

Mr. Rosen wished the applicant good luck.

4. Tentative and Final Preliminary Plat Recommendations – (City File No. 80-976.4)

Project: Avon Lakes Village Subdivision No. 4, a 27-lot subdivision on approximately 8.7 acres
Request: Tree Removal Permit
Natural Features Setback Modification
Tentative Preliminary Plat Recommendation
Final Preliminary Plat Recommendation
Location: South of Mackwood Drive and West of Dequindre
Parcel: Part of 15-25-276-037, zoned R-4, One Family Residential District
Applicant: Hamlin Associates, Inc.
5877 Livernois, Suite 103
Troy, MI 48098

(Reference: Staff Report prepared by Deborah Millhouse, dated November 15, 2002 has been placed on file and by reference becomes part of the record hereof.)

Present for the applicant were Dale Garrett of Hamlin Associates, Inc., and Joel Garrett, President of Hamlin Associates, Inc., and Michael Mayotte, Professional Engineering Associates.

Mr. D. Garrett stated that this plat was started in 1987 and they have been working through issues since that time. The last approval received was in 1995, which was good for two years, and in 1996 they submitted the construction plans, which took about three years to get approved. When they requested the Land Improvement Permit, they discovered that the plat had lapsed. They set about getting the plat re-approved and have been working to meet and satisfy all the requirements since then. They are now ready to seek approval.

Ms. Millhouse commented that things are never easy, and this was a project that has actually been in process since 1980 and was to be developed in four Phases. Three of the four maintained approvals throughout the process, but the approvals did lapse for Phase four. The applicants had to start over again with the Tentative and Final Plat approvals. In the interim, the Tree Conservation Ordinance and Wetlands and Watercourse Ordinance took effect and this is where it becomes rather interesting. Ms. Millhouse advised that the Tree Conservation Ordinance requires 37% of regulated trees to be preserved on site and that the applicant appealed to the City Council last month and was granted a variance of 12% from that requirement. This dropped the percent to be saved to 25%. The other issue deals with the Wetland and Watercourse protection in the Ordinance. She explained that Dr. Niswander, the City's wetland consultant was in attendance because he had been involved in this project over the past year. She stated that the Final Preliminary Plat for Phase four was approved by City Council in 1993 with 32 lots, which was in effect for two years. She said that the proposal before the Commissioners tonight shows 27 lots, and within those 27 lots is a restoration plan for wetlands and a natural features setback. This man-made lake was a gravel pit, and over the course of time some wetland vegetation started to develop along the shoreline, in the area of Avon Lakes Village No. 4. When this project came back to life in about 1999, it was determined by the City's previous wetland consultant, J & L Consulting, that there were City regulated wetlands along the shoreline. During the technical review of the proposed plat, the applicant did receive a permit from the MDEQ to do some dredging and grading along the shoreline. Because of that dredging, the regulated wetlands disappeared. They then began a process with the City, Dr. Niswander and the applicant's wetland consultant to come up with an amenable restoration plan for the wetlands. Associated with that restoration is a natural features setback and Staff does appreciate that this natural features setback becomes, in essence, the rear of the building envelopes along the shoreline. She pointed out that the applicant is requesting a Natural Features Setback Modification to allow that natural features setback to be maintained in lawn. Typically, a natural features setback is an

open, natural area that is protection for the regulated wetlands. She turned the discussion over to Dr. Niswander to explain the specifics of how, in his opinion, this Modification does provide meaningful protection for the wetland as it is restored. She noted that there is also a floodplain issue that will be addressed by the applicant later.

Dr. Niswander stated that Ms. Millhouse did a very good job of summarizing some of the issues. He felt it was important to consider the resource they are looking at. The goal of the restoration plan is essentially to protect the lake itself, which is a gravel pit. He said that when he was asked to look at this area, one confounding issue was that the wetland delineation was completed by J&L and then the shoreline had been re-graded with the MDEQ Permit approval. The Permit was for an Inland Lake and Stream Permit, not a Wetland Permit, and the DEQ stated that there were not DEQ regulated wetlands along the shoreline. He had conflicting information because the J&L letter stated there were 30-120 feet of regulated wetlands, but DEQ stated there were none. He believes J&L had looked at submergent aquatic vegetation to a depth of about six feet and called the regulated wetland from that six-foot depth up to the shoreline. The shoreline itself is a fairly steep bank, so if there were emergent vegetation along the shoreline, it would have been a very narrow strip. Working with the applicant's wetland consultant, he recommended they do a two-foot restoration below the waterline, with submergent vegetation, and an eight-foot strip of emergent vegetation, which would have been similar to what was there prior to the restoration. It was his opinion that the eight-foot strip of emergent vegetation will provide a water quality improvement function that will filter the backyard runoff prior to it entering the lake. The lake currently receives direct runoff from the adjacent properties. In addition, he has requested that at the corner of the lots there be scrub shrub vegetation, providing wildlife habitat along the shoreline. That is not present now on Phases 1-3. There might be one or two lots in those Phases that have both wetland vegetation and somewhat of a buffer. In conclusion, he said that the restoration plan should provide water quality improvement and wildlife habitat that currently is not there, and should restore it to the state it was in prior to the dredging.

Mr. Rosen asked if there were any technical or clarifying questions from the Commissioners. He summarized Dr. Niswander's comments and said that when the project was originally in review, wetlands would not have applied and the Tree Conservation Ordinance (TCO) would not have applied. Since the plat lapsed, the TCO applies, and because wetlands grew in the unattended eastern boundary of the lake, the Wetland Ordinance applies. He commented that the wetlands were there, but now they are not. Dr. Niswander answered that was correct.

Ms. Millhouse said that Mr. Rosen was absolutely correct from the City's perspective. She referenced Dr. Niswander's comments about the fact that the DEQ did not consider the area to have State regulated wetlands. Dr. Niswander said it needed to be clarified that J&L said there were wetlands, but the DEQ said there were none. After he looked at the site, a letter was authored stating that a City wetland violation had occurred. It was after the issuance of that letter that he had correspondence with the DEQ staff member who had issued the Permit. When he questioned that person and said the Permit that was issued was only for Inland Lakes and Streams, he asked if the applicant should have obtained a Wetland Use Permit from the State. This person's opinion was that there were no State regulated wetlands. If it were not a State regulated wetland, it would not be regulated by the City either, in this case. He said that the only cases where there are City regulated wetlands, but not State regulated wetlands, is when there are less than five acres. This is not such a case and there is conflicting information for this case. They pursued and balanced it by saying there may or may not have been City regulated wetlands, but the shoreline had to be restored to provide the maximum natural benefit to the lake. They are trying to make the right decision and determine how the City's Ordinance would apply.

Mr. Rosen asked if the last approved Tentative Preliminary Plat was obtained in 1996. Ms. Millhouse said that the last action by the City relative to a Preliminary Plat for Avon Lakes Village #4 was part of a Final Preliminary Plat approval by City Council in 1993.

Mr. Garrett said that his records show it was extended by City Council in 1995 for two years.

Ms. Millhouse advised that according to the stamping on the plan, it was approved by the City Council on July 7, 1993, but it was not approved by Staff until March 28, 1995. Either way, it expired after two years.

Mr. Rosen asked when the MDEQ Inland Lakes and Streams Permit was issued. Dr. Niswander replied January 29, 2001. Mr. Rosen asked approximately when the lake was dredged. Dr. Niswander thought it would have been in the spring shortly thereafter. Mr. Rosen said the J&L determination was made in April 2000 and he went over the events and dates. He remarked that the plat lapsed, even though the applicant was going through engineering reviews.

