

BEFORE THE BOARD OF ZONING AND BUILDING APPEALS

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IN RE: BZA-0001-2003 :

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PROCEEDINGS

in the above-captioned matter, before the City of Gahanna Board of Zoning and Building Appeals, taken before Jennifer L. Parish, a Registered Professional Reporter and Notary Public in and for the State of Ohio, at the Gahanna City Hall, 200 South Hamilton Road, Gahanna, Ohio, commencing on Thursday, February 27, 2003 at 7:00 p.m.

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BOARD MEMBERS

Timothy W. Pack, Chairman

Robert D. Fischer

Debra Mecozzi

Michael F. Schirtzinger

Isobel L. Sherwood, Clerk

Bonnie Gard, Zoning Administrator

Jennifer Chrysler, Deputy Director of Development

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APPEARANCES

JOHN P. MAZZA, ESQUIRE

HARRIS, TURANO & MAZZA

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Suite 201

Columbus, Ohio 43221

On behalf of the Worlins

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## 1 P R O C E E D I N G S

2 CHAIRMAN PACK: Good evening. My name is Tim  
3 Pack, and I'm the chairman an of the City of Gahanna  
4 Board of Building and Zoning Appeals. This proceeding  
5 is to hear Docket No. 0001-2003 of the BZA, the appeal  
6 of James and Janet Worlin of 681 Tim Tam Avenue,  
7 Gahanna, Ohio, a denial Variance Application  
8 V-0031-2002 by the City of Gahanna Planning  
9 Commission.

10 This hearing will be conducted in accordance  
11 with the Gahanna City Charter, Chapter 2506 of the  
12 Ohio Revised Code, the City of Gahanna Codified  
13 Ordinances, and this board's rules of procedure. A  
14 stenographer is recording this proceeding at the  
15 expense of the City.

16 As always, this board wants our proceedings  
17 to be fair and in the spirit of community service. I  
18 would ask that all cell phones be placed off at this  
19 time.

20 A little history before we get going.

21 On January 16, 2003 this board voted to  
22 recess the public portion of this appeal having heard  
23 the oral presentations and the redirect questioning by  
24 both the proponents and opponents of this appeal all  
25 within the allotted time governed by our rules of

1 procedure. This board is in the questioning portion  
2 of witnesses and city staff members. All witnesses  
3 who were administered and placed under oath at the  
4 January 16th meeting should consider themselves still  
5 under oath.

6 Tonight we have the benefit of the presence  
7 of a board member that was absent during the meeting  
8 on January 16th.

9 And, Mrs. Mecozzi, have you received and  
10 availed yourself to the transcript and presented  
11 evidence of the January 16th meeting and feel  
12 comfortable in participating in this evening's meeting  
13 as it will --

14 MS. MECOZZI: Yes, Mr. Chairman, I have  
15 received the materials and transcript of the first  
16 January 16th meeting; and I am prepared to proceed.

17 CHAIRMAN PACK: Very good. At this time the  
18 Chairman would entertain a motion to reopen the public  
19 portion of this case.

20 MR. FISCHER: So moved.

21 MS. MECOZZI: Second.

22 CHAIRMAN PACK: Any discussion?

23 (No audible response.)

24 CHAIRMAN PACK: Would the clerk please call  
25 the roll.

1 THE CLERK: Fisher.

2 MR. FISCHER: Yes.

3 THE CLERK: Mecozzi.

4 MS. MECOZZI: Yes.

5 THE CLERK: Pack.

6 CHAIRMAN PACK: Yes.

7 THE CLERK: Schirtzinger.

8 MR. SCHIRTZINGER: Yes.

9 CHAIRMAN PACK: And as soon as -- since you  
10 were not present at the last meeting, would you like  
11 to start us off with any questions that you may have?

12 MS. MECOZZI: Okay. I did this evening have  
13 questions regarding any legislative action that had  
14 occurred at the level of the City Council. Since this  
15 case had been filed, and I understand the city  
16 attorney is not here, that any legislation action that  
17 has not occurred since the January 16th public hearing  
18 would not be applicable to this evening's discussion.

19 I have -- in addition to the transcript I  
20 received all the materials as part of your original  
21 application that included the record from the Planning  
22 Commission, the letters of opposition or support, and  
23 certainly your submittal as the applicant outlining  
24 the reasons for this that you were requesting the  
25 support of the BZA.

1           Having said that and having read all the  
2 material, I would like to hear from the applicant, if  
3 he can tell me, if there are, indeed, facts that have  
4 changed since your original application was submitted  
5 or information -- additional information that you  
6 presented to the Planning Commission that supports  
7 your request.

8           You're the attorney?

9           MR. MAZZA: I am. May I speak on behalf of  
10 them?

11          MS. MECOZZI: Certainly.

12          MR. MAZZA: I believe that this is an answer  
13 to your question. You would like for presentation of  
14 any additional information --

15          MS. MECOZZI: That's correct.

16          MR. MAZZA: I would suggest --

17          THE CLERK: I'm sorry, for the benefit of the  
18 clerk.

19          MR. MAZZA: I'm John Mazza, and I represent  
20 the Worlins.

21           I would suggest that, although strictly  
22 speaking this board of appeals would not need consider  
23 any legislation that may have been promulgated and  
24 acted upon since this first hearing, I think it is  
25 very pertinent as to what took place and to see

1 support for the position we asserted in the appeal and  
2 in our presentation earlier. That specifically being  
3 that legislation was passed by the City Council, and  
4 that legislation would have, in effect, deemed moot  
5 any question about the building of the kind of fences  
6 at the time proposed of the Worlins in the no-build  
7 zones in Gahanna. However, as you may or may not be  
8 aware, but probably are, the mayor has elected to  
9 without precedent veto the City Council vote.

10 And I would submit to you that the situation  
11 that I described in the first hearing as political is  
12 now even more so demonstrable as political when you  
13 have, first, the planning commission rejects a  
14 recommendation of the City Council, then when City  
15 Council does act, does propose legislation, presumably  
16 in support of the interests of all of the residences  
17 of Gahanna, and have your mayor veto that, this is a  
18 highly political situation I believe.

19 MR. FISCHER: Can you just answer the  
20 question?

21 MS. MECOZZI: I guess my question, if I  
22 didn't make it clear, is not what has happened so much  
23 from the January 16th portion of this public hearing,  
24 but has there been any additional evidence or  
25 information that had changed between the original --

1 the previous Planning Commission denial and this most  
2 recent Planning Commission consideration?

3 MR. MAZZA: You're right, Ms. Mecozzi, I did  
4 not understand that question.

5 MS. MECOZZI: I apologize. I may not have  
6 phrased that right.

7 MR. MAZZA: I'm sorry. I believe and still  
8 it would be a question of since the one before and  
9 this most recent one, there was the promulgation, the  
10 process for the legislation, based upon a perceived  
11 viewpoint that the current legislation which was the  
12 predicate for the earlier and then later decisions of  
13 the Planning Commission, presumably the predicate for  
14 this zoning appeal board's denial of the appeal time  
15 around -- first time around, I think this is very  
16 germane that this legislation was proposed.

