

The Board of Zoning Appeals of the City of North Royalton met on **November 24, 2008**, to hold a Public Hearing, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 8:00 pm

Present: Chairman Neil Price, Vice Chairman John Ranucci, Paula Recker,
Tony Caraballo, Councilman Dan Kasaris,
Prosecutor Donna Vozar,
Zoning Inspector Joe Hartman
Secretary Julie Broestl

(BZ08-33) Good Karma Broadcasting and OSWGI, Ltd. Partnership request a variance to Chapter 1286 "Nonconforming Uses", Section 1286.06 "Extension Prohibited", paragraph (B) of the City of North Royalton Codified Code to allow two additional radio towers to be constructed on this property which is located off Ridge Road, PPN: 488-06-008.

Mr. Tom Bonus approached the microphone.

Chairman Price: Let the applicant present first, if they can decide on which one.

Mr. Craig Karmazin approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Karmazin: I do.

Chairman Price: Your address.

Mr. Karmazin: Ridge Road, radio towers.

Chairman Price: What is your position with it?

Mr. Karmazin: I am the owner of Good Karma Broadcasting. We are the tenant on the property that is owned by OSWGI, which is our landlord. First I want to thank everyone because it has been a process and everyone in the community has been wonderful to work with, everyone with the City, and the Mayor and everybody has been great to work with. A few months ago the FCC granted our application to move our WWGK radio towers which is 1540 AM, to North Royalton and to our existing site where we have our WKNR radio towers. There have been towers on that land since 1941. One of the things that the FCC tries to do is limit the amount of towers and have towers in areas that have pre-existing towers. We would have needed four towers if we would have gone somewhere else. The idea of being able to collocate on existing towers allows us to only put up two additional towers rather than four additional towers, which is a very big positive. Along those lines what we are going to be doing is putting up hopefully two towers that are significantly shorter than the towers that are out there. The current towers are 260-feet and these are approximately 180-feet. 262 and 183 are the heights. The power associated with these towers are significantly less than our existing towers. We have 50,000 watts emanating from our six existing towers and these towers will be less than 5,000 watts. Which means that it won't have much of a visual effect on the area because of the height and it won't have much of an RF effect because the power that we are giving off can not be measured outside of 15-feet from the towers that we are putting out, so there won't be a factor there. I guess the best thing about this whole process has been listening to people, citizens, people on the Board, people at all the meetings, because we have been able to come up with a lot of good ideas. One of the first things we are able to do is, you guys were able to use our land for the fireworks celebration for the City's birthday celebration. So, we were able to do that which was nice to be able to help, which we talked about at the last BZA meeting. In addition, we have learned that there is a need for recreational use in the community and we have been able to figure out 14-acres of our land that we are willing to give to the City at their option at no cost if they would like to build out soccer fields. Which we have been in touch with a lot of people and heard that

there is a lot of need there. In addition, as a broadcaster, one of the things we love doing and do already is public service, and as part of this application we would also love to contribute an amount and the amount that we have come up with is \$50,000.00 annually of public service and public affairs time to be able to go towards the City's causes and community causes that can help. So, we think that what we are doing doesn't have much of an impact and what we are trying to do, because we know that towers are always tough, is really make this positive for everyone involved. There is no tax payer money, people have asked that, that is going to this. This is our money to build this thing. We are a taxpayer. Last year we paid over \$30,000.00 in taxes, our landlord and ourselves in North Royalton. What we are doing here is an improvement, which we assume will be taxed as well. We are excited about that and obviously I'm not the land owner and I wanted to enter in a statement from the land owner who owns the property. You will all have copies of this momentarily. Should I start reading or wait until you have it?

Mr. Karmazin approached the bench and handed out the copies.

Mrs. Vozar: Just as a reminder to the Board, the evidence that this Board takes is sworn testimony whether through an affidavit or sworn testimony, so you will note that this is a letter. So, take that into consideration when you are considering the evidence.

Mr. Karmazin proceeded to read the letter attached to the back of these minutes.

Mr. Karmazin: He mentioned the economy and I just want to enter in a quick video. He is not sworn in but about a little over a year ago Bernie Kosar, who some people may know as the former quarterback of the Cleveland Browns, approached us and said that he was looking for more time to spend in Ohio and looking for a way to stimulate the economy here and I have an idea to bring arena football to town. We met with him. We worked with his team and we were able to help launch the Cleveland Gladiators. There has been a significant economic impact for the region having another pro football team in the region. He just has a quick message to share.

Mr. Karmazin approached the television and plug in the video.

Mr. Karmazin: I will try to hold the mic up so that everyone can hear.

The video began to play.

"Hi. This is Bernie Kosar for the Cleveland Gladiators. I wanted to say hi tonight, and I'm sorry I couldn't be there in person, being Mr. Mom and stuff right now. But, I wanted to introduce myself and reach out to you tonight. I know a lot of discussion has been going on about WKNR and 850 and 1540 and WKNR II, and the radio towers. And I'm not here tonight to talk for or against the radio towers, but I did want you to know my feelings about the WKNR team and Craig Karmazin and his team of people. They have done such a fantastic job for myself personally and for our company. They reach out and build a partnership and relationships. I think, especially for the people of North Royalton, it will bring jobs and in this economy being able to bring jobs and businesses in this economy has really been impressive. It has helped us with the Gladiators. It has helped grow our business. It has helped grow northeastern Ohio with the economy the way it is and getting the word out there and getting business out there and growing jobs in our community and I think that has been a great asset for them coming in and adding things to northeast Ohio. So, I think definitely that this is something that we should consider. And also to add on to one thing that is important to me, especially to me in my heart, I also like the part of the fourteen acres that Craig and his team and the KNR people are going to donate. Fourteen acres to the North Royalton and area to do youth initiative to build soccer fields and to have youth based leagues and teams so that kids are able to go to the parks. Again, to be able to donate the land so that kids have a place to go and play in North Royalton at an early age. I think this is really important. It was a big part in my life growing up. Being able to go to the ball fields and football fields and

soccer fields as a kid. It gives you a positive influence. I think that will be a big benefit for the area also. Thanks again. God Bless You.

Mrs. Vozar: Mr. Chairman. If I could state for the record. The Board should be reminded that pursuant to our Code any testimony and evidence that you hear is under oath. So, again what you just heard is not evidence before this Board.

Mr. Karmazin: I guess hand off to my land use council, but the last thing that Bernie talked about was economic development and the economy and all that. It is a very tough time that we are in and we hope that the economy stays stable enough that we will be able to build this thing, should it be approved, and we expect and hope that it will be, but in under two years in northeast Ohio we have actually grown our payroll. Which is something I'm very proud of, by over 33%. Which means that we are creating jobs and really helping in time that is needed. Last but not least I will say that you have to pay for everything, the waters that are sitting in front of you, radio now has satellite radio that you can pay for and television that you can continue to expand services at a time like this and to be able to give people free entertainment, which this radio station right now is very difficult to hear in this community and now you will be able to hear it. Which we feel, in our world, is important for people to have free entertainment at times like this. That is all I have. If there are any questions for me, or I will turn it over to Tony Coyne, who is my land use council. Thank you.

Mr. Tony Coyne took the microphone.

Mr. Coyne: Good evening everyone. I wanted to review the site plan on the property and the zoning on the property specifically for the purpose...

Chairman Price: I'm sorry. Could you state your name please.

Mr. Coyne: My name is Anthony J. Coyne. I'm a partner at Mansour, Gavin, Gerlack and Manos. I'm a Land Use Attorney with the firm. Also here this evening is Ted Yates who is an associate of the firm. We specialize in land use legal representation. What I would like to do is bring to your attention the site plans. This first site plan represents the location of the proposed towers. I'm sorry.

Chairman Price: We are supposed to swear you in.

Mrs. Vozar: Mr. Chairman. He is the attorney for his client. He is not here testifying on behalf. He is advocating on behalf of his client. Unless he wants to be sworn in, which obviously he is free to do if he wants to testify.

Mr. Coyne: I'll choose not to be sworn in and just give you an overview of our position. The site plan here identifies all of the towers that are on the property, and I could either pass this around or you could identify the property and its location. I'm indicating these two squares are identifying the two new proposed towers. The two new proposed towers are situated in a location where they are well over 215-feet at their closest point to an adjacent property owner. They are over 400-feet from any residential structure. So, that is the location of the proposed new towers. And they are 80 some feet lower than the towers that are currently there. They are also not lighted unless the City would ask us to light the towers. The second site plan I want to show you is really a zoning map. This identifies the town center district zoning code. The property that is owned by OSWGI, I usually say OSWGI instead of saying O-S-W-G-I, is located in the center and is in blue. It is the only property in the City that has that zoning designation on it. I know you are familiar with that zoning designation and I will get to that a little bit later. But if you will look at the location of the property it has no frontage on any public road in your community. It's also located in the middle of the other TCD districts and it is a 60-plus acre site. The two photographs that we have show the view of the property from the adjacent rear residential lands. And as you can see from the distance, and these are blown up substantially, you can barely see the towers during the day. Here is what they would

look like in the after scenario when the towers are installed. You will see the towers installed are significantly shorter than the towers that are there. At night time they would be completely invisible because they are not anticipated to be lighted. They don't have to be lighted. Your Code actually provides for having them lighted but because of their height they would not have to be lighted. So, they would be virtually invisible. Mr. Karmazin also indicated, and I also represent OSWGI, I conferred many times with Mr. Embrescia and I can assure you that the comments that were made in the letter read by Mr. Karmazin are heartfelt from Mr. Embrescia. He couldn't be here this evening, but he has fully indorsed this and has asked for the cooperation of the BZA to grant the requested variances. And as part of that, and this has been somewhat tricky to do because of the ownership of Mr. Embrescia's company and Mr. Karmazin's company, but to accommodate a need that we thought was significant and that is to address adding recreational fields on this location of the property that I'm indicating on an aerial photograph that shows the location of approximately four athletic fields, presumably soccer, but I suppose football would work as well, and that we have done that using a landscape architect for potential locations which would not interfere with the operations of the towers at all and it could be connected potentially different locations adjacent to the cemetery properties. That is something that would consist of about 14-acres of pretty valuable land, which we have also agreed to submit in the form of a lease with the City. Now, that has been in draft through your council and I believe it has been given to you all this evening. The point of that lease would be to provide flexibility to both the City and to the property owner. In other words, to provide for an assurance of a period of time that the fields could be used by the community for recreational purposes. That's number one and is very important. It also accommodates Mr. Karmazin's need to continue to operate his radio station towers from that location for an indefinite period of time. You know those towers have actually been there almost 70-years, the towers that are standing, and these towers could go on for another 30-years. Even if you don't approve, God forbid, you don't approve the two additional two towers, this will be here another 30-years. That's how long it goes for. So, in a sense when we looked at this trying to look at what would be an appropriate use under your TCD Code. There are provisions for recreational uses in your TCD Code. That's contained therein. We are looking at these recreational amenities as a big positive. Now, the other thing it does is provide for not only the use for the community, but the way we drafted the lease it also provides for an exit strategy. What's the exit strategy for? It has been my understanding and reviewing newspaper articles and minutes of other meetings in the community that there has been a desire by many to potentially develop this property consistent with the TCD district regulations, for what I will call loosely a lifestyle center. As you know, the Coral Group made a good run at it and they were not successful in developing it. At the same time we are now hit with incredible difficult economic circumstances. I for one don't want to be remiss in saying that when Mr. Karmazin talks about the economic impact to this radio station truly its about the impact on the region. It is a free media service, and there are employees that live in North Royalton. Obviously the site doesn't have a specific employee tied to it but it does have a significant impact. Also, the commercial broadcasting that they do benefits folks that have businesses in North Royalton, if they choose to use that service. But it is a free media outlet. Getting back to the development of the property in the TCD Code, the point of the lease was if there is a time when developer X wants to develop it, our client, OSWGI, in working with Mr. Karmazin, isn't going to entertain anybody who makes a proposal unless it has the blessing of the City of North Royalton. And upon doing so, if that were to occur, then OSWGI would confer with Mr. Karmazin to provide a way to consider installing some other development portions of the property. That is something we thought would benefit the City, would benefit OSWGI, and would also be a way that the property would have a future and not just radio towers and the recreational fields. So, it gives some flexibility. We thought it was important to add that because it makes it more compliant by having the recreational use, and it provides flexibility should there be a point in time in our economic future that we could see this property get developed. Having said that, I want to go over briefly your regulations for granting variances. I looked to a couple sections of your Code, certainly Section 1264.08, provides for the granting of variances for practical difficulties and unnecessary hardships, depending upon one looking at this as a use for expanding a nonconforming preexisting use or for that