Ms. Millhouse said it was her understanding that the Subdivision Ordinance requires that an extension be granted by City Council in any event. She added that there were numerous extensions for this project's other Phases.

Mr. J. Garrett said he wanted the Commissioners to keep in mind that before Hamlin & Associates got the Permit to construct the lake, they were required by the Township to get a plat approval, which necessitated continuing the receipt of plat approvals every two years. It had been the habit of the community to notify a developer when their plat was going to expire so they could request an extension. He said this was true for many communities in which they operate. For some reason, that was not done. They were going back and forth with the Engineering Department mainly over the paving of off-site improvements. When they finally got that resolved and were ready to start work, they were told sorry, the plat has lapsed and they had to start over. They did not knowingly allow that to lapse, it just took about three years to get the Engineering approvals. He said that this was constructed as a lake. He said it pains him when it is called just a gravel pit. It was designed to be a subdivision and they constructed the lake with a Permit from the DEQ and with the approval of the Avon Township community at that time. Mr. Rosen opened the public hearing.

Clifford McKillop, 1831 Mackwood, Rochester Hills, MI Mr. McKillop stated that he was not here to stop progress. He said that he moved here in 1977, and at that time, the property across the street from him was a field, not a gravel pit. He watched the lake being dug, has seen progress and has seen a lot of disappointments. He said that before this project proceeds, he would like to see some consideration for the residents on Mackwood. One issue is the paving of the road. He requested from Steve Dearing, the City's former Traffic Engineer, that a stop sign be placed on Mackwood to slow the traffic. He was initially told there would never be construction traffic on Mackwood but they see it all day long. At 7:30 this morning, there was a gravel truck ripping down the street. At about 8:30 this morning, his neighbor blew down the street at about 60 m.p.h. A stop sign at Mackwood and Gerald would put an end to that. He said that he has requested it, but the City has not put one in. He said that Mr. Dearing said the Bible on a T street is the T gets the stop sign. Gerald is the T but has no traffic. He mentioned at the first meeting regarding this project that there would be a problem. There are sewer units in resident Donofrio's front yard, and if someone pulls up to the stop sign, he or she cannot see around them because the City planted trees. There is going to be a bad accident and the City will be responsible for what they have developed. He would like to see the mess cleared and the project done because he is tired of looking at it. He does not understand the wetland issue because when homes are built around the lake, the ducks and geese will have no place to go anyway. They will not come to this lake. They come there now because there are no homes. If someone sees ducks on the west side, they also see the neighbors running them off the property with gas powered hydroplane boats.

Judy Vannini, 1875 Mackwood, Rochester Hills, MI Ms. Vannini said she agreed with everything Mr. McKillop said and advised that she lives directly across from the proposed development. Her concern is that they would like to remove 48 trees. It did clarify it for her when it was mentioned that the Tree Conservation Ordinance came into effect during this Phase but did not reside with the others. She said she witnessed the last Phase going in and said all the trees were taken out. The lots are so small and the houses are so big there is no place someone could put in a tree. The trees need to be

removed for homes to be constructed. She wondered who would monitor the 48 trees that are to be protected. She addressed the DEQ issue and said that when it was posted and a representative was there, she asked him what was being done to the lake. He told her to go to the Township and all the documents would be there. She came to City Hall and the people there did not know squat. They did not know what was happening and that is a shame. As far as dredging, there was no dredging done. The only thing by the lake was a dozer. They brought in trains of sand, but before the sand was pushed in, they pushed spoil into the lake and pushed the sand on top of it. That is when the wetlands disappeared. She said that nothing was dredged. When she asked about it, no one could give her answers. Regarding the road Mr. McKillop discussed, she said she came to City Hall to look at the plans and it showed that on the north side of Mackwood there is ditching. On the south side, where the proposal is to go, there will be curbs and storm sewers. She said this is not a two-sided street and this plan needs to be revised. It should be consistent to someone coming down Mackwood. If storm sewers are going in on the south, they should also go in on the north side of the road.

Sue Hesson, 1853 Mackwood, Rochester Hills, MI Ms. Hesson stated that she lived across from the proposed addition. She said she agrees entirely with Mr. McKillop regarding the stop sign. She said that in order to see anyone coming at night, her children turn off their car lights to see if any lights are coming down the road. During the day there is no way to tell. As far as the wetlands, she said she called the City to let them know exactly what was happening. As Ms. Vannini said, there was no dredging, they merely put sand in the lake and destroyed the wetlands. She would like to see the developer save a few more trees along Mackwood. She looked at the plan and saw that the few trees left along Mackwood were all being taken down. Some were taken down when the storm sewer was installed. She added that most on the east side are against a fence. She noted that the off-road improvements they discussed earlier comprises half of a road; the north side of Mackwood versus the south side. She said the residents would like to see curbs up, not ditches. If someone drives down the road in a trash or mail truck and comes to the side of the road where there is no curb, the asphalt will break off. Mackwood will not have an assessment district, and every time the trucks come through and break off a little more asphalt, that half of the road will have to be repaved. They would like to see a curb and storm sewers so they do not have ruined edges of a road in front of their homes.

Sharon Smith, 1768 Mackwood, Rochester Hills, MI Ms. Smith said she owns the very last house of Phase 3. She lives on the lake and pays very high taxes to live there. She moved there in 1997 and they were promised that within a year Phase 4 would be paved. She is paying taxes for a paved road that the City determined put a two-foot easement to her home. She is eating dust all the time. She said she is the third generation of her family in this town and she has been here a long time, but now it all comes down to who has the money and who wants to make more money. No one cares to preserve and keep things the way they should be. She said the developers did not dredge. She disclosed that she had very extensive surgery eight months ago and has been homebound and she watched them dump a lot of dirt in the lake. She is furious because her property ends and there is another 20 feet and they catch all the garbage from the lake. She is sure Mr. Garrett does not care as long as he gets his money for his homes. She does care and she does want something done about that. She and her husband are furious and when people come over they cannot believe what has happened. She said she did not know how anyone could get away with such a thing. It is not right. She wanted to know what trees were going to be removed. She said there is a tree about five feet off of her property line on the next lot and when they first moved in it was half dead. They trimmed it, nurtured it and now it is a beautiful tree. It would be a shame to take that tree out – or any of the other beautiful trees. She said they used to have deer come across the property but since they removed a lot of trees they do not see them. That was one of the beautiful things to do – to watch nature. The streets are not paved and she is paying high taxes for streets that are not paved. The landscaping for the sewer unit is a joke. She said someone went to K-Mart and got some really cheap shrubs. The traffic and construction traffic comes flying down the road and it is scary. She concluded that this is her home and she wants things taken care of correctly.

Christal Lewandowski, 1795 South Shore, Rochester Hills, MI Ms. Lewandowski stated that she is a member of the Avon Lakes Village Homeowners Association. She said that the existing homeowners would like to see the subdivision completed for many reasons, the least of which is to eliminate trespassing and the illegal dumping that occurs there now. The new homeowners should be able to enjoy the water by being able to see it and have easy access to it. As a Homeowner's Association, they have concerns about the effects the lake treatment might have on the plants and the new homeowners' maintenance of the plants. The proposal for the wetlands and the setback will be inconsistent with the existing shoreline and appearance of other portions of the subdivision.