17 I've also included and hope that you have a  
18 most recent legal opinion issued by the law director,  
19 Tom Webber. What I would say is that Mr. Weber in  
20 that memorandum has now put to writing and made an  
21 official document what he has been saying to city  
22 council people, what he has said to me in the past;  
23 and I think it's very relevant, because Mr. Weber  
24 recognizes that you have virtually unenforceable code  
25 sections as they are now without, as he calls it, any



1 factual or legal justification.

2 Now, since that was not stated at any time  
3 before the -- before this most recent Planning  
4 Commission decision, I think it's highly germane at  
5 this time when your city attorney says you have no  
6 legal justification. I think that is very, very  
7 relevant to the decision of this board.

8 MS. MECOZZI: The Planning Commission -- this  
9 opinion postdates the Planning Commission meeting in  
10 which this appeal was decided.

11 CHAIRMAN PACK: Do we have that yet?

12 THE CLERK: I've not distributed it yet.

13 MS. MECOZZI: Is it the February 6th?

14 THE CLERK: Yes.

15 MS. MECOZZI: Thank you.

16 MR. MAZZA: But that opinion, although not  
17 expressed in the form of a memorandum, had been  
18 generated, had been publicized by Mr. Weber before the  
19 decision of the Planning Commission. It was  
20 articulated by Mr. Weber to the Planning Commission,  
21 maybe not in as much detail as is contained there.

22 I believe it is more up to the Board to  
23 recognize, this board here, to recognize where there  
24 is a problem of potential illegality or  
25 unenforceability more so than the Planning Commission,

1 which is purely an agency, you are vested with if not  
2 extraordinarily legal powers, but quasi legal powers.  
3 You must realize that. And further you also must  
4 recognize, I believe, it's part of your charge where  
5 you are confronted with an action by an agency that  
6 you review and scrutinize where that action is a  
7 denial of equal protection of rights, as we outlined.

8 MS. MECOZZI: Thank you. That answers my  
9 question.

10 MR. WORLIN: May I make a comment?

11 MR. FISCHER: No comments are being taken --

12 CHAIRMAN PACK: Mr. Worlin, there is a fine  
13 line between readdressing opening statements that were  
14 in the first meeting on the 16th and then answering,  
15 you know, questions of the Board.

16 MR. WORLIN: Mine was a really specific  
17 add-on.

18 If I understood your question, it was what  
19 had happened from the time of the Planning Commission  
20 a year ago and this recent Planning Commission. I had  
21 one valid point. That was that there has been four  
22 more variances granted for similar circumstances in  
23 Rose Run.

24 So that is the key issue of the change.

25 MR. MAZZA: I apologize. There have been

1 other variances granted in that interim time period  
2 for what we would characterize as circumstances no  
3 more special than those that we have previously  
4 mentioned.

5 CHAIRMAN PACK: Thank you.

6 CHAIRMAN PACK: Mr. Schirtzinger, do you have  
7 any questions for the City?

8 MR. SCHIRTZINGER: I do not have any  
9 questions.

10 CHAIRMAN PACK: Mr. Fisher.

11 MR. FISCHER: I have one question to start  
12 off with.

13 On page 15 of the transcript it states on  
14 line 15 through 21 basically that an injustice was  
15 committed by both the Planning Commission and this  
16 Board in 1999 when they interpretly (sic.) --  
17 interpreted wrongfully the ordinance and in  
18 interpreting the word structure to include fences when  
19 it clearly did not.

20 Could you elaborate on that very shortly on  
21 why you're stating that?

22 MR. MAZZA: I'm stating that because  
23 specifically the -- the particular legislation or that  
24 act was changed in the year 2000 to include fence,  
25 which implicitly suggests that fence was not

1 considered a part of that legislation prior to.

2           There certainly wasn't anything in the -- in  
3 that act to say that a fence would be included. And  
4 then when you looked at the other -- and we have this  
5 in our record -- when you look at the other  
6 legislation that existed in 1999, it would certainly  
7 suggest that fence would not be included as a  
8 structure which was prohibited by the no-build zone.  
9 And then when you look further at what was  
10 permitted -- or what was excluded by the particular  
11 deed restrictions, it contemplates that fences would  
12 be okay.

13           So what I was essentially saying there was,  
14 quite frankly, we really shouldn't be here now. This  
15 should have been all been resolved in 1999.

16           MR. FISCHER: Were you aware that in 1992  
17 Chapter 1171 clearly states that a fence means a  
18 structure?

19           MR. MAZZA: There is other legislation,  
20 though, that says that it doesn't pertain to this  
21 particular -- I mean, if you read our materials, we  
22 have gone into great detail looking at the differences  
23 in the legislation. That, as far as I understood it,  
24 was not -- if that were so -- let me ask you a  
25 question, Mr. Fischer.

1           If that was so, then why was it found  
2 necessary to include fence in the later definition if  
3 what you say it so?

4           MR. FISCHER: I'll answer your question,  
5 because I was part of that reason. Because there was  
6 confusion at the time that a fence was not included in  
7 the no-build zone, and we wanted to make it clear that  
8 a fence was included in the no-build zone. Plus, it  
9 does say in 1171.01 that a fence is a structure.

10          MR. MAZZA: I think you've just answered a  
11 very -- a very helpful dilemma that --

12          MR. FISCHER: Well, I did. Thank you.  
13 That's all I have.

14          MR. MAZZA: That's all you have? Okay.  
15 I would request one thing.

16          CHAIRMAN PACK: I have some questions, sir.

17          MR. MAZZA: All right. Go ahead.

18          CHAIRMAN PACK: I have some questions of the  
19 zoning administrator; and this says -- for the record,  
20 I did call her I believe it was on the 26th of this  
21 month to get some clarifications concerning  
22 conditional residential fence variances. And is that  
23 not correct?

24          MS. GARD: That's correct.

25          CHAIRMAN PACK: And my questions are, are you

1 aware of the three homes in Rose Run, you may not,  
2 that I know of that were referred to in the Worlins'  
3 appeal and also an explanation by Mr. Peck on the  
4 denial and variance, one on Dark Star, one on the Fern  
5 Court, and one on Cannonade Court, where variances for  
6 fences in no-build zones were recommended, were  
7 approved by Planning Commission upon the  
8 recommendation of the city attorney?

9 MS. GARD: Yes, I'm aware of those.

10 CHAIRMAN PACK: What were the circumstances  
11 involved?

12 MS. GARD: There were probably at least  
13 three, perhaps four, permits that were granted almost  
14 ten years ago that were granted in error by the  
15 then-zoning administrator. And when I checked with  
16 Mr. Weber, he said, even though those permits had been  
17 granted in error, that the City would still stand  
18 behind those and they would still be valid. I can't  
19 -- I'm thinking there were four altogether.

20 CHAIRMAN PACK: Okay. So it was a situation  
21 where permits were granted by the then-zoning  
22 administrator without associated variance applications  
23 and subsequent appeals.

24 MS. GARD: Right. And I think when I went  
25 back and looked at the ones that I could find -- and I

1 could not find every one that the Worlins had inquired  
2 about -- but the ones -- out of the ones that I could  
3 find, there were at least two that were granted by the  
4 zoning administrator at those times that had not  
5 correctly-drawn plot plans or insufficient plot plans  
6 that did not show the no-build zone. And the plot  
7 plan is required for a fence permit and it is required  
8 for that very reason, so that the City officials can  
9 be aware of easements, no-build zones, preservation  
10 zones, things like that, that would show up on an  
11 actual survey. And two of those did not include that  
12 pertinent information, and so a decision was made  
13 without that knowledge.