matter its location and size. Now, under 1264.08 and I will say that 1264.06, which is the extensions of nonconforming uses being prohibited, only your Board can accommodate a variance for this proposed use. But when you look at the standards that are provided either for purposes of practical difficulties or unnecessary hardship, but I know for the audience this may be legal mumbo jumbo but it is actually very important. And those are the two standards for granting variances in the State of Ohio. But if you look at your own Code, this application does clearly qualify for the granting of a variance. When you look at the standards provided in 1264.08 (1)(a), whether there can be any beneficial use of the property without the variance. This property is the only property in your City that is zoned TCD-4. Any development and I say any development on this property would require the granting of multiple variances including the assemblages of land because you need frontage on State Road or on Royalton Road or you can't develop the property period. The use of emanate domain to assemble land to do this would be very difficult and with current law might not even be legal because it would be for economic development. Under Section B, Whether the variance is substantial? Lets look at that question. The property currently has six 50,000 watt towers. Depending on how you look at it, if we are adding two towers we are increasing the towers by 20%, if you do it by wattage we are only increasing the wattage on the 60-acre parcel by 3%. Therefore, we don't believe that the variance is that significant. C. Whether the essential character of the neighborhood would be substantially altered or changed? Folks, there are six towers on the site that are lit up currently. They have existed there for decades and will continue to exist there for another thirty years whether or not we get the variance. In fact, if we get the variance there might be a chance that something could change in the future. It would be more likely to given the fact you would show much greater cooperation with the tenant, Mr. Karmazin's company, Goodkarma, as well as OSWGI, Mr. Embrecias' company. D. under your Code, whether the variance would adversely effect governmental services? It gives specific examples. Water, sewer, garbage collection. Certainly this variance would have no impact on the delivery of governmental services. Under Section E. it says whether the variance sought is for the relief from a zoning provision which was enacted after the creation of the existing condition? The answer to that is yes. The zoning condition which is there was enacted almost fifty years after the original tower went up. So that is another basis for granting the variance. There is also under Section F. whether the property is unique in any way? The property is very unique. It is one of the highest points of Cuyahoga county. For this type of use it is perfect for this type of use. G. says whether the property owner's predicament feasibly can be obviated through some other variance? Under federal law, due to the FCC requirements the applicant's only real option is to request this variance if we were to go in on this property. Another location would be very difficult. Also, under H. whether or not we will be creating a nonconforming lot? The lot currently is nonconforming in that it can not accommodate your TCD district because it has no frontage on a public street and there are also other setbacks and side yard restrictions that would make it impossible to develop. Now under the hardship provision which is found in Sections 1264.08 (I) and J(2)(A) of your Code it really gets into little application of the Code. What else could you do with this property? And when you look at it, this is a reasonable use. The lawful legal use for the property currently. Obviously, the TCD-4 zoning would be something you would like to see in the future. Not everyone would by the way we are told, but a lot of folks would. But standing alone this property is undevelopable for that zoning category. So you would still need to grant variances. Any development on the property would require variances. Multiple variances and as I indicated earlier, assemblage, and that would be difficult. Given that the TCD zoning advocates for open space, advocates for other recreational uses as well, we think we are making it more compliant than it is today by introducing this compromise and we are also bringing other public benefits to the table because of the fact that Mr. Karmazin has agreed to provide other community services for the use that is on the property. I won't belabor the point. I have submitted a lot of this to you in writing but I think it is self explanatory. I think if you would review it you would see that Good Karma Broadcasting has presented a very logical and reasonable continued use of the property in the current format but also to provide a recreational use to the community and also with the cooperation of the owner of the land. The flexibility when the day comes and our economy improves that you might see some other use consistent

with the zoning code and the plan that you plan to do going forward in the future. So with that Mr. Yates, I believe, also from my office, has received approximately four letters, they are not sworn admittedly, but letters from residents of the City of North Royalton urging the BZA to approve the requested variance. We will be glad to stick around and answer any questions that you may have as the meeting progresses.

Chairman Price: Thank you. We are done with the side of the applicant? Mr. Kelly?

Mr. Tom Kelly approached the microphone

Mr. Kelly: Mr. Chairman, members of the board, my name is Tom Kelly. I live at 12820 Tradewinds Drive, North Royalton. I'm here this evening in my capacity as the Law Director. The City administration wishes to speak in opposition to the applicants position and present testimony also in opposition. For that purpose we have with us tonight, I have brought with me and have seated behind me Mr. Thomas Jordan, our Director of Development, and with your permission Mr. Chairman I would like to have him sworn.

Mr. Thomas Jordan approached the microphone.

Chairman Price: Yes. State your name.

Mr. Jordan: Mr. Thomas Jordan.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Jordan: I do.

Mr. Kelly: I do. Mr. Jordan, what is your current position sir?

Mr. Jordan: The Director of Community Development for the City of North Royalton.

Mr. Kelly: How long have you held that post?

Mr. Jordan: Since January of this year.

Mr. Kelly: Prior to this position where were you employed?

Mr. Jordan: I was the Director of Planning and Development for the City of Lakewood.

Mr. Kelly: How long did you serve in that capacity?

Mr. Jordan: Four years.

Mr. Kelly: Prior to that where you employed?

Mr. Jordan: I was employed for the City of Cleveland in the Department of Economic Development.

Mr. Kelly: How long did you work there?

Mr. Jordan: Approximately five years.

Mr. Kelly: And before that did you have a relevant employment in connection with real estate development?

Mr. Jordan: I was involved with private development in the District of Columbia in Maryland. I was a licensed property manager and licensed real estate agent in the District of Columbia, Maryland.

Mr. Kelly: And are you a college graduate sir?

Mr. Jordan: Yes.

Mr. Kelly: Where did you graduate from?

Mr. Jordan: Xavier University.

Mr. Kelly: Are you familiar with Zoning Codes Generally?

Mr. Jordan: Yes.

Mr. Kelly: Are you familiar with the North Royalton Codes particular?

Mr. Jordan: Yes.

Mr. Kelly: Are you familiar with the application that has been submitted by Good Karma Broadcasting, I guess in connection with OSWGI as well?

Mr. Jordan: Yes.

Mr. Kelly: And are you familiar with the Town Center District development as currently on the books?

Mr. Jordan: Yes.

Mr. Kelly: Are you familiar with the Town Center District Zoning Code as it exists in the Codified ordinance?

Mr. Jordan: Yes.

Mr. Kelly: In particular have you given any thought to the proposed development by the proposed expansion of a nonconforming use to include these two towers on that property?

Mr. Jordan: Yes I have.

Mr. Kelly: Have you an opinion as to whether or not the extension of the nonconforming use would be consistent with the existing Code?

Mr. Jordan: Yes I do. The variance should not be granted. The extra two towers would expand this nonconforming use and move it closer to the residences.

Mr. Kelly: Do you believe, or have an opinion on the question of whether or not the expansion of the use is consistent with the purpose and intent and objectives of the Zoning Code and the Master Plan?

Mr. Jordan: Yes I do. My opinion, again, is the variance should not be granted for this purpose.

Mr. Kelly: Do you have anything else you would like to offer?

Mr. Jordan: I do have some brief comments. I don't have a video from Bernie Kosar or any other sports person. I didn't hire any outside council but I do have just a few comments that I put together concerning the application. It's actually the unique nature

of the site that I don't think everyone and certainly possibly the applicant didn't have a full appreciation for. The letter attached to the back of these minutes was read by Mr. Jordan.

Mr. Jordan: For these reason I urge the Board not to grant the variance of the applicant.

Applause from the residents in the audience.

Mr. Kelly: The City's position, legally at least, from our point of view is that this is plainly, simply, clearly, and fundamentally, the expansion of a nonconforming use. It is not permitted. It is completely and strictly prohibited and it should not be granted. We ask you to pay attention as well in your deliberations to 1264.08, the standards or reasons for granting variances are laid out there. One of the considerations, one of the very first considerations, to be given your attention is the question of whether the literal application of the Code would result in no economically viable use of the property. Well, that brings to issue Mr. Karmazin's point, that putting up two towers instead of four towers was, as he said it, a very big positive. What he means is economically it's much better for the applicant to put up two towers instead of four towers. Now we don't wish him to be burdened unnecessarily in his financial obligations. On the other hand, that's the promoting and the real fundamental basis upon which they proceed. It is purely and simply an economic advantage to the applicant. It does not serve the Code. It does not meet the Town Center District regulations. And the last time OSWGI came to the City of North Royalton we ended up in the Court of Appeals of the Eighth District, and In that case decided in August of 1996, one of the judges wrote as noted in Beck, zoning authorities are required to permit an existing uninterrupted use of real property to continue after changes in Zoning Ordinances that no long permit the use. However, the Ordinances have prospective effect and may impose limitations on the future use modification, change, expansion or extension, of such nonconforming uses. So, we ask you to bear those things in mind during your deliberations. Thank you very much.

Chairman Price: Thank you. Anyone else?

Mr. Tom Bonus approached the microphone.

Chairman Price: State your name and address.

Mr. Bonus: Tom Bonus, 13146 State Road

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Bonus: I do. I have with me for the Board a petition of 19 residents from around the property and I bought a copy for each of the members.

Mr. Bonus approached the Board with the petitions and handed them out to each member.

Mrs. Vozar: Mr. Chairman. These are notarized, just for the record.

Mr. Bonus: I'm here to represent not only myself but the 19 residents who could not make it tonight who asked me to please come and prepare their notarized statements. And what I'd like to do is read the addendum which I gave to each of you which summarizes thoughts of these 19 residents. I have spoken with many more residents but do to people's schedules was unable to get signatures, although there are quite a few here tonight. Mr. Bonus read out loud to the Board the remarks relating to the disapproval of Good Karma and OSWGI application for the variance and is attached in its entirety to the back of these minutes.

Mr. Bonus: Financial damages: if a variance is approved, the neighboring residential property owners must be reimbursed for the loss in aesthetic value and market value

resulting from the towers as follows. And then there is a tiered formula that at this point none of the residents has obligated themselves to except but it is a talking point. That is the statement from the 19 of us, and although we have hired legal council of our own who had a letter sent to the City, and I included it in your materials there, and I would like to summarize that as well.

