I, Kevin J. McMahan, hereby submit this work as part of the requirements for the degree of:

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This work and its defense approved by:

Chair: Christopher Auffrey, Ph.D.

David J. Edelman, Ph.D.

Dan Petronio, M.C.P.
COLERAIN TOWNSHIP ZONING AMENDMENT CASE: ZA2006-04

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Kevin Joseph McMahan

Bachelor of Science, Environmental Science, University of Cincinnati, 2000

Committee Chair: Christopher Auffrey, Ph.D.
Faculty Member: David J. Edelman, Ph.D.
Reader: Dan Petronio, M.C.P.
Abstract

In late 2005, the owners of Rumpke Consolidated Companies, Inc. decided to “expand” their Colerain Township landfill east of Hughes Road. There are two main hurdles to overcome, before this could take place. Rumpke needed to rezone the property, as well as obtain the necessary federal, state, and local construction and operating permits.

This report analyzes the zone amendment process for Ohio townships. Colerain Township Zone Amendment Case: ZA2006-04 is used as a case study, to determine how closely this process is actually followed and where “conflicts” exist. A second aspect of research involves interviewing individuals whose opinions, experiences, and points-of-view offer insight into understanding the thought process behind the decisions made during a zone amendment.

The purpose of this thesis is to provide readers with a better understanding of zoning and the zone change process. By narrowing my examination to zone changes at the township level, a more specific investigation is possible.

The “expansion” or siting of a new landfill is a scenario which will continue to play-out in municipalities across America, until alternatives to this disposal practice offer a replacement. For a planner, understanding as much as possible about the zone change process necessary to allow for the development of a landfill, or other LULUs, enables us to approach these situations strategically. For the everyday citizen, educating themselves on the statutes which shape their world empowers them to live a more meaningful life, and helps them to feel included in decisions their elected officials are making.
Hopefully this thesis will shed some light on issues which some have been “in-the-dark” on, and will inspire inquiring minds to “dig deeper” in a quest to find-out the “story behind the story.”

A summary of the findings shows that when it comes to processing a zone amendment, there is not much room for deviation from O.R.C. requirements. Also, an analysis of opinions gathered through interviews revealed a consensus that the NIMBY factor is to blame for why zone amendment decisions are challenged in court. In the end, the author found that these court challenges are just as important as any government official’s decision, due to our system of “checks and balances.” The courts provide “aggrieved” persons the opportunity to “check” the powers of legislative and administrative bodies.
Dedication / Acknowledgements

There are a few special individuals, to whom I would like to dedicate this thesis. First is to my wife, Natasha, for her support and caring understanding. Without her, I would have never followed through with my application for graduate school, or been motivated to complete everything I had started. Second are to my parents, for their financial and spiritual support. Without them, I would have been too busy cooking food, washing laundry, and wondering what was happening in the lives of my two brothers and five sisters to even begin to concentrate on my schoolwork.

The technical research and writing skills which enabled me to create this thesis must be attributed to all of my professors and teachers, up to this point in my education. From Visitation grade school, through Oak Hills high school, and including my undergraduate and graduate studies at the University of Cincinnati. Prof. Chris Auffery, the Chair of my Thesis Committee, is most responsible for this particular report. I was fortunate to have such an intelligent and caring man to guide me through this process. Dr. Edelman and Dan Petronio provided needed support along the way, as well.

Last, but certainly not least, I would like to thank my deceased Grandpa Stenger for everything he taught me growing up. Whether it was opening my eyes to the world outside of Cincinnati, teaching me the importance of family, telling me to go to college (which he paid for), or showing me the finer things in life – like fishing on Lake Erie and Lake Michigan, he definitely played a huge role in making me the person I am today. God definitely blessed me and all my relatives, by making Grandpa part of our lives. I wish he could be here to see me graduate, with a Master’s degree!
# Table of Contents

Abstract ........................................................................................................... 1
Dedication / Acknowledgements ................................................................. 4

Table of Contents ............................................................................................ 6
List of Figures (located throughout Text) ..................................................... 10
List of Figures (located in Appendix) .......................................................... 11
List of Terms .................................................................................................. 12
Acronyms ........................................................................................................ 29
Relevant Entities / Individuals ..................................................................... 31
List of Relevant Court Cases ....................................................................... 40
List of Relevant Zoning Cases ..................................................................... 41
List of Relevant Acts, Amendments, Bills, Legislation, Laws, Plans, Reports, and Statutes ................................................................. 43

Chapter 1: Introduction ............................................................................... 51

1.1 Introduction ........................................................................................... 51
1.2 Statement of the Problem ....................................................................... 55
1.3 Hypothesis and Research Questions ...................................................... 58
1.4 Outline of Remainder of Thesis .............................................................. 59

Chapter 2: Ohio Planning Law: Background / Foundations .................... 60

2.1 The “Power to Plan” ............................................................................. 60
2.2 History of Government in Ohio ............................................................. 61
2.3 Ohio’s Four Track System of Power ...................................................... 62
2.4 Local Government in Ohio ................................................................... 62
   2.4.1 Ohio Municipalities (Cities / Villages) ............................................ 62
   2.4.2 Ohio Counties .............................................................................. 63
      2.4.2.1 Hamilton County .................................................................. 63
      2.4.2.2 Ohio County Planning ............................................................ 66
         2.4.2.2.1 Hamilton Cnty. Regional Planning Commission .......... 66
      2.4.2.3 Ohio County / Township Plans ............................................ 68
         2.4.2.3.1 Hamilton County Comprehensive Plan / Colerain Township Comprehensive Plan ...... 69
         2.4.2.3.2 Hamilton County Land Use Plan / Colerain Township Land Use Plan ...... 70
   2.4.3 Ohio Townships ........................................................................... 76
      2.4.3.1 Colerain Township ................................................................. 76
         2.4.3.1.1 Relationship between Colerain Township and Hamilton County ........................................... 77
         2.4.3.1.2 Colerain Township Board of Trustees ...... 78
Chapter 3: Current MSW Landfill Situation in U.S. / Ohio

3.1 U.S. / Ohio MSW Landfills Nearing Capacity
  3.1.1 U.S. / Ohio MSW Landfills Being Closed
    3.1.1.1 Response
    3.1.1.1 Old MSW Landfills Being Expanded and
    New MSW Landfills Being Sited

3.1.2 Problems for Planners
  3.1.2.1 Dealing With Locally Unwanted Land Uses (LULUs)
    3.1.2.1.1 Rumpke Landfill as a LULU
    3.1.2.1.1.1 Host Fees / Solid Waste District Fees
      (Disposal Fees) / Tipping Fees / “Landfill Fees”

Chapter 4: Rumpke Landfill

4.1 History of Rumpke Landfill
  4.1.1 Growth Near Rumpke Landfill
  4.1.2 Past Rumpke Landfill Zoning Amendments

Chapter 5: Methodology

5.1 Methodologies Used
  5.1.1 Case Study Analysis

Chapter 6: Case: ZA2006-04

6.1 Processing Township Zoning Amendments (Ohio Revised Code)
  6.1.1 Initiation of Amendment
  6.1.2 Zoning Commission Public Hearing; Notice
  6.1.3 Referral to County or Regional Planning Commission
  6.1.4 Recommendations to County or Township Board; Notice
  6.1.5 Action by Legislative Body
  6.1.6 Filings with County Recorder
  6.1.7 Referendum on Amendment

6.2 How Case: ZA2006-04 was Processed (Case Study)
  6.2.1 2/23/06: Application Check Written
6.2.2 3/6/06: Pre-Application Meeting ................................. 124
6.2.3 3/6/06: Application for Zoning Amendment Filed .......... 125
6.2.4 4/24/06: Notice of Public Hearing Case: ZA2006-04 .......... 126
6.2.5 5/4/06: Hamilton County Regional Planning Commission Meeting 126
6.2.6 5/16/06: 1st Public Hearing: Colerain Twp. Zoning Commission 129
6.2.7 6/20/06: 2nd Public Hearing: Colerain Twp. Zoning Commission 132
6.2.8 7/18/06: 3rd Public Hearing: Colerain Twp. Zoning Commission 132
6.2.9 8/8/06: Recommendation by Colerain Twp. Zoning Commission 133
6.2.10 9/5/06: 1st Public Hearing: Colerain Twp. Board of Trustees 134
6.2.11 10/2/06: 2nd Public Hearing: Colerain Twp. Board of Trustees 137
6.2.12 11/9/06: 3rd Public Hearing: Colerain Twp. Board of Trustees 138
6.2.13 11/9/06: Decision on Case: ZA2006-04 ......................... 140
6.3 12/20/06: Suit Filed in Hamilton County Court of Common Pleas .......... 141
6.4 Strategies Utilized During Decision-Making Process ...................... 142

Chapter 7: Interviews with Decision Makers .............................. 147

7.1 Interviews with Decision Makers ...................................... 147
  7.1.1 Benyo, Steven .................................................. 148
  7.1.2 Brown, Russell ................................................. 148
  7.1.3 Christmann, Holly .............................................. 149
  7.1.4 Kerr, John ....................................................... 149
  7.1.5 McDonald, Tim .................................................. 150
  7.1.6 Powell, Gary .................................................... 150
  7.1.7 Rengering, Jill ................................................... 151
  7.1.8 Snyder, Bryan .................................................... 151
7.2 Primary Sources ...................................................... 152
7.3 Summary ............................................................. 152
7.4 Case Study Analysis .................................................. 153

Chapter 8: Interview Results .................................................. 154

8.1 Expectations at the Research Outset .................................. 154
8.2 Findings .................................................................. 154
  8.2.1 Qualitative Data ................................................... 155
8.3 Interviews with Decision Makers; Results ....................... 156
  8.3.1 Why do Zone Amendments End-Up in Court? ................. 158
  8.3.2 Why are Decisions Challenged in Court? ................... 159
  8.3.3 How to Avoid Going to Court? ................................ 160
  8.3.4 How Pertinent is the O.R.C. Township Zone Amendment Process? 161
  8.3.5 Where are the “Conflicts” in the Process? ................. 162
8.4 Summary ............................................................. 164
# Chapter 9: Conclusions and Recommendations

## 9.1 Conclusions

9.1.1 Research Conclusions

## 9.2 Primary Lessons Learned

9.2.1 Lesson 1

9.2.2 Lesson 2

9.2.3 Lesson 3

9.2.4 Lesson 4

9.2.5 Lesson 5

## 9.3 Suggestions for Further Research

## 9.4 Recent Related Occurrences

**Appendix**

**Resources**
List of Figures / Tables (Located throughout Text)

Table LT.1: Rumpke Fiscal Impacts in 2005 .......................... 23
Figure 1.1: Rumpke Sanitary Landfill, Inc.’s Proposed Expansion ...... 52
Figure 2.1: Hamilton County Organization Chart ....................... 65
Figure 2.2: Land Use Plan: Hamilton County v. Colerain Township 73
Figure 2.3: Colerain Township Organization Chart ....................... 79
Figure 2.4: Relationship between Planning and Zoning Documents in Colerain Township 84
Figure 3.1: Ohio’s SWM Districts and Ohio’s EPA District Offices 91
Figure 3.2: Locations of Nearby Solid Waste Disposal Facilities ...... 93
Table 4.1: Rumpke Landfill Timeline ................................. 103
Figure 4.1: Rumpke’s Colerain Twp. Landfill’s Growth: 1955 – 2006 105
Table 4.2: Colerain Township Population ............................ 106
Table 4.3: Timeline of Landfill Zone Changes ............................ 107
Figure 6.1: How Case: ZA2006-04 Was Processed v. Expected Outcome 121
Table 6.1: Timeline of Case: ZA2006-04 ............................... 123
Table 6.2: Strategies and Tactics (Generic, Proponents, and Opponents) 142
Figure 8.1: Chart of Qualitative Issues ............................... 157
List of Figures (Located in Appendix)

Figure A.1: Location of Rumpke’s Colerain Township Landfill …… 174
Figure A.2: Heading for Article Reporting Citizen Opposition …… 175
Figure A.3: Colerain Township Residential Development: 1900 – 2000 176
Figure A.4: Revised Colerain Township Zoning (Effective 8/19/2006) 177
Figure A.5: Rumpke’s Zoning Application Check …………………… 178
Figure A.6: Amendment to Zoning Resolution; Submission Requirements 179
Figure A.7: Prelim. Review for Proposed Zone Amendment; Application 180
Figure A.8: Application for Zoning Amendment: Case: ZA2006-04 181
Figure A.9: Proposed Zone Amendment (Case ZA2006-04) …… 182
Figure A.10: Location of 66 Parcels to be Rezoned by Case: ZA2006-04 183
Figure A.11: Zone Amendment Application / Request for Review; Notice 186
Figure A.12: Colerain Township Zoning Commission Hearing; Notice 187
Figure A.13: Rumpke Request for “Official Letter of Recommendation” 188
Figure A.14: Rumpke v. Colerain Township: Case: A0611056 …… 189
Figure A.15: Consent for Interview Form …………………………… 190
Figure A.16: Rezoning Near Rumble Landfill (Approved 2/20/2007) 191
Interview Questions …………………………………………………… 189
Interview Transcripts ………………………………………………… 195
List of Terms

**Abatement:** Reduction in amount or force (Collin 1999).

**Act:** A statute or resolution (Act 2007).

**“Administrative Arm of the State” (Ohio County Government):** The concept of local control and responsiveness to the people (Portage County 2007).

**Annexation:** The legal incorporation of some territory into another geo-political entity. Municipal corporations annex significant parcels of township territory each year (Annexation 2007; Colerain Township 2007).

**Appeal:** Request to the law courts to reconsider a verdict (Collin 1999).

**Authority:** Power; Permission; Source. Ruling committee or group (Collin 1999).

**Colerain Township’s Authority:** The Ohio General Assembly delegates powers to Colerain Township. Colerain is mostly responsible for providing services such as road maintenance, cemetery management, police and fire protection, solid waste disposal and zoning regulations. An “Organization Chart” can be viewed in Figure A.1, in the Appendix.

**Hamilton County’s Authority:** Hamilton County consists of 49 political jurisdictions, with many of these local governments (municipalities, townships, and special districts) responsible for providing services. Hamilton County’s website lists 45 different departments and agencies (Hamilton County (OH) 2007).

**Capital Improvement Programs:** Any physical improvement to property of a permanent nature. There is usually a minimum cost which the projects and/or improvements must exceed, before being considered a “Capital Improvement” (Baltimore (MD) Department of Planning 2007).

**“Compatible Uses”:** Uses which do not conflict. The purpose of zoning is to ensure harmony between land uses and prevent undesirable development. Zoning works towards these goals by separating “conflicting” land uses, and establishing standards for buildings (Colerain Township 2006f).

**Comprehensive Plan (“Master Plan”):** The O.R.C. does not define what constitutes a “Comprehensive Plan” or “Master Plan.” Planners view a comprehensive plan as prospective; showing what a community should be like at some point in the future. A comprehensive plan is not a law. According to a 1991 law journal comment, decisions in Ohio’s courts have “made the comprehensive plan a weak document by viewing it as encompassed in the zoning ordinance itself.” The Ohio enabling legislation requiring counties and townships to zone “in accordance with a comprehensive plan” is symbolic at best (Meck and Pearlman 2005, 88-114).
Hamilton County Comprehensive Plan: Hamilton County has not updated its Comprehensive Plan since 1964. The County’s present attempt, Community COMPASS (Hamilton County’s Comprehensive Master Plan and Strategies), is a long-range plan which looks to address mutual goals pertaining to physical, economic, and social issues among Hamilton County’s 49 communities. Community COMPASS will assist in ensuring trends are anticipated, challenges are addressed, priorities are focused, and the future of County citizens is planned and achieved over the next 20 to 30 years (Hamilton County (OH) Regional Planning Commission 2007; League of Women Voters of the Cincinnati Area Education Fund 2003, 29-30).

Colerain Township Comprehensive Plan: In Colerain Township, the Comprehensive Plan (adopted 4/12/05) acts as the central guide and “visioning document” for both the Land Use Plan and Zoning Resolution. It develops the broad policies which guide land use and zoning decisions. There are three “core components” (Vision, Land Use Framework, and Character Areas) which Township officials, staff, and committee members should consider when making decisions (McBride, Dale, and Clarion 2005, 13).

Conflict: Battle; Fight. The “conflict” which this thesis centers around stems from the “duplication of planning functions.” In 2003, Ohio Attorney General Jim Petro declared that “both a county and a township may prepare and adopt land use plans for the unincorporated area of a township.” Contrarily, the County and Township Zoning Act, enacted in 1947, suggests that townships have no authority to adopt plans, and that only the Board of County Commissioners has “the express authority to adopt plans” (Collin 1999; Meck and Pearlman 2005, 74-75; Petro 2003).

“Conforming Use”: As compared to a “non-conforming use,” a “conforming use” is consistent with the development promulgated through an area’s zoning regulations (Burke 2002, 95).

Consent Decree: A court decision stating a voluntary agreement between parties in a law suit. In 1999, Rumpke applied to rezone 313 acres south of the original landfill (Colerain Case: 99-6). Following a denial by the CTBT, the landfill operators filed a lawsuit which was settled by a Consent Decree (Consent Decree from Case: A00-07121) (Colerain Township 2000; Colerain Township Zoning Commission 2006e; Consent Decree 2007; McBride, Dale, and Clarion 2006).

Constitution: The laws and principles which form the basis of a government’s organization (Collin 1999).


Corporation: The “law” views a “corporation” as an artificial person. This “artificial person” may enter into contracts, incur debt, bring suit in court, and be sued itself. Under Ohio law, a corporation is formed for profit (Broberg 1995, 125; Anderson’s Ohio Online Docs 2006).

County (Ohio): Ohio is made up of 88 counties. Counties are an “administrative arm” of the state, with their structure outlined by the state constitution and laws passed by the General Assembly (League of Women Voters of the Cincinnati Area Education Fund 2003, 5).

County (Hamilton) Court of Common Pleas: The Hamilton County Court of Common Pleas has original jurisdiction in civil cases involving claims of any amount. Judgments from the County Court of Common Pleas are appealed to the Ohio First District Court of Appeals. After the Court of Appeals, the Ohio Supreme Court has final judicial review authority, at the state level (League of Women Voters of the Cincinnati Area Education Fund 2003, 19).

County Recorder: Is responsible for recording deeds, mortgages, plats, powers of attorneys, proceedings of annexation, and municipal incorporation and liens (League of Women Voters of the Cincinnati Area Education Fund 2003, 7).

“County (Hamilton) Officials”: Hamilton County’s government is overseen by the Ohio General Assembly (legislative), County Courts (judicial), and a three member Board of County Commissioners and eight other elected “County Officials” (administrative). List of County Officials: Auditor, Clerk of Courts, Coroner, Engineer, Prosecuting Attorney, Recorder, Sheriff, and Treasurer (League of Women Voters of the Cincinnati Area Education Fund 2003, 5-7).

“Creative Tension”: Meck and Pearlman use this phrase to describe the “duplication of planning functions” by county or regional planning commissions, and township zoning commissions. During the zone change review process, it is assumed that the county or regional planning commission takes a broader, overarching view, while the township zoning commission has different ideas for its own local territory (Meck and Pearlman 2005, 74).

“Critical Points”: “Points” or “Steps” during the process of Colerain Zone Amendment Case: ZA2006-04, when important, potentially outcome affecting decisions were made.

Decision Makers: Those “key players” involved with deciding / determining how Colerain Zone Amendment Case: ZA2006-04 was processed.

Business Owners: Rumpke requested “Official Letters of Recommendation” from various “business owners” for its proposed “eastern expansion” (Case: ZA2006-04) in early April 2006. This request can be viewed in Figure A.17, in the Appendix. “Enlisting outside support,” and then presenting these letters at a public hearing is a
technique listed among Meck and Pearlman’s “Strategy and Tactics” for use during the legislative and administrative decision-making process (Meck and Pearlman 2005, 716; Rumpke Consolidated Companies, Inc. 2006c).

City Managers: Working through the Finance Department, brings together estimates for financial needs and resources of the City for each ensuring year. Also decides on a group of activities within the financial resources of the city, which are included in a budget document with supporting schedules and analyses (Cincinnati 2005 / 2006).

Real Estate Developers: Increase the value of some “real property” by making improvements. May be a single individual, but more often is a partnership, limited liability company, or corporation (Real Estate Developer 2007).

Zoning Administrators (Officers): Individuals appointed to enforce and administer the zoning ordinance. These Administrators receive applications for zoning permits and certificates of occupancy permits, and are responsible for reviewing the zoning ordinance; determining whether such permits should be issued (Kennedy 1988).

Development Review: Planning departments, such as the HCRPC, are responsible for reviewing developments in order to assist communities, agencies, and citizens in achieving sustainable development, as well as community and regional goals (Hamilton County (OH) Planning and Zoning Department 2007).

“Duplication of Functions”: The “duplication of planning functions” by county or regional planning commissions, and township zoning commissions, was cited by Meck and Pearlman as “introducing a ‘creative tension’ in the zone change review process.” In 2003, Ohio Attorney General Jim Petro declared that “both a county and a township may prepare and adopt land use plans for the unincorporated area of a township.” Contrarily, the County and Township Zoning Act, enacted in 1947, suggests that townships have no authority to adopt plans, and that only the Board of County Commissioners has “the express authority to adopt plans” (Meck and Pearlman 2005, 74-75).

Environmental Justice Movement: In response to poor and minority communities being unfairly targeted, for the siting of LULUs, the “environmental justice movement” emerged; ensuring the protection of all individuals from “disproportionate impacts of environmental hazards.” Planners are expected to work to achieve environmental justice by including all groups and assessing disproportionate impacts (Randolph 2004, 47).

Expenditures: Payments for personnel, materials, and equipment required for a department to function (Cincinnati 2005 / 2006; Ohio Legislative Service Commission 2007, 15).

Capital Expenditures: Expenditures towards acquiring or upgrading physical assets (equipment, property, industrial buildings) (Capital Expenditure 2007).
Operating Expenditures: Expenditures for day-to-day municipal activities (employee salaries, supplies, other non-personnel items) (Cincinnati 2005 / 2006).

Governments: Authorities which control the affairs of people living in a community. In the U.S., governments exist on three levels: national, state, and local. At each level, governments possess a degree of sovereignty (freedom from external control) (Broberg 1995, 13-15).

Local Governments: All governments located in sub-state areas are local governments. These include: counties, municipalities, townships, and school districts (Broberg 1995, 21).

Local Self Government: A local government’s ability to control its own affairs, by creating and enforcing local laws. These powers are known as “Home Rule” (Broberg 1995, 21).

State Government: “A sovereign political community with a distinct government which is: recognized as ‘supreme’ by the people, and has legal power over a specific territory” (Broberg 1995, 15).

“Home Rule”: The Ohio Constitution and legislation in the O.R.C. grants authority to local governments, classifying them as either Home-Rule or Non-Home Rule. All municipalities and counties, which have adopted a charter, are Home Rule. These Home Rule governments may perform all functions which the law does not specifically prohibit. These functions include the power of local self-government, the exercise of police powers, and the operation of utilities. Colerain Township is not a “Home Rule” township (Roschke 2007a; Liberty Township (OH) 2006; Mase and Heaphy 2001; Ohio Legislative Service Commission 2007, 129; Ohio State University (The) 2007).

“Limited Home Rule” (or “Limited Self-Government”): The common name for legislation enacted by the Ohio General Assembly in 1991 (amended in 1999, 2001, and 2003), which permits townships the ability to establish a "limited form of self-government." These laws grant townships, which meet certain criteria, increased legislative authority to enforce township resolutions. Unfortunately, townships are still unincorporated jurisdictions, and may be altered by actions of the General Assembly and the Board of County Commissioners (Colerain Township 2007b; League of Women Voters of the Cincinnati Area Education Fund 2003, 4; Liberty Township (OH) 2006; Mase and Heaphy 2001; Ohio Legislative Service Commission 2007, 129).

Host Fees: Negotiated agreements, consisting of cash payments or in-kind donations, paid by a landfill developer to the community which hosts the facility. A 2002 New York Times article reported that Tullytown, PA was receiving $4.50 per ton of garbage imported from New York City and Long Island (which amounted to $48 million over the years). In comparison, since 1988, Colerain Township has received only $0.25 per ton. (This Host Fee will increase to $0.45 per ton once the “southern expansion” starts receiving trash) (Clement 2005; Property Owners Want Equal Rights 2006).
Impact Fees: A form of “exaction.” Impact Fees are charged to “recoup or offset” the costs of building public facilities required by developments (Meck and Pearlman 2005, 606).

“In Accordance with a Comprehensive Plan”: This much discussed and interpreted phrase’s reasoning was explained by those who drafted the SZEA, as “preventing haphazard or piecemeal zoning. No zoning should be done without such a comprehensive plan” (Meck and Pearlman 2005, 88).

“In Accordance with Statutory Requirements”: Complying with legal and administrative requirements.

“In Compliance with Zoning Regulations”: Conforming to the provisions of a zoning resolution.

Incorporation: An early step in the statutory process of a territory becoming a municipality (either as a village or city – depending on size, population, and potential tax base), thus gaining more control over management of their internal affairs. In order to create their own charter, a municipality must be incorporated (Broberg 1995, 125-126; Ohio Legislative Service Commission 2007, 129).

Infrastructure: Basic structure; Supporting framework (Collin 1999).

“Landfill Fees”: This was the term, used by Rexhausen and Rodrigues, for one of the “revenue sources” Rumpke paid to Hamilton County and Colerain Township. These Fees include Host Fees and Solid Waste District Fees. In 2005, Rumpke paid $2,765,000 in landfill fees to the HCSWMD, and $481,000 to Colerain Township (Rexhausen and Rodrigues 2006, 10).

Land Use: How land is used.

Land Use Regulations / Restrictions: Common ways to protect landscapes which provide public and quasi-public goods. Examples include: zoning, pollution quotas, right-to-farm, right-to-forest laws, and development buffers (Hoch, Dalton, and Frank ed. 2000, 382).

Land Use Plan: Identifies land capabilities and constraints, determining where developments and infrastructure should be located, and then implementation. Brings together population and economic forecasting, environmental and land analysis, urban and development design, engineering infrastructure, stakeholder perspectives, and growth management mechanisms (Daniels and Daniels 2003, 2-3; Hoch, Dalton, and. So, ed. 2000, 142-155; Randolph 2004, 48-52).

Land Use Planning: A public process of identifying land capabilities and constraints, determining where developments and infrastructure should be located, and

**Subdivision of Land:** The process of dividing a piece of land into a number of parcels. The sub-divider, often a developer, must comply with local subdivision control regulations. Authority for regulating subdivisions is found in state codes, often modeled after SCPEA § 13-14 (Burke, Barlow 2002, 220).

**Lawmakers (“Legislators”):** Individuals who write and pass laws (Legislator 2007).

**Legislation:** Laws; also “Ordinances” or “Resolutions.”

**Planning Legislation:** The SCPEA was passed in 1928. Established Planning Commissions responsible for creating Land Use Plans (Burke 2002, 76; Daniels and Daniels 2003, 44).

**Zoning Legislation:** The SZEA was ready for adoption in 1924. Authorized the enactment of a zoning ordinance, containing the text for the regulatory scheme and a zoning map. Established a Zoning Commission and a Board of Zoning Adjustments or Appeals (Burke 2002, 76; Daniels and Daniels 2003, 44).

**Legislative Body:** Individuals who make, amend, or repeal laws (Legislative Body 2007).

**U.S. House of Representative:** Larger of the two legislative chambers which make-up the U.S. Congress; consists of 435 members. Works with the U.S. Senate to draft and pass laws, that if signed by the U.S. President, govern the U.S. (Microsoft Encarta Encyclopedia 1999).

**U.S. Senate:** Smaller of the two legislative bodies which form the U.S. Congress; consists of 100 members. Works with the U.S. House of Representatives to draft and pass laws, that if signed by the U.S. President, govern the U.S. (Microsoft Encarta Encyclopedia 1999).

**Legislative Power:** Power to make laws.

**U.S. Federal Legislative Power:** Article One of the U.S. Constitution establishes the legislative branch of the government, the U.S. Congress (U.S. Constitution 2007).
Ohio State Legislative Power: According to § 2.01 of the Ohio Constitution, the legislative power of the state is vested in a General Assembly, which consists of a Senate and a House of Representatives. The citizens reserve the power to propose to the General Assembly laws and amendments to the Ohio Constitution. Also, citizens may adopt or reject laws by a referendum vote. Ohio’s legislative power is limited only by the Ohio and U.S. Constitutions and by federal law. The legislative power is composed of three fundamental powers: political power, police power, and taxing power (Ohio General Assembly 2007 / 2008; Ohio Legislative Service Commission 2005, 7-9).

Ohio County Legislative Power: County government is an administrative arm of the state. Ohio counties can not pass their own ordinances (laws), but they may levy certain taxes. Voters in Ohio counties may choose to adopt a charter or alternative form of government. (Summit County is the only Ohio county to have changed its structure; adopting a charter in 1979) (League of Women Voters of the Cincinnati Area 2003, 5).

Ohio Township Legislative Power: Traditionally, Ohio townships only engage in governmental activities specifically authorized by the Ohio state legislature. If a township seeks to engage in an “unauthorized” activity, the Ohio General Assembly must enact new legislation. With the enhancement of the limited home rule provisions (in 1999, 2001, and 2003) townships were permitted to establish a "limited form of self-government." These laws grant townships, which meet certain criteria, increased legislative authority to enforce township resolutions. Unfortunately, townships are still unincorporated jurisdictions, and may be altered by actions of the General Assembly and the Board of County Commissioners (Colerain Township 2007; League of Women Voters of the Cincinnati Area 2003, 4-5; Liberty Township (OH) 2006; Ohio Legislative Service Commission 2007, 129).

“Letters of Consent”: Agreement / Consent from property owners to seek a zone change / amendment on their property. Seven “Letters of Consent” were submitted with Rumpke Sanitary Landfill, Inc.’s zoning application (transmitted 3/6/06). These property owners included: Larry G. Riddle; Jimmey K. Young; Warren E. North; Waldo E. Kallenberger; Claire A. Stepaniak; Lillian M. Stoeppeal; and Steve D. Hendren (Abercrombie & Associates, Inc. 2006).

“Letters of Support”: Larry Stone, Director of Safety for Rumpke, requested “official endorsements” (“Letters of Support”) of their “proposed eastern expansion” from Colerain Township businesses, schools, and other organizations. Assumingly, Mr. Stone “really needed the support” of these organizations to strengthen Rumpke’s argument, that their proposal had “public” support. (Rumpke Consolidated Companies, Inc. 2006c).

Life Cycle Analysis (LCA): “A technique to assess the environmental aspects and potential impacts associated with a product, process, or service, by:
- Creating an inventory of relevant energy and material inputs and environmental releases
• Evaluating potential environmental impacts associated with known inputs and releases
• Interpreting results in order to make more informed decisions (U.S. Environmental Protection Agency 2007).

**Locally Unwanted Land Use (LULU):** “A large, unwanted land use opposed by area residents.” Examples include solid waste transfer stations, wastewater treatment facilities, and other uses perceived to pose a hazard or reduction in property values (Daniels and Daniels 2003, 460; Randolph 2004, 47).

**“Main Players”:** Individuals responsible for making different decisions affecting the outcome of Case: ZA2006-04. Includes: CTBT; CTZC; Colerain Township Planning and Zoning Staff; HCBCC; HCRPC; HCRZC; Hamilton County Court of Common Pleas (Judge Ethna M. Cooper; Judge Ralph E. Winkler); Hamilton County Planning and Zoning Department Staff; Landfill Opposition; Landfill Supporters; Ohio Attorney General Jim Petro; Rumpke consultants and representatives.

**Municipality:** This form of government (Municipality) obtains all of its power and authority from the state, through statutes and expressed authority. A 1912 Ohio Constitution amendment classified municipalities according to population: 
> 5,000 = City; < 5,000 = Village. The provisions in O.R.C. Title 7 “Municipal Corporations” pertain to all villages and cities, except those which have created their own charters (in order to manage their own internal affairs) (Broberg 1995, 126; Burke 2002, 5; League of Women Voters of the Cincinnati Area Education Fund 2003, 4; Ohio Legislative Service Commission 2007, 129).

  - **City:** Community with > 5,000 population
  - **Village:** Community with < 5,000 population

**Municipal Solid Waste (MSW) Landfill:** MSW consists of common household waste: paper and paperboard, yard trimmings, food scraps, plastics, metals, glass, wood, rubber, leather and textiles, and other. MSW does not include industrial, hazardous, or construction waste. A landfill is where waste is disposed (buried) in the ground (U.S. Environmental Protection Agency 1995a; U.S. Environmental Protection Agency 2004a).

  - **Siting of MSW Landfills:** Deciding on a MSW Landfill site is an extensive process; steps include: estimating landfill volume requirements, identifying project objectives, fulfilling land use goals, identifying soil profile characteristics, determining applicable Federal, State, and Local requirements, assessing landfill options for energy and materials recovery, consider final site use, and determining suitability of sites (conducting site characterizations) (U.S. Environmental Protection Agency 1995a).

**Non-Charter Municipalities:** A City or Village without a Charter has its organization and operation controlled by state law (Broberg 1995, 25).
“Nonconforming Use”: These uses were legally in existence at the time a new zoning ordinance or amendment took effect. Due to changes in permitted uses, these become illegal under the new ordinance or amendment (do not meet current zoning requirements). Though communities would like to see all landowners in compliance with zoning ordinances, the Ohio Constitution contains provisions which protect landowners. Unless the nonconforming land use is a “nuisance,” landowners may keep their old land uses and not be forced to immediately change. Also, new zoning provisions do not apply to the nonconforming use, unless the use is abandoned or interrupted and not “restored” within lawful time periods (Meck and Pearlman 2005, 299-300; Ohio Legislative Service Commission 2007, 129).

“No Statutory Power to Engage in Land Use Planning”: The County and Township Zoning Act leads to the suggestion that “zoning enabling legislation for townships is for zoning only, and does not include planning legislation.” By viewing this Act, it appears that “townships have no authority to adopt ‘plans,’ even though they may enact a ‘zoning plan’ (zoning text and maps)” (Meck and Pearlman 2005, 75).

Notice of Public Hearing: Notice must appear in a certain number of publications of at least one local newspaper of general circulation in the county or township a set minimum number of days before the Public Hearing (Meck and Pearlman 2005, 355).


Ohio’s “Four Track System of Planning and Zoning Power”: The delegation of authority in Ohio has created this system, involving counties, townships, and charter and non-charter or “statutory plan” municipalities (Meck and Pearlman 2005, 47).

Planning: Planning in Ohio is “permissive rather than mandatory.” Meck and Pearlman note some of the “defects” of planning in Ohio: unidentified required content of plans; a vague connection between plans and administration of land use controls; lack of requirements for drafting or updating plans; overlapping and duplication of planning organizations’ duties; no common assumptions; conflicting plans (no “mechanisms” for reconciling disputes); and confusion over where local control / power ends and the State’s begins (Meck and Pearlman 2005, 60-61).

Community Planning: “A strategic planning process that addresses the needs of communities in a purposeful way, with implicit notion of varying level of community involvement in the process” (Rural Assist Information Network 2007).

Planning Commissions: Consisting mostly or entirely of “lay citizens,” Planning Commissions are permitted, through Ohio statutes, to initiate a planning policy. Planning Commissions are responsible for: forming comprehensive and functional plans and studies; reviewing subdivisions; suggesting recommendations on zoning map and text
changes as well as other proposed developments; and preparing or reviewing long term capital improvement projects (Meck and Pearlman 2005, 61).

**Colerain Township “Comprehensive Plan Executive Committee”:** These 12 individuals attended meetings and volunteered their time towards the creation of a plan which represented the “greater community and not just a single interest.” Committee members included: John Archibald, Bernard Fiedeldey, Alfred Harden, Donald Hughett, Don Johnson, John Kerr, Raymond Lippert, William Robers, Rick Salerno, Thomas Westfall, and Bruce Garber and Deanna Huber (Alternates) (McBride, Dale, and Clarion 2005).

**Regional Planning Commission:** O.R.C. Enabling Statute 713.21 permits a Planning Commission of any Municipal Corporation or group of Municipal Corporations, any Board of Township Trustees, and a relevant Board of County Commissioners to cooperate in the creation of a regional planning commission” (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 66).

**Planned Unit Developments (PUD):** O.R.C. 303.022 and O.R.C. 519.021 allow counties and townships to adopt PUD regulations. PUDs are usually proposed for “areas controlled by a single landowner, and which are to be developed using different types of dwelling units (single-family detached residences, duplexes), commercial, industrial, and other uses such as schools and churches; bringing together elements of zoning and subdivision control” (Meck and Pearlman 2005, 613-616).

**“Police Power”:** “The government’s power to regulate, in order to promote public health, safety, morals, and welfare.” Zoning is an example of a “police power” (Meck and Pearlman 2005, 32; Smith 1983, 28-29).

**“Power to Plan”:** Under O.R.C. Enabling Statute 713.21, “a Planning Commission of any Municipal Corporation or group of Municipal Corporations, any Board of Township Trustees, and a relevant Board of County Commissioners may cooperate in the creation of a regional planning commission.” Under O.R.C. 713.24, a “Regional or County Planning Commission may certify a Board of County Commissioners (not the Township Zoning Commission or Township Board of Trustees) the authority to adopt ‘plans of any type.’” Under O.R.C. Enabling Statute 713.25, “the Planning Commission of any Municipal Corporation to which a Regional or County Plan is certified (O.R.C. § 713.24), may adopt such a Plan, and that Plan shall thereupon have the same force within the Municipal Corporation as is provided by Law or Charter for Plans prepared and adopted by the Local Planning Commission. The Board of County Commissioners may adopt such a Plan, in relation to non-municipal territory (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 75).

**Power to Plan and Zone:** This power is “implied in the ‘police power,’ authorized through state constitutions and state statutes” (Meck and Pearlman 2005, 55-56).
“Pre-Application Meeting”: Usually, a “Pre-Application Meeting” or preliminary review before the CTZC is recommended. The CTZC offers feedback, may alert the applicant to potential problems, or suggest improvements to the plans (Colerain Township 2007c).

Property: “Things which belong to someone” (Collin 1999).


Public Hearings: O.R.C. § 519.06: Public Hearings on Recommendations; Notice. Before certifying its zoning plan recommendations to the Board of Township Trustees, the Township Zoning Commission must hold at least one Public Hearing. This is an opportunity for citizens to examine the text and maps of the proposed zoning resolution. O.R.C. § 519.08: Public Hearing on Zoning Plan. Before adopting any zoning resolution, the Board of Township Trustees shall hold a Public Hearing (Anderson’s Ohio Online Docs 2006).