Mr. Rosen closed the public hearing. He said he was not able to get to the site but he gathered that half of Mackwood was paved. Mr. J. Garrett replied that none of Mackwood adjoining this Phase was paved. He said they paved Mackwood for Phase 3 up to Gerald, where the subdivision ended. They agreed to put a three-inch cap on Mackwood out to Dequindre many years ago when they started to dig the lake, as a convenience for everyone, as opposed to putting in a seven-inch concrete road. They were going to be required to put a curb and gutter on the Avon Lakes side. There is an existing ditch on the other side. (At this point the audience members spoke out that there is no ditch). Mr. J. Garrett deferred to his engineer, and said he would explain what had been reviewed and agreed to by the City.

Mr. Mayotte said that right now the cross section for Mackwood that was required by the Engineering Department is curbed on both sides with three inches of asphalt over eight inches of gravel. There are concrete curbs on both sides. Mr. Rosen asked from where. Mr. Mayotte replied from Gerald to the east limits of the subdivision and said it is the same paving section with asphalt curbs for the portion that is from the east line of Mr. Garrett's property out to Dequindre. Mr. Rosen said that was about one lot depth. Mr. Mayotte said it was one property depth, or about 300 feet. Mr. Rosen said that Mackwood would be asphalt curb and gutter, both sides, as part of the submittal. Mr. Mayotte responded that it is on the Preliminary Plat now.

Mr. Rosen said that regarding the tree monitoring, 12 trees will be saved and 48 will be lost. The City's Forestry Department will monitor the trees.

Mr. Anzek stated that prior to the Engineering Department issuing the Land Improvement Permit, which would give Mr. Garrett the right to move dirt, there are a series of inspections done, one of which includes reviewing the tree preservation fencing. That has to be in place and maintained on the site at all times. Recently, the City adopted a new policy through the Building Department, which dictates that until the homes are completed, the tree protective fencing must remain intact, in good shape and upright. Those safeguards have been put in place to guarantee that the trees identified to be preserved, will be preserved.

Ms. Brnabic corrected that 16 trees would be saved. Mr. Rosen asked if there was a print which showed which trees would be removed. Ms. Millhouse said there was, and if they were hard to see she had a full size print they could review. She advised that the trees proposed to be saved are along the easterly property line and that is because they are located in the required rear yard and because one of the requirements of the City is that the grade meets the adjoining property.

Mr. Rosen said there has been a lot of consternation and concern with the way this piece has dragged on. He thought they had discussed the issues brought up by members of the audience from a factual basis. He added that there were a couple of comments at the end of the public hearing about access and inconsistency that he wished to leave for the Planning Commission to discuss.

Ms. Holder asked about the shrubs along Mackwood and if trimming those were part of the Homeowner's Association's responsibility. A member of the audience replied it was the City's responsibility. Mr. McKillop answered that this was on private property and the City installed the pumping station and decided to camouflage it. It was done so close to Mackwood that if someone pulled up to the stop sign there, he or she would

almost have to get out of the car to see around it before proceeding. He added that the City is asking for a major problem.

Ms. Holder said that Mr. Garrett indicated that a while ago he was not notified that the plat was about to expire. It seemed to her that as a developer, he should have been aware of that date. She wondered if there was some type of guarantee that could be attached to a plat so that it would proceed at a proper rate of speed.

Mr. Rosen did not believe that could be done, as everyone has responsibilities. If an owner gets a tax bill, he or she should pay it. People have to pay attention when their driver's license expires, even if the State does not send a renewal. He does not see that this situation is any different than that. He would like to be able to guarantee that the City could help a project move forward, because it is a common courtesy, but he did not think it could be a requirement.

Mr. Anzek advised that he would request that maintenance crews from the Parks and Forestry Division go out and ensure that there is line of sight triangle clearance for the referenced intersection. He assured them that they will trim the hedges back as necessary.

Mr. Kaltsounis addressed Mackwood Drive and the curb and gutters. He referenced Sheet P-2, at the top, and said there was a drawing showing a cross section of Mackwood Drive from East Avon Lakes #3. He pointed out the two layers of asphalt with gravel beneath and what appeared to be a cement curb on either side. He said that on the existing side of the property, there is a proposed gutter that would be filled in and there is two inches of top soil and mulch. Mr. D. Garrett said that the topsoil and mulch would be on the north side of the street, where there are existing homes. Mr. Kaltsounis asked him to pay attention to the curb and asked him to look at Sheet P-3. That shows a different situation, because at the corner at the top of the print there is a curb from Mackwood Drive from the East Avon line to proposed #4, and there is an asphalt curb on top of the asphalt. At the bottom of the Sheet, it shows Mackwood Drive from the east line of Avon Lakes #4 to Dequindre. He asked about that cross section as opposed to the one on the previous page that shows cement.

Mr. D. Garrett said the one on the previous page goes from Gerald, where the existing pavement ends, to the eastern property line, which is the rear of lot 154. The cross section on page P-2 is for that section of Mackwood, with a cement curb on each side of the street. Moving eastward from the end of the subdivision, the back of lot 154 towards the main road is where the other cross section starts, which has an asphalt curb. Mr. Kaltsounis said he did not see lot 154 and on Sheet P-3 it shows Dequindre Road. Mr. Garrett asked him to look at the south side of the road on the far left and he would see a bold line, which represents the lot lines for lot 154 of proposed Avon Lakes Village #4.

Mr. Rosen said the drawings on Sheet P-3 show an off-site improvement. It is located on the eastern end of Mackwood, which the applicant does not own. He asked the applicants if they have agreed to put down gravel with asphalt curbs, rather than concrete curbs, and have agreed do some grading to level the area out. He said it was not clear, but rather inferred. He said if he were the applicant he would gladly do it because it makes the entrance to the subdivision a lot nicer.

Mr. Garrett referenced Sheet P-2 and said that "North" is on the left side of the page, and on P-3 it is on the top. Mr. Kaltsounis wondered why they proposed an asphalt curb there rather than continuing it all the way across with cement. Mr. J. Garrett said it was because it is off-site and not really their responsibility to incur extra expenses for cement. Mr. Kaltsounis asked if they had talked with the Engineering Department to garner their thoughts. Mr. Mayotte replied that this was what Engineering had agreed to. Mr. Kaltsounis said he was concerned there might be an issue with expansion between the two materials and if the curbs would break apart.

Mr. J. Garrett said that originally, they were not going to do any curbs and did not anticipate any ditches. They were going to just cap what was there. This is part of what

they were going through with the Engineering Department that took so long. There is even more involved – there is an entry from Dequindre Road, which is a major expense. They had agreed to do what was proposed two years ago. It has been changed somewhat by the new regime. Mr. Dietrich (former Engineering Department employee) was ready to issue a Land Improvement Permit because they had Final Preliminary Plat approval but they were told it had lapsed. He said they do not deny that they should have been watching that, but it had been a habit to get notices every two years. He remarked that they did drop the ball.

Mr. Kaltsounis asked what year the plat expired. Ms. Millhouse replied that the answer would be a matter of interpretation. City Council approved the Final Preliminary Plat in 1993. Staff did not sign off on it until 1995. Whether it was two years from 1993 or from 1995, it was, quite honestly, probably academic. Mr. Kaltsounis said the dredging took place in about 2001. He asked when the City was first approached by the developer to continue the plat. Ms. Millhouse replied that it was while Ms. Goodwin (former Planning Director) was still on the job. She believed it was 1998 when she first responded to the request. There was subsequent response from Ms. Millhouse, as acting Director of Planning and then subsequent response from Mr. Anzek, as Director, in 2000. Mr. Kaltsounis asked if the lot was dredged to make up for any changes in the Ordinances for lot setbacks and lot widths and lengths. He asked that because when he looks at the plan now, compared to the print Ms. Millhouse brought from a few years ago, it looks like there was an extension added to it into the lake.

