

RECORD OF RESOLUTIONS

Dayton Legal Blank Co., Form No. 30045

Resolution No. 1772

Passed June 19 1997

CLEARCREEK TOWNSHIP WARREN COUNTY, OHIO

A RESOLUTION APPROVING THE APPLICATION OF BRUCE McGARY, AGENT FOR GERALDINE YOUNG, OWNER, TO AMEND THE ZONING OF LOTS 7 AND 8 OF YOUNG ESTATES FROM "R-1" RURAL RESIDENCE TO OFFICE ZONE "O"

WHEREAS, all public hearings, publication of notices, notices to adjoining property owners, the recommendation of the Warren County Regional Planning Commission and the action of the Clearcreek Township Zoning Commission for the application of Bruce McGary, Agent for Geraldine Young, owner, to amend the zoning resolution and map for lots 7 and 8 of Young Estates Subdivision which are located on the north side of State Route Old 122 east of Weisenberger Road from "R-1" Rural Residence to Office Zone "O" have been conducted and made pursuant to the Clearcreek Township Zoning Resolution and Section 519.12 Ohio Revised Code:

NOW THEREFORE, BE IT RESOLVED by the Board of Clearcreek Township Trustees to **APPROVE** the said application for zoning map amendment from "R-1" Rural Residence to Office Zone "O".

Mr. Lamb moved to approve the foregoing Resolution. Mr. Poe seconded the motion and upon the call of the roll the following vote resulted:

Mr. Wade- yea
Mr. Poe- yea
Mr. Lamb- yea

Resolution adopted at a regular public meeting conducted June 19, 1997.

THE BOARD OF CLEARCREEK TOWNSHIP TRUSTEES

Ed Wade

Noel A Poe
Richard J. G

PEELER, M^cGARY & ZOPFF CO., L.P.A.

423 Reading Road
Mason, Ohio 45040
Telephone (513) 398-4891
Facsimile (513) 398-1935

ROBERT W. PEELER*
BRUCE A. M^cGARY
DARCIE A. SLY

OF COUNSEL:
JOHN S. ZOPFF
JAMES PAPA KIRK

*ALSO ADMITTED IN KENTUCKY

May 7, 1997

Dennis A. Pickett, Administrator
Clearcreek Township Government Center
7593 Bunnel Hill Road
Springboro, Ohio 45066

Re: Rezoning Application for Young Estates-Lots 7 & 8

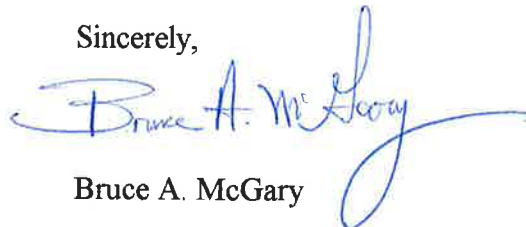
Dear Dennis:

I am writing to follow up our telephone conversation on May 6th. I have enclosed for your file and submission to the Zoning Commission & Trustees a recorded copy of the Amendment to the Covenants & Restrictions of Young Estates wherein all property owners within the subdivision have consented to Lots 7 & 8 being developed in accordance with the Office classification under the Clearcreek Township Zoning Code.

As we also discussed, Mike Powell suggested the most conservative approach was to also have the Lienholders sign the Amendment. Bob Craig advised me that the Planning Commission Staff recommended to the RPC that the RPC should not concern itself with covenants & restrictions because such are private matters. In an attempt to be overly conservative, I researched the title to the properties involved and included a signature provision for the Lienholders in the Amendment. Jillora Summers executed the amendment as President of 1st National Bank of Warren County who holds the mortgage on Lot 11 owned by the Porkchop Roadhouse, Inc. The mortgage on Lots 1 & 2 owned by Mrs. Hoffman & Mr. Martin has been sold several times and is now held by a bank in Michigan. Mrs. Hoffman & Mr. Martin's attorney, Mark Florence notified me that he disagrees with Mike Powell and his clients do not want to get their lienholder involved. I am enclosing a copy of Mark Florence's letter to substantiate his clients' position. Finally, the remaining lots in the subdivision are owned free and clear by Geraldine Young.

