitute supersedes a motion to table.

**A motion was made by Vice Mayor Kurtz, seconded by Jack Shallcross, to table the application of St. Maron's Church for sixty (60) days to allow City Council to review a resolution of necessity and/or an ordinance to appropriate the land identified in the application. If Council does not take action to afford towards eminent domain within the sixty (60) day period of time, the Planning Commission will move forward on the application and vote on the application of St. Maron's Church.**

**ROLL CALL: Yeas: Shallcross, Narduzzi, Kurtz, Lytkowski, Ramos  
Nays: None  
MOTION CARRIED**

Chairman Lytkowski stated that the motion has been approved, and they have tabled the U-3 Permit for St. Maron's Church for the next sixty days. Vice Mayor Kurtz stated that the resolution of necessity will be drafted by the Law Department and will be on first reading before City Council next week.

**Acorn Drive, PPN 562-29-057** – Law Director O'Brien stated that last month there was a motion that was combined for the lot split and consolidation and for the final site plan. In speaking with Stephen Richman, attorney for the applicant, there was a question regarding the one condition about the donation of the land for future extension of Acorn.

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Obviously, that is sometime in the future and down the road. The Law Director stated that first the Commission entertain a motion to reconsider last month's motion; and assuming that it passes, the Law Director has crafted a couple of motions. The only item that he would have re-affirmed in the record beyond the motions, would be Mr. Lombardo's attestation to donating the remaining 3 acres that he has an interest in, not the 3 acres, but only enough land to extend Acorn for a public roadway and the right-of-way for that public roadway. That would be just for the remaining three acres because the road goes past the applicant's property that they are seeking a lot split on.

Chairman Lytkowski asked Mr. Lombardo if he agreed with this. Mr. Lombardo stated that as long as it is mutually accepted. Mr. Lombardo stated "yes" that he did agree with this.

**A motion was made by Tom Narduzzi, seconded by Jack Shallcross, to reconsider the Planning Commission's motion of May 1, 2007 with respect to Acorn Drive, PPN 562-29-057.**

**ROLL CALL:           Yeas: Narduzzi, Shallcross, Kurtz, Lytkowski, Ramos  
                              Nays: None  
                              MOTION CARRIED**

Law Director O'Brien stated that the motion that he would like the Commission to consider is two motions. The first motion would be a motion to approve the lot split and consolidation submitted by the applicant for Acorn Drive.

**A motion was made by Jack Shallcross, seconded by Tom Narduzzi, to approve the lot split and consolidation.**

**ROLL CALL:           Yeas: Shallcross, Narduzzi, Kurtz, Ramos, Lytkowski  
                              Nays: None  
                              MOTION CARRIED**

The Law Director stated that the second motion he would like the Commission to consider is a motion to approve the final site plan, subject to a drainage and landscaping plan to be reviewed and approved by the City Engineer and City Planner respectively, and subject to a donation by L & M Properties and/or Sam Lombardo as to the remaining 3 plus or minus acres, enough land necessary for the right-of-way for a public roadway extension of Acorn Drive in a location mutually agreeable to the City and L & M Properties and Mr. Lombardo, and/or his successors and assigns. Attorney Richman stated that his preference is it would be a condition to the site plan to the 1.5 acre parcel

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rather than make that motion to include that condition. Perhaps a third motion can be made to condition any development and/or sale of that 3 acre parcel by the agreement between Mr. Lombardo and the City.

**A motion was made by Jack Shallcross, seconded by Tom Narduzzi, to approve the final site plan, subject to the drainage and landscaping plans to be reviewed and approved by the City Engineer and City Planner.**

**ROLL CALL:           Yeas: Shallcross, Narduzzi, Kurtz, Lytkowski, Ramos  
                              Nays: None  
                              MOTION CARRIED**

Law Director O'Brien stated that he did not think that they needed a motion because in the record Mr. Lombardo has already attested to that, and that went into consideration for the Commission passing the two motions. So, the Law Director is comfortable with no motion. Mr. Lombardo would like to have that memorialized in writing.

**6957 Brecksville and 7211 Cherry Street** – Chairman Lytkowski stated that the Commission told the applicant last month that she did not have to attend this evening's meeting. The only thing they wanted was a 30 day cooling down period. The Chairman asked if residents had been notified with regard to this matter. The Secretary stated that they had been. There were no residents in the audience with regard to this matter.

The Chairman asked City Engineer Elewski if he had any concerns or comments with regard to water or drainage. Mr. Elewski had none. City Planner Markley had no comments with regard to landscaping. The Law Director had no issues.

**A motion was made by Mayor Ramos, seconded by Jack Shallcross, to approve the lot split and consolidation.**

**ROLL CALL:           Yeas: Ramos, Shallcross, Narduzzi, Kurtz, Lytkowski  
                              Nays: None  
                              MOTION CARRIED**

**6990 Brecksville Road** – Mrs. Elaine Kukawka was in attendance. Mrs. Kukawka stated that she was before the Commission last month. She has a parcel where her father's house is and the entrance to the house is off of Archwood. She is requesting that it be split into one parcel with an easement off of Archwood into that parcel. The back piece of that parcel she is requesting to be split off into a separate parcel. The front parcel is 6990 Brecksville Road. She is requesting a variance on either side to make that

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a buildable lot. It is her understanding from last month that they need to take a little bit off of 6974 Brecksville Road to give enough width to 6990 to bring it up to current standards.

Chairman Lytkowski asked if the residents had been notified with regard to this lot split. The Secretary stated that they had been notified. Vice Mayor Kurtz stated that each of the Commission members received correspondence from the residents in the area. The Vice Mayor stated that this falls on the City Engineer's shoulders and the City Planner's shoulders. Before any decisions, the Vice Mayor thinks there are concerns relative to drain water that comes from the Elmerge area across Parcel 4 and to the rear lots of Rosewood and Hunting Lane. As part of any type of approval process, before they change the current land formation, they need to address that in concrete terms; not only for the benefit of those on Rosewood and Hunting Lane, but also for whoever acquires this property so that they can address the issues and know that there are certain requirements of them relative to drain water.

The second issue that has been brought to the Commission's attention is access. It was pretty clear that they said Archwood was never intended to go through or they would have kept a 60' right-of-way. The Vice Mayor asked if that was a fair assumption. The City Engineer stated that it was never intended to go through. The Vice Mayor asked the applicant if she wanted access to the property. She stated that she did. The Vice Mayor stated that the applicant was trying to split the property in some manner, shape or form that allows the existing house to have its own frontage, to create a new lot in front; and then Parcel 4 is the concern. The Vice Mayor thinks that Parcel 4 is where drain water needs to be addressed and access. When he says access, if Parcel 4 or some configuration on the western portion of the property is a result of the dialogue and expertise of the City's Planner and professionals, the City needs to insure that there's not going to be a road of any kind of access that abuts the houses on Rosewood and Hunting Lane. If there is going to be access it can't be parallel to the rear lots. The City Engineer stated that you want to save frontage on the end of Archwood. There is frontage on the paper street of Eugene. The Vice Mayor stated that the problem with the paper street, and he thinks they should vacate that, when they rebuilt Elmerge they didn't accommodate the paper street. When they did 21, they accommodated for Florian, another paper street. The Vice Mayor assumes that for all these years that once they re-did Elmerge, because they put curbs, that they precluded the opportunity to build on Eugene Drive. Mrs. Kukawaka is asking for access either off of Archwood or Eugene. She is asking just for a drive, not a road. Vice Mayor Kurtz stated that the problem on Eugene is that when the City re-did Elmerge they re-did it without any type of accommodation for access off of Elmerge. The Vice Mayor stated that he is asking the City Planner that when he does his analysis he needs to incorporate a couple foods for thought. One would be access to Parcel 4 if that is the

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final configuration; if there is no better configuration. He would ask the Planner to review this to see if there is a better configuration for the City of Independence. He would ask to determine the extent of access off of Archwood and location. He would ask him to address drain water issues for the entire parcel; but he would think that the Planner would focus on Parcel 4 because there is a creek that goes through the middle of Parcel 1 and 2 and drains Parcel 3. Mrs. Kukawaka stated that it would be between 1,2 and 3. The Vice Mayor stated that all of the drainage is pretty much in place. That is not really an issue.

The Vice Mayor stated that there is the issue of Archwood for frontage of the reconfiguration of Parcel 3. The Vice Mayor asked if it would be appropriate at this time to request the City Planner and City Engineer to use their expertise to confirm the assumptions that have been presented to the Planning Commission. The Vice Mayor would like those submitted to the next Planning Commission meeting for review. The Vice Mayor wants to know if the plan submitted is the best configuration for the property.

Is there a better situation for the land owner, is there is a better situation for the residents? The Vice Mayor would also like to see locations of potential houses, access roads and drain water issues. The City Planner stated that he could work on that. The Vice Mayor thinks that would help the Commission move this along rather than sit here and not have direction. The Vice Mayor would like to look at the big picture and how this falls into play long term, and then once they come up with something everybody agrees to; then the City can take appropriate steps – rather than come back next month with one little change. The Vice Mayor would like to expedite the matter so that all the issues are addressed up front and to see from the experts what they propose as the best layout for the City.