Resolution: Generally “formal expressions” of opinions and wishes of the General Assembly; do not require the Governor’s approval. There are three types of Resolutions: Joint, Concurrent, and Simple. Joint and Concurrent resolutions require approval by both “Houses.” Simple resolutions only require approval of the “House” in which they were introduced. Also, Ohio township laws are called “Resolutions” (Broberg 1995, 23; Ohio Legislative Service Commission 2005, 47).

Rumpke Fiscal Impacts: In 2005, Rumpke generated $4,688,769 in local government and school district revenues through landfill fees, property taxes, employee earning taxes, and sales taxes. The distribution of these fees is seen below, in Table LT.1.

Table LT.1: Rumpke Fiscal Impacts in 2005

<table>
<thead>
<tr>
<th>Revenue Source</th>
<th>Hamilton County</th>
<th>Colerain Township</th>
<th>Northwest School District</th>
<th>Other Municipalities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landfill Fees</td>
<td>$2,765,175</td>
<td>$481,194</td>
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<td>-</td>
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<tr>
<td>Property Taxes</td>
<td>$238,033</td>
<td>$173,667</td>
<td>$532,807</td>
<td>$31,809</td>
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<td>-</td>
<td>$295,184</td>
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<td>Sales Tax</td>
<td>$170,900</td>
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<td>TOTAL</td>
<td>$3,174,108</td>
<td>$654,861</td>
<td>$532,807</td>
<td>$326,993</td>
</tr>
</tbody>
</table>

(Rexhausen and Rodrigues 2006, 10).
**School Districts:** The governing unit for elementary and secondary education in Ohio. School Districts are categorized as “city,” “exempted village,” and “local.” All Ohio territory lies in one of these three basic types of school districts (Ohio Legislative Service Commission 2007, 83).

**Solid Waste District Fees:** These “disposal fees” are paid by landfills, to finance the SWM district’s (which manage them) programs and plans. In 2005, Rumpke paid $2,765,000 in Fees to the HCSWMD (Hamilton County (OH) Solid Waste Management District 2006a; Hamilton County (OH) Solid Waste Management District 2007; Rexhausen and Rodrigues 2006).

**“Special Districts”:** Authorized by Ohio law, these “special districts” serve specific governmental purposes, not already offered. Each “special district” has an independent budget and means of financing. Hamilton County’s list of “special districts” includes: Cincinnati Metropolitan Housing Authority (CMHA), Hamilton County Soil and Water Conservation District, Hamilton County Solid Waste Management District (SWMD), Hamilton County Storm Water District (HCSWD), Metropolitan Sewer District of Greater Cincinnati (MSD), Miami Conservancy District (MCD), Millcreek Valley Conservancy District, Park District, Port of Greater Cincinnati Development Authority, Public Library of Cincinnati and Hamilton County, Southwest Ohio Regional Transit Authority (SORTA), Transportation Improvement District (TID) (League of Women Voters of the Cincinnati Area Education Fund 2003, 8-9).

**“Staff Report”:** Provides Committees (HCSWMD Policy Committee, HCRPC, CTZC, CTBT) with objective information to evaluate proposed projects. Data in staff reports includes: request, purpose, applicant, location, site description, surrounding conditions, history, summary of recommendations, proposed use, analysis, recommended motion, compliance, other issues, conclusion, and findings of other agency reports (Colerain Township Zoning Commission 2006e; Hamilton County (OH) Regional Planning Commission 2006; Hamilton County (OH) Solid Waste Management District 2006b).

**Standard City Planning Enabling Acts (SCPEA):** Passed in 1928, “establishes a Planning Commission, as a ‘quasi-independent agency’ of local government, in order to keep the Commission non-political. This Planning Commission is responsible for creating Land Use Plans (Burke 2002, 76).

**Standard State Zoning Enabling Act (SZEA):** Drafted originally by the U.S. Department of Commerce, and ready for adoption in 1924. The SZEA is the prototype for all U.S. State Zoning Enabling Acts. The SZEA “authorizes the municipal legislative body to enact a zoning ordinance, containing the text for the regulatory scheme, and a zoning map. The SZEA also establishes two administration bodies to consider matters of Zoning Administration; a Zoning Commission and a Board of Zoning Adjustments or Appeals” (Burke 2002, 76).
**Statute:** “A formal, written law of a country or state. It is written and enacted by the legislative authority, with the intention of being ratified by the highest executive in the government, and finally published” (Statute 2007).

**Tax Revenue:** U.S. local governments’ “revenue-raising powers” are granted by the states. The “property tax” is the most important tax for local governments. Other “local option taxes” include local income taxes, local sales taxes, and user charges (Hoch, Dalton, and So 2000, 404-412).

**Tipping Fees:** A fee for unloading or dumping waste at a landfill, transfer station, incinerator, or recycling facility. In 2004, the U.S. average landfill tipping fee was $34.29 per ton. In 2002, Ohio’s average tipping fee was $30.88. From these revenues, landfills pay-out “host fees” (to off-set impact on local community) and Solid Waste District fees (to provide strategies, facilities, programs, and activities) (Dhindaw 2004; Hamilton County (OH) Solid Waste Management District 2006a; National Solid Wastes Management Association 2004b; Ohio Environmental Protection Agency 2003).

**Township:** According to the Ohio Township Association’s website, there were 1,308 townships in Ohio as of 2007, with 12 townships in Hamilton County. The Ohio General Assembly delegates power to townships; “political subdivisions of the state” (Colerain Township 2007; League of Women Voters of the Cincinnati Area Education Fund 2003, 4; Meck and Pearlman 2005, 52-54; Ohio Township Association 2007).

**Township “Capabilities”:** In Ohio, each township is a “corporation” assigned rights by law. A township which adopts a “limited home rule” government may also, within the unincorporated area of their township: exercise all powers of local self-government; adopt and enforce local police, sanitary, and similar regulations; supply water and sewer services; and adopt resolutions (Anderson’s Ohio Online Docs 2006).

**Township Zoning Commission:** The creation of a Township Zoning Commission is required by township zoning enabling statutes. This Commission advises the Board of Township Trustees on zoning issues (Meck and Pearlman 2005, 73-77).

**Unincorporated Territory:** “A region of land which is not part of any municipality. An unincorporated community is usually not subject to city government taxes. These regions are generally administered (by default) as part of a larger territorial division (examples include township, county, or state). In Ohio, townships are considered ‘unincorporated areas’ while only villages and cities are referred to as incorporated (Unincorporated Area 2007).

**Variances:** “Minor departure or exception from the strict rule or literal enforcement or interpretation of zoning provisions.” Two types of variances: area or bulk variance; and use variance (Meck and Pearlman 2005, 435).
Village: There were 19 cities (including the City of Cincinnati) and 18 villages in Hamilton County, in 2003. A village is a municipal corporation with less than 5,000 registered electors (Anderson’s Ohio Online Docs 2006; League of Women Voters of the Cincinnati Area Education Fund 2003).

“Violated Its Constitutional Rights”: Rumpke, unwilling to accept the CTBT’s “final” decision (in Case: ZA2006-04), filed a lawsuit (No. A0611056) on 12/20/06 in the Hamilton County Court of Common Pleas. Rumpke claims the Township “violated its constitutional rights” by not approving their zoning change request, which would allow the landfill to expand.

Vision: “Ability to look and plan ahead” (Collin 1999).

Colerain Township’s Vision: These are the “guiding principles for the Colerain Township Comprehensive Plan.” Township representatives, the Comprehensive Plan Committee, and the Land Use Advisory Board helped decide on goals and objectives for Colerain’s future (McBride, Dale, and Clarion 2005).

Hamilton County’s Vision: The County’s “vision” is presently being used as the base for the long-range comprehensive plan being developed – Community COMPASS. This vision includes “mutual goals (at all levels of government) related to physical, economic, and social issues” (Hamilton County (OH) Regional Planning Commission 2003, 3).

Zoning (in Colerain Township): In 1961, the residents of Colerain Township voted to adopt Hamilton County Zoning. In 1994, Colerain Township residents voted to adopt local township zoning. A similar zoning resolution to the Hamilton County Zoning Resolution was put in effect by Colerain Township at that time. With this change, the Township took over control of their zoning. On 8/19/2006, Colerain Township adopted new zoning regulations. Zoning “separates conflicting uses, and establishes standards for building spaces and signs within different districts” (Colerain Township 2006f; McBride, Dale, and Clarion 2006).

Zoning Amendment (Map and Text Amendments): Changes or modifications to the zoning resolution. Amendments may be initiated by “a zoning commission motion, a Township Board of Trustees resolution, or an application filed by owners of the affected property” (Colerain Township 2006d, 21).

Zoning Amendment Process: At minimum, a 7 step process: Pre-Application Conference, Application, Referral to the Hamilton County Regional Planning Commission, Public Hearing with the Zoning Commission, Recommendation by the Zoning Commission, Public Hearing with the Board of Township Trustees, and a Decision (Colerain Township 2006d, 21-23).
**Zoning Appeal:** An Appeal can be made to the Board of Zoning Appeals “by any individual who feels injured or at a loss due to the zoning administrator’s or any township administrator’s interpretation or application of the zoning resolution” (Colerain Township 2006d, 24-25).

**Zoning Board of Adjustments or Appeals:** Created and established by the CTBT. This Board is made up of 5 members “who reside in the unincorporated area of Colerain Township.” This Commission’s roles and powers include: “hearing and deciding appeals of decisions made by the zoning administrator or another township official, authorizing ‘variances,’ permitting a ‘nonconforming use,’ and other powers conferred in Section 519.14 of the O.R.C.” (Colerain Township 2006d, 11-14).

**Zoning Certificates (Licenses):** These Certificates are required in order to: “construct or alter any building, occupy vacant land, change the use of land, and change how a ‘nonconforming use’ is used” (Colerain Township 2006d, 19).

**Zoning Commission:** Created and established by the CTBT. This Commission is made up of 5 members “who reside in the unincorporated area of Colerain Township.” This Commission’s duties include: “initiating proposed zoning resolution amendments, reviewing proposed zoning resolution amendments and making recommendations to the Township Board of Trustees, and performing all other duties listed in Chapter 519 of the O.R.C.” (Colerain Township 2006d, 10-11).

**Zoning Districts:** “Classify, regulate, and restrict where industries, residences, recreation, trades, and other land uses are located” (Colerain Township 2006d, 40).

**“A-A” Single Family Residence:** As of 8/19/06: R-2 “Estate Residential.” Intended for large lot residential development or open space subdivisions; ensuring protection of open spaces and steep hillsides (Colerain Township 2006d).

**“O-O” Planned Office:** As of 8/19/06: PD-B “Planned Business.” Permitted uses include: B-1, B-2, B-3, or O-1 Districts (Colerain Township 2006d).

**“EF” Excavation – Landfill:** As of 8/19/06: SWD “Solid Waste Disposal”

**“FF” Planned Light Industrial:** As of 8/19/06: PD-I “Planned Industrial”

**“PD-I” Industrial Planned Development:** Permitted Uses include: I-1 District (Colerain Township 2006d).

**“SWD” Solid Waste Disposal District:** Defines the limits of landfill and other solid waste disposal activity. Permitted uses include: “sanitary landfill facility as defined in O.R.C. Section 3734; construction / demolition debris disposal facility; central processing facility for solid waste transfer and / or for materials / resource recovery /
recycling; agricultural uses; wildlife uses; veterinary facilities; riding stables; active parks and recreational facilities; passive parks and recreational facilities and conservation areas; warehouses; storage facilities; methane recovery facility; soil removal for capping of a sanitary landfill facility; and mining and excavation as an accessory use” (Colerain Township 2006d).

**Zoning Inspector (Zoning Administrator):** Appointed by the CTBT to enforce the zoning resolution (review applications for zoning certificates, issue zoning certificates, and issue citations for zoning violations). As of 3/23/07, Dr. Susan Roschke (Planning and Zoning Administrator) and Jerry Quinn (Zoning Inspector) filled these positions for Colerain Township (Colerain Township 2006d, 14-15; Colerain Township 2006f).

**Zoning Interpretation:** A more specific analysis/interpretation of a zoning code’s applicability to a particular situation or property.

**Zoning District Map:** Outlines the boundaries of the established zoning districts. This map is part of the zoning resolution (Colerain Township 2006d, 41).

**Zoning Ordinance (Zoning Text):** This text, along with zoning maps, explains the terms and conditions of zoning within the municipality. Sets forth all standards, procedures, and requirements. Following a public hearing, a local governing body adopts the zoning ordinance. A zoning commission or planning commission is responsible for its preparation, basing the ordinance on well-prepared planning studies (Smith 1983, 232-233).

**Zoning Resolution (Zoning Code):** The purpose of the Zoning Resolution is to set forth zoning districts in order to regulate “the location, height, bulk, number of stories, and size of buildings and other structures” (Colerain Township 2006d, 2, 40).
Acronyms

CTBT: Colerain Township Board of Trustees
CTLUAB: Colerain Township Land Use Advisory Board
CTPZD: Colerain Township Planning and Zoning Department
CTZC: Colerain Township Zoning Commission
Community COMPASS: Hamilton County Comprehensive Master Plan and Strategies
HCBCC: Hamilton County Board of County Commissioners
HCCCP: Hamilton County Court of Common Pleas
HCFPO: Hamilton County Fire Prevention Officer
HCGHD: Hamilton County General Health District
HCMSD: Hamilton County Metropolitan Sewer District
HCNRCSC: Hamilton County Natural Resources Conservation Service
HCPZD: Hamilton County Planning and Zoning Department
HCRPC: Hamilton County Regional Planning Commission
HCRZC: Hamilton County Rural Zoning Commission
HCSWMD: Hamilton County Solid Waste Management District
LCA: Life Cycle Analysis
LULU: Locally Unwanted Land Use
LUPA: Land Use Plan Amendment
MSW: Municipal Solid Waste
NIMBY: Not-In-My-Back-Yard
OEPA: Ohio Environmental Protection Agency
OEPA SWDO: OEPA Southwest District Office
O.G.C.: Ohio General Code
O.R.C.: Ohio Revised Code
PMUE: Planned Mixed Use Employment
P.O.W.E.R.: Property Owners Want Equal Rights
PUD: Planned Unit Development
Rumpke: Rumpke Sanitary Landfill, Inc.;
RCRA: Resource Conservation and Recovery Act
RPC: Regional Planning Commission
SWM: Solid Waste Management
SCPEA: Standard City Planning Enabling Acts
SZEAA: Standard State Zoning Enabling Acts
U.S. EPA: United States Environmental Protection Agency
Relevant Entities / Individuals

Banklick Creek Character Area: One of eleven geographic areas identified in the Colerain Township Comprehensive Plan. Rumpke landfill is situated within this area (McBride, Dale, and Clarion 2006).

Colerain Case: ZA2006-04: A request to change zoning from “AA” Residence and “OO” Planned Office to “EF” Excavation / Landfill and “FF” Planned Light Industrial. The purpose is “to change the zoning of property east of Hughes Road to allow for a new landfill, and to create a planned light industrial area along I-275.” The applicants include Rumpke Sanitary Landfill, Inc. (applicant / owner), Steve and Margaret Hendren, Henry and Lillian Stoeppel, and Clair Stepaniak (owners) (Colerain Township Zoning Commission 2006e).

Colerain Case: ZA2006-10: Recommended by the CTZC (on 11/19/06) and later adopted by the CTBT (on 2/20/07). This application to rezone approximately 209 acres was separated into two sections: Struble Road area (from R-3 “Suburban-Low Residential” to B-3 “Commerce”) and Hughes Road area (from R-2 “Estate Residential” to I-1 “Industrial”); with frontage of approximately 2,200 feet on the south side of Struble Road and 5,200 feet on the east side of Hughes Road. Property Owners included in zone change: Bryan Rabe (R-2 to I-1); Claire A. Stepaniak (R-2 to I-1); David J. & Penny D. Schon (R-3 to B-3); Joseph G. and Rita C. Benz, Trustees (R-3 to B-3); Legacy, Inc. (R-3 to B-3); Lillian M. Stoeppel, et al. (R-2 to I-1); Manfred H. Benndorf, Trustee (R-3 to B-3); Paul A. & Celia Pitzer (R-3 to B-3); Robert J. and Kristi K. Burbink (R-3 to B-3); Robert L. Jacobs, Trustee (R-3 to B-3); Ronald H. and Laverne J. Schoch (R-3 to B-3); Rumpke Sanitary Landfill, Inc. (R-2 to I-1) (R-3 to B-3); Steven M. Hardwick (R-3 to B-3); Thomas E. Haas (R-3 to B-3); and William H. Margrave, Jr. (R-2 to I-1) (Cincinnati (OH) Enquirer, The 2007; Colerain Township. 2007a; Colerain Township Online Documents 2007a; Hamilton County (OH) Regional Planning Commission 2007b; Hamilton County (OH) Regional Planning Commission 2007c).

Colerain Township: Settled in 1790 by a surveyor named John Dunlap, and established as a Township in 1794. It is situated in the northeastern part of Hamilton County. Up until 1945, the Township was mostly a rural, agricultural area with few homes. Development has progressed into large subdivisions, as roads and sewers have been extended.

In 1961, Colerain Township residents voted to adopt Hamilton County Zoning. Then, in 1994, Township residents voted to adopt local township zoning, assuming responsibility for their zoning and all previously developed uses (Colerain Township 2006b; McBride, Dale, and Clarion 2006).

Colerain Township Board of Trustees: The Township legislative authority, as well as executive responsibilities. The CTBT’s manage and control duties include: budgeting, payroll, insurance, record keeping, accounting, department oversight, planning, legal, disbursements. Legislative duties include: complaint department, public meetings, government access / referral, liaison with government entities, public relations /


**Colerain Township Land Use Advisory Board:** The CTLUAB maintains the Land Use Plan and provides advisory review of land use and zoning issues (Colerain Township 2006f).

**Colerain Township Planning and Zoning Department:** Provides short and long term planning services for the Township, as well as zoning permitting and enforcement. The work of the CTPZD is supported by four appointed boards: CTZC, Board of Zoning Appeals, CTLUAB, and the Landscape Advisory Board (Colerain Township 2006f).

**Dale, Kathryn A.:** Colerain Township Land Use Planner. Spoke as a “Public Official” at the HCRPC’s Zone Amendment Hearing for Case: ZA200-04 on 5/4/06 (Hamilton County (OH) Regional Planning Commission. 2006b).

**McBride, Dale, and Clarion:** Land Use Consulting Firm hired by Colerain to prepare the Township’s Comprehensive Plan, and later to complete the Banklick Creek Zoning Analysis (Colerain Township 2007a; Colerain Township Online Documents 2007a; McBride, Dale, and Clarion 2005; McBride, Dale, and Clarion 2006, 1; McBride, Dale, and Clarion 2007).

**Roschke, Dr. Susan:** CTPZD Administrator. Dr. Roschke replaced Otis Spriggs in early 2006. Dr. Roschke was responsible for preparing a Staff Report (of Case: ZA2006-04) for the CTBT (Colerain Township Zoning Commission 2006e).

**Colerain Township Zoning Commission:** A five member citizen Board appointed by the Board of Trustees. The CTZC’s responsibilities are outlined in O.R.C. 519, and defined more specifically in Article 3 of the Colerain Township Zoning Resolution. These responsibilities include: hearing requests for zoning amendments, development plans, and amendments to development plans; initiating zoning map or text amendments; and providing recommendations to the Board of Trustees (Colerain Township 2006f).

**Colerain Township Zoning Inspector:** In order to enforce zoning regulations, O.R.C. § 519.16 allows the CTBT to provide a system of zoning certificates, and
establish and fill the position of Township Zoning Inspector. As of 2/20/2007, Jerry L. Quinn was Colerain Township’s Zoning Inspector (Anderson’s Ohio Online Docs 2006).

Kerr, John: A Colerain Township resident and member of the Comprehensive Plan Executive Committee which assisted with the creation of Colerain Township’s Comprehensive Plan (adopted 3/12/05). He opposed Rumpke’s zone amendment application; publicly commenting during at least one Public Hearing.

Powell, Gary: Land Use and Zoning lawyer with Manley Burke; “interested observer” (Powell 2007).

P.O.W.E.R. (Property Owners Want Equal Rights): This group’s “mission” is “to maintain and enhance the quality of life in Colerain Township and protect and improve property values.” P.O.W.E.R. members envision “promoting public involvement in local government and community issues; enhancing the future for all Township residents.” P.O.W.E.R. seeks to “empower individuals to have a voice in issues and decisions which impact their ‘quality of life’” (Property Owners Want Equal Rights 2006).

Reuter, James E: Colerain Township Legal Counsel (Attorney).

Hamilton County: Established in 1790. Located in the southwest corner of Ohio. See map in Figure 4 in Appendix. Hamilton County’s 2005 population equaled 806,652 (out of 11,464,042 Ohio citizens). Hamilton County’s 2000 land area measured 407 square miles (out of 40,948 square miles of Ohio land area). Within Hamilton County, there are 37 municipalities (19 cities and 18 villages), 12 townships, 22 school districts, and numerous special districts. The County’s 414 square mile area breaks down into 19% City of Cincinnati, 25% other municipalities, and 56% unincorporated.

The County is governed by three, equally ranked, elected Commissioners (administrative / budget authority), who share responsibilities with the Ohio General Assembly (legislative authority), County courts (judicial authority), and eight other elected County officials (administrative authority) (Auditor, Clerk of Courts, Coroner, Engineer, Prosecuting Attorney, Recorder, Sheriff, and Treasurer) (Hamilton County (OH) Commissioners 2006; League of Women Voters of the Cincinnati Area Education Fund 2003; U.S. Census Bureau 2007).

Hamilton County Board of County Commissioners (HCBCC): Presently, this 3 member Board is made up of Pat DeWine, David Pepper, and Todd Portune. The HCBCC is responsible for: approving the annual county budget; adopting an annual appropriation resolution for most County offices; determining tax levies and bond issues; appointing members of various boards and commissions; approving annexations and incorporations; managing property; implementing state regulations; and entering into agreements with municipalities, special districts, and other counties (League of Women Voters of the Cincinnati Area Education Fund 2003, 7).
Hamilton County Board of Zoning Appeals (HCBZA): A 5 member Board appointed by the Board of County Commissioners. The HCBZA is responsible for hearing and authorizing zoning appeals; granting conditional zoning certificates; and revoking building certificates which have unauthorized variances (League of Women Voters of the Cincinnati Area Education Fund 2003, 30).

Hamilton County Court of Common Pleas: Made-up of 5 Divisions / Courts: General Division, Drug Court, Domestic Relations Division, Juvenile Court, and Probate Court Division (League of Women Voters of the Cincinnati Area Education Fund 2003, 19).

Hamilton County Department of Public Works (HCDPW): Reviews, approves, and inspects all new developments for storm water management and flood protection in the unincorporated areas of Hamilton County. Also regulates water line installation through the Petition Process, and manages County Capital Improvement Projects. The HCDPW’s Maintenance Division installs and repairs fire hydrants and storm sewers, and investigates storm water drainage concerns within the unincorporated county limits.

Hamilton County Elected Officials: Hamilton County elected officials include: Board of County Commissioners, County Engineer, Municipal Court, Juvenile Court, Probate Court, Prosecuting Attorney, County Recorder, County Sheriff, County Treasurer, County Auditor, Clerk of Courts, County Coroner, Court of Appeals, Court of Common Pleas, County School Board, and Domestic Relations Court (League of Women Voters of the Cincinnati Area Education Fund 2003).

Hamilton County Engineer: William Brayshaw’s office is responsible for the design, construction, inspection, maintenance, and study of 522 bridges and 500 miles of “public right of way.” Also, the Engineer’s office is required to provide “survey – related services” (surveying, record keeping, tax maps, review of land deeds, and maintaining Cincinnati Area GIS data) (Hamilton County (OH) Engineer’s Office (The) 2007).

Hamilton County Executive Director: As Executive Director, Ron Miller serves as Regional Planning Commission Secretary and Rural Zoning Commission Secretary, and is generally in charge of both Commissions. Miller provided comments to the HCRPC on several different cases involving Rumpke and Colerain Township (including Case: LUPA Colerain 2005-01; Rumpke Industrial; Case: ZA2006-04; and Case Colerain ZA2006-10; Banklick Creek) (Hamilton County (OH) Regional Planning Commission 2005a; Hamilton County (OH) Regional Planning Commission 2006b; Hamilton County (OH) Regional Planning Commission. 2007b; League of Women Voters of the Cincinnati Area Education Fund 2003, 29).

Hamilton County Fire Prevention Officer: The HCFPO is Mark Walsh. Walsh reviewed Case: ZA2006-04; approving the concept plan “subject to conditions” (Colerain Township Zoning Commission 2006e).
**Hamilton County General Health District:** Governed by the Board of Health, the HCGHD’s purpose is to work with the community to protect public health and the environment. This organization provides education, inspections, health care coordination, and data analysis in order to ensure that the citizens of Hamilton County are safe from disease, injury, and contamination. An “Agency Request for Review” of Case: ZA2006-04 was made to HCGHD; “none was received” (Colerain Township Zoning Commission 2006e; Hamilton County (OH) General Health District 2007).

**Hamilton County Metropolitan Sewer District:** The HCMSD serves the wastewater removal and treatment needs of over 800,000 customers in Hamilton County. The HCMSD reviewed Case: ZA2006-04; approving the concept plan “subject to conditions” (Colerain Township Zoning Commission 2006e; Hamilton County (OH) Metropolitan Sewer District of Greater Cincinnati 2007).

**Hamilton County Natural Resources Conservation Service:** The HCNRCS provides leadership in a partnership effort to help conserve, maintain, and improve our natural resources and environment. An “Agency Request for Review” of Case: ZA2006-04 was made to HCGHD; “none was received” (Colerain Township Zoning Commission 2006e; Hamilton County (OH) Natural Resources Conservation Service 2007).

**Hillside Trust:** Promotes the preservation of area hillsides through education, land conservation, and advocacy of responsible land use. Service area includes the multi-county region (around Cincinnati). The HCRPC’s Staff Report for Case: ZA2006-04 requested an “Agency Report” from the Hillside Trust; which was “not yet received” when the HCRPC approved Case: ZA2006-04 (Hamilton County (OH) Regional Planning Commission 2006a. Hamilton County (OH) Planning and Zoning Department 2007; Hillside Trust (The) 2001).

**Hamilton County Regional Planning Commission (HCRPC):** Made-up of 7 representatives; present HCRPC Secretary is Ron Miller. Provides “advisory” planning services to 12 Hamilton County Townships (unincorporated areas). Also serves 37 Hamilton County Municipalities (members of the Hamilton County Planning Commission), which pay annual fees. Services include: community planning, development review, and information services. These services are in connection with annual work programs which monitor development trends, evaluate current policies, and update the Hamilton County Master Plan. These services are also tied to related regulations for zoning, subdivision of land, and traffic movement.

The HCRPC is also responsible for Land Use Controls, which includes reviewing developments for compliance with: zoning regulations; subdivision rules and thoroughfare plans; as well as how well they follow land use plans (League of Women Voters of the Cincinnati Area Education Fund 2003, 28-29).

**Hamilton County Rural Zoning Commission (HCRZC):** Consists of 5 members, appointed by the Hamilton County Board of Commissioners, present HCRZC Secretary is Ron Miller. The HCRZC administers and enforces zoning in 8 Hamilton
County Townships (League of Women Voters of the Cincinnati Area Education Fund 2003, 30).

**Hamilton County Soil and Water Conservation District (HCSWCD):** Overseen by a Board of 5 Supervisors. The HCSWCD is responsible for promoting soil and water conservation, correct land use, and improving water quality (League of Women Voters of the Cincinnati Area Education Fund 2003, 8).

**Hamilton County Solid Waste Management District (HCSWMD):** Includes 4 permanent “statutory” members, 3 “revolving members, and 1 “ex-officio waste industry representative.” The HCSWMD is set-up to reduce Hamilton County’s reliance on landfills (through waste reduction, reuse, and recycling programs). The HCSWMD is responsible for implementing Hamilton County’s Solid Waste Management Plan. It is separated into three categories: Residential Outreach, Business and Industry Outreach, and Education Outreach (League of Women Voters of the Cincinnati Area Education Fund 2003, 8; Ohio Legislative Service Commission 2007, 100).

**Hamilton County Zoning Inspector:** Zoning Inspector’s office interprets and enforces Zoning Regulations (League of Women Voters of the Cincinnati Area Education Fund 2003, 30).

**Snyder, Bryan:** Senior Planner with the Hamilton County Planning and Zoning department. Snyder has written Staff Reports and spoken at HCRPC Public Hearings regarding numerous Colerain Township Land Use and Zone amendments.

**Meck, Stuart:** A Senior Research Fellow with the American Planning Association in Chicago, IL. Meck has 33 years of experience as a professional planner and public administrator. He has also written extensively on planning and land use controls. In a letter, referred to by J. Trauth (during a Hamilton County Regional Planning Commission meeting to consider an amendment to the Colerain Township Land Use Plan on 7/7/2005) Meck responded to the Ohio Attorney General’s Opinion that Ohio Townships have the authority to adopt their own land use plan. Meck said that “under O.R.C. 713.23(B)(1) an Ohio County is the only entity which has ‘statutory authority to engage in regional planning’” (Meck and Pearlman 2005).

**Rumpke Consolidated Companies, Inc.:** Has formed a total of 22 companies, including one of the largest privately owned waste and recycling companies in America; “ranked No. 14 on the 2005 Waste Age 100 list.” The Rumpke business began in 1932, with Rumpke brothers, William F. and Bernard, operating a coal and junkyard business in Carthage, OH. As of 2005, Rumpke owned 9 landfills, 6 recycling centers, and 10 transfer stations, as well as a portable restrooms operation and a waste brokerage service. Rumpke Consolidated employs 1,800 (including 75 “blood relatives”) (Angel 2005; Rumpke 2007).

**Butler, John R:** Rumpke Senior Site Engineer
Riddle, Larry: Rumpke Landfill Manager

Roberts, Richard (Jay): Director of Engineering and Environmental Affairs at Rumpke Consolidated Companies, Inc. (Rumpke 2007).


Rumpke’s Colerain Township Landfill: Located at 10795 Hughes Road (in Colerain Township). The busiest of Ohio’s “publicly-available landfills” in 2005; received an average of 7,048 tons of waste per day. Received a total of 2,015,848 total tons of waste, in 2005. As of 12/31/2005, there were 43,267,038 cubic yards of “gross airspace” remaining (Ohio Environmental Protection Agency. 2005; Ohio Environmental Protection Agency 2006a).

Rumpke, Jeff: Rumpke’s Regional Vice President for Cincinnati Market for Rumpke Consolidated Companies, Inc. (Rumpke 2007).

Rumpke Sanitary Landfill, Inc.: The “corporation name” under which a lawsuit was filed 12/20/2006, in Hamilton County Court of Common Pleas, against Colerain Township (Radel 2006).


Rumpke Jr., William (Bill) J.: Serves as COO for Rumpke Consolidated Companies, Inc. (Rumpke 2007).

Rumpke Sr., William (Bill) J.: President and CEO, and Chairman of the Board at Rumpke Consolidated Companies, Inc. (Rumpke 2007).


State of Ohio: The 17th State of U.S. 2005 estimated population was 11,464,042. Nearly 70 percent of all waste is landfilled (compared to 80 percent nationwide). In 2002, 19,994,254 tons of solid waste (includes 2,192,091 tons of “out-of-state” imported waste) was disposed in Ohio landfills (Heimlich 2007; Knepper ed. 2001; Ohio Environmental Protection Agency 2003; U.S. Census Bureau 2007).

Ohio Attorney General: The Chief Law Enforcement Officer in the State of Ohio. The Attorney General is responsible for writing “Opinions” on questions of the law submitted by: State officials, the General Assembly, heads of state departments, and County prosecutors. The Attorney General’s Opinions are equal to a law, and so provide a point of authority for the State and its political subdivisions. A check on the Attorney
General’s power is a court ruling, which can overrule an Opinion (Ohio State University (The) 2007).

**Benyo, Steve:** State of Ohio Assistant Attorney General, under Attorney General Marc Dann.

**Petro, Jim:** Wrote a much discussed Opinion on 7/15/03, concerning the conflict between a county’s and a township’s authority (as granted by the O.R.C.) to prepare and adopt plans for the unincorporated territory of the township (Opinion No. 2003-022). Ohio Attorney General Petro determined that “both a county and a township may prepare and adopt land use plans for the unincorporated territory of a township.” When these plans “contain inconsistent provisions, the township is conferred primary authority to regulate land use in the township” (pursuant to O.R.C. Chapter 519) (Petro 2003).

**Ohio Constitutional Convention of 1802:** During the month of November 1802, thirty-five men worked together in Chillicothe, OH drawing-up Ohio’s first constitution (Knepper ed. 2001, 69).

**Ohio Environmental Protection Agency (OEPA) SWM Districts:** In response to the passing of Ohio House Bill 592, in 1988, a planning process at both the local and state government levels was set in motion; requiring the formation of single or joint county SWM districts. The OEPA is responsible for approving these districts’ SWM plans; accounting for solid wastes generated within the district for a minimum of 10 years (Ohio Environmental Protection Agency 1996; Ohio Environmental Protection Agency 2007a).

**OEPA Southwest District Office (SWDO):** Serves 16 counties (2002 population of 2,817,182) in southwestern Ohio. Ten program divisions are represented in OEPA’s SWDO: air pollution control, ground water unit, public drinking water unit, division of emergency & remedial response, emergency response & special investigations, hazardous waste management, office of federal facilities oversight, office of compliance assistance and pollution prevention, solid and infectious waste management, and surface water & water quality (Ohio Environmental Protection Agency 2007e).

**Ohio General Assembly:** The legislative power of the State of Ohio belongs to the General Assembly, a two-house (bicameral) legislature consisting of the Senate and the House of Representatives, and to the citizens. The General Assembly exercises legislative power by enacting bills and proposing constitutional amendments (Ohio Legislative Service Commission 2005, 7-15).

**Ohio House of Representatives:** The House has 99 members (Ohio Legislative Service Commission 2005, 7-15).

**Ohio Senate:** The Senate has 33 members (Ohio Legislative Service
Ohio Governor: Ohio’s Chief Executive. The Governor is responsible for the preparation of the state budget and has extensive powers of appointment. The Governor may veto proposed legislation, but this veto may be over-turned by a three-fifths vote of the elected members of the General Assembly (Microsoft Encarta Encyclopedia 1999).

Ohio Land Use Review Committee: Created by the Ohio General Assembly, in 1975, “to examine planning and land-use control at the state, regional, county, township, and municipal levels.” The Committee was based on two general principles: “local government should have the primary role in land use management; and comprehensive planning is essential.” The Committee’s 1977 report sought “greater responsibilities for county and regional planning commissions, and enhanced authority for municipal and county planning commissions.” Unfortunately, legislation to implement these proposals “lacked sufficient political support,” and were never enacted. The Committee’s report “was the first and only major assessment of Ohio’s planning statutes” (American Planning Association 2007; League of Women Voters of the Cincinnati Area 1998; Meck and Pearlman 2005, 116).

Ohio Supreme Court: The Supreme Court is established, has its size and jurisdiction determined, and is granted rule making and other authority by Article IV, Sections 1, 2 and 5 of the Ohio Constitution. The Supreme Court is the “court of last resort” in Ohio (Supreme Court of Ohio (The) 2007).


Vella, Mark (Development Director with Al Neyer, Inc.): A registered professional engineer / expert in commercial development / industrial developer. Created a report (discussed in Colerain Case: LUPA Colerain 2005-01; Rumpke Industrial) “regarding the evaluation of land east of Hughes Road for development as PMUE. Testified that the PMUE strip near Rumpke landfill was not feasible “due to location, visibility, access, and economics.” Also, Meck provided testimony for Colerain zone amendment Case: ZA2006-10; Banklick Creek, regarding the “economic feasibility” of the proposed rezoning near Rumpke landfill (Al Neyer, Inc. 2007; Hamilton County (OH) Regional Planning Commission 2005a; Hamilton County (OH) Regional Planning Commission 2007b).
**List of Relevant Court Cases**

**Case: A00-07121:** Rumpke landfill operators filed this lawsuit after the Colerain Township Board of Trustees denied their 1999 application to rezone an additional 313 acres south of the original landfill to a mix of “EF” and “PD-I.” This lawsuit resulted in a consent decree, which agreed that the landfill and industrial uses were “reasonable” for that location. It should be noted that this area was not rezoned by the court’s decree (Colerain Township 2000; Colerain Township Zoning Commission 2006e; Hamilton County (OH) Clerk of Courts 2007; McBride, Dale, and Clarion 2006, 3).

**Hamilton County Court of Common Pleas Case No.: A0611056:** Unwilling to accept the Township Board of Trustees’ “final” decision Rumpke Sanitary Landfill, Inc.; Charles M. and John J. Stoeppe; Trustees of the Henry and Lillian Stoeppe Family Living Trust; and Claire A. Stepaniak filed this lawsuit (on 12/20/06) against Colerain Township (OH) and the Colerain Township Board of Trustees (Bernard A. Fiedeldey, Keith N. Corman, and Jeff Ritter). Rumpke claims the Township “violated its constitutional rights” by not approving their zoning change request, which would allow the landfill to expand.

On 1/10/07, the Case’s Judge was reassigned; Case transferred from Judge Ethna Cooper to Judge Ralph Winkler. On 1/19/07, Case was removed to U.S. District Court by the defendants (where it was re-assigned Case No. 1:07-CV-039). Rumpke subsequently dismissed the case (“not wanting it to be heard in Federal court); re-filing it again in the Hamilton County Common Pleas Court (on 4/3/07), without the federal claims. The new Case No. is A0703073 (Hamilton County (OH) Clerk of Courts 2007; Hamilton County (OH) Court of Common Pleas 2006; Hamilton County (OH) Court of Common Pleas 2007; Reuter 2007; Rumpke Sanitary Landfill, Inc. 2006b).

**Hamilton County Court of Common Pleas Case No.: A0703073:** The “re-filed” Case stemming from Case No.: A0611056. Rumpke, “not wanting their Case to be heard in Federal court, re-filed it in the Hamilton County Court of Common Pleas (on 4/3/07), without the federal claims.

The court’s decision in this Case will determine whether or not Rumpke moves forward with its planned “expansion.” Even after the court’s decision, Rumpke will have further permitting steps to pass through. The OEPA will play a pivotal role in signing-off on the long list of standard requirements for MSW landfills (Reuter 2007).
List of Relevant Zoning Cases

Colerain Case: 4-82: In 1982, Rumpke received approval to rezone approximately 23 acres along Hughes Road from “A-A” Single Family Residence to “FF” Light Industrial. Allowed Rumpke to construct several maintenance and operational buildings (McBride, Dale, and Clarion 2006).