Mr. J. Garrett replied it was not. He said that in fact, they made the lots wider. He said the lots that were originally approved were 72 feet wide and some of the proposed lots are 80 and most are 90 feet wide. The only thing they did was exactly what they had to do for Subdivision #3. When a lake is constructed in a sand and gravel environment, as this one is, the winds tend to erode the shoreline and that is exactly what happened here. All they were doing was restoring what was originally approved by the City and by the DNR. They are not making any lots bigger than they intended, they just made them wider. That did not affect the lake.

Mr. Kaltsounis asked how much the house would take up of the building envelope. He asked if the homes would be sitting in the entire envelope or if decks or patios would go into the natural features setback area.

Mr. J. Garrett said that as they understand it, an owner cannot exceed the building envelope. There are minimum rear yards and they cannot encroach into those rear yards. He did not feel it was an issue and affirmed that the lots are larger than what they have already in the subdivision. They are wider and in most cases, the houses will be constructed with a wider configuration than they were in the past.

Mr. Kaltsounis asked the applicants to envision an owner with children and a boat and they have a wetland strip, and he asked how the wetland vegetation would hold up to foot and boat traffic. He said he went to view the lake and noticed that everyone had a beachfront. He asked how the plan was originally laid out and if there was a wetland and grass or if it was a beachfront.

Dr. Niswander clarified that he was asking how the proposed restoration plan would allow homeowners access to the lake. Mr. Kaltsounis replied that was correct. Dr. Niswander explained that as part of the restoration plan, they are proposing to maintain the natural features setback as mowed lawn. There would be a 10-foot wide wetland restoration strip and as part of that, 20 feet of that lawn would be maintained to the water's edge. Essentially, each of the lots would have a 20-foot wide access point to the water's edge. Mr. Kaltsounis asked if Dr. Niswander envisions any issues with the lawn taking over the wetland vegetation area. Dr. Niswander responded typically not, and what is being proposed, the emergent seed mix, is fairly aggressive. Once it is established it should be maintained. He added that the caveat obviously is that it cannot be mowed or impacted in some similar way. There would be an issue about keeping it as is. That will have to be very clear as part of the deed restrictions. It will have to include that there is a wetland and natural features setback. That was added as a condition. There should be no building occurring within that natural features setback.

Furthermore, the Commission would have to grant a Natural Features Setback Modification for it to be maintained as lawn.

Ms. Millhouse said that earlier in the day Dr. Niswander explained how the lawn, relative to this kind of wetland, would provide the same function as a natural setback normally would and asked if he would discuss it again. Dr. Niswander replied certainly, and explained that he was at a disadvantage because the first time he was on the site was after the grading had occurred. Looking at the soil and vegetation that was established in areas that were not disturbed, it showed a fairly invasive species. There are also sand and gravel deposits that have been disturbed over the years. There were basically colonizing wetland species, such as willows and cattails. In the submergent area there was water milfoil, which they are actually trying to control in the lake because it is kind of a nuisance in inland lakes like this. Going to the restoration plan where they are re-establishing the wetland vegetation and having a mowed lawn will provide a similar function that the vegetation previously provided.

Mr. Kaltsounis said he read the Ordinance and about projects being harmonious to the areas surrounding them. When driving around the lake, he noticed that there were several parks on the other side of the proposed development. He asked why there was nothing like that on this side of the lake.

Mr. J. Garrett answered that he had been developing artificial lakes since 1965 and they have found that the parks get very little use and in fact, they would have only provided one park on the lake, but the City required two. The homeowners have contacted him in recent years and asked him to build on the lot because it is a nuisance to them. They have to spend money to maintain it and they would rather not. Mr. Turgeon (a current resident) expressed that he did not want any more parks or open space to take care of. He added that the homeowners do not want to pay the bill.

Mr. Kaltsounis recommended that one of the lots be used as a beach to help ensure that the wetland will not be disturbed. He asked Mr. Garrett his thoughts about that. Mr. Garrett replied that he felt that the people who lived there would want water access. That is why they would buy on a lake. He does not think they would walk down the street to access the beach. Some people are concerned there would be so much activity they would not want to live next to an open lot, but in reality, the park/open area would get very little use. The homeowners do not want another park to take care of.

Mr. Rosen asked if the total area of the restored wetland would be 3/10 of an acre. Dr. Niswander answered that it was based on the length of the shoreline, which is approximately 1200 square feet times the 10-foot width. Mr. Rosen said he appreciated the effort that went into the idea of designing a strip of wetland mitigation area to come close to replicating what grew there during a period of inactivity. He had a feeling, however, that it would not last past the second summer and that the area would all become grass. The entire effort could end up in litigation from the homeowners. He wondered if there was any other way to do this so there will be a wetland that will survive and that would not present the homeowners with an untenable situation. They would be told they cannot use their yard area, but everyone around them can use theirs. He believed the affected areas would be cut down.

Dr. Niswander responded that it was a huge concern when they first looked at it. The compromise was allowing the 20-foot access for each of the repairing property owners so they would have lake access and there could be an area set aside that would not be disturbed. He said he thought about consolidating it and doing restoration in one location, but they would lose the water quality benefit of it acting as a filter for the yard run-off. The lake does really need a buffer and a strip of wetland vegetation that is maintained to provide a water quality benefit.

Mr. Rosen said that all sounds good and he does not mean any disrespect, but he does not think it will last. People would be shown that there is not anything natural or normal about having wetlands behind them because each one of them has a 20-foot width stripe that leads down to the lake. He said it strikes him that they are engaged in a bit of a charade that says they are going to try to rectify something that was done

improperly, and do it in a way that is doomed to failure. He does not think the Garretts will do anything because they will probably pass on any deed restrictions and will dutifully require that the people who are building and selling homes must comply with the Wetland Ordinances. As a practical matter, however, it has no teeth. He does not like the idea of creating a situation they know is going to fail. It is almost like they are winking at it because it will satisfy some letter of intent, but they know it will not last. He said he would rather see two or three lots 15 or 20 feet deep for people who did not want to have lake access. He said he did not feel this was a viable plan, and he felt there had to be at least two or three others that would be more viable and have less impact on the homes the applicants want to sell and so they would end up with a better set of circumstances. He does not buy in to all of this because he thinks it will fail. He wanted to get some feedback to see if there was another way.

Dr. Niswander responded that it was a good question and said they run into this issue with all of the developments where there are properties that abut natural features and wetlands, in particular, where they are trying to implement the protection of the wetlands and the natural features after it passes on to individual homeowners. This is an extraordinary case in that the precedent was already set on the rest of the lake where they maintain mowed lawns to the water's edge. In some cases, there might be boulder walls right down to the water's edge. It will be critical that the restoration be done to provide the water quality benefit and it will have to be monitored through the construction phase. In addition, he recommended that the restoration occur prior to the granting of the Land Improvement Permit so they will have the establishment of the vegetation prior to the construction occurring on the parcels themselves. Also, the wetlands would be protected with silt fence during the construction phase. That would give enough time for the wetland vegetation to be established and at the time the homes are eventually sold, the homeowners would know that they have both a natural features setback that has to be respected along with protection of the wetland area. He was not sure what they could do beyond that.