Chairman Lytkowski stated that there were some legal issues that were not addressed yet, and he thinks that the Law Director is addressing the legal issues like a private drive servicing two homes. The Law Director stated that if there is going to be a new plan, it wouldn't be prudent to opine on this plan. The Law Director stated that the Building Department is very helpful. They will let the applicant know, subject to final review, what they are looking at regarding a variance. Chairman Lytkowski stated that one thing that bothered him was that with respect to Parcel 3 and 4, the question being that one private drive would service two homes. That could present a problem down the road. Mayor Ramos stated that for the record there are several sites that have one private drive to a couple different homes throughout the City. He is not sure if that is a concern. The Mayor is concerned about the cul-de-sac on Rosewood and Hunting Lane regarding some of the storm water runoff. He was back over by Dr. Gervasi's as well as a couple of the

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other property owners. As far as a resolution of this, the City needs to make sure that those issues are addressed because his understanding is that some of these issues relate back to when the original development was done in 1996. So consequently, maybe this would be a good opportunity to address those concerns.

City Planner Markley asked the Mayor if he thought that the problems may have stemmed from the development of Rosewood and Hunting Lane. The Mayor stated the back lots of the cul-de-sacs. The Mayor is not saying that this is the Wisnieski family's responsibility or fault. All he is saying is that when the development was put in, there were some areas that have had water problems from the get go. Now because of other further development, it is becoming worse. This might be a great opportunity to look at that.

Chairman Lytkowski stated that there are a number of issues, and the Planning Commission is not going to take action tonight. Chairman Lytkowski requested City Planner Markley and City Engineer Elewski to work with Mrs. Kukawaka over the next thirty days to formulate a comprehensive plan for those four lots. Mayor Ramos stated that there were a couple of letters received by the Commission. If Mr. Markley could contact those property owners to get their input into this, so that the Commission can come up with something that is a win-win situation for everyone concerned.

Vice Mayor Kurtz stated that he would like to know if some of the abutting property owners were interested in buying some of the property if Mrs. Kukawaka would consider that. Mrs. Kukawaka stated that she is open to selling the property to adjacent property owners.

A resident asked if there were any changes to the plan. The Vice Mayor stated that there was a minor change at Brecksville Road where they moved a little bit of property from one lot to the other lot to meet the City requirements. There are a number of issues that the Commission has asked the Planner and Engineer to address including but not limited to the drain water issues for Hunting Lane and for Rosewood, the potential for access off of Archwood for Lot 4. If there is any consideration on the applicant's part to potentially sell that property to the neighbors, and along with some of the legal issues in terms of access and frontage that were explained earlier. The Planner is going to look at it and see if there is a potential common ground for the family and the City, what is best for both parties; to see if there is some ability to achieve that goal and incorporate some of the concerns the City has into the resolution.

Rhonee Iula asked if there was a letter that was received from Mr. and Mrs. Sogor. The Chairman stated the Commission received that letter. She just wanted to stress that the Sogors spent over \$30,000 on their lot alone to try to remedy a lot of the water issues.

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Right now if you go back there, there is another pond with standing water. There are issues on Hunting Lane and Rosewood Circle with water. They are very concerned from that standpoint. There are also two creeks. Everyone knows that water cannot be re-directed.

The Chairman asked the Secretary if the residents would be notified when there is a meeting with Mrs. Kukawaka and the Planner and Engineer. The Vice Mayor stated that first the issues need to be resolved. The Chairman would hate to make all these changes. City Planner Markley asked if the Chairman was asking about a joint work session. The Chairman thinks it makes sense. The City Planner asked that anyone who was interested in participating in the work session can contact the Secretary to be included.

Larry Gervasi of 6879 Rosewood Circle spoke. His concern is that the access to Archwood would be most likely against the backyard of his property. He is worried about safety issues. He is worried about privacy issues, and he is worried about the valuation of his property. Other areas in the City where there are private drives, have been accessed off of a public road. That drive would be parallel to his whole backyard. He believes it is against the building standards. The Chairman stated that this is the exact reason that the residents should notify the Secretary so that the residents can be there to protect what they want protected. The Chairman wants to make sure this meets the applicant's needs and the residents' needs, and everyone is satisfied. If it can't be done, then it can't be done. Mr. Gervasi stated that he also has water problems in his backyard. The Chairman tabled this matter until next month.

**7120 Brecksville Road** – Mr. Randy Matejka was in attendance along with the owner of the property, Joseph Krist. He is before the Commission to present a pylon sign for the whole plaza. There are five tenant spaces, four are already presently occupied. The sign would be located in the empty island on the property. It is set within the required setback. It is really 44'6" from the corner. The sign would be 8' wide. It would be 10' high. There will be stone at the bottom, and an 8" stone cap. The signage itself would be white background and black letters. The tenants in the plaza did not want signs on the building. Mr. Matejka stated that they talked to Dollar General about the yellow background, and they agreed to go with the white background with black letters.

Chairman Lytkowski stated that in the Minutes it was stated that the Planning Commission did not want five names on the sign. Mr. Matejka stated that it was on a ground sign, this is a pylon sign. The Chairman stated that Rockside Corners wanted the names of the tenants on a sign and they were denied. Mr. Matejka stated that there is a sign in the center of town with all the tenant names on it. The Chairman stated that the

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Commission had talked about a potential clock tower as well. They had suggested that a clock tower be put there. Mr. Matejka presented a drawing. Mr. Matejka stated that the cost between this clock tower and the sign they propose is about \$16,000 to \$18,000. If the City would like to pay for the clock tower, they would be willing to go ahead and do that. Mr. Matejka stated the pylon sign is \$8,000. The other sign with the clock tower is \$26,000.

Chairman Lytkowski stated that it was talked about moving the magazines from the front of Convenient, and this was done. It looks much cleaner. They also talked about taking the ice unit and putting it in the back. That was never done. Whatever happened with that? Mr. Matejka stated that they told the tenants. The Chairman does not like storage units in the front of the stores. The Chairman complimented Mr. Krist on doing a great job on the building itself. Mr. Narduzzi stated that there are convenience stores where the ice unit is inside.

Law Director O'Brien stated that there is only one building there; therefore, the City code provides that you can have one tenant name on your pylon sign. Mr. Matejka will have to go to the Board of Zoning Appeals for additional names. The Law Director stated that Mr. Matejka can either identify it with the sign as the name of the building or one tenant that occupies 60% or more of the building. Mr. Matejka asked about the Ink Stop sign. The Law Director stated that those are separate buildings. The code provides for separate buildings. Also, they got a variance. Mr. Narduzzi stated that they did not want to have four separate signs on the site. Mr. Matejka stated that the other tenants in the building are looking for signage. They have not put signage on the building. It will look nicer with no signs going across the top of the building. The Chairman thinks that signs on the building would look cluttered. Mr. Krist stated that he will talk to the owner of Convenient about putting the ice unit inside.

The Law Director stated that the Commission may want to table the sign and have the applicant go before the Board of Zoning Appeals to get their variance before he comes back. Mayor Ramos stated he does not know about the individual stores being identified. He would rather see Hillside Plaza. The Chairman also prefers that. Mayor Ramos stated that the tenants come and go. Mr. Matejka stated that they could do four tenants. The Chairman suggests tabling this, go to Zoning and come back. Mayor Ramos stated that he is not trying to do the Board of Zoning Appeals' job, but because it involves the corner, Mr. Matejka should set up a board there so that at least the police department can take a look at it to make sure that it doesn't provide a visual obstruction. Mr. Matejka stated that they are 45' away from the corner, but he does understand.

Chairman Lytkowski stated that the clock tower would look nice. Mr. Matejka thinks the clock tower would look nicer on the other corner because you do have telephone poles and wires there. This matter was tabled.

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**6491 Brecksville Road** – Gina Zingale and Jenny Rizzo were in attendance with regard to this matter. Law Director O’Brien stated that the building they want to go into is in a U-4 district. Therefore, it would not be a stated, permitted use. Although, the Planning Commission could entertain it falling under the catch-all if so inclined. Otherwise, the property would have to be re-zoned, and he hasn’t had a chance to look what that would fall under. The applicants could also seek a U-3 permit. The Mayor asked the applicants to give their presentation with regard to the business they wanted.

Ms. Zingale stated that the business would be a dog grooming salon and day care where people would drop off their dogs during work hours or if they were going out of town. They would walk the dogs three times a day. There would also be in home services provided. They would go to people who could not bring their dogs in for grooming.