Colerain Case: 7-96: Resulted in rezoning of an existing house on Struble Road to “OO” Planned Office, in order to be used as Rumpke office (1996) (Colerain Township Zoning Commission 2006e).

Colerain Case: ZA1999-06: The CTBT’s denial of this 1999 zone amendment application resulted in Rumpke filing a lawsuit, which was settled by a Consent Decree (Consent Decree from Case: A00-07121). This Consent Decree allowed for grading modifications of approximately 165 acres at the southern end of landfill, with an expansion of approximately 65 acres to the south. An additional 83 acres of Light Industrial were added along the north side of Struble Road and the west side of Hughes Road, as well as the east side of Hughes Road next to I-275. It should be understood that this area was not rezoned until 8/19/06, when Colerain Township’s new zoning resolution took effect (Colerain Township Zoning Commission 2006e; Consent Decree 2007; McBride, Dale, and Clarion 2006).

Colerain Case: ZA2006-04: A zoning amendment request to change from “AA” Residence and “OO” Planned Office to “EF” Excavation/Landfill and “FF” Light Industrial. The applicants include: Rumpke Sanitary Landfill, Inc., Steve and Margaret Hendren, Henry G. and Lillian M. Stoeppel, and Claire A. Stepaniak. The request covers 350 acres (59 “FF” and 291 “EF”). The HCRPC recommended for approval (on 5/4/06). The CTZC recommended against approval (on 7/18/06). The CTBT recommended against approval (on 11/9/06). Applicants filed lawsuit in Hamilton County Court of Common Pleas (on 12/20/06) (Colerain Township Online Documents 2007).

Colerain Case: ZA2006-10: Recommended by the CTZC (on 11/19/06). This was the follow-through on a Township commitment, to re-study the area east and south of Rumpke landfill (directly in the middle of Case: ZA2006-04’s “expansion” area), made during the Comprehensive Planning process. The application to rezone approximately 209 acres was separated into two sections: Struble Road area (from R-3 “Suburban-Low Residential” to B-3 “Commerce”) and Hughes Road area (from R-2 “Estate Residential” to I-1 “Industrial”); with frontage of approximately 2,200 feet on the south side of Struble Road and 5,200 feet on the east side of Hughes Road. The HCRPC recommended
approval of the Struble Road area rezoning, but denial of the Hughes Road area (on 1/4/07). The CTZC recommended approval of the “application as presented” (both areas) (on 1/16/07). The CTBT voted to adopt the CTZC’s recommendations (on 2/20/07) (Cincinnati (OH) Enquirer, The 2007; Colerain Township. 2007a; Colerain Township Online Documents 2007a; Hamilton County (OH) Regional Planning Commission 2007b; Hamilton County (OH) Regional Planning Commission 2007c).
List of Relevant Acts, Amendments, Bills, Legislation, Laws, Plans, Reports, Statutes

Banklick Creek Zoning Analysis: This report, presented to the CTZC on 11/17/06, was completed by the same land use planning consultants (McBride, Dale, and Clarion) who assisted with the preparation of Colerain’s Comprehensive Plan. The purpose of this zoning analysis was to create a “strategic plan to identify the best mix of land uses and zoning that could serve as a ‘transition’ in the area around Rumpke landfill,” and offer guidance on “appropriate zoning map amendments” (Colerain Township 2007a; Colerain Township Online Documents 2007a; McBride, Dale, and Clarion 2006, 1).

Case # LUPA 2002-01: Filed by the CTLUAB and the CTBT on 8/1/02, with the CTBT accepting the CTZC’s recommendation for approval on 2/25/03. This LUPA amended two sites near Rumpke landfill; Site 51 and Site 334. Site 51, situated on Hughes Road, changed from “SF” Single Family to “PMUE” Planned Mixed Use Employment. While Site 334, also in the area, changed from “SF” Single Family to “RR” Rural Residential. Resulted in Resolution # 18-03 (Colerain Township 2003a).

Case # LUPA 2003-01: Filed by Rumpke on 1/2/03. Recommended for denial by the CTLUAB on 3/4/03. Recommended for denial by the CTZC on 4/15/03. Denied by the CTBT on 5/13/03. According to Colerain Township Attorney, J. Reuter, and Hamilton County Senior Planner / Supervisor, Todd Kinskey, this same plan was presented by Rumpke in Case # LUPA 2005-01; Rumpke Industrial (Colerain Township 2005a; Hamilton County (OH) Regional Planning Commission 2005a).

Case: LUPA Colerain Township 2005-01; Rumpke Industrial: Initiated by Rumpke Sanitary Landfill, Inc. Approved by the HCRPC on 7/8/05. Amended the County’s “Colerain Township NE Sector” Land Use Plan; changing Sites east of the current landfill from “Single Family,” “Transitional Mixed Use,” “Light Industrial,” and “Heavy Industrial” to “Heavy Industrial,” “PMUE,” and “Green Space and Agriculture.”

In an interview printed 5 days before the HCRPC’s decision, Ron Miller (Director of the HCRPC) stated that his Commission “can not force the Township to change its Land Use Plans for the area around Rumpke,” but there was a reason why both the County and the Township were seeking the HCRPC’s “blessings” for their plans. Miller explained that, “In all likelihood, this whole matter will be litigated. And, when it gets to court, both parties would like to have the planning commission support their view because it may have some bearing on the case” (which Miller incorrectly predicted would be “10 or 15 years from now”) (Hamilton County (OH) Regional Planning Commission 2005c; Hamilton Journal News 2005; Klepal 2005).

Civil Rights Act, 42 U.S.C. § 1983: Allows individuals to sue State representatives in U.S. Federal Courts for “civil rights violations.” Federal civil rights (covered under the U.S. Constitution and Federal Statutes) must be violated, for the case to be covered under federal jurisdiction.” Violations of the 1st Amendment, 14th Amendment, and the Constitution’s Equal Protection Clause are often brought to court under Section 1983 of the Civil Rights Act (Civil Rights Act of 1871 2007).
**Colerain Township Comprehensive Plan:** In Colerain Township, the Comprehensive Plan (adopted 4/12/05) acts as the central guide and “visioning document” for both the Land Use Plan and Zoning Resolution. It develops the broad policies which guide land use and zoning decisions. There are three “core components” (Vision, Land Use Framework, and Character Areas) which Township officials, staff, and committee members should consider when making decisions (McBride, Dale, and Clarion 2005, 13).

**Colerain Township Zoning Resolution:** With the new Colerain Township Zoning Resolution taking effect on 8/19/06, the original landfill and the 2000 expansion (including the 1988 zoning and 2000 consent decree) were rezoned to the new “SWD” Solid Waste District. This zoning classification has specific landfill regulations, and states that previously approved landfill operations would be considered in compliance with the new Township Zoning Resolution (Colerain Township 2006c; Colerain Township. 2006d; McBride, Dale, and Clarion 2005, 1-3).

**Colerain Township Resolution # 08-07:** A resolution (adopted 2/27/07) making it known that the CTBT accepts the recommendation of the CTZC that the application for the zone amendment in Case No. ZA2006-010; Banklick Creek be approved. “Approval of Application for Zone Changes of approximately 196 acres from an existing ‘R-2’ Residence District to ‘I-1’ Industrial District and approximately 13 acres from ‘R-3’ Residence District to ‘B-3’ Commerce District” are in the “best interest of the Township and the public, and are consistent with the Colerain Township Comprehensive Plan (previously adopted by the Township)” (Colerain Township 2007a).

**Colerain Township Resolution # 18-03:** A resolution (adopted 3/11/03) announcing that the CTBT accepts the CTZC’s recommendation for adoption of the application for Case No. LUPA 2002-01, NE Sector, Site 51 & 334. Besides stating that the LUPA’s amendment of two sites near Rumpke landfill (Site 51, situated on Hughes Road, changed from “SF” Single Family to “PMUE” Planned Mixed Use Employment, and Site 334, also in the area, changed from “SF” Single Family to “RR” Rural Residential) are in the “best interest of the Township and the public, and are consistent with the Colerain Township Comprehensive Plan (previously adopted by the Township),” the CTBT placed additional development requirements on these two sites.

The additional standards state that development on Site 334 should be clustered to preserve hillsides and open space adjacent to public roads. Also, non-residential development along Hughes Road (Site 51) should be varied to achieve “natural use of hillsides for buffering residential areas to the east” (Colerain Township 2003a; Colerain Township 2003b).

**Colerain Township Resolution No. 46-00:** A resolution (adopted 11/14/00) that the CTBT approves the settlement contained in the Consent Decree in Case No. A-0007121 (Colerain Township 2000).

**County and Township Zoning Act:** Enacted by the Ohio General Assembly in 1947; an adaptation of the SZEA. This Act leads to the suggestion that “zoning enabling
legislation for townships is for *zoning only*, and does *not* include planning legislation.” By viewing this Act, it appears that “townships have *no* authority to adopt ‘plans,’ even though they may enact a ‘zoning plan’ (zoning text and maps)” (Meck and Pearlman 2005, 75).

**Enabling Act of 1802:** This Act “enabled” the territory of Ohio to become a State. The Act set the State’s boundaries, and permitted its citizens the right to draft a constitution. (Knepper, ed. 2001, 66).

**Feeding Household Waste to Swine is Banned (1955):** The U.S. Public Health Service banned feeding raw garbage to pigs, following a nation-wide outbreak of virulent swine disease (Monmouth County (NJ) Health Department 2007).

**Hamilton County Comprehensive Master Plan and Strategies (Community COMPASS):** Hamilton County has not updated its Comprehensive Plan since 1964. The County’s present attempt, Community COMPASS (Hamilton County’s Comprehensive Master Plan and Strategies), is a long-range plan which looks to address mutual goals pertaining to physical, economic, and social issues among Hamilton County’s 49 communities. Community COMPASS will assist in ensuring trends are anticipated, challenges are addressed, priorities are focused, and the future of County citizens is planned and achieved over the next 20 to 30 years (Hamilton County (OH) Rural Zoning Commission 2007; League of Women Voters of the Cincinnati Area Education Fund 2003, 29-30).

**Hamilton County Solid Waste Management Plan:** Implemented by the HCSWMD, this Plan (required by Ohio House Bill 592) must be approved by the OEPA (approved 7/19/93; updated 4/18/00); accounting for solid wastes generated within the district for a minimum of 10 years (Hamilton County (OH) Solid Waste Management District 2006a; League of Women Voters of the Cincinnati Area Education Fund 2003, 8; Ohio Environmental Protection Agency 1996; Ohio Legislative Service Commission 2007, 100).

**Northwest Ordinance of 1787:** Shaped territorial boundaries and governmental structures in the Northwest Territory; provided organizational structure for five states in this district. Allowed for the establishment of counties and townships in the territory (Ohio State University (The) 2007).

**Ohio General Assembly:** The Legislative branch of state government; provides for different types of local government (counties and townships [Article X], a public school system [Article XVIII], and “special purpose districts”). The lower house, Ohio House of Representatives, has 99 members. The upper house, Ohio State Senate, has 33 members (Broberg 1995, 2; Ohio General Assembly 2007).

**1991 Ohio General Assembly Legislation:** Granted townships the ability to establish a "limited form of self government;” Township Home Rule (Colerain Township 2007).
Ohio General Code (O.G.C.): Was in effect until 1 October 1953; replaced by the O.R.C. in order to correct language and organize laws in a “more understandable manner” (Ohio State University (The) 2007).

Ohio House Bill: The document by which a member of the General Assembly proposes to enact a new law or amend / repeal an existing law. The term “Bill” refers to the document from the time it is drafted and delivered by a member of the General Assembly until it is considered and approved by the Ohio House of Representatives and the Ohio Senate. A “Bill,” after passing both “Houses”, becomes an “Act” (and is presented for the Governor’s approval). If “Act” is accepted, it becomes a “Law” (Ohio Legislative Service Commission 2005, 48).

Ohio House Bill 592: Ohio House Bill 592 (effective in 1988) revised Ohio’s 1967 solid waste law, requiring the formation of single or joint County SWM districts. Also, these County districts must have a SWM plan approved by the Ohio EPA, accounting for solid wastes generated within the district for a minimum of 10 years (Ohio Environmental Protection Agency 1996).

Ohio Attorney General Opinion No. 2003-022: Attorney General Jim Petro wrote this much discussed Opinion on 7/15/03, concerning the conflict between a county’s and a township’s authority (as granted by the O.R.C.) to prepare and adopt plans for the unincorporated territory of the township (Opinion No. 2003-022). Ohio Attorney General Petro determined that “both a county and a township may prepare and adopt land use plans for the unincorporated territory of a township.” When these plans “contain inconsistent provisions,” the township “is conferred primary authority to regulate land use in the township” (pursuant to O.R.C. Chapter 519) (Petro 2003).


O.R.C. Chapter 163: Appropriation of Property. Determines who may “appropriate real property” (Anderson’s Ohio Online Docs 2006).

O.R.C. Chapter 303.02: County regulation of land use in unincorporated territory; landscaping and architectural standards; modifications to ensure constitutionality of adult entertainment establishment regulations.

“In the interest of public health and safety (plus additional “interests”), the Board of County Commissioners may regulate by resolution, in accordance with a comprehensive plan, the location, height, bulk, number of stories, and size of buildings and other structures… in the unincorporated territory of the county” (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 399).

O.R.C. Chapter 513: Hospitals; Joint Hospital Districts
O.R.C. Chapter 519: Ohio Township Zoning

O.R.C. Chapter 519.01: Defines “Agriculture”

O.R.C. Chapter 519.02: Township regulation of land use in unincorporated territory; landscaping and architectural standards; modifications to ensure constitutionality of adult entertainment establishment regulations.

The Township Board of Trustees “may regulate by resolution, ‘in accordance with a comprehensive plan,’ the location, height, bulk, number of stories, and size of buildings and other structures…” (Anderson’s Ohio Online Docs 2006).

O.R.C. Chapter 519.03: Adoption of resolution of intent to proceed with township zoning.

Before taking over control of its own zoning (O.R.C. § 519.02), the Board of Township Trustees must pass a resolution declaring its intention to proceed under O.R.C. § 519.02 to § 519.25 (Anderson’s Ohio Online Docs 2006).


O.R.C. Chapter 519.05: Recommendations of township zoning commission; organization, powers, and compensation of commission.

The Township Rural Zoning Commission “shall submit a plan, which includes both text and maps, representing the recommendations of the Zoning Commission for how the Board of Township Trustees should carry-out its powers, purposes, and provisions determined in O.R.C. § 519.01 to § 519.99.” Under O.R.C. 519.05, a township may contract with planning consultants (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 76).

O.R.C. Chapter 519.12: Amendments to the Zoning Resolution; Procedure; Referendum.

O.R.C. Chapter 519.12(E): Requires that “Regional or County Planning Commissions make recommendations to townships regarding various Zoning issues.” Meck and Pearlman view this as “an indicator that the Legislature intended to check ‘parochial decision making’” (Meck and Pearlman 2005, 75).

O.R.C. Chapter 519.22: County Rural Zoning Regulations to Take Precedence. “In situations where residents of a township or part thereof have approved county rural zoning regulations (in accordance with O.R.C. Sections 303.02 to 303.25) prior to the adoption of a zoning resolution by the board of township trustees (and the township plan includes any area covered by the county rural zoning plan) the zoning resolution adopted by the board of county commissioners shall take precedence over the zoning resolution adopted by the board of township trustees, unless a majority of the
voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning.

In fact, in 1994, Colerain Township residents did replace the county rural zoning plan with the township plan of zoning, by voting to adopt local township zoning (and thus taking over control of their zoning) (Colerain Township 2006f; McBride, Dale, and Clarion 2006).

**O.R.C. Chapter 519.25:** Procedure for repeal of Township Zoning Plan.

**O.R.C. Chapter 519.99:** Penalty for violating O.R.C. § 519.01 to § 519.25.

**O.R.C. Chapter 2721:** Declaratory Judgments.

**O.R.C. Enabling Statutes:** A law which bestows new or extended authority or powers, generally to a public official or a corporation (Enabling Statute 2007).

**O.R.C. Enabling Statute 713.21:** Regional Planning Commissions. “A Planning Commission of any Municipal Corporation or group of Municipal Corporations, any Board of Township Trustees, and a relevant Board of County Commissioners may cooperate in the creation of a regional planning commission” (Anderson’s Ohio Online Docs 2006).

**O.R.C. 713.23(B)(1):** Powers and Duties of Regional and County Planning Commissions.

A Planning Commission’s duties include “preparing plans, including studies, maps, recommendations, and reports.” During the HCRPC’s meeting for Case: LUPA Colerain 2005-01; Rumpke Industrial, Rumpke’s Attorney Trauth referred to Stuart Meck’s (an expert in land use planning and zoning) response to Ohio Attorney General Petro’s Opinion No. 2003-022. Meck said that “under O.R.C. 713.23(B)(1), the county is the only entity who has statutory authority to engage in regional planning.

In fact, Meck said “the statutory structure reflects a political decision by the General Assembly to assign responsibility for land use planning to the counties.” Meck feels there are “important statutory distinctions, common to virtually all U.S. planning legislation, missing from the O.R.C. regarding townships (Anderson’s Ohio Online Docs 2006; Hamilton County (OH) Regional Planning Commission. 2005a; Meck and Pearlman 2005, 76).

**O.R.C. 713.24:** Copies of Plans to Municipal Corporations.

After creating the Regional or County Plan (O.R.C. § 713.23), “the Regional or County Planning Commission shall certify a copy to those local governments covered in the Plan.” Under O.R.C. 713.24, a “Regional or County Planning Commission may certify a Board of County Commissioners (not the Township Zoning Commission or Township Board of Trustees) the authority to adopt ‘plans of any type’” (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 75).
O.R.C. Enabling Statute 713.25: Effect of Adoption of Plans.

“The Planning Commission of any Municipal Corporation to which a Regional or County Plan is certified (O.R.C. § 713.24), may adopt such a Plan, and that Plan shall thereupon have the same force within the Municipal Corporation as is provided by Law or Charter for Plans prepared and adopted by the Local Planning Commission. The Board of County Commissioners may adopt such a Plan, in relation to non-municipal territory (Anderson’s Ohio Online Docs 2006).

Ohio State Constitution: First Ohio Constitution created in 1802. Present Ohio Constitution adopted 3 March 1851. Amendments to Ohio Constitution were made in 1912 and 1933. The basic governing document of the State of Ohio; delegates authority to make laws to the Ohio Legislature (Anderson’s Ohio Online Docs 2006; Ohio Constitution 2007; Ohio State University (The) 2007).

Article II § 1 of Ohio Constitution: In whom power vested.

“The legislative power of the state (which includes the “police power”) shall belong to the General Assembly, made up of a Senate and House of Representatives. The citizens reserve the power to propose to the General Assembly laws and amendments to the State Constitution, and to adopt or reject laws and amendments at the polls on a referendum vote” (Meck and Pearlman 2005, 47; Ohio General Assembly 2007 / 2008).

Article XVIII § 3 of Ohio Constitution “Home Rule Amendment”: Powers.

“Municipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws” (Ohio General Assembly 2007 / 2008).

Resource Conservation and Recovery Act (RCRA): U.S. Congress’ most important waste management legislation. RCRA dealt with increased municipal solid waste problems, mostly landfill disposal, and new hazardous waste concerns. Subtitle D of RCRA gave the federal government the right to permit and regulate waste facilities, particularly open dumps. RCRA called for the EPA to set landfill standards, and required states to make an inventory of their trash dumps. Once inventoried, these dumps were to be brought up to EPA standards or closed. In accordance to RCRA’s Section 4002, the EPA mandated that all states prepare regional solid waste management plans. Also, RCRA’s Section 4004 required that the EPA set minimum technical requirements for the design, operation, and siting of solid waste landfills in the U.S.

In 1991 RCRA was revised. Landfill siting criteria, contained in RCRA Subtitle D became more comprehensive, strict, and universal. RCRA was revised to “protect human health and the environment.” Also, ground water monitoring was required, siting location guidelines for new and existing facilities were determined, and arrangements were included to allow for ‘corrective actions’” (Hughes, Christy, and Heimlich 2007; U.S. Environmental Protection Agency 2006e; U.S. Environmental Protection Agency 2006f; Welles 2000, 23-26).
Rexhausen and Rodrigues’ Report: “Economic Impact of Rumpke”: The purpose of this study was to estimate Rumpke Consolidated Companies, Inc.’s (Rumpke) impact on Hamilton County and its benefits to Colerain Township. The report analyzed direct expenditures for 2005. Effects the company has had on employment, household earnings, local school districts, municipal budgets, and business sales within the County were measured. Rumpke’s total economic impact on Hamilton County was determined by examining the patterns of economic activity (Rexhausen and Rodrigues 2006).

Standard City Planning Enabling Acts (SCPEA): Passed in 1928, “establishes a Planning Commission, as a ‘quasi-independent agency’ of local government, in order to keep the Commission non-political. This Planning Commission is responsible for creating Land Use Plans (Burke 2002, 76).

Standard State Zoning Enabling Act (SZEA): Drafted originally by the U.S. Department of Commerce, and ready for adoption in 1924. The SZEA is the prototype for all U.S. State Zoning Enabling Acts. The SZEA “authorizes the Municipal Legislative body to enact a zoning ordinance, containing the text for the regulatory scheme, and a zoning map. The SZEA also establishes two Administration bodies to consider matters of Zoning Administration; a Zoning Commission and a Board of Zoning Adjustments or Appeals” (Burke 2002, 76).

U.S. Federal Constitution: The laws and principles which form the basis of a government’s organization (Collin 1999).

10th Amendment: States Rights Amendment.
“The basic principle of U.S. Federalism; the National Government may only exercise powers delegated to it, with all other powers reserved to the States or the Citizens (Broberg 1995, 15).

“Commerce Clause”: Article I, Section 8, Clause 3 of U.S. Constitution. This Clause empowers the U.S. Congress “to regulate Commerce with foreign Nations, among the States, and with Indian Tribes.” One of the few powers specifically delegated to the U.S. Federal Government (Congress uses this Clause to justify its Legislative power). Interpreting its scope is important in determining the balance of power between the Federal Government and independent States (Commerce Clause 2007; Nagle and Ruhl 2006).

“Equal Protection Clause”: Part of the 14th Amendment of the U.S. Constitution; states that “no State shall… deny to any person within its jurisdiction the equal protection of the laws.” Enables courts to enforce the proposition that ‘all men are created equal’ (Equal Protection Clause 2007).
Chapter 1: Introduction

1.1 Introduction

The basis for this report is a comparison of how Colerain Township zone amendment Case: ZA2006-04 was processed to the stated township zone amendment process, in the Ohio Revised Code (O.R.C.). Rumpke Sanitary Landfill, Inc.’s (Rumpke) zone amendment request was a change from “A-A” and “O-O” to “EF” and “FF” on a total area of 350 acres. An illustration of “Rumpke Sanitary Landfill, Inc.’s Proposed Expansion” can be viewed on the following page, in Figure 1.1. Additional illustrations of Rumpke’s “Proposed Zone Amendment (Case: ZA2006-04)” and “Location of 66 Parcels to be Rezoned by Case: ZA2006-04” are included in the Figures A.9 and A.10, in the Appendix.

In 1912, the Ohio General Assembly granted municipalities “Home Rule;” “the authority to exercise all powers of local self-government, and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.” It was not until 1947, that the Ohio General Assembly “authorized zoning in the unincorporated areas for counties and townships.” In 1961, Hamilton County adopted zoning for the entire county. This code was administered and enforced in Colerain Township by the Hamilton County Rural Zoning Commission (HCRZC), until Colerain’s zoning became official in November 1994 (Colerain Township 2006d; Meck and Pearlman 2005, 47-52; Ohio State University (The) 2007).
Figure 1.1: Rumpke Sanitary Landfill, Inc.’s Proposed Expansion

Source: Rumpke Sanitary Landfill, Inc. 2006b.
Despite adoption of the so-called “home rule amendment” almost 100 years ago and authorization of zoning by Ohio counties and townships 60 years ago, planners and land use lawyers (not to mention everyday citizens) still have difficulty understanding the delegation of legislative and administrative powers. To help shine some light on zoning, which enacts local regulations to control buildings and uses, this report will analyze Case: ZA2006-04.

First, the background and foundation for planning at the local level in Ohio will be explained. That will be followed by a look at the current landfill situation in America and the problems facing planners. This will include an introduction to Rumpke’s Colerain Township landfill. Then, the process of amending an Ohio township zoning resolution, as ordered by the O.R.C., will be explained. Finally, the processing of Rumpke’s application will be critiqued; determining how well it followed the prescribed format.

This analysis and comparison is expected to turn-up instances where Rumpke could have proceeded differently, or Colerain Township may have decided another way. Remarks will be made about these “critical points.” Also, an attempt will be made to bring to the forefront the reasoning behind certain decisions. Why did the Hamilton County Regional Planning Commission (HCRPC) vote unanimously to approve Case: ZA2006-04? Why did the Colerain Township Zoning Commission (CTZC) and the Colerain Township Board of Trustees (CTBT) vote unanimously to disapprove Case: ZA2006-04? Are townships pressured to follow county plans? Does a township have a right to plan for itself as the Ohio Revised Code (O.R.C.) states, or is the overall county plan the one which ultimately “wins out?”
The purpose for undertaking this research is to show, that in spite of government’s best intentions, planning is not always “fair.” Case: ZA2006-04 deals with expanding Rumpke landfill, which at 500 acres is currently Ohio’s third largest active landfill and almost twice as large as the average Ohio landfill. The Hamilton County Board of Commissioners (HCBCC) approved expanding Rumpke’s Colerain Township landfill. Despite this, the CTZC and the CTBT denied Rumpke’s proposed zoning resolution amendment. Even though this denial meant the Township’s legislative review was over, Case: ZA2006-04 was not “settled.” Rumpke proceeded to file suit in the Hamilton County Court of Common Pleas (HCCCP), claiming the Township’s decision was “unconstitutional.” The path that litigation has taken is as follows: Case A0611056 was removed to U.S. District Court by the Township on 1/19/07 (assigned Case No. 1:07-CV-039). Rumpke then dismissed the Case (“not wanting it heard in Federal court”) and re-filed it in the HCCCP on 4/3/07 (without federal claims), with the new Case No. A0703073 (McBride, Dale, and Clarion 2006, 7; Reuter 2007).

Are Hamilton County Commissioners more concerned about being re-elected by a larger portion of constituents un-affected by an almost doubling of Ohio’s third largest landfill? Or, do the Commissioners truly believe this proposed expansion is in the “best interests” of Colerain Township residents who must live with the side-effects of a landfill, literally in their backyards, on a daily basis? Why then did local township officials, who are more “in-tune” with their neighbors, vote against the proposal?

Why does everything seem to end-up in court when one side feels the decision was unfair? Nowadays it seems as though laws and statutes are only used as stepping stones to the court house. It is so common, that with Case: ZA2006-04 most individuals
paying attention felt it would end-up in court. After Rumpke’s previous expansion attempt, applied for in 1999, was settled by a consent decree (in response to Rumpke’s lawsuit), most observers assumed the same would happen this time. It seems unfair to allow a judge, who is elected by a county-wide vote, to decide on an issue, which if approved only negatively affects a minimal portion of those who vote, but if denied could lead to the judge not being re-elected.

1.2 Statement of the Problem

The first section of the Literature Review (Chapter 2) will lay the framework of local government in Ohio, as stated in the O.R.C. The “Power to Plan,” History of Government in Ohio,” “Ohio’s Four Track System of Power,” and “Local Government in Ohio” will be delved into. Four types of local government are relevant in this case: municipalities (cities and villages), counties, and townships. In 2002, Ohio had 246 cities, 696 villages, 88 counties, and 1,308 townships. Each of these types of local government, which along with public school districts are required by the Ohio Constitution, is empowered to perform certain functions. Planning for future growth is certainly included with these functions (Broberg 1995, 1-2; U.S. Census Bureau 2002).

In Ohio, local governments are granted regulatory authority by the municipal “home rule” provisions of the state constitution and state enabling statutes. Unfortunately, presently, untrained laypersons and township zoning commissions without professional assistance make most planning and land use decisions, and complex zoning resolutions. An unsuccessful attempt to change Ohio’s land use laws (“the first and only major assessment of Ohio’s planning statutes”) failed in June 1977, due to a “lack of sufficient political support.” The Ohio Land Use Review Committee, a special study
group of the Ohio General Assembly, had assessed the structure and substance of the state’s planning statutes; seeking “greater responsibilities for county and regional planning commissions, and enhanced authority for municipal and county planning commissions” (American Planning Association 2007; League of Women Voters of the Cincinnati Area 1998; Meck and Pearlman 2005, 15, 116).

One of the reasons given by Meck and Pearlman for the lack of planning and land use reform is that municipality, county, and township (not to mention state) governments have “conflicting interests” in who controls land use in Ohio. They stated that “each of these levels views the others’ motives ‘suspiciously,’ sometimes with good reason. Such mistrust, which may have played a role in Colerain assuming control of zoning in November 1994, can not be good for the general public. The conflict between Hamilton County and Colerain Township over Case: ZA2006-04 further illustrates the problems with Ohio planning and land use (Meck and Pearlman 2005, 16).

Section 2.4.2 introduces Ohio counties, followed by an explanation of the set-up of Hamilton County’s planning and zoning. This includes the HCRPC, county planning in Ohio, the county comprehensive plan, and county zoning. Then, Colerain Township’s role in the big picture is shown. This includes a view of the relationship between Colerain and Hamilton County, the CTBT, “limited home rule,” township planning in Ohio, the township comprehensive plan, and township zoning. All of this leads-up to the process for amending the Colerain Township Zoning Resolution.

Chapter Three brings readers up-to-date on the current landfill situation in America. In 2005, there were 1,654 U.S. Municipal Solid Waste (MSW) landfills. The number of MSW landfills has decreased as they have neared capacity and closed.
America’s response has been to expand old landfills or site new landfills. Planners are being forced to deal with Locally Unwanted Land Uses (LULUs) more often. With the public’s increased interest in protecting the environment and knowledge of the preventive measures needed to do so, lawmakers and decision-makers are being held to a higher standard. This includes city managers, zoning administrators, business owners, developers, and others who determine future growth (U.S. Environmental Protection Agency 2006c).

Rumpke landfill, as a receptor for MSW, is not a land use most communities welcome into their backyards. Thus, this landfill qualifies as a LULU. Tipping fees, “taxes” on waste dumped at landfills, are intended to off-set negative impacts of operating a landfill, such as increased traffic, dust, noise, smell, birds, and rodents.

Chapter Four thoroughly examines the history of Rumpke’s Colerain Township landfill. This includes analyses of growth near the landfill and past zoning amendments. While, Chapter Five explains the two different methodologies used to create this thesis: Case Study and In-Depth Interviews. These methods, as prescribed by Yin, and Nagy Hesse-Biber and Leavy, are among a researcher’s best options when time and resources are limited, as is the situation with most theses.

Chapter Six begins by listing the steps involved in processing a township zone amendment, according to the O.R.C. This includes the initiation of an amendment, a hearing before the zoning commission, a referral to the county or regional planning commission, and a notice of the recommendation to the county or township board. Following that is action by the legislative body, and filings with a county recorder. Opposition to the Board of Township Trustees’ adoption of the amendment may result in
a referendum or amendment, at this point. A zoning resolution can be repealed. This is followed by action by a legislative body (Meck and Pearlman 2005, 355-374).

Chapter Six then recounts the Colerain Township zoning amendment Case: ZA2006-04’s process, with the purpose of determining how closely it has followed the process stated in the O.R.C. Section 6.2 thoroughly documents the process Case: ZA2006-04 passed through. This began with the filing of an application for a zoning amendment, then the pre-application meeting, the notice of a public hearing, and then the meeting of the HCRPC. This was followed by three meetings of the CTZC and three meetings of the CTBT. The CTBT’s application denial led to the filing of a lawsuit, on December 20, 2006, by Rumpke against Colerain Township in the Hamilton County Court of Common Pleas (Hamilton County Court of Common Pleas 2006; Radel 2006).

1.3 Hypothesis and Research Questions

Before attending graduate school, and prior to researching Colerain Township Zone Amendments, I believed there was a determined “set” way of doing things (such as siting / “expanding” a landfill) and that was how they occurred. Over the past year, after having delved deeper into this specific Case: ZA2006-04, I have learned that this is not always true. What we assume is not always fact.

To satisfactorily compare Case: ZA2006-04 to the zoning amendment process stated in the O.R.C., a clearly defined scope and its limitations is necessary. In order to ensure a successful study, the research, analysis, and conclusions must be clear, concise, complete, and convincing. Limitations will include time, resources, purpose, and objectives. The limitations determine what the project attempts to accomplish and why.
The idea regarding the scope is to set the context of local government in Ohio. Then take one aspect, amending an Ohio township’s zoning resolution, and examine how well Case: ZA2006-04 followed the prescribed O.R.C. process. This is not a simple matter of checking-off requirements from a list. In fact the process is more complicated and less predictable. By analyzing the factors behind the choices made at “critical points” in the process, conclusions and inferences about the decision makers’ actions will be drawn. This will succeed in providing readers a more informed understanding of the planning and land use decisions affecting their lives.

1.4 Outline of Remainder of Thesis

The purpose of this thesis is to conduct research, analyze this information, and draw conclusions to answer the main question. Each phase of the project works towards answering this question. The main question for this project is “Did Case: ZA2006-04 follow the township zone amendment process determined by the O.R.C.?”

Chapter Seven lays-out how the interviews with decision makers were conducted. The relevance of each interviewee and the format of the interviews (questions asked) will be reported. The interview results will follow, in Chapter Eight. The results will be arranged according to the important, reoccurring issues brought-up during questioning. A grand summary will bring together the main lessons learned through these interviews.

Finally, Chapter Nine will wrap-up with the author’s conclusions, lessons learned, recommendations, and suggestions for further research. The suggestions for further research are important to consider. The issues of SWM and landfills are many faceted, with multiple aspects capable of supporting a thesis. This report’s data on arranging for appropriate zoning should be a springboard for future analyses.
Chapter 2: Ohio Planning Law: Background / Foundations

This literature review discusses knowledge gained. Articles, documents, journals, reports, statutes, and web sites were researched through the course of this project. A list of resources can be found in the Appendix of this proposal.

2.1 The “Power to Plan”

According to Meck and Pearlman, the “power to plan” is asking, “Where are we now? Where do we want to be in the future? How do we get there?”

Planning is an on-going process which includes:

1) Using a system to gather information, in order to describe problems and issues facing a government’s planning jurisdiction;
2) Agreeing on problems and issues, and setting goals to address future concerns;
3) Identifying alternative courses of action and gauging the consequences of those alternatives
4) Selecting the course(s) which best address the goal and implanting it;
5) Monitoring chosen courses of action to ensure goals are met

(Meck and Pearlman 2005, 55).

This power to plan is included with the police power, whether implied or granted by the Constitution or state statutes. Planning should provide the basic reasoning and aim for the exercise of police powers. Also, it should be noted that state and local governments’ authority to propose, schedule, and put into action programs involving operating and capital expenditures is based on planning (Meck and Pearlman 2005, 55-56).

The Standard State Zoning Enabling Acts (SZEA) and Standard City Planning Enabling Acts (SCPEA) of the 1920s provided standards for U.S. states to base their planning and zoning laws. These model Acts were meant to “create a national
framework which could standup to scrutiny, as the constitutionality of zoning and planning began to be questioned in state and federal courts.”

The third draft of the SZEA, dated February 10, 1922, contained the sections: Grant of Power; Districts; Purpose for Zoning Regulations; Procedures for Establishing and Amending Regulations; Changes; Zoning Commission; and Remedies. Also, it was in this third draft that some important planning language first appeared. This included: “such [zoning] regulations shall be considered ‘in accordance with a comprehensive plan;’” “Zoning Commission” (which described the advisory group appointed to recommend the zoning ordinance and map to the legislative body); and “variance” (Knack, Meck, and Stollman 1996).

2.2 History of Government in Ohio

On April 30, 1802, U.S. President Thomas Jefferson signed the Enabling Act of 1802, which called for Ohio to be admitted as a formal U.S. State. Besides setting Ohio’s boundaries, the Enabling Act set the date for Ohio’s constitutional convention; November 1, 1802. Thirty-five delegates met to draft a State constitution, the final requirement under the Northwest Ordinance for Ohio to meet before becoming a state. Ohio’s Constitution was approved by the convention on November 29, 1802, and later, by the U.S. Senate and the House of Representatives on February 19, 1803; making Ohio the seventeenth U.S. State.

Due to the makeup of delegates, Ohio’s state constitution created a relatively weak government, with most power being held by the legislative branch. The governor was not granted the power to veto acts of the legislature. The legislature, made up of the General Assembly, contained two houses, the House of Representatives and the Senate.
The governor needed the General Assembly’s approval for all appointments. Also, the legislature was responsible for selecting judges (League of Women Voters of the Cincinnati Area Education Fund 2003; Ohio Constitutional Convention of 1802 2007).

The Northwest Ordinance of 1787 set-up counties and townships in Ohio. Also, Ohio’s constitution was allocated its powers through the Northwest Ordinance (Broberg 1995, 18).

2.3 Ohio’s Four Track System of Power

In Ohio, the power to plan and zone (regulate land use) belongs to the state. Article II § 1, of the Ohio Constitution, assigns the state’s legislative power (including the “police power”) to the Ohio General Assembly. Much of Ohio’s planning and police power authority to regulate land use has been delegated down to the local level, through its constitution and enabling statutes. Ohio’s “four track system of planning and zoning powers” includes counties, townships, and municipalities (villages [population < 5,000] and cities [population > 5,000]) (Meck and Pearlman 2005, 47).

2.4 Local Government in Ohio

According to the U.S. Census Bureau, in 2002, Government in Ohio consisted of 88 counties, 942 municipalities (cities and villages), 1,308 townships, and 667 school districts (U.S. Census Bureau 2002).

2.4.1 Ohio Municipalities (Cities / Villages)

The 2002 U.S. Census Bureau counted 942 Ohio municipalities. A 1912 Ohio Constitution amendment set the classification of municipalities: Villages have less than 5,000 citizens, while Cities have more than 5,000 citizens (Broberg 1995, 125-126; U.S. Census Bureau 2002).
2.4.2 Ohio Counties

There were 88 Ohio counties in 2002 according to the U.S. Census Bureau. Ohio’s Constitutional Convention of 1802 provided for a few county officials and for local courts under the State’s court system. In succeeding years, the General Assembly authorized additional county functions, as officials needed to deal with state business at the local level. Today, in almost all of Ohio’s counties, county government remains an administrative arm of the state. The county cannot pass its own ordinances. It does have the power to levy certain taxes, with others requiring voter approval (U.S. Census Bureau 2002).