Mr. Anzek indicated that he did not want to put Dr. Niswander on the spot, but wished to bring up the letter on file by the previous wetland specialist that identified this as a delineated wetland. He said that Dr. Niswander concluded that it was because of plant material below the surface, which he did not see because by the time he was on the scene, it had been dredged. He asked if, assuming that this plan was built as proposed and restored as suggested, the wetland would be regulated. Dr. Niswander replied absolutely yes. He felt DEQ would also regulate it, which confounds the issue with the conflicting reports, one from the City's wetland consultant stating that there are City and State regulated wetlands and one that was followed up a year later with the DEQ issuing a Permit and stating there were no State regulated wetlands.

Mr. Rosen asked if he knew the amount of the initial acreage of wetlands. He said Dr. Niswander construed it was six feet below the water line and asked him what the area was. Dr. Niswander replied that based on the original delineation letter, it said there was a wetland strip that varied from ten feet to 100 feet wide. He did not believe there was an area associated with that. Looking at the grading from the original plans and the assumption that it went down to the water's edge and out beyond that, the estimated wetland was 3/10 to 6/10 of an acre. He would have to verify that. Mr. Rosen said it was not the whole 1200 feet, but was a shorter but wider area. Dr. Niswander said he believed it went from very narrow and broadened out along the shoreline. He also believed the area Dr. Jaworski (J&L) was including was submergent vegetation to a depth of six feet. If they were to take it a step further, the restoration would have to include vegetation to a depth of six feet, and there is not a practical restoration method for that. It will likely naturally re-colonize from the adjacent areas. The restoration being proposed is essentially for the emergent buffer strip immediately adjacent to the water's edge.

Mr. Rosen said there are 12,000 square feet of wetlands. He said one lot is approximately 12,600 square feet and he believed the wetland area would be replaced by an area about the size of a lot. At 10 feet by 1200 feet, it takes up 14 or 15 homes. He wondered if it would be better to make it 20 or 30 feet along 4 or 5 homes. It could be done in the northeast corner where there is a little greater depth of wetlands and a

greater depth of unusable land, and then they would not have to worry about losing it. He said that if they want to keep the value of the wetland, that might be a better way to do it. Dr. Niswander responded that in his opinion, the value that the wetland is providing at Avon Lake would be water quality improvement.

Mr. J. Garrett responded that the lots are minimum depth as proposed, and that is one of the reasons they were made wider. If an additional 20 or 30 feet is taken and a setback is required, the lots would be unbuildable. Mr. Rosen answered that may be.

Mr. J. Garrett said a suggestion was made at the City Council meeting that perhaps one of the lots on the east shore be made a wetland. The Homeowner's Association was opposed to it because they do not want land to maintain.

Mr. Rosen asked Mr. Staran if the applicant was under fairly great obligation for wetland restoration given the circumstances. Mr. Staran said it was essentially an enforcement issue if the applicant eliminated a wetland without a Permit and a Permit was required. They are required to restore it as close as possible to its prior condition. He said it was not the case where the applicant was requesting a Wetland Use Permit, which is usually what the Planning Commission reviews. He is hearing that it is not the quantity of wetland that is of utmost concern here, but rather the function that it would serve. He said that apparently this previously narrow but broadening strip served some type of intercept function that purified the water. The City is not as concerned about square foot for square foot but rather, the concern is to restore the function that existed before. He also recognizes and is equally perplexed by the quandary and wonders about the solution, if any, to prevent someone from coming in with a weedwacker or mower and wiping it out. It is the same issue they have with any natural feature, other than perhaps in this instance it might be more attractive to do that.

Mr. Rosen asked if he was saying that on the shore, the wetland might have been 40 or 50 feet wide and it went out into the lake at a much greater width. He asked if it started out like a trumpet bell or megaphone. Dr. Niswander answered that was his assumption. It is speculation on his part from reading Dr. Jaworski's original letter and trying to determine what was intended by that letter. Mr. Rosen said that it appeared that there was a narrow strip of willows and vegetation on the shoreline that transitioned out into the water to approximately six feet in depth, and he asked if that was correct.

Mr. J. Garrett replied that they did not think there were any wetlands there and the State concurred that there were not any. The City's consultant maintained there were. There were some willows along the edge of the lake that grew while they were waiting to get other approvals. He did not know how wide the area was. They were not 100 feet wide and he did not know if the consultant was just looking at submerged weeds.

Mr. Rosen wondered if ordinarily, in a well known, well-defined set of circumstances, where they definitely knew what the wetland was, the person who removed it would be required to restore it close to what it was. He wondered if it were 10 feet by 50 feet, if they would have to restore it to the same size. Mr. Staran said that the answer is generally yes. Mr. Rosen said he gathered that in this circumstance, that is not the case. They are taking one thing and replacing it with something different. Mr. Staran said that he was not sure that was the intention. He said what they are lacking is that they do not have the certainty of what was there before due to lack of evidence and they are going off a letter and visualizing what it was. He did not think the applicants were proposing something different, he thought Dr. Niswander was proposing to reconstruct it as he understood it existed previously.

Mr. Rosen said that was not what he was hearing. He said that maybe they need to make sure they get this issue solved first. Dr. Niswander replied that it was absolutely a critical issue. He said that what is being proposed is somewhat different in that the shrub vegetation that is being planted is actually of higher quality than what was previously there. What they are trying to re-establish is the narrow buffer of wetland that existed along the shoreline. In addition, they would plant out in the submerged portion but only along the shoreline itself, not out to a depth of six feet. They are trying to achieve restoration of the same type of system that would have been there prior, with

the exception that the vegetation should be of higher quality. They are also allowing for access to the lake because they would not know what would prevent homeowners from clearing wetland vegetation if they insist on having access to the water's edge.

Mr. Rosen clarified that what he is hearing is that they would be creating the same thing, only different and better. He is not hearing that they are doing exactly the same thing. That is very critically important to him because the Commissioners are being asked, as part of the Preliminary Plat Recommendation and Natural Features Setback Modification to take it away from traditional enforcement, which would be pretty cut and dried, and change it into something entirely different and which would have a whole series of unintended consequences. He is not comfortable with that, especially when the restored wetland is not likely to survive. He believes three out of four homeowners will cut things down within three years. If they put up fences and limit access and people buy into it knowing that is what they are getting, not that there are 70 other neighbors that can do what they cannot, they are in an untenable spot. He thinks the Commissioners are being asked to solve an enforcement problem by doing something that was not originally there. He asked if it was correct that there was some vegetation on the shore, but that most of it was in the lake. Dr. Niswander replied that it was the assumption obtained after reading the J & L letter. Mr. Rosen said they are being asked to allow a little restoration in the lake and a lot on the shore. That is fundamentally different to him. If this were a pure Site Plan issue, there would be ways of figuring this out. It seems to him they should just replace the wetland. He said they could provide wetlands to approximate closely what was lost and make sure it is not something that would be destroyed by the people who buy the houses. Mr. Rosen said the Garretts probably messed things up by not getting all their paperwork in order. It sound like they had something that said it was a wetland. He said it was an enforcement issue that either had to be solved separately and they could prepare another plan for submittal, or they should come back with something that they can build that makes sense.