Ms. Zingale stated that their goal is to have somewhere where they would want to bring their own dogs. The problem with most boarding facilities is that they leave the dogs in cages for long periods of times. The dogs don’t get walked, or any attention whatsoever. These dogs here would have their own particular space. They would have their own individual rooms. They would not all be together. A large problem with boarding facilities is kennel cough. Ms. Zingale stated that there would be no dogs left outside or left unattended whatsoever. They would also have a web camera set up for all people that leave their dogs there to check on them at anytime of the day. They could see what their dog is doing. Ms. Zingale stated that because this space used to be a music center, each individual room is soundproofed already. Mr. Shallcross asked if the animals would be boarded overnight. Ms. Zingale stated that in rare occasions if people needed to go out of town. There would be nothing long term; possibly a day or two. There would not be boarding for long periods of time. There are only six rooms that would be available.

A resident asked about asking for proof of dogs’ parvo shots. Ms. Zingale stated that they would be doing that. She also stated that she was registered with the State. Another resident asked about sanitation with regard to waste from the dogs. Ms. Zingale stated that the owner of the building gave them permission to use a quarter of an acre in the back of the building that he owns. They will have something installed that will eliminate the waste. The Chairman asked if the quarter acre will be enclosed. There will be a fence put up so the dogs can’t get out. Someone asked if it was close to the pre-school. Ms. Zingale stated that they will have a fence, and the pre-school has a fence as well. Mr. Shallcross asked about the business hours. Ms. Zingale stated it would be anywhere from 6:00 a.m. to 8:00 p.m. They also do have ample parking in front of the buildings. Mr. Shallcross asked about the sanitation in the dog kennel areas. Ms. Zingale stated that they will be putting in a non-porous surface on the floor. The dogs will be walked three to four times a day. They will not just be locked in a room.

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Chairman Lytkowski asked the Law Director if there is a zoning for the dogs per se. The Law Director O'Brien stated that they do not have one. The Chairman would like to take 30 days to look at this so an informed, educated decision can be made. The Law Director stated that it does make sense. The Chairman stated that he would like the applicants placed on the Agenda next month. In the meantime the Law Director will double-check the ordinance to make sure they are not in violation of any part of the City ordinance, and next month the Commission will take action. The Law Director stated that in the meantime, this is the City's first dog grooming facility, they would like to look into what certification the applicants have to make sure that they are up to date. The Mayor stated that he wanted to ask Norm Casini to approach Mr. Sutula about some of the ideas for the building to see if he is willing to do something. Mr. Casini had some real nice ideas to upgrade the building. A resident asked the applicants if they had to be bonded and insured. Ms. Zingale stated that they are bonded and insured. Ms. Zingale asked the Commission about the owner having them sign a lease. The Law Director stated that it should be signed contingent upon them getting the appropriate zoning. She asked about going in and doing some work. The Law Director stated that they shouldn't go in there and start working unless they have a provision in their lease that said the owner would reimburse them for the betterments to the building. This matter was tabled until next month.

**Chapter 1143A, Section 1141.021 of Codified Ordinances** – Law Director O'Brien stated that the Commission should have Revision 5, dated June 4, 2007. This encompasses what was before the Commission last month. In essence, it has been modified to a degree encompassing input provided during two public hearings before Council, meeting with the Senior Coalition Group, David Hartt, Jeff Markley, the Law Department and this is what is before the Commission. The Law Director stated that it is up to Council to pass this. The Law Director stated that the Commission was given their options last month. Chairman Lytkowski stated that the options were vote to send it back to Council approving the Ordinance, a vote to disapprove of the Ordinance or not take any action and table it.

Vice Mayor Kurtz stated that by way of history, he began his history on senior housing back in 1979 as a member of the four churches committee when they got together and began dialogue on senior housing. He doesn't believe any elected City official has a greater history on this issue than himself. Back in 1988 there was a comprehensive plan. The Senior Coalition Chairman John Nicaastro helped sponsor that legislation. It is comprehensive in nature. It dealt with many facets of senior housing needs, and it was defeated by the voters. In the 1990's there were a variety of plans and proposals, discussions, public hearings. He thinks that the current legislation proposed by

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Councilman Chicocki, what he said it 1993 or 1994 that it is not senior housing, it is senior help that is needed. It is a little more comprehensive than senior housing. In 2003 there was the Kemper plan. Judge Nicastro said that she liked the Kemper plan. She would vote for that if that was the plan. In 2006 they had the Concordia plan; again, more comprehensive senior housing. It was defeated by a slim margin of the voters. They have currently a piece of legislation before the Commission that addresses one facet of senior housing. History's lessons have taught us several things. Every City official supports senior housing. Go back to the 1980's, everyone does. But nobody agrees and can answer the question of what is senior housing. All you need is evidence from the public hearing of 4/17/07 where there were a variety of suggestions – types of senior housing. Nobody agrees on what is senior housing. It is different for everybody. All you have to look at is the record of the last public hearing. As a matter of fact, the last public hearing generated as many questions as it did answers. They now have a fifth revision before them on this one type of senior housing. The Vice Mayor's view has been consistent for 25 years. The approach should be comprehensive, and the process must be inclusive. Senior housing is part of senior needs. They need to address all of the needs of the seniors – the big picture, the long term vision. There is no one size fits all. Look at the elements of the public hearings. He believes that a multi-step process has to be put in play. The first step, which was actually introduced or suggested back in 1999 by Dorothy Ornas; she had it right when she said a door-to-door personal survey needs to be taken. You need to define what is needed and define the demand. What is the importance of the demand to the Vice Mayor? The importance is simple, business economic formula – supply and demand. You ask why supply and demand is so important? He believes they will have real time information of the needs of the City's seniors through this survey. By doing so, they then know what and how much they have to have available for the seniors. What type of housing and how much. The difference between last fall and why the Vice Mayor thinks this one element of supply and demand will eliminate a lot of the concerns, because it takes away the residents' fear of the unknown, of over-developing. The Vice Mayor believes they need to create options, but they have to be comprehensive. One size does not fit all. Single family, congregate, condos, assisted living would define all needs of the community of the seniors by a comprehensive, personal survey. Another step they need to take is to secure the land. They need to get an option on the land that they propose. By getting a lower price or the best price on the land, the City's residents will get the benefit of that value. They need to support the community. Too many people have said that we need to have the people involved in this process. He has heard the Senior Coalition members. The Vice Mayor thinks Mr. Nicastro said it best in his e-mail to the Commission when he suggested that they approve multi units this fall. The Vice Mayor agrees with Mr. Nicastro, and he will campaign for that concept. Once they get the good information, the Vice Mayor believes

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the people will embrace it, they will support it, because they will know it is for them. Another thing that made the Vice Mayor create this option was because of the waiting list for the cemetery right now. The residents are in line to get future plots. If they have to have a waiting list for their residents, it will give everyone else in the community a comfort level, and they won't have this mad dash to move from one type of housing to another type of housing.

In conclusion, the Vice Mayor would ask that the Commission table the current legislation and replace it with new legislation that he will present to Council next week. Then they can all join arms and do what is best for the community based on evidence from the people they represent.

Mayor Ramos stated that he would like to respond. He didn't realize that the campaign began already, but the Mayor would like to respond accordingly. 2003 the City invested close \$65,000 in the Kemper plan. Studying, bring in experts, bringing in attorneys, bringing in land planners, bringing in people to look at whether or not they should renovate or tear down, having public hearings, surveys, you name it. The City spent close to 12 to 18 months in extensive studies, public hearings, open sessions. They had representatives from all parts of the community; anywhere from Dr. Deyling from the Cleveland Clinic to the churches to the seniors to the young people to the organizations to the downtown people. They did a survey. They sent out a survey at that time, and they received close to 1,300 responses. They rated the responses, and went through the whole process. The Mayor thinks that it is time to stop. They know the information. They have talked about the preference of the seniors about giving the seniors in Independence that preference. Can they make this facility just for Independence residents? No. They have done the research. They have spent many, many dollars, countless hours researching this issue. They cannot have it just for Independence residents. Let's put that to rest. What they can do is give a preference. They can give a preference by the introduction of the project. They can give a preference as far as the marketing of the project. Ladies and gentlemen, this is the 21<sup>st</sup> century. Let's get real. This is not anything unusual. Senior housing is being done throughout the country. Senior housing or alternate living is being done throughout the county. They have talked, as Greg has indicated, for 25 years about senior housing, and now they are going to stop and let's take a survey. You know, the Mayor does not want to be laughed at anymore. He wants to move forward with senior housing.

The Kemper plan was a very, very good plan. The seniors, when they took the survey, close to 75% or 78% of the people said that they would support senior housing if it was the right plan. That is what they indicated. Then they asked what type of housing were they looking for. They preferred the independent living, etc. They came up with a plan

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that unfortunately was defeated. The Mayor believes it was defeated because of the multi-family part of it. All they are talking about is providing an option for the seniors. Are they going to come up with something that everybody is going to approve? The Mayor will state right now they are not going to do it. How many people like ranch homes, how many people like colonial homes? Everybody has their own preference. They are not going to come up with a plan that everybody is going to be happy with. They are not going to do it. All they can do is provide an option. An option for the seniors, and that is what this is all about. The Mayor is embarrassed to talk about senior housing today. They have been talking about it since he has been involved in politics. The Mayor ran for office back in 1983. It is 2007. The Mayor stated he has been talking about it for 25 years. It was talked about even prior to that time, probably 10 to 15 years. It is going to take the leadership and the guts to move this project forward. Now, the Mayor realizes and appreciates that some folks have a concern about multi-family housing, about opening it up for apartments, clusters, opening it up for condos – whatever the case may be. The Mayor respects that. He thinks they need to educate people as far as what that housing is about, but he respects their concerns. But this is just single-family home ownership. The Mayor would like to move forward this. He would like to make a motion to recommend this proposed zoning amendment to Council for their consideration.