Mrs. Vozar: Mr. Chairman. I don't mean to interrupt but if you have submitted to the Board the letter your reading it isn't going to be any more relevant except for perhaps the audience. I would like to caution the Board at this time, as I have reminded you on other occasions, this Board is preempted by federal law under the Federal Telecommunications Act of 1996, Section 704, regarding taking into account any health issues and regarding any RF admissions. That has already been determined by the Federal Government. So, again I would like to caution the Board that the testimony that was taken or whatever was included in your packet has been preempted by Federal Law.

Mr. Bonus: I'm not sure I know what that means, but I'll take your word for it.

Mrs. Vozar: Okay. It's really meant for the Board sake.

Mr. Bonus: Basically, our legal council has taken a position that as the City's legal council has clearly stated that this application does not qualify under our North Royalton variance request requirements. Finally, I would like to summarize for the Board some information on health risks that have come from a variety of sources.

Chairman Price: I'm sorry the health risks are not an issue here. We have already been admonished as to this.

Mrs. Vozar: You've submitted your packet. The Board has been advised to the requirements.

Mr. Bonus: If I can respectfully say that I think the residents would say that it is an issue, because we will live in the magnetic field. May I ask a question that I didn't understand when I was in the audience about \$50,000 per year, that went over my head?

Mrs. Vozar: You've submitted to the Chairperson and he will then have the applicant then come back up.

Mr. Bonus: The last statement that I would like to discuss is just integrity. I think we will all agree integrity is vital for business people, for the Board, for everybody involved, and civilized union, which of course our City is. I'm very disappointed. We have talked about all the good things that these people are going to bring to our City. Those are statements that haven't been backed up. I spoke with Craig forty-eight hours ago to discuss this project and how the neighbors felt about it, and he specifically told me "Tom, we are about to let this thing go. We don't think the City's going to let us have it and we are not planning to bring our legal council to the meeting and we are probably just going to show up to say that we really aren't interested", which obviously, since he knows that I'm an active person in the neighborhood, was to get me to not come or not to finish the petitions and all the things that were important to present to this Board. I'm extremely disappointed that a so called honorable business man would directly lie to me as I represent the good citizens of this City to try to get us not to come here and state how we feel about these towers. I would like to ask about new jobs. I'm a CPA. I have three degrees, three advanced degrees, and a CPA for thirty years, and I represent many successful businesses and I am sought after as a consultant. I would really like to hear some quantifications of how jobs are going to be brought to this community as a result of adding two towers. I don't buy it as a professional or as a neighbor. Whatever Bernie Kosar says, I don't know how that has anything to do with anything. The fact that we can barely see the towers, again, ask the residents who live there now, you can see those towers from everywhere in our development. And they are very obvious. Especially at night. You don't need lights in your back yard, you have plenty of red glow. They are

very obvious. These will be twice as close to us as the existing towers. If you are such a good neighbor why is the offer of the land contingent on getting this thing? That sounds to me like a bribe. If you are such a good neighbor offer up the land and help our wonderful City. But I don't see how they are connected, and connecting them strikes me as not appropriate. Enough on that. Again, economic benefits to the City, please quantify them. There are financial people who can do that. I don't see how we can move forward on a promise if something will happen when I question the integrity of the person making that promise anyway, personally. Another thing about integrity, we have been said right now that that land is not developable because there is no access point. That is an outright lie. I know Tom Embrescia, and I know that he owns two properties. He owns the house right next to me which is vacant and I'm currently negotiating to rent it from him. It's there and has a 100-foot access point to his property that is the only real reason why he owns it. It is owned by OSWGI. I had a title company search it and that's how I knew how to contact him when I saw it vacant. Also there is a double that's next to another house that I own which is owned by OSWGI, the second brick double from Rini Rego. This is the integrity of the people we are going to trust to help our wonderful City. I'm appalled that they would be so blatantly dishonest to this Board. As my final thought is that there would be a greater likelihood of future cooperation with our City if we give this now. Does that sound like somebody who really cares about the City or really cares about the economic benefit of the tower? That is all I have to say. Thank you.

Chairman Price: Thank you.

Mr. Coyne: Mr. Chairman. I'm entitled to examine this witness he has provided testimony. I believe Mr. Kelly won't object to that.

Mr. Kelly: We are not going to object.

Mr. Bonus: I'm not going to object.

Chairman Price: Okay. You are going to have to speak into the microphone its recorded.

Mr. Coyne: Mr. Bonus, you were sworn in or were you not this evening?

Mr. Bonus: Yes I was.

Mr. Coyne: So you are under oath?

Mr. Bonus: Yes I am.

Someone from the audience asked "are you?"

Mrs. Vozar: Sir, please don't talk from the audience.

Mr. Coyne: You represented that you are sort of the ring leader of this opposition group, am I correct?

Mr. Bonus: I don't think that was the term I used.

Mr. Coyne: What's the term you would use?

Mr. Bonus: I'm a good neighbor of the residents that are in the neighborhood that my properties are located in.

Mr. Coyne: And you are representing them this evening?

Mr. Bonus: I'm representing 19 residents who asked me to bring their petitions here.

Mr. Coyne: Mr. Bonus, did you not talk to Mr. Tom Embrescia approximately 10-days ago?

Mr. Bonus: I think it was more like about a month, three weeks ago.

Mr. Coyne: Three weeks ago? Now you have provided testimony and you have talked about integrity, is that right?

Mr. Bonus: That's absolutely correct.

Mr. Coyne: Did you not call Mr. Embrescia approximately three weeks ago in which you told him and tried to extort \$150,000 from him to get you to support this variance and in fact told that it would be a condition if he got the variance and Mr. Karmazin's got the variance you would actually support it, isn't that correct? You are under oath.

Mr. Bonus: Yes, I am. I told Tom Embrescia that

Mr. Coyne: Is that correct or not?

Mr. Bonus: No. That's not totally correct. And I would like to clarify to make it correct. As I summarized in our arguments here which I presented to the Board, I told Tom and I also told, I think when we spoke, that if these towers were to go through that they could not go through without some payment going to all of the residents including myself, and the \$150,000 is summarized in the calculations within this and it is summarized as an amount for every resident that has a property line that either adjoins the tower property comes within, and there are varying amounts if their property line comes within 1000feet, 200-feet, and I think 375-feet. But it is summarized in that packet.

Mr. Coyne: You didn't show that with Mr. Embrescia did you? You told him that you wanted \$150,000 for your support and that you could keep some of the opposition at home, isn't that what you said to him?

Mr. Bonus: No I did not say that.

Mr. Coyne: Are you sure about that?

Mr. Bonus: Yes I am.

Mr. Coyne: You know you are under oath.

Mr. Bonus: Yes I'm under oath.

Mr. Coyne: Did you have a similar conversation with Mr. Karmazin?

Mr. Bonus: Similar, yes.

Mr. Coyne: Did you share the calculations with Mr. Karmazin?

Mr. Bonus: No I did not. Not specifically.

Mrs. Recker: Mr. Chairman. I don't know if this is going to continue but could you give Mr. Bonus this microphone and you could use this one.

Mr. Coyne: I only have one more question. You even advised Mr. Embrescia that he wouldn't have to pay until after the variance was approved, isn't that right?

Mr. Bonus: Well, I told him that any payments to landowners would be contingent to a variance being approved. Obviously, we could not ask as landowners to be paid if they did not get the towers because the payment is for damages in loss of values.

Mr. Coyne: But the request for payment was only to you wasn't that right Mr. Bonus?

Mr. Bonus: To the residents.

Mr. Coyne: Are you sure about that?

Mr. Bonus: Yes.

Mr. Coyne: No further questions.

Chairman Price: Thank you.

Mr. Karmazin: Can I ask one question?

Chairman Price: One.

Mr. Karmazin: Did you also ask Mr. Embrescia, oh, Craig Karmazin

Mrs. Vozar: Excuse me. I understand, but you will have to ask that question to the Board. It's one thing when your council cross examines a witness its another for you. If you have a question you need to direct it to the Board member and he will decide whether he can pass it along,

Mr. Karmazin: Okay. Just because character was talked a lot I thought it was relevant to ask another question and my question is if there was talk of \$150,000 being divided over multiple people, my question is was also the offer made that Mr. Embrescia could give Mr. Bonus his house, one of his adjoining properties, in exchange for his support of this application.

Chairman Price: We'll explore that later. Thank you. Anybody else?

Dr. Don Keen approached the microphone.

Dr. Keehn: Dr. Don Keehn. 5611 Goodman Drive.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Dr. Keehn: Yes sir. First of all I've lived here, come December 5, for thirty years. What I'm hearing hear I don't like hearing. It sounds like, you know, well what we think about improving could keep this thing here for another thirty years. The one thing that I'm a little bit concerned with is the FCC. I had experienced in my past thirty years of living here when I was having problems that they are very, very, very, difficult to correct. The people of the FCC don't worry about us little folk, they worry about the big guys with the big bucks. And that is very unpleasant for a resident. My wife has fibromyalgia and I don't know if it has anything to do with this. But there are issues relating to the additional towers and number one, we are talking about a different radio station with a different frequency besides the addition of the towers there could be some harmonic frequency or inner modulation distortion, because you have two different towers operating at different frequencies and when they come in contact with one another that can add additional distortion and cause amplified distortion is a possibility there. We spend a good deal with time and I remember going to a lot of meetings to zone that center of town into some use that I would like to see as a resident. It would increase the value of my property. As a thirty year resident in North Royalton I see relatively little progress in this town in the area of development and to make the place desirable to live in. We do not have a recreation facility, we don't have a lot of things. That Town Center is a good proposal. I would like to see us continue to seek that and not be adding things that might lock us into changes we might not be able to get out of. What is your name, I'm sorry?

Mrs. Vozar: It's Donna Vozar, I'm the Assistant Prosecutor.

Dr. Keehn: Donna, the FCC regulations, I'm not sure what they are. I think it would be nice to have the residents to be able to know that. I do know that the last time I asked about a problem to be corrected it was like well, you got to go to the FCC. We aren't going to do anything about it. That was the answer I got. That was quite a long time ago. That really angered me. You don't want to anger me.

Chairman Price: Or me.

Dr. Keehn: Well, that's correct. I don't like being told that I'm worthless and that I have no power to handle my destiny. When we moved into this City the City had zoned that land for residential development. I don't know if anybody thought about the potential problems at that point in time. There were a lot of things we did not think of including water problems, that should have been addressed and should be addressed now. Yes, fifty years ago this was farm land, now it's a City. And this is the center of the City. It one of the largest cities, as was stated, in Cuyahoga County. Lakewood is what 2.6 miles, North Royalton is 23.4 miles, I believe, square miles. It is a very large city. It has a big population. This is the center of town. It would be nice to see us be able to use some of the center of that town so we wouldn't have to drive, like I do, every time I want to go somewhere five miles in one direction or ten miles in two directions to get to anything worth shopping at or things that would bring money to the City. I don't see money coming into the City from this. The health issues that my wife is experiencing, the fact that this is not helping the City in anyway. This offer of a recreation center. Gee its funny they didn't offer this before. It's been here for fifty years why wasn't this offered by Tom Embrescia, he's owned that property for how many years now? How long has he owned the property, anyone know? Okay. He has owned the property for twenty years and this is the first time he all of a sudden he decided he needs to do something to make it useful. So, I don't see that as a sincere offer either. That's really all about I have to say. Thank you very much for your time.

