

**VILLAGE OF SOUTH LEBANON
REGULAR MEETING MINUTES
DECEMBER 6, 2018
6:30 P.M.**

1. Mayor Smith opened the meeting at 6:30 p.m. with the Pledge.
2. ATTENDANCE

Linda Allen – Present	Bryan Corcoran - Present
Jim Boerio – Present	Bill Madison – Present
Linda Burke – Present	Rolin Spicer - Present

3. Mayor Smith opened the floor to the public.

Sue Girolami 5280 Fredericks Stand – Ms. Girolami wanted to ask if Solicitor Revelson has a response to the questions proposed at the last meeting regarding the Zoar Road gate. Mayor Smith stated that Solicitor Revelson will address the questions later in the meeting when he gives his report. Ms. Girolami stated that legally this is a very gray area and no state has a clear standard.

Dr. Scott Doughman 260 E Forrest Avenue – Mr. Doughman read a five page letter and provided a copy to Council, which accompanies this set of minutes.

In summary, Mr. Doughman stated that zoning variances should be taken very seriously and should be hard to get. Variances should be detailed and specific as necessary and not generalized. Mr. Doughman stated his availability to research and give zoning advice to anyone interested.

Mayor Smith closed the floor to the public.

4. RESOLUTION 2018-70 FIRST READING: A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE AN ADDENDUM TO THE AGREEMENT WITH WARREN COUNTY SHERIFF AND THE WARREN COUNTY BOARD OF COMMISSIONERS FOR POLICE PROTECTION IN THE VILLAGE OF SOUTH LEBANON FOR THE CALENDAR YEAR 2019

Mayor Smith asked Council to do this resolution as an emergency. This is for police protection through a contract with the Warren County Sheriff's Office. We would like to have this effective immediately instead of waiting 30 days. Allen asked about the comparison of the health benefit amount because it went up substantially. Mayor Smith stated that the deputy who left our jurisdiction had a single insurance plan and the deputy who replaced him has a family insurance

plan. Spicer stated he thought he remembered approving an additional deputy earlier in the year. Mayor Smith said no.

RESOLUTION 2018-70 A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE AN ADDENDUM TO THE AGREEMENT WITH WARREN COUNTY SHERIFF AND THE WARREN COUNTY BOARD OF COMMISSIONERS FOR POLICE PROTECTION IN THE VILLAGE OF SOUTH LEBANON FOR THE CALENDAR YEAR 2019, AND DECLARING AN EMERGENCY

A motion to waive the three reading rule made by Madison, seconded by Allen, all yeas. By title only, Resolution 2018-70, a motion to adopt made by Madison, seconded by Boerio, all yeas.

5. RESOLUTION 2018-71 A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL OFFICER TO EXECUTE A FISCAL YEAR 2019 (FY2019) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION IN COOPERATION WITH THE UNION TOWNSHIP BOARD OF TRUSTEES AND FURTHER AUTHORIZING THE VILLAGE ADMINISTRATOR TO PROCESS THE APPLICATION WITHOUT DELAY TO THE WARREN COUNTY OFFICE OF GRANTS ADMINISTRATION, AND DECLARING AN EMERGENCY

A motion to waive the three reading rule made by Boerio, seconded by Corcoran, all yeas. By title only, Resolution 2018-71, a motion to adopt made by Boerio, seconded by Madison, all yeas.

6. RESOLUTION 2018-72 A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE AN AGREEMENT WITH O.R. COLAN ASSOCIATES, LLC, FOR APPRAISAL SERVICES FOR RIGHT-OF-WAY ACQUISITION FOR THE SANITARY SEWER IMPROVEMENT PROJECT IN THE VILLAGE OF SOUTH LEBANON, AND DECLARING AN EMERGENCY

Allen asked Mayor Smith if this resolution needs to be an emergency and confirmed that the location is by the bike trail. Administrator Haddix said the location is from Zoar Road down to the treatment plant. The Engineer is waiting on the right-of-way acquisition, which is the reason for the emergency.