Chairman Lytkowski wanted to make a comment. He asked if anyone in the audience had any comments with respect to this proposed ordinance.

Alan Klonowski spoke. He said “let’s do it”. Let’s stop fighting this and the inuendos about what could happen. Right now they have approximately 60% of the housing in Independence senior housing. So what has changed? The Mayor stated that 32% of the people in Independence are over 65. Mr. Klonowski stated that there are people who would like to stay in the area. He would like to have his mother stay in the area so he wouldn’t have to drive across town. Mr. Klonowski stated that there are a lot of things he gets in his mailbox that aren’t signed by anybody. He does not like to see information in his mailbox by people who are insinuating that something bad can happen because senior citizens are allowed in their town. Everyone has to grow up. What is the game plan here? Just do it.

Carl Aseff of Kingscote spoke. He is against this Ordinance. He is for senior housing, but he is against this Ordinance. It is putting a group of homes in an area and four to five to an acre. He thinks that Mr. Kurtz addressed it quite well for a comprehensive plan. He has access to approximately 950 seniors. He talks to them. This plan will not satisfy them. This is just moving from one home to another. He asks why did those votes fail on the other proposed plan – a much better proposed plan. It failed for absolute lack of

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leadership. Leadership could deliver the goods. If they can't deliver the goods, they should just get out of that position. Because that is what it takes to deliver it. He has been in leadership positions many times, and he knows what it takes. Hard issues – Dr. Aseff stated that the Mayor was smiling like a opossum. The Mayor stated he is smiling. Dr. Aseff stated that he had the floor right now. It takes real leadership to deliver. There are two people sitting at the table who are running for Mayor. That is fine. They should be supportive of a real plan and get it through. That will tell what fiber they are made of, whether they can get this plan through and get real stuff for the seniors. Not just a group of 1,000 square foot homes.

Yael Timock asked where the certain designated area of the City for the senior housing would be. Vice Mayor Kurtz stated that it was behind Concordia Church.

Jerry Schmidt spoke. He has been in the City 38 years. He has seen many of his friends leave the City and go into apartments and senior housing elsewhere. They have it in Seven Hills, they have it in Brecksville. It is in a lot of places in Cuyahoga county. They need it. He needs it. He said he is having trouble going up his steps. He doesn't want to live in a colonial like he is now. Between 1,000 and 1,500 square feet in a ranch home is fine with him. Mr. Schmidt thinks they ought to get this thing going. He has been talking about it a long time too.

A resident asked who would maintain all the outside areas of the senior housing. Law Director O'Brien stated that the Ordinance doesn't get down to that specific of an issue, but he can assure everyone that it would be handled by the Homeowners Association in conjunction with the City. The City would provide the services it is providing right now – garbage pickup, snowplowing. The Law Director has not been part of any discussions. The Law Director stated that the Ordinance does provide and require a Homeowners Association.

Mrs. Frances Burant. Dr. Aseff lives on Kingscote. She does not have a Kingscote home. There are residents like herself that don't want them. Keep your big homes and big lots, and give the seniors what they want.

John Nicastro spoke. The Commission has heard him talk before. Everyone knows that things are getting to a point where many people are getting frustrated. He would like to make the following observations. The City has done a great job in town encouraging many entities to come to town. They have all types of commercial, office, retail buildings. They even have multi-story office buildings. They have hotels, motels, restaurants, a nursing home, the Cavs training facility, a bereavement center, a funeral parlor. There are even colleges, and a new high school and a shared use sports facility.

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They have approved many housing subdivisions and houses of all types. They have an excellent park. There is a bike trail planned. They have even added to the cemetery. But for some reason there is difficulty in getting together to build a cottage for a senior citizen. Does anyone see anything wrong with that picture? They have everything in town, but a cottage for a senior citizen. With the comments made by the Vice Mayor and Mayor, Mr. Nicastro is cutting his presentation in  $\frac{3}{4}$ .

Mr. Nicastro stated that he truly believes that in your gut you feel that senior housing is the right thing to do. Your fear is not why you think this is right or wrong. Your fear is what the alarmists and skeptics think. You are not listening to us. You are listening to the outsiders. You are listening to the skeptics. Real leaders don't give a damn about what skeptics think. They respectfully request that every member on the Commission approve this legislation. It is a positive message sent to the community that they do care about their seniors. You know this is the right thing to do. This has been recommended not by committees, but Mr. Nicastro wanted to read a couple of things that have been brought up before. The Commission has before them some plannings made by some associates designating four locations that meet the criteria of senior housing. Soukup Consulting, the land conservation group, just last year made a report and considered that age restricted housing as having a positive fiscal impact on the community. Mr. Nicastro has sent out a chart and hoped the Commission read it. Independence Senior Housing Steering Committee appointed by the City was the group that produced the Kemper report. They ran a City wide survey and recommended a full range of senior housing.

The Downtown Redevelopment Committee appointed by the City, their tentative plan is to consider housing with increased density to enhance the downtown planning. The City's own Kathy Kapusta, the Senior Service Coordinator, who knows more about the senior experience than anyone else in town, repeatedly endorses senior housing. Independence Homeowners and Citizens Association had this to say, published in the Sun Courier on August 3<sup>rd</sup> of 2006: "If the ISC removes the part in the proposal that allows multi-family housing, they and the HIOCA probably would support senior housing". Those were the people that were against senior housing ever since they started, and now they are willing to take a second look at it because they have done just that. They have eliminated the multi-family portion of it so that they can come to some kind of agreement. Mr. Nicastro stated that there are all those things in their favor.

Mr. Nicastro stated that there were only a handful of people objecting to the senior housing at the public hearings. The City went out of their way to hold two public hearings. Most of them came out in favor of it. Mr. Nicastro wanted to read something that one of the Councilman wrote and it was published in the Independence Community

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Newsletter dated June 6<sup>th</sup>, and it is on page 13: “on seeing the records and plans for the Cleveland Cavaliers Training facility for the first time just yesterday at the Planning Commission’s Public Hearing, to being granted a U-3 Special Use Permit by Council here tonight, demonstrates when all impacted stakeholders work together for the betterment of the community, great things can happen and they can happen fast.” Mr. Nicastro stated that this was impressive. They accomplished something in two days, that’s taking the City since 1968. That is when the first plan came out talking about senior housing. Mr. Nicastro said that he doesn’t want to hear that they can’t do it. They can run their surveys, which have already been done. Check the newspapers, magazines and the Planning people, senior housing is going to come to this town regardless of what they say. They need it, they want it. There is no reason to delay. Mr. Nicastro stated that the Vice Mayor even mentioned it at one of the public hearings that they had as a coalition. Let’s start with something small, and get the people to agree with it and then they can go on to something bigger than that. That is all they are asking to do. They can do it. It just takes the will to do it.

Tony Apenzeller, the former Police Chief of Independence spoke. He retired 14 years ago to take care of his wife who was dying. Mr. Apenzeller stated to Dr. Aseff that he lives in a home that is pretty expensive itself. He was fortunate to be able to have gotten it when he was younger. He is now a widower, living by himself, in a four bedroom split on Beverly Mae Drive, which isn’t a bad neighborhood either. Mr. Apenzeller cannot handle that big house anymore. Mr. Apenzeller stated that there are a lot more seniors like him.

Vice Mayor Kurtz stated that his mother-in-law, who just passed away, if there would have been a comprehensive senior housing plan in place, she would have still been in Independence. She left her house, went to Sunrise and ended up in the assisted living and nursing area at the Sisters of St. Joseph’s. He is fully aware and sensitive of what they really need. They need to be able to have people stay in this town from cradle to grave. That is what they have to do, but they have to do it in a way that the people trust what they are giving. The Vice Mayor believes that how they sell this is supply and demand, so they know they have first dibs. This is his opinion. There are people who disagree with his position, but Judge Nicastro said it best that they have to provide leadership.

Deborah Nicastro wanted to speak. She appreciates the Vice Mayor’s offer to support a program. This is her concern about the Planning Commission. She wants to know what criteria they are using other than their personal belief about senior housing to make their decision. She is not familiar with the way this Planning Commission works. What criteria does the Commission have to follow to make a decision, other than your personal opinion? She would like the Commission to show the Senior Coalition that they support senior housing, that this is a good beginning. If there is anyone willing to come and

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develop this plan. In the meantime, if they can come up with a comprehensive plan, put that into effect later. She does not believe that will happen between now and the fall. It is going to be very hard to come up with legislation and go to the ballot in the fall. She is asking personally each one of the Commission members to approve this plan. It only requires approval on its submission, then it goes to Council. If they can't, she would like to know the legal criteria that the Planning Commission is using to table this.