Dr. Niswander clarified that the original enforcement letter that was written requested exactly that – restoration of the lakeshore to its previous condition, which was prior to the activity. He said that Mr. Garrett's wetland consultant approached him and said that is not feasible, looking at how the property would be developed. At that time, Dr. Niswander had not seen a Site Plan for it. He said that the homeowners are going to want to have lake access. If they were to restore the shoreline back to the natural condition where it is a strip of shrub and emergent vegetation and the submerged vegetation, they will run into the problem where homeowners will expect to have lake access and they will clear the vegetation. He asked if they could do a restoration plan that maintains shrub vegetation at the corner lots, in an emergent strip, and then provide a 20-foot strip access to the lake's edge for each of those properties. Their attempt during the review and in working with the applicant's wetland consultant was to come up with a viable plan that would restore the wetlands that were impacted, while still providing the functions of those wetlands, and have it done in such a way that they would be protected into the future while providing lake access. This was their attempt to address both of the issues, but the original violation was written as "restore to what was there prior to." This has been combined into enforcement of the wetland violation, but also requires doing the restoration plan such that it would be viable for the Plat.

Ms. Millhouse added that the Preliminary Plat before the Commissioners is a direct result of the restoration plan the City approved through the wetland consultant to restore the wetlands' system and function.

Mr. Rosen clarified that Ms. Millhouse said that the form of restoration is not at issue. Mr. Staran agreed, and said he felt that was what Ms. Millhouse was stating. It goes to Mr. Rosen's previous question. The City Administration has addressed it through the restoration plan. The Planning Commission is not being asked to approve it, but rather is being advised of what it is. Mr. Rosen asked why they are being asked to grant a Modification.

Ms. Millhouse answered that the Natural Features Setback Modification the applicant is requesting is within the purview of the Planning Commission. That is one of the motions requested, given the restoration plan as it deals with the Preliminary Plat. Mr. Rosen

asked what would happen if the Planning Commission did not grant a Natural Features Setback Modification. Ms. Millhouse said that the owners would have to maintain the area within 25 feet of natural features.

Dr. Niswander responded that doing that would not be unusual. He referenced properties like Arcadia Park, where there are building envelopes approaching the edge of a natural features setback. The Planning Commission has in the past granted an approval, even though the natural features setback itself was within the lot line of a property, but outside of the building envelope.

Mr. Hooper said that this was a noble attempt by Dr. Niswander to re-establish a wetland and accompanying natural features setback, but what will happen is that the people who move into those homes will see the other homes around the lake and want the same thing around their properties. He agreed with Mr. Rosen that the restoration attempt would not last. He envisions it going away and does not feel the City or the homeowners would enforce it. He commented that if J&L's letter did not exist, none of this would be an issue.

Dr. Niswander replied that to look at the flip side, had the developer not done any grading and there was a wetland buffer and they had the same set of plans, the same argument could be made. There is a natural wetland there, but the people will want lake access. The question becomes whether they should be provided lake access or not and how that can be done. In his view, the issue is the same - it is a matter of whether the Planning Commission decides if restoration of the wetland and establishing the natural features setback in this case makes sense. He feels that is the overall issue and that they should look at it as if there is a wetland on the ground now that was not disturbed by the applicant, then they would likely be having the same discussion. They would ask if they should be granting a Natural Features Setback Modification for maintaining lawn access and furthermore, if they should grant access to the lake edge.

Mr. Hooper said that in his opinion, he would answer yes to both. People that move in are going to want the same thing the other homeowners have. They are going to want to mow their grass, some will want boulder walls, or beachfronts, grass to the shorelines, and so on, and those types of things will happen.

Mr. Kaltsounis said that Dr. Niswander mentioned previously that he was looking for a two-foot restoration strip into the water but he did not see that on the print. Dr. Niswander answered that it was part of some correspondence that was sent to him with the restoration plan. What is shown on the plat is the overall 10-foot restoration strip. Two feet of that is planting in the submerged zone and eight feet is using a wetland seed mix that will grow in the transition zone that is not submerged.

Mr. Kaltsounis said that the water level on the old plan was 709 and on the new it is 711. He asked Mr. Garrett what the actual transition of the water from the area that has been reworked to the lake now would look like. He asked if it was a step or gradual. He asked how far into the water Mr. Garrett would anticipate grading when the houses are put in. Mr. Garrett asked if he meant the lake bottom slope and if so, he said they try to maintain somewhere between a one on four and a one on six slope below the water, and he repeated that sand does move. He wanted to point out that most people envision a wetland as being something that is growing in a low area with heavily organic soils and one of the methods used to determine if something is a wetland is by the color of the soil. He noted that there is no organic soil here, just sand and gravel. It was sold for construction fill and it would not be a wetland in a typical setting. They did have high water a couple of years ago and the subdivision to the north was created and they de-watered and filled the lake and that storm water comes into this lake. The static level has been changed from what was originally anticipated from the hydrologist's report because of the higher water level. Last summer the level was 709.6 and there was no positive outflow from the lake, but when it was at 713.5 there was, and as a result, the City asked them to put in two 100-year storm drains. The Federal law requires one 100-year storm. The lake is higher and the 711.6 is the level at which the water now escapes because the developer that did the subdivision to the north made a connection from their existing storm sewers in Avon Lakes Village #2 to the storm sewer south of

Avon Lakes #1 and the water starts flowing out of the lake at that point. He said that right now it is substantially below that.

Mr. Kaltsounis asked how far in they would go to maintain that transition. He asked if someone bought a house if they would fall off a cliff. Mr. Garrett replied absolutely not. He said that in fact, looking at the site when they construct a lake, they usually bench the lot so at the middle of the house there is a slope down and the backyard is perhaps three feet above the lake so that it is flat and provides an area for recreation and a walkout basement. He noted that all of those homes would have walkout basements and disclosed that there will not be cliffs anywhere. Mr. Kaltsounis mentioned the water surface to the house, and wondered if something could be added to the plan that captures the two-foot restoration strip in the water, as well as shows what type of grade there would be so they know how far into the water they will be adding or subtracting.

Dr. Niswander asked if Mr. Kaltsounis wondered if there would be additional grading from the existing condition at the lake edge. Mr. Kaltsounis replied he would like to see more detail on the print so they know what they are getting into. Now, past the water surface, it shows nothing. One of the items Dr. Niswander asked for is not captured on the print.

Ms. Millhouse asked if he meant the detail section in B at the bottom and if he would like to see a delineation of the two-foot restoration below the level of the water. Mr. Kaltsounis replied yes for there, and he suggested adding a line similar to the one used to show protective tree fencing. He would like a line added that shows where the dredging or any other effect will end. That way the applicant would not go deeper than they should.

Mr. Rosen said the note at the bottom of page one indicates that the ten-foot wetland restoration strip intersects with the edge of the water. That means there is no two feet past the water and that is not correct. Dr. Niswander said that it really is more of a concept and reads "not to scale." Mr. Rosen said that the Detail and Restoration plan does not show the eight-foot and two-foot areas. Ms. Millhouse suggested they look at the larger plan to be able to see what Dr. Niswander was talking about. Mr. Kaltsounis reviewed the Lakeshore Restoration at Lot Lines Typical and asked where the waterline edge would be. He wanted it clarified where the two feet into the water would be. Dr. Niswander replied he was correct and Mr. Rosen said it would be added as a condition, with a note delineating that the two-foot vegetation line into the lake shall be included within the ten-foot wetland strip. Mr. Kaltsounis commented that it would actually give them two feet for the natural features setback.