A motion to waive the three reading rule made by Madison, seconded by Spicer, all yeas. Resolution 2018-72, a motion to adopt made by Madison, seconded Corcoran, all yeas.

7. RESOLUTION 2018-73 A RESOLUTION APPROVING OEDER & SONS GARAGE, INC. BID FOR THE EXCHANGE OF REAL PROPERTY, AND DECLARING AN EMERGENCY

Haddix stated we have the 5.001-acre parcel on Turtlecreek Road that we put out to bid for sale back in the summer. Oeder & Sons Garage Inc. was the only bidder. The bid consisted of two options and Council chose to go ahead with the option to transfer 3-acres of property located along Mason-Morrow-Millgrove Road for the 5.001-acres on Turtlecreek Road. This Resolution formalizes that bid. Solicitor Revelson said that Council already approved the bid back in August. The survey took longer than expected and we realized that this should be formalized in a resolution versus a motion only.

A motion to waive the three reading rule made by Corcoran, seconded by Burke.
Vote: 4 – yeas (Boerio, Corcoran, Madison, Spicer) 2 – nay (Allen, Burke)

Mayor Smith stated that this will be the first reading.

**RESOLUTION 2018-73 FIRST READING: A RESOLUTION APPROVING
OEDER & SONS GARAGE, INC. BID FOR THE EXCHANGE OF REAL
PROPERTY**

Allen stated for the record the reason she voted no is due to the Mineral Extraction and Processing (MEP) rezoning because we don't need a gravel pit. Madison stated for the record, when we take ownership of this it will substantially reduce the lot that they planned on having as a gravel pit. By us taking this property, it will render the property unusable for Mineral Extraction and Processing (MEP). Allen said that is not guaranteed. Mayor Smith said it would be guaranteed because the zoning would be changed from Mineral Extraction to Industrial and the piece Oeder & Sons Garage would receive is in the center of the gravel pit. Burke stated that she changed her vote because this is not an emergency just for someone's tax purposes. She thinks this needs to have due diligence.

**8. RESOLUTION 2018-74 A RESOLUTION APPROVING AND AUTHORIZING
THE FISCAL OFFICER TO TRANSFER FUNDS FOR FISCAL YEAR 2018,
AND DECLARING AN EMERGENCY**

A motion to waive the three reading rule made by Allen, seconded by Madison, all yeas. Resolution 2018-74, a motion to adopt made by Boerio, seconded by Madison, all yeas.

**9. Mayor Smith wanted to clarify for audience members on Resolution 2018-73.
Oeder & Sons own property in the Village on Mason-Morrow-Millgrove that is
Mineral Extraction and Processing (MEP) and we are exchanging that property
for a piece of property that the Village owns on Turtlecreek Road that is in the
center of the gravel pit. The property on Mason-Morrow-Millgrove-Road will
change from Mineral Extraction and Processing and the plan is to build a**

maintenance facility. Madison added that the Oeder Family was gracious to donate the 1-acre property.

10. AUTHORIZATION FOR FISCAL OFFICER TO SEND AN AMENDED CERTIFICATE TO THE WARREN COUNTY AUDITOR

A motion made by Boerio, seconded by Spicer, all yeas.

11. ORDINANCE 2018-21 AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE VILLAGE OF SOUTH LEBANON, STATE OF OHIO, FOR THE PERIOD OF JANUARY 1, 2018 THROUGH DECEMBER 31, 2018, AND DECLARING AN EMERGENCY

Fiscal Officer Armstrong stated that she made an adjustment on the ordinance due to a transposition in the (TIF) section. Mayor Smith said the ordinance is corrected.

A motion to waive the three reading rule made by Madison, seconded by Burke, all yeas. By title only, Ordinance 2018-21, a motion to adopt made by Madison, seconded by Allen, all yeas.