Mrs. Vozar: Mr. Chairman. Before you sit down sir, I would like to make it clear that you understand that it is my position here to merely advise the Board what their legal criteria that they need to apply, and also to advise them of the law. We are all bound by the same laws and the same criteria. The City of North Royalton, we actually pass our own laws, and we can only enforce those laws. We are preempted in many areas by state and by the Federal Government. And the City of North Royalton has no authority to override the Federal Government or the State of Ohio.

Dr. Keehn: What is it, if I might ask, what is the FCC regulation with regards to that land other than the fact that they are now allowed to have a radio station there, a radio station there, what is the FCC's responsibility to the people around that with regards to problems with that radio station and how are we to handle them in a manner if we are not a six million dollar corporation?

Mrs. Vozar: Sure. Again, it's the FCC that actually moderates and controls and that you would make your complaints and reports to because the City only has limited authority over that property. Once the FCC has preempted us that is all we can do. So, we do have some authority, which is why we are here today. We do have authority over our land use and obviously this is a nonconforming use, because it has been rezoned. And the applicant has the right to come before this Board and ask for a variance and they have the burden. And it's a heavy burden for them. They have to prove their burden to the Board by clear and convincing evidence that they have established all of the criteria. And the criteria that they do have to present is under 1264.08(e)(2), you are provided with both (e)(1) and (e)(2), it is (e)(2) that you will be applying to the facts today. So, I hope that clarifies. I am sorry for your wife. I do understand how difficult it is, but again, this Board can only take into consideration what they are allowed to. We are not allowed to take in evidence that is not sworn. We are not allowed to take in evidence that the

Federal Government or State Government doesn't allow us to do. This is a quiz judicial hearing. We have to abide by those.

Dr. Keehn: The one question that I have Donna is with regards to the FCC's regulation for the usage to that land, is that land once granted, and it was granted fifty years ago probably, is that forever?

Mrs. Vozar: They have a license.

Dr. Keehn: They have a license, so their license could be taken away and their license has been taken away.

Mrs. Vozar: The FCC has authority over that. We don't have the authority. As long as they have a valid license and they are coming before us and asking for an expansion which is what they are doing, the only criteria we can apply is the facts that we are given and what we have authority over.

Dr. Keehn: Now, when we did this development of the property, and we went through all this work, three years worth of work, were we aware that we couldn't change the radio stations. Were those intended to be there? I'm not sure in having examined that research.

Mrs. Vozar: When the City rezones any property owner is allowed to continue to use your property, it is called a legal nonconforming use. They are a legal nonconforming use. The question that they are here about is can they expand that legal nonconforming use. Can they add another tower. That's all this is about.

Dr. Keehn: So in other words, they would not be able to

Mrs. Vozar: The Chair would want to go.

Dr. Keehn: The only question I have is if that land were developed as a Town Center would we still have those radio towers there? Was that in the plan to leave them there or not? I was confused by that when I was listening to conversation.

Mrs. Vozar: The radio tower property owner is entitled to use his property as a legal nonconforming use provided he doesn't cease using the property.

Dr. Keehn: Would this screw up the way the plans were made?

Mrs. Vozar: Sir. I'm not going to get into anything

Dr. Keehn: I'm just wondering whether we wasted a lot of time for nothing.

Mrs. Vozar: This Board only has authority that is before the Board.

Dr. Keehn: We went through all this process to do this and get to a certain point and at the time they were planning on moving, from what I understood from the first meeting when not everyone was here.

Mrs. Vozar: Okay. To just try and speed this along. As you heard them testify there was some negotiations that were going on with them. If they chose to leave their property they were free to do so and move. But they have a legal nonconforming use where they are entitled to stay on that property so long as they continue to use that use. Today is something totally different. It is an expansion of that.

Dr. Keehn: I understand then. Thank you very much.

Chairman Price: Thank you. Anybody else?

Dr. William Schmidt approached the microphone.

Chairman Price: State your name and address.

Dr. Schmidt: My name is Bill Schmidt. 5770 Goodman Avenue

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Dr. Schmidt: Absolutely. Okay. I have been a resident of North Royalton probably 40-years, but not always on Goodman Avenue. I've been in business out here 50-years I watched this town grow from a small little farming community to a very lovely and beautiful suburb with many nice developments. Now we have a Town Center. We have land there. What is good for the people in the community? Is it two radio towers sitting there in that land? Is that the best thing for the people in the community of North Royalton, or is it the best thing for the radio tower station? Who benefits from that? Do we benefit from that, the people, the community who is trying to develop a beautiful town, or the radio station? The radio station benefits from that. I mean so they are going to put soccer fields there, which may or may not be in a good location. Who wants to play soccer under radio towers? That's not very safe or healthy. To be honest with you, to me I think this Board should deny this application and consider the Master Plan which the people voted for. It was a wonderful idea. It may take years, but the land is there. If they rezone the land for radio towers who's to say there won't be 20 more radio towers. Why should we have a whole center of a beautiful town with big radio towers? That doesn't make sense to me. This town should develop in a very lovely and aesthetic fashion. Provide shops, provide town houses, provide more hiking trails, for the people of the community. I think the people of the community deserve that. They pay taxes and vote. They voted for the Master Plan. I mean come on. Who benefits from this, the radio station or the community? That's all I have to say. Thank you.

Applause from the audience.

Chairman Price: Thank you. Anyone else?

Mr. Bob Suter approached the microphone.

Chairman Price: State your name and address.

Mr. Suter: Bob Suter. 5630 Goodman Drive.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Suter: I do. I've been a resident their for 30-years, just like Don Keehn. My wife and family have been putting up with the radio stations interference for 30-years. When we moved there in 1978 the station was only a 10,000 watt station. 5,000 watts at night and only operated 18-hours a day. We were able to put up with the interference problems. Somewhere in the mid nineties all five towers were taken down. Six new ones were put up and the station went to 50,000 watts. That's when the problems really began. Interference with the VCR, the telephone, the GFI's in the house, whenever the station switches from daytime power to nighttime power they trip off. It comes through the stereo without even the stereo being turned on. The computer speakers. We hear WKNR all the time whether we want to or not. Now, when the station puts up the two new towers, even though the license, construction permit for the station says only 3,000 watts for those two new towers its effective radiated power from the towers. Since it's four towers that are the 3,000 watts is going to be feeding four towers, it's all beaming downtown which is straight over Goodman Drive. Straight over Royalwood, right north of the City. That means that the effective radiated power is going to be like 15,000 watts. So it's the 50,000 watts, the ERP of 15,000 watts, we are going to have two stations we

hear on our phone, and it is just going to compound the whole situation. Also there was one thing that was never brought up, every one of those towers has a grounding plane underneath the tower. Which is every 10-degrees there is a copper wire that goes out from the towers all the way around the towers. The new towers will probably have a grounding field. They will have to have a grounding field. That grounding field will go right towards the residents on Goodman Drive. The grounding field has just as much power on it as the towers. Its part of the entire complex. So that means this power is going over towards the end of Goodman Drive, all those houses there, and a lot of radio frequency interference. As a resident and you as a council I urge you not to give them the permit. Thank you.

Applause from the audience.

Chairman Price: Thank you. Yes sir.

Mr. Wally Saleh approached the microphone.

Chairman Price: Name and address.

Mr. Saleh: Wally Saleh, 5641 Goodman Drive.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Saleh: I do. With all do respect, I'm a business man myself, and I wish you success but in this case we have a lot of interference with the towers. Like Bob said, the TV sometimes comes on with the radio voice. It just comes through the TV. If you are talking on a land-line telephone, same way. It interferes with it and then you will hear the radio towers. And the gadgets that the kids play with sometime it is effected as well. I'm very, very close. I'm right behind you. So, it does effect a lot of gadgets that we have. I'm against it. I really wouldn't like to have more towers. I believe about the health emissions. You mentioned the Federal Government. I don't think the Federal Government cares about the health of the people. Personally, I don't think they do. Look at what they are doing in Iraq right now. Dropping four thousand pounds of Bombs on innocent people. That's another story. But, I do think these towers does have an effect on us. So, I'm against it.

Applause from the audience.

Chairman Price: Anybody else? Yes sir.

Mr. Josh Sabo approached the microphone.

Chairman Price: Name and address please.

Mr. Sabo: My name is Josh Sabo and I live at 8276 Windsor Drive.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Sabo: I do. I've been a resident of North Royalton for over four years. Not very long compared to a lot of people to a lot of the people here in this room tonight. I'm also an employee of Good Karma Broadcasting. And I work at WKNR radio station. That is owned by Good Karma for close to 10-years now. Pretty much since I got out of school. It's all I've known. Introduced me to this community to where I presently live right now. It has also introduced to me how great this community is. I rent I don't own. But at the same time I look towards the future, possibly living in this area for quite some time. But at the same time I'm a very passionate person about my work and I poured a lot into WKNR throughout my years, and also through many companies that were not owned by

Good Karma Broadcasting. This station was left for dead and through Craig Karmazin and Good Karma Broadcasting, he has turned it around and saved the radio station for the community for the community of northeast Ohio, but at the same time also been able to create a profit and to make it a great place to work. And that is why I am here tonight, to support the motion as a resident of North Royalton. This is my first time at one of these meetings so pardon me. At the same time I am here to support it. Basically, I know Craig personally, I know he is a man of his word, and I know he has done amazing things for this radio station and for this company. I think he will provide what has been laid out tonight. That's all. Thank you.

Chairman Price: Thank you. Anyone else?

Mr. Bart Bishop approached the microphone.

Chairman Price: Name and address.

Mr. Bishop: Bart Bishop, 60 North Pointe Drive, Avon Lake, Ohio.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Bishop: I do. You're probably wondering why someone from Avon Lake is standing before this Board. Again, I'm humbled and honored to be here. As I flash back to the sixties, when my Uncle Carl moved his family from New York Avenue, at Broadway and Miles, to 6997 Edgerton Road. I remember coming out here, being an inner city kid, being able to drink water from a creek in his back yard. That is the North Royalton I remember and for the most part, that is still the North Royalton that I see. It is still a wonderful community. A great, great, place to be. I've also have been involved with the community speaking to Mr. Ricorio's classes over at North Royalton's middle school. I've noticed the electricity, excitement, and energy, from all those students, and its just a wonderful thing. I do want to point out that I also am employee of Good Karma Broadcasting. I did a show from 3:00 to 6:00 in the afternoon. Not a cheap blood for the show by the way already, called Munch on Sports. So, I am a full time employee and the most interesting thing about these gentlemen, and I like to brag about them, Mr. Karmazin, Mr. Fines, Mr. Williams, and I embarrass them at time. I had been with a previous radio station company for all of twenty seven and a half years, because companies come and go, the people usually stay the same, the names change. And when I was first approached by these gentlemen to come join them I was a little nervous. With a wife and four children, having been with someone for twenty seven and a half years and the longevity that I've had, and I have to say that after speaking to them and seeing their vision, which every conversation, community service kept coming up, which is something that is important to me. I'm honored to say this Wednesday I will be celebrating my 19th anniversary of doing a food for St. Augustine's in Tremont. And this is something that they get behind. This is something that they stand for. This is something that they demand, to the point that I was able to leave people, that were my friends, and still are, and people that I was comfortable with, a company that I was comfortable with, and take a deep breath, and join them and humbly become a part of their company. I do know this, for someone to make a move like I did, because I'm a bit of a home boy, I don't like a lot of change, if someone doesn't have honesty, dedication, community service, and integrity, they are not going to be a part of my life. These gentlemen, this company, is a part of my life. Thank you.