As an agent of the state, the county government serves the entire county by electing officials to administer and enforce state laws, collects taxes, assess property, record public documents, conduct elections and issue licenses. Also, by appointing boards and officials, county government provides parks, libraries, sewers, civil defense, welfare and hospitals. As required by state law, county government also serves unincorporated areas by providing highways, police protection, building inspection, and planning and zoning. Elected county officials, who oversee most of these services, have no authority in incorporated areas; a city or village may contract with the county to receive a service, though (League of Women Voters of the Cincinnati Area Education Fund 2003; Ohio Constitutional Convention of 1802 2007).

2.4.2.1 Hamilton County

The second county formed from the Northwest Territory; Hamilton County was established in 1790. Hamilton County is located in the southwest corner of Ohio. See map in Figure A.1, in the Appendix. In 2005, the population of Hamilton County (OH)
was 806,652, out of 11,464,042 Ohio citizens. Hamilton County’s land area measured 407 square miles, in 2000, out of 40,948 square miles of Ohio land area. Within Hamilton County, there are 37 municipalities (19 cities and 18 villages), 12 townships, 22 school districts, and numerous special districts. The County’s 414 square mile area breaks down into 19 percent City of Cincinnati, 25 percent other municipalities, and 56 percent unincorporated.

There is no top executive or single overall governing body in Hamilton County. The County is governed by three, equally ranked, elected Commissioners (administrative / budget authority) who share responsibilities with the Ohio General Assembly (legislative authority), County courts (judicial authority), and eight other elected County officials (administrative authority) (Auditor, Clerk of Courts, Coroner, Engineer, Prosecuting Attorney, Recorder, Sheriff, and Treasurer). A “Hamilton County Organization Chart” is included in Figure 2.1, on the following page.

As of 1/28/07, the Board of County Commissioners included Pat DeWine, Phil Heimlich, and Todd Portune. County Commissioners’ duties include, among others, approving annexations and incorporations, managing real and personal property, and implementing state regulations governing the physical needs of the County (roads, sewers, zoning) (Hamilton County (OH) Commissioners 2006; League of Women Voters of the Cincinnati Area Education Fund 2003; U.S. Census Bureau 2007).
Figure 2.1: Hamilton County Organization Chart

2.4.2.2 Ohio County Planning

Under the O.R.C. enabling statutes (713.21 and 713.25), counties may create community planning commissions; responsible for planning functions. Also, counties, townships, and municipalities may cooperate, and together create regional planning commissions (Meck and Pearlman 2005, 50).

The planning commissions, which are made-up mostly of lay citizens, responsibilities include creating comprehensive and functional plans and studies, reviewing the subdivision of land, recommending zoning map and text changes and other development proposals, and preparing long-range capital improvement programs (or reviewing proposed capital projects). The initial reasoning behind creating these “independent” planning commissions was to oversee and assist local legislators, who had limited time to be “good planners.” Today, it is important to question who serves on commissions and their connection to the political process (Meck and Pearlman 2005, 61; 70-72).

2.4.2.2.1 Hamilton County Regional Planning Commission

O.R.C. 713.21 allows for the creation of Regional Planning Commissions (RPCs). An RPC may include planning commissions from municipal corporation(s), boards of township trustees, and boards of county commissioners. Part, whole, or multiple counties may constitute an RPC (Meck and Pearlman 2005, 66-67).

The HCRPC provides advisory planning services to the unincorporated areas (twelve townships) of the county. The HCRPC also serves 37 county municipalities (towns and cities), which are members of the HCRPC and pay annual fees. HCRPC’s services include community planning, development review, and information services.
These services are associated with annual work programs, which monitor development trends, evaluate current policies and update the Hamilton County Master Plan, and deal with regulations for zoning, subdivision of land and traffic movement. Land use control responsibilities also include development review for compliance with zoning regulations, subdivision rules and thoroughfare plans as well as consistency with adopted land use plans.

Advisory zoning recommendations are made to the Hamilton County Rural Zoning Commission (HCRZC) and the HCBCC. The HCRPC administers and makes the final decisions on land subdivision and building addresses for all unincorporated areas. The HCRPC also oversees multi-agency review of subdivision plans and ensures they conform to the County’s regulations.

The HCRPC, as well, prepares and makes available information and maps concerning different topics related to planning; maintaining data files on population, housing, zoning, building activity, the U.S. Census, social-economic development, school trends, and many physical and land use features.

The Executive Director, Ron Miller (as of 1/5/07), serves as HCRPC and HCRZC Secretary, and is generally in charge of both Commissions. The HCRPC consists of seven representatives, each appointed for a 5-year term: Five representatives appointed by the HCBCC (4 from the unincorporated area and 1 from the incorporated area); one representative elected by the Municipal Planning Committees (MPC); and one representative appointed by the Cincinnati Planning Committee (CPC). As of 1/5/07 the HCRPC representatives were: M. Larry Sprague (appointed by HCBCC), Melvin D. Martin (appointed by HCBCC), Donald Misrach (appointed by HCBCC), David Okum
(appointed by MPC), James Tarbell (appointed by CPC), Hal Lee Franke (appointed by HCBCC), and John W. Linnenberg (appointed by HCBCC) (Hamilton County (OH) Regional Planning Commission 2007; League of Women Voters of the Cincinnati Area Education Fund 2003).

During the HCRPC’s hearing on Rumpke’s request for the adoption of an amendment to the Colerain Township NE Sector Land Use Plan, on 7/7/05, J. Reuter (Colerain Township Legal Counsel) stated that “Under O.R.C. Chapter 519 Colerain Township’s plan prevails, not Rumpke’s (which Hamilton County approved / adopted), when the two are in conflict.” This was the opinion of the Ohio Attorney General (Hamilton County (OH) Regional Planning Commission 2005a).

J. Trauth, Rumpke’s attorney, claimed at the same hearing that “Colerain Township has no statutory power to engage in land use planning.” Trauth felt the Attorney General’s opinion on who has the authority to do land use planning was “confusing.” Trauth presented a letter from Stuart Meck, land use planning and zoning expert, which responded to the Attorney General, claiming that “under O.R.C. 713.23(B)(1) only Hamilton County has statutory authority to undertake regional planning” (Hamilton County (OH) Regional Planning Commission 2005a).

2.4.2.3 Ohio County / Township Plans

A 1991 study by Patricia Salkin on Comprehensive Plans explained that states became more interested in comprehensive land use planning in the late 1980s and early 1990s. According to Salkin, this renewed interest may have been due to the many, complicated land use issues communities were dealing with at the time, including the siting of solid waste facilities (Salkin 1991, 1).
A look at the legislation which enables comprehensive plans shows that many states require local zoning to be determined by a “comprehensive plan (Salkin 1991, 3). Chapter 303.02 of the O.R.C., states that the Board of County Commissioners may create zoning “in accordance with a comprehensive plan.” While Chapter 519.02 of the O.R.C. states that the Board of Township Trustees should also base their zoning “in accordance with a comprehensive plan (Anderson’s Ohio Online Docs 2006).

2.4.2.3.1 Hamilton County Comprehensive Plan / Colerain Township Comprehensive Plan

A “Comprehensive Plan” or “Master Plan” states the local government’s goals, objectives, and policies. The Plan’s maps are meant to guide public and private development, within the planning jurisdiction.

The comprehensive plan acts as a policy guide for:

- Administering zoning and subdivision regulations
- Laying-out and classifying streets and thoroughfares
- Siting and constructing public and semi-public buildings, as well as community facilities and infrastructure (water, sewers, gas)
- Developing parks and open spaces
- Starting new programs to address community needs (housing rehabilitation and economic development)

(Meck and Pearlman 2005, 88).

Hamilton County’s last comprehensive plan was created in 1964. Presently, the County is undertaking an in-depth analysis, which will anticipate trends, address challenges, and focus priorities over the next 20 to 30 years. Hamilton County’s Comprehensive Master Plan and Strategies (Community COMPASS) is a long range plan, intended to address mutual goals related to physical, economic and social issues among Hamilton County’s 49 communities. This plan, based on concerns and hopes of thousands of County citizens, is a “collected shared vision for the future.” Community
COMPASS will form the basis for initiatives, strategies, and plans of action (who, how, and when strategies will be implemented) (Hamilton County (OH) Regional Planning Commission 2003; Hamilton County (OH) Rural Zoning Commission 2007; League of Women Voters of the Cincinnati Area Education Fund 2003).

Colerain Township’s comprehensive plan (adopted 4/12/05) acts as the central guide and “visioning document” for both the Land Use Plan and Zoning Resolution. It develops the broad policies which guide land use and zoning decisions. There are three “core components” (Vision, Land Use Framework, and Character Areas) which Township officials, staff, and committee members should consider when making decisions. Colerain’s comprehensive plan was created over several months, with assistance from the CTBT, Colerain’s planning staff, the Comprehensive Plan Executive Committee, residents, business owners, property owners, and community agencies. These participants shared their information, concerns, and ideas for the future of the Township during this planning process (McBride, Dale, and Clarion 2005, 13).

2.4.2.3.2 Hamilton County Land Use Plan / Colerain Township Land Use Plan

In 2003, Ohio Attorney General Jim Petro determined that “both a county and a township may prepare and adopt land use plans for the unincorporated areas of a township.” A land use plan identifies land capabilities and constraints, determining where developments and infrastructure should be located, and then implementation. The plan brings together population and economic forecasting, environmental and land analysis, urban and development design, engineering infrastructure, stakeholder perspectives, and growth management mechanisms (Daniels and Daniels 2003, 2-3;
This thesis is mostly concerned with the area around Rumpke landfill, referred to as the “Banklick Creek Character Area.” Colerain has adopted two plans, which apply to this area (Colerain Township Comprehensive Plan [4/12/05] and Colerain Township Land Use Plan [last amended in February 2006]). The HCRPC has not adopted the Township’s land use plan. The HCRPC has maintained a separate land use plan for the Township (which “is generally consistent with Colerain’s Plan, except for the ‘Banklick Creek Character Area’”). The HCRPC’s land use plan for this region (Colerain Township Land Use Plan – Northeast Sector) adopted a “Five Year Review / Update” on 12/6/01, adopted a Rumpke initiated amendment on 7/7/05, and was supposed to receive a “Five Year Review / Update” on 12/6/06, but the deadline was not met (Hamilton County (OH) Regional Planning Commission 2007c; McBride, Dale, and Clarion 2006, 10).

The Township plans are a “starting point for identifying future land use and zoning patterns; recognizing the ‘desires of the Township citizens,’ and considering the constraints (services and development) present in the study area (slopes, water and sewer service, and roadway access).” The Comprehensive Plan provides a broader framework and goals for development, while the Land Use Plan offers more site-specific land use recommendations for the long-term future of the area (“connecting the broad comprehensive plan with regulatory language of the zoning resolution”). The Township’s land use plan attempts to “provide a ‘transitional land use’ between the landfill and surrounding uses.” The goal of this “mixed-use transitional area” (designated
as PMUE) is “to establish a long-term vision of reasonable uses next to the landfill, serving as a ‘land use buffer’ between the landfill and other less intense uses.” (McBride, Dale, and Clarion 2006, 10, 13-14).

The County’s land use plan for the area around Rumpke Landfill (in Colerain Township) can be viewed (in comparison the County’s own land use plan) on the following page, in Figure 2.2.

A comparison between the two plans follows:

**Struble Road Area**

**HCRPC Land Use Plan**
- Designates all properties in the Struble Road area as Light Industrial

**CTBT Township Land Use Plan**
- Also designates properties in Struble Road area as Light Industrial

**Hughes Road Area**

**HCRPC Land Use Plan**
- Designates relevant properties as Heavy Industrial, Light Industrial, PMUE, and Green Space

**CTBT Township Land Use Plan**
- Designates relevant sites for PMUE and Rural Residence

(Hamilton County (OH) Regional Planning Commission 2007c).
Figure 2.2: Land Use Plan: Hamilton County v. Colerain Township

2.4.2.4 Ohio County Zoning

The Ohio General Assembly did not authorize zoning in unincorporated areas of counties, until 1947. The Standard State Zoning Enabling Act (SZEA), drafted originally by the U.S. Department of Commerce, and ready for adoption in 1924, is the prototype for all U.S. State Zoning Enabling Acts. The SZEA “authorizes the municipal legislative body to enact a zoning ordinance, containing the text for the regulatory scheme, and a zoning map. The SZEA also establishes two administration bodies to consider matters of zoning administration; a Zoning Commission and a Board of Zoning Adjustments or Appeals” (Burke 2002, 76; Knack, Meck, Stollman 1996).

The “police power” (which the enactment of zoning laws is an exercise of) is delegated to Ohio counties by the Ohio General Assembly (instead of through Ohio’s Constitution, as for municipalities). If an Ohio county decides to enact zoning regulations, county commissioners must establish a zoning commission. This zoning commission advises the board of county commissioners on zoning map and text amendments. County zoning commissions must consult with county planning commissions, if in existence, before zoning recommendations are made. Also, a board of zoning appeals (an administrative body) must be created in order to deal with appeals of zoning interpretations, authorize variances (departures from strict and literal interpretation of the zoning code), and to authorize special exceptions (Meck and Pearlman 2005, 50-52).

2.4.2.4.1 Hamilton County Rural Zoning Commission

The HCRZC serves the HCBCC and County citizens, by administering and enforcing zoning regulations in four townships, or parts thereof, and by providing
contract services to a number of townships and villages in Hamilton County. Five members appointed by the HCBCC, from areas covered by County Zoning, make up the HCRZC. Besides serving as HCRPC Secretary, Executive Director Ron Miller (as of 1/5/07) works as Department Head and HCRZC Secretary.

The HCRZC’s vision is for all development to be “in compliance with Hamilton County zoning regulations, and consistent with the land use goals and objectives of the region and each affected township.” The HCRZC constantly seeks to “improve public awareness and understanding of the importance of zoning in protecting public health, safety and welfare, and private property.”

The HCRZC makes recommendations to the HCBCC pertaining to zone amendments, as well as makes the final determination on Planned Unit Developments (PUD) and compliance with County Commissioner approved conditions. In order to deny or modify HCRZC recommendations, a unanimous decision by the HCBCC is required. As an administrative part of the HCRZC staff, the County Zoning Inspector office interprets and enforces the County Zoning Resolution. The HCBCC appoints the Zoning Inspector.

The HCRZC administrative staff and Zoning Inspectors are responsible for:

- Coordinating zoning amendment reviews and scheduling Public Hearings
- Presenting amendment and other zoning requests before the Regional Planning Commission, Rural Zoning Commission, Board of Zoning Appeals, and Board of County Commissioners
- Maintaining official maps and files; Assisting the public with zoning information; Reviewing all building permits for zoning compliance
- Issuing Zoning Certificates and Final Zoning Inspections Certificates for all building permits
- Conducting field inspections on reported zoning violations
- Abating zoning violations through due process
- Maintaining complaint and abatement records
- Updating zoning regulations
In the early 19th century, the distance between Ohio settlers and their county government was difficult to traverse. Townships were created to connect Ohioans with the government. Broberg explains that an 1841 book, “Statutes of the State of Ohio of a General Nature,” listed township duties as keeping the peace, maintaining roads, settling boundary disputes, poor relief, and managing civil township affairs. The 2002 U.S. Census Bureau listed 1,308 Ohio townships (Broberg 1995, 51-58; U.S. Census Bureau 2002).

Townships’ capabilities are limited by what the Ohio state legislature allows. Their original responsibilities have changed. Today, townships do not have a judicial branch and are not required to provide relief to the needy. On the other hand, townships may now provide services such as fire protection, ambulance and emergency medical services, trash collection and disposal, and zoning (Broberg 1995, 65-69).

2.4.3.1 Colerain Township

Colerain was settled in 1790 by a surveyor named John Dunlap, and established as a Township in 1794. It is situated in the northeastern part of Hamilton County. Up until 1945, the Township was mostly a rural, agricultural area with few homes. Development has progressed into large subdivisions, as roads and sewers have been extended. The area around Rumpke landfill has become a critical part of Colerain Township, due to the major interchange at Colerain Avenue and Interstate 275, which provides access to commercial uses (retail and service) along Colerain Avenue and S.R.
127. Besides commercial uses, the area allows for residential developments to be sited amongst its hillsides. Determining compatible uses to place near Rumpke landfill has become a major concern for Colerain Township and Hamilton County. 

In 1961, Colerain Township residents voted to adopt Hamilton County zoning. Then, in 1994, Township residents voted to adopt local township zoning, assuming responsibility for their zoning and all previously developed uses (Colerain Township 2006b; McBride, Dale, and Clarion 2006).

2.4.3.1.1 Relationship Between Colerain Township and Hamilton County

Brian Kennedy’s 1988 Master’s Thesis, which analyzed Ohio Township Zoning, found that township and county officials often disagreed over who should control zoning in the townships. Townships felt county officials could not “effectively enforce nor appropriately administer” zoning in townships. Contrarily, county officials believed they were “better equipped and trained” to handle township zoning administration (Kennedy 1988).

Meck and Pearlman explain that in Ohio, a “creative tension” may be introduced during the review process for a zone change. This stems from a “duplication of functions,” as recommendations from both county zoning commissions and township zoning commissions are presented to county commissioners and township trustees. The county or regional planning commission has broader interests in mind, while the township is trying to put its personal interests first (Meck and Pearlman 2005, 74).

Upon reviewing the minutes from various HCRPC meetings from the past few years, where Colerain Township zoning and planning issues were discussed, one gets the impression that the Colerain Township Trustees feel that Hamilton County is imposing
itself upon the township. For example, Colerain Township Trustee, Bernie Fiedeldey, at
the HCRPC’s 7/7/05 hearing in Case: LUPA Colerain 2005-01; Rumpke Landfill, told
the HCRPC “land use planning is not your job, your job is regional planning.” After
explaining that “the minimum price for land in the Township is $50,000 per acre, but that
across the street from Rumpke the land is $400 per acre,” Fiedeldey exclaimed “it isn’t
about seeing the landfill it’s about smelling the landfill.”

2.4.3.1.2 Colerain Township Board of Trustees

The CTBT consists of three individuals: Bernard A. Fiedeldey, Jr. (Trustee
President), Jeff Ritter (Trustee Vice President), and Keith Corman (Trustee). The CTBT
are the Township legislative authority, as well as in charge of executive responsibilities.
The trustees’ manage and control duties include: budgeting, payroll, insurance, record
keeping, accounting, department oversight, planning, legal, disbursements. Their
legislative duties include: complaint department, public meetings, government access /
referral, liaison with government entities, public relations / press, resolutions. An
“Organization Chart” of Colerain Township is included in Figure 2.3, on the following
page (Broberg 1995, 67; Colerain Township 2007; Meck and Pearlman 2005, 353).
Figure 2.3: Colerain Township Organization Chart

Citizens of Colerain Township

Board of Trustees
Corman, Keith N.
Fiedeldey Jr., Bernard
Ritter, Jeff

Township Fiscal Officer
Harlow, Heather E.

Township Administrator
Foglesong, David L.

Assistant Administrator
Birkenhauer, Frank

Fire Division
Smith, Bruce

Parks & Services
Snyder, Greg

Police Division
Sarver, Steven

Public Works
McClain, Bruce

Senior & Community Center
Klosterman, Kay

Zoning
Roschke, Susan

Source: Colerain Township 2007b.
2.4.3.1.3  “Home Rule” and “Limited Home Rule”

Article XVIII, § 3, of the Ohio Constitution states:

Municipalities (cities and villages) shall have the authority to exercise all powers of local self-government, and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws (Meck and Pearlman 2005, 47-48).

This is the “Home Rule” amendment, adopted in 1912. It allows a municipality to control its internal affairs, while the Ohio General Assembly enacts laws which affect all Ohio citizens. The Ohio Supreme Court has since ruled that the administering of zoning laws, by a municipality, is an exercise of the “police powers.” This is instead of considering zoning an exercise of the power of “local self government,” as granted by the home rule amendment (Meck and Pearlman 2005, 48).

Planning and zoning legislation for counties, townships, and non-charter municipalities is contained in the O.R.C. Ohio counties may adopt charters permitting them “home rule powers.” Townships, under Ohio law, and through the O.R.C., may assume “limited powers of self-government, under certain conditions.” Local governments are not required to engage in planning and land use control, instead they are permitted to do so (Meck and Pearlman 2005, 49-52).

“Home rule” is the common name for local self-government. This is displayed through local governments creating and managing their own local laws. While Ohio municipalities are guaranteed home rule powers, residents in Ohio counties and townships must vote to institute such powers. Residents of Colerain Township have not voted to institute “Home Rule” powers. Only since 1991, has the Ohio General Assembly allowed townships this choice of “limited self-government.” Though
townships’ powers are limited to regulating minor problems, Broberg notes their
circumstances take precedence over county laws (Roschke 2007a; Broberg 1995, 21-24).

2.4.3.2 Ohio Township Planning

In the Ohio Attorney General Jim Petro’s 7/15/03 opinion (Opinion No. 2003-022) regarding the conflict between county and township land use plans, he offered this explanation: “The provisions of O.R.C. Chapter 519 authorizing township zoning thus provide a comprehensive system for land use management in the unincorporated territory of the township. Intrinsic to this authority is the power of township officials to prepare and adopt plans for land use in the unincorporated territory of the township.” Attorney General Petro determined that “both a county and a township may prepare and adopt land use plans for the unincorporated territory of a township.” When these plans “contain inconsistent provisions,” the township is conferred primary authority to regulate land use in the township” (pursuant to O.R.C. Chapter 519) (Meck and Pearlman 2005, 75; Petro 2003).

2.4.3.2.1 Colerain Township Land Use Advisory Board

The CTLUAB maintains Colerain’s Land Use Plan and provides advisory review of land use and zoning issues. The CTLUAB is one of four boards appointed to support the work of the CTPZD (which provides short and long term planning services for the Township, as well as zoning permitting and enforcement (Colerain Township 2006f).

2.4.3.2.2 Colerain Township Planning Regarding Rumpke Landfill

As the most visible and well-known land use in Colerain Township, Rumpke landfill, along with its owners’ continued requests for expansions, “is a major influence on Colerain” which requires ongoing, specific planning visions. As residential
development continues to close in around this landfill, which is unrelentingly expanding outward, the Township has found the need to form a “transition of mixed land uses and zoning” separating the two. The goal of this “mixed-use transitional area” (designated PMUE) is “to establish a long-term vision of reasonable uses next to the landfill, serving as a ‘land use buffer’ between the landfill and other less intense uses’ (McBride, Dale, and Clarion 2006, 10, 13-14).

2.4.3.3 Ohio Township Zoning

By 1939, Ohio Townships were tired of “suffering from the location of automobile ‘graveyards,’ garbage dumps, and other unpleasant land uses in their residential sections.” The first township zoning bill, introduced during Ohio’s 93rd General Assembly, failed to pass due to opposition from those who felt counties should regulate zoning in rural areas. It was not until a compromise measure was passed by Ohio’s 97th General Assembly (enacted on 25 September 1947), that township trustees were permitted to institute rural zoning (Guitteau 1949, 118-120).

O.R.C. Chapter 519 contains the statutes which regulate Ohio township zoning. O.R.C. Chapter 519.02 states that the township board of trustees “may regulate by resolution, ‘in accordance with a comprehensive plan,’ the location, height, bulk, number of stories, and size of buildings and other structures.” In order for townships to assume these powers, the board of trustees must first complete a series of required steps:

- Pass a resolution declaring its intention to proceed under O.R.C. § 519.02 to § 519.25 (O.R.C. Chapter 519.03)
- Create and establish a Township Zoning Commission (five members) (which is responsible for preparing a zoning plan [including text and maps], which must be submitted to the county or regional planning commission, for approval, disapproval, or suggestions. Under O.R.C. 519.05, a township may contract with planning consultants in preparing this plan
• Create a system of zoning certificates and appoint a Township Zoning Inspector to administer them; ensuring enforcement of the zoning regulations
• Appoint a Board of Zoning Appeals (five members) to hear and decide zoning act appeals, and to authorize variances from literal enforcement of the resolution

(Anderson’s Ohio Online Docs 2006; Guitteau 1949, 120-123; Ohio State University (The) 2007; Meck and Pearlman 2005, 73-77).

2.4.3.3.1 Colerain Township Zoning

In 1961, the residents of Colerain Township voted to adopt Hamilton County Zoning. In 1994, Colerain Township residents voted to adopt local township zoning. A similar zoning resolution to the Hamilton County Zoning Resolution was put in effect by Colerain Township at that time. With this change, the Township took over control of their zoning (McBride, Dale, and Clarion 2006).

After completing their Comprehensive Plan in 2005, Colerain Township began updating their Zoning Resolution, in order to implement recommendations put forth in the Comprehensive Plan and Land Use Plan. The Zoning Resolution improvements, which included a new zoning map (with new zoning districts) were approved and became effective on August 19, 2006 (McBride, Dale, and Clarion 2006).

2.4.3.3.2 Colerain Township Zoning Commission

The CTZC is a five member citizen Board appointed by the CTBT. As of 4/1/07, CTZC members included: J. Thomas Westfall (Chair), Rick Salerno (Vice Chair), Daniel J. Temming (Attorney), Don Johnson, Bruce M. Garber, and alternates Linda Krekeler and Chris Lawson. The Zoning Commission’s responsibilities are outlined in O.R.C. 519, and defined more specifically in Article 3 of the Colerain Township Zoning Resolution. These responsibilities include: hearing requests for zoning amendments,
development plans, and amendments to development plans; initiating zoning map or text amendments; and providing recommendations to the Board of Trustees. A flow chart explaining the “Relationship between Planning and Zoning Documents in Colerain Township” is included below, in Figure 2.4 (Colerain Township 2006f).

**Figure 2.4: Relationship between Planning and Zoning Documents in Colerain Twp.**

- **Comprehensive Plan**
  - 20 year vision
  - Broad recommendations
  - Organized by character area
    - Land use mix
    - Growth and development guidelines
    - Address vision themes
  - Relationship to public services and infrastructure

- **Land Use Plan**
  - 5 year plan
  - Site specific land use recommendations
  - More specific strategies for specific problems
  - Monitored and updated annually

- **Zoning**
  - Immediate
  - Day-to-day administration
  - Implements Land Use Plan
  - Law

2.4.3.3 Amendments to Colerain Township Zoning Resolution

Amendments to a township’s zoning resolution may be initiated by “a zoning commission motion, a Township Board of Trustees resolution, or an application filed by owners of the affected property.” O.R.C. Chapter 519.12 describes the process for enacting and amending township zoning resolutions. At minimum, this is a seven step process: Pre-Application Conference, Application, Referral to the Hamilton County Regional Planning Commission, Public Hearing with the Zoning Commission, Recommendation by the Zoning Commission, Public Hearing with the Board of Township Trustees, and a Decision (Anderson’s Ohio Online Docs 2006; Colerain Township 2006d, 21-23; Meck and Pearlman 2005, 355-367).
Chapter 3: Current MSW Landfill Situation in U.S. / Ohio

3.1 U.S. / Ohio MSW Landfills Nearing Capacity

The amount of household waste creation continues to increase. From 1960 to 2005, the total amount of yearly MSW generated in the U.S. increased by almost 179 percent, from 88.1 million tons to 245.7 million tons. (Fortunately, after recycling [23.8 percent], composting [8.4 percent] and combustion [13.6 percent], only 133.3 million tons [or 54.3 percent] of this MSW was actually land-filled). During that same 45 year period, U.S. population grew by only 65 percent, from 179,979,000 to 296,410,000. These numbers, when distributed amongst American citizens, show that in 1960, 2.68 pounds of MSW per person per day were generated. That rose to 4.54 pounds of MSW per person per day being generated in 2005. Per person, our daily waste generation increased 69 percent between those 45 years (U.S. Environmental Protection Agency 2004a, 2, 4; U.S. Environmental Protection Agency 2006c).

As well, Ohio, in recent years, has seen a rise in the amount of MSW it disposes. From 1984 to 2003, the amount of MSW disposed increased from 10 million tons to 20.9 million tons (or 109 percent). It should be noted that up until 1997, some waste was still being incinerated (as a means of disposal) in Ohio. Oddly enough, from 1980 to 2000, Ohio population grew by only 5 percent (from 10,797,630 to 11,353,140)! One explanation for this disproportional rise in MSW disposal could be the increase of “out-of-state” waste being imported to Ohio. Of the 20.9 million tons of MSW disposed in Ohio, in 2003, 12 percent (or 2.5 million tons) was imported (Ohio Environmental Protection Agency 2004a; U.S. Census Bureau 2007b).
A 2005 report by *BioCycle* magazine analyzed the remaining landfill capacity of the U.S.’s 1,654 MSW landfills. Twenty-nine states shared information, either in cubic yards or tons. The range was from lows in Connecticut – 150,000 cubic yards and Massachusetts – 2.3 million tons to highs in Illinois – 986 million cubic yards and Texas – 1.1 billion tons. (For comparison, when solid waste is placed in a landfill, it has a density between 1,200 to 1,400 pounds per cubic yard. After waste has settled and degraded, it can have a density from 1,700 to 1,900 pounds per cubic yard) (National Solid Wastes Management Association 2006c; Simmons, Goldstein, Kaufman, Themelis, and Thompson, Jr. 2006).

In 2003, the “Average Remaining Volume” of an Ohio landfill was 13,389,759 tons (589,149,395 tons / 44 Ohio landfills). According to the Ohio Environmental Protection Agency (OEPA), in 2005, the remaining capacity at Ohio’s, then 41 active, publicly-available landfills was 600,131,065 cubic yards, with additional proposed capacity of 212,457,779 (Ohio Environmental Protection Agency 2004a; Ohio Environmental Protection Agency 2005).

### 3.1.1 U.S. / Ohio MSW Landfills Being Closed

The number of MSW landfills has steadily declined in the U.S., from 7,924 in 1988 to 1,654 in 2005. Similarly, Ohio has seen a decline in MSW landfills, falling from 76 in 1990 to 41 in 2005. The OEPA explains this shift from small local landfills to larger regional landfills as a result of “technological upgrades to the siting / design requirements.” The requirements were part of the OEPA’s 1990 rules (updated in 1994) enacted as a result of Ohio House Bill 592 (Ohio Environmental Protection Agency
3.1.1.1 Response

The most basic question to ask is “What are my options?” Have decision makers looked at other ways of solving the waste disposal problem, besides continued dependence on landfills, which are nearing capacity?

U.S. Congress’ most important waste management decision was enactment of the Resource Conservation and Recovery Act (RCRA), in 1976. Subtitle D of RCRA gave the federal government the right to permit and regulate waste facilities, particularly open dumps. RCRA called for the EPA to set landfill standards and required dumps to be brought up to EPA standards or closed. In accordance to RCRA’s Section 4002, the EPA mandated that all states prepare regional solid waste management plans. Also, RCRA’s Section 4004 required that the EPA set minimum technical requirements for the design, operation, and siting of solid waste landfills in the U.S.

In 1991 RCRA was revised to “protect human health and the environment.” Landfill siting criteria, contained in RCRA Subtitle D became more comprehensive, strict, and universal. Also, ground water monitoring was required, siting location guidelines for new and existing facilities were determined, and arrangements were included to allow for ‘corrective actions’” (Hughes, Christy, and Heimlich 2007; U.S. Environmental Protection Agency 2006e; U.S. Environmental Protection Agency 2006f; Welles 2000, 23-26).

In the U.S., MSW has been dealt with in three ways, through recovery (recycling or composting), combustion (mass burn or refused-derived fuel form, and combustion
with energy recovery of source separated materials in MSW [ex. wood pallets and tire-derived fuel]), and by discarding to landfills (including discards after recovery minus combustion). Of the 88.1 million tons of MSW generated in 1960: 55.5 million tons – discarded to landfills; 27.0 million tons – combusted; and 5.6 million tons – recovered. By 2005, how we handled our 245.7 million tons of created MSW had evolved into: 133.3 million tons – discarded to landfills; 79.0 million tons – recovered; and 33.4 million tons combusted. Breaking-down our management of MSW into percentages, in 1960: 63.0 percent – discarded to landfills; 30.6 percent – combusted; and 6.4 percent – recovered. Our figures for 2005 showed: 54.3 percent – discarded to landfills; 32.1 percent – recovered; and 13.6 percent combusted (U.S. Environmental Protection Agency 2004a, 10-11; U.S. Environmental Protection Agency. 2006c, 1-2).

In 1988, Ohio House Bill 592 revised Ohio’s 1967 solid waste law; requiring that Boards of County Commissioners create Solid Waste Management (SWM) districts. Presently, there are 52 SWM districts in Ohio, overseen by five OEPA District Offices. The makeup and location of these districts is illustrated in Figure 3.1, on page 91 (Ohio Environmental Protection Agency 1996; Ohio Environmental Protection Agency 2007c; Ohio Environmental Protection Agency 2007d).

The OEPA’s Southwest District Office oversees 16 counties (which includes 15 different SWM districts, including the Hamilton County SWM District [HCSWMD]), with a population of 2,817,182 and a total land area of 7,240 square miles (2002 Census). The stated purpose of the HCSWMD is to lessen landfill reliance by reducing, reusing, and recycling waste. The HCSWMD serves this purpose by overseeing the implementation of the Hamilton County SWM Plan, and working towards achieving a 25
percent reduction of the solid waste disposed in Hamilton County (Beck 2004a; Hamilton County (OH) Solid Waste Management District 2006a; Ohio Environmental Protection Agency 2007e).
Figure 3.1: Ohio’s SWM Districts and Ohio’s EPA District Offices

Source: Ohio Environmental Protection Agency 2007c; Ohio Environmental Protection Agency 2007d.
A basic requirement of Ohio House Bill 592 is that SWM districts plan for long-term (10 - 15 years) waste disposal capacity. The HCSWMD views available solid waste disposal facilities situated within a 200 mile radius of the County when gauging long-term availability. A map illustrating the “Locations of Nearby Solid Waste Disposal Facilities” is included in Figure 3.2, on the following page. According to a staff report produced in response to Rumpke’s proposed expansion, the HCSWMD determined there were 34 years of capacity remaining. (At the HCRPC Hearing on 5/4/06, Holly Christmann [Solid Waste Program Manager at the HCSWMD] explained that “this plan was based on capacity without Rumpke’s “southern expansion”). If Rumpke is not permitted to expand, the HCSWMD will not address the change until its SWM Plan update in 2021 (Beck 2004a; Hamilton County (OH) Solid Waste Management District 2006b; Hamilton County (OH) Regional Planning Commission 2006b).
Figure 3.2: Locations of Nearby Solid Waste Disposal Facilities

Legend

Solid Waste Disposal Facilities within 200 miles of and currently used by the Hamilton County Solid Waste District

Source: Beck 2004a.

Edited: 1/29/07
3.1.1.1 Old MSW Landfills Being Expanded and New MSW Landfills Being Sited

In *BioCycle* magazine’s 2005 report, thirty-nine states responded to a question about whether their landfill capacity was being expanded. Thirty said, “Yes,” while nine said, “No.” Apparently, it has become routine in the U.S. to expand present landfills rather than site new landfills (Simmons, Goldstein, Kaufman, Themelis, and Thompson, Jr. 2006).

Bill Rumpke, president and CEO of Rumpke Consolidated Cos. Inc. claims to have been “approached about selling his business over 100 times,” with the highest offer being $1 billion. The reason for Rumpke’s business being so sought after could be that it is increasingly difficult to site new landfills (Radel 2006b).

3.1.2 Problems For Planners

In an editorial, Tjell lists nine issues, among many, to consider, relating to sustainable waste management. These issues include: “consumer product design; substitution of toxic constituents; recycling; recovery; reuse; composting; biogas; public participation; and life cycle analysis (Tjell 2003, 179).

Welles’ research suggested that waste management could be improved through better management of public involvement. Measures for lessening constraints to resolving conflict, increasing public participation, and achieving lasting solutions included: establishing regional offices to improve state and local coordination; continued research of ways to reduce the generation of waste; more host community representation on waste management boards and task forces; presenting more disposal choices for neighborhoods (minimizing opposition); and further educating the public on waste management challenges and involving them more with solutions (Welles 2000, 12-13).
There appears to be six distinct problems facing planners, with regards to solid waste management:

- Lack of collaboration (need regional agreements)
- Lack of credible information (need more studies)
- Lack of education
- Lack of incentives (laws requiring certain actions)
- Lack of public participation
- Need for source reduction (need to reduce raw materials usage; less materials entering the stream – means less waste)

**Lack of collaboration (need regional agreements):** Perhaps, rather than competing against each other, SWM districts might cooperate and work together towards sustainable waste management.

**Lack of credible information (need more studies):** Praagh and Persson explained that “tools still need to be developed” to figure out the “long term behavior of waste.” Also, Praagh and Persson stated that there are no methods to monitor emissions from old and new landfills. Answering questions about the “whole life cycle” of landfills will lead to more sustainable waste management (Praagh and Persson 2006).

**Lack of education:** Those creating the waste are responsible for such things as: purchasing “bulk” items, separating recyclables from non-recyclables, transporting yard trimmings to compost sites, removing batteries before throwing-out items, and disposing of waste in designated containers. O’Leary and Walsh (1995) stated that to ensure your waste management program’s success, the public must know which behaviors are desired and why. A significant, ongoing, and consistent educational program is required to maintain citizen involvement.

**Lack of incentives (laws requiring certain actions):** Previously, economic costs were the major factors in waste management decision making. Recently, environmental
concerns and social aspects have become more important. In Europe, the German Green Dot program, driven by the “polluter pays” concept, promotes the reduction of excess packaging, by requiring retailers to take back all forms of packaging. An important step in legitimizing recycling efforts is building markets for secondary materials, which, according to Luoma (1990) and Allen (1992), have lagged behind the growth of recycled material supply (Dhindaw 2004, 64-66).

**Lack of public participation:** As Tromans remarked in his article on England and Wales’ Government Waste Strategy, “changing retailers’ and consumers’ behavior” (which he senses is not likely to happen any time soon) is important to the success of any sustainable waste management initiative. Also, public – private partnerships seem to be the best option for managing solid waste. Buntrock explained that a national governmental waste management plan could be best implemented by private sector financial resources and management expertise (Buntrock 1996, 46; Tromans 2001, 258).

Welles pointed out in her doctorate dissertation, that there are two publics with interests in solid waste management: the general public (who need to dispose their waste) and the local hosts (who live where waste is disposed). The two most pressing issues are (1) who “speaks” for the general public and (2) how to answer local hosts’ concerns. This Not-In-My-Back-Yard (NIMBY) mentality is definitely impacting development and planning decisions. Welles’ research suggests waste management could be improved through better management of public involvement (Welles 2000, 61).