14 CHAIRMAN PACK: Okay. In reading, again, the  
15 couple places in the appeal, one of which was, again,  
16 the explanation by Chairman Peck of the Planning  
17 Commission as to an explanation of the denial of the  
18 variance at the Planning Commission level, he  
19 highlighted an approval perhaps one or two places of a  
20 fence, a residential fence, based on a conditional  
21 variance. And it kind of caught me off guard, because  
22 going through the Code I see temporary construction  
23 fences where you as zoning administrator can approve a  
24 temporary fence permit for construction, for snow; but  
25 I -- it kind of caught me off guard, because I'd never

1 seen one with reference to residential property  
2 before.

3 MS. GARD: There were at least two that I can  
4 think of -- I can't tell you the exact addresses --  
5 that were approved by Planning Commission. The  
6 variance was approved with conditions, and per code  
7 they can do that. They can approve variance with  
8 conditions.

9 One was approved, it was a privacy fence. It  
10 was a section of privacy fence. It wasn't a  
11 completely surrounding privacy fence, it was a section  
12 of privacy fence that was to put up to block the view  
13 of what was deemed a vicious animal so that the  
14 children in the yard behind it could not be seen by  
15 the animal and perhaps aggravated by it. The  
16 condition of that variance was that if, indeed, the  
17 dog left that property, that that fence would no  
18 longer be needed and would be removed.

19 The other fence permit variance that was  
20 conditioned was a split-rail fence; and that fence  
21 also was conditioned in a way that read if the owner  
22 of the home was to move, then that fence would be  
23 removed at the time that this person left the house.

24 CHAIRMAN PACK: Which brought me to the next  
25 question.



1           How does the City enforce conditional fence  
2 variances on residences, particularly if you have a  
3 promise by a homeowner that they will remove a fence  
4 or a portion of the fence at the time they move? How  
5 does the City enforce that?

6           MS. GARD: It would be difficult for me to  
7 know when a property changed hands without actually  
8 continuing to check on that through the Auditor's web  
9 site, perhaps.

10           As far as the dog being gone, that would just  
11 be a visual check to see if the dog were still there;  
12 and then, of course, the fence could remain.

13           But it does become an enforcement problem.

14           CHAIRMAN PACK: The dog was the pit bull that  
15 you're referring to?

16           MS. GARD: I believe so.

17           CHAIRMAN PACK: And the conditional fence  
18 variance that was granted by Planning Commission was  
19 not by the -- correct me if I'm wrong -- was not by  
20 the homeowners with the dog, it was by the people next  
21 to the dog.

22           MS. GARD: That's correct. It was the back  
23 door neighbor.

24           CHAIRMAN PACK: And the conditions placed on  
25 that variance was that if the dog would leave, in

1 other words, the nextdoor dog, the people not with the  
2 fence, once that dog has left the area, then the  
3 person who was granted the appeal -- or granted the  
4 variance, at that time they would have to remove the  
5 fence?

6 MS. GARD: That's correct.

7 CHAIRMAN PACK: Okay. Is it the policy of  
8 the Planning Commission when you have a legal  
9 rendering by the city attorney, do they -- for the  
10 most part do they always -- when it involves a  
11 decision by the Planning Commission and the city  
12 attorney renders a legal opinion on something, do  
13 they -- for the most part has it been your experience  
14 that they take that advice?

15 MS. GARD: I'm sure they take that into  
16 consideration when they make their decision.

17 CHAIRMAN PACK: Thank you very much. I don't  
18 have any more questions.

19 Ms. Mecozzi.

20 MS. MECOZZI: Nothing further.

21 CHAIRMAN PACK: Mr. Fischer?

22 MR. FISCHER: I don't have anything further.

23 CHAIRMAN PACK: Mr. Schirtzinger.

24 MR. SCHIRTZINGER: I did not have anything  
25 further either.

1           CHAIRMAN PACK: Well, with no additional  
2 questions, then the Chair would entertain a motion to  
3 close the public portion of the meeting, have  
4 discussion amongst ourselves and the public, if we are  
5 so inclined, that would eventually lead to a vote.

6           MS. MECOZZI: I'd move to close the public  
7 hearing.

8           MR. FISCHER: I'll second that.

9           CHAIRMAN PACK: Would the clerk please -- any  
10 discussion?

11           (No audible response.)

12           CHAIRMAN PACK: Would the clerk please call  
13 the roll.

14           THE CLERK: Mecozzi.

15           MS. MECOZZI: Yes.

16           THE CLERK: Fischer.

17           MR. FISCHER: Yes.

18           THE CLERK: Pack.

19           CHAIRMAN PACK: Yes.

20           THE CLERK: Schirtzinger.

21           MR. SCHIRTZINGER: Yes.

22           CHAIRMAN PACK: Okay. Now, in the  
23 discussionary phase of the board members preceding the  
24 vote.

25           Mr. Schirtzinger, would you like to begin

1 should you have any comments regarding this case?

2 MR. SCHIRTZINGER: Absolutely.

3 As you're all aware, I'm the junior member on  
4 this board. Reading through the, I would say, a good  
5 couple hundred pages of evidence and minutes from  
6 2002, 2001, 1999, 2000, it's overwhelming; and I spent  
7 an awful lot of time reading through, rereading, and  
8 also rereading the transcripts. My decision has not  
9 changed from the last meeting that I made personally  
10 at that point. It's been an extremely difficult  
11 decision.

12 One thing I do feel that I do disagree with  
13 the attorney and the Worlins is, I do not feel that  
14 this is political. Right or wrong, I strongly feel  
15 that this is not a political issue. And looking at  
16 the evidence provided by the applicant, I do not wish  
17 to grant an appeal by the -- excuse me, I do not wish  
18 to grant an appeal of the City of Gahanna Planning  
19 Commission.

20 CHAIRMAN PACK: Okay. Mr. Fischer.

21 MR. FISCHER: Again, I think I've heard this  
22 case probably all three times it's been in. So, and I  
23 understand your hardship as far as you bought  
24 property, you want to put up a fence. If I was in the  
25 same position, I'd probably want to have a -- you

1 know, if I wanted to have a fence, I'd probably be  
2 doing to same thing.

3           However, I also looked at, and in the past  
4 looked at, the 1131, which is variance, it lists three  
5 conditions. And two things in there. The third one  
6 is really one I'm harping on or looking at right now.  
7 And it basically says, the granting of this  
8 application will not materially affect adversely the  
9 health, the safety of persons residing or working in  
10 the neighborhood or proposed use and will not be --  
11 materially be detrimental to the public welfare or  
12 injurious to property value in such neighborhood.

13           And we've heard a lot of testimony tonight --  
14 or not tonight, I'm sorry -- in this case that by  
15 allowing this variance to go through or by granting  
16 the appeal, neighbors would not be able to enjoy their  
17 property as you so wish to enjoy your property.