Vice Mayor Kurtz stated that what the Planning Commission can do is, it's position is to recommend. That is what the Ordinance is. The Council has to pass it by law. The Planning Commission then has its prerogative and it has to debate the issue, and then it makes a decision – individually and then collectively. If the majority feels it should be recommended, it goes back to Council with a recommendation. If it is recommended, it takes four members of Council to enact it. If the majority of Planning does not recommend it or take no action, then it goes back to City Council and it takes a super majority, or five members of Council, to approve it. That is the checks and balances in the City's Charter. Judge Nicastro wanted to know what criteria does the Commission make their decision on. Is it the plan, the language of the Ordinance, or they just don't like senior housing? Vice Mayor Kurtz stated that the Commission can use whatever criteria they have. One of the criteria that was addressed to the Chairman that it should be voted on. The Chairman thinks it should be voted. Others say it should not be voted on. So that is one criteria. Mr. Nicastro stated that the Commission cannot use their personal prejudice or bias when they pass that. They look at the Ordinance, and they base it on the criteria that you use to pass it. They have to make sure it meets the criteria of the City's zoning laws, the Ordinances – no personal bias. Mr. Nicastro stated that if they are going to refuse this Ordinance based on the fact that they think that it has to go to a vote of the people, then they should recuse themselves from voting. That is not the Commission's responsibility. The responsibility that it goes on the ballot is left to the Council, and the people by petition. The Commission has no right to tell them that they refused this because they think it has to go on the ballot. That is not the criteria that the Planning Commission uses. Vice Mayor Kurtz stated that the Planning Commission only recommends, it does not make the decision. Whatever criteria, as Council, they want to use to make a decision. The Planning Commission is only making a recommendation. Whatever the recommendation is, unless the Vice Mayor is wrong, the Planning Commission can make any recommendation. Mr. Nicastro stated that they can't use their personal bias. The Vice Mayor stated that it is not an all or nothing proposition of the Planning Commission. The Planning Commission has the opportunity and option to amend, modify, recommend in some way, shape or form. They are not bound by what was delivered to them. Mr. Nicastro believes that the Commission cannot use their personal bias to turn it down. Mr. Nicastro would like to see the criteria the Planning

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Commission uses to make their decision. It certainly isn't personal bias. Law Director O'Brien stated that they would use the parameters based in the Charter and the Code, Chapter 1101. The Law Director agrees and disagrees with Mr. Nicastro. The purpose of this Ordinance to come to the Planning Commission is to plan. Their personal background and experiences certainly should be used, and the Law Director would encourage them to use them. The whole genesis of this, and he is just speculating, but he does not think he is too far left of center, is that the Planning Commission is closest to the issue, more closely than Council. So, the exercise is that the Planning Commission would get an Ordinance, review that Ordinance, they recommend what they like, they may change it, they may put something back, if there is some that just don't like the concept, then that too is acceptable because they would vote "no" on referring it back to Council. The Law Director stated that is the purpose of the Planning Commission. It is limited by purely discretionary predicated solely upon the health, welfare and safety parameters.

A resident spoke saying that he had just a couple of comments with regard to this. Everyone on the Planning Commission he has heard so far is in favor of senior housing in some way, shape or form. This resident asked the Commission if they thought there was anything wrong with the plan that is being proposed. Everyone began speaking at once. This resident heard a campaign speech by two people. The Vice Mayor stated that he can call it what he wants to call it. The Vice Mayor calls it leadership. He calls it taking a position. He calls it being comprehensive. The resident asked Vice Mayor Kurtz how long he was Mayor. The Vice Mayor stated that he was Mayor for 14 years. The resident asked if the Mayor got senior housing in. Vice Mayor Kurtz stated that they tried in 1988 and in the 1990's. They tried in 2003 and 2006, and they all failed. The resident stated that the Vice Mayor did not answer the question. The resident stated that all he is saying is that if leadership is required to get this through, the Vice Mayor was Mayor for 14 years, did he get anything through? That is all he has to say.

Jackie Haddad asked if there was any way that as a group to have the senior district designated and everyone work together to decide what can go into that district. Can they work slowly then? Can they start with single family houses and work as a group to find a way to expand on that and go on slowly and carefully? Vice Mayor Kurtz stated that in December of 2006 after the failure of the last approach for senior housing; in December the Vice Mayor recommended Council approve legislation authorizing the administration to enter into an option agreement on the proposed senior housing site. He took the initiative because he truly believed then that the issue was closed. He truly believed that was the site, and the City ought to control the site or an option on the site so they did not pay an inflated price for the property and then have to transfer that inflated price to the seniors who occupy that property. The Vice Mayor took this step back in December to

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initiate this process so that they would have the site or at least the ability to acquire the site if and when they came up with the right plan. Mrs. Haddad asked how long the option was opened. The Vice Mayor deferred to the Mayor. Mayor Ramos stated that they have had probably three or four discussions with Concordia Church. In order to exercise an option, they need to agree to a price. Right now that is where it is at. He will be reporting back to Council because they did an appraisal, they made an offer. They have submitted a counteroffer, and before the Mayor can come back with an offer, he needs Council approval accordingly.

Mr. Narduzzi stated that this is a tough situation for everyone on the Commission. He cannot understand in his mind how you can start a plan, which you guys have Plan 1 in effect. You guys did an awesome job explaining that to the Commission, when you don't have Plan 2 or Plan 3 for seniors in effect. What happens if Plan 1 gets out of control or fails? By the time Plan 1 is complete, half the seniors will be ready for Plan 2, and that is not even established yet. Just to say we have to start something to get the ball rolling – in his mind that is not how it works. You don't start building a house without the plans to finish the whole deal. Mr. Narduzzi thinks they are rushing this thing to get it rolling, but no one is looking at Phase 2 and Phase 3. Everyone that wants Phase 1 will be in that situation in 5 or 10 years. Until they have a whole picture of what this is going to look like and what it's going to service the residents, he does not know if he will support it or not. Mr. Narduzzi stated to Mr. Nicastro that he will be a leader, he would like to see this go to a vote of the people. 30% of the residents, and 10% of 30% of the seniors are going to use this. What happens to the other 90% of Independence? Do they have no say on this? It is going to affect their lives in one way or another for a long time. Mr. Narduzzi stated that what he votes on today will affect him in 40 years. He is not voting for himself, but he is sticking up for the mouths that he has heard over the last month talking on the street that it has gone to the vote everytime it has come up from when they first started it until last year. Now all of a sudden Phase 1 they are going to sneak in without going to a vote of the people. Morally, he does not think it is right.

Mr. Nicastro stated that he appreciates Mr. Narduzzi's remarks, but here is what he is concerned about. Every time you guys or anyone in political life when you have a delicate or difficult situation to make, the first thing you do is call in a committee. If the committee doesn't fit your needs, you call in a consultant. If the consultant doesn't meet your needs, then you ask to go to a vote of the people. Mr. Nicastro stated that they asked the people on the Commission to be up there to make these decisions. The Commission did not ask Mr. Nicastro to vote on the Cavs Training Facility. The Commission didn't ask Mr. Nicastro to vote on the bereavement center. They didn't ask Mr. Nicastro to vote on the college, but all of a sudden when there is a difficult decision to make; let's go to a vote of the people. Everyone began talking at once. Mr. Nicastro stated that the Commission doesn't give them a vote on anything else, but now they want everyone to vote on what they want. Where is the leadership?

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Mr. Shallcross stated that he attended both of the public hearings, and he did not hear a whole of opposition. Dr. Aseff was there, and he opposed. There were a few other people who had comments and so forth. Mr. Shallcross does not think everyone had the same idea what senior housing should be. You will never find that. You are not going to please everyone. You have to start someplace. You have to start small perhaps as John suggested. You take the Vice Mayor's ideas and incorporate these other facets later on. Maybe they can get to work on that right away in conjunction with this not instead of this. There is no reason that this could not pass, go on to Council and let Council decide what to do with it. They make the final decision as is their responsibility. At the same time, try to get more comprehensive housing issues involved and let them dovetail together. He does not understand why that cannot happen.