Mr. Rosen asked if, for what is being proposed or for something already in place, the Planning Commission and Staff wanted to move the wetlands to someplace else, with equal amounts and everyone agreeing to it, that could be done. He gave an example of South Boulevard Office and said that the applicant did mitigation because of a driveway through a wetland there. Ordinarily, if an applicant and the consultants and Staff agree, that can be done. Mr. Staran replied that if everyone agrees, it could be done. The example Mr. Rosen referenced was done in connection with a Wetland Use Permit. For this project, no Wetland Use Permit is being requested. They are proposing to put the condition back the way it was and to stay out of the wetland, and are requesting a Natural Features Setback Modification, so it is a little bit different. He could not remember a situation like this before the Planning Commission. Mr. Rosen could not recall one in his ten years on the Commission. Mr. Staran said that from comments from at least two Commissioners, it is apparent there are a number of concerns. First, the DEQ did not deem this to be a regulated wetland, even though under these circumstances he assumed it would be regulated, not by virtue of its size, but rather its proximity to the body of water. He noted that it would make sense that if it were a wetland, it would be a wetland both for State and City law purposes, since the definition is identical for each. There is not a real good paper trail as to what was there. The consultants are trying to reconstruct something based on imperfect facts and they have additional concerns about rebuilding this into its prior natural form. He felt this was somewhat of a misnomer because they are talking about a man-made lake where there was no wetland, there was simply the passage of time and mother nature kicked it

and vegetation emerged. Meanwhile, there are enforcement or practical issues, lake access issues that Planning Commissioners are identifying and appropriately so, based on the collective experiences of each. They are questioning the sense of what the exercise is, which seems to be doomed for failure in a relatively short term, and he wonders if they should, instead of trying to reconstruct what was there before, be encouraging the applicant to now turn this into a Wetland Use Permit request, to sanction or approve what has already been eliminated and keep that eliminated. Then through the Permit process, they could get into mitigation mode. They would not make the applicant reconstruct the wetland the way it was, but would request something else. He was concerned that this was out of his level of expertise. He suspects Dr. Niswander would say that can be done, but whatever mitigated wetland is created would not be serving the same function as the one that has been eliminated and he wonders if they are really creating an equal wetland or something completely different. Instead of trying to protect something that might not be able to be protected, he questions whether they should sanction that it does not have to be reconstructed and try to mitigate it through some other location or means.

Mr. Rosen said that was where he was trying to go earlier with his question about whether it has to be created as the same thing. Mr. Staran replied that he believed it does in the mode it is in currently. If they steer this in another direction and get out of restoration mode and into Wetland Use Permit mode, he thinks it would be acceptable. Mr. Rosen asked if they abandon the restoration, if that would affect the enforcement action. Mr. Staran replied that if it were abandoned in order to pursue a Wetland Use Permit, and that would be after the fact but there is some precedence for that because they have done it for Tree Permits, it could occur. It would involve Dr. Niswander, Staff, the applicants and their representatives getting together and figuring out if it makes sense, and if so, getting into the mitigation plan and ultimately taking it to the Planning Commission.

Ms. Millhouse amplified Mr. Staran's comments and said that given the circumstances of this area, if this were the Planning Commission's wish to investigate the creation of some sort of wetland around the lake, she wondered if the Planning Commission would also consider an equivalent mitigation in another area, such as a City park or around an existing wetland where the results might produce a better quality wetland.

Mr. Rosen asked other Commissioners if the idea of doing something else had merit and if so, how much "different" would be acceptable. He wondered if it could be done on the lake but concentrated, or across the street or across the City.

Ms. Millhouse said she hoped consideration would be given to Dr. Niswander and she asked if it were even feasible to mitigate. Mr. Rosen asked to defer to the Commissioners first, saying if it was not even going to fly, there was no sense going further with the suggestion.

Mr. Hooper replied yes, and thought Staff and Dr. Niswander should be engaged and work with the developer to come up with an alternative plan, and he felt they should table any action this evening. Ms. Myers said she agreed. Mr. Katsounis said he agreed. Mr. Boswell said that two years ago there was a wetland there. If this plan had been brought to the Commission at that point, they would probably not be looking at this option. They would probably say the developer could build there, but would have to put up a fence. He agrees that within four or five years there would be nothing left of it if they do the restoration. Ms. Holder asked if it was the Commission's responsibility to make sure the residents would have lake access. She wondered if there could be a two-foot wall constructed from the lake to the property line and homes without lake access. Due to the amount of time that has lapsed and what has been created, she wondered if these particular homes must have lake access.

Mr. Rosen said that he did not think it was the Commissioners responsibility, but he felt that they should recognize the practical reality, that these will be sold as lakefront. As Mr. Boswell said, if this plat came before them two years ago, there would have been some number of homes that would have had restricted or no lake access and they would be going through the same discussion. They would be faced with all the same

issues. He agreed that this plan will not work and that there probably is another that will work. He did not feel there should be off-site mitigation. He felt it should be on the lake, and the island idea was one possibility. He thinks it will be up to the applicants to figure out if there is another way to develop this. If they are stuck with so much wetland area they have to keep it on the lake somehow, it comes down to an economic decision. What is past is past, and there are some consequences for it. He was sure they would be able to come up with another plan. He said he was not trying to put words in anyone's mouth, but if it is going to be on the lake, that would be great if it can work. If it is in the lake, that is fine too. He stated that if it is done with a minimal amount of lake frontage, because the purpose was to have some filtering, it gets iffy, but offsite would not fly for him either.

Mr. Staran said Mr. Rosen's last comment was one he was going to make. In the Wetland Ordinance, when mitigation is required, it is not a function that all wetlands are created equal and the square footage is measured and replaced. This is a wetland by virtue of its proximity to the water and its principal value is the filtering affect referred to. It would seem to make sense that if they are going to allow this particular area to remain destroyed and mitigate somehow, what they would be trying to achieve is the same affect elsewhere on the lake. Otherwise, he was not sure how valuable the exercise would be to simply try to create a wetland somewhere else if it were not serving the filtering function for the lake. Then they would be creating something that serves an entirely different purpose. They would not be mitigating anything, but be creating something new. It seems like creating a wetland anywhere else on the lake would be moving the problem they are talking about.

Mr. Rosen asked Mr. Garrett what he thought. Mr. Garrett said that they own a high-quality woodland across Mackwood. He thought about possibly setting aside land, either by an easement on the back which would not be in Avon Lakes, or some other way, to mitigate what the consultant perceives to be wetlands. He thinks some of the Commissioners have touched on the situation. This was intended to be a lake with total access. That is the way it was approved and constructed. Due to high water and the passage of time and the erosion that took place, it created a little problem and some plants emerged. He said that all inland lakes are treated to kill weeds. The Homeowner's Association treats this lake every year and will continue to do so. They have expressed to him that they want the lake here and will treat it. Even if they had wetlands and they were able to build, the same issues exist. The people that buy there will not be happy with the wetland. He thinks that any wetland on the lake will have a tough time surviving. The people probably will not want it and they will eventually do away with it. He knows the Homeowner's Association does not want it. It was never intended to be here and is a total accident that they are even here talking about it. Maybe it was their mistake that the plat lapsed and they had to start over, but as a practical matter, he felt that they should look at trying to mitigate off the lake if that is what is needed.