Chairman Price: Thank you. Anybody else? Did you want to cross again council? You are going to have to use that microphone.

Paula Recker: Here. I don't need this yet.

Mr. Coyne and Mr. Jordan took the microphones.

Mr. Coyne: I'll call you Tom. Tom, we have known each other since you appeared before the Planning Commission a few times, sometime ago, right?

Mr. Jordan: In Cleveland, Yes. That is correct.

Mr. Coyne: In Cleveland, because I'm on the Planning Commission in Cleveland. Tom, let me ask you a question. OSWGI, are you aware that they never received any kind of notice, written notice, when they changed the zoning to TCD?

Mr. Jordan: As you are aware I only started employment in January of this year. I'm unaware of notices given or not given out.

Mr. Coyne: Okay. And as it relates to the variance, this is just your opinion, right?

Mr. Jordan: It is my opinion right.

Mr. Coyne: You are not a City Planner are you?

Mr. Jordan: No I am not.

Mr. Coyne: You are not credentialed as a City Planner in any way?

Mr. Jordan: No I am not.

Mr. Coyne: Who was the City Planner for the Master Plan?

Mr. Jordan: There was an outside company that was used by the City who's name escapes me at the moment.

Mr. Coyne: Was David Heart involved in it did you know?

Mr. Jordan: I'm not sure.

Mr. Coyne: Did you not take the time to have a planner come and look at this application?

Mr. Jordan: Well, under the Zoning Code when a larger section of the TCD is proposed for redevelopment, or redevelopment, the City is required to hire a Plan Developer, or I'm sorry, a Planning Consultant, to look at it. Since that was not submitted I did not send it to a Planning Consultant.

Mr. Coyne: Okay. And did you, or you could have done that?

Mr. Jordan: I could have but it was not required.

Mr. Coyne: Okay. Also, the property frontage, how do you access the property currently, off of what street?

Mr. Jordan: I believe that there is an access road off of Ridge Road.

Mr. Coyne: Okay. It's a drive off of Ridge Road. There is no access to State or Royalton Road, is that correct?

Mr. Jordan: Not that I am aware of.

Mr. Coyne: Okay. And the TCD plan included access from Royalton Road and from State Road, is that correct?

Mr. Jordan: Well, actually the TCD zoning really doesn't specify where the access would be granted.

Mr. Coyne: But you would not want, based on your experience, the access from Ridge Road right?

Mr. Jordan: Actually, some of the plans that I have reviewed do call for the extension of Bennett Road right through where the access road exists through the heart of your applicants site and out to State Road.

Mr. Coyne: And that would require eminent domain right?

Mr. Jordan: Most cities, when they acquire property for roads it would.

Mr. Coyne: But that would be for the Town Center Development, not just for a road right?

Mr. Jordan: No. I indicated that the eminent domain would be for a road in that case.

Mr. Coyne: Is the City contemplating taking any of the property by eminent domain?

Mr. Jordan: No. We had had no plan from any developer, currently, for the development of the site that the City is supporting.

Mr. Coyne: The properties on Goodwin, the residential properties on Goodwin, all of...I'm sorry?

Audience said Goodman.

Mr. Coyne: I'm sorry, Goodman, thanks for the correction sir. On Goodman, came after the towers were constructed?

Mr. Jordan: Actually I am unaware of the development but by their construction, and if your date is correct of sixty-years, I would assume that they did occur after the sixty-years.

Mr. Coyne: And you are not aware of the property having any frontage on the four, or three main streets adjacent to it, correct?

Mr. Jordan: I am aware that this property, if referring to the radio tower property, has access through that road, that access road.

Mr. Coyne: Right, that is the only road. But for purposes of development of major lifestyle center you would need more access=ways than that correct?

Mr. Jordan: Actually, again, if the road was extended through Bennett Road, through that access road, it would have access.

Mr. Coyne: And the City has no plans to do that road is that correct?

Mr. Jordan: Currently do not.

Mr. Coyne: I have no further questions.

Chairman Price: Thank you. Anybody else? Do I have a motion to move BZ08-33 to the regular order of business.

Moved by Paula Recker, seconded by Dan Kasaris to move BZ08-33 to the regular order of business.

Chairman Price: Discussion? Call the roll.

John Ranucci: Yes.
Paula Recker: Yes.
Tony Caraballo: Yes.
Dan Kasaris: Yes.
Chairman Price: Yes.

Ayes-all. Nays – none.
Motion carried. (5-0)

Chairman Price: That concludes the Public Hearing. The Board will now break for a short time and reconvene. Do I have a motion to adjourn.

Moved by Paula Recker, seconded by Dan Kasaris to adjourn the Public Hearing.

Ayes – all. Nays – none.
Motion carried.

Public Hearing adjourned at 9:41 pm.

The Board of Zoning Appeals of the City of North Royalton met on **November 24, 2008**, to hold an Open Meeting, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 10:02 pm

Present: Chairman Neil Price, Vice Chairman John Ranucci, Paula Recker, Tony Caraballo, Councilman Dan Kasaris, Prosecutor Donna Vozar, Zoning Inspector Joe Hartman, Secretary Julie Broestl

Chairman Price: I need a motion to excuse me from voting on the approval of the minutes of October 9, 2008.

Moved by Paula Recker, seconded by Dan Kasaris to excuse Neil Price from voting on the minutes of October 9, 2008.

Chairman Price: I have a motion and a second. Call the roll.

Dan Kasaris: Yes.
Paula Recker: Yes.
John Ranucci: Yes.
Tony Caraballo: Yes.

Ayes – all. Nays – none.
Motion carried. (4-0)

Chairman Price: I need a motion to approve the minutes of the special meeting of October 9, 2008.

Moved by Dan Kasaris, seconded by Paula Recker, to adopt the minutes of October 9, 2008.

Chairman Price: I have a motion and a second. Call the roll.

John Ranucci: Yes.
Tony Caraballo: Yes.
Paula Recker: Yes.
Dan Kasaris: Yes.

Ayes – all. Nays – none.
Minutes of October 9, 2008 approved. (4-0)

Chairman Price: The minutes of October 27, 2008.

Moved by Paula Recker, seconded by John Ranucci, to approve the minutes of October 27, 2008.

Chairman Price: A motion and a second. Call the roll.

Chairman Price: Yes.
Tony Caraballo: Yes.
John Ranucci: Yes.
Dan Kasaris: Yes.
Paula Recker: Yes.

Ayes – all. Nays – none.
Minutes of October 27, 2008 approved. (5-0)

Old Business

(BZ08-32) Edward and Linda Steimle request a variance to Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”, for relief from the 100-foot frontage requirement to allow a new home to be constructed on this property which is located at 18801 State Road, PPN: 486-24-012.

Chairman Price: A motion to move BZ08-32 from the table.

Moved by Paula Recker, seconded by Dan Kasaris, to remove BZ08-32 from the table.

Chairman Price: A motion and a second. Call the roll.

John Ranucci: Yes.
Chairman Price: Yes.
Tony Caraballo: Yes.
Dan Kasaris: Yes.
Paula Recker: Yes.

Ayes – all. Nays – none.

Motion carried. (5-0)

Paula Recker: Mr. Chairman. Can we have the applicant come to the microphone?

Mr. Edward Steimle approached the microphone.

Paula Recker: Good evening.

Mr. Steimle: Good evening.

Paula Recker: I believe that Mr. Price needs to swear you in again.

Chairman Price: State your name and address.

Mr. Steimle: Ed Steimle. 4307 Bucyrus, Cleveland, Ohio.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Steimle: Yes I do.

Paula Recker: First of all I would like to thank you for your patients through that public hearing.

Mr. Steimle: Its been an experience.

Audience laughter.

Paula Recker: We all learn at some point. Do you have any further information for us since we saw you last time 30-days ago?

Mr. Steimle: Yes I do. But I’m just a little disturbed of how the meeting ended last time, because if I am correct this variance was to let me build on a lot that does not have a 100-foot frontage, and a variance 70-feet. But, I was asked to provide cost for providing a sprinkler system or fire hydrant. What does that have to do with the safety of the residents? I think it should have ended with either Mr. Steimle you either have to put in a sprinkler system or you have to supply a fire hydrant to your property. That would have been it. I don’t know what relevant of bringing in cost in for the installation of either one of these.

Paula Recker: You are saying cost not cause?

Mr. Steimle: Cost.

Paula Recker: Okay.

Mr. Steimle: Price.

Mrs. Vozar: Mr. Chairman. Can I add some light to that? Sir, if you will recall the Fire Chief came in and testified at the last meeting. Again, as you will recall, this property was granted a variance and there was conditions put on it because of the safety problems that our firefighters and EMS could not get back there to that property. So, there were conditions imposed, safety requirements, and the Chief advised you that while he recommended the sprinkler system, you had indicated that you had another option that you wanted to utilize. The Chief indicated to you that it was probably in your best interest to find out how much it would cost to run that water line. He thought that it would be prohibited to you, and we asked you if you wanted to table it or proceed. You indicated that you wanted to table it. That is why the matter was tabled, so that you would have the opportunity to come forward and present to this Board your option. The option that you wanted rather than the option that the Chief had recommended as far as addressing his safety concerns for the property. That is why you were tabled and why you are back here today. That is why you were asked to go and look into those. You weren't required to do so sir. It was just an option for you and you requested to be tabled.

Mr. Steimle: Okay. I'm sorry I don't recall tabling for that option. I thought that I was required to provide this. Also, if you do recall Chief Fabish also did say that the 14-foot driveway leading all the way back to that property would be ample room to get a fire truck back there, okay. I do recall that. But, anyways I would like to get a variance here today to either install a fire hydrant back there by the property within 200 feet of the household, or to install a sprinkler system, or to provide a smoke alarm system throughout the whole house that would be connected to ADT or Brinks System that would also call the Fire Department.

Paula Recker: Are you asking us to put a condition on the variance? That if those conditions are not met then the variance would be null and void?

Mr. Steimle: Correct. I should have my options, either one, two or three, to provide that for the safety of the residents.

Chairman Price: Okay. The issue of water to put out the fire has nothing to do with the smoke detector. That would alter the Fire Department to the fact that there may be something burning, but when they get there they are not going to have any water to fight the fire with. So, the issue last time was that there has to be some mechanism to provide fire suppression and the idea was either a water connection of sufficient quantity that they could fight the fire or have a home sprinkler suppression system a sprinkler system.

Mr. Steimle: As you do know, the Fire Department does have pump trucks also that would supply water back there to put out a house fire, okay. So, I really don't need a supply of water back there.

Donna Vozar: Sir, I'm a little confused. You were here the last meeting and heard the Fire Chief testify. It's a vacant lot now. The house that was there burnt down to the ground. They couldn't get water to it.

Mr. Steimle: What year was that house built?

Chairman Price: That doesn't make any difference.

Donna Vozar: The Fire Chief testified sir that nothing has changed in his opinion.

Mr. Steimle: That house was dilapidated. One resident even told me that it was an arson fire. This will be a 2008 house with all the updated Codes.

Donna Vozar: The Fire Chief testified his requirements.

Mr. Steimle: I don't understand that one mame.

Chairman Price: The issue was that there was no water back there to fight it and put it out.

Mr. Steimle: And they did not have ample room to get the fire truck back there because the driveway was so narrow also.