12. Mayor Smith stated that there is another project taking place concerning Oeder & Sons. They are allowing us access through their property to run a sewer trunk for the new SiteWORX facility, which will be built off of I-71. Mayor Smith said if there is no objection by Council that he would like to request a motion to draft paperwork to allow a water and sewer tap for allowing us access through their property.

A motion made by Allen, seconded by Madison, all yeas.

13. ORDINANCE 2018-20 SECOND READING: AN ORDINANCE APPROVING ZONING MAP AMENDMENT UPON COMPLETION OF ANNEXATION AND APPROVING THE PLANNED UNIT DEVELOPMENT (PUD) PRELIMINARY DEVELOPMENT PLAN AT 727 GRANDIN ROAD CONTAINED IN THE RIVER CORRIDOR ANNEXATION IN ACCORDANCE WITH SECTION 15.7.13 AND SECTION 15.14.15 OF THE VILLAGE ZONING REGULATIONS.

14. AUTHORIZATION OF INVOICES

A motion made by Boerio, seconded by Allen, all yeas.

15. APPROVAL OF MEETING MINUTES PENDING NO CORRECTIONS OR ADDITIONS:

Regular Meeting – August 2, 2018. A motion made by Burke, seconded by Corcoran, all yeas.

Workshop Meeting – August 2, 2018. A motion made by Boerio, seconded by Allen, all yeas.

Regular Meeting – August 16, 2018. A motion made by Burke, seconded by Corcoran, all yeas.

Regular Meeting – September 6, 2018. A motion made by Corcoran, seconded by Burke, all yeas.

Workshop Meeting – September 6, 2018. A motion made by Burke, seconded by Corcoran, all yeas.

Regular Meeting – September 20, 2018. A motion made by Allen, seconded by Boerio, all yeas.

16. Mayor Smith reported that plans have been submitted from Waffle House and Bridgestone/Firestone Tire, both of which will be located on State Route 48 in front of Kohls.
17. Mayor Smith asked Mr. Norvel, Primrose School, for an update. Mr. Norvel, owner, stated that they hope to be open by year-end.
18. Mayor Smith stated that he hopes to have the first Council Meeting of 2019 in the new administration building. We will have an open house and later a building dedication.
19. Mayor Smith stated that our Public Works Employee, Rodney Wheelen, has completed his 6-month probationary period. He came to us from the Warren County Water Department and has done an excellent job. Mayor Smith recommended that Council to approve a 3% pay increase.

A motion made by Madison, seconded by Burke, all yeas.
20. Haddix said that the Warren County Municipal League meeting and dinner is next Wednesday.
21. Mayor Smith mentioned that we had several residents pass away this year and some he knew personally. Beulah Doughman, who preferred to be called Boots, passed away at the age of 94. She was a previous Assistant Fiscal Officer for the Village.
22. Haddix reported the streets and water/sewer construction of the final phase of Shepherd's Crossing Subdivision are nearly complete.

23. Haddix said he provided to Council a memo about the Stonelake Subdivision parking situation. The Village received a letter from the Stonelake HOA requesting assistance to enforce the on-street parking rules. Haddix said that they were private streets up to late last year when The Village accepted the streets from the Stonelake HOA. After consulting with Sergeant Boylan and Hamilton Township Fire Department, on-street parking is not permitted due to the width of the streets. We will be putting up signs stating no on-street parking.