18           You bought the property, and you testified  
19 that you did a lot of expensive research. I think  
20 your attorney at the time back in '99 stated that he  
21 did a lot of research; and I believe I asked him if he  
22 had checked with the City, and he had not. And I,  
23 again, stand where I stood before. I don't think  
24 anything's changed in this.

25           If the legislation passes, then this is a

1 moot point. But if it doesn't, I still think what we  
2 have here is an appeal to a preexisting condition, and  
3 every case stands on its own. I know there's been  
4 many appeals that have been granted in the past or  
5 many variances that have been granted in the past; but  
6 I've got to look -- my duty is to look at each one on  
7 its own merit.

8           Therefore, I still believe that there's  
9 enough proof and evidence here that the Planning  
10 Commission has done the right thing and I've got to  
11 agree with that.

12           CHAIRMAN PACK: Mrs. Mecozzi.

13           MS. MECOZZI: Yes. I also support the  
14 decision of the Planning Commission and would not be  
15 voting to uphold that decision.

16           When I look at a case before this board, one  
17 of the first things that I do is to look at the Code  
18 and determine if the Planning Commission followed the  
19 requirements for granting a variance, if the case was  
20 a variance, and that's what's come to us on appeal,  
21 and the three criteria. In some cases they have  
22 approved the variance and distribute it to us by the  
23 opposition to overturn that. It's not the case here.

24           I know that the Planning Commission stated in  
25 their minutes on November 6th that they were not

1 required by code to state the reasons for the denial,  
2 unlike when they approve a variance they need to have  
3 a finding of fact of one of the three criteria.  
4 Despite I'm saying that, I think when you read the  
5 minutes of not only the November 6th meeting but the  
6 meetings that led up to that decision, that they do  
7 state their rationale and what they were looking for  
8 and what they could not find in granting that  
9 variance.

10 Like Mr. Fischer I strongly believe that each  
11 case stands alone and needs to be considered on its  
12 own merit.

13 And, thirdly, I could not find any changes or  
14 additional information; and, therefore, my decision is  
15 to uphold the City.

16 CHAIRMAN PACK: I first heard this case I  
17 believe it was 13 or 14 months ago. I believe that  
18 December was the month of the initial meeting that we  
19 had, actually stretched into to January. So I base  
20 the merits on this appeal with respect to things that  
21 have transpired or changed since I last heard this  
22 appeal.

23 And absent any other additional information  
24 or things that would influence me to the contrary, I  
25 would vote to -- essentially vote against the appeal.

1 And, in fact, up until a couple weeks ago looking at  
2 everything, I was going to stay with my initial  
3 decision on that. But then I got something in the  
4 mail.

5 As a member of the Board of -- City of  
6 Gahanna Board of Zoning and Planning Appeals, we  
7 automatically get the minutes and transcripts of City  
8 Council meetings. In a packet that I got about two  
9 weeks ago was a legal rendering by the city attorney,  
10 Mr. Weber, that's been addressed here tonight, that  
11 talked about -- it was a memorandum addressed to City  
12 Council based on his recommendations with regards to  
13 changing of the legislation involving the definition  
14 of a fence included as a structure in the no-build  
15 zone. If you'll -- if I may ask of your indulgence to  
16 read a couple excerpts out of that.

17 On page 1 Mr. Weber wrote, The proposed code  
18 change would also specify that fences are not included  
19 in definition of structures. This change is  
20 particularly useful because the Gahanna Codified  
21 Ordinances have not been of models of consistency  
22 regarding what kinds of constructed items should be  
23 defined as structures for purposes of enforcing of the  
24 Planning and Zoning Code.

25 On page 2 he goes on and writes, it is clear



1 that the pertinent sections under review as they are  
2 currently worded dictate more stringent restrictions  
3 upon the construction of fences in no-build zones than  
4 the restrictions themselves require. Thus, the City  
5 is placed in the position of imposing limitations upon  
6 the reasonable use of private property by homeowners  
7 that argu- -- arguably have no factual or legal  
8 justification.

9 On page 3 he goes on to write, I am also  
10 concerned that the granting of variances under Chapter  
11 1113 Gahanna Codified Ordinances to permit the  
12 building of plus or minus fences in the Rose Run  
13 no-build zone creates the likelihood that these  
14 exceptions to the general rule seriously dilute or  
15 obviate the significance of a legal barrier against  
16 fences which the Code as it currently exists was  
17 intended to -- to prevent. In reality, the no-build  
18 zone in this particular subdivision no longer serves  
19 as a legal basis for the exclusion of fences in  
20 situations where the condition 1131.03, paragraphs A,  
21 B, and C of the Code are met.

22 When I read this, I -- my -- I really had to  
23 sit down and read it about three or four times,  
24 because this is the city attorney's memorandum to the  
25 City Council on why he thinks the Code should be

1 changed.

2 I went back and I looked at the Worlins'  
3 appeal; and for the most part, in my opinion, the city  
4 attorney has made the appeal for the Worlins in his  
5 memorandum, made the case for the appeal.

6 I also then went back into Article 10 of the  
7 Charter of the City of Gahanna; and in that charter it  
8 basically says, at least my interpretation, that the  
9 legal opinion of the city attorney transcends from one  
10 body and holds validity to another board and  
11 commission inside the City. In other words, this  
12 is -- this is valid, in my opinion, or at least in the  
13 Article 10 of the charter, it's as valid to us as a  
14 board of the Board of Building and Zoning Appeals as  
15 it is to City Council.

16 Now, obviously we can look at it, read it,  
17 and interpret how perhaps we feel it should be  
18 interpreted. But given that, I started to ask some  
19 questions; and I went back again in the appeal where  
20 the Planning Commission, based on legal opinions of  
21 the city attorney, granted variances of fences in  
22 no-build zones. They used his recommendation and his  
23 legal opinion for support of their granting of  
24 variances. That, again, struck a cord with me as  
25 well.

1           I got this about two weeks ago. This was  
2 between our last meeting and, of course, this  
3 evening's meeting. I hold of the opinion that the --  
4 given the Code as it stands, that the zoning  
5 administrator was correct in a requirement that the  
6 burden of the variance -- the burden of the Code had  
7 to be overcome by the Worlins seeking a variance. I  
8 believe that she was correct in her interpretation.

9           I also for the most part really don't have  
10 any heartburn with Planning Commission how they voted,  
11 because they didn't have this legal memorandum with  
12 them at the time that they made the decision that they  
13 did with regard to the Worlins.

14           I believe they may have had -- may have had a  
15 difference of opinion. I don't know how that would  
16 have outcome -- been an outcome of a vote. But I  
17 don't know how that you use the legal opinion of the  
18 city attorney in more than one cases and then possibly  
19 would not use it in any subsequent cases.

20           So for the most part I'm going to vote in  
21 favor of this appeal.

22           I would also like to throw something out for  
23 discussion, that the Planning Commission has used  
24 conditional variances for residential fences. I don't  
25 think it's been used a lot, but it has been used this

1 year. And that was for the most part to satisfy, not  
2 only perhaps satisfy the person seeking the appeal --  
3 or seeking the variance, but also trying to maintain  
4 the integrity of the definition of -- in the spirit  
5 and intent of the no-build zone.