Chairman Price: Then that's another issue.

Mr. Steimle: I told the Chief that I would put in a 14-foot driveway.

Chairman Price: Okay. You are going to have to go to the Building Department, if this gets approved, and present them with plans that they are going to have to look at and okay.

Mr. Steimle: I would like the option to pick which ever choice I would like to have.

Chairman Price: I'm going to make a motion to add a condition that a water line of sufficient size to provide quantity of water that is acceptable to the Building and Fire Departments be installed.

Mr. Steimle: For either a fire hydrant or a whole house sprinkler system?

Chairman Price: That there be sufficient quantity of water available back there. Its either a water line, sprinkler system, whatever is acceptable to the Fire and Building Departments. It's going to involve size, length, quantity, that there is some mechanism to be able to fight a fire if there is one. Heaven forbid.

Paula Recker: Mr. Hartman would you like to comment on this possible condition?

Joe Hartman: Thank you. The pressure in that main line is going to be critical and that is going to pretty much determine what size line you would have to have for a hydrant. Going back that distance, I'm going to tell you that you are probably looking at between a four and six inch line.

Mr. Steimle: It would have to be a six inch line sir. 89-pounds of pressure out in front of my property.

Joe Hartman: Okay. Now if you go with a sprinkler system inside your home you may be able to reduce that line to a two inch line but with an inside pump in the inside of the house. The only thing the Building Department is going to require is that you submit a set of plans to us with either or. As you have stated, if you want to go with a hydrant that would be close enough to that house where the firefighters could fight a fire, fine. You want to put a suppression system inside the house, fine. Either one, but you have to submit a set of plans for approval by the Building Department. Okay?

Mr. Steimle: Yes. Okay.

Paula Recker: And would you agree to that condition?

Mr. Steimle: Yes I would.

Paula Recker: And you understand that should you not be able to comply with that condition then the variance would be null and void?

Mr. Steimle: Yes.

Moved by Paula Recker, seconded by Dan Kasaris to add **the condition that the homeowner installs either a fire hydrant or an in-house sprinkler system and that plans be submitted and approved by the Building Department and also submitted and approved by the Fire Department.**

Donna Vozar: Mr. Chairman.

Chairman Price: Donna.

Donna Vozar: Again, I have concerns with doing that prior to the applicant bringing in a plan, which was the reason it was tabled, so it could be reviewed by the Fire Chief and by the Building Department to assure it would meet the criteria. Again, you are granting a variance on the property. Again, there was one previous granted on this property and nothing was ever done for the very reason that it was cost prohibited and they wanted to make sure that the applicant was aware of that. Nothing ever happened and the variance lapsed. I would strongly recommend that the applicant be required to submit a plan to this Board. It is his burden to bring to this Board a plan and to justify why he is requesting the variance. A huge aspect of this is the safety, and that is one of the criteria that this Board looks at. I think that the Fire Chief needs to look at what he submits before you grant the variance. That is why this was tabled. Putting the condition on it and assuming that perhaps he will meet whatever requirements we have, I don't think it is appropriate. I think that we are doing it a little backwards, which is why it was tabled. That is my recommendation to the Board.

Mr. Steimle: I'm sorry Donna, but there was no mention of bringing in plans. There was only mention of bringing in the cost of the project. That is what was mentioned to me and that is what I got here, the cost of project to install a fire hydrant or a whole house sprinkler system.

Donna Vozar: And what is your decision sir?

Mr. Steimle: My decision is that I will probably go with the whole house sprinkler system.

Donna Vozar: So, you are requesting that the Board approve your application.

Mr. Steimle: I want the option either or though. If next year I decide that I want the fire hydrant I should have the option of putting in the fire hydrant. It is my cost and my financial burden to provide that.

John Ranucci: Mr. Chairman. Since this is the applicants second time here, don't we have to vote on this tonight.

Chairman Price: Yes.

Mr. Steimle: I was not told to bring in plans. I'm sorry.

Paula Recker: Mr. Chairman.

Chairman Price: Yes.

Paula Recker: Mrs. Vozar, I understand where you are coming from with your advice. However, because we have to vote on this tonight, and I also have confidence in the Building and Fire Departments, and when these plans are submitted with these conditions

before even a nail is hit by a hammer that job will be done and they will protect both the City's and residents interest. Personally I would like to see us move forward. The only other way to do that is to have the applicant come back to us under a reconsideration at no cost to the applicant, if that is the route that the Board would like to go. In my opinion we would delay this applicant needlessly.

Donna Vozar: Mrs. Recker, normally I would agree if it appeared the applicant was moving forward with it, but as you just heard the applicant say next year when he gets ready to start on this he will then decide which plan he is going to go with. Again, I have a problem with granting a variance that you are not fully informed of and the applicant has not fully provided the information. Clearly this Board on numerous occasions has allowed applicants to come back before you and waived the resubmittal fee. I understand that there is a time constraint. That is all I am going to say on this issue and the Board is free to go forward on this.

Mr. Steimle: One more item. Obviously, there is only about a month and a couple more days left to the new year. So, next year is not so far off. I did submit all the architectural plans that I needed and I have plans for the City already. The only plans that I am going to need is my utilities to get back to the house site. That is it.

Paula Recker: When do you intend to start construction?

Mr. Steimle: Actually, I wanted to have all my utilities in already. But I got delayed.

Paula Recker: When do you now intend to start?

Mr. Steimle: Probably when Spring starts I would like to start building.

Paula Recker: As Mrs. Vozar has stated thus then if for instance you came back for reconsideration, which you would have to find out from the Board's secretary when the next deadline is, then you would still have time then to start on your construct date, and we can do as we are advised.

Mr. Steimle: No its not because I want to get all my utilities back to where the point where the house is going to be. I wanted to do that this year. Actually in November. So, November is already over now. So, if whether is permitting I will start. If I submit the plans to the City and if everything is okay I am going to get my utilities back there. First I will have to get the water, then gas, the phone, and electricity, back there.

Donna Vozar: The problem that we have, Mr. Chairman, is that the variance runs with the land. One of the things that happened before with the previous owner of the property sought the variance and then made the determination and did not follow through with it, the variance lapsed. Certainly we do not want to keep granting variances on the property and not have construction begin. That is one of the reasons I think it is important to know what the plan is before we grant a variance.

Mr. Steimle: If I did get the variance today I will be submitting the plans as soon as I get them back from the mechanical engineer, to pull the permit, and get the utilities back there. Would that be sufficient enough? Also in the process I would submit the permit to start building our house.

Dan Kasaris: Mr. Chairman. 149 11

Chairman Price: Yes sir.

Dan Kasaris: The concerns I had are relative to the access with the fire trucks and ambulance, if we are to vote on this variance request tonight I would propose a condition that the driveway be 14-feet wide and of adequate foundation and substance so that we

can get a fire truck 1,500-feet back to the property. I think that this is something whether it would be water or whether it be a driveway, I think this is something our Building Department can decide and can deal with. I would like to move this tonight and vote on it and let the Building Department do their job.

Paula Recker: Mr. Chairman.

Chairman Price: Yes.

Paula Recker: As I stated, and I always appreciate Mrs. Vozar's fine advise, but in this particular case I agree with Councilman Kasaris. Because we are also putting in the wordage of the condition that if the variance is not used within a year it is null and void. We are specifically putting in this condition that if he doesn't submit the proper paperwork to the Building Department and Fire Department to review then the variance is null and void. And now Mr. Kasaris is asking that we put in this third point in the condition and that works with me also.

John Ranucci: Mr. Chairman.

Chairman Price: Go ahead.

John Ranucci: As part of the condition could we have it stated that the plans will be submitted within a month as the applicant has noted?

Dan Kasaris: That's a good idea.

Chairman Price: We could say it but I don't want to get this out of hand. When I brought this up I have no objection to a house being built on this lot. My only concern is that there is water back x-amount of feet, from the main road to be able to handle an emergency that might be back there, via fire. And if you are going to build my notion was, as a condition, you have water back there sufficient to handle what might be the requirement to fight the fire. That is all.

Mr. Steimle: I do have someone from my fire tech guy for either a hydrant or a sprinkler system throughout the house. Not actual plans but

Chairman Price: I personally don't care which one it is and my only concern is whatever it is meets the Building Department and the Fire Departments requirements. And if that is a condition that you are agreeable with then I am agreeable with it.

Mr. Steimle: That's fine with me, those two conditions, yes.

Dan Kasaris: Mr. Chairman.

Chairman Price: Yes.

Dan Kasaris: Sir, are you also agreeable with a 14-foot drive or road with adequate room?

Mr. Steimle: I will put the width of road is required by the State of Ohio, how's that, to get government trucks down there?

Dan Kasaris: As long as our Building Department, and you will submit that to the Building Department, and if they approve of that then you can go forward. If our Building Department disapproves of that, you will have to come with terms with what our Building Department wants.

Mr. Steimle: Yes. I would like to have one month to submit the plans, because of the holidays.

Chairman Price: That is not a consideration at this point.

Paula Recker: We are not putting a time line for submission?

Chairman Price: So, we have a motion for conditions.

Donna Vozar: You have amended it needs to go for a vote.

Amendment to the condition that the homeowner installs either a fire hydrant or an in-house sprinkler system and that plans be submitted and approved by the Building Department and also submitted and approved by the Fire Department and if the variance is not used within a year it is null and void.

Chairman Price: Call the roll on the amendment.

John Ranucci: Yes.
Dan Kasaris: Yes.
Paula Recker: Yes.
Tony Caraballo: Yes.
Chairman Price: Yes.

Ayes – all. Nays – none.
Motion carried. (5-0)

Chairman Price: Opinions on the whole issue?

Dan Kasaris: Mr. Chairman.

Chairman Price: Yes Dan.

Dan Kasaris: We have area variance here, unlike the other matter we have in front of us tonight, which is a use variance. With regards to an area variance, Mr. Chairman, I believe that the applicant meets the criteria. Specifically, in looking at A thru J in 1264.08(e)(1), I don't know that there can be any beneficial use of the property without the variance. I think special conditions or circumstances exist here. I also think that they are not changing the character of the neighborhood. The lots in that area are very wide. There are some large setbacks in the area, I know from walking it. Therefore, Mr. Chairman, I will be voting in favor of the variance.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: I will concur with Mr. Kasaris. I definitely feel that there would be no beneficial use with out granting this variance, and I think that is the biggest thing for me. The government services, I think, with cooperation with the applicant is stating and with what our Building and Fire Departments will require, I feel that those will not be interfered with. So, I will be approving this variance.

John Ranucci: Mr. Chairman.

Chairman Price: John.

John Ranucci: I am going to have to agree with my two council members here also. The biggest issue here is item D, whether the variance would have adversely effect the government services. I think that with the discussion at the last meeting and this meeting, the applicant is going to agree with the conditions we put on here; getting the water line back to the property, making the road accessible, wide enough for the fire and ambulances to get back there. So, I will be agreeing to this variance also.

Tony Caraballo: Mr. Chairman, I also concur with the Board here in regards that there is no beneficial use of this property without the variance granted. We discussed the other items in regards to safety and he is going to have to provide the property paperwork for the Building Department and the Fire Department, and upon their approval, your road, BZA

Continued

your driveway, so to speak, and the water lines, which I am not up to date on, so once you meet those criteria, yes I will be voting for this also.