Mayor Ramos stated that it is unfortunate that this turns into a political issue. He thinks as was indicated before that everyone agrees that senior housing is needed in Independence. He thinks they all agree to that. They are not trying to re-invent the wheel here. They are trying to satisfy a need. They are trying to satisfy a need of the seniors, and he hates to repeat this; but Kathleen Kapusta will tell many stories of people who really should not be in their homes but really have no options. The Mayor would love to see congregate living. He thinks that is the way to go. The Mayor thinks that was the original proposal that was proposed by Betty Kemper after doing extensive studies; after doing market studies. After taking a survey of their own town; after bringing in continuous experts, it was the comprehensive plan. It involved single family housing. It involved apartments. It involved cluster homes together. It was something for everyone. Independence has a history of putting an issue on the ballot, submitting something to the people, and what they try to do is package it so that it is something for everyone. That is what the Kemper plan was about. The Mayor agrees that it should be a comprehensive plan. The Kemper plan was just that. There were people who wanted apartments. There were people that wanted just a smaller unit. Then there were people who wanted homes. That was what the Kemper plan was about. Unfortunately, it did not pass. There could be many, many reasons. The Mayor stated that the question of leadership comes into play, and he doesn't think there is any question of his position regarding senior housing. The Mayor has supported it. He has been in the forefront. During 8 short years, this issue will hopefully be placed on the ballot or be considered three times. It has been placed on the ballot twice already. The Mayor is not going to give up on this. He thinks senior housing is good for our seniors, and much more importantly it is good for the City of Independence. He thinks that it may not be the most popular view, and people are very passionate about senior housing. The Mayor will support senior housing because it is the right thing to do. That is the only criteria, Debbie you asked about the criteria, the Mayor's criteria is because it's the right thing to do. That is what it is all about.

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Walt Ellert of Brecksville Road spoke. Mr. Ellert stated that they come back to the basic problem that they had from the inception of this City, and it is basically the City charter. The charter states specifically that if they are going to do something other than single family, it has to go to the vote of the people. Mr. Ellert stated that he is for senior housing, he is a senior; but by the same token, the real problem is exactly like the Mayor stated. It is a very passionate subject. People have their opinions. It is going to be very hard leadership wise to say you are not a leader if you don't pass this. Mr. Ellert has been here all of his life. He was part of the administration with Greg Kurtz. The surveys that were done at that point and time came back and people, a large number of them wanted to stay in their own homes. They wanted help from the City. At that point and time, the City provided that help. Mr. Ellert stated that if they are going to do this, he feels it should also be comprehensive. There should be a number of who wants single family homes, who wants apartments; then you say that you need so many condos, so many apartments, etc. Then you submit this to the voters as a plan. Mr. Ellert stated that he would volunteer to go around and take surveys. Nobody really knows honestly. Yes, seniors need help, but Mr. Ellert stated that he would rather have the horse before the cart than the cart before the horse. That's just the way it seems right now what they are doing. Mr. Ellert stated that when he was part of the administration, they tried to get Concordia to sell the land there for senior housing. At that point they didn't want to sell. They don't really need to sell. They have the land. They can have senior housing for their parishioners. They own the land already. Mr. Ellert's suggestion is to give it a shot, take a group of people, do the survey, but do it on a door-to-door basis, talk to the people and write down their comments. People will talk to you. See what they have to say.

Chairman Lytkowski wanted to give his comments. He referred to Judge. Nicastro's question about the criteria used. He has been on the Planning Commission for maybe six or seven years. He takes the job very seriously. The Chairman does not think he brings his biases into his decision-making process. He always views Independence as a universe and what is good for all of Independence, not a small segment, but all of the City because they are all in this together. He does not think he is biased. He deals in a fiduciary capacity. He has a responsibility to everyone here, and those that are not even here. It is interesting tonight, and there are a lot of different comments for and against. The Chairman was surprised to hear that Tom made a comment that if everyone is in favor of this senior housing project, everyone seems to be in favor of it, why wouldn't they bring it for a vote of the people? It should pass like that. Jack would like to just approve it without sending it to the residents. Greg said he would like to bring it to a vote for the people, and he believes the Mayor also said bring it to a vote for the people, put it on the ballot. The Chairman is for that also. He does not have a problem tonight taking this Ordinance and amending it to recommend to the City Council that they vote on it, and take this Ordinance to the people for a vote as soon as practical. He does not have a problem doing that at all.

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For the record, the Chairman has voted on every senior housing because he's in the category too. He does not have a problem tonight taking this Ordinance and amending it so that they take it to vote of the people. The Chairman said he will support it. The Chairman still thinks it is wrong, and he knows Mr. Nicaastro, does not want to hear this, to circumvent the democratic process. Mr. Nicaastro thinks that it isn't true. Mr. Nicaastro said that Chairman Lytkowski carries a big stick up there, and when he says that they are circumventing the charter; he is telling the biggest, fattest lie that there is. That is what he is concerned about. Mr. Nicaastro said some of these people are going to go back and say that the seniors are going to circumvent the charter. The Chairman stated that he firmly believes they should take this to the vote of the people. He is willing right now to amend this Ordinance and recommend it to Council for approval, subject to a vote. Mr. Nicaastro asked when the last time was that Council placed something on the ballot that they had no obligation to put on there, and have the people vote on it. He stated that the Commission is setting a precedent. They are asking the people to do their job. When was the last time the City Council placed something on the ballot that they were not obligated to put on the ballot? Law Director O'Brien said it was the year 2000, sidewalks on Dalebrook. The Mayor stated that it was by petition of the people. Mr. Nicaastro wants to know if there was no obligation to put something on the ballot, when was the last time they did that? A precedent is being set. The Commission is relinquishing their job. Everyone began talking at once.

Judge Nicaastro stated that the Commission is saying that because this housing development is going to house seniors, it is different than other housing development in Independence. It is not. If you choose not to support it because it is senior housing, she will understand that. This is no different than when Kingscote was developed. She lives on Stone Road, and she was here before the developments came in. She was not allowed to vote on Kingscote and these houses where there are million dollar houses because she does not want million dollar houses in Independence; but she didn't get to vote on it. She does not understand why the rest of the population has a vote on whether she can buy senior housing. She knows what Council is going to do. These people are getting older, she is getting older, and she is the next generation to ask for senior housing. Every day this is delayed they are harming her. Independence is decaying. Unless you have a half million dollar house, the other houses in this town are decaying. They are not being maintained. Please get in your cars this weekend and drive up and down the streets in Independence. Seniors are not maintaining their houses, and it is destroying her property value. Vice Mayor Kurtz disagrees with that. The Vice Mayor knows some seniors who take better care of their houses than some of the other people. Ms. Nicaastro asked if the Commission knew how many rental houses were in Independence. She is hoping that by allowing this practice to go on, they will be harming the seniors.

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Vice Mayor Kurtz stated that Judge Nicastro said three times that the City had decaying houses. He disagrees. He said it is not just seniors. He knows a lot of seniors who take very good care of their houses.

Chairman Lytkowski asked the Commission if they could recommend to City Council that this would be put on the ballot, he would support it 110%.

Mayor Ramos stated that he is going to support this because he would like to see this Ordinance be considered, and apparently this is the only way for this Ordinance to be referred out of the Planning Commission. There have been several public hearings and most of the people have supported this Ordinance. So consequently he will be voting for it just so that they can get it out of the Planning Commission and move forward. Because if he doesn't support putting it on the ballot or moving forward in this regard, he is afraid it is going to die here. This will be the third time within the past five years that senior housing is being proposed, and he will vigorously support this just like he has done the other two times.

Mr. Shallcross asked when Council receives the Ordinance, do they have the ability to strike that out and go ahead and pass it. The Law Director stated that they could by a vote of five. This is what the Planning Commission is recommending back to Council. The Chairman asked for Council to just approve it, they need a vote of four? The Law Director stated for Council to approve the Planning Commission's recommendation, they need a vote of four. For them to approve something other than the Planning Commission's recommendation, whether it be what's originally before Planning, or something else, they would need five.

Vice Mayor Kurtz stated for the record, if they are going for a vote of the people, he wants to go with comprehensive types of housing for the seniors.

**A motion was made by Chairman Lytkowski, seconded by Jack Shallcross, to recommend that the Ordinance be sent to City Council with the recommendation of putting it on the ballot for a vote of the people.**

**ROLL CALL:           Yeas: Lytkowski, Shallcross, Narduzzi, Ramos  
                              Nays: Kurtz  
                              MOTION CARRIED**

Chairman Lytkowski asked if there was any other business before Planning Commission. A resident asked about the MSZ project. Vice Mayor Kurtz stated that they will set up a meeting within two or three weeks. Everyone affected will be notified.

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**There being no further comments or business, a motion was made by Chairman Lytkowski, and approved by the Commission, to adjourn the meeting at 9:59 p.m.**

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**Dale Lytkowski, Chairman**

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**Debi Beal, Planning Commission Clerk**  
Minutes unapproved at Time Released 6/08/07

## CITY OF INDEPENDENCE PLANNING COMMISSION

**REQUEST:** St. Maron's Church seeks approval of a Special U-3 Use Permit to operate a church and community center on the property located at 7800 Brookside Road.

### FINDINGS OF FACT

The within matter came on for approval before the City of Independence Planning Commission. The Planning Commission received evidence in the form of testimony and/or documentation at Public Hearings on November 9, 2006, January 2, 2007, and May 1, 2007.