At this juncture, it is my understanding that you are scheduling my client's application for rezoning for a second public hearing and you will forward notice to my attention.

Sincerely,



Bruce A. McGary

BAM/pmz
enclosures: as stated
cc: George D. Young

KAUFMAN & FLORENCE
ATTORNEYS AT LAW
P. O. BOX 280
144 E. MULBERRY STREET
LEBANON, OHIO 45036

WILLIAM H. KAUFMAN
MARK FLORENCE

513 932-1515
FAX 513 932-9172

April 23, 1997

Peeler, McGary & Zopff Co., L.P.A.
Attorneys at Law
423 Reading Road
Mason, OH 45040

COPY

Attn: Bruce A. McGary

RE: Amendment of Covenants
and Restrictions for Young
Estates

Bruce:

Pursuant to your correspondence and the copies enclosed therein of April 11, 1997, I have reviewed the copy of the amendment of the covenants and restrictions of Young Estates with Ann M. Hoffman and Charles D. Martin, the owners of Lots 1 and 2 of Young Estates. Both are willing, ready and able to execute the amendment. Since you only provided me with a copy and not the original, I did not have them execute the copy you provided me. I understood from your letter of April 11th that you submitted the original to Bob Craig of the Warren County Regional Planning Commission.

I would further like to advise you that while my clients agree to cooperate with your clients and execute the amendment, they cannot speak for their mortgage holder, Standard Federal Bank. As you and I have previously discussed, it is my opinion that a mortgage holder would not be a proper party to execute a document amending covenants and restrictions. My clients do not want to pay me or anyone else to deal with Standard Federal Bank in attempting to obtain its authorized signature to the amendment. I trust that you would agree that there would probably be a lot of bureaucratic layers to work through in order to ever hope to obtain a signature from a bank to such a document.

Please let me know if there are any questions, and I trust that you will get the original amendment to Ms. Hoffman and Mr. Martin for their signatures. Let me know if there are any questions.

KAUFMAN & FLORENCE


Mark Florence

MF/csw

CC: Ann Hoffman
Charles Martin

97 MAY -8 AM 11:15

AMENDMENT OF THE COVENANTS & RESTRICTIONS OF
YOUNG ESTATES
BY WRITTEN CONSENT OF THE OWNERS

O.R. VOL. 1361

PAGE 653 FEE 26.00

This instrument titled the Amendment of the Covenants & Restrictions of Young Estates by Written Consent of the Owners is executed on the 28th day of April, 1997, and the 4th day of May, 1997, at Lebanon, Warren County, Ohio.

RECITAL

- A. On or about the 14th day of October, 1993, a plat titled as Young Estates ("Young Estates Plat") was executed by the fee simple owner, Geraldene L. Young, and her husband George D. Young who had dower rights to the property subdivided and dedicated therein, and was thereafter recorded in Plat Book 27, Pages 76 and 77, of the Office of the Warren County Recorder, on the 25th day of October, 1994, at 9:28 a.m.
- B. The Young Estates Plat subdivided 14.7042 acres into ten (10) separate and distinct subdivision lots being more particularly described as follows:

<u>Sidwell #</u>	<u>Lot #</u>	
09-33-240-001	1	
09-33-212-001	2	Situated in Section 33, Town 4, Range 4, Clearcreek Township, Warren County, Ohio, and being more particularly described as follows:
09-33-212-002	3	
09-33-212-003	4	
09-33-240-002	5	Being all of Lots Numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Young Estates as recorded in <i>Plat Book 27, Pages 76 and 77</i> , of the Plat Records of the Office of the Warren County Recorder.
09-33-240-003	6	
09-33-240-004	7	
09-33-240-005	8	
09-33-240-006	9	Prior Deed Reference: Official Record Volume 823, Page 374 of the Office of the Warren County Recorder.
09-33-240-007	10	