**Need for Source Reduction:** Need to reduce raw materials usage (less materials entering the stream – means less waste). According to Cooper’s viewpoint, waste
generation needs to be “stabilized and prevented,” and the “whole product chain” needs to be considered, not just waste treatment (Cooper 2002, 3).

The different alternatives available for managing solid waste, (recycling, incineration, landfilling, source reduction, public participation, regional plans, etc.) must be evaluated to determine the optimal alternative for specific municipalities. In Bovea and Powell’s article on meeting the demands of sustainable waste management, they analyzed different management alternatives, by evaluating their environmental performance through Life Cycle Assessments (LCA). Kijak and Moy, in their article on deciding a support framework for sustainable waste management, integrated LCA with other environmental, social, and economic tools (Bovea and Powell 2006, 131; Kijak and Moy 2004, 33).

Society’s response to increased waste creation has been to implement recycling and composting programs. By 1996, 50 percent of American households took part in a recycling program. Glenn (1992) relayed that a minimum of 41 states had passed laws pertaining to recycling goals, by 1992. Boerner and Chilton (1994) explained that many of these laws required that between 15 to 60 percent of solid waste be recycled (Anex 1995, 5; Buntrock 1996, 48).

According to the OEPA, Ohio’s greatest concern should be imported out-of-state wastes. Reasons for concerns include:

- Difficulty verifying that hazardous or untreated infectious waste has not been included with solid waste shipments
- Opposition to landfills (which are looked at as servicing out-of-state waste) works against the siting of facilities needed for disposing Ohio’s waste
- Citizens have less incentive to reduce or recycle waste when they feel their efforts will only serve to make room for trash from other states
• In 2003, Ohio’s average tipping fee was $30.46 ($20 less than the average tipping fee in the northeast region of the U.S. and $3 less than the southern and midwest regions)
• The potential exists for Ohio to import even larger amounts of out-of-state waste in the next several years (due to low tipping fees and an abundance of permitted landfill airspace)

(Ohio Environmental Protection Agency 2004a, 24-25).

In response to anticipated pressure, some landfill owners (particularly government entities) have chosen to impose service area restrictions. Some counties (with landfills) have decided not to accept out-of-state and / or out-of-county waste, or have imposed high surcharges on imported waste.

Originally, Ohio House Bill 592 authorized SWM districts to limit or prohibit the receipt of out-of-state and out-of-district wastes at any facility within their jurisdiction. However, following successful challenges in federal courts, these types of restrictions on landfill service areas are no longer imposed (Ohio Environmental Protection Agency 2004a).

3.1.2.1 Dealing With Locally Unwanted Land Uses (LULUs)

A Locally Unwanted Land Use (LULU) is “a large, unwanted land use opposed by area residents.” Examples include solid waste transfer stations, wastewater treatment facilities, and other uses perceived to pose a hazard or reduction in property values (Daniels and Daniels 2003, 460; Randolph 2004, 47).

In the past, LULUs have been sited in areas free from angry residents, litigation, and civil disobedience (the expected response when the siting of a LULU is announced). In response to poor and minority communities being unfairly targeted, for the siting of LULUs, the “environmental justice movement” emerged; ensuring the protection of all individuals from “disproportionate impacts of environmental hazards.” Planners are
expected to work to achieve environmental justice by including all groups and assessing disproportionate impacts (Randolph 2004, 47).

3.1.2.1.1 Rumpke Landfill as a LULU

Landfills are bird and rodent infested, dirty, methane gas and leachate (water which has percolated through the landfill) producing, smelly burial sites for our municipal waste. Even though operators / owners claim their landfills are safe; accidents happen. In fact, Rumpke’s Colerain Township landfill has repeatedly been fined / punished over the years, by the OEPA, for regulation infractions. For example, Rumpke was fined $1 million and restricted from expanding for three years by the OEPA, for a land slide which occurred at their site in 1996 (Callison 2002; O’Neill 2003b).

Of main concern is the age and size of the landfill. Rumpke has been dumping trash at this location since 1945, with The Cincinnati (OH) Enquirer reporting on citizen opposition to the landfill since 1947! Estimates of when the landfill will finally reach capacity, and be closed, vary. This question was brought-up during the third Colerain Township Board of Trustees Public Hearing on Case: ZA2006-04. Maintaining the present dumping rate of 8,000 tons of garbage a day, and including the recently approved 95 acre “southern expansion,” the landfill has from 15 to 18 years left. If Case: ZA2006-04 is approved it will add an additional 30 to 46 years. That means barring further additional expansions the landfill will close sometime between 2051 and 2070, and be somewhere around 106 to 125 years old (Cincinnati (OH) Enquirer, The 1947; McMahan 2006).

In 2004, Rumpke received 2,020,000 tons of trash. The second largest landfill in Ohio received 1,890,000 tons of trash that same year. In 2003, the “Average Remaining
Volume” of an Ohio landfill was 13,389,759 tons (589,149,395 tons / 44 Ohio landfills). With its recently approved 95 acre “southern expansion,” Rumpke added from 15 to 18 years of life or between 30,300,000 to 36,360,000 tons of landfill capacity (2,020,000 [2004 trash receipts] x 15 to 18 years). This does not take into account potentially increasing volumes of trash (Ohio Environmental Protection Agency 2004; Radel 2006a).

If Case: ZA2006-04 is approved, and Rumpke is permitted to expand their landfill by 30 to 46 years, a substantially larger landfill would be created. Using 2004 trash receipts of 2,020,000 tons, this proposed “expansion” would increase Rumpke’s Colerain Township landfill’s capacity to somewhere between 90,900,000 and 129,280,000 tons ([30,300,000 to 36,360,000] + 2,020,000 x 30 to 46 years) (Ohio Environmental Protection Agency 2004).

Since land filling began, different opposition groups have formed in an attempt to close-down or at least hem-in Rumpke’s Colerain Township landfill. One of the earliest groups was mentioned in a Cincinnati (OH) Enquirer, The article from 8/12/1947. It was reported that “approximately 30 ‘odor-conscious residents’ of Colerain Township complained to the Hamilton County Board of Health, that refuse from 21 Hamilton County communities (saying nothing of garbage from Butler County) was ‘piled in our back yard’” (Cincinnati (OH) Enquirer, The 1947). The “heading” from this article is included in Figure A.2, in the Appendix.

The latest group to fight this LULU is P.O.W.E.R. (Property Owners Want Equal Rights), formed in response to Rumpke’s application for a zone amendment in Case: ZA2006-04. This group’s “Mission” is “to maintain and enhance the quality of life in Colerain Township and protect and improve property values.” P.O.W.E.R. members
represented Township residents at seven public hearings (HCRPC, CTZC, and CTBT) in opposition to Rumpke’s proposed rezoning (Property Owners Want Equal Rights 2006).

3.1.2.1.1 Host Fees / Solid Waste District Fees (Disposal Fees) / Tipping Fees / “Landfill Fees”

This section clarifies the different “fees” associated with waste disposal in landfills. Host Fees are what citizens hear the most about, because these are meant to offset the negative externalities associated with having a landfill located near your home. Solid Waste District Fees are important to SWM districts, since these fees fund the district’s programs and plans. According to Clement, Tipping Fees (along with hauling distance and landfill ownership) determine where waste is disposed. The term “Landfill Fees” was used by Rexhausen and Rodrigues to describe the Host Fees and Solid Waste District Fees paid by Rumpke (Clement 2005; Rexhausen and Rodrigues 2006).

Host Fees are negotiated agreements, consisting of cash payments or in-kind donations, paid by a landfill developer to the community which hosts the facility. A 2002 New York Times article reported that Tullytown, PA was receiving $4.50 per ton of garbage imported from New York City and Long Island (which amounted to $48 million over the years). In comparison, since 1988, Colerain Township has received only $0.25 per ton. (This Host Fee will increase to $0.45 per ton once the “Southern Expansion” starts receiving trash). Heather Harlow, Colerain Township’s Fiscal Officer, explained that “the Host Fees are deposited into the Township’s General Fund, which supports the Zoning Department (which follows up on landfill complaints), provides funding for legal issues related to the landfill, and funds the Public Works Department which is responsible for road issues around the landfill (including street cleaning) (Clement 2005; Property Owners Want Equal Rights 2006).
Solid Waste District Fees (Disposal Fees) are paid by landfills to finance the SWM district’s (which manage the landfills) programs and plans. In 2005, Rumpke paid $2,765,000 in Fees to the HCSWMD (Hamilton County (OH) Solid Waste Management District 2006a; Hamilton County (OH) Solid Waste Management District 2007; Rexhausen and Rodrigues 2006).

Tipping Fees are charged for unloading or dumping waste at a landfill, transfer station, incinerator, or recycling facility. In 2004, the U.S. average landfill tipping fee was $34.29 per ton. In 2003, Ohio’s average tipping fee was $30.46. From these revenues, landfills pay-out “host fees” (to off-set impacts on the local community) and Solid Waste District fees (to provide strategies, facilities, programs, and activities) (Dhindaw 2004; Hamilton County (OH) Solid Waste Management District 2006a; National Solid Wastes Management Association 2004b; Ohio Environmental Protection Agency 2003; Ohio Environmental Protection Agency 2004a).

“Landfill Fees” include Host Fees and Solid Waste District Fees. In 2005, Rumpke paid $2,765,000 in landfill fees to the HCSWMD, and $481,000 to Colerain Township (Rexhausen and Rodrigues 2006, 10).
Chapter 4: Rumpke Landfill

4.1 History of Rumpke Landfill

Table 4.1, located below, contains a timeline of Rumpke’s landfill; listing notable milestones over the years.

Table 4.1: Rumpke Landfill Timeline

<table>
<thead>
<tr>
<th>Year</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1932</td>
<td>William F. Rumpke operated a coal and junkyard business in Carthage, OH (5 miles south-east of Colerain Township). Business grew into a hog farming and garbage operation.</td>
</tr>
<tr>
<td>1936</td>
<td>Rumpke business has 10 employees and 6 trucks</td>
</tr>
<tr>
<td>1943</td>
<td>Rumpke brothers (William and Bernard) purchase 80 acre farm in Colerain Township.</td>
</tr>
<tr>
<td>1945</td>
<td>Household waste accepted as food for hogs</td>
</tr>
<tr>
<td>November 1945</td>
<td>First garbage is placed on site</td>
</tr>
<tr>
<td>1947</td>
<td>132 acres added for a total of 212 acres</td>
</tr>
<tr>
<td>1950</td>
<td>Land filling of household waste begins</td>
</tr>
<tr>
<td>1954</td>
<td>70 acres added; total 202 (or 282) acres</td>
</tr>
<tr>
<td>1958</td>
<td>15 acres added; total 314 acres</td>
</tr>
<tr>
<td>1960</td>
<td>100 acres added; total 414 (of these 414 acres of property, only 234 acres considered landfill)</td>
</tr>
<tr>
<td>1970</td>
<td>1,000 tons of garbage dumped daily</td>
</tr>
<tr>
<td>1980</td>
<td>2,500 tons of garbage dumped daily</td>
</tr>
<tr>
<td>1982</td>
<td>Overall acreage equals 428 acres</td>
</tr>
<tr>
<td>1990</td>
<td>5,000 tons of garbage dumped daily</td>
</tr>
<tr>
<td>1995</td>
<td>Height 1,075 feet above sea level</td>
</tr>
<tr>
<td>2002</td>
<td>6,500 tons of garbage dumped daily. More than 1,850 employees, more than 1,400 trucks</td>
</tr>
<tr>
<td>2005</td>
<td>Received 2,015,738 tons of waste (5,523 tons / day). Landfill authorized to receive 10,000 tons / day</td>
</tr>
</tbody>
</table>

Source: Ohio Environmental Protection Agency 2006a; O’Neill 2003b; McBride, Dale, and Clarion 2006
Information provided by Rumpke and Colerain Township, for McBride, Dale, and Clarion’s Banklick Creek Zoning Analysis lists the existing landfill as beginning operation in 1945. At the start, Rumpke’s operation was limited to collecting household waste to feed their hogs, which were raised at the original hog farm, on the site.

When the U.S. Public Health Service banned the feeding of household waste to swine in 1955, the true land filling of solid waste began at the Hughes Road site. This consisted of simply “pushing refuse over the hill into ravines.” Rumpke documents show their property holdings along Hughes Road totaled 234 acres, in 1961. The Hamilton County Regional Planning Commission estimates that only 60 acres were actually used for landfill, at that time.

By 1982, due to Rumpke’s continued purchasing of land around the landfill, overall acreage had reached 428 acres. That year (1982), a change in zoning enabled Rumpke to construct several maintenance and operational buildings. In 1988, the landfill was still restricted mostly to the northern area of the current (as of August 2006) Solid Waste Disposal (SWD) zoning district (former “EF” Excavation-Landfill District).

Today, Rumpke’s Colerain Township landfill is located within the “Hamilton County” Ohio SWM district, as overseen by the OEPA. According to a 2006 HCSWMD Staff Report on the “Expansion of Rumpke Sanitary Landfill,” which Nancy Lindenmood referred to in a letter published in The Cincinnati (OH) Enquirer, “total disposal capacity within 200 miles (including pending capacity) is 186,107,590 tons, based on annual District waste receipts of 5,343,300 tons. This equates to 34 years of capacity (Hamilton County (OH) Solid Waste Management District 2006; Lindenmood 2006; Rumpke Sanitary Landfill, Inc. 2005).
Maps showing the “Growth of Rumpke’s landfill from 1955 to 2006” are included below, in Figure 4.1.

**Figure 4.1: Rumpke’s Colerain Twp. Landfill’s Growth: 1955 – 2006**

4.1.1 Growth Near Rumpke Landfill

Colerain Township, and the area around Rumpke Landfill, has changed significantly since the landfill opened in 1945. “Residential Development” progress throughout the Township (1900 – 2000) can be seen in Figure A.3, in the Appendix. Table 4.2, below, illustrates Colerain Township’s population growth.

Table 4.2: Colerain Township Population Growth

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>3,410</td>
</tr>
<tr>
<td>1910</td>
<td>3,034</td>
</tr>
<tr>
<td>1920</td>
<td>2,891</td>
</tr>
<tr>
<td>1930</td>
<td>3,664</td>
</tr>
<tr>
<td>1940</td>
<td>4,627</td>
</tr>
<tr>
<td>1950</td>
<td>7,473</td>
</tr>
<tr>
<td>1960</td>
<td>28,632</td>
</tr>
<tr>
<td>1970</td>
<td>50,971</td>
</tr>
<tr>
<td>1980</td>
<td>56,583</td>
</tr>
<tr>
<td>1990</td>
<td>56,781</td>
</tr>
<tr>
<td>2000</td>
<td>60,144</td>
</tr>
</tbody>
</table>

Source: Hamilton County (OH) Data Center 2007.

Many of the nearby residential subdivisions were built after the landfill was first opened. Infrastructure (water, sewer, and road improvements) has been updated, following along with the population growth. These improvements have led to further development of this area; once made-up of farms and forested hillsides.

McBride, Dale, and Clarion explained in their 2006 Banklick Creek Zoning Analysis that the landfill, as was typical with most Ohio landfills, started out as a small land use in a semi-rural area. Eventually, “the landfill expanded ‘well beyond’ what was expected.” Rumpke’s owners have repeatedly argued that adjacent land, which is negatively impacted by its closeness to the landfill, is only suitable as additional landfill.
This mindset has trapped the Township in an unending situation, where “the more the landfill expands, the more strongly landfill representatives argue it is ‘justified’ to expand” (McBride, Dale, and Clarion 2006, 6).

McBride, Dale, and Clarion believe that Colerain must view a landfill expansion, as it would the expansion of any other business. By having a long-term perspective, Colerain is more capable of ensuring a stable future. Once the landfill closes, that acreage “will not be able to be developed into another tax generating use,” and the discontinuance of tipping fees will leave a deficit in Township finances. This problem is better addressed sooner, rather than later (McBride, Dale, and Clarion 2006, 6).

4.1.2 Previous Rumpke Landfill Zoning Amendments

A timeline, below in Table 4.3, lists zone changes to Rumpke’s landfill.

Table 4.3: Timeline of Landfill Zone Changes

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>Colerain Township adopts Hamilton County Zoning (enforced by Hamilton County). Landfill is listed as a nonconforming use in “A-A” Single Family Residence District.</td>
</tr>
<tr>
<td>1982</td>
<td>Rumpke’s application to rezone 23 acres along Hughes Road to “FF” Light Industrial to allow for construction of buildings related to the landfill is approved.</td>
</tr>
<tr>
<td>1988</td>
<td>Rumpke’s application to rezone 428 acres, including the 1982 “FF” Light Industrial, to “EF” Excavation and Landfill is approved.</td>
</tr>
<tr>
<td>1994</td>
<td>Rumpke’s application to rezone an additional 7 acres (for a sedimentation pond) to the “EF” District is approved; total “EF” District equals 435 acres.</td>
</tr>
<tr>
<td>1999 - 2000</td>
<td>Rumpke’s application to rezone 65 acres south of the landfill to “EF” District is denied by Colerain Township. This decision led to Rumpke and the Township agreeing to a consent decree.</td>
</tr>
<tr>
<td>March 2006 - Present</td>
<td>Rumpke’s application to rezone 291 acres east of the landfill to “EF” District is still being deliberated.</td>
</tr>
<tr>
<td>August 2006</td>
<td>A new Colerain Township Zoning Resolution takes effect; rezones original landfill, plus the 2000 expansion (1988 zoning and 2000 consent decree) to new “SWD” Solid Waste District</td>
</tr>
</tbody>
</table>

When Rumpke began operating its Colerain Township landfill, in 1945, there was no township zoning. In 1961, the Township voted to adopt Hamilton County Zoning, and the area of the existing landfill was zoned “A-A” Single Family; allowing for large lot residential uses. At that time, Rumpke property along Hughes Rd. totaled 234 acres; with the Hamilton County Regional Planning Commission estimating that only 60 acres were being used as landfill. With the creation of zoning, the landfill became a “nonconforming use;” not complying with the “A-A” zoning regulations. Rumpke continued to purchase nearby land, and by 1982 had increased its area land holdings to 428 acres; none of which was zoned for “landfill.”

Rumpke’s first property rezoning occurred in 1982, with the approval of their application to rezone approximately 23 acres along Hughes Rd. from “A-A” Single Family Residence to “FF” Light Industrial (Case: 4-82 Colerain). This zone change enabled Rumpke to construct several maintenance and operational buildings. Not until 1988, did Rumpke finally succeed in making their landfill a “conforming use;” having all of the original landfill site rezoned from “A-A” Single Family, including the 1982 “FF” Light Industrial, to “EF” Excavation – Landfill District.

Over the years, Hamilton County made several zone changes to the area around the landfill; including rezoning some land as a landfill district and other areas as commercial districts. In 1994, Township residents voted to adopt local township zoning. The Township adopted with minor changes, the Hamilton County Zoning Code and Map that had been used prior to the change. The change meant that Colerain Township took over zoning responsibilities for the Township, as well as all previously developed uses (McBride, Dale, and Clarion 2005, 1-3).
In 1999, following a three year moratorium on expansions and the payment of a $1 million fine (as punishment for a 1996 landslide), Rumpke applied to Colerain Township to rezone 313 acres south of the original landfill to a mix of “EF” Excavation – Landfill District (65 acres) and “PD-I” Planned Light Industrial. The aim of this zoning request was to add an additional 15 to 20 years to the landfill’s “life,” as well as create “buffer areas” of light industrial uses, park land, and greenspace.

In a reversal of the treatment of previous zoning applications, the CTBT, following a review “in accordance with statutory requirements” denied Rumpke’s application. Rumpke did not accept the Trustees’ decision, though, and filed a lawsuit (Case: A00-07121), which was eventually settled by a Consent Decree. It should be noted that the area covered under the consent decree (within the confines of Struble Road to the south, U.S. 27 to the east, Hughes Road to the west, and Bank Road to the north) was not rezoned until 8/19/06, when Colerain Township’s new zoning resolution took effect.

Following the adoption of the Colerain Township Comprehensive Plan (3/12/05), and while the Township Zoning Text and Map were still being finalized, Rumpke applied for another expansion, to the east. In March 2006, Rumpke began the process of applying to rezone 350 acres of “A-A” Single Family Residence and “O-O” Planned Office to “EF” Excavation – Landfill (291 acres) District and “FF” Planned Light Industrial (59 acres). This Case: ZA2006-04 is currently being decided in a Hamilton Court of Common Pleas.

With the updated Colerain Township Zoning Resolution taking effect on 19 August 2006, the original landfill and the 2000 expansion (including the 1988 zoning and
2000 consent decree) were rezoned to the new “SWD” district. Figure A.4, in the Appendix, contains a map of the Rumpke landfill area before and after the zoning update. This zoning classification has specific landfill regulations, and states that previously approved landfill operations would be considered in compliance with the new Township Zoning Resolution (McBride, Dale, and Clarion 2005, 1-3; Reuter 2007).
Chapter 5: Methodology

Research of the planning literature did not produce any previous attempts at analyzing an Ohio township zoning amendment. The following is an explanation of the methodology used for this project. The criteria for analysis, the case study, and the interviews conducted are discussed.

5.1 Methodologies Used

The first task in the methodology was to identify the criteria needed for comparison between the O.R.C. regulated process and Case: ZA2006-04. Determining those issues and facts was necessary to maintain focus and ensure integrity throughout the methodology and comparison tasks. One would assume that an Ohio township zoning process, which is regulated by statutes in the O.R.C., would follow predetermined steps fairly close. For the purpose of this project, it was necessary to establish specific criteria to serve as the basis for comparing Case: ZA2006-04 against the O.R.C. defined process. These criteria included: 1) Initiation of amendment; 2) Notifying the public; 3) HCRPC meeting; 4) CTZC hearings; and 5) CTBT hearings. The criteria were used to show how closely Rumpke’s zoning amendment proposal followed the expected path, as well as providing the basis for drawing conclusions about why certain decisions are made, and for suggesting changes to the process.

Analytical Methods

1. The Case Study method was used to analyze the Colerain Township Zoning Amendment Case: ZA2006-04. This method is used to explore, describe, and compare the O.R.C. procedure for Amendments to Township Zoning Resolution against the processing of Case: ZA2006-04.
Justification for this method: According to Yin, “Case studies are the preferred means for answering ‘how’ or ‘why’ questions. Also, when the investigator has little control over events, and the focus is on a contemporary phenomenon within some real-life context” this method should be implemented (Yin 2003, 1).

2. **In-Depth Interviews** were conducted with key “decision makers.” A set of prepared questions were submitted to those either involved with Case: ZA2006-04, or with expertise in this area. Eight key decision makers were interviewed. Three reoccurring questions asked were:

- Why do you think zone amendment cases (particularly those involving a landfill end-up in court)?
- What do you think those involved in a zone amendment case (applicant; township; county) can do differently, in order to avoid going to court?
- Where are the “conflicts” in the “O.R.C. stated township zone amendment process?” (What would you recommend be changed with O.R.C. § 519.12)?

A “Chart of Qualitative Issues,” created from answers to these questions, allows for comparison between those interviewed and highlights reoccurring opinions.

Justification for this method: According to Nagy Hesse-Biber and Leavy, “In-depth interviews use individuals as a departure point for the research process and assume individuals have unique and important knowledge which can be gathered through verbal communication” (Nagy Hesse-Biber and Leavy 2006, 119).

5.1.1 **Case Study Analysis**

For this thesis, Case: ZA2006-04 was analyzed. This case, dealing with Rumpke’s “expansion” or siting of a new landfill next to their present Colerain site, was chosen for a few reasons. It had repeatedly been discussed in the local newspapers during the previous year, the author was interested in learning more about how solid waste management is conducted, and it was a situation which could potentially be
repeated in municipalities across Ohio and the U.S. Also, the author was interested in learning more about the history and governance of Ohio townships.

The author was unable to locate a case study of an Ohio township zoning amendment, so Case: ZA2006-04 was compared to the actual process listed in the O.R.C. The zoning amendment process’ pertinence was illuminated through a comparison of how closely the guidelines were adhered to, where conflicts occurred, and where different decisions could have been made. Few divergences from the statutes meant the O.R.C. was relevant and in-tune with present society. On the other hand, the more situations where the process was not adhered to meant less credibility could be assigned to our zoning amendment process, as it is written.

Considering this, it was important to thoroughly explain the steps in the Ohio township zoning amendment process. This included listing the history and reasoning behind the steps in the O.R.C. This helped answer questions about the validity and appropriateness of our government and its laws. Other criteria included “critical points” when important decisions were made, the thought process involved with such decisions, the “main players” settling the case, and the public citizen’s role.

All of the criteria listed above were considered when reviewing Case: ZA2006-04. Their combined impact was used to show how well this case’s process adhered to what should have been expected. The biggest advantage for the author was the abundance of and easy access to available information connected to Case: ZA2006-04. Also, close proximity to those involved enabled interviews to be conducted more easily.

The methodology’s next step was to conduct research according to the established criteria and case study. This research included analysis of journals, land use and planning
documents, law statutes, material related to Ohio’s government, newspapers, web sites, the O.R.C., and zoning issues. Findings were then recorded, organized, and compiled into a usable format for comparison during the analysis phase of the project.
Chapter 6: Case: ZA2006-04

6.1 Processing Township Zoning Amendments (Ohio Revised Code)

The first part of this Chapter walks the reader through the O.R.C. prescribed process for amending township zoning. In addition to the strict wording of the Code, Meck and Pearlman’s comments are included to allow for clearer understanding.

O.R.C. 519.12: Amendments to Zoning Resolution (Procedure; Referendum)

(A)  (1) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission.

(2) The commission shall set a date for a public hearing. Notice of the hearing shall be given by the commission by one publication in one or more newspapers of general circulation in the township.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land written notice of the hearing shall be mailed by the township zoning commission, to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted.

(C) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;
(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
(3) The time and place where the text and maps of the proposed amendment will be available for examination;
(4) The name of the person responsible for giving notice of the hearing by publication;
(5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;
(6) Any other information requested by the commission.

(D) After the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section,
or the filing of the application described in division (A) of this section, the
township zoning commission shall transmit a copy of it together with text and
map pertaining to it to the county planning commission.

The county planning commission shall recommend the approval or denial
of the proposed amendment or the approval of some modification of it and shall
submit its recommendation to the township zoning commission. The
recommendation shall be considered at the public hearing held by the township
zoning commission on the proposed amendment.

The township zoning commission shall recommend the approval or denial
of the proposed amendment, or the approval of some modification of it, and
submit that recommendation together with the motion, application, or resolution
involved, the text and map pertaining to the proposed amendment, and the
recommendation of the county planning commission on it to the board of
township trustees.

The board of township trustees, upon receipt of that recommendation,
shall set a time for a public hearing on the proposed amendment. Notice of the
hearing shall be given by the board by one publication in one or more newspapers
of general circulation in the township.

(F) If the proposed amendment alters the text of the zoning resolution, or
rezones or redistricts more than ten parcels of land the published notice shall set
forth the time, date, and place of the public hearing and include all of the
following:

(1) The name of the board of township trustees that will be
conducting the hearing on the proposed amendment;
(2) A statement indicating that the motion, application, or
resolution is an amendment to the zoning resolution;
(3) The time and place where the text and maps of the proposed
amendment will be available for examination;
(4) The name of the person responsible for giving notice of the
hearing by publication;
(5) Any other information requested by the board.

(G) The board of township trustees shall either adopt or deny the
recommendations of the township zoning commission or adopt some modification
of them.

(H) The county or township board is required to file the text and maps of
a zoning resolution amendment with the office of the county recorder and with the
regional or county planning commission (if one exists).

(I) The proposed amendment (if adopted by the board) shall become
effective, unless within thirty days after the adoption a signed petition (requesting
the board to submit the amendment to the electors for approval or rejection at a
special election) is presented to the board of township trustees.
6.1.1 Initiation of Amendment

(A) (1) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission.

The county or township is permitted to charge a fee for amendment applications (to defray advertising, mailing, filing with the county recorder, and other costs)

6.1.2 Zoning Commission Public Hearing; Notice

(2) The commission shall set a date for a public hearing. Notice of the hearing shall be given by the commission by one publication in one or more newspapers of general circulation in the township.

The zoning commission’s hearing must not be less than 20 nor more than 40 days after the resolution’s date of certification or adoption of the motion, or the application’s filing date. A “Notice” of the hearing must appear in at least one publication, in at least one newspaper “of general circulation in the county or township,” at least 10 days before the hearing. If the required “Notice” does not notify the public of the type of rezoning considered, the time and place for review of the application, or of future meetings where the zoning commission may “take action on the application,” then any subsequent amendment to the zoning resolution will be invalid (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 355-356).

6.1.3 Referral to County or Regional Planning Commission

(D) After the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section, or the filing of the application described in division (A) of this section, the
township zoning commission shall transmit a copy of it together with text and map pertaining to it to the county planning commission.

The county planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the township zoning commission. The recommendation shall be considered at the public hearing held by the township zoning commission on the proposed amendment.

Following the motion, resolution, or application, the zoning commission has five days to transmit a copy (along with the text and map) to the county or regional planning commission (if one exists). Requiring that the zoning commission refer the text or map amendments to the county or regional planning commission was “held to be a mandatory procedural step,” even though their recommendation (on the request) is “non-binding.” The township zoning commission and board of trustees are not obligated to follow the planning commission’s recommendations (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 356-357).

6.1.4 Recommendations to County or Township Board; Notice

The township zoning commission shall recommend the approval or denial of the proposed amendment, or the approval of some modification of it, and submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county planning commission on it to the board of township trustees.

The board of township trustees, upon receipt of that recommendation, shall set a time for a public hearing on the proposed amendment. Notice of the hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township.

Within 30 days of holding its hearing, the zoning commission must forward the application or resolution, the text and map, its recommendation, and the county or regional planning commission’s recommendation to the county or township board. The board must then schedule a public hearing on the proposed amendment less than 30 days from receipt of the zoning commission’s recommendation. A published “Notice” must
appear at least ten days before the public hearing. “Failure to properly publish the ‘Notice’ sufficiently in advance of the board’s public hearing invalidates the board’s subsequent zoning resolution amendment.” Despite this requirement, “when a zoning commission or a board shows ‘substantial compliance’ with the ‘Notice’ and hearing requirements, the zoning amendment will be valid” (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 357-358).

6.1.5 Action by Legislative Body

(G) The board of township trustees shall either adopt or deny the recommendations of the township zoning commission or adopt some modification of them.

The county or township board (the “Legislative Body”) has 20 days after its public hearing to make a decision. If the “Legislative Body” seeks to deny or modify the zoning commission’s recommendation, a “unanimous vote” is required (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 358-360).

6.1.6 Filings with County Recorder

(H) The county or township board is required to file the text and maps of a zoning resolution amendment with the office of the county recorder and with the regional or county planning commission (if one exists).

Within five days of the zoning resolution amendment’s “effective date,” the county or township board is required to file the “revised” text and maps with the county recorder’s office and the regional or county planning commission (if one exists). However, “the failure to file such an amendment does not invalidate the amendment or provide ‘grounds for an appeal’ of any decision to the board of zoning appeals” (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 360).
6.1.7 Referendum on Amendment

(I) The proposed amendment (if adopted by the board) shall become effective, unless within thirty days after the adoption a signed petition (requesting the board to submit the amendment to the electors for approval or rejection at a special election) is presented to the board of township trustees.

The petition must be signed by a number of qualified voters residing in the unincorporated area of the township (or the part included in the zoning plan) “equal to not less than eight percent of the total vote cast for all candidates for governor in that area at the most recent general election at which a governor was elected.” A form (of a petition for a zoning referendum) is provided in the statutes to assist with meeting application requirements. If a referendum petition is submitted to the board of county commissioners or board of township trustees (within 30 days), the amendment is prevented from taking effect until a vote is held, and a majority of the vote is in favor of the issue (Anderson’s Ohio Online Docs 2006; Meck and Pearlman 2005, 360).

6.2 How Case: ZA2006-04 Was Processed (Case Study)

After reviewing how Case: ZA2006-04 was processed, one can only conclude that this Case was processed in accordance with the statutes for a township zoning resolution amendment, except for:

- No record of Rumpke’s 4/18/06 “preliminary hearing”
- A discrepancy of $1,035.40 in Rumpke’s application check
- Some of the “time constraints” not being met by the CTZC

The explanation for why some of the “time constraints” had not been met (the CTZC’s Public Hearings had been postponed with Rumpke’s agreement) was given by Dr. Roschke (CTPZD Administrator), in an email to the author (Roschke 2007).

Figure 6.1, included on the following page, displays flow charts comparing “How Case ZA2006-04 Was Processed” against the “Expected Procedure.”
Figure 6.1: How Case: ZA2006-04 Was Processed v. Expected Procedure

Source: Colerain Township 2006d; Colerain Township Zoning Commission 2006c; Colerain Township Zoning Commission 2006e; Hamilton County (OH) Regional Planning Commission 2006; McMahan 2006b; McMahan 2006c; Rumpke of Ohio, Inc 2006; Roschke 2007; Rumpke Sanitary Landfill, Inc. 2006a; Rumpke Sanitary Landfill, Inc. 2006e.
The reason for studying the processing of Case: ZA2006-04 was to determine if an application from Rumpke, with the influence that it carries in the Township (and County), is handled similarly to other zone amendment applications. Previous attempts by Rumpke to not follow procedures were tried in late 2002. The Case Summary of Case # LUPA 2003-01 reports that at the CTLUAB Meeting (on 12/03/02) “Rumpke representatives came to the CTLUAB meeting to present their plan. They were not on the agenda.” Then, on 12/30/02 and 12/31/02, “Rumpke representatives asked to be on the January CTLUAB Meeting Agenda, while “packets had been sent and set before the request was made” (Colerain Township 2005a).

Another example of Rumpke appearing to circumvent the “rules,” stems from their second attempt at re-applying to the HCRPC for a land use amendment to the County’s “Colerain Township NE Sector Land Use Plan” (Case: LUPA Colerain 2005-01; Rumpke Industrial). First of all, there was confusion on whether Rumpke met “time constraints” on when applications could be submitted. Then, despite Todd Kinskey (Development Services Administrator for the HCPZD) “informing ‘KAD’ (assumed to be Kathy Dale [Colerain Township Land Use Planner]) first (on 6/22/05) that the HCRPC was going to reschedule the Hearing for September, then (on 6/23/05) informing ‘KAD’ that the meeting was still scheduled for 7/7/05, but that “the HCRPC ‘Staff” was going to ‘recommend’ to the HCRPC that the hearing be continued until September, the HCRPC not only held their meeting but “approved” Rumpke’s amendment application. Oddly enough, the HCRPC made their decision even though Bryan Snyder (Senior Planner with the HCPZD) explained that “the packet of materials submitted to you today from Mr. Trauth (Rumpke’s Attorney) was not what the HCPZD received in submittal for this
request, and we have not had an opportunity to review it.” Also, Ron Miller’s (HCRPC Secretary and HCPZD Executive Director) “recommendation for continuation of this Hearing” was ignored (Colerain Township 2005a; Hamilton County (OH) Regional Planning Commission 2005a).

Table 6.1, located below, contains a timeline following the processing of Case: ZA2006-04. Due to overwhelming public interest, both Public Hearings before the CTZC and the CTBT had to be continued twice, to permit all interested residents an opportunity to voice their concerns.

**Table 6.1: Timeline of Case: ZA2006-04**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/23/06</td>
<td>Application Check Written</td>
</tr>
<tr>
<td>3/6/06</td>
<td>Pre-Application Meeting</td>
</tr>
<tr>
<td>3/6/06</td>
<td>Application for Zoning Amendment Filed</td>
</tr>
<tr>
<td>4/24/06</td>
<td>Notice of Public Hearing Case: ZA2006-04</td>
</tr>
<tr>
<td>5/4/06</td>
<td>Hamilton County Regional Planning Commission Meeting</td>
</tr>
<tr>
<td>5/16/06</td>
<td>1st Public Hearing: Colerain Township Zoning Commission</td>
</tr>
<tr>
<td>6/20/06</td>
<td>2nd Public Hearing: Colerain Township Zoning Commission</td>
</tr>
<tr>
<td>7/18/06</td>
<td>3rd Public Hearing: Colerain Township Zoning Commission</td>
</tr>
<tr>
<td>8/8/06</td>
<td>Recommendation by Colerain Township Zoning Commission</td>
</tr>
<tr>
<td>9/5/06</td>
<td>1st Public Hearing: Colerain Township Board of Trustees</td>
</tr>
<tr>
<td>10/2/06</td>
<td>2nd Public Hearing: Colerain Township Board of Trustees</td>
</tr>
<tr>
<td>11/9/06</td>
<td>3rd Public Hearing: Colerain Township Board of Trustees</td>
</tr>
<tr>
<td>11/9/06</td>
<td>Decision on Case: ZA2006-04</td>
</tr>
</tbody>
</table>
6.2.1 2/23/06: Application Check Written

The first step in the zone amendment process is paying for the process, “up front.” Rumpke’s check to the Colerain Township Board of Trustees, dated 2/23/06, was for $53,779.56. A copy of this check can be viewed in Figure A.5, in the Appendix (Rumpke of Ohio, Inc. 2006).

6.2.2 3/6/06: Pre-Application Meeting

General Requirement 1.1 (Pre-Application Meeting) of the Submission Requirements for Amendment to the Colerain Township Zoning Resolution orders that:

The applicant is to present the concept of a proposed development plan and reclassification to the Colerain Township Zoning Inspector or staff to obtain and discuss the overall application process before submitting an application (Rumpke Sanitary Landfill, Inc 2006d).

On Rumpke’s filled-in list of Submission Requirements, the date and time for a Pre-Application Meeting was: “Date: 3/6/06 and Time: 2:00.” A copy of these “Submission Requirements” is included in Figure A.6, in the Appendix. Did Rumpke take this “Pre-Application Meeting” seriously? Not much time was given for discussion prior to applying for a zoning amendment, with Rumpke filing their Application for Zoning Amendment Case: ZA2006-04 that same day (3/6/06) (Colerain Township Zoning Commission 2006; Rumpke Sanitary Landfill, Inc 2006c).