6 This board has -- again, this is discussion  
7 -- this board has the ability under the articles of  
8 the charter of Gahanna to either approve, deny an  
9 appeal, modify an appeal, or remand it back to  
10 Planning Commission. I think if we remanded it back  
11 to Planning Commission, then to me I wouldn't -- I  
12 think it's already been down that road, and I'm not  
13 sure you would want to -- I wouldn't want to subject  
14 Mr. -- the Worlins to that.

15 But there is a solution, I think, that --  
16 another solution that might be of interest, is that to  
17 grant a conditional variance regarding a fence in a  
18 no-build zone for the Worlins. There's advantages to  
19 making it a conditional approval, and one of which is  
20 that contiguous property owners have had concerns  
21 regarding the value of their property, that those  
22 concerns could be met if this was based on the  
23 condition that should the Worlins move -- first off,  
24 they would have to agree to the conditions -- that if  
25 the Worlins would move, that they would remove the

1 fence portion that is in the no-build zone and return  
2 it back to its original position. So hopefully for  
3 the contiguous property owner that might appease and  
4 maybe allay some of their worries with regards to  
5 that.

6 Another perhaps possibility is that if we  
7 were to make a conditional variance regarding this, is  
8 that it doesn't set up a permanent -- doesn't set a  
9 permanent precedent. It's also consistent with what  
10 the Planning Commission has actually done this year,  
11 and also it would appease the Worlins. And from their  
12 standpoint I think if they have been dealt perhaps the  
13 wrong set of cards this year, particularly since the  
14 last two weeks since I've been -- the city attorney  
15 has rendered a little opinion basically saying that,  
16 you know, he's -- my opinion he's made the case for  
17 the Worlins.

18 So I'm going to throw out maybe a conditional  
19 fence variance in the no-build zone. So, obviously,  
20 you know, per the approval of the Worlins that when  
21 they move, that the fence would be removed. And I'd  
22 like to throw that out for discussion.

23 MR. FISCHER: Mr. Chairman, I agree with you  
24 in the fact that Mr. Weber supports the Worlins; but I  
25 disagree in the fact that I believe we're here to hear

1 what the Planning Commission has done and see if that  
2 was justifiable and was correct. With everything  
3 that's out there, obviously other members of the  
4 administration disagreed with this; and where it goes  
5 from here, it's beyond me and this board.

6 I don't have a problem with remanding this  
7 back to the Planning Commission, I like your idea of a  
8 condition; but I think there has to be a little bit of  
9 work between the neighbors to maybe get a condition  
10 that's doable. And I don't know if we as amongst our  
11 board, maybe the Planning Commission should consider  
12 that, and maybe remand it back to them with that  
13 bullet in mind that they work out -- try to work out  
14 some kind of condition and see what happens.

15 You know, we've heard a lot of testimony of  
16 the neighbors that were adamantly against it, that  
17 they were going to be injured by this. And I can't  
18 without opening it up to public hearing and getting  
19 into this tonight, I don't know if I could support a  
20 condition on that. But I have no problem remanding it  
21 back to the Planning Commission for that.

22 Our goal is to have everybody walk away  
23 happy, if that's possible.

24 CHAIRMAN PACK: If I may address one of your  
25 comments.

1           One of the problems or one of the things I  
2 had to overcome was to bring up Mr. Weber's memorandum  
3 tonight, because as a board we have addressed the  
4 issues with respect to looking at things in the same  
5 informational plane that the Planning Commission has  
6 looked at it. And in the last few years, or at least  
7 since I have been on the Board, we have been very  
8 literal with respect to allowing things to come in,  
9 perhaps in the pursuit of fairness. And, in all  
10 honesty, there have been times when I felt perhaps it  
11 was not the thing to do to keep it in under the same  
12 plane and in the same plane in the information the  
13 Planning Commission used in rendering their decision.

14           But I think this -- to me this is one case  
15 where the Planning Commission did not have the benefit  
16 of this memorandum, and so that was why I brought it  
17 up tonight.

18           MR. FISCHER: I think that was a good point  
19 to bring it up. Again, the Planning Commission didn't  
20 have this memorandum. There have been -- there  
21 needs -- maybe according to Mr. Weber, he obviously  
22 says that there needs to be a change in the Code.  
23 Maybe all of that can happen and all this will go  
24 away. But the conditions and maybe remanding this  
25 back to them, maybe that's -- I believe that's the

1 place where this should go. I believe our job is to  
2 look at what was done; and based on what they had done  
3 at the time, I feel it was appropriate.

4 Now, we can send it back to them with new  
5 information and let them do their job again and see if  
6 they come up with something different.

7 CHAIRMAN PACK: Mr. Schirtzinger.

8 MR. SCHIRTZINGER: I agree with Mr. Fischer's  
9 idea of taking it back to the Planning Commission.  
10 This memorandum, you know, does state in favor of the  
11 Worlins as far as a change in the Code, as far as Mr.  
12 Weber stating that the Code -- his interpretation of  
13 the Code is different than what members of the  
14 Planning Commission had supposedly interpreted. Plus  
15 he's also stating that, you know, some of the parts of  
16 the Code is incorrect.

17 It's my opinion that if we send it back to  
18 the Planning Commission, if they decide that, you  
19 know, they wish to accept his legal opinion and decide  
20 in favor of the Worlins, then this is all over. If  
21 they decide, hey, this needs to, you know, go back to  
22 the BZA or, you know, we do not approve the fence,  
23 then obviously, if this is appealed again, we would  
24 have to look at that evidence again and look at the  
25 legal opinion.



1 I don't feel that it is our job to consider  
2 the legal opinion. Like I said, right or wrong, I  
3 don't feel -- I feel that's a decision for the  
4 Planning Commission to make, not for us to make. I  
5 agree with Mr. Fischer, our decision is to state did  
6 the Planning Commission do something wrong. Is there  
7 something unjust.

8 I know the Worlins did put Article 12 from  
9 the Board of Zoning and Building Appeals, Section C,  
10 the Board shall decide in cases to afford justice and  
11 to avoid unreasonable hardship to citizens. In my  
12 opinion, I don't feel that there's a hardship to Mr.  
13 and Mrs. Worlin. This memorandum here might change  
14 that, but I don't feel that that's our decision to  
15 make. I believe that's the Planning Commission's  
16 decision to make.

17 CHAIRMAN PACK: Mrs. Mecozzi.

18 MR. FISCHER: Can I follow up on that?

19 I believe, you know, this is a very difficult  
20 application. And I've heard a number of these as the  
21 testimony that the Worlins presented, I think we've  
22 heard all those. And I also tonight stated that,  
23 yeah, there was confusion in the Code and Mr. Weber  
24 and the Planning, and we asked them for their opinion  
25 of it and it was supposed to have been changed to

1 clear all that up. Obviously, it's still not clear  
2 when Mr. Weber comes back with a memorandum like this.  
3 And that's, again, why I would propose and suggest  
4 strongly that we send it back to Planning, let them  
5 work with Mr. Weber and let them come up with some  
6 either rewording or justification why it shouldn't be  
7 changed. I don't think it's up to this board to  
8 change the Code, make recommendations that the Code be  
9 changed like we have in the past. In this case we  
10 have the support of the attorney.