24. Solicitor Revelson informed the audience members who are here for the gate issue that his role as Solicitor is to advise Council and provide his opinion. Solicitor Revelson stated that two opinions were previously rendered, and this Council voted to make those documents public. One opinion was provided by Bruce McGary, a prior Solicitor, on April 12, 2013 and it is available for public inspection. On October 17, 2018, Solicitor Revelson said he provided an update on this matter at the request of Council, which is also available to the public. Solicitor Revelson said at the last regular meeting he was given material by Ms. Girolami to review. The documents provided were out-of-state materials and he concluded they do not have any application to Ohio. Solicitor Revelson said that he read the materials and tried to apply the out-of-state principal to Ohio. There is not any code section in Ohio law that covers this exactly. There are a couple of statutes that discuss public access to roads but they are vague. Solicitor Revelson said the only case law he could find related to a complete blocking of a road and the neighboring municipality being upset that it was blocked. This is not applicable to this situation because this situation is South Lebanon residents unhappy with the road being restricted to certain people. The next section deals with a "take". If you "take" someone's property, you have to give him or her compensation. An example would be if you build a road through someone's property, you have to compensate them for it. This is not really the case here but if you restrict access to someone's property that might be called a "take" and you would need to compensate them for it. You could apply this here but it is not a classic example of this situation. It is not a property owner's only access. Solicitor Revelson phrased it as "inconvenience" is okay but "denial" is not okay. If there is another way around for access, then chances are it is going to be acceptable according to what the law says. Solicitor Revelson said that he does not see anything wrong with what Council did back in 2004/2005 and his opinion hasn't changed on the issue. Burke asked for clarification. Solicitor Revelson said Council's actions in vacating that portion of the road and approving the plat were not incorrect fourteen or fifteen years ago.

Larry Vordemesche, 5240 Grants Settlement – Mr. Vordemesche feels this is denial of our access to a public road and does not understand how someone can do this. He said it sounds like the only thing that is going to stop this is a lawsuit. There are a lot of unhappy people about this and it is going to show in November if nothing is done. We need your help.

Barbara Robinson, 5220 Grants Grove – Ms. Robinson asked if an explanation could be given about what Council passed back in 2004/2005. Solicitor Revelson stated that it is best described in Mr. McGary's opinion back in 2013. Ms. Robinson asked if Solicitor Revelson could summarize. Solicitor Revelson said he wasn't sure of the exact date that the plat was approved, but the road previously had a 90-degree turn and when the subdivision went in the road was corrected to make it a curve. The 90-degree turn was vacated and Zoar Road was smoothed out. The plat and discussion if the gate would go in occurred around the same time. Council approved the final plat and the final plat references the declarations stating this is subject to what the Homestead declarations are. The Homestead declarations contain provisions for the gate.

Kevin Keefe, 5236 Grants Settlement – Mr. Keefe stated that he has lived in South Lebanon for five years and is excited to see the growth. He is concerned about his tax dollars going to support a neighborhood that he doesn't have access to.

Paul Forest, 5166 Homestead Drive – Mr. Forest said that he has lived on Homestead Drive for about eight years. He stated that he understands the history behind the gate but the whole community isn't just Homestead, Vista Pointe, Fredericks Stand, and Grants Settlement. It is all one community. Mr. Forest said that he understands the rationale for the gate because construction vehicles go through there and it is used as a cut through but he feels that people on the other side of the gate should have access through it. Mr. Forest said that he has witnessed on two separate occasions traffic backing up on Zoar Road because someone didn't have access rights through the gate and that this will create a safety issue.

Debbie Casper, 413 Vista Ridge Drive – Ms. Casper stated that she understands everyone's concern. Ms. Casper said when they purchased their house that was initially to be a dead end before The Homestead Subdivision. The Developers of the two subdivisions came to a legal agreement and the property that the gate is located on is private property. Ms. Casper said you need to understand what it is like to live on Vista Ridge Drive and the number of cars that cut through our subdivision. Ms. Casper said the gate wasn't meant to close people out. The original intention was for that street to be a dead end. It is unfortunate that it took so many years for this to happen and people got used to coming through the subdivision but safety of our children is important, too.