- C. The Young Estates Plat encumbered the above described real estate with Covenants & Restrictions memorialized on the face of the plat.
- D. Paragraph 1 of the Covenants & Restrictions provides, that:

No portion of the premises shall be occupied or used for purpose other than the purpose of establishing a dwelling place for a single family and for purposes necessarily incidental thereto, and any use of, or improvement made on the premises shall be in conformity with all existing valid zoning, platting, health, or other lawful rules and regulations, including the applicable off-street parking requirements of Clearcreek Township and Warren County, Ohio.

- E. The Young Estates Plat has been modified to the extent that Lots Numbered 9 and 10 of Young Estates were replatted as a single lot and renumbered as **Lot Number 11 [Sidwell No. 09-33-240-008]**. Said replat dated the 27th day of April, 1994, and recorded in Plat Book 28, Page 89 of the Office of the Warren County Recorder on the 17th day of June, 1994, at 2:19 p.m., provided a consent of all the property owners to the replat of Lot Number 11 and the owners waiving future objections to the use and development of Lot Number 11 for permitted office uses. Lot Numbered 11 was rezoned by the Clearcreek Township Trustees for Office Zone "O" in compliance with the Regulations of Chapter 8.5 of the Clearcreek Township, Warren County, Ohio Zoning Code.

- F. As of this 28th day of April, 1997, the fee simple owners of the existing lots of Young Estates are as follows:

<u>Description</u>	<u>Owner(s)</u>	<u>Address</u>	<u>Deed Reference</u>	<u>Sidwell No.</u>
1) Lot 1	Ann M. Hoffman & Charles D. Martin	3660 Weisenberger Rd. Mason, Ohio 45040	OR Vol. 1052 Page 588	09-33-240-001

<u>Description</u>	<u>Owner(s)</u>	<u>Address</u>	<u>Deed Reference</u>	<u>Idwell No.</u>
2) Lot 2	Ann M. Hoffman & Charles D. Martin	3660 Weisenberger Rd. Mason, Ohio 45040	OR Vol. 1052 Page 588	09-33-212-001
3) Lot 3	Geraldene L. Young	3725 Crestview Ave. Lebanon, Ohio 45036	OR Vol. 823 Page 374	09-33-212-002
4) Lot 4	Geraldene L. Young	3725 Crestview Ave. Lebanon, Ohio 45036	OR Vol. 823 Page 374	09-33-212-003
5) Lot 5	Geraldene L. Young	3725 Crestview Ave. Lebanon, Ohio 45036	OR Vol. 823 Page 374	09-33-240-002
6) Lot 6	Geraldene L. Young	3725 Crestview Ave. Lebanon, Ohio 45036	OR Vol. 823 Page 374	09-33-240-003
7) Lot 7	Geraldene L. Young	3725 Crestview Ave. Lebanon, Ohio 45036	OR Vol. 823 Page 374	09-33-240-004
8) Lot 8	Geraldene L. Young	3725 Crestview Ave. Lebanon, Ohio 45036	OR Vol. 823 Page 374	09-33-240-005
9) Lot 11	Porkchop Roadhouse, Inc.	P.O. Box 4 Lebanon, Ohio 45036	O.R. Vol. 1331 Page 504	09-33-240-008

G. The above reference property owner(s) make up the following percentages of ownership:

<u>Owner(s)</u>	<u>Percentage of Ownership</u>
1) Ann M. Hoffman & Charles D. Martin	22%
2) Geraldene L. Young	67%
3) Porkchop Roadhouse, Inc.	<u>11%</u> <u>100%</u>

H. This Amendment of the Restrictions and Covenants of Young Estate is executed, delivered, accepted and intended to be recorded of public record in the Office of the Warren County Recorder, in order to give notice of the amendment of the original Covenants & Restrictions memorialized on Plat Book 27, Pages 76 and 77 of the Plat Records of said County, and the Owners hereby acknowledge they have consented to the amendment and have executed the same knowing and understanding the amendment shall run with the land and be binding upon themselves as the current owners and their respective heirs, executors, administrators, successors and assigns forever.