Dr. Niswander said he had serious concerns about doing off-site mitigation for this project for the exact reasons Mr. Garrett stated. The Homeowner's Association is treating the lake for aquatic, weedy vegetation. The reason they have that is due to high nutrient inputs because of the development of the lake frontage property and the contribution of the nutrients from backyards. He said that the attempt at doing the restoration plan as presented is to provide filtering of that backyard runoff of the proposed development. If they do off-site mitigation, they would lose all water quality function. At a minimum, it should be within this watershed, which is fairly small. It should be on the lake edge and he still stands behind the recommendation to have it along the backyard runoff. It is obviously an enforcement issue, but it is the intent of the Ordinance to protect the natural features of the City, of which this lake is one. There may be an opportunity to do on-site mitigation. It should be in conjunction with the lake, not only for the water quality benefit, but also to provide some wildlife habitat, which is essentially lacking in the existing condition. There may also be an opportunity to direct the storm water runoff into a wetland that is created, as opposed to the plan shown, with storm water runoff discharging directly to the lake. There are some options, but he would strongly recommend that the mitigation be done on the lake with the specific purpose of providing water quality improvement.

Mr. Rosen said he felt they were at the point where they could not solve any more issues this evening. He thought that the Planning Commission needed to ask Staff, the City Attorney, Dr. Niswander and the applicants to work together to do something associated with the lake that will do some good. If they can come up with something that will not only last, but be worthwhile, it will be to everyone's advantage. He asked if this item should be formally tabled. He felt that the project needed to be postponed for at least a few weeks to give everyone a chance to talk.

Ms. Myers referenced the Resolution from City Council in the packet, granting a Tree Variance, and said she understood that the minutes from their meeting were not ready, but she asked if the Planning Commission was obligated to grant a Tree Removal Permit because City Council granted a Variance.

Ms. Millhouse answered that they were not. She said the variance was granted by City Council to provide relief from the 37% requirement of the Ordinance. City Council granted a 12% variance, reducing the percentage of saved trees on site from 37% to 25%. It was her understanding that the applicant still needs a Tree Removal Permit as if it were based on 25% on site.

Mr. Staran replied that was correct. The Planning Commission's process is the same, other than considering the Ordinance amended with a reduction from 37% to 25%. He advised that the Planning Commission still has to be satisfied with the tree removal and tree replacement plan submitted.

Ms. Myers asked if City Council minutes would be included the next time this project is before them. She said she was uncomfortable with this issue, not having read the discussion City Council had. Mr. Staran said that part of what the Council determined was to try to be responsive to the residents' concerns. Many people who are here this evening appeared before City Council and expressed a great deal of concern with what a long term project this has been and with the construction issues and traffic, and City Council also wants to see this project move forward with all due speed, simply to bring an end to it.

Mr. Anzek said that Staff could make video duplications of the meeting at which the Tree Variance was discussed. Mr. Rosen commented that if the minutes were done, that would be good enough.

Mr. Hooper said that Mr. Mayotte mentioned that the City bought off on the asphalt curb and he wanted to make sure that was true. Mr. Carney spoke up and relayed that Mr. Paul Davis has been handling this project but is on vacation, and he was just asked to attend the meeting. He said that the plans they have are not those shown this evening and he needs to review them. He said that from the letters he has read, it does seem like the asphalt curbing was approved for that section. Mr. Hooper thought it would be the first time they had a public street with an asphalt curb. He asked if traffic calming measures could be used to answer the residents' concerns about speeding along Mackwood. Mr. Carney said that as far as a traffic control device or stop sign, warrants have to be met to dictate that. Mr. Hooper said he was not talking about a stop sign, but rather speed humps or bumps. Mr. Carney felt that was something they could discuss with Mr. Dearing, the Traffic consultant for the project. He said that at one point, the applicants did have construction approval and it might be up to the Planning Commission to add something like speed humps. Mr. Hooper asked why the sidewalk was not extended to Dequindre. He wondered why the sidewalk would not be paved to Dequindre if the street were going to be. Mr. Carney answered that Engineering Services only requires a sidewalk to be installed in front of an applicant's development. Other than that, it would be considered an off-site improvement. Mr. Hooper said they agreed to pave out to Dequindre so he was curious about the sidewalk ending up short.

Ms. Holder asked Mr. Carney if the speed bumps were the responsibility of the Homeowner's Association or the subdivision's. She thought it was something the residents had to purchase and have installed. Mr. Carney replied that if it were put in as

part of the project, it would be something the City would maintain. Ms. Holder asked if Mackwood was part of the project and Mr. Carney replied that it was.

Ms. Brnabic asked how long the pumping station had been in place and how long it had been since the shrubs were planted around it. Mr. Anzek said he was not sure, but said there is annual maintenance on the pathways through Parks and Forestry. This issue was just recently brought to the City's attention by the residents. Ms. Brnabic asked if the shrubs were trimmed now if there would be a schedule of maintenance to continue that. A member from the audience said that as soon as they were planted, they caused a visibility problem. Someone else said they are the type of bushes that do not get cut. Mr. Rosen explained that there must be a 25-foot sight line of clearance and he was sure Mr. Anzek would take care of this problem.

Ms. Brnabic asked about the trees that were cut down by Detroit Edison and noted that their letter said they claimed responsibility for 14 regulated trees, eight of which were to be saved, yet on the page after that letter, it mentioned that 41 were cut down. She said she did not see anything that reaffirms that fact, and she was curious about how many were cut down and if they were not regulated by size, how there was interference. She said that perhaps they were not six inch trees and she wondered if they were under Detroit Edison's lines or if not, if Edison projected that they would interfere in the future.

Ms. Millhouse answered that Ms. Brnabic was exactly right about the 41 Siberian Elms referenced, but that dealt with unregulated as well as regulated trees. The Forestry Department, working with Detroit Edison, did confirm which trees were to be cut. There was a tree survey done and the size of the trees that were cut along the easterly portion of the property determined the number to be saved. Ms. Brnabic asked if the trees that were lost, for which no one seemed to know anything, occurred simultaneously. Mr. D. Garrett replied that it all happened at the same time, and there were some trees Edison claimed they did not cut but they were all cut at the same time, in the same manner, cut in sections and left right where they were, some with medallions still on them. He tried diligently to persuade the representative at Edison to admit they had done the cutting but he would not. Mr. Garrett pled his case with Mr. Lee of Forestry and told him he would not take responsibility because that would mean they had run afoul of the Tree Conservation Ordinance. It actually makes the lots less appealing and costs money, and he maintained there would be no reason for them to take the trees out. With that information, Mr. Lee did not count the trees Edison cut against them.

Mr. Kaltsounis asked the applicants if they would highlight the utilities on the plan. He explained that where he works, they always hard line things in the prints. He was referring here to gas and electric. Mr. Mayotte said that those plans are done by Consumers Power and Detroit Edison, after the applicants get the construction plans approved. Mr. Kaltsounis replied that was fine, as long as there is a line on the print that mentions where these items will generally be. Mr. Mayotte said he could not really say where the utility companies would put them. Mr. Rosen suggested that what they would be doing is specifying that they will provide easements in the front yard, if that is where they want them. In the case of the lakefront, he was fairly certain that is where they would want them. Mr. D. Garrett replied that the utility companies usually tell him where they want the utilities to be placed. Mr. Rosen said that the Commission has learned that if they put the utilities in the back, where trees are, chances are that the trees will come down. It is very easy to specify that they be placed in the front.

Mr. Rosen advised that this item would be postponed, with a request that Staff, the City Attorney, the applicants, Dr. Niswander and anyone else necessary, try to see if there is a better way to do this project.

Recess: 10:10 to 10:23 p.m.

ANY OTHER BUSINESS:

Master Plan Implementation Amendment