11 CHAIRMAN PACK: Mrs. Mecozzi.

12 MS. MECOZZI: I don't know that I have  
13 anything new to add.

14 I agree with Mr. Fischer and Mr.  
15 Schirtzinger. I also agree with some of the things  
16 that you said in terms of our role and looking at the  
17 same material, the same information that Planning  
18 Commission and looking at things on the same plane.

19 Having said that, I also would like to know  
20 if there is new information, because maybe that is a  
21 rationale for remanding it to the Planning Commission.  
22 I asked that question, and we got the answer to that.

23 Looking at the information that's presented  
24 to the PC, again, I think it's our job. Not  
25 necessarily looking at pending legislation or the

1 atmosphere that's surrounding that or the newspaper or  
2 anything of that information I don't think is  
3 applicable to us. It's something that we should be  
4 very careful to avoid using in our deliberations.

5 I agree that the timing of the memo is  
6 unfortunate, because the Planning Commission didn't  
7 have the benefit of the official written opinion when  
8 it made its decision in November, and would agree with  
9 the Board that if we felt this was pertinent  
10 information that the PC should reconsider, then I  
11 would support remanding it.

12 I also agree with Mr. Fischer that it's more  
13 appropriate for the Planning Commission to work out  
14 all of the issues that go with a conditional variance.

15 Relationship with the neighbors, what  
16 everyone is comfortable with, making the -- or asking  
17 the applicant to commit to deadlines or restrictions,  
18 I don't think it's appropriate for the BZA to do those  
19 things. So that would be a second reason that I would  
20 support remanding it.

21 I would ask a question, and this may be a  
22 legal question or something that the staff or clerk  
23 could answer.

24 Are we able to take action on the appeal and  
25 in the same action remand it for reconsideration so

1 that the applicant does not have to go through the --  
2 doesn't have to start again through the process or  
3 reapply or pay fees?

4 THE CLERK: Your action to remand would send  
5 the application as it stands back to Planning  
6 Commission.

7 MR. FISCHER: And if we send it back and  
8 remand it, I believe that we tell them to look at the  
9 new information that's come up, the legal rendering by  
10 the city attorney, we can look at that. We can look  
11 at the conditional use -- I mean conditions or  
12 whatever else. And we can put all that in our motion.

13 We can tell them what to look at and what  
14 (inaudible) based on what they do.

15 MS. MECOZZI: And if the Planning Commission  
16 maintains their position of denying, does the  
17 applicant have to reapply if --

18 MR. FISCHER: No.

19 MS. MECOZZI: -- he chooses to come to the  
20 BZA again?

21 THE CLERK: He would have to appeal again.

22 MR. MAZZA: Mr. Pack, may I have an  
23 opportunity to address on this issue?

24 CHAIRMAN PACK: Mr. Mazza, would you let us  
25 kind of work through this just for a couple of

1 minutes?

2 MR. MAZZA: Sure. Okay.

3 CHAIRMAN PACK: I can see the endless circle  
4 that would come about. And I -- as I said, I would  
5 vote in favor of the appeal or I would vote in favor  
6 of a conditional appeal. Remanding it back to  
7 Planning Commission I think throws the Worlins. I'm  
8 not sure that's the thing to do. I did say that  
9 Planning Commission did not have the benefit of the  
10 memorandum.

11 So absent of that, the Chair would entertain  
12 a motion to remand this back to Planning Commission  
13 with language to review their actions in light of the  
14 memorandum of February 6th by the city attorney.

15 MR. FISCHER: Would you like us to have them  
16 look at conditions?

17 CHAIRMAN PACK: I think that would --

18 MR. FISCHER: Just in case they disagree with  
19 this or whatever. That would be another avenue.

20 CHAIRMAN PACK: I think that's -- I think  
21 that's a possibility. You know, I also am cognizant  
22 of the fact that this is the third time these people  
23 have appealed this. They've been to the Planning  
24 Commission three times, they've been to the BZA three  
25 times; and they may want to seek relief outside the

1 jurisdiction of the City of Gahanna, at which point,  
2 upon the approval the Board, I'd like to know what Mr.  
3 Mazza has to say.

4 MR. MAZZA: Thank you. I believe if you  
5 review your charter and review the codes, as Mr. Pack  
6 mentioned, I think you have -- I know you have the  
7 ability to remand this matter to the Planning  
8 Commission. But I believe you also further have the  
9 ability to remand it to the Planning Commission not  
10 with the request that they merely read a legal  
11 opinion, but that they take the legal opinion, which  
12 they did not have before, pursuant to Article 10 they  
13 act upon this application in light of what has been  
14 written in the legal opinion. That is within your  
15 purview.

16 So you don't just remand it. You remand it,  
17 as they do out of any court of appeals, you remand it  
18 with a specific instruction to the lower court and you  
19 say, this is what we want you to do.

20 I think Mr. Fischer is right. I think the  
21 actual mechanics of putting this thing into effect is  
22 probably the Planning Commission. But I think this  
23 board orders the Planning Commission what this board  
24 decides it wants it to do; and that is, you can order  
25 it to issue a conditional variance, you can -- you can

1 just say, you look at the legal opinion and you follow  
2 the legal opinion pursuant to Article 10. You tell  
3 them what they have to do. Mechanically they do it.

4 What you cannot do is throw this back and ask  
5 them to rehash it. We already know what the Planning  
6 Commission thinks of the legislation. We already know  
7 what the Planning Commission has said about this  
8 controversy.

9 I beg to differ with Mr. Schirtzinger. I  
10 know you haven't done most --

11 CHAIRMAN PACK: Thank you, Mr. Mazza.

12 MR. MAZZA: But that's what I think you can  
13 do.

14 CHAIRMAN PACK: Thank you.

15 MR. FISCHER: I think we should remand it  
16 down, but I don't at this point feel comfortable  
17 telling them to specifically grant the variance. I  
18 don't feel comfortable with that. I think we have a  
19 board that has developed the Code, that the Board  
20 reviews the Code to enforce (inaudible), that we've  
21 got a problem with this, there seems be an  
22 inconsistency or whatever, please look into it and  
23 come back with your -- make a recommendation of how  
24 you're going to change it or whatever.

25 I don't think -- I understand what Mr. Mazza

1 said. I think we do have that right to say, do this;  
2 but I'm not about here -- I'm not about to do that in  
3 this case, because I think there's more to it than  
4 just a legal opinion.

5 Obviously when you have a 4/3 -- I don't want  
6 to get into politics here, but a 4/3 vote by the  
7 council and a veto by the mayor, there's more to it  
8 than just a legal opinion (inaudible).

9 So I'm not going to make a change in the Code  
10 by sending this down to them and telling them to.

11 CHAIRMAN PACK: Mr. Schirtzinger, any  
12 comments?

13 MR. SCHIRTZINGER: No. I agree with Mr.  
14 Fischer's statements.

15 CHAIRMAN PACK: Ms. Mecozzi.

16 MS. MECOZZI: I agree with Mr. Fischer, just  
17 to start, that I'm not comfortable ordering the  
18 Planning Commission to grant a conditional variance,  
19 because I think that there are several things that  
20 they, the applicant, need to take into consideration  
21 to work out what those conditions -- if it's  
22 appropriate for a conditional variance and what those  
23 might be.