When Jeff Rumpke applied for a zoning amendment on 3/6/06, he noted on the application that a 4/18/06 meeting would be applied for to discuss this zoning amendment with the CTZC and staff in a preliminary hearing. No record of this 4/18/06 “preliminary hearing” was located, but a copy of Rumpke’s “application” can be viewed in Figure A.7, in the Appendix (Colerain Township Zoning Commission 2006a).
6.2.3 3/6/06: Application for Zoning Amendment Filed

A copy of Rumpke’s zone amendment application is included in Figure A.8, in the Appendix. There were two different “Submission Requirements: For Amendments to the Colerain Township Zoning Resolution” (requirements and procedures) which Rumpke needed to comply with (Single Letter Districts and Planned Districts [Double Letter]). Maps of Rumpke’s proposed “expansion” / zone amendment can be viewed in Figures 1.1, in Chapter 1, and A.9, in the Appendix. The “Locations of the 66 parcels to be rezoned by Case: ZA2006-04” are visible in Figure A.10 in the Appendix (followed by a list of the parcels’ identifiable information) (Colerain Township Zoning Commission 2006a).

Rumpke’s check to the CTBT (dated 2/23/06) was for $53,779.56. Colerain Township Land Use Planner, Kathryn A. Dale, recalculated Rumpke’s application fee, as follows:

- Special District Applications for “EF”: $1,000 + $150 / acre
  - Total: $150 X 291 acres = $43,650 + $1,000 = $44,650
- Non-Residential Zone Map Amendments: $1,000 + $150 / acre
  - Total: $150 X 59 acres = $8,850 + $1,000 = $9,850
- Legal Advertisement: Estimated at $125 per hearing X 2 = $250
- Certified Mailings: 14 owners (not includ. 4 on applicat.) X $4.64 each = $64.96

**TOTAL SHOULD BE: $54,814.96**
**DIFFERENCE: $1,035.40**

(Dale, Kathryn A. 2006; Rumpke of Ohio, Inc. 2006).

Rumpke’s lawyer, Joseph L. Trauth, Jr., clarified issues brought-up in Dale’s letter with a “response letter” addressed to James Reuter (lawyer representing Colerain Township), Kathryn Dale (Colerain Township Land Use Planner), Jeff Rumpke (Rumpke’s Regional Vice President), Larry Riddle (Rumpke Landfill Manager), and John Butler (Rumpke Senior Site Engineer). Trauth explained which property owners
were part of this zone change application and which were only submitting “letters in support of this application.” Also, Trauth discussed how Rumpke had calculated their application fee; finishing with an agreement “to make any adjustments on the projected costs of advertising, etc. as the Application moved forward” (Trauth Jr., Joseph L 2006).

Upon receiving a zone amendment application, the CTPZD requests reviews from: HCRPC, Hamilton County Engineer, Fire Prevention Officer, Metropolitan Sewer District, OEPA, Natural Resources Conservation Service, Department of Public Works, and HCGHD. A copy of the request sent to Mark Walsh (Fire Prevention Officer) is included in Figure A.11, in the Appendix (Colerain Township Planning and Zoning Department 2006b).

6.2.4 4/24/06: Notice of Public Hearing Case: ZA2006-04

This Notice of Public Hearing to Property Owner announced when the case would be heard by the Hamilton County Regional Planning Commission (5/4/06), when the Colerain Township Zoning Commission would hold a public meeting (5/16/06), and where the application and plans could be examined (Zoning Office). A copy of this Notice is included in Figure A.12, in the Appendix (Colerain Township Planning and Zoning Department 2006a).

6.2.5 5/4/06: Hamilton County Regional Planning Commission Meeting

Kinskey and Miller (HCPZD Staff) reviewed their Staff Report. Next, the applicant (Rumpke) made their comments. Trauth (Rumpke’s Attorney) announced that Rumpke “agrees with the conclusions of the report.” Riddle (Rumpke Landfill Manager) explained the different preliminary steps Rumpke has taken; meeting with the Hamilton County Engineer and Water Works. Roberts (Rumpke’s Director of Engineering and
Environmental Affairs) explained that the landfill follows phases required by the OEPA (Hamilton County (OH) Regional Planning Commission 2006b).

This was followed by comments from “Public Officials.” T. Garry, Jr. (presumably representing Colerain Township) explained that the Township was not taking a particular position, because the CTBT was still deciding on the zoning application. The Township did want to “point-out some ‘great’ concerns about the staff findings:

- No reference to analysis of the Township’s Land Use Plan which has been updated over time and sent to the HCRPC, for approval
- No reference to the Western Hamilton County “2020 Plan” (which does not ‘contemplate’ an expansion of the landfill)
- No consideration of the Township’s Comprehensive Plan (which was approved by the HCRPC in August 2005)

(Hamilton County (OH) Regional Planning Commission 2006b).

Dale (Colerain Township Land Use Planner) and Colerain Township Trustee Fiedeldey reinforced the importance of the Township’s Comprehensive Plan. Fiedeldey explained that “the comprehensive planning authority lies with the Colerain Township Trustees because ‘if we adopt zoning, we have to follow a comprehensive plan.’” These two Colerain Township officials were followed by Christmann (HCSWMD’s Solid Waste Program Manager) and W. Moller. Christmann stated that “there is 34 years of landfill capacity within a 200 mile radius (without Rumpke’s “southern expansion”), while Moeller explained the difference between Colerain’s Comprehensive Plan (policy plan) and their Land Use Plan (site specific land uses).

Following the Public Officials, “opponents” of Rumpke’s zone amendment application were allowed to comment. Notable comments from these citizens include: B. Margrave asked about Rumpke’s nine other area landfills, and “commended”
Township officials for “trying to keep the landfill from becoming the fourth or fifth largest in the (country).” C. Whitcomb brought-up some interesting points:

- At a HCRPC meeting on 12/6/01, the Commission felt the landfill should not expand beyond Colerain, Bank, Hughes, and Struble Roads
- This expansion would “place waste 3,100 feet from Bevis Elementary and 2,300 feet away from Northwest High School

S. Hurt complained about damage to his house, caused by blasting at the landfill.

N. Lindenmood remarked that “none of the economic studies include the impact on residential property owners (of adding 291 more acres of landfill). Also, Lindenmood could not understand how the HCRPC could make a recommendation, without having received ‘input’ from most agencies” (only the Metropolitan Sewer District report had been received). At the end of Lindenmood’s comments, she asked the HCRPC to “rise above whatever ‘power struggle’ was present and work in collaboration with the Township, to create a long term plan that benefits everyone.” B. Rabe was the final citizen to speak in opposition of Rumpke’s application. Rabe felt there was no need for a new landfill, because this landfill had “18 years of life left and there are many other landfills around.” Then, Rabe complained about the damage, which blasting at Rumpke has caused to his house.

The HCRPC followed these comments with two votes. The first motion, “to accept staff findings that consistency with the HCRPC’s adopted land use plan is required, and that Rumpke’s zone amendment can achieve consistency” was approved unanimously by HCRPC members Sprague, Martin, Okum, Tarbell and Franke. The second motion, “to recommend approval of case: Colerain ZA2006-04, Rumpke Landfill & Light Industrial” was also approved unanimously by HCRPC members. The HCRPC members comments, explaining their decisions were the following:
Commissioner Franke

The Township’s plan does not agree with HCRPC’s land use plan (adopted 7/7/05).

Commissioner Okum

The revenues do not drive my decision on the land use issue.

Commissioner Martin

We must pass this expansion, in order to benefit the citizens of this region. If the landfill is not allowed to expand, the price of solid waste is going to grow.

Commissioner Sprague

This amendment is consistent with what the HCRPC has adopted in its land use plan for this site. We need to look at expanding these “undesirable” land uses for the good of the county and region.

Commissioner Tarbell

The thought of starting over somewhere else is not possible. Everyone needs to work together to make the best of the situation. I am struck by the fact that population and property values have increased in Colerain Township (Hamilton County (OH) Regional Planning Commission 2006b).

6.2.6 5/16/06: 1st Public Hearing: Colerain Township Zoning Commission

The CTZC Staff provided a presentation describing Rumpke’s proposed project. This included a discussion of road closures, grading modifications, buffer zones, location and description of the light industrial area, and access points. It was noted that “there are 34 single family homes located ‘in the vicinity’ of the zone change request.”

The Colerain Township Comprehensive Plan was discussed. It was recalled that “during the Comprehensive Plan process, residents felt that ‘no expansion of the landfill should occur.’” It was stated that “the Township accepts that the landfill is part of the community, but desires that ‘landfill operations should continue only within the confines
of the current landfill boundary.’” Also, it was stated that “the application does not show compliance with the Zoning Resolution as defined in the CTZC Staff Report.”

The application was found to be “not consistent with the adopted Land Use Plan for this area, which is Planned Mixed Use Employment or Rural Residence.” Also, it was explained that the proposed landfill “expansion” is “not consistent with the hillside and open space preservation and buffering standards.”

The HCRPC’s 5/4/06 vote to “recommend approval” of the Zone Amendment was discussed. It was explained that the HCRPC’s decision was “based on the County’s Land Use Plan.” HCRPC “did not consider Colerain Township’s ‘adopted’ Land Use Plan or Comprehensive Plan.” The CTZC Staff, after recommending a continuation “until all items are received,” proceeded to list 15 conditions pertaining to the Zone Amendment, for the CTZC to consider.

A presentation by the Applicant then took place. Joseph Trauth, an attorney with Keating, Muething, and Klekamp PLL representing Rumpke, stated that “they were unaware that there was any noncompliance.” (Assuming this was in response to statement regarding the application’s “noncompliance” with the Zoning Resolution as defined in the CTZC Staff Report). Mr. Rumpke’s (unsure which Rumpke) address to the HCRPC, that “the acres were assembled not as a ‘buffer,’ but as a potential ‘expansion’ of the landfill” was recounted.

Larry Riddle, Rumpke Landfill Manager, discussed the proposed “expansion,” stating that “there are seven lots to be developed.” Riddle critiqued Colerain Township’s Comprehensive Plan and the public participation process. After sharing that “the life of the existing landfill will contribute $45 million to Colerain Township’s ‘general fund,’”
Riddle remarked that “Rumpke has always contended that the Colerain Township Land Use Plan is not economically feasible and not an appropriate use of area due to steep topography and lack of utilities.”

Tom Abercrombie, an Abercrombie & Associates, Inc. consulting engineer working with Rumpke on this project, commented on Light Industrial. Abercrombie reported on his meeting with the County Engineer and Cincinnati Water Works, stating that “they don’t seem to have any problems with it.” (Assuming “it” means the proposed “expansion”).

David Hart (unsure of connection) stated that “development in the area must be ‘sensitive to market feasibility recommendations.’” Hart, referring to a topography map, felt “because of rugged topography, PMUE (Planned Mixed Use Employment) is ‘unreasonable.’”

Tom Tepe, another Keating, Muething, and Klekamp PLL lawyer representing Rumpke, passed out copies of Mark Vella’s (a registered engineer with Al Neyer, Inc.) testimony taken in March 2005 in support of the zone amendment. (Possibly Rumpke has been considering this zone amendment since March 2005).

Following the Applicant’s presentation, the Zoning Commission discussed the proposal. This included: the timing of the expansion (Riddle explained Rumpke has “18 years of life” remaining); and increased costs if “expansion” is denied (It would cost $30 million per year to transport waste). The Hearing concluded with a continuation until 6/20/06 (Colerain Township Zoning Commission 2006c).
6.2.7 6/20/06: 2nd Public Hearing: Colerain Township Zoning Commission

This Hearing intended to “give members of the public an opportunity to address the issue” (Zone Amendment). A stack of papers, nearly two inches thick, containing data, reports, charts, and articles was submitted for review to the CTZC.

A few notable citizen remarks included: Bill Rumpke, president and CEO of Rumpke, noting that the “‘expansion’ could amount to $80 million in fees to Colerain Township;” John Kerr, a civil engineer, drew attention to the Township’s declining property values explaining that “between 2004 and 2005, property values declined nearly 5 percent;” Carrie Davis felt that “a bird in hand is worth two in the bush” (Rumpke is a “strong economic development… even though we have to “hold our noses once in a while”); and Carol Ambach suggested that the Zoning Commission follow the Township Comprehensive Land Use Plan (which does not call for expanding the landfill) and “deny the request” (Colerain Township Zoning Commission 2006c; Radel 2006a).

6.2.8 7/18/06: 3rd Public Hearing: Colerain Township Zoning Commission

During this Hearing, Zoning Commissioners discussed different issues relating to Rumpke’s proposal, including: appropriate use of land (“Light Industrial” and “PMUE”); the health and safety of the Township; Ohio Attorney General Jim Petro’s Opinion No. 2003-022 (made 7/15/03); the Colerain Township Comprehensive Plan (given to CTZC by Township Trustees as “the guide for zoning issues”); and the timing of Rumpke’s Zone Amendment application (with Commissioner Westfall stating that “they [meaning Rumpke] must know how long it takes [to “expand” their landfill] and they must need this amount of time or they would not be here”).
Before voting on Case: ZA2006-04, the Commissioners recapped the proceedings, and provided some insight into the reasoning behind their decisions. Commissioner Westfall noted the positive (highly regulated, good compliance, and provider of a necessary service) and negative (landslide and fire, odors, dynamite blasting, litter, and uncertain long term health effects) aspects of the landfill. While, Commissioner Salerno brought-up that “a lot of sleep was lost over this proposal” reviewing documents and studying materials (not only those submitted, but also the Township Comprehensive and Land Use Plans). Commissioner Salerno pointed-out that according to a University of Cincinnati Economic Study, “only 20 percent of Rumpke employees live in Colerain.” Commissioner Salerno stated that “the most compelling testimony he heard was from a 20 year old man who questioned building a home for himself and his future family in Colerain because of Rumpke.”

Before voting, Commissioner Lauf finished his explanation by reasoning that “because of the nature of the landfill business, it should not be expanded over the long haul because of the negative impact on property values.” This final CTZC Public Hearing ended with unanimous vote, denying Zone Amendment Case: ZA2006-04 (Colerain Township Zoning Commission 2006c; Radel 2006d).

**6.2.9 8/8/06: Recommendation by Colerain Township Zoning Commission**

Commissioner Lauf explained (on 7/18/06) at the CTZC’s 3rd Public Hearing regarding Zone Amendment Case: ZA2006-04 that approval of a zone change requires a unanimous vote (at least 3 out of 5 Zoning Commissioners). The CTZC’s recommendation was provided to the CTBT on 8/8/06. At that point, it was up to the CTBT to make the final decision of whether to approve or deny the CTZC’s
recommendations (to deny the zone amendment) (Colerain Township 2006f; Colerain Township Zoning Commission 2006c; Radel 2006d; Roschke, 2007b).

6.2.10 9/5/06: 1st Public Hearing: Colerain Township Board of Trustees

This Public Hearing began with a presentation of the proposed project and zoning amendment, by Dr. Susan Roschke, Colerain Township Planning and Zoning Administrator. Issues looked at included: Zoning (past, current, and requested) for this area, relation to Colerain Township’s Comprehensive Plan and Land Use Plan, and Rumpke’s proposed EF “Landfill / Excavation” and FF “Light Industrial” project plans. Dr. Roschke proceeded to review the HCRPC’s 5/4/06 recommendation to approve Case: ZA2006-04, and the CTZC’s recommendation against approval. Then the 15 conditions pertaining to the Zone Amendment, originally recommended by the Colerain Township Zoning Commission Staff (for the CTZC to consider on 5/16/06), were stated again.

Next, the Applicant presented its proposal before the Board of Trustees. Joseph Trauth, an attorney representing Rumpke, explained that the application proposes two separate zone changes. Trauth simplified the Case down to a legal issue: Is the current zoning constitutional? (“Is the existing zoning promoting the health, safety, and morals or is the area economically feasible to be developed?”) Trauth noted that the HCRPC (“the only Commission who has looked at this land use, which is authorized by the O.R.C. to do regional planning”) has recommended approval. Trauth stated that “the only appropriate zoning use east of Hughes Road is landfill.”

Following Trauth, Tom Abercrombie, a consulting engineer working with Rumpke on this project, described the project plans and explained associated maps. Abercrombie repeated (from the 5/16/06 Zoning Commission Hearing) Cincinnati Water
Works’ and the County Engineer’s role in the project. Next, Larry Riddle, Rumpke Landfill Manager, discussed the EF “Landfill / Excavation” district (291 acres) and uses for once the landfill is closed.

Following Riddle was Eric Gardner’s, Vice President for the consulting and appraisal company Collier, Turley, Martin, and Tucker, analysis presentation which found that if Rumpke’s proposal was approved, “the annual revenue to the Township (including property tax and host fees) would be $971,295 or $29,138,850 over 30 years.” Colerain Township Trustee Ritter asked if “other scenarios (such as Light Industrial in most of the parcel or Office) had been considered.” Gardner replied that other scenarios “were considered, but were not the ‘highest and best use’ of the area.”

Gardner then proceeded to lay-out possible explanations for the “lack of growth” in Colerain Township; his intention being to show that “Rumpke is not to blame.” Gardner’s “risk factors” for the Township included: low-ranking school district, below average housing values, residents working blue collar jobs, limited upscale shopping, aging community members, limited available land for development, location along a “secondary route” (I-275), older housing stock, high crime rate for a suburb, and high rental rates. Riddle followed this by referring to a poll by Dan Pinger Public Relations which showed that “a majority of residents support Rumpke.” Then Dr. Riley Kinman, a consultant with RNK Environmental Inc., spoke of the virtues of Rumpke’s Sanitary Landfill. Dr. Kinman finished by saying that the decomposition process for municipal solid waste “poses no significant public health risk.”

Later, Riddle again brought up Rumpke’s financial impact on Colerain Township, by mentioning that Rumpke “currently pays $400,000 annually in host fees, with the
“expansion” raising that figure to $1 million.” Trustee Fiedeldey and Jeff Rumpke (Regional Vice President for Rumpke’s Cincinnati market) then discussed jobs at the landfill (the 2000 figure of 1,000 jobs has increased 5 to 10 percent since, with the expansion expected to add the “same 5 percent market growth rate).

Concerned about outside waste being dumped in Colerain Township, Trustee Ritter confirmed with Rumpke that “current disposal is 50 percent Hamilton County residents and 50 percent non-residents.” Rumpke stated that these percentages “should not change (with the “expansion”) and there would be no long-haul waste, as this is a ‘regional facility.’”

The Hearing was then opened for public address. Walt Stepaniak asked the Trustees to “vote for the needs of many,” and approve the “expansion” in order to “serve the whole community.” Nancy Lindemood provided the Board of Trustees with a petition to deny the rezoning, with 395 signatures. Lindemood felt that “alternatives (to expanding) have not been explored.” Bruce Slattery explained that the “landfill was a good idea 60 years ago, but its growth has created a ‘monster,’ which needed to end.” One last memorable comment was made by Bill Strachan, a civil engineer with RNK Environmental Inc., who suggested that once the landfill is closed it could be transformed into “a supper club or a ski slope.”

The Hearing ended with the Trustees agreeing to continue on 10/2/06 (Colerain Township Online Document 2007d; McMahan 2006a; Roschke 2006).

6.2.11 10/2/06: 2nd Public Hearing: Colerain Township Board of Trustees

This second Township Trustees’ Public Hearing mostly consisted of concerned citizens addressing the Board regarding Rumpke’s Zone Amendment. Some notable
statements made by those in favor of the zone change included: Dan Sifferlen, President of *Comet Communications*, conducted a telephone survey on behalf of Rumpke and found that 76.3 percent of those surveyed “are not opposed to the ‘expansion.’” In response to Sifferlen’s findings, Trustee Fiedeldey did not think it was “fair” to conclude that the 35 percent of respondents who were “undecided” were “not opposed to the ‘expansion.’” Buck Rumpke, who has worked at the landfill for 41 years, noted that “Rumpke donated over $200,000 to the Northwest Local School District.” Finally, Larry Stone, director of Safety at Rumpke, stated that “Rumpke is a good ‘community citizen.’”

Comments from citizens opposing the zone change included: John Kerr urged the Board to remember the “time and work which went into the Township Comprehensive Plan, Land Use Plan, and Zoning Code.” Caren Whitcomb remarked that Larry Riddle’s (Rumpke Landfill Manager) comment that the “expansion would make the Township ‘rich beyond its wildest dreams’” had not been true in the past. Whitcomb felt the landfill “devalues our property, and there is no good quality of life with the landfill’s odor.” (Whitcomb can not open her house windows because of odor). Nancy Pessler called for other options to be considered, like recycling. Pessler asked Trustees to think about “quality of life for those living here now and those living here in the future.” James Watson explained that “this is a highly populated area, and you do not build a garbage dump in a populated area.” Lastly, Nancy Lindemood offered an update on the petition, saying there were now 531 signatures opposing the zone change.

Trustees closed this second Hearing by continuing until 11/9/06 (Colerain Township Online Document 2007c; McMahan 2006b).

**6.2.12 11/9/06: 3rd Public Hearing: Colerain Township Board of Trustees**
This third and final Board of Trustees Public Hearing did not last as long as the two previous Hearings. For all in attendance, there was a tense feeling in the air. There was a sense that an important decision, which would impact Colerain Township’s future, was about to be made.

Bill Rumpke, President of Rumpke Consolidated Companies, was the second speaker of the night. Rumpke reminded the Trustees that “increased host fees could be used to ‘improve the community.’” Later, Nancy Lindemood pointed out her “masked mannequin,” which represented a little boy in the future if the landfill was allowed to expand. Lindemood shared the final tally of opposition signatures; 549.

As a final word to the Trustees, Joe Trauth, an attorney with Keating, Muething, and Klekamp PLL, stated that “the current zoning is ‘unconstitutional.’” Trauth wants compliance with the Hamilton County Land Use Plan, because “Colerain Township Zoning is inappropriate.”

Upon conclusion of the Public Hearing, the Township Trustees shared their feelings and reasoning behind the decisions they were about to make. Trustee Ritter listed some of the reasoning behind his decision: The landfill is progressively “compromising” more land the farther it expands; landfill revenues will eventually come to an end; his duty to protect Colerain Township; the Colerain Township Comprehensive Plan; and the landfill’s negative impact on neighbors.

Trustee Fiedeldey attempted to figure out the expected “life” of the landfill, and future revenues from tipping fees. Trustee Fiedeldey concluded that Rumpke “uses up 6.33 acres each year, so 291 acres is 45 years.”
Trustee Corman confirmed with Jeff Rumpke, that rejection of the zone amendment application would lead to a “reduction in Rumpke’s contributions to civic organizations.” Trustee Corman asked Rumpke if they “planned to expand past this request,” with Rumpke explaining that he could not determine what would happen “45 years out.” Trustee Corman made two memorable statements: Landfill Tipping Fees are “like the crack cocaine of economic;” and there is now a “creeping effect,” on those who have purchased properties near the landfill, “producing a negative investment for resale.”

In conclusion, Trustee Corman stated that “the applicant has 18 years to divert future waste to other locations outside the Township. Trustee Fiedeldey appeared upset, recalling that in 1999 “it was clear that Rumpke would not expand past the confines of their present site.” Since the closure of Hughes Road “does not fall within Township Land Use and Comprehensive Plans,” and because “sterilizing” 300 acres was “not much of a legacy to leave our grandchildren or our grandchildren’s grandchildren,” Trustee Fiedeldey opposed the expansion.

The three Township Trustees concluded by voting unanimously “to accept the recommendation of denial from the CTZC” (Colerain Township Online Document 2007b; McMahan 2006c).

6.2.13 11/9/06: Decision on Case: ZA2006-04

The CTBT’s decision to accept the recommendation of denial from the CTZC ended the legislative decision making regarding Zone Amendment Case: ZA2006-04. Unwilling to settle with defeat, Rumpke proceeded to file a lawsuit against Colerain Township and the CTBT in Hamilton County Court of Common Pleas on 12/20/06.
(Anderson’s Ohio Online Docs 2006; Colerain Township 2006f; Colerain Township Zoning Commission 2006c; Radel 2006d; Rumpke Sanitary Landfill, Inc. 2006e).

6.3 12/20/06: Suit Filed in Hamilton County Court of Common Pleas

Rumpke, unwilling to accept the CTBT’s “final” decision, filed a lawsuit (No. A0611056) on 12/20/06 in the Hamilton County Court of Common Pleas. Copies of the first two pages of the lawsuit are included in Figure A.14 in the Appendix.

Rumpke claims the Township “violated its constitutional rights” by not approving their zoning change request, which would allow the landfill to expand.

Hamilton County Court of Common Pleas Case No. A0611056 was brought by Rumpke Sanitary Landfill, Inc.; Charles M. and John J. Stoeppel; Trustees of the Henry and Lillian Stoeppel Family Living Trust; and Claire A. Stepaniak against Colerain Township, Ohio and the Colerain Township Board of Trustees (Bernard A. Fiedeldey, Keith N. Corman, and Jeff Ritter).

The plaintiffs seek: 1) A judgment under Ohio Revised Code (O.R.C.) Chapter 2721, which finds the site’s existing zoning classifications “unconstitutional;” 2) A judgment under O.R.C. 2721 which allows their property to be used as a sanitary landfill and for light industrial uses; 3) Payment (by defendants) of “just compensation for being deprived of the economically viable use of their land and suffering damages in excess of $25,000;” 4) A judgment requiring defendants, under O.R.C. Chapter 163, to determine the amount of appropriations necessary to compensate for “taking” the plaintiffs’ property; 5) Payment (by defendants) of damages in excess of $25,000, for violation of plaintiffs’ rights under the “Equal Protection Clause of the U.S. Constitution;” 6) Payment (by defendants) of damages in excess of $25,000, for violation of plaintiffs’
rights under the “Commerce Clause of the U.S. Constitution;” and 7) Payment (by defendants) of damages in excess of $25,000, for violation of plaintiffs’ “private property and civil rights” under the “Civil Rights Act, 42 U.S.C. § 1983” (which also includes “the recovery of attorneys’ fees) (Rumpke Sanitary Landfill, Inc. 2006e).

On 1/10/07, the Judge in Case No. A0611056 was reassigned; transferred from Judge Ethna Cooper to Judge Ralph Winkler. On 1/19/07, the Case was removed to U.S. District Court by the defendants (where it was reassigned Case No. 1:07-CV-039).

Rumpke subsequently dismissed the case (“not wanting it to be heard in Federal court); re-filing it again in the Hamilton County Common Pleas Court (on 4/3/07), without the federal claims. The new Case No. is A0703073 (Hamilton County (OH) Clerk of Courts 2007; Hamilton County (OH) Court of Common Pleas 2006; Hamilton County (OH) Court of Common Pleas 2007; Reuter 2007; Rumpke Sanitary Landfill, Inc. 2006b).

The court’s decision in this Case will determine whether or not Rumpke moves forward with its planned “expansion.” Even after the court’s decision, Rumpke will have further permitting steps to pass through. The OEPA will play a pivotal role in signing-off on the long list of standard requirements for MSW landfills.

6.4 Strategies Utilized During Decision-Making Process

Meck and Pearlman provide a list of strategies and tactics utilized by those for and against proposed developments (including land use development decisions) during the legislative and administrative decision-making process. These are listed in Table 6.2, included on the next three pages.
<table>
<thead>
<tr>
<th>Strategies and Tactics – Generic</th>
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<tbody>
<tr>
<td>1. Enlist outside support</td>
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<td>2. Submit petitions</td>
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<td>3. Send letters-to-the-editor</td>
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<tr>
<td>4. Hold a press conference</td>
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<td>5. Engage in ex parte contacts with decision-makers</td>
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<td>6. Make ad hominem attacks</td>
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<td>7. Threaten litigation</td>
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<td>8. Stand up and be counted</td>
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<td>9. Minimize the importance of unfavorable rulings by other subordinates administrative bodies</td>
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<td>10. Point to the staff report</td>
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<td>11. Hire a well-connected local attorney</td>
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<td>12. Avoid excessive reliance on legal pronouncements</td>
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</tbody>
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(Meck, Stuart and Kenneth Pearlman 2005, 716-720).
Strategies and Tactics – Proponents

1. Emphasize the character and credibility of the applicant
2. Stress the economic situation of the applicant
3. Maintain that, if the development is approved, longstanding public facilities problems in the area will be corrected
4. Contend the development proposal is consistent with or implements the comprehensive plan’s recommendations for the area
5. Argue that the development proposal will increase the tax base
6. Dare: “If you don’t approve this development, then X-ville would be happy to have it”
7. Demonstrate that the existing zoning would result in uses that are less preferable than the proposed zoning
8. Induce: “If you grant this request, the applicant would have an incentive to upgrade the property and improve the area”
9. Argue the applicant is the “hapless victim of government bungling”
10. Show the development proposal to be an example of good community planning
11. Argue the development proposal satisfies the criteria in the zoning code
12. Appeal to a sense of fairness: “You have set the precedent by approving similar developments, so then why not me?”
13. State: “We have anticipated the potential adverse impacts from the development on the surrounding area and are taking steps to prevent them from occurring”
14. Attack the opponents
15. Have alternative proposals ready
16. Keep it short

(Meck, Stuart and Kenneth Pearlman 2005, 720-723).
Both supporters and opponents of Case: ZA2006-04 borrowed from almost all of these ideas.

Rumpke (including supporters): enlisted outside support (a copy of “Rumpke’s Request for an ‘Official Letter of Recommendation’” is included in Figure A.13, in the Appendix); sent letters-to-the-editor; held a “press conference” (provided “news release”); threatened litigation; pointed out their “supporters” (red shirts at hearings, questionnaire results); referred back to HCRPC’s vote of support (minimized Colerain Township’s Zoning Commission’s disapproval); pointed to the HCRPC’s “Staff Report”

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**Strategies and Tactics – Opponents**

1. Declare that procedural rules have been violated
2. Claim that approval of the proposal will set a “dangerous precedent”
3. Assert that the cumulative impact of previously approved developments has not been adequately assessed
4. Maintain that local government approval should not be granted until other state and local agencies have had a chance to examine the proposal
5. Contend that the proposal conflicts with the comprehensive plan
6. Argue that the proposal does not satisfy criteria in the local code
7. Attack the proponent’s track record in other communities
9. Assail the applicant’s exhibits or the credibility of expert witnesses
10. Provide your own experts
11. Suggest alternatives
12. Claim that public facilities are overloaded as it is
13. Insist that deed restrictions applicable to the property would be violated
14. Demand mitigation
15. Claim that property values would be depressed or that the marketability of property will be affected
16. Argue the development will not “pay its own way”
17. Claim potential “conflicts of interest” by decision-makers
18. Disparage the development’s features as contrary to those that make the surrounding area attractive

(Meck, Stuart and Kenneth Pearlman 2005, 723-727).
(supported Rumpke’s position); used well-known local attorneys; emphasized Rumpke’s character and credibility (local church / school supporters, “responsible” business owners); stressed the economic situation of the applicant (Rexhausen and Rodrigues’ “Economic Impact of Rumpke” report); suggested that if Case: ZA2006-04 was approved, problems with Hughes Road’s hills and curves would be eliminated (Hughes Road would be covered by the new landfill); adamantly contended that Hamilton County’s authority / decisions overruled Colerain Township’s; continually mentioned Rumpke’s tax payments; referred to expert engineer, Mark Vella’s (Development Director with Al Neyer, Inc.), testimony before the Colerain Township Trustees that the land east of Hughes Road was “not well located for office or light industrial development” (Rumpke, Jeff 2006); implied that Rumpke would continue to manage their business “responsibly” and not consider “selling-out” to the highest bidder once their re-zoning was approved; made it appear that the government was “picking-on” their company (EPA / safety restrictions, increased taxes); presented their development proposal as Colerain Township’s “best option” (Hamilton County even approved Rumpke’s proposed amendments on 7/7/05); recalled Rumpke’s previously approved zoning amendment proposals; presented research into how negative impacts will be dealt with; and repeatedly discredited opposition to Case: ZA2006-04.

Opponents of Case: ZA2006-04: claimed that approving Case: ZA2006-04 would only lead to further “expansion” at a later time; warned that not all the dangers of landfills were known; could have noted that the Staff Report prepared for the HCRPC’s consideration on 5/4/06 did not include agency reports from the Fire Prevention Officer, the Hamilton County Engineer, Public Works, the Metropolitan Sewer District, the Soil
Conservation Service, Hamilton County Soil and Water, and the Hillside Trust; pointed-out that “expanding” Rumpke’s landfill was in direct conflict with Colerain Township’s Comprehensive Plan (which is meant to guide development and zoning regulations); created an “unnamed, faceless ‘boy’” (mannequin) to remind citizens of innocent victims; questioned credibility / relevance of some experts’ findings; suggested Rumpke seek alternatives; repeatedly claimed that expanding Rumpke’s landfill would decrease property values and quality of life; and decried further landfill expansion as unattractive for the surrounding area.

While researching Case: ZA2006-04, the author discovered amongst the different related documents the existence of additional, miscellaneous requirements for a zone change, these include: “Letters of Consent” from owners of property subject to Rumpke’s rezoning application; “Letters of Support” from Colerain Township business owners; the request for “Agency Reports” (from the Fire Prevention Officer, the Hamilton County Engineer, Public Works, the Metropolitan Sewer District, the Soil Conservation Service, Hamilton County Soil and Water, and the Hillside Trust); requests for review of the Zoning Amendment (from the HCRPC, the Hamilton County Engineer, the Fire Prevention Officer, the Metropolitan Sewer District, the Ohio Environmental Protection Agency, the Natural Resources Conservation Service, the Department of Public Works, and the Hamilton County General Health District).
Chapter 7: Interviews with Decision Makers

7.1 Interviews with Decision Makers

An additional method of investigation was to interview individuals, who were either involved with or had knowledge of Case: ZA2006-04, or had experience with similar situations. To ensure relevant information was acquired, “Interview Questions” were prepared beforehand. The questions for each of the eight interviews are included in the Appendix. It was difficult to adhere to a single set of questions for all interviewees. The questions were modified slightly, accounting for each individual’s occupation or role with regards to Case: ZA2006-04. Successful interviews were contingent upon the interviewees’ agreement to be questioned on this subject. Each interviewee was required to agree to the terms included in the “Consent For Interview Form” displayed in Figure A.15, in the Appendix. In-depth, qualitative interviews, as described by Nagy Hesse-Biber and Leavy, were conducted either over the telephone, through email, or in person. This format included: active asking and listening; being issued oriented; explaining differences; having a focused topic; having an analytical process; and ranging from structured to open-ended.

Individuals able and willing to recount their role in Case: ZA2006-04, or willing to share their opinion of township zone amendments were chosen. They included: Steven Benyo (State of Ohio Attorney General Office: Assistant Attorney General), Russell Brown (Ohio EPA SWDO: Environmental Supervisor), Holly Christmann (HCSWMD: Solid Waste Program Manager), John Kerr (Rumpke Opponent), Tim McDonald (Whitewater Township Clerk), Gary Powell (Interested Observer), Jill Rengereng (Rumpke Supporter), and Bryan Snyder (HCRPC: Senior Planner,
Proper questioning and recording during the interviews was important to ensure complete and correct analysis. An alphabetical listing of interviewees follows.

7.1.1 Benyo, Steven

On 7/15/03, Ohio Attorney General Jim Petro wrote an Opinion (Opinion No. 2003-022) determining that “both a county and a township may prepare and adopt land use plans for the unincorporated territory of a township.” It was thought that having an opinion (to compare to the other interviewees’) from the “Chief Law Enforcement Office” in Ohio could offer important insight into the reasoning of our policy makers. Attorney General Marc Dann has since replaced Attorney General Petro, and Assistant Attorney General Benyo is the one who actually shared his “personal views and understanding of the authority of counties and townships in the zoning process” (Benyo 2007; Ohio State University (The) 2007; Petro 2003).

Benyo is a particularly valuable interviewee, considering his knowledge of the O.R.C. and with “conflicts” in the process (such as the one between Colerain Township and Hamilton County over which “Plan” to consider when reviewing zone amendment applications). Benyo was interviewed by email.

7.1.2 Brown, Russell

Brown, the Environmental Supervisor at OEPA’s Southwest District Office, was interviewed (through email) mostly to find-out the role the OEPA plays in the process of “expanding” or siting a landfill. Then, in order to compare the views of an environmentalist, who is employed by a State “environmental monitoring” organization, against others’ (with different backgrounds), Brown was asked to comment on zone
amendment cases (involving landfills), the overall acceptance of landfill sitings, and different approaches to zone amendments (involving landfills).

7.1.3 Christmann, Holly

Christmann is the Solid Waste Program Manager at the HCSWMD. An HCSWMD employee was sought-out to be interviewed, because this organization is responsible for implementing Hamilton County’s Solid Waste Management Plan. It was thought that Christmann could elaborate on the expected impacts an “expansion” of Rumpke’s landfill would have on the County’s Solid Waste Management Plan, and the HCSWMD’s role in the landfill siting process. Also, Christmann (employed by a County “environmental monitoring” organization) would provide an additional environmentalist’s view of why zone amendment cases are settled in court, and offer suggestions of how court could be avoided. Christmann was interviewed in person.

7.1.4 Kerr, John

Kerr provides the point of view of a resident who opposes Rumpke’s zone amendment and subsequent expansion; publicly commenting during at least one Public Hearing. With the intention of comparing his answers against the other interviewees’, Kerr was asked (during an over the phone interview) for his opinion on why zone amendment cases (particularly those involving a landfill) are settled in court, the importance of the “O.R.C. stated zone amendment process,” and conflicts in the process. He was also asked to offer suggestions for how litigation in court could be avoided (by those involved in a zone amendment case) and for changes to the O.R.C. zone amendment process.
Kerr has first-hand experience with the inter-workings of a lot of Colerain Township’s government offices, having served as a member of the Comprehensive Plan Executive Committee (which assisted with the creation of Colerain Township’s Comprehensive Plan (adopted 3/12/05).

7.1.5 McDonald, Tim

After Colerain Township representatives’ declined to be interviewed (due to Case: ZA2006-04 still being settled in court) it was decided that the next best option was to interview a representative from a different Ohio township, with a landfill. It turns out that Tim McDonald, Whitewater Township Clerk, is from a township which does not have a zoning ordinance. Despite this fact, McDonald provides the point of view of an elected township official. A retired City of Cincinnati Assistant Fire Chief (retired 1/22/00), McDonald has been Whitewater Township’s (OH) Clerk since June 2002.

Questions for McDonald (asked by email) attempted to understand the relationship between Hamilton County and the townships contained within its boundaries, and a township’s role in siting or “expanding” a landfill. Also, McDonald’s opinion was sought for why zone amendment cases (especially those involving a landfill) and related OEPA decisions are challenged in court. Then, the interview finished by trying to figure-out how not having a zoning ordinance affects the township.

7.1.6 Powell, Gary

Powell was interviewed, in person, with the expectation that he would provide useful insight into the township zone amendment process, having worked as an attorney for over twenty years; counseling on land use, zoning, and eminent domain cases (particularly those involving townships). Also, because this thesis compares an actual
zone amendment application (Case; ZA2006-04) against the process stated in the O.R.C., Powell was asked to comment on the “pertinence” of the O.R.C.’s statutes and “conflicts” in the process (county plan / zoning vs. township plan / zoning), to offer advice (for those involved) of how to “avoid going to court,” and to suggest changes to the O.R.C. (Powell 2007). With regards to Colerain Case: ZA2006-04, though, Powell is “merely an interested observer.”