Chairman Price: I have to go along with everything that everybody said tonight so far. The variance is not substantial, I have no concern with a house being built on that piece of property, my only concern is water and delivery of government services. Otherwise, I think that if all the conditions for the variance are met I would agree with it.

Donna Vozar: Mr. Chairman. The proposed submitted findings of fact for the Board's consideration are as follows; The applicant was here at both meetings and had the opportunity to testify. No neighbor's were here to object. This is relief from the 100-foot frontage. It is an area variance and therefore the Board will be referring to the criteria and has considered all the variables under the appropriate Ordinance. The applicant has agreed as a condition for the granting of the variance to comply and submit to the Building and Fire Departments for their review and approval regarding the water safety service access and fire and EMS as discussed and incorporated into these findings of fact. The Board determined that there could not be beneficial use of the property without the granting of a variance and therefore that criteria has been met. In addition the Board found that the character of the neighborhood would not be detrimental due to the land and topography of the area. However, the Board did find that the variance would affect the delivery of governmental services but never the less imposed the conditions which the applicant agreed to, and would address those two issues with the fire and EMS access. Based on that the Board found that the practical difficulty has been established. Those are the proposed finding of facts and conclusion of law for the Board to consider. If there is anything you wish to add do so now or have the secretary call for the roll.

Chairman Price: Anything to add? Call the roll.

Chairman Price: Yes.
John Ranucci: Yes.
Paula Recker: Yes.
Tony Caraballo: Yes.
Dan Kasaris: Yes.

Ayes – all. Nays – none.
Variance granted. (5-0)

Mr. Steimle: Thank you Board.

Under new business

(BZ08-33) Good Karma Broadcasting and OSWGI, Ltd. Partnership request a variance to **Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (B)** to allow two additional radio towers to be constructed on this property which is **located off Ridge Road, PPN: 488-06-008.**

Paula Recker: Mr. Chairman. Before I make this motion, seeing as we have residents in the audience, all motions are brought forward in the approval form. It does not mean that the motion has passed. I just wanted to inform you. It hasn't been approved yet we are just bringing it up to the floor.

Moved by Paula Recker, seconded by Dan Kasaris to **approve a variance to allow two additional radio towers to be constructed on this property in a TCD-4 district which is contrary to Section 1286.06 of the Zoning Code.**

Chairman Price: We have a motion and a second. Discussion?

Paula Recker: Mr. Chairman. I do have a question for the applicant himself, not his attorney.

Mr. Karmazin approached the microphone.

Mr. Karmazin: That meant sit down Tony.

Paula Recker: I think he can handle this question. I don't think I got the correct call letters right off the bat, but I did get the right ones for the question. Do I assume that WWGA is that the correct call letters?

Mr. Karmazin: WWGK. K as in Karma. Actually GK as in Good Karma.

Paula Recker: That is a subsidiary of WKNR?

Mr. Karmazin: That is second radio station. On the air we brand it as KNR.

Paula Recker: They are one and equal under an umbrella? It is all one company.

Mr. Karmazin: Yes. They are all part of Good Karma Broadcasting. It's all part of ESPN Cleveland.com. Its all part of one website.

Paula Recker: How does this company relate to the WKNR that is at Broadview Road and Oaks Road in Broadview Heights?

Mr. Karmazin: There is no WKNR in Broadview Heights.

Paula Recker: Yes there is. There is a big ground sign in front of five towers on the property. It use to be WGAR that now says WKNR.

Mr. Karmazin: It says that but that is actually WHK. That land is owned by Salem Communications. We don't broadcast from there. We have nothing to do with it.

Paula Recker: Why are your call letters on the ground sign? Did you at some point have an interest in that property?

Mr. Karmazin: They allowed us, when we purchased the radio station from them, to use it for nine months before they kicked us out. We used it for nine months and we have no rights to that facility at all.

Paula Recker: You spend that kind of money on that kind of ground sign for nine months?

Mr. Karmazin: That ground sign actually says WKNR's 1220 am, which goes back over 15-years.

Paula Recker: Okay.

Mr. Karmazin: We have only been in Ohio for about two years.

Paula Recker: I just wanted to make sure that you two went related over there.

Mr. Karmazin: No.

Paula Recker: Alright that's my major thing. Now please lawyers don't get, on either side, okay, if this variance and I'm hoping that I am going to phrase this properly, which is sincerely doubt full, but one never knows. If this variance would be granted, in the future, and this was granted and we put a condition on this, that it was up to your company should the City decide and has the opportunity to go forward with their TCD, that is would be your responsibility to find or remove any and all of the towers that exist on this property at this time. Would you be willing to consider that condition and would you accept that condition perhaps?

Mr. Karmazin: I would accept the condition on the two towers that we are talking about.

Paula Recker: Why not the other towers?

Mr. Karmazin: Because that would be probably close to a \$2,000,000.00 project to move all those six towers. I can't afford it.

Paula Recker: I can understand that. Thank you.

Mr. Karmazin: Am I allowed to add anything at this time based on what was said in the previous Public Hearing?

Chairman Price: Go ahead.

Mr. Karmazin: I promise I will limit it. The FCC has approved this, which was a question. The FCC has approved WWGK to be built at this site. The FCC does monitor and make sure that we stay to any health restrictions. Interference issue, which have been brought up, I have been at every meeting and have given out my phone number and e-mail address and have not heard from any residents here of unresolved interference issues. We would be happy to be involved in resolving those issues. We would be happy to make that part of the variance. Those are issues that go back twenty, thirty years. Some of which before I was born. But I would be happy to help fix those if that was something that you felt was necessary as part of this variance. Additionally, Mr. Jordan brought up some things that were new to me tonight about topography and all that and if the City is looking for us to come up with a better plan, I mean we would have to pay an architect for those plans, but we would certainly be willing to work with the City as we have and its residents to continue on that. There was also a question from Mr. Bonus that were raised about the public affairs programming and public service announcements, if that is something that people feel they would like spelled out in more detail before another meeting we would be comfortable doing that as well.

Chairman Price: I have a question. With the, I just forgot it.

Paula Recker: It's only five after ten.

Tony Caraballo: I have a question Mr. Chairman.

Chairman Price: Go ahead.

Tony Caraballo: You propose the soccer fields here for the City of North Royalton, which is a fantastic idea, but your access road leading to the facility for the residents of North Royalton have use of this, I believe it accesses through the cemetery?

Mr. Karmazin: That is correct.

Tony Caraballo: Now has that been approved, granted, with anyone from the City of North Royalton, that access road there?

Mr. Karmazin: These overall plans were shared with the City of North Royalton, that is actually the point of why we came back a meeting, so these have been shared with the

City and we are very open to feed back. If that's not a good plan or a better plan we are open to it.

Tony Caraballo: I wouldn't think that would be acceptable for the cemetery access to the soccer fields for the public. Have you or the City considered is there access from State Road, Ridge Road, Goodman Drive?

Mr. Karmazin: All of these different things we are sensitive to neighbors. They may not want extra traffic in their neighborhood. So, we are wide open. This idea of soccer fields wasn't our idea, it came from working with the City and we continue to be very open to any ideas that the City has.

John Ranucci: Mr. Chairman.

Chairman Price: Yes John.

John Ranucci: I'm not sure if you are the proper person to answer this question. Is there, as far as you, any agreements with the City as far as if and when that town center district a developer comes forward to develop that whole area? Is there any agreements with you as far as moving the towers, who is responsible, and do you have the final say so if those towers are moved or not moved?

Mr. Karmazin: Yes, I have the final say of if the towers are moved. And I have a hard and fast lease that goes I think into 2038, I think, the entire acreages of land that we have seen here tonight.

John Ranucci: I am assuming then, since you have the final say so and you have already agreed that you are not putting up the \$2,000,000. to move those towers, any negotiation would have to be between the City and the developer to come up with that \$2,000,000. to move those towers?

Mr. Karmazin: Not exactly because we do have a landlord who may be inclined. When Coral came through we signed off on everything. There wasn't much of a benefit for us but they convinced us and at that time we did cooperate even though there was nothing to be gained. We did sign off on that. In the back of my mind one of the hopes was that we could potentially put these towers all together at a new location if we were going to be relocated. But we would be able to say we are not interested in moving based on our lease.

John Ranucci: Based on what you just said then, if I came to you today and said I have \$5,000,000. and I want you to move, is there another location for you to move to that you have explored?

Mr. Karmazin: We've explored and the Board of Education, I believe there was a site that was brought to us as part of the Coral proposal, and that one did work. As you guys could imagine finding sixty acres of land that is undeveloped to be able to build a tower and ground system and everything that is involved is really challenging. So, there is very tight constraints put on us by the FCC, and very tight constraints that are put on us here by local zoning. It's pretty tough to find a spot. That did work because I think that the City had that land or the Board of Education had that land. But that was an acceptable location.

Chairman Price: I remembered my question. Just to clear up a point, you made a comment earlier. The FCC has granted you the right or the authority to move the antennas, is that correct?

Mr. Karmazin: Yes, to move WWGK.

Chairman Price: They haven't requested that you move them. They haven't required that you move them. They just said if you want to you can and you have to meet certain guidelines.

Mr. Karmazin: I don't know how they worded it. We have a permit from the FCC to build.

Chairman Price: To build but not required that you have to build, or have to move, or change the location, or anything like that.

Mr. Karmazin: That is correct.

Chairman Price: Okay.

Mr. Coyne approached the microphone.

Mr. Coyne: I would like to get back to Mr. Ranucci's comments because I think they are well taken and this is when I put on my Tom Embrescia hat for OSWGI. The reason this is so important is that we wanted to integrate some of what you were asking about in the lease as it relates to relocation of at least two of the towers and have flexibility on the location of the soccer fields, which are not finite in the lease. We don't have a legal description attached to the lease. Secondly, if in fact anything can happen with the town center plan that Mr. Embrescia can really see that there has been full cooperation with Mr. Karmazin. In other words, in order for something to happen that is going to be very important or I'm going to end up in a situation or Mr. Embrescia is going to end up in a situation that is going to be very difficult to try to accommodate relocating towers and moving towers because of this request. So, we are sort of in the position of trying to be as flexible as possible. That is why the lease, and I was hoping to with this evenings meeting, I wasn't sure you could take a formal vote on this with some of the conditions and the questions you are asking about the lease about the community service announcements about the location of the soccer fields and also the towers. That would be something we would be willing to address in a formal lease so that everybody knows were they stand. A big part of that lease was to benefit the City. That was the biggest reason we were agreeing to do it.

Paula Recker: Mr. Chairman.

Chairman Price: Yes Paula.

Paula Recker: I was going to mention this lease that you have presented to us this evening, and this question would be to either Mr. Kelly or Mr. Jordan. Have you had time to review this, and I assume it states that it is a draft, have you and the administration had time to review this proposed lease?

Mr. Kelly: No. Let me say this, and I hope I'm not over stating it. The administration is adamantly, completely, and strongly opposed to the entire project. That is number one. The issue of the soccer fields was a discussion early on with the idea in mind that maybe there was some potential positive gain that might come from this experience for the community at large. The City administration has abandoned that project long ago. Mr. Karmazin, good salesman that he is, wants to try to promote the use of these soccer fields in order to make the proposal palatable. The proposal to the administration is not palatable. It is not from our perspective a proper place for soccer fields. It isn't suitable for that purpose. It was simply an exploratory investigation early on. It has long since been abandoned. Does that answer your question?

Paula Recker: Yes.