Rosie Schoenhof, 654 Fredericks Pass – Ms. Schoenhof said her major concern, in addition to the inconvenience of no longer having direct access to a family member in Stonebrook, is public safety. Ms. Schoenhof said that she has attempted to get information from Mr. Haddix and Mr. Smith for eight weeks. Ms. Schoenhof wants to know that our emergency services have tested the gate and how long will it take them to respond. Aside from the legality, Ms. Schoenhof wants to know that she is safe if we have an emergency in our

community but she has not received that answer after four unanswered emails. Ms. Schoenhofstated if Vista Pointe and Homestead don't want to allow people to go through the subdivision from other neighborhoods that they provide their senior citizen neighbors with access. She would like a thorough review of our emergency response to our neighborhoods and scenarios reviewed that can guarantee the people of Fredericks Stand will have emergency support in the time that we need without it taking extra time. Boerio stated that all emergency response entities are supposed to have access through the gate. Sergeant Boylan stated he and his deputies have clickers to pass through the gate. Boerio said all EMS personnel should have access but he will confirm this tomorrow morning.

Mark Merkel, 234 Vista Ridge Drive – Mr. Merkel stated when he bought his home ten years ago, there was a construction gate in place until the permanent gate was finished by the developer and he understood this. Mr. Merkel said that the residents of Vista Ridge were told one thing, the documents support what we were told, and we bought our houses based upon that. Mr. Merkel agreed with Ms. Schoenhofstated that the traffic on Zoar Road at night is scary but feels bringing the Zoar Road traffic through the subdivision is not the solution. If there is a problem with the secondary road, maybe we should look at addressing Zoar Road and not changing what we were told as homeowners that we would have a closed gate subdivision

Debbie Knighten, 658 Fredericks Pass - Ms. Knighten stated now that the gate is operational that 99.9% of the homeowners in the subdivision do not stop at one stop sign. Ms. Knighten also wanted to know how school buses, mail carriers, and the garbage system work and if it affects their time schedule. She also commented that Zoar Road has minimal lighting versus the subdivision. In addition, there is a subdivision in Hamilton Township, Heritage Bluffs, that is a gated community but their gates would be open certain hours of the day and then closed. Mayor Smith asked what hours the gates were open. Ms. Knighten said she knew that during morning and evening rush hour the gates were open.

Jim Woeste, 674 Fredericks Pass – Mr. Woeste said that he is an avid bicycle rider. He said when he does not go to the bike path that he has a 15-mile route which winds through that subdivision and does this all year. Buena Vista (the road that goes through from the gate to the next subdivisionzz) has three stop signs. Mr. Woeste said you couldn't get your car speed up past 25-mph from one stop sign to the next so the individual who said that cars go through there at 60 mph is not correct. There is no reason for them to be concerned for their children due to the traffic. Mr. Woeste rides through the subdivision once or twice daily and does not see the safety issue. It is a public street and we should have access to it.

Cindy Merkel, 234 Vista Ridge – Ms. Merkel said there are a lot of children on our streets in the subdivision and to say otherwise is incorrect.

Tom Kelly, 5276 Fredericks Stand – Mr. Kelly suggested that remote controls for the gate be made available for sale to the adjoining subdivisions

Sue Girolami 5280 Fredericks Stand – Ms. Girolami stated if you research gated communities the majority are private roads. Ms. Girolami suggested looking at an alternative. If the issue is the speed of traffic, look at speed bumps.

Debby Vordemeshe, 5240 Grants Settlement – Ms. Vordemeshe asked how the decision was made and if it included both Vista Pointe and Homestead. Haddix said the Village received notification from Vista Pointe HOA. The actual agreement with the gate installation was private and between the two HOA's.

Tom Brown, 5158 Homestead Drive – Mr. Brown stated that we were not informed what our HOA Trustees were doing. Last night at the HOA meeting, we received an explanation from our Trustees that a business decision was made under threat of lawsuits so our Trustees decided to help Vista Pointe to allow the gate to come in and fund it to avoid a possible large expenditure. That is the only explanation the Homestead residents received. Mayor Smith clarified that this Council never took action regarding litigation.