Having heard the evidence and reviewed the documents provided to the Planning Commission, the Findings of Fact of the Planning Commission, from such evidence, are as follows:

#### November 9, 2006 Public Hearing

1. Father Karam ("Karam") testified that:
  - (a) St. Maron's Church ("Church") seeks to move from its landlocked location in downtown Cleveland to Independence because the Marycrest property ("Property") would give the Church a better opportunity to expand and to develop programs for the youth and elderly. The Church also appreciates the Independence location due to its centrality within the County – the parishioners are spread across the county in all directions.
  - (b) The Church understands the residents' concerns about maintaining a residential feel to the neighborhood. The Church wants a similar community, residential feel. The desires of the Church are not incompatible with those of the residents.
  - (c) The Church intends to have a community center/gymnasium for youth/adult social activities, a pastoral center, parish rectory, recreational area, swimming pool, baseball fields, athletic fields and picnic area. There will be no party center, bingo, or schools. The Hanna House will be used as residences and offices for the clergy and potentially for classrooms.
  - (d) The Church has 962 active parishioners and 300-400 families who attend Church occasionally. The entire Church community consists of no more than 1300 families.
2. T.J. Asher ("Asher") stated that converting the Property into residential use would have more impact than using it as a Church – more houses result in more driveways and roofs, which result in more impervious surfaces. Houses would also strain City services. Asher is aware of concerns over flooding and assured that the Church would like to work with the City to address the concerns.
3. Karam stated that the senior/youth programs would only be open to parishioners; activities would not be for the public. The Church only expects 20-30 people per week. Mary Calabersa asked whether the dormitories would continue to be used as such. Karam said no; the properties would be converted into classrooms and meeting rooms.
4. Vicky Willard worries about the retention basin flooding the creek. Elewski noted that water would be delayed in reaching the creek. Karam again stated the Church would work with the City to address flooding.
5. A resident whose house abuts the Property worried about flooding from the retention basin, and about traffic.
6. Karam expects only Sunday to cause traffic. He expects 75 people to attend the 9:30 a.m. Mass and 400-500 people for the 11:00 a.m. Mass. More could be expected during the Holidays, but otherwise weekday traffic would be at a minimum. Residents expressed their desire to maintain the Property as residential.

7. Edward Johnson inquired about a traffic study. The Chairman assured him that a traffic and safety study would be conducted.
8. Connie Shippitka asked whether a liquor license would be obtained by the Church. Karam said there were no plans to have a liquor license for the Church. Shippitka asked when the Church expects to move into Independence. Karam said there were no immediate plans and no specific timetable yet. Shippitka also worried that the Church would have more active parishioners if it were to move into Independence. Karam said only 5% of the Church's parishioners actually live in Independence.
9. A Bramley Drive resident emphasized the need for sidewalks on Bramley if the Church were approved.
10. Responding to a resident's inquiry, Mayor Ramos stated that numerous developers have contacted him about developing the Property into cluster housing. Most have found it would not be cost effective to demolish existing buildings, particularly due to asbestos.
11. Bill Gautner asked whether the retention basin would be a breeding ground for mosquitoes. Elewski said that it depended on whether it was a wet basin or a dry basin, which would not create a mosquito problem.
12. Chairman Lytkowski asked about lighting for the baseball field and parking spaces. Karam said that parking spaces would be in line with City Codes. The baseball field will not be lit at night. In general there would be minimal nighttime activity.
13. Sal Shula worried about noise pollution and constant traffic.
14. Eric Romilly noted that there is already a flooding problem in the area that should be addressed before new development is permitted.
15. Mickey Zuber feels the location is not appropriate for the Church and that the City should work with the Church to find a more suitable property within the City.
16. Bob Longano feels the Property should remain residential and instead suggested the Church be built on the old middle school site.

#### **January 2, 2007 Continued Public Hearing**

1. Ron Bender ("Bender") of Euthenics Engineering & Consulting presented display boards which demonstrate the following:
  - (a) Church would have a 600-seat capacity;
  - (b) The single-family residences, classroom building, and gymnasium would be demolished;
  - (c) The space between the new structure and property line would increase;
  - (d) A baseball field would be installed and the pool and tennis courts would be relocated;
  - (e) Parking would be on either side of the main Church complex;
  - (f) 130 feet of green space would be included between the parking spaces and property line; and
  - (g) Traffic study revealed one hour per week when traffic would increase. Sunday services would generate approximately 160 cars, with 330 cars being the normal peak for Brookside Road during the week. Besides Sunday services, only a small amount of traffic will be generated at other times.
2. Edward Johnson witnessed the traffic study being conducted and it was only done on the weekend. He asked whether there would be any activity at the Church during the week. Bender stated that his presentation included a traffic study done on a Sunday morning and a weekday.

3. Bender testified that the storm water study showed a slight increase in impervious surface area. The Church would abide by City requirements for water detention facilities. The Brookside sanitary sewer has plenty of capacity and would not be an issue.
4. Bender stated that a 600-member church would require 150 parking spaces; their plan showed 172. The lot would have pole lighting which shines downward so as not to illuminate the surrounding properties. Parking was also moved farther away from property lines. Lighting will be turned off at night when the Church is not in use. The Church will incorporate landscape buffers.
5. Karam reiterated:
  - (a) Hanna House will stay and will be used for clergy residences and offices;
  - (b) The chapel will remain;
  - (c) The infirmary will become the pastoral center, youth center, classrooms, and offices;
  - (d) Swimming pool and tennis courts will be moved;
  - (e) Additional parking will be included near the picnic area;
  - (f) The Church will be used for worship, Sunday gatherings, weddings, baptisms, etc.; and
  - (g) Youth center will be used for Church activities and gatherings.
6. Sheldon Berns (“Berns”) testified about the legal consequences. The Ohio Supreme Court has stated that churches can be built in residential areas. This is not a situation where an extremely large church is being built in a small area. The Court of Appeals has ruled that communities have an obligation to accept people from other communities and allow them to worship where they want. Courts have noted that it is very rare for church-related traffic to be the cause of traffic accidents. When it is the welfare of the community versus the right of worship and peaceful assembly, the balance weighs heavily on the side of freedom of worship. There will be no traffic problem. Essentially it will be one hour per Sunday that will cause a change in traffic.
7. Berns testified about the effect of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), which prevents discrimination against churches. RLUIPA provides churches with the right to apply for a special permit if a locale’s zoning does not otherwise permit churches as a use. Any intrusion caused by the Church into the community would be modest.
8. Vice Mayor Kurtz was concerned with the ancillary uses of support services on the Church – the banquet and reception facilities appear to be commercial in nature. Asher clarified that any such use would be restricted to members of the congregation. When asked by Kurtz whether the Church had any intent to rent out the facilities, Asher stated there was no such intention and that use of the facilities is strictly for parish members. Mayor Ramos asked if the Church would be willing to give a deed restriction or guarantee that there would not be a commercial use for the Property. Asher stated “very definitely.”
9. Narduzzi asked what would happen if the congregation were to grow beyond the current plan for a 600-person church. Berns stated that the only plan before the Commission is for the 600-person church. If there is a need, they could always return to the commission to change the original plan.
10. Law Director O’Brien explained that the way to maintain green space would be to require a “building envelope” by deed restricting the size of a building and requiring the remaining space to remain green. Berns noted that this would be a possibility but that it would not be appropriate to agree to a deed restriction that permanently restricts development under all circumstances.
11. Shallcross requested an explanation of how the Church intended to approach the renovations. Karam stated that they expect to renovate over a 2 or 3 year period. Demolition of the buildings would be first because they are dangerous. Then the housing would be improved due to dangerous living conditions at the downtown location. The Church itself would take 2 or 3 years. The infirmary would be remodeled quickly for Sunday school and Church activities. Asher explained that the Church now has enough money to buy the Property and would thereafter need to raise money for the renovations.