24 As I stated earlier, based upon the date of  
25 the memorandum, I'm okay with remanding it to the



1 Planning Commission. However, I would first support  
2 or ask the Board to consider acting tonight. The  
3 applicant has the benefit of our vote.

4 You stated what you thought this board had  
5 the authority to do. You didn't state what the  
6 applicant's preference was. I am interested in that.  
7 You know how we would vote. You know based on the  
8 earlier discussion that if we remand it and the  
9 Planning Commission upholds their decision, we're back  
10 in this circle again, as Mr. pack has indicated -- I'm  
11 sorry, yeah, Pack. Yes or no.

12 MR. MAZZA: They would -- they would agree to  
13 a conditional variance. That was already broached  
14 with the Planning Commission before. We'll take the  
15 fence down when we move. We've already said they  
16 would do that in workshops, but -- and they remain  
17 willing to do that.

18 MS. MECOZZI: You've discussed a conditional  
19 variance already? That's new information, I mean to  
20 me.

21 MS. CHRYSLER: The Worlins made -- they made  
22 an offer to take the fence down in the Planning  
23 Commission workshop and threw that out to the Planning  
24 Commission to consider.

25 MS. MECOZZI: Okay. Knowing that the

1 Planning Commission then did consider that, I would  
2 support this board voting tonight to uphold or  
3 overturn the PC.

4 CHAIRMAN PACK: Okay. Mr. Fischer.

5 MR. FISCHER: I'd like to ask the Worlins,  
6 knowing how the vote is going to go without us voting  
7 yet, do you have any preference whether we remand this  
8 back or just take a vote on it?

9 MR. MAZZA: I would prefer that you remanded  
10 it back with instructions, as I suggested before, that  
11 they follow the Code.

12 MR. FISCHER: Okay.

13 MR. MAZZA: Because -- well, never mind.

14 CHAIRMAN PACK: The Chair would entertain --  
15 I think it's time that we kind of bring this to a  
16 head. Let's go through it systematically.

17 The Chair would entertain a motion to remand  
18 this back to Planning Commission with, for lack of  
19 better word -- words, to grant the appeal -- or grant  
20 the fence variance pertinent to the memorandum by the  
21 city attorney.

22 Do I have a motion for that?

23 MR. FISCHER: I can't make that motion. I  
24 can make a motion that they take this --

25 CHAIRMAN PACK: Well, let's just stick with

1 that first.

2 Do you -- would you make a motion for that?

3 MR. FISCHER: Would you support that?

4 MS. MECOZZI: No.

5 CHAIRMAN PACK: Okay. Mr. Mecozzi (sic.).

6 MR. SCHIRTZINGER: No, I would not support

7 that.

8 CHAIRMAN PACK: Okay. I would support that.

9 Do I have a second?

10 (No audible response.)

11 CHAIRMAN PACK: Okay. There being no second,

12 then that's out.

13 The Board then -- the Chair would entertain a

14 motion that we remand this back to the Planning

15 Commission to review the memorandum by the city

16 attorney for further evaluation.

17 MR. FISCHER: Can I add to that?

18 CHAIRMAN PACK: Sure.

19 MR. FISCHER: I think they need to do more

20 than review. They need to look at the Code and take

21 into account the memorandum.

22 THE CLERK: I'm sorry, we are in motion mode

23 and you're making a motion, not discussion.

24 MR. FISCHER: No, he didn't make a motion.

25 CHAIRMAN PACK: There's was no second to the

1 motion.

2 THE CLERK: I thought you asked for a motion  
3 again. Okay.

4 MR. FISCHER: I would say that if the motion  
5 was made, that it would be more specific to the  
6 Planning Commission to take the memo that Tom Weber  
7 put out, look at the Code, see how -- you know, see  
8 how the Code would be changed or how that affects  
9 that, and then review this case again and make a  
10 decision.

11 CHAIRMAN PACK: Okay. Is there a --

12 MR. FISCHER: Or we can have them come back  
13 to us so we don't have to go through another appeal  
14 and tell us, you know, looking at this memo what their  
15 position is.

16 MS. MECOZZI: Okay. That's -- could we  
17 elaborate on that, because that is what I was trying  
18 to get at or understand in terms of stopping -- if we  
19 send it back and they maintain their position and then  
20 they come back to us, can we have a dual action like  
21 that where we remand it for their consideration  
22 enabling us to take action without the formal process.

23 MR. FISCHER: Yeah. We can send it back to  
24 them to take a look at this memorandum and how that  
25 would affect the Code and, specifically in this case,

1 if they have any changes, send it back to us or come  
2 in here to tell us -- I'd rather to see it in  
3 writing -- how -- why this would not change their  
4 opinion on this. You know, are they going to change  
5 the Code? You know, why is this not valid to change  
6 the Code.

7 Obviously, this says the Code should be  
8 changed. Until the Code gets changed, it's not  
9 changed.

10 CHAIRMAN PACK: And subsequent to that, why  
11 is it, why is it not. I would put in there also, why  
12 it does not qualify as a hardship for the Worlin,  
13 which is one of the predicates for qualification for a  
14 variance.

15 MR. FISCHER: Are you asking them to say why  
16 this is not a hardship, why having a puppy or some of  
17 these other things that are hardships?

18 CHAIRMAN PACK: Well, I would -- I would  
19 want -- if we're going to remand it back to Planning  
20 Commission with that legal memorandum by the city  
21 attorney, recognized under Article 10 of the City  
22 Charter, in all their fairness, they have not seen  
23 that memorandum --

24 MR. FISCHER: Right.

25 CHAIRMAN PACK: -- in conjunction with this

1 case. Because the date of that was February 6th.

2 MR. FISCHER: How would you want to word such  
3 a motion? Do you have any ideas?

4 CHAIRMAN PACK: To -- basically to have the  
5 Planning Commission reevaluate the variance  
6 application of the Worlins based on new information of  
7 the city attorney's memorandum of February 6th and  
8 provide information and details as to the positives or  
9 negatives of this not qualifying or qualifying as a  
10 hardship to qualify for a variance.

11 I know that's discombobulated, but I'd like  
12 to see what the Planning Commission says.

13 MR. FISCHER: There's more in this than just  
14 a hardship. There's also inconsistencies of what they  
15 talk about in the Code and the fact that --

16 CHAIRMAN PACK: Which is part of the Worlins'  
17 appeal.

18 MR. FISCHER: Okay. And we want them to get  
19 back to us a time certain?

20 CHAIRMAN PACK: I would give them -- I don't  
21 know. What -- Madam Clerk, has this come up before?

22 THE CLERK: No, it has not. And without the  
23 benefit of the city attorney, you can affirm, you can  
24 reverse, you can modify, or you can remand with  
25 instructions to the body for further consideration

1 and/or action.

2 If you're closing out your action and  
3 remanding it back, Planning Commission makes the  
4 decision. And if it comes back to you, it is as a  
5 separate appeal again.

6 MR. FISCHER: Shouldn't remand. We should  
7 request that they look at this memo, take this memo  
8 into account, and tell us if, why, when, how this  
9 would affect the Code or will not affect the Code.