William Gore, 667 Grants Pass – Mr. Gore stated that his property is almost directly across from the gate and he explained the inconvenience of making the gate operational. He does not like the idea of paying taxes for streets that he can't use.

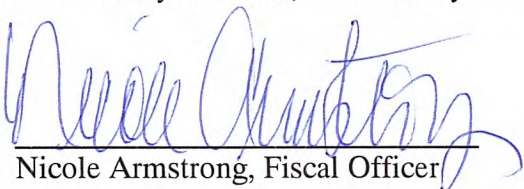
Dan Swihart, 5266 Frederick Stand – Mr. Swihart asked Mayor Smith how long Cochran Road was a public road. Cochran was the original property of the Ritchey Family and they either donated it or sold it for a small amount to the County. Mr. Swihart wanted to know when it went from a public road to a private one. The road was changed when they put in the development. Haddix said Cochran Road was totally vacated in 2004 or 2005. Mayor Smith said the lower section was vacated at that time. Mr. Swihart asked Mayor Smith if the lower portion is now Homestead. Mayor Smith said yes.

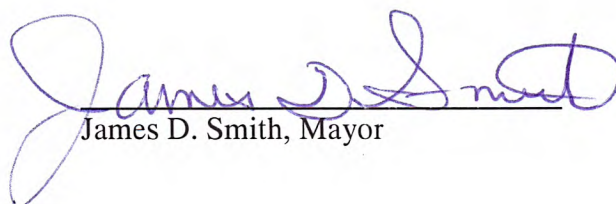
Gail Kelly, 5276 Fredericks Stand – Ms. Kelly stated that it was mentioned about having a new access road and extending Emerald down to make it safer. If you want to understand the makeup of community where Emerald Drive is, there are more small children in that community than any other community around. We have made it less safe for them by opening that road up.

Denny Begue, 676 Fredericks Pass – Mr. Begue said we need to come up with a solution that fits the communities needs and not just Vista Pointe and Grants and Fredericks Pass. Mr. Begue let Council know when we say safety it is more than Fire and Police when we look at our aging community.

Peggy Tura, 5210 Grants Settlement – Ms. Tura said she is a working person who leaves early each day to take the park & ride from Kings Island to downtown. Now that the gate is closed, when she travels Zoar Road she never knows if there is going to be a tree down or utility pole which would cause her to turn around and take Zoar Road all the way back out to 22 & 3 to State Route 48, and turn right on Mason-Morrow-Millgrove Road causing her to miss the bus for her job. Ms. Tura said she understands about the children in the neighborhood and we want them to be safe. There is concern on both sides and all we are asking for is a way for those of us who need to get through there can.

25. Madison said he has asked several times for lighting on Zoar Road and listening tonight it drives it home and it needs to be done. Madison stated he has heard tonight about wanting the subdivisions to come together to resolve this matter. This Council does not have the authority to referee because these are private business entities and we have boundaries set by the Ohio Revised Code (ORC). Madison thanked everyone who came to the meeting and voiced their opinion. We hear you. Madison said that he will be having discussions with Solicitor Revelson to see if it needs relooked and is it serving the community and protecting all of our citizens.
26. Burke thanked everyone for coming out tonight and letting us hear your feelings and opinions. We are here to listen and make things better for our community.
27. Allen thanked everyone for his or her comments and concerns.
28. Boerio thanked everyone for being here tonight. This is clearly not a simple issue. It is a difficult issue and it has been around for almost 15 years. We need to find our way through this problem as a community and as adults.
29. Mayor Smith asked for a motion to adjourn the meeting at 8:31 p.m. A motion made by Madison, seconded by Burke, all yeas.