Mr. Kelly: And as to the lease, no, we haven't seen it, haven't studied it, haven't reviewed it, and at this moment we are not interested in it.

Paula Recker: Okay.

Dan Kasaris: Mr. Chairman.

Chairman Price: Yes Dan.

Dan Kasaris: I have some questions for Mr. Jordan. Mr. Jordan, what is a Master Plan?

Mr. Jordan: What is a Master Plan?

Dan Kasaris: Yes.

Mr. Jordan: Your City Charter requires that a Master Plan be in place. It is an overall, it's a guide to development for the City as it grows.

Dan Kasaris: You testified earlier that in your opinion this proposal would violate the Master Plan, was contrary to the Master Plan.

Mr. Jordan: Right. Yes, it is not consistent with the Master Plan.

Dan Kasaris: Why is that?

Mr. Jordan: The Master Plan identified this area of the City for a quote town center. First of all, overall the Master Plan guide what they wanted to have happen was an increase in commercial space or land within the City. The City had an explosion of residential growth. That growth they plan to continue but they needed to balance out the growth of the City with some expansion and make available some more commercial space. So they rezoned which was in a good part residential area of the City for a commercial purpose. Further this particular area they give a very specific zoning for called the Town Center District to provide civic spaces. To provide commercial and mixed use opportunities. As opposed to other areas of the City that you might be familiar with that are more industrial. Research and Office was rezoned near the West 130th Abbey Road site. So these two major portions of the City were rezoned commercial. This one with a very specific zoning for a town center. If you get into the actual zoning it talks about second floors, bringing the house closer, making it pedestrian friendly, these types of activities is what they envisioned here in the Town Center. In my estimation and in my opinion and as I stated earlier the adding of two additional towers doesn't get us any closer to that envision that was outlined in the Master Plan.

Dan Kasaris: Thank you.

Tony Caraballo: Mr. Chairman I have a question here. You have the existing towers there, and you are proposing, it's TCD right now, and you are proposing a town center, but I am a little confused on the existing towers what happens with that? He says it's up to, for removal of these towers.

Mr. Jordan: Right. Your council could advise you possibly further, but as the same with the houses that may have already come before you, and certainly I am aware of one or two, when the houses that are now zoned TCD go before you and request a significant addition they too will require a variance from you. So, we are asking all the additional uses within the TCD to be restricted to their current use. They are allowed to continue to operate as a residence, they are allowed to continue to operate in their current form, but the idea is that eventually that person would move on. They would vacate that premise. It would be absorbed in the TCD. Much the same way in zoning a lot of it starts out at agricultural uses, that was once a farm land, and it is then rezoned for residences. In this case now it has been rezoned for a commercial. The idea is that it ages these uses would disappear over time and that the intended purpose in the Master Plan and in the zoning that would be enforced. I don't know if your council wants to add anything to that.

Donna Vozar: I would be happy to. That is one of the reasons why we have in our Code 1286.06 "Extention Prohibit". It actually is intended that at some point the nonconformity will cease to exist. That life span is different depending on what the use is, but at some point it will end. That is why they are here for a variance. Obviously, it is prohibited under our Code. Because it is an extension of a use variance they must meet the criteria that is under 1268.08(e)(2) which requires them to establish by clear and convincing evidence all the criteria under section a,b,c,d,e, and that they are suffering unnecessary hardship if strict compliance with the terms of our Code are required. Hopefully that answers that question.

Dan Kasaris: Mr. Chairman.

Neil Price: Dan.

Dan Kasaris: One quick question. Are you offering the photographs and diagrams as exhibits for us to consider?

Mr. Coyne: Yes we can do that and have those reproduced as well. If I could follow up to Mr. Caraballo's comments. At the end of the day these will be here for another thirty years if there is no resolution. That is the end of it. These will be here indefinitely. They are in excellent condition and will be maintained. That is the situation we are placed and is why we were working so very hard to address these other things. I heard, and certainly respect Mr. Kelly's comments, but I was unaware that this was going to receive as unfavorable position on trying to reach out to address some of the City's needs.

Mr. Karmazin: Mr. Kelly's has a response?

Chairman Price: You do a good job.

Laughter from the audience.

Mr. Kelly: Mr. Chairman if I might. Mr. Coyne respectfully may have been unaware of the position the City was taking on this matter but I'm sure that if we reflect on our conversations in the past he would acknowledge that we've never given false encouragement and we haven't. That is number one. Number two, I want to point out to the Board of Zoning Appeals, that the Master Plan to which many of us in this room made some contribution one way or another, was a look fifty years into the future. That was the commission that the Master Plan task force was given. So, while the radio towers you may be looking at thirty years on their lease or whatever they claim they have, the Master Plan was looking at fifty. So, in terms of the distance and the time frame that ought to be applied we ask you to give that some thought and consideration as well. The community in its wisdom was looking beyond the life of those towers to what proper use ought to be made of that property. Thank you.

Chairman Price: Any more questions?

Paula Recker: Mr. Chairman I'm ready to vote.

Chairman Price: Opinions?

Dan Kasaris: Mr. Chairman.

Chairman Price: Dan.

Dan Kasaris: We are here for a use variance. As you are well aware we have a Code that we have to follow. The Code was adopted by our City, this particular section, in the early seventies and amended in 1998. We can't alter the Code. We can't modify the Code. We are not a legislative body. We are an administrative Board. We are a quasi judicial Board. I think we have a good business here. Made up of good people who hopefully

will continue to be a good partner in the community regardless of what happens here tonight. They presented some great ideas. In my mind those ideas do not relate to the reason that we are here. We're here to decide whether or not this nonconforming use should be extended. In considering that we have to look at five factors and all these factors have to be met. I turn my attention to 1264.08(e)(2)A, no economically viable use of the property. Well, we don't have that. We have an economical viable use of the property. We have the current radio towers that are on the property. We have a radio station that is using these towers to operate. I turn my attention to subsection D, granting of the variance will be contrary to the general purpose and intent and objectives of the zoning code and the Master Plan. As Mr. Jordan has indicated, we have a Master Plan. He indicated why we have a Master Plan. What went into the Master Plan. What the Master Plan is for. I do think that the variance sought is the minimum. It is a minimum type variance. I also do not believe that there is any materially detrimental problems to the public welfare or injurious to the property owner or to the neighbors. However, given the fact that all five of these requirements have to be met, and in my mind two of them are not met, one doesn't apply, subsection B, I will be voting against the variance. I will be voting no. Thank you.

Mr. Karmazin: Mr. Chairman may I speak?

Chairman Price: No we are done with the Public Hearing.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: I too will be voting no. I agree with Mr. Kasaris in regards to (2)A. But I'm more specifically, and worked very, very hard as a member of the Master Plan Task Force, so I really understand what the Master Plan is for and what the Master Plan was intended to do for North Royalton. I do not intend, hopefully, with which whatever means that I can help this City, that that Master Plan will continue to be followed. So, unfortunately, and I do appreciate the time that the applicant and his attorneys have brought forth. It was extremely interesting and well put, and well researched, however, I have to stand on the Code. I think that in this particular case the nonconforming use has can not go forward or be extended. As I said before, the Master Plan is God in my opinion. So, I will be voting no.

Mr. Coyne: Mr. Chairman is it possible to request that tabling until we address the conditions, because it is apparent that the lease was not distributed to the Board before the meeting and we would like to have some of those items, if possible, reviewed by the administration in more detail, it that is possible?

Chairman Price: We are here to discuss a variance for two additional radio towers. Not soccer fields. Not other enhancements, that may or may not, take place in the future. The variance is a request for two additional radio towers.

Mr. Karmazin: This is the first time we had the opportunity to hear the City's thoughts in any way on this application.

Paula Recker: My other thing, Mr. Chairman, is remember they were here before us under a different Code. They requested to be tabled and then they withdrew, and now they are back again. So, really you have been here three times.

Mr. Karmazin: Upon the City's request. Everything that has happened.

Paula Recker: I don't know whose request it was but you were on my agenda.

Mr. Karmazin: And this was the first time that we were able to hear the City's thoughts on our application.

Chairman Price: All of us have to live with zoning restrictions. Things change, age, whatever the case may be. And I believe that the applicant has come with the full knowledge that this area is not zoned for towers. Not an allowed main use. And the property as used is beneficial by the owners without a variance. Without going through these other factors that the Board is required to consider, you haven't met them. My vote is going to be no.

John Ranucci: Mr. Chairman.

Chairman Price: John.

John Ranucci: Unfortunately the situation is what it is. I'm a small business owner and I can sympathize with the fact that you have a property and you would like to take full advantage of it, but in this situation rules are rules, and zoning codes are zoning codes. And as my co council members have stated, I see three of the five criteria's are not met. We got a viable property that you have a current business on. It is contrary to the Master Plan, and as you stated there is other options. If it is a viable option for you could contact the school board yourself and purchase that land and put towers on them. I don't know what that cost is.

Mr. Karmazin: We certainly won't be doing that, but thank you for the offer.

John Ranucci: It's an option. So, based on that, like I said I sympathize with you, but rules are rules. I will be voting against this request also.

Mr. Karmazin: Thank you.

Tony Caraballo: Mr. Chairman. I'm going to have to concur with my fellow Board Members here. I also have to consider the future of the Master Plan of the City of North Royalton. I have some concerns in regards to allowing this for a future use for the City. Two of the three criteria haven't been met so, I will concur and be voting against this also.

Chairman Price: Consensus Donna,

Donna Vojar: Mr. Chairman. I would submit the proposed findings of fact and conclusions of law for the Boards consideration and approval. The applicant was here and testified on behalf of his application and was represented by council who argued his case on behalf of granting the variance. In addition to that various property owners and neighbors were also here, and some obviously objected. There was one of the residents appeared here was requesting approval of the variance. The City of North Royalton's Planning or Community Development Director appeared and testified and was represented by the Law Director Thomas Kelly. After which the Board took in all the evidence and applied the evidence that was submitted to them, all the documents and sworn testimony was considered by the Board. The Board thereafter applied the factors under 1264.08(e)(2) and determined that subsection A, that the property was economically viable without granting of the variance. And further found that there was sufficient evidence that this variance if granted would be contrary to the general purpose of the Master Plan. The Board did consider the other factors under 1264.08(e)(2), and did not find nevertheless found that the applicant has failed to demonstrate the unnecessary hardship and therefore has determined that the variance should be denied. In addition I would request that the Board ask the secretary to issue a written decision to the applicant. Other than that if the Board has something else they want to add to those findings of fact and conclusions of law. Any changes, modifications, if not, the Board can vote.

Chairman Price: Any changes or additions?

Mr. Karmazin: If there is an inaccuracy in what you just read is that something that I'm expected to correct?

Donna Vozar: Actually it's not for you to correct. It is the Board's findings of fact and conclusions of law. It is their determination and they can make any whatever changes or modifications to that based on their findings. Other than that, Mr. Chairman, I submit it to the Board for their determination.

Chairman Price: Call the roll.

Dan Kasaris: No.
Paula Recker: No.
Tony Caraballo: No.
John Ranucci: No.
Chairman Price: No.

Ayes – none. Nays – all.
Variance denied. (0-5)

Applause from the audience.

Mr. Karmazin: Thank you all very much. I appreciate all your help. Mr. Kelly, Mr. Jordan, and the entire Board. It has been a pleasure to work with you. Thank you. And the residents as well.

The Board of Zoning Appeals Meeting adjourned at 10:38 pm.

Approved: _____

Date: _____

Attest: _____