NOW, THEREFORE, the current owners of the existing lots of Young Estates, do hereby amend the Covenants & Restrictions memorialized on the Young Estates Plat recorded in Plat Book 27, Pages 76 and 77 of the Plat Records of said County, and such are hereby amended as follows:

1. **LAND USE:** Lots Numbered 7 & 8 of Young Estates shall not be occupied and used for a purpose other than the purpose of developing the said lots for a permitted use in compliance with the Office Zone "O" Regulations of Chapter 8.5 of the Clearcreek Township, Warren County, Ohio Zoning Code.
2. **STRUCTURES:** No building shall be constructed, erected or maintained on Lots Numbered 7 & 8 unless it complies with the regulations set forth in Chapter 8.5 of the Clearcreek Township, Warren County, Ohio Zoning Code and all other zoning and building regulations of the State of Ohio and Warren County, Ohio. Any such structure shall have and contain a minimum net floor space suitable for office space of not less than one thousand five hundred (1500) square feet for a one story structure and a minimum net floor area suitable for office space of not less than one thousand (1000) square feet on the first floor and not less than five hundred (500) square feet on a one and one-half (1 ½) or two (2) story structure for a combined total minimum net floor area suitable for office space of not less than one thousand five hundred (1,500) square feet.

3. MISCELLANEOUS All other covenants and regulations memorialize the plat of Young Estates recorded in Plat Book 27, Pages 76 and 77 of the Plat Records of said County, to the extent such will not be construed to prohibit the land development and use of Lots 7 & 8 of Young Estates for a permitted use in compliance with the Office Zone "O" Regulations of Chapter 8.5 of the Clearcreek Township, Warren County, Ohio Zoning Code, shall remain in full force and effect. No future amendment of the Covenants and Restrictions shall be made without one hundred percent (100%) of the owners of the lots of Young Estates and consent of lienholders, if any.

IN WITNESS WHEREOF, the undersigned owners of Lots 1 & 2 of Young Estates, being Ann M. Hoffman, an unmarried woman, and Charles D. Martin, an unmarried man, have hereunto set their hands, on the 4th day of ^{may} April, in the year A.D. nineteen hundred and ninety-seven (1997).

Signed and acknowledged in the presence of us:

[Signature]
(signature)
JERRY L. PLUNKETT
(print name)
[Signature]
(signature)
BRUCE A. MCGARY
(print name)

[Signature]
Ann M. Hoffman

[Signature]
Charles D. Martin

STATE OF OHIO, COUNTY OF WARREN, ss:

On this 4th day of ^{may} April, 1997, before me, a Notary Public in and for said County, personally appeared, the above named Ann M. Hoffman and Charles D. Martin, and upon presenting sufficient proof of their identities, acknowledged the signing of the foregoing instrument to be their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.

BRUCE A. MCGARY, Attorney at Law
Notary Public, State of Ohio
My Commission has no Expiration date
Section 147.03 R.C.

[Signature]
(Notary Public)

CONSENT OF LIENHOLDER

IN WITNESS WHEREOF, the undersigned being a Lienholder of Lots Numbered 1 and 2 of Young Estates, has caused its corporate name to be hereunto subscribed by _____ who holds the title of _____, being duly authorized by Resolution of its Board of Directors, on this ____ day of April, 1997.