Nicole Armstrong, Fiscal Officer


James D. Smith, Mayor

12/6/2018

From Scott Doughman

Developments and subdivisions are likely to continue over time in South Lebanon. Because of my research and regulatory skills, more residents and businesses are asking me informally to give voluntary attention to procedures, to review preliminary plans, to make statements and to ask questions. This is, in my interpretation, an invitation to give a regulatory opinion as part of this public process. This does not mean that I represent anyone else, nor is the opinion formalized. It is submitted for your respectful consideration.

First, clearly all residents, companies and non-profits are entities, individually and/or collectively, and all fall under the authority and jurisdiction of the Corporation of South Lebanon.

I am submitting these statements in writing also because the Council minutes have unfairly failed to, to record the individual public statements. Resident statements should be respected as equal in value before this council, especially in context to relevant public discussion and should not be abridged. To void these statements in the text of the minutes is a violation of the public trust, in my opinion. It is easy to

include these speaker statements sufficiently as we are the taxpayers and the residents are who are being served, and we are not to be omitted and to be made silent in our own minutes. They are not yours they are ours, together

I must ask, who is currently on the Planning Commission and what are their so called qualifications, because questions of what might be confused as inconsistencies with respect to the intent of our ordinances and zoning rules is at stake.

Because of the presentation of the current so called zoning variances of a subdivision all being lumped into one line-item applicable to all plots and subsections within its plans, it would appear this is inconsistent with proper zoning practices, and this would mean that a broad rezoning variance applied to all proposed properties within one development bypasses what is normally the jurisdiction of an ordinance.

I am willing, able and experienced in challenging large corporate bodies, local governments and can review standard business practices. My intent is not to oppose, but to correct.

For example, an umpire sometimes conducts a video replay, to review and either upholds or changes a call.

Similarly, I am willing and interested in discussing any and all past, present and future zoning petitions and proposals, if necessary, or if asked to do so on a case by case basis, to help promote what is called substantial justice.

As a resident with an opinion, this statement today may suffice as relevant discussion on any future challenge. This statement today is a sufficient prerequisite to challenge any and all entities, regardless of size or aggressiveness, regardless of experience or financial means, basically by just using my own skill sets for whatever and whomever I wish.

Consider that zoning issues are NOT often overlooked, are often long remembered, and since votes do count, please note that residential and commercial real estate transactions may not have the right to do whatever is the wish-list of the landlord, and especially in that context.

This is the time, now, here and now, to speak and to let all residents know I wish for their substantial justice. Every municipality enforces their own zoning regulations and failure to strictly comply with these rules can lead to lengthy and costly litigation.

Example, a village dispute going back more than 10 years for a "private nuisance". Would this be

excessive? Is it better to ask for forgiveness than permission? Is it a true necessary hardship? These are zoning considerations.

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Does a broad brush approach have true legal merit if challenged?

Rarely are there clear answers for these questions. Seeking those answers is the hard task. The applicant must present competency, material, and substantial evidence that they meet all zoning variance standards, not just some and not for convenience or for favor. Do consider the issues on a case-by-case basis, not in lump, which is the jurisdiction of an ordinance. Weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the specific owner.

However, advanced plans and preliminary plans are just paper and process designs, and correcting these

corrects a self-induced leading substantial hardship that propagates wrongly into a broad zoning policy that is not proper. So it is necessary to call for a redesign. If 10% of properties need a variance, one should not adjust all 100% of properties to fit one plan, that is for an ordinance. Plans may yet be redesigned to avoid self-inflicted hardship.

Unnecessary hardship resulting from the strict application of an ordinance, from conditions that are peculiar to the property, that where not self-created means the applicant must show that the variance will be consistent with the intent of the existing ordinances, will improve public safety and will achieve substantial justice. Not for convenience. Variances should be hard to get. One shall otherwise prohibit any such use variances other than on a case by case basis.

A variance is not a free pass from regulation, or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince that the property meets all of the statutory standards for a variance. Merely showing some hardship, and not all hardship, is insufficient.