7.1.7 Rengering, Jill

Rengering provides the point of view of a resident who supported Rumpke’s zone amendment and subsequent expansion publicly commenting during at least two Public Hearings). With the intention of comparing her answers against the other interviewees’, Rengering was asked (by email) for her opinion on why zone amendment cases (particularly those involving a landfill) are settled in court, the importance of the “O.R.C. stated zone amendment process,” and conflicts in the process. She was also asked to offer suggestions for how litigation in court could be avoided (by those involved in a zone amendment case) and for changes to the O.R.C. zone amendment process.

Having lived near the landfill (grew-up across the street from Rumpke landfill in the 1950s) for more than 50 years, Rengering has some fairly strong opinions, and she is not shy about sharing them.

7.1.8 Snyder, Bryan

Fortunately, an in person interview was conducted with one of the actual Hamilton County Senior Planners (Snyder is a Senior Planner of Development Services), who has played a significant role in numerous Colerain Township zone amendments and land use plan amendments (which have often involved Rumpke landfill and properties in
the area). Unfortunately, because Case: ZA2006-04 is presently being decided in court, Snyder was unable to discuss the Case, directly. Despite the limitations, Snyder did offer plenty of his own opinions on the Hamilton County Planning and Zoning Department’s (HCPZD) role in zone amendments, why zone amendments are often settled in court, and why decisions made by his department might upset those involved in siting or “expanding” a landfill. He also shared suggestions for what those involved in zone amendment cases can do differently to avoid going to court.

7.2 Primary Sources

The “critical points” were singled-out by how they worked to solve the question set-out at the start of the report. That main question being, “Has Case: ZA2006-04 followed the township zoning process determined in the O.R.C.?” The different “critical points” in the process were backed-up by data collected during the literature review. The author used some personal judgment in deciding what was most important, but the literature, as expected, guided his decisions. Comparisons looked at what the O.R.C. says and what actually occurred. The reasoning behind important actions was explained.

7.3 Summary

When lining-up the steps in Case: ZA2006-04 with those in the O.R.C. township zoning amendment process, it was crucial to compare and analyze similar points. Inferences made between uncorrelated steps would mean the project was not objective. Also, the thinking behind these decisions must not be inferred by the author, alone. The thoughts of the “decision makers” involved in Case: ZA-2006-04 provided the reasoning behind how the case was processed. This removed any bias the author may have brought to the project. Assumptions were acknowledged and the thought behind the comparisons
was laid-out. This ensured understanding and legitimacy for the analyses and conclusions.

Nagy Hesse-Biber and Leavy explain that “it is in methodology that theory and method come together; creating a guide to research design – from question formulation through analysis and representation.” Analyzing how Case: ZA2006-04 was processed, then comparing that to the stated process, in the O.R.C. statutes seemed like the best way of answering questions of the O.R.C. ’s validity and to determine if Rumpke was “following the rules.” Then, by interviewing either those directly involved in deciding Case: ZA2006-04 or those with experience or knowledge of township zone amendments, it was thought “inside (behind-the-scenes) information” could be learned (Nagy Hesse-Biber and Leavy 2006, 20-22).

7.4 Case Study Analysis

The thoroughness and accuracy of the comparison was another important step in the project. Building on the accurate and up-to-date information collected through the research, the comparison of Case: ZA2006-04 against the O.R.C. statutes provided the thinking behind the conclusions and recommendations. The appropriateness of the current system was determined, at that time.
Chapter 8: Interview Results

8.1 Expectations at Research Outset

This part of the report draws inferences based on the analysis of where Case: ZA2006-04 adhered to and strayed from the O.R.C. zoning amendment process. Following correct and thorough completion of the steps up to this point, inferences are clear and acceptable. It was necessary to base comparisons on related steps and to use as much information from those actually involved, in telling the “story behind the story.” Sharing the path taken to reach these inferences was critical in supporting the conclusions.

8.2 Findings

Might have Case: ZA2006-04 proceeded differently? Yes, the CTBT could have approved Rumpke’s application. If Rumpke had followed a different path, would their proposal have been approved? Perhaps, if Rumpke considered working with the HCSWMD to increase recycling, or if a smaller expansion had been requested, maybe their proposal would have been approved. Could Colerain Township have done anything differently to ensure that the HCRPC would have voted against approving Rumpke’s proposal? As far as the County, they seemed intent on following their Land Use Plan for the area around Rumpke. If Colerain officials would have worked more closely with Rumpke, while they were creating their County Land Use Plan Amendments (LUPA Colerain 2005-01; Rumpke Industrial) in 2005, maybe the County could have had a greater influence on growth. As well, as County Commissioner Martin remarked during that same LUPA Colerain 2005-01 Case, “Colerain could have purchased all the land around Rumpke,” if they wanted to control how it would be used. Should the Hamilton
County Court of Common Pleas be settling this case? After considering the U.S. government’s system of “checks and balances,” it became clear that any “aggrieved” party may file a lawsuit, to have their Case heard by a judge.

After all the findings were collected and analyzed, these questions were answered. Answers were based on a comparison of the processing of Case: ZA2006-04 to the O.R.C. statutes, as well as insights gleaned from interviews with those either involved with the case or with relevant experience. A summary of the thought process followed, to ensure each answer given was included in this section, as support for the conclusion.

### 8.2.1 Qualitative Data

Recommended changes for parts of the present zone amendment process for Ohio townships, as prescribed by the O.R.C., found to be inappropriate, were to be made in this final part of the project. Prior to researching this subject, it was obvious that conflicts existed between Ohio counties and townships. Who has the power to plan? Also, the meaning of the phrase “in accordance with a comprehensive plan” has been debated by Ohio planners and lawyers for a while. If nothing less, Case: ZA2006-04 was to provide another example, of why the process needs to be rewritten. As it turns-out, information gathered during the course of this report actually presents the O.R.C. zone amendment process as being fair and open to public opinion.

The public elects their government representatives. If decisions made by the HCRPC, the CTZC, or the CTBT are “unacceptable” to more than 50 percent of those who vote, then those officials will not be in office for long. The laws, statutes, and processes which regulate townships and counties have been agreed upon by the majority of voters, as well. In America, our goal has been to prevent too much power in one
position, so we created a system of checks and balances. That is what permits the
CTBT’s decision in Case: ZA2006-04 to be appealed to a judge, in the HCCCP.

Rumpke has filed a lawsuit against Colerain claiming the Township “violated its
constitutional rights” by not approving their zoning change request, which would allow
the landfill to expand. Rumpke was not claiming any procedural errors, just that the
CTBT’s decision was unconstitutional. Three out of the eight interviewees explained that
the “court has a check on township trustees,” with three other interviewees offering that,
“the courts provide an option for a zone amendment applicant to ‘exhaust all options.’”

8.3 Interviews with Decision Makers; Results

A “Chart of the Qualitative Issues Brought-Up in the Interviews” is presented in
Figure 8.1, on the following page. This chart is accompanied by complete “Interview
Transcripts” from the eight interviews conducted for this report, located at the end of the
Appendix.
<table>
<thead>
<tr>
<th># Code</th>
<th>Why do zone amendments end up in court?</th>
<th>Why are decisions challenged in court?</th>
<th>How to avoid going to court?</th>
<th>How pertinent is O.R.C. township zone amendment process?</th>
<th>Where are the &quot;conflicts&quot; in the process?</th>
</tr>
</thead>
<tbody>
<tr>
<td>03010979</td>
<td>due to the regulation or amendment being a reaction to an action</td>
<td>contention that the evaluation is faulty.</td>
<td>being proactive in developing zoning regulations</td>
<td>zoning should be made by folks closest to the property.</td>
<td>Rumpke is good for county and township, different interests are going to be affected.</td>
</tr>
<tr>
<td>03020979</td>
<td>reasonable? challenge the legislative body.</td>
<td>&quot;reasonable?&quot; is there some connection to health, safety, and welfare?</td>
<td>the American legal system (process) and court has check on Township Trustees decision.</td>
<td>&quot;I don't know what O.R.C. is.&quot; and I know Hamilton County passed the amendment.</td>
<td>a lot of times what the county believes is right, may not be right for our township. perhaps the landfill issue should be voted on.</td>
</tr>
<tr>
<td>03030979</td>
<td>because Colerain Township Trustees were not smart enough to pass zoning, Rumpke has no &quot;choice&quot; but to take this to court.</td>
<td>politics, pure and simple. &quot;Trustees want to be re-elected. whatever zone amendment comes up &quot;someone will be unhappy.&quot;</td>
<td>Trustees should keep trash for a month or two and see how unpleasant it gets. Rumpke should shut-down for a month people would beg for the zone amendment.</td>
<td>&quot;Do not know what O.R.C. is.&quot; and I know Hamilton County passed the amendment. no one on Colerain committee would ever suggest expanding the landfill.</td>
<td>a lot of times what the county believes is right, may not be right for our township. perhaps the landfill issue should be voted on.</td>
</tr>
<tr>
<td>03040979</td>
<td>a land use (such as a landfill) is &quot;potentially objectionable.&quot; places with new zoning resolutions often require numerous text amendments in first few years &quot;to walk-out the bugs with regulations, unintended consequences.&quot;</td>
<td>either way, this case was going to court. &quot;any party that feels aggrieved is going to court.&quot; (difficult to make everyone happy)</td>
<td>Hamilton County Regional Planning Commission has decide to do a case as they see fit. (do not have to follow Planning and Zoning Department's recommendations)</td>
<td>&quot;the process is very important.&quot; statute sets forth procedures to follow. (protects rights of landowners by limiting township's power)</td>
<td>both a county and township may regulate land use. by enacting zoning regulations. township zoning resolution control over county or regional recommendations / plans.</td>
</tr>
<tr>
<td>03110979</td>
<td>if a person believes a &quot;procedural error&quot; has occurred or that an amendment violates his &quot;constitutional rights.&quot; courts provide mechanism to invalidate a township's action.</td>
<td>aggrieved person believes procedures were violated. endowner near landfill believes property will be negatively affected. (uses legal remedies to protect value of land)</td>
<td>counties and townships should avoid violating &quot;substantial rights of landowners.&quot; landowners, who want to use their land for a prohibited purpose are going to litigate.</td>
<td>Due Process of the Law (Checks and Balances) Public Hearings are the only chance for public to speak (once gets into equal system, public has no say).</td>
<td>Code: 519.12 (e): County or Regional Planning Commission shall recommend; shall be considered. should a few suffer for the good of many?</td>
</tr>
<tr>
<td>03210979</td>
<td>one side &quot;feels aggrieved.&quot; &quot;Business entity makes a calculated decision to go to court. Hopes to overturn Board of Trustees' decision.&quot;</td>
<td>a &quot;business decision.&quot;</td>
<td>&quot;one side has to roll over&quot; (applicant decides not to appeal a decision or Township grants application).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03260979</td>
<td>the NIMBY effect. (people understand the necessity, but object to certain land uses in their backyard).</td>
<td>the NIMBY effect (especially in landfill cases). &quot;organized groups&quot; (often on a national level) resist certain types of development.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
8.3.1 Why do Zone Amendments End-Up in Court?

The purpose of this question was to gather the ideas and opinions of the interviewees, on the courses of action which lead a zone amendment to court. Three noteworthy explanations were:

- If the intention of the zone amendment was to exclude a particular business
- A land use (such as a landfill) is controversial or “potentially objectionable”
- The NIMBY effect. Residents understand the necessity, but object to certain land uses in their backyard

Benyo found that, “The courts provide a ‘mechanism’ by which a person (who believes a procedural error has occurred or that the zoning amendment violates his constitutional rights) may invalidate the township’s action. Cases involving landfills may occur more often, because a landowner near the landfill may believe that this land use will ‘not allow him to retain an economically viable use of his land,’ or that this land use ‘does not substantially advance a legitimate government interest in the health, safety, or welfare of the township. The landowner is using ‘whatever legal remedies are available to protect the value of his land’” (Benyo 2007).

Brown’s “personal opinion” was that the zone amendments challenged in courts are those, “which were intended to exclude a single business or type of business” (Brown 2007).

Echoing a response given by other interviewees, Christmann cited the NIMBY factor, “as playing a part in the siting of all ‘unpopular’ uses” (Christmann 2007).

McDonald’s ideas for why zone amendments end-up in court reflected others’ interviewed. He said, “The obvious answer, especially in landfill cases, would be the NIMBY effect. Most people understand the need for landfills, gravel pits, industrial plants, and large retail establishments (LULUs), but object to those land uses in their
backyard. Property owners assert themselves as ‘injured parties,’ due to these developments affecting property values.”

Powell’s explanation for why zone amendment cases are eventually challenged in court, after passing through the legislative process, is that it has a lot to do with “reasonableness.” The plaintiff is arguing that the defendants acted irrationally, and their decision was not “reasonable.” Powell felt that the American Legal System is part of the “process.” “The court has a ‘check’ on the Township Trustees’ decision” (Powell 2007).

Jill Rengering thinks zone amendments end-up in court, “Because Colerain Township Trustees were not smart enough to pass the zoning.” Rengering explains that, “When it comes to a landfill, a lot of folks do not want that” type of land use (NIMBY).

Switching to Snyder’s opinion, he believes, “A land use (such as a landfill) is ‘potentially objectionable.’” Snyder felt (as have other individuals the author has spoken with), “That either way, this Case was going to court.” He figured that, “Any party that feels ‘aggrieved’ is going to court.” Once again, the NIMBY phenomenon is brought-up, with Snyder determining that, “NIMBY is a factor experienced in everyday life” (Snyder 2007).

8.3.2 Why are Decisions Challenged in Court?

This question sought to understand why zone amendment decisions (particularly those involving a landfill) are not accepted, but instead challenged in court? All interviewees had an opinion on this question, with 4 out of the 8 blaming it on the NIMBY factor. According to answers given, besides simply not wishing to welcome a LULU into their “backyards,” those on the losing side of a decision in a zone amendment
case might claim the decision was not rational, not reasonable, or that procedures were violated.

Benyo suggested, “Counties and townships comply with all procedures for approving zoning resolution amendments and avoid violating landowners’ rights.” Still, despite these precautions, “If landowners want to use their land for a prohibited purpose, they are going to litigate.” Benyo believed, “The General Assembly has provided an ‘adequate system’ that balances the competing interests of landowners, counties, and townships. Nevertheless, he thought Ohio would benefit from ‘more centralized planning authority’” (Benyo 2007).

When asked about the siting / permitting of landfills being challenged in court, he indicated two groups which are likely to bring a lawsuit. When a landfill permit application is denied, “applicants (who have invested large amounts of money to investigate and develop conceptual designs for their proposed facilities) are determined to ‘exhaust’ all of their options towards obtaining the permit.” On the other hand, when a solid waste permit is granted, citizens against LULUs rally in a NIMBY fashion; attempting to “prevent the siting of landfills where they do not want them” (Brown 2007).

John Kerr thought zone amendments end-up in court, “Because businesses have ‘calculated’ the ‘risks and benefits’ of going to court (hoping to overturn the decision) (Kerr 2007).

8.3.3 How to Avoid Going to Court?

With “taking it to court” seeming to become a common occurrence, this question was aimed at finding-out how the “inevitable” can be avoided. Not all interviewees
offered a definitive and able to be implemented answer to this question. Two interviewees noted the American Legal System’s provision for a court to provide a “check” on township trustees’ decisions, with one explaining, “Landowners who want to use their land for a prohibited purpose are going to litigate.”

Brown’s advice that “municipalities be ‘proactive’ in developing zoning regulations, and that zoning regulations be firm, appropriate, maintained, and updated” might go the furthest in deterring litigation of these decisions (Brown 2007).

In seeking suggestions of what can be done differently (by those involved in a zone amendment case), to avoid court litigation, Kerr answered that, “One side has to ‘roll over’ (decide not to challenge a decision).” Kerr thought the O.R.C. process should not be changed, adding that, “It puts responsibility squarely where it should be. It allows for ‘checks and balances’ on powers” (Kerr 2007).

8.3.4 How Pertinent is the O.R.C. Township Zone Amendment Process?

With the author wondering if processing a Township zone amendment was just a waste, since the “final” decision seems to be made by a County judge more often than not, this question was meant to gauge interviewees’ opinions. The three interviewees who have experience working with the O.R.C. (Benyo, Kerr, and Powell) all felt it was an important process.

Benyo’s opinion on the “pertinence” of the O.R.C. zone amendment process was that “it is very important.” His reasons were that the O.R.C. 519.12:

- Provides interested persons notice of proposed zoning amendments
- Requires the township to hold public hearings regarding such amendments
- Sets forth specific procedures a township must follow when enacting zoning amendments
- Is intended to protect the substantive rights of landowners (by limiting the zoning power of a township)
Kerr felt that a Case, “Must go through the zone amendment process. It is the ‘Due Process of the Law’ (system of checks and balances). Once a Case gets into the legal system, the public has no say. Public Hearings are a chance for the public to speak” (Kerr 2007).

Powell’s answer to this rationalization was that “an amendment must go through the ‘legislative process.’” This is how American government is set-up; Checks and Balances (Powell 2007).

Rengering admitted that she did not know what the O.R.C. was. Perhaps, in and of itself, the fact that such a longtime resident admits to not even knowing the acronym for the statutes which govern the process that she herself was taking part in, says something negative about the “pertinence” of the O.R.C. (Rengering 2007).

8.3.5 Where are the “Conflicts” in the Process?

One goal of this thesis was to analyze the “conflicts” in the O.R.C. zone amendment process. This question was answered by four of the interviewees, in an attempt to determine where they felt “conflicts” existed. Those would be points where the author could concentrate his attention. All four answers given pinpointed the conflict stemming from counties and townships both creating plans for the township.

As far as Benyo’s thoughts on “conflicts” in the O.R.C. zone amendment process, he basically pointed to the same issues covered by Attorney General Petro’s Opinion No. 2003-022, stating that, “Both a county and a township may regulate land use in the unincorporated territory of a township by enacting zoning regulations; with conflicts being resolved ‘in accordance with O.R.C. 303.22 and O.R.C. 519.22. Also, regarding
the conflicts between a township’s authority to adopt land use plans (pursuant to O.R.C. Chapter 519) and the county’s authority to prepare and adopt land use plans (under O.R.C. 713.23 and O.R.C. 713.25), the General Assembly did not intend to limit either government entity’s authority to plan for land use. Though, in fact a township zoning resolution and the amendments thereto with respect to land use within the unincorporated territory of a township have control over whatever recommendations or plans a county or regional planning commission may otherwise propose in that regard” (Benyo 2007).

The “conflicts” Kerr sees in the O.R.C. zone amendment process has to do with “Hamilton County attempting to overstep its limitations as a “recommending body. The County or Regional Planning Commission ‘shall recommend’; its suggestions ‘shall be considered’” (Kerr 2007).

As far as suggesting changes to the O.R.C. process, Powell felt that zoning “should be made by those closest to the affected property.” It is going to be difficult to please everyone, as “different interests are affected” by a zone amendment (Powell 2007).

Regarding Rengering’s opinion on which plan / zoning should be followed (county’s or township’s), she felt that, “Each has its place, with none being right for all situations.” She felt that because, “Elected officials live here, they may have a different perspective (when what the county believes may not be right for our township).” In seeking suggestions of what can be done differently (by those involved in a zone amendment case), to avoid court litigation, Rengering offered that, “The Trustees should try to keep their garbage for a few months (during the summer) and see how unpleasant it gets.” Rengering seems to favor “strong arm” tactics, adding that, “If I was Rumpke, I
would shut down for a month; forcing people to beg for the zone amendment to go through” (Rengering 2007).

8.4 Summary

Conducting in-depth interviews was a useful technique for learning what different “decision-makers” and those with relevant experience thought about the O.R.C. zone amendment process. There is no substitute for first-hand knowledge. During the interviews, it was evident to the author that a few of the interviewees were extra careful with what they said. With this Case: ZA2006-04 still being decided on in court, there is the possibility that their words could become part of the lawsuit.

One of the main difficulties with interviewing different individuals stemmed from having to decide on questions, which they could offer an opinion on. For a couple interviewees, different, more experience-specific questions were asked.

The comparisons of answers, which were made, did not turn-up many overwhelmingly different ideas. In the authors’ opinion, Jill Rengering was the most open and free-thinking of all the interviewees. This might be because she had nothing to lose, if she said something “offensive,” or shared her “true feelings.” While on the other end of the spectrum, Assistant Attorney General Benyo’s answers seemed almost straight from a textbook on “How to Explain the O.R.C.” Given the importance of his position in government, nothing less would be expected.

The three main issues brought-up in the interviews were:

- Zone amendments (especially those involving a landfill) end-up in court, because the land use is unwanted (“potentially objectionable”)
- The decisions on zone amendments are challenged in court, due to the NIMBY factor (decisions are considered not rational, not reasonable, or that procedures were violated)
- Court challenges provide “checks” in the American Legal System
Chapter 9: Conclusions and Recommendations

9.1 Conclusions

From the beginning, Rumpke did not hide its intentions for requesting a rezoning of the property east of their Colerain Township landfill. In a 3/6/06 letter to Frank Birkenhauer (Interim Planning & Zoning Administrator for Colerain Township) Jeff Rumpke (Rumpke’s Regional Vice President for Cincinnati Market) explained that “the area will be used for the continuation of Rumpke’s Sanitary Landfill operations, with seven additional light industrial lots.” This fact was reported on in newspapers and on television, and is what a lot of citizens, Rumpke officials, and even elected officials concentrated on. Would an expansion of Rumpke’s landfill be a good idea (Rumpke 2006)?

9.1.1 Research Conclusions

The realization that a zone amendment was required for Rumpke to “expand” or site a new landfill, remained with the author throughout his research. The main issue looked at in this thesis, though, was how closely the O.R.C. zone amendment process was followed. After analyzing Case: ZA2006-04, and comparing it to the statutes, it is conclusive that Colerain Township adhered to the regulations. The reason for choosing Case: ZA2006-04 was because it was hypothesized that Rumpke, due to its influence, may expect “preferential treatment” when dealing with government entities. It turned-out that Rumpke did “go through the motions” of the O.R.C. process, but as they are legally entitled, appealed the CTBT’s decision to the Hamilton County District Court.

Decisions are permitted to be “appealed,” when the “losing” side feels there were errors in the process, but in the author’s opinion (based on research results and on
personal observations) the appeals process has almost become automatic, signaling little acceptance of our written laws.

9.2 Primary Lessons Learned

The way the American government is set-up, all the way down to township government, is to allow for “Checks and Balances.” Americans may argue that our legislators are “wasting taxpayers’ dollars,” by seeming to go about their business in a “backwards” way. Zone amendment applications with specific requirements, Public Notices sent-out to residents who are not interested in anything that their elected officials are doing, Public Hearings which seem like popularity contests, and recommendations from regional planning commissioners (who often ignore “sound” advice provided to them by professional planners) all serve a purpose, and all have been put in place by us or our ancestors. It should be remembered that if a resident does not approve of the way government is handling a certain situation, then they are permitted to do everything within their constitutional rights (which includes running for an elected position themselves) to, in their eyes, correct the problem.

9.2.1 Lesson 1

NIMBY is a phenomenon experienced in everyday life. Citizens’ opposition to proposed development, often a LULU, influences how decision makers act. The phrase “NIMBY” was mentioned by four of the eight interviewees. Is there anyway to please all of the people, all of the time? Are there any locations left, further-out into the country-side, where we can dump our trash and not upset anyone?

A search of articles in local newspapers (The Cincinnati (OH) Enquirer and The Cincinnati (OH) Post) turned-up around 600 articles from 1947 until 2006 dealing with
The headline from a 1947 article in *The Cincinnati (OH) Enquirer*, included in Figure A.2, in the Appendix, is proof that Rumpke’s Colerain Township landfill has been opposed since its inception.

Also, there is the reality that regular, everyday citizens are not completely knowledgeable of “all the issues.” For example, Jill Rengering, did not know what the O.R.C. was. Having an informed public is necessary for a development to be appropriately considered.

### 9.2.2 Lesson 2

The fact is, at some point a compromise must be reached. I learned this lesson from examining how Rumpke’s lawsuit against Colerain Township, in 2000, filed in response to the denial of Rumpke’s zone amendment application in Case: ZA1999-06, was settled. Both sides viewed a mutually agreed upon Consent Decree as their best option for resolving the conflict.

The CTBT, with their attorneys, considered the following:

- Likelihood of success at trial
- Possible loss of control over the property (in the event of an unfavorable outcome in litigation)
- Potential exposure of the Township to a claim for damages
- Costs connected with defending the lawsuit (ex. expert witness fees)

(Colerain Township 2000).

While, Rumpke’s main goal was to be permitted to expand their landfill. Rumpke’s representatives must have known this was going to be an expensive endeavor, when they set-out. Seemingly, the worst part of the Consent Decree for Rumpke was the requirement that an additional sum of $0.20 per ton be paid to Colerain Township, “for all solid waste delivered after the opening of the 65 acre ‘EF’ expansion area.” On the
other hand, Rumpke has used this increased fee as almost a public relations tool, pointing-out how lucrative their business is for the Township. It is not inconceivable to infer that Rumpke did “weigh” this variable when choosing to settle their lawsuit, after reading a statement from Bill Rumpke, Sr. explaining that Rumpke “is working on ‘public relations’ daily; trying to make everyone understand that we want to be a good neighbor.” For Rumpke, the compromise reached through the Consent Decree, allowed them to “get more” for their money. Rather than spending money on lawyers and expert witnesses, that money goes to the Township and towards a more positive public image for the Rumpke organization (Colerain Township 2000; Marano 2006, 15-16).

9.2.3 Lesson 3

There is a conflict between Ohio counties and townships. Who has the right to create plans? Which plans should a township base its zoning on (the township’s or the county’s)? Most planners would agree that the more “comprehensive” and “all inclusive” a plan, the better its chances of implementation. Assistant Ohio Attorney General Benyo made a good point, by suggesting that “Ohio would benefit from a ‘more centralized planning authority’” (Benyo 2007).

In Ohio, there are no strong advocates for reform measures, with planning being viewed as a bothersome procedure, which only costs money. The Ohio state statutes enabling planning are “permissive not mandatory; drawn to advise not regulate.” An unsuccessful attempt to change Ohio’s land use laws (“the first and only major assessment of Ohio’s planning statutes”) failed in June 1977, due to a “lack of sufficient political support.” The Ohio Land Use Review Committee, a special study group of the Ohio General Assembly, had assessed the structure and substance of the state’s planning
statutes; seeking “greater responsibilities for county and regional planning commissions, and enhanced authority for municipal and county planning commissions.” In 1997, more recent Ohio legislation (by the Ohio Farmland Preservation Task Force) was proposed, which encouraged local governments, on a voluntary basis, to prepare countywide comprehensive plans (identifying urban service growth areas, discouraging duplication of services, and encouraging preservation of farmland). Unfortunately, the measure failed (American Planning Association 2007; League of Women Voters of the Cincinnati Area 1998; Meck and Pearlman 2005, 116).

One of the reasons given by Meck and Pearlman for the lack of planning and land use reform is that municipality, county, and township (not to mention state) governments have “conflicting interests” in who controls land use in Ohio. They stated that “each of these levels views the others’ motives ‘suspiciously,’ sometimes with good reason. Such mistrust, which may have played a role in Colerain assuming control of zoning in November 1994, can not be good for the general public. The conflict between Hamilton County and Colerain Township over Case: ZA2006-04 further illustrates the problems with Ohio planning and land use (Meck and Pearlman 2005, 16).

9.2.4 Lesson 4

A surprisingly large amount of Meck and Pearlman’s “List of Strategies and Tactics” were used during the processing of Case: ZA2006-04. It is almost as though both sides, those for and against the zone change, were using Meck and Pearlman’s book as a “personal handbook” of “How to Sway the Public Opinion.” Gaining public support seems to play a major role with proposed developments.
Rumpke / Proponents: enlisted outside support; threatened litigation; stressed their economic importance; discredited opposition.

Opponents: warned of unknown dangers; pointed-out conflicts with Colerain Township’s Comprehensive Plan; reminded citizens of the innocent victims; and questioned the credibility / relevance of Rumpke’s experts.

9.2.5 Lesson 5

You have to start at the beginning to understand why we do things the way we do. This entails referring back to the U.S. Constitution, the Northwest Ordinance, and the Ohio Constitution. Our system of “Checks and Balances” is what more than 50 percent of those who vote have agreed upon, for overseeing our government. That means that those who feel “aggrieved” are entitled to file a lawsuit, to settle their issues.

9.3 Suggestions for Further Research

“Knowledge truly is power,” and in this instance the majority of citizens appear powerless. There are many conflicting opinions on what would happen, if Rumpke’s expansion was not allowed. Mostly, this is due to how the facts have been presented, and lack of alternatives put forth, by Rumpke. An example of Rumpke adding to customers’ fear is found in the “Fact Sheet” on their proposed eastern “expansion.” Instead of giving actual “facts” of what the “proposed ‘expansion’” would entail, Rumpke claims the “expansion is necessary to secure ‘low-cost’ waste disposal and local and regional ‘economic viability.’” Rumpke continues by stating, “Without Rumpke Sanitary Landfill ‘waste hauling and disposal rates would increase and transfer stations would become necessary.’” Also, Rumpke shares, “according to Hamilton County research, ‘if Rumpke
closed, residents and businesses might pay an additional $34 million a year,’ increasing both business and consumer expenses” (Rumpke Consolidated Companies, Inc. 2006).

The most basic question to ask, would be, “What are my options?” Has Hamilton County looked at other ways of solving the waste disposal problem, besides continued dependence on Rumpke’s Colerain Township landfill? The HCSWMD seems most concerned about “maintaining its revenue structure,” which would enable their “programs” to continue. According to HCSWMD’s “Staff Report” regarding Case: ZA2006-04, “if Rumpke’s current ‘expansion’ plan is not approved, the District would not address the change in fee structure until the solid waste plan update in 2021.” The reason for the delay is due to the fact that “there is adequate disposal capacity through 2021” (Hamilton County (OH) Solid Waste Management District 2006a).

Across America, increasing “reduce, reuse, and recycle” efforts would be a good place to begin to solve our problem of landfill dependence. With this Case: ZA2006-04, in particular, if Rumpke had asked for a smaller rezoning, perhaps their chance of success would have increased.

The number one suggestion for “Further Research” is that all residents do their own research. The author has worked on this report for about one year. Up until his final “thesis defense,” he continued to “discover” something which was previously unrealized. Sometimes, only through “independent research” do facts surface. Question everything you hear on the news and everything you are told by those with an “interest” in the outcome of this zone amendment. Remember that Rumpke has professionals on their side, working on every angle of this Case.
9.4 Recent Related Occurrences

Adding another layer to the complexity of this Case: ZA2006-04, Colerain Township recently rezoned part of the area (in Rumpke’s application) presently being litigated on. A map illustrating the amended properties is included in Figure A.16 in the Appendix.

Colerain Case: ZA2006-10, recommended by the CTZC (on 11/19/06), was a follow-through on a Township commitment to re-study the area east and south of Rumpke landfill (directly in the middle of Case: ZA2006-04’s “expansion” area), made during the Comprehensive Planning process. The application to rezone approximately 209 acres was separated into two sections: Struble Road area (from R-3 “Suburban-Low Residential” to B-3 “Commerce”) and Hughes Road area (from R-2 “Estate Residential” to I-1 “Industrial”); with frontage of approximately 2,200 feet on the south side of Struble Road and 5,200 feet on the east side of Hughes Road. The HCRPC recommended approval of the Struble Road area rezoning, but denial of the Hughes Road area (on 1/4/07). The CTZC recommended approval of the “application as presented” (both areas) (on 1/16/07). The CTBT voted to adopt the CTZC’s recommendations (on 2/20/07) (Cincinnati (OH) Enquirer, The 2007; Colerain Township. 2007a; Colerain Township Online Documents 2007a; Hamilton County (OH) Regional Planning Commission 2007b; Hamilton County (OH) Regional Planning Commission 2007c).

If the courts were to overturn the Township’s decision in Case: ZA2006-04, then they would most likely also overturn the conflicting zoning portions of this Case: ZA2006-10.
Appendix
Figure A.1: Location of Rumpke’s Colerain Township Landfill

Figure A.2: Heading for Article Reporting Citizen Opposition

Figure A.3: Colerain Township Residential Development: 1900 - 2000

Source: Mantri, Bathmaraj, and Yedavalli 2006.
Figure A.4: Revised Colerain Township Zoning (Effective 8/19/2006)

Source: Colerain Township 2006c; Colerain Township Planning and Zoning Department 2005.
Figure A.5: Rumpke’s Zoning Application Check

Source: Rumpke of Ohio, Inc. 2006.
Figure A.6: Amendment to Zoning Resolution; Submission Requirements

SUBMISSION REQUIREMENTS

FOR AMENDMENT TO THE COLERAIN TOWNSHIP ZONING RESOLUTION

SINGLE LETTER DISTRICTS

Case: Applicant: Rumpke Sanitary Landfill, Inc.

An application for a Single Letter District map amendment submitted to the office of the Township Zoning Commission must comply with the requirements and procedures outlined herein.

This checklist (completed and signed) must be submitted with the Preliminary Development Plan.

PLEASE READ ALL INSTRUCTIONS

1. GENERAL REQUIREMENTS (attachments 1 & 2)

✓ 1.1 Pre-Application Meeting (Date: Time: 2:00)

The applicant is to present the concept of a proposed development plan and reclassification to the Colerain Township Zoning Inspector or staff to obtain and discuss the overall application process before submitting an application. Call the Zoning Office for appointment. The staff will present any township and/or Regional Planning Commission land use plans to the applicant for review. The applicant and/or his representative must be present. There will be no assurance at any time, implicit or otherwise, regarding final staff recommendations to the Commission about this application.

✓ 1.2 Colerain Township Zoning Commission Review (CTZC): (Preliminary) 4/15 (For CTZC agenda, month of Apr.). (Optional at discretion of Applicant)

The applicant and/or his representative shall submit nine (9) prints of the proposed plan to the Colerain Township Zoning Inspector for review and analysis. The Colerain Township Zoning Commission will hold an informal hearing at its regularly scheduled monthly meeting at which time the proposed plan and reclassification will be reviewed for consistency with adopted plans.

✓ 1.3 Submission Deadline 5/21 (For R.P.C. agenda, month of May)

Prior to application submission, the Applicant should revise proposed plans and/or reclassification as advised in the staff memo. Early submission is recommended to assure placement on the agenda (Two (2) cases per cycle) and adequate time for revisions and correction. Incomplete applications will not be accepted for processing or officially reviewed, nor placed, on the agenda for review.

✓ 1.4 Application Fee

An application fee for a zoning amendment shall accompanied by a payment of $500.00 plus $150.00 per acre or part thereof, to cover the cost of processing the application. This fee is non-refundable. In addition, the applicant also pays all charges to cover all the costs of advertising, notifications, legal notice, and all postage as required by law or otherwise in connection with said amendment. Review fees for Hamilton County Public Work and other professional or public agencies (if required) are also the responsibility of the applicant. Make all checks payable to Colerain Township Board of Trustees.

Source: Rumpke Sanitary Landfill, Inc. 2006d.
Figure A.7: Preliminary Review for Proposed Zone Amendment; Application

APPLICATION FOR PRELIMINARY REVIEW FOR A PROPOSED ZONE AMENDMENT

COLERAIN TOWNSHIP ZONING COMMISSION
4200 SPRINGDALE ROAD
CINCINNATI OH 45251
(513) 385-7505

Date of Application: 3/6/06

Request Change From: AA & OO To: FF & EF Area: 350 acres

Applicant: Rumpke Sanitary Landfill Inc. Telephone No.: 851-0122

Address: 10795 Hughes Rd. City, State, Zip: Cincinnati, OH 45251

Name, address and parcel number of each property owner of record within the area of proposed to be reclassified:

1. Rumpke Sanitary Landfill Inc. 10795 Hughes Rd See attached list

2. Hendren, Steve & Margaret 3065 Buell Road 510-013-0133


4. Steppenik, Claire A. 11120 Hughes Rd 510-0130-0069, 0035

Location of property in accordance with County Auditor’s Records:

Township: Colerain Book:510 Page: ___ Parcel No.(s): see attached list

Physical location of property:

see attached Map

My (our) interest in the property included in the request is as:

Owner X Agent _ Lessee _ Optionee _

Applicant Signature

10795 Hughes Rd, Cincinnati, Ohio 513-851-0122
Address Telephone No.

No filing fee is required for this preliminary application.

Submit 9 copies of the following: application, letter of intent and preliminary development plan with elevations.

Source: Rumpke Sanitary Landfill, Inc. 2006a.
Figure A.8: Application For Zoning Amendment: Case: ZA2006-04

APPLICATION FOR ZONING AMENDMENT
COLERAIN TOWNSHIP ZONING COMMISSION
4200 SPRINGDALE ROAD
CINCINNATI, OH 45251

Case No.: ZA2006-04
Date Filed: 03/06/06

Has this proposed Zoning Amendment been discussed with the Colerain Township Zoning Commission and Staff in a Preliminary Hearing? Yes ___ Date ___ No X will apply for 06/18/06 meeting

Request Change from: "A-A" & "OO" to: "FF" & "EF" Total Area: 350 Acres

Location of property in accordance with County Auditor's Records:

Township: Colerain Book: 510 Page: Parcels: See Attached Sheet

Physical location of property: East side of Hughes Road to west side of I-275 from north side of Studebaker Road to south side of Bueil Road

Name of Applicant: Rumpke Sanitary Landfill Inc.

Telephone No. 513-851-0122 Email Address: jeff.rumpke@rumpke.com

Address: 10795 Hughes Road City: Cincinnati State OH Zip: 45251

*Name of Owner: Rumpke Sanitary Landfill Inc. Telephone No. 513-851-0122

Address: 10795 Hughes Road City: Cincinnati State OH Zip: 45251

*Additional Owners-See Attached Sheet

Name, address and parcel number of each property owner of record within the area of proposed to be reclassified:

1. Rumpke Sanitary Landfill Inc., 10795 Hughes Road, Cincinnati, Ohio 45251-See Attached List

2. Hendren, Steve & Margaret, 3065 Bueil Road, Cincinnati, Ohio 45251, 510-0130-0133


4. Stepaniak, Claire A., 11120 Hughes Road, Cincinnati, Ohio 45 45251, 510-0130-0035, 0039

My (our) interest in the property included in the request is as:

Owner XX Agent XX Lessee _____ Optionee _____

Signatures:

Applicant: __________________________ Date: 2-1-06

Jeffrey E. Rumpke, Regional Vice President, Rumpke Sanitary Landfill Inc.