Signed and acknowledged in the presence of us:

(signature)

(print name)

(signature)

(print name)

STANDARD FEDERAL BANK,
A FEDERAL SAVINGS BANK

By: [Signature]
(signature)

(print name & capacity)

STATE OF _____ COUNTY OF _____, ss:

Be it remembered that on this _____ day of April, 1997, before me, the subscriber, a Notary Public in and for the said County and State, personally appeared the above named _____, who holds the title of _____, who executed the foregoing instrument and acknowledged that he did sign said instrument in his official capacity on behalf of STANDARD FEDERAL BANK, and by authority of its Board of Directors, and such was his/her/their free act and deed.

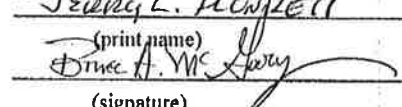
(Notary Public)

IN WITNESS WHEREOF, the undersigned owner of Lots 3, 4, 5, 6, 7 & 8 of Young Estates, Geraldene L. Young, and her husband, George D. Young who has dower rights in the said real estate, have hereunto set their hands, on the ^{MAY} 4th day of April, in the year A.D. nineteen hundred and ninety-seven (1997).

Signed and acknowledged
in the presence of us:

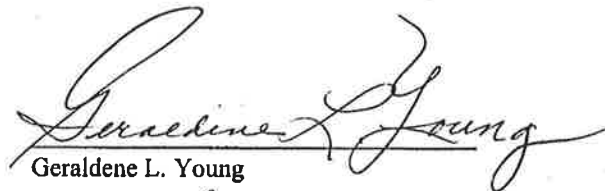


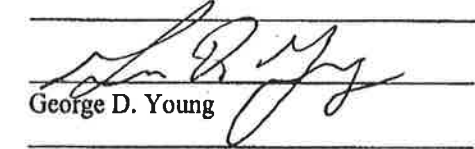
(signature)
JERRY L. PENKETT

(print name)


(signature)

(print name)



Geraldene L. Young


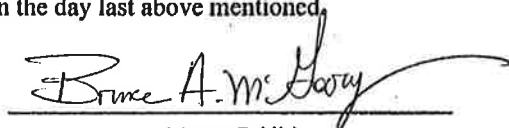
George D. Young

STATE OF OHIO, COUNTY OF WARREN, ss:

On this ^{MAY} 4th day of April, 1997, before me, a Notary Public in and for said County, personally appeared, the above named Geraldene L. Young and George D. Young, and upon presenting sufficient proof of their identities, acknowledged the signing of the foregoing instrument to be their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned,

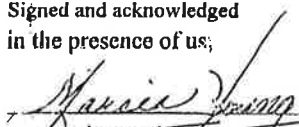
BRUCE A. MCGARY, Attorney at Law
Notary Public, State of Ohio
My Commission has no Expiration date
Section 147.03 R.C.



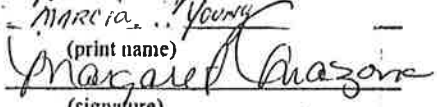
(Notary Public)

IN WITNESS WHEREOF, the undersigned owner of Lot 11 of Young Estates, has caused its corporate name to be hereunto subscribed by its President, Charles F. Stephens, hereunto duly authorized by Resolution of its Board of Directors, on this 28th day of April, 1997.

Signed and acknowledged
in the presence of us;

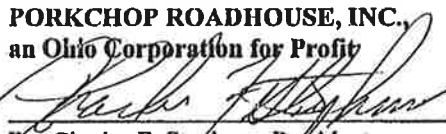


(signature)
MARCIA Young

(print name)


(signature)
MARGARET M. MAZORRA

(print name)

PORKCHOP ROADHOUSE, INC.,
an Ohio Corporation for Profit


By: Charles F. Stephens, President

STATE OF OHIO, COUNTY OF WARREN, ss:

Be it remembered that on this 28 day of April, 1997, before me, the subscriber, a Notary Public in and for the said County and State, personally appeared the above named Charles F. Stephens, President of Porkchop Roadhouse, Inc., who executed the foregoing instrument and acknowledged that he did sign said instrument in his official capacity on behalf of Porkchop Roadhouse, Inc., and by authority of its Board of Directors, and such was his free act and deed.