12. Mayor Ramos summarized that the main concerns are traffic, storm water drainage, lighting, and limiting the impact on the surrounding residential areas.
13. Bill Gautner expressed concern about the distance between home plate of the baseball field and the property line. Elewski stated it would be approximately 330 feet. Berns stated the field would not be next to the property line.
14. Calabersa raised the following issues:
  - (a) According to the state's Fire Code, an 8,000 ft<sup>2</sup> hall can accommodate up to 1000 people. Such halls are popular for a number of events, which are not always on a Saturday night. She worries about the commercial nature of the facilities and brought photographs of a Maronite church in Fairlawn to demonstrate how such a church is not appropriate in residential neighborhoods.
  - (b) Nearly all of the 20% impervious surface area would be concentrated on the easterly end of the Property, which ends in a 50' drop. She suggested that a better use for the Property would be a development similar to Hillbrook (across from St. Basil's), which only created 15% impervious surface area. Such residences would be better suited to the location.
15. Asher responded that the Church is not in the commercial banquet business and would be willing to have that stated in the deed restriction. The facilities are only for Church purposes.
16. Gil Montague expressed concerns about the green space and stated residents do not want the Church to be built at that location. He also noted that even if the Church used state-of-the-art asbestos abatement, there could be a lot of impact when the buildings are demolished.
17. Law Director O'Brien noted that Berns' presentation was legally accurate, as to Ohio law and RLUIPA. The City has an obligation to heed the requirements of both state and federal law. Law Director O'Brien summarized that the most relevant legal issues are storm water, traffic, and fire code restrictions. Also important, but not necessarily relevant for the application, are issues surrounding asbestos mitigation.
18. Montague stated that if the Property is zoned residential, he would like to see the City use any tools available to prevent the development and maintain the Property as residential.
19. While Law Director O'Brien believes that the Property was abandoned and therefore reverted to residential space, Berns disagreed.
20. Edward Johnson asked whether Council would have an executive session to discuss the "religious extortion" that is happening. He questioned whether the Property would be used for commercial purposes. He also worries about why, at the last meeting, it was stated the Church would be built in 4 or 5 years but now would be 2 or 3.
21. Berns stated that he understood no one wants anything built on the Property but the Church has a constitutional right to use its Property. The Church wants to work with the City to address as many concerns as possible.
22. Alan Klonowski noted that the Property was grandfathered into the City's zoning when the City was first formed. Normally zoning issues are put to a vote of the people; he asked whether this would occur with the Property. Law Director O'Brien clarified that Klonowski was asking whether the residents could vote to change the charter to require voting on these types of applications. Law Director O'Brien stated that certain issues are decided by Council, while others, such as multi-family zoning, are decided by the residents. An application for a U-3 permit is decided by the Planning Commission and Council. Mayor Ramos clarified that residents only vote on re-zoning for multi-family or cluster homes. Vice Mayor Kurtz stated that a few years ago an attempt to allow residents to vote on all zoning and rezoning was defeated by a 2 to 1 margin.

23. Sondra Lansky expressed concern about the baseball field and whether baseballs could hit her windows. She believes that other residents share her concern about why a Church needs a pool and what effect a pool would have on her enjoyment of her own backyard. Asher stated that the pool might be used on the weekends and clarified that there would be no day care center for children (but there would be one for adults).
24. A member of the Church's council noted that the Church's community is very spread out, meaning there will not be a large number of people at the Church on a daily basis. The Sunday School classes he teaches only have 14 or 15 students – this is exemplary of the size of the parish. The meetings are also very small. He assured the residents that the Church will not be intrusive.
25. Longano noted that it appears from the timing that the community centers would be built long before the Church itself, meaning that the Property would initially be used as only a community center, which is in contravention of the residential zoning. Longano also noted that the Church could relocate closer to downtown, near the other churches.
26. Rich Stanovich pointed out that Marycrest also promised to be a good neighbor but now it is abandoned. He believes the Property should remain residential.
27. Mildred Schauer compared this Church to the church that was built on Wallings and I-77, which started with 20 members but now requires police to direct traffic. The Property should remain residential.
28. Chris Krol inquired about the Church's growth pattern over the last 20 years. Karam said that the Church has grown 15-20% since 1975, which he believes is minimal. It will never become a mega church like St. Michael's. With the exception of Christmas and Easter, Karam expects no more than 450 people for the Sunday 11:00 a.m. Mass. After Mass, families usually leave a few at a time, rather than all at once. For parish meetings, there are usually only 9 people in attendance. The Church will also never have a school like St. Michael's.
29. Louis Colantuono worries about the traffic, especially since the area is already crowded. He also worries about how the City has been trying for years to divert water from Brookside. He wonders why such a small parish needs an 8,000 ft<sup>2</sup> hall.
30. Berns stated that the community hall could be built contemporaneously with the Church; it need not be built before the Church.

**May 1, 2007 Continued Public Hearing**

1. Berns stated that the concerns expressed had been addressed in the new, but not final, site plan:
  - (a) The Church was moved from the east side to the west side of the Property;
  - (b) 10-foot high landscape mounds with pine trees will be built;
  - (c) Adjoining residences will be separated by landscape buffers; and
  - (d) The soccer field will be on the west side and the buildings will be relocated on the east side
2. City Planner Jeff Markley testified and stated he is generally supportive of this plan because:
  - (a) The Church will be safer on the west side of the Property for ingress and egress;
  - (b) Placing the Church near the chapel and rectory will allow for shared parking facilities, resulting in less impervious surfaces and less total parking;
  - (c) A proposed storm water facility will take care of flooding;
  - (d) The soccer field could be used as a way to retain water during major storms; and
  - (e) Consolidating facilities on the west side allows for better ease of access for parishioners.

3. Calabersa did not appreciate that the Church canceled the March Hearing then presented a new plan during caucus. She worries about a new sewage problem during construction, like the one that occurred last year. She fears that the sanitary system will not have the capacity for an additional 500-1000 people. She asked whether this issue was addressed by the Engineering Department. Elewski maintained that the current sewer will be sufficient for the additional people. He clarified that the problem with sewage backup last year was caused by an unusually large storm. The water came through the storm sewers, not the sanitary sewers. The water got into the sanitary sewers most likely through the illegal tying of sanitary and storm sewers or breaks in the system. This is being addressed as a part of the Phase II Clean Water Act.
4. Calabersa maintains that according to the County Sanitary office, the additional activity would be the equivalent of adding 40 homes. Elewski is not concerned by an additional 40 homes on the sewer system. Vice Mayor Kurtz requested that Elewski demonstrate the good condition of the sewer.
5. Calabersa also pointed out that the storm sewers are practically non-existent and probably date back to the WPA. She noted that nothing has been done to alleviate the problems that were faced last year. The City still hasn't heard from Hydrosphere regarding flooding problems. The Mayor clarified that Hydrosphere has made recommendations but these have not yet been submitted to Council. The Mayor assured Calabersa that the recommendations will be reviewed prior to approval of the project.
6. Calabersa noted that there have been at least 9 separate water line breaks in the last two months, 2 of them in front of the Property. Residential areas are becoming second class because the infrastructure is crumbling.
7. Calabersa also worried about the legal implications. She believes it is unfair that the law gives churches leeway to avoid infringing their right to religion but ends up denying the rights of the individual. By granting this permit, the residents are being denied their right to enjoy a quiet residential neighborhood.
8. Erol Somer worries about flood waters. His yard, which abuts the Property, has been struggling with water run off, especially since last year's flood. He fears the problems that would arise by removing the retention pond, which is what this newest plan reflects.
9. Larry Lansky questioned how the storm water runoff would be handled, considering that the adjacent homes all have a natural grade towards the back – with the parking lot and buffer zones, the water has nowhere to go except to back up in peoples' backyards. Elewski believes that there will be enough water retention and storm sewers to avoid a problem.
10. Sal Sciuva reiterated that the residents don't want the Church.
11. Rosie Mewhinney hopes the Property will remain as green space. She worries that the buildings are too close to her backyard and will cause a safety hazard.
12. Gus Katsas worries about the potential for noise. He believes the development would not maintain what is required by the definition of a U-3 Special Permit. The permit would not help him but would instead kill his quality of life.
13. Bill Gautner questions why the Property has gone from 100-125 parking spaces up now to over 200 spaces. He suspects that if the Church ends up spending over \$10,000,000 for the Property and renovations, it will want to get as much use out of it as possible.
14. Frances Burant objects to the Church serving alcohol on the Property.
15. Dave Lansky believes there are other properties that are better suited for churches.

16. Mark Chaney noted that he was denied the chance to build a utility shed because it would be unsightly. Now his house will overlook a parking lot. He thinks the Church should be treated the same as he was.
17. Donna Johnson is bothered by the fact that Marycrest has not been forced to improve its Property – if a residence were in such bad shape, the City would force the owner to do something about it. Law Director O'Brien responded that this is the first time he is hearing of such a problem. The City would look into whether the dilapidation constitutes a nuisance and whether the City has tried to do anything in the past. Law Director O'Brien believes that the Property has been abandoned.
18. Louie Colantuono is frustrated by the City's failure to take action against the sewer problems.
19. Calabersa noted that the Engineering Department has been telling her for the past 30 years that the area will be re-engineered. She would like to see a moratorium on the development of Brookside until the flooding problems are addressed.
20. Kate Feeman asked whether the Property had been sold yet and if so, at what price. Law Director O'Brien did not know for sure but believes the Sisters of the Good Shepherd still own the Property. Jeff Markley believes the sale price is \$3,000,000.
21. Law Director O'Brien clarified that the Church falls squarely within the ambit of RLUIPA. The applicability to other ancillary uses, such as the day care center, is questionable.
22. Shallcross maintained that he could only make a decision once the storm water problems and other issues are addressed. He does not think these issues have been addressed yet.
23. According to the Mayor a number of concerns need to be addressed:
  - (a) Flooding;
  - (b) Green space;
  - (c) Future uses and subdivisions;
  - (d) Architecture and design;
  - (e) Destruction issues;
  - (f) Traffic;
  - (g) Water lines; and
  - (h) Sanitary sewers.
24. Berns stated that the Church understands everyone's concerns but he objects to comments that the City should deny the application while other problems are ameliorated. The Church has not contributed to those problems and will not contribute to them in the future.