*Owner: ***See Attached Consent Agreement Date:

Hendren, Steve & Margaret, Stoepel Henry G. Jr. & Lillian M. and Stepaniak, Claire A.

Filing fees shall accompany the application. Make check payable to: Colerain Township Board of Trustees. Fees: filing fees legal notice: THERE SHALL BE NO REFUND OR PART THEREOF ONCE PUBLIC NOTICE HAS BEEN GIVEN.

*Although the Applicant may not be the same as the Owner(s), the Owner(s) shall co-sign as Applicant(s) for an amendment.

FILE COPY

ATTACHMENT 3

Figure A.9: Proposed Zone Amendment (Case: ZA2006-04)

Source: Colerain Township Planning and Zoning Department 2005; Rumpke Sanitary Landfill, Inc. 2006b.
Figure A.10: Location of 66 Parcels to be Rezoned by Case: ZA2006-04

### List of 66 Parcels to be Rezoned by Case: ZA2006-04

<table>
<thead>
<tr>
<th>Parcel ID</th>
<th>Address</th>
<th>Current Owner</th>
<th>Sale Date</th>
<th>Sale Price</th>
<th>Map #</th>
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<tr>
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List of 66 Parcels to be Rezoned by Case: ZA2006-04 (continued)

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</table>

Figure A.11: Zone Amendment Application / Request for Review; Notice

Colerain Township

PLANNING & ZONING DEPARTMENT
4200 Springdale Road • Colerain Township, Ohio 45251-1419
(513) 385-7505 • FAX (513) 245-6503 • www.coleraintwp.org

NOTICE OF ZONE AMENDMENT APPLICATION
AND REQUEST FOR REVIEW

TO:
___ Regional Planning Commission
___ County Engineer
X Fire Prevention Officer
___ MSD

ATTENTION: Mark Walsh DATE: March 13, 2006

The following request for a Zone Amendment has been officially filed for processing:

Case No.: ZA2006-0004
Project Name: Rumple Landfill and Light Industrial Site
Request: “AA” (Single Family Residential) and “OO” (Planned Office) to “FF” (Planned Light Industrial) and “EF” (Excavation & Landfill)
Location: The area generally bounded by the east side of Hughes Rd., northwest of I-275, north of Struble Rd. and southwest of Buell Rd.
Total Area: 350 acres
Applicant/Owner: Rumple Sanitary Landfill, Inc.
Application: 291 acre landfill and 59 acre light industrial site.

We are requesting your review of the plan and submission of your comments regarding this proposal. You are requested to forward your original comments to the undersigned with a copy submitted to Todd Kinskey, Hamilton County Regional Planning Commission. We anticipate that the Hamilton County Regional Planning Commission will review and make recommendations on this application at their May 4, 2006 meeting. The public hearing before the Colerain Township Zoning Commission is scheduled for May 16, 2006.

If you have any questions, do not hesitate to contact the undersigned or Mr. Todd Kinskey at (513) 946-4454.

Sincerely,

Frank A. Birkenhauer, Director of Development Interim Planning & Zoning Administrator

Source: Colerain Township Planning and Zoning Department. 2006b.
Figure A.12: Colerain Township Zoning Commission Hearing; Notice

Colerain Township

PLANNING & ZONING DEPARTMENT
4200 Springdale Road • Colerain Township, Ohio 45251-1419
(513) 385-7505 • FAX (513) 245-6503 • www.coleraintwp.org

NOTICE OF PUBLIC HEARING TO PROPERTY OWNER
COLERAIN TOWNSHIP ZONING COMMISSION

Certified - Return Receipt Requested

April 24, 2006

This notice is to advise you of the following public hearing:

Case No.: ZA2006-0004
Project Name: Rumpke Landfill and Light Industrial Site
Request: “AA” (Single Family Residential) and “OO” (Planned Office) to “FF” (Planned Light Industrial) and “EF” (Excavation & Landfill)
Location: The area generally bounded by the east side of Hughes Rd., northwest of I-275, north of Struble Rd. and southwest of Buell Rd.
Total Area: 350 acres
Applicant/Owner: Rumpke Sanitary Landfill, Inc.
Application: 291 acre landfill and 59 acre light industrial site.

The case will go before the Hamilton County Regional Planning Commission in an open public meeting on Thursday, May 4, 2006 at 1:00 p.m. at the Hamilton County Administration Building, 138 E. Court St., Cincinnati, Ohio.

The Colerain Township Zoning Commission will hold a public hearing on Tuesday, May 16, 2006 at 7:00 p.m. at the Colerain Township Government Complex, 4200 Springdale Rd., Cincinnati, Ohio. After conclusion of this hearing, action will be determined by the Colerain Township Zoning Commission and forwarded to the Board of Trustees.

The application and plans for this request may be examined at the Zoning Office during the hours of 8:00 a.m.-4:30 p.m., Monday-Friday.

Source: Colerain Township Planning and Zoning Department. 2006a.
Figure A.13: Rumpke Request for “Official Letter of Recommendation”

Dear Friend,

Throughout our relationship, I have enjoyed the privilege of cooperating with you on various successful projects within our community. It is with high hopes that I approach you again by requesting your official endorsement of the proposed eastern expansion of Rumpke Sanitary Landfill.

As you may know, the businesses, schools and numerous other organizations of Colerain Township are extremely important to me. I take pride in supporting initiatives which will greatly benefit our prosperous community. I have been an employee at Rumpke for more than 30 years and my employment has allowed me to be an active part in Rumpke’s overall growth while adding value as a local corporate citizen.

- Last year, Rumpke paid Colerain Township $655,000 in taxes and host community fees.
- Rumpke’s landfill operation accounts for approximately 75 percent of the revenues Rumpke generates for Colerain Township (this amount will increase to 85 percent in 2007 when host community fees increase).
- In 2005, the Northwest School District received more than $532,000 in local property taxes paid by Rumpke.
- Annually, Rumpke contributes nearly $100,000 in financial and in-kind services to Colerain Township organizations.

As Rumpke begins the process to secure low cost waste disposal for tri-state home and business owners, I can tell you Rumpke will always consider the best interests of this community and its neighbors. You can help keep a valuable community resource in this area for your children. I really need your support today. Please submit your official letter of endorsement to me by writing to:

Larry Stone
Rumpke Consolidated Companies, Inc.
10795 Hughes Road
Cincinnati, Ohio 45251

If you would like to learn more about Rumpke’s proposed expansion I will send you a detailed video of our future plans. You may also attend Rumpke’s public information meeting at 6:30 p.m. April 27 at Pebble Creek Golf Course. Thank you again for your time and consideration. We look forward to your involvement and support throughout this process. Thank you for your past support.

With appreciation,

Larry Stone
Director of Safety
Rumpke Consolidated Companies, Inc.

Source: Rumpke Consolidated Companies, Inc. 2006c.
Figure A.14: Rumpke v. Colerain Township: Case: A0611056

Source: Rumpke Sanitary Landfill, Inc. 2006e.
ADULT CONSENT FOR INTERVIEW
University of Cincinnati
Consent to Participate in a Research Study
College of Design, Art, Architecture, and Planning / Department of Planning
Kevin McMahan, BS 513-967-5948 (mcmahak@email.uc.edu)

Title of Study: Colerain Township Zoning Amendment Case: ZA2006-04

Introduction: I will interview around ten different individuals involved with Rumpke’s Colerain Township Landfill Zone Change Process, as research for part of my master’s degree program. Please read the following explanation carefully and ask questions about anything you do not understand.

Purpose: The purpose of these interviews will be to gain a more in-depth understanding of the reasoning behind certain decisions. Your unique and important knowledge, experience, information, ideas, and thoughts will allow for a better understand of the zone change process for expanding / siting a landfill.

Duration: Each interview will be less than one hour.

Procedures: You will meet with me at a location of your choice and be interviewed individually about your role in Rumpke’s Colerain Township Landfill Zone Change Process (Case #: ZA2006-04). I will take notes during our interview. If you do not want to participate in this research study, please let me know.

Risks/Discomforts: I do not expect you to be exposed to any risks or discomforts from participating in this study. None of the interview questions ask for sensitive personal information and you may choose to not answer any questions.

Benefits: You will receive no direct benefit from your participation in this study. However, your participation will help me create a more complete final master’s thesis.

Alternatives: There are no other activities planned if you do not want to be interviewed.

Confidentiality: Transcripts of your interview, along with a separate file containing your identifying information will be kept in a locked file cabinet in my Co-Investigator / Thesis Committee Chair’s office. Only myself and my Co-Investigator / Thesis Committee Chair, Dr. Christopher Auffrey, will have access to your data. This research data will be stored in a locked file cabinet for three years after the end of this study and then will be destroyed by shredding. Number Codes will be used in my notes instead of your name and / or other individually identifying information. The data from the research study may be published; and you may be identified by name.

Offer to Answer Questions: If you have any questions about study-related activities, you may call me at 513-967-5948 or Dr. Christopher Auffrey, my faculty advisor, at 513-556-6579. If you have any questions about your rights as a research participant, you may call the Chair of the U.C. Institutional Review Board – Social and Behavioral Sciences at 558-5764.

Voluntary Participation: You do NOT have to agree to be interviewed. You may choose not to participate or you may quit participating AT ANY TIME.

Agreement: I have read this consent document. I voluntarily agree to participate in this research study. I will receive a copy of this consent document for my reference.

Participant Signature __________________________ Date __________

Signature and Title of Person Obtaining Consent __________________________ Date __________

Identification of Role in the Study: Primary Investigator

McMahan #07-01-26-04E Adult Consent IRB approved 2-18-07 / EXPIRES 2-18-08
Figure A.16: Rezoning Near Rumpke Landfill (Approved 2/20/2007)

Source: Colerain Township 2006c; Colerain Township 2007a; Colerain Township Online Documents 2007a; Hamilton County (OH) Regional Planning Commission 2007c).
Interview Questions

Interviewee # Code: 03010701
- What is Ohio EPA’s role in the landfill siting process?
- What information is utilized in deciding where to site landfills? (Who / What Entities has a “say” in this decision)?
- Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?
- Why do you think Ohio EPA decisions regarding the siting / permitting of landfills are challenged in court?
- What do you think those involved in a zone amendment case (applicant; township; county) (particularly those involving a landfill) can do differently, in order to avoid going to court?

Interviewee # Code: 03020702
- Why do zone amendment cases end-up in court?
- Why do zone amendment cases (particularly those involving a landfill) end-up in court?
- How “pertinent” is the “O.R.C. stated township zoning amendment process?” If it seems that most landfill owners intend on taking their case to court, even after their zone amendment request has been denied by the township, then why go through all of those earlier steps? (Do they serve any purpose?)
- Where are the “conflicts” in the process (county plan / zoning vs. township plan / zoning)? (Which to follow?)
- What can those involved in a zone amendment case (applicant; township; county) do differently, in order to avoid going to court?
- Can you suggest any changes to the “O.R.C. stated township zoning amendment process?” (What would you recommend be changed with O.R.C. § 519.12?)
Interviewee # Code: 03050703
- Why do you think zone amendment cases end-up in court?
- Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?
- How “pertinent” is the “O.R.C. stated township zoning amendment process”? If it seems that most landfill owners intend on taking their case to court, even after their zone amendment request has been denied by the township, then why go through all of those earlier steps? (Do they serve any purpose?)
- Where are the “conflicts” in the process (county plan / zoning vs. township plan / zoning)? (Which should be followed?)
- What do you think those involved in a zone amendment case (applicant; township; county) can do differently, in order to avoid going to court?
- Can you suggest any changes to the “O.R.C. stated township zoning amendment process?” (What would you recommend be changed with O.R.C. § 519.12?)

Interviewee # Code: 03080704
- What impact will the siting or “expansion” of a landfill have on your implementation of the Hamilton County Solid Waste Management Plan?
- What is the HCSWMD’s role in the landfill siting process? (Does your department “sign-off” or review documents?)
- What information does your department deal with in deciding where to site landfills? (Who / What Entities have a “say” in this decision?)
- Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?
- Why might one side or the other involved in siting or “expanding” a landfill be upset by your department’s decisions regarding the siting / permitting of a landfill?
- What do you think those involved in a zone amendment case (applicant; township; county) (particularly those involving a landfill) can do differently, in order to avoid going to court (or becoming upset by a decision made by your department)?
Interviewee # Code: 03080705
- What impact would the siting or “expansion” of Rumpke’s Colerain Township landfill have on the Hamilton County Planning and Zoning Department, and Hamilton County overall (other Hamilton County government departments)?

- How does Hamilton County view (take into account / assign importance to) Colerain Township’s Zoning Plan and Comprehensive Plan? How were these considered in Hamilton County Regional Planning Commission’s decision on Case: ZA2006-04? (If it is better to discuss “hypothetical” rather than the Rumpke Case specifically, then maybe we should do that…)

- Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?

- Why might one side or the other involved in siting or “expanding” a landfill be upset by your department’s decisions regarding the siting / permitting of a landfill?

- **What** do you think those involved in a zone amendment case (applicant; township; county) (particularly those involving a landfill) **can do differently**, in order to avoid going to court (or becoming upset by a decision made by your department)?

Interviewee # Code: 03130706
- Why do zone amendment cases end-up in court?

- Why do zone amendment cases (particularly those involving a landfill) end-up in court?

- How “pertinent” is the “O.R.C. stated township zoning amendment process?” If it seems that most landfill owners intend on taking their case to court, even after their zone amendment request has been denied by the township, then why go through all of those earlier steps? (Do they serve any purpose?)

- Where are the “conflicts” in the process (county plan / zoning vs. township plan / zoning)? (Which to follow?)

- What can those involved in a zone amendment case (applicant; township; county) do differently, in order to avoid going to court?

- Can you suggest any changes to the “O.R.C. stated township zoning amendment process?” (What would you recommend be changed with O.R.C. § 519.12?)
Interviewee # Code: 03210707
- Why do you think zone amendment cases end-up in court?
- Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?
- How “pertinent” is the “Ohio Revised Code’s stated township zoning amendment process?” If it seems that most landfill owners intend on taking their case to court, even after their zone amendment request has been denied by the township, then why go through all of those earlier steps? (Do they serve any purpose?)
- Where are the “conflicts” in the process (county plan / zoning vs. township plan / zoning)? (Which should be followed?)
- What do you think those involved in a zone amendment case (applicant; township; county) can do differently, in order to avoid going to court?
- Can you suggest any changes to the “Ohio Revised Code’s stated township zoning amendment process?” (What would you recommend be changed with O.R.C. § 519.12?)

Interviewee # Code: 03260708
- Do you feel that Hamilton County “pushes” or “forces” its “will” or “ideas” on Whitewater Township? (Any insight into the “interplay” / “interaction” between Hamilton County and Whitewater Township?) (Does the County pressure Whitewater to accept the siting of different businesses within your Township?)
- What role did Whitewater Township have in deciding to site or “expand” the landfill on Bond Road? (Who / What Entities had a “say” in this decision?)
- Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?
- Why do you think Ohio EPA decisions regarding the siting / permitting of landfills are challenged in court?
- You explained that Whitewater Township does not have zoning. Do you think this helps or hurts the Township? How does it help or hurt the Township? Has anyone attempted to implement zoning in the Township?
- Many instances where citizens go to court against the siting of “unwanted” land uses near their homes? Could it be that Whitewater Township is seeing an increase in residential housing (Harrison High School is growing), and in the near future, would Whitewater Township be considering implementing zoning?
Kevin, I’m not sure if my answers to your questions will yield the results that you want (i.e. what happens next). Ohio EPA’s review process is not contingent upon a facility meeting local zoning. You could think of the two as being mutually exclusive from the reviewer’s standpoint. Because of the authority given to Ohio EPA and the scope of review that Ohio EPA is tasked with, it is possible for Ohio EPA to review a solid waste permit application and find that it meets the state and federal standards for siting a landfill, despite it not being in compliance with local zoning regulations. So, given this and applied to the situation in Colerain Twp. that you are interested in, Rumpke did not necessarily have to take on this zoning challenge first. From an economic standpoint it was probably wise to do so because developing a permit application for Ohio EPA’s review is an extremely costly endeavor and without complying with local zoning a permit is probably worthless, but from the State’s perspective it is not a necessary first step.

1. What is Ohio EPA’s role in the landfill siting process?

   Background:
   Ohio EPA’s landfill siting has its roots in Federal Law, specifically the 1976 Resource Conservation and Recovery Act (RCRA), which of course has been amended repeatedly in the mean time. RCRA, Subtitle D establishes minimum standards for Location Restrictions (Subpart B), Operating Criteria (Subpart C), Design Criteria (Subpart D), Groundwater Monitoring and Corrective Action (Subpart E), Closure and Post Closure (Subpart F), and Financial Assurance (Subpart G). Obviously Subpart B is what you are most interested. You will see that Ohio EPA has mirrored these requirements in Ohio Administrative Code (OAC) Rule 3745-27-20. Ohio EPA has gone beyond these minimum requirements, and established the more rigorous siting criteria contained in OAC Rule 3745-27-06(H). Authority for the criteria contained in -06(H) are based on Ohio Revised Code Title XXXVII, Chapter 3734.

   Our Role in Siting:
   Ohio EPA is responsible for reviewing a solid waste application for permit to evaluate whether or not a proposed location meets Ohio’s siting criteria and the Federal (adopted by Ohio) Location Restrictions. Ohio EPA does not have the authority to include evaluation of local zoning ordinances in this review.

   Information Sources:
   This USEPA website will provide you with more information
   http://www.epa.gov/epaoswer/osw/laws-reg.htm
2. What information is utilized in deciding where to site landfills? (Who / What Entities have a “say” in this decision)?

Ohio EPA evaluates a proposed submitted Solid Waste Permit application for permit with respect to the State and Federal siting criteria. The decision regarding whether a criterion is met or not, is a pass/fail (e.g. is a domicile located within 1000 feet of the proposed limits of waste placement.)

3. Why do you think zone amendment cases (particularly those involving a landfill) end up in court?

I don’t have much professional experience with zoning amendments and their being challenged in court. My personal opinion is that zoning regulations (regarding landfills) that end-up in court are frequently due to the regulation or amendment being a reaction to an action. The action in these cases being the submittal of a solid waste landfill application for permit. Also, zoning regulations and amendments that are crafted as a reaction are intended to exclude a single business or type of business.

4. Why do you think Ohio EPA decisions regarding the siting / permitting of landfills are challenged in court?

I’m not aware of many of Ohio EPA’s decisions regarding siting / permitting of landfills being challenged in court. I don’t have any data close at hand to support this, but I would venture to say that the majority of our permitting decisions that have been challenged (appealed) are denials of permit applications. In these cases usually the company whose application for permit has been denied contends that Ohio EPA’s conclusion to the evaluation of the application is faulty in some way. These applicants have invested large amounts of money to investigate and develop conceptual designs for these proposed facilities and are not willing to give up that investment without exhausting every possible avenue of obtaining the permit.

Conversely, in those situations where citizens appeal an Ohio EPA solid waste permit approval decision, I it think stems from the unpopular nature of landfills. People like to have their trash picked up at the curb each week, but they don’t like it to be disposed of where they can see it. It is the classic NIMBY situation and they are willing to use all of the tools at their disposal to prevent it from being situated where they don’t want it.
5. What do you think those involved in a zone amendment case (applicant; township; county) (particularly those involving a landfill) can do differently, in order to avoid going to court?

I think that being proactive in developing zoning regulations is the way for a municipality to prevent their zoning regulations from being challenged in court. Having firm, appropriate, maintained and updated zoning regulations in place will significantly decrease the chances of the regulation being challenged in a legal setting.
- Different interests are going to be affected
- Township to change the zoning - Rezoned
- Township official has discretion - Euclidean Zoning
- “Reasonable” - Go through legislative process
- Variety of reasons why Township may not want to (change zoning)
- It’s a permitted use where current landfill
- Why should be allowed to expand - Kathy Dale; Otis Spriggs
- It goes to Court - Legal powers
- Legislative Body - Legislative decision
- Challenge - Zoning can be variety of districts
- Property Rights – Very Important
- Generally allowed
- Zoning is allowed - If zoning
- But, if property owners
- Single family resident; no business
- Court could find it’s (…)
- Generally, should follow
- “Reasonable” – Some connection health, safety, welfare
- Complicated legally
- Each parcel
- Is existing
- Challenge Constitutionality
- Not rational
- Restrictions
- Lingle Case: 2005
- Reasonable relationship
- Taking
- Ohio: 2 ways to challenge zoning:
- 1) Aren’t reasonable
- 2) Economic
- P.O.W.E.R.
- Process: American Legal System
- Decision of Legislative: “Township Trustees”
- Court has check on Township Trustees Decision (Did they act “reasonably?”)
- 1) Has to go through the Legislative Process
- Zoning: Should be made by folks closest to property
- Colerain Township: Thought Landfill could not expand forever
- Rumpke is good for County and Township
Interview Transcript: Interviewee # Code: 03050703

IRB#: 07-01-26-04 “Colerain Township Zoning Amendment Case: ZA2006-04”
Primary Investigator: Kevin McMahan
Co-Investigator / Thesis Committee Chair: Dr. Christopher Auffrey
Interviewee # Code: 03050703
Date: 5 March 2007

1. Why do you think zone amendments cases end-up in court?
   Because Colerain Township Trustees were not smart enough to pass the zoning. We need a place to put our garbage, Rumpke provides it, Rumpke is smart enough to plan for our future and go to court to ensure we have a place for the garbage in the future. Rumpke had no choice but to take this to court.

2. Why do you think zone amendment cases (particularly those involving a landfill) end-up in court?
   Politics, pure and simple, a few people come to the meetings and ask that they not pass the zoning, the Trustees want to keep these people happy so they can be re-elected so they vote these down, maybe you could check to see how many residents are in Colerain Twp and then see the few that attend the meetings, they are many people who do not care one way or the other, there are many that support Rumpke and want the expansion but can not comment because they have there own businesses and if they speak one way or the other someone will be mad. I do not care who gets mad, I want my garbage picked up so I support Rumpke, but what ever zone amendment comes up someone will be unhappy, when they wanted to put a Target at the end of my street I fought it tooth and nail, we all think we know what is best, most of us do not want change, and of course when it comes to a landfill lots of folks do not want that. I grew up across the street from it in 1955, I know it is safe, it is family owned and the family both live and work in Colerain Twp. Now tell me with the Rumpke money, do you really believe they would live and work here if it were not safe?

3. How “pertinent” is the “O.R.C. stated township zoning amendment process?” If it seems that most landfill owners intend on taking their case to court, even after their zone amendment request has been denied by the township, then why go through all of those earlier steps? (Do they serve a purpose?)
   Sorry I do not know what O.R.C. is but I do know that Hamilton County passed the amendment, Colerain has committees that decide what should be in our Township, I know no one on the committee will ever say, “Hey why not extend the landfill and make it bigger” so therefore it will never be recommend by the land use committee so there will always be a fight, you might ask all of there people who fight it where their garbage goes, also see when they moved to Colerain Township, Rumpke was here when I moved here in 1955, Rumpke does not make the garbage they only give us a place to put it. If you tell me what O.R.C. means I’ll try to say what I think of it.
4. Where are the “conflicts” in the process (county plan / zoning vs. township plan / zoning)? (Which should be followed?)

Wow that is a tough question, I believe each is important, I do not think that any one can be right for all situations, each one has their place, lots of times what the county believes is right may not be right for our Township, they live here and may have a different perspective, zoning is important for many reasons, I do not want to build a house then have a trailer court built next to it, when it comes to the landfill, I believe maybe it is a little too personal to some of our elected officials. Perhaps it should be placed on the ballot and voted on. Are you aware when we tried to stop Lowes and Target from moving to Colerain and Raeann, it did go to the ballot and was voted down that it could not be build, but guess what the Trustees passed it anyway. As I said each one is important, I disagree with this decision and it will cost the Township a lot of legal fees and in the end Rumpke will win, most people are smart enough to want their garbage taken away.

5. What do you think those involved in a zone amendment case (applicant; township; county) can do differently, in order to avoid going to court?

I believe the trustees should try keeping their garbage for a month or two not now in the summer and see how unpleasant it gets, when I was a kid my Dad had 7 children and believed in us doing chores, my brothers chores was trash, they would burn it in a drum and bury the glass and cans, no fun, do not ever want to go back, but if the trustees want this they should go for it but let them see what it is like not to have garbage service. The county has passed the amendment so there is nothing they can do, as for Rumpke, they are much too nice to do what they should, if I were them I would shut down for a month, bet people would beg to have the amendment go thru, but of course this will never happen unless this does not go thru when we run out of dumping space your generation will suffer.

6. Can you suggest any changes to the “O.R.C. stated township zoning amendment process?” (What would you recommend be changed with O.R.C. § 519.12?)

Let me know what the O.R.C. is.

Kevin I would be happy to do what ever I could to help you, I know lots of people do research and have books to quote their answer, I am just a plain old gal, who has a deep respect for the Rumpke Corporation, they do a dirty job that not many of us would want, growing up across from the dump, they never gave us a problem, Of course it was much smaller then, but Moms stayed home, we washed diapers, now we use disposable how much garbage does that make, we ate at home, how much trash does take out make, want a neat experiment, fix dinner for 4 people for 1 week and put the garbage in a can, next go to the restaurant and get the same 21 meals for carry out and compare the amount of trash, there are many more examples, but what it boils down to is we make the garbage, Rumpke provides a service to take it away, no one wants a dump in their back yard, no one wants a prison in theirs, no one wants a car manufacture in theirs, but we all must have some of these to keep the world going.
Interview Transcript: Interviewee # Code: 03080704

IRB#: 07-01-26-04 “Colerain Township Zoning Amendment Case: ZA2006-04”
Primary Investigator: Kevin McMahan
Co-Investigator / Thesis Committee Chair: Dr. Christopher Auffrey
Interviewee # Code: 03080704
Date: 8 March 2007

- Ms. Christmann has been in her position for less than 1 year. Replaced Jeff Alutto (now Assistant County Administrator).
- Joint project
- Policy Committee asked to put it together
- Non-Regulatory
- 15 years of waste disposal
- Ensure adequate disposal capacity and Reduce, Reuse, and Recycle (meet State minimum requirements)
- How would an expansion of Rumpke Landfill impact Hamilton County? (Presently 17 years of waste capacity, in a 200 mile radius)
- HCSWMD’s role in landfill siting process?
- HCSWMD only plays a role in facilities they own
- Calls from concerned citizens
- Stick with the facts
- Landfills within the District (look at County Wide Landfill and Stark County Landfill)
- HCSWMD is not Regulatory (Health Department and Ohio EPA are Regulatory)
- Portions of funds collected from landfills pay for Hamilton County Health District (Is this a “conflict of interest?” [interviewer’s question])
- Historically, HCSWMD does not come-out in favor or against landfill sittings
- In HCSWMD, Rumpke and CSI (subsidiary of “Republic”) are main garbage collectors
- Before HCSWMD was created in 1990s (following HB 592) the “private sector” was handling waste collection services (just kept this system)
- Some SWMDs run their own landfills
- Some of HCSWMD’s programs: household hazardous waste (chemicals); computers / electronics; residential, apartments, industrial; recycling
- The NIMBY factor plays a part in the siting of all “unpopular” uses

Clarifications

"HCSWMD only plays a role in the facilities they own" Please clarify that we currently do not own any facilities. As we talked about, we do have a siting strategy in our 15-year plan which follows OEPA siting guidelines.

IF the District was going to own their own facility, we would have to develop our own siting strategy prior to siting.
Township and State law

The HCPZD reviews zone amendments for Regional Planning Commission

The purpose of the review is to provide recommendations (the Planning and Zoning department only makes recommendations on plans; the Commission decides what to do with those recommendations)

The HCPZD is not a Regulatory Agency (they are “professional planners” – so their recommendations mean something; they’re following state law)

Members of the Planning Commission need to have zone amendments reviewed by Staff Review (professional staff reviews)

Mr. Snyder feels that the Regional Planning Commission does not push the Townships to accept their recommendations or do one thing over another

The Regional Planning Commission is an “independent body”

The HCPZD has no zoning control in Colerain Township (HCPZD is not the zoning commission there)

Planning – HCPZD creates Plans for the entire County

HCPZD could be concerned about the solid waste capacity (regarding Rumpke landfill “expansion”) – The HCPZD would need to know where to put waste

Mr. Snyder said, “A Land Use (such as a landfill) is potentially objectionable.”

Mr. Snyder felt (as have many other individuals the interviewer has spoken with) that, “either way, this case was going to court.”

Mr. Snyder said, “Any party that feels ‘aggrieved’ is going to court.”

“NIMBY is a factor experienced in everyday life…”

Mr. Snyder acknowledged that it is difficult, “to make everyone happy.”

When asked, “What land use is least hated?” Mr. Snyder answered, “offices; small offices.” (Most communities like small offices)

Projects include: traffic changes; storm water run-off; property concerns

Zone Case in Colerain: Plan by Regional Planning; Plan from Colerain Township; Update Land Use Plan (Regional Plan is not being used as much by the HCPZD because it is going out-of-date)

Recommendations are consistent?

The Hamilton County Regional Planning Commission has the choice to decide a Case as they see fit (do not have to follow HCPZD’s recommendations)

“Regulatory”: Colerain Township Board of Trustees

Colerain Township created text of Zoning Resolution

Mr. Snyder said, “Zoning does not always work.” (the best laid plans)
I did want to clarify one thing at the end of the session. We were talking about zoning codes and how places that have adopted entirely new zoning resolutions (like the City of Cincinnati) often require numerous text amendments within the first few years of implementation to work out all of the bugs with the regulations, unintended consequences, loopholes, etc. I don't feel that this conversation was captured with the statement that Zoning does not always work and best laid plans. In fact, I don't think I said that zoning doesn't work in any context.
I am in receipt of your questions to Attorney General Dann concerning the township zoning process. I will attempt to provide you with useful guidance with regard to your questions.

Your first question asks me to articulate the reasons zoning amendment cases are filed with the courts. The purpose of zoning under R.C. Chapter 519 is to regulate land use in the unincorporated territory of a township. Any exercise of the zoning power must, however, be done in accordance with the provisions of R.C. Chapter 519. This means that a township must comply with the procedures set forth in R.C. 519.12 when adopting an amendment to a township zoning resolution. The township also must comply with the substantive limits on its zoning power when adopting an amendment to a township zoning resolution. For instance, a township zoning amendment may not violate the constitutional rights of a person.

If a person believes that a procedural error has occurred in the adoption of a zoning amendment or that the amendment violates his constitutional rights, the courts provide the mechanism by which the person may invalidate the action of the township. Cases illustrating specific reasons why cases are brought before courts may be found among the annotations construing R.C. 519.02 (authority of a township to regulate building and land use) and R.C. 303.02 (authority of a county to regulate building and land use).

Your second question asks me to discuss the reasons zoning amendment cases involving landfills are frequently litigated in court. The answer for this question is the same as for question one. Aggrieved persons believe that the township has violated the procedures set forth in R.C. 519.12 when adopting an amendment to a township zoning resolution or failed to comply with the substantive limits on its zoning power when adopting an amendment to a township zoning resolution.

Cases involving landfills may occur more frequently because a landowner near the landfill may believe that the use of the land for this purpose will not allow him to retain an economically viable use of his land or that the use does not substantially advance a legitimate governmental interest in the health, safety, or welfare of the township. A landowner in such a situation typically will use whatever legal remedies are available to him to protect the value of his land and his ability to convey the land in the future. For more information as to why zoning cases involving landfills are litigated more frequently than other zoning cases, it may be helpful to ask state and county attorneys that regularly litigate matters involving landfills.

Your third question is, as follows: “How ‘pertinent’ is the ‘O.R.C. stated township zoning amendment process?’ If it seems that most landfill owners intend on taking their case to court, even after their zone amendment request has been denied by the township, then why go through all of those earlier steps? (Do they serve any purpose?)”
The process is very important. R.C. 519.12 provides interested persons notice of proposed zoning amendments and requires the township to hold public hearings regarding such amendments. The statute sets forth specific procedures a township must follow when enacting zoning amendments. In addition, R.C. Chapter 519 is intended to protect the substantive rights of landowners by limiting the zoning power of a township. A township may not violate an explicit statutory command of the General Assembly. Any such attempt, renders the action of the township invalid and unenforceable.

Your fourth question asks whether there are any conflicts between the statutes governing county land use regulation and township land use regulation, and, if there are any, which controls. Both a county and township may regulate land use in the unincorporated territory of a township by enacting zoning regulations. When both a township and county have adopted zoning regulations, any conflicts between the two are resolved in accordance with R.C. 303.22 and R.C. 519.22.

Moreover, with regard to conflicts between a township’s authority to adopt land use plans pursuant to R.C. Chapter 519 and the county’s authority to prepare and adopt land use plans under R.C. 713.23 and R.C. 713.25, 2003 Op. Att’y Gen. No. 2003-022 at 2-172 and 2-173 explained that no language indicates that the General Assembly intended to limit the authority of a township to plan for land use within its territory when a county has prepared and adopted land use plans. In fact, a township zoning resolution and the amendments thereto with respect to land use within the unincorporated territory of a township control over whatever recommendations or plans a county or regional planning commission may otherwise propose in that regard.

Your fifth question asks whether there is any way that landowners, townships, and counties may avoid litigating zoning amendment cases. Counties and townships should comply with all of the procedures for approving amendments to zoning resolutions and avoid violating the substantive rights of landowners. Even if counties and townships take these steps, landowners who want to use their land for a purpose prohibited by a zoning amendment are going to litigate.

Your final question asks me to suggest changes that could be made to the township zoning amendment process. I believe that the General Assembly has provided an adequate system that balances the competing interests of landowners, counties, and townships. Nevertheless, it is my belief that Ohio would benefit from more centralized planning authority.

Please be reminded, however, that this communication does not express the official or unofficial views of Attorney General Dann or his administration. Rather, it is my personal view and understanding of the authority of counties and townships in the zoning amendment process, and is provided as a courtesy to assist you in the preparation of your thesis.
Interview Transcript: Interviewee # Code: 03210707

IRB#: 07-01-26-04 “Colerain Township Zoning Amendment Case: ZA2006-04”
Primary Investigator: Kevin McMahan
Co-Investigator / Thesis Committee Chair: Dr. Christopher Auffrey
Interviewee # Code: 03210707
Date: 21 March 2007

1. Assume the decision is made by the Township Board of Trustees
   - Next Appeals (lowest local court)
   - Since proposed
   - End-up in court (“Follow the Money”)
   - Business entity trying to do something
   - After a Cost / Benefit Analysis is made the party that feels aggrieved makes a
     Calculated decision to go to court (hope to overturn the Board of Trustees’ decision)
2. Still a “business decision”
3. Has to go through that Process
   - Due Process of the Law
   - Checks and Balances
   - Once gets into legal system, public has no say
   - Public Hearing (chance for public to speak)
4. Code: Specifically 519.12, paragraph (e)
   - County or Regional Planning Commission shall recommend; shall be
     considered
   - Just a recommendation
   - Multiple States are served by Rumpke Landfill, to the detriment of the local
     community (Colerain Township) in which the landfill is located. Mr. Kerr resides in that
     local community and feels his community’s concerns are not considered valid or
     important by the outsiders benefiting from the dump.
     - Hamilton County – Thinks they’re looking out for the good of the whole
       county, but should a “few suffer for the good of many?”
     - Planning Commission Staff Reports often side with the Township, yet the
       Commission continually rules opposing.
     - Local Land Use Plan; Zoning Plan should be followed, as they were formulated
       with the input of the local community and establish parameters under which the local
       residents wish to live.
5. How do you avoid going to court?
   - “One side has to roll over” (applicant decides not to appeal a decision or
     Township grants application)
     - Depressed Real Estate Values in Colerain Township
     - Homes are selling for less; closer to landfill
     - Some homes have been for sale for months and years
6. Should O.R.C. be changed? “No, it’s good.”
   - “Puts responsibility squarely where it should be.”
   - Allows for “checks and balances” on powers
1. Do you feel that Hamilton County “pushes” or “forces” its “will” or “ideas” on Whitewater Township? (You might not want to answer this…) (Can you offer some insight into the “interplay” / “interaction” between Hamilton County and Whitewater Township?) (For example, does the County pressure the Township to accept the siting of different businesses, within your Township?)
   - Without zoning regulations, Whitewater Township has no authority in regulating land use. I am not aware of any case in which Hamilton County interfered in any way to encourage or discourage development in any part of the Township.

2. What role did Whitewater Township have in deciding to site or “expand” the landfill on Bond Road? (Who / What Entities had a “say” in this decision?)
   - Without zoning regulations, Whitewater Township has no authority in regulating land use. Agencies which may have some authority on this issue would include the Hamilton County Commissioners, Hamilton County General Health District, and Ohio EPA, and the USEPA.

3. Why do you think zone amendment cases (particularly those involving a landfill) end-up in court? (Not Sure if you want to answer this; but I would be interested to hear your opinion on this…)
   - The obvious answer, especially in landfill cases, would be the NIMBY (Not In My Back Yard) effect. Most people understand the necessity of landfills, gravel pits, industrial plants, and large retail establishments. Most of those people would object to those land uses in their back yard. There is also the reality of organized groups, often on a national level, that resist certain types of development. Such developments necessarily affect property values, resulting in property owner assertions as an injured party if the project is completed.

4. Why do you think Ohio EPA decisions regarding the siting / permitting of landfills are challenged in court? (Also, your thoughts would be interesting…)  
   - Essentially the same answer as #3 above.

5. You explained that Whitewater Township does not have zoning. Do you think this helps or hurts the Township? How does it help or hurt the Township? Has anyone attempted to implement zoning in the Township?
   - The township has tried at least two times to enact zoning regulations, but both times it was soundly defeated at the polls.
6. Are there many instances where citizens go to court against the siting of “unwanted” land uses near their homes? Could it be that Whitewater Township is seeing an increase in residential housing (Harrison High School is growing), and in the near future, would Whitewater Township be considering implementing zoning? (Just curious…)

- I am aware of no lawsuits objecting to development in the Township. There has been moderate residential and commercial development in the area, but there has not been a problem with rapid uncontrolled growth. The largest obstacle to development in Whitewater Township is the lack of sewers and water in a large portion of the Township. Residents of the Township have historically been resistant to implementing zoning regulations, and I do not foresee any change in attitudes in the near future.

- These answers are from my own observations and opinions. They in no way represent an official stand by Whitewater Township or the Board of Trustees.

Timothy McDonald
Fiscal Officer
Whitewater Township
Resources


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**Interviews**