MARGARET M. MAZORRA
Notary Public, State of Ohio
My Commission Expires 12-01

Margaret Mazorra
(Notary Public)

CONSENT OF LIENHOLDER

IN WITNESS WHEREOF, 1st National Bank, being a Lienholder of Lot Numbered 11 of Young Estates, has caused its corporate name to be hereunto subscribed by Jillora H. Summers, its President, being duly authorized by Resolution of its Board of Directors, on this 28th day of April, 1997.

Signed and acknowledged
in the presence of us:

1st NATIONAL BANK

Margaret M. Mazorra
(signature)
Margaret M. Mazorra
(print name)
Marcia Young
(signature)
MARCIA Young
(print name)

By: Jillora H. Summers
Jillora H. Summers, President

STATE OF OHIO, COUNTY OF WARREN, ss:

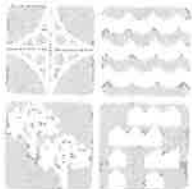
Be it remembered that on this 28th day of April, 1997, before me, the subscriber, a Notary Public in and for the said County and State, personally appeared the above named Jillora H. Summers, President of 1st National Bank, who executed the foregoing instrument and acknowledged that she did sign said instrument in her official capacity on behalf of 1st National Bank, and by authority of its Board of Directors, and such was her free act and deed.

MARGARET M. MAZORRA
Notary Public, State of Ohio
My Commission Expires 12/01

Margaret M. Mazorra
(Notary Public)

This instrument was prepared by Bruce A. McGary, Attorney at Law, of Peeler, McGary & Zopff Co., L.P.A. 423 Reading Road, Mason, Ohio 45040.

TRANSFER NOT NECESSARY
NICK NELSON, AUDITOR
WARREN COUNTY, OHIO



Warren County Regional Planning Commission

WARREN COUNTY ADMINISTRATION BUILDING
320 EAST SILVER STREET-LEBANON, OHIO 45036
TELEPHONE (513) 933-1223

ROBERT D. PRICE, EXECUTIVE DIRECTOR
KAREN GARRETT, DEPUTY DIRECTOR
ROBERT T. CRAIG, DIRECTOR OF PLANNING

ZONING APPLICATION RECOMMENDATION

To The Clearcreek Township Zoning Commission

March 27, 1997

GENERAL INFORMATION

Applicant: Bruce A. McGary
423 Reading Road
Mason, Ohio 45040

Status of Applicant: Agent for property owner, Geraldine L. Young

Requested Action: Rezone to Office Zone O.

Purpose: "Owner plans to sell for office use. Currently the property is not marketable for residential development. Owner has been approached by Jerry Plunkett, a resident of the township, who plans to purchase and develop/construct a dental laboratory which develops dental plates."

Existing Zoning: Rural Residence R-1.

Location: Section 33, Town 4, Range 4 in Clearcreek Township. The property is located along the north side of Old State Route 122, between intersections of Weisenberger Road and Drake Road, as Lots 7 and 8 of the Young Estates residential subdivision plat.

Size: 2.1201 acres (1.0485 acres of Lot 7 with 1.0716 acres of Lot 8)

Existing Land Use: Vacant/undeveloped as platted homesites.

Surrounding Zoning and Land Use: (adjacent to and across road from site)

North: Rural Residence Zone R-1 and General Business B-2 - Single family residences and a wood pallet manufacturer (Spartan Supply).

South: Rural Residence Zone R-1 and Neighborhood Business B-1. - Single family residences and Coomer furniture sales and a hair and tanning salon on the B-1 zoned land.

East: Office Zone O, General Business B-2 and Neighborhood Business B-1. - Vacant/undeveloped farmland as future site of FOP Lodge in O zone, pallet factory in B-2 zone and vacant building in B-1 zone.



West: Rural Residence Zone R-1 - Vacant/undeveloped lots of the Young Estates subdivision and single family residences further to the west.

Generalized Land Use Plan: An update of the 1990 Generalized Land Use Plan for Warren County, Ohio was prepared for the Clearcreek Township area, but has not yet been adopted by the Clearcreek Township Trustees. The land use plan and update thereof designate the site of the rezoning request for agricultural and/or rural residential uses.

Zoning History: The property has been zoned Rural Residence R-1 since zoning was initiated in Clearcreek Township. In March, 1994, adjacent Lots 9 and 10 of Young Estates subdivision, created in October, 1993, were rezoned to Office Zone O, in support of the intended development of a FOP Lodge, which has not yet been built.

Applicable Regulations: The Office Zone O permits banks, financial institutions, medical/dental clinics, radio and television broadcasting, art, music and photography studios and professional offices.

SPECIAL INFORMATION

Sewer: Central sanitary sewer service is not available to the site, nor planned in the foreseeable future. No indication was provided with the rezoning application as to Ohio Environmental Protection Agency approval of the site for use of an onsite septic system for the dental lab intended for development, though each platted lot had received health department approval for an onsite system to serve initially intended homesites.

Water: The site is served by the Warren County central water system.

Physical Characteristics - Soil Analysis:

The Warren County Soils Survey, shows the site consists of Russell-Miamian silt loam soils, ranging from 2 to 6 percent in slope. These soils are rated as posing severe limitations for onsite sewage disposal due to a moderately slow permeability.

ANALYSIS

The requested rezoning is not in conformance with the Land Use Plan for Warren County, which designates the site for agricultural and/or rural residential uses. However, it is apparent that the existing commercial and manufacturing uses east and south of the site constitute a node for such non-residential land use activity and that such uses will likely continue in the vicinity around the intersection of Old State Route 122 and Drake Road. This reality, along with the immediately adjacent Office zoning on Lots 9 and 10 of the Young Estates subdivision, tend to be factors supportive of this request for additional Office zoning, even though the stated reason for rezoning to Office due to a lack of

marketability for the initially intended residential development does not constitute absolute justification for approval of the request. However, in retrospect, it may be that none of the Young Estates lots (8 through 10) that abut the pallet factory property were desirable or buffered enough as a setting for homesites, and perhaps should not have been platted for residential use.

Office use of the site would be sensible as the westward limit of non-residential use associated with the aforementioned node for such land use, as well as serve as a transitional use in buffering the pallet factory and intended FOP Lodge to the east and north from single family residences existing to the west and south. The existing hair cutting and tanning salon located on the south side of the road opposite the site of this rezoning request is the westward limit of non-residential use, given it abuts recently developed single-family residences.

There are some technical matters of concern pertaining to the private covenants of the plat in which the site exists and the configuration of the lots intended as a single building site. The plat covenants pertaining to the site specify that all lots shall only be developed for use as homesites, which would disallow consideration for the intended office use. Also, use of Lots 7 and 8 as a site for one office building may necessitate replatting if such building would be proposed over the common line that presently separates the lots and/or in order for such building to meet setback requirements in satisfaction of minimum zoning requirements for yard spaces and parking.

As a final technical note, the Clearcreek Township Zoning Code requires that any B-2 use be served by a central sewage system that upon completion would be turned over to the Warren County Combined Health District. However in error, the intent is that a use be adequately facilitated for sanitary waste disposal, which is actually under jurisdiction of the Ohio Environmental Protection Agency in pertinence to a non-residential use of a property.

RECOMMENDATION: The Warren County Regional Planning Commission (RPC) Executive Committee recommends that the request be denied due to the subdivision plat covenant stating that all lots shall only be developed for use as homesites. If this issue is resolved in favor of the use of the lot for the proposed use, the RPC Executive Committee would recommend approval. This recommendation was made at the March 27, 1997 RPC Executive Committee meeting.



Director of Planning - Regional Planning Commission