10 CHAIRMAN PACK: Not the Code, but affect the  
11 Worlins' request for variance.

12 MR. FISCHER: Okay. I agree. That way it's  
13 not a remand, it's a request for them to provide us  
14 with information. Sticky (inaudible).

15 MS. MECOZZI: Could I ask you to restate the  
16 four or five specific actions?

17 THE CLERK: In any appeal of an order,  
18 adjudication, or decision the Board may affirm,  
19 reverse, modify, or remand with instructions to the  
20 city official, employee, or body for further  
21 consideration and/or action.

22 CHAIRMAN PACK: All right. Let's -- the  
23 Chair would entertain a motion to take a vote to  
24 affirm or deny the appeal tonight.

25 MS. MECOZZI: Second.

1 THE CLERK: No, no. You can't make a motion  
2 to affirm or deny.

3 CHAIRMAN PACK: I mean affirm -- yes. The  
4 Chair would entertain a motion to approve the  
5 appeal --

6 THE CLERK: No. Mr. Weber and your rules  
7 state that the motion has to be in the positive.

8 So your motion would be to uphold the  
9 decision of the Planning Commission.

10 CHAIRMAN PACK: Okay.

11 THE CLERK: If you want to uphold Planning  
12 Commission, you vote yes. If you wish to overturn  
13 Planning Commission, you vote no.

14 CHAIRMAN PACK: Okay. The Chair would  
15 entertain a motion to uphold the Planning Commission,  
16 to take a vote to uphold the -- to uphold the decision  
17 of the Planning Commission.

18 MS. MECOZZI: So moved. Are you requesting a  
19 motion?

20 CHAIRMAN PACK: I'm requesting a motion. I'm  
21 just trying to make progress.

22 MR. FISCHER: Why are we going that way?

23 CHAIRMAN PACK: To rule that out. If we want  
24 to deal with this tonight, we vote up, we vote in  
25 favor to uphold the Planning Commission or to deny the



1 Planning Commission or not uphold the Planning  
2 Commission. And then if that -- if that motion  
3 passes, then we'll vote.

4 MR. FISCHER: I'd rather remand it back and  
5 let them take into the account the new information.

6 MS. MECOZZI: It appears that there's a staff  
7 member that would like to comment, Mr. Chair.

8 CHAIRMAN PACK: Absolutely.

9 MS. CHRYSLER: With all due respect, I'd like  
10 to make a recommendation. It sounds like you're  
11 asking for more information from the Planning  
12 Commission. It might be a suggestion, if it's  
13 possible with the rules of procedures, to postpone  
14 your decision and ask for a Planning Commission member  
15 to be present for interview or comment.

16 MR. FISCHER: Good point.

17 CHAIRMAN PACK: To recess.

18 MR. FISCHER: Another recess, yeah.

19 MR. MAZZA: No.

20 MS. MECOZZI: Except we would need the  
21 consensus or the opinion, the majority of the Board to  
22 know --

23 CHAIRMAN PACK: Well, we had the chairman --  
24 Mr. Peck was present on the 16th. We could have asked  
25 him questions at that time.

1 MR. FISCHER: This wasn't around on the 16th.

2 CHAIRMAN PACK: That's correct.

3 MR. MAZZA: And he's no longer a member of  
4 the Commission.

5 CHAIRMAN PACK: He's not a member anymore.

6 MR. MAZZA: Mr. Pack, I do this stuff for --  
7 can I make a suggestion?

8 CHAIRMAN PACK: Sure.

9 MR. MAZZA: I'm also on a number of boards.  
10 I think to accomplish what I hear you're  
11 trying to accomplish, what you can do is make a motion  
12 to remand back to the Planning Commission for  
13 reconsideration predicated upon a question which you  
14 have, an instruction and a question. And that is  
15 to -- the question or the instruction is to reexamine  
16 the application for a variance in the context of the  
17 legal opinion provided by Mr. Weber in the context of  
18 Article 10 of the City Code and, as you suggested, and  
19 to determine whether or not based upon that opinion in  
20 the context of this case there are not now sufficient  
21 grounds to grant a conditional variance, at least a  
22 variance or a conditional variance. Then they can  
23 respond in that fashion.

24 But you move it -- you move to remand back  
25 for reconsideration and then you give them a question

1 that you want them to consider.

2 If I may. Thanks.

3 CHAIRMAN PACK: I -- it's my impression of  
4 this that I'm getting from this board that we need to  
5 clarify the feelings of the Planning Commission in  
6 light of the memorandum issued by the city attorney of  
7 which they did not have access to. And so I think in  
8 light of that, the Chair would entertain a motion to  
9 remand this back to Planning Commission and review the  
10 -- their decision on the Worlins' appeal in light of  
11 the memorandum dated February 6th by the city attorney  
12 and how that would -- that would pertain to the  
13 request for the variance by the Worlins.

14 MR. MAZZA: And in the context of Article 10  
15 of the City Code.

16 CHAIRMAN PACK: I think that's fair. And in  
17 the context of Article 10 of the city.

18 THE CLERK: City charter.

19 CHAIRMAN PACK: The city charter.

20 MR. FISCHER: Did you make the motion? Don't  
21 expect me to repeat it.

22 CHAIRMAN PACK: I just made a motion to that  
23 effect.

24 Court Reporter, would you be able to read  
25 that back for clarification?

1 MADAM COURT REPORTER: It would take me -- I  
2 would need a break to get it all together.

3 CHAIRMAN PACK: Let's see if we can do it in  
4 a more concise way.

5 The Chair would entertain a motion to remand  
6 this appeal back to Planning Commission with an  
7 explanation -- with a review request of Planning  
8 Commission -- Planning Commission in light of the city  
9 attorney's memorandum of February 6, 2003 and also in  
10 light of Article 10 of the city charter.

11 Do I have a motion?

12 MR. SCHIRTZINGER: So moved.

13 CHAIRMAN PACK: Do I have a second?

14 MR. FISCHER: A second.

15 CHAIRMAN PACK: Discussion?

16 MR. FISCHER: Is there anything that the  
17 Worlins would like to add to that or retract from  
18 that? Revise the motion or anything?

19 MR. DELLIGATTI: More for my own  
20 clarification.

21 Does that mean everything, including the  
22 merits, basically the vetoes? Is all of that called  
23 into play here, or are you --

24 CHAIRMAN PACK: I don't think you have --  
25 sir, I don't think you have the chair. You're not

1 being recognized right now.

2 MR. FISCHER: I did motion to him.

3 CHAIRMAN PACK: Oh, you did?

4 MR. DELLIGATTI: Scott Delligatti. I live  
5 here in Gahanna, 689 Tim Tam.

6 MR. FISCHER: Your question?

7 MR. DELLIGATTI: Does it mean that everything  
8 -- are we just focusing in and saying the city  
9 attorney is the only available information that can be  
10 added to this, or are we saying any and all  
11 information and any and all data, the Planning  
12 Commission has to go back and review it all?

13 CHAIRMAN PACK: No. Just the city attorney.

14 MR. FISCHER: Just the memorandum of February  
15 6th.

16 CHAIRMAN PACK: The memorandum of February  
17 6th.

18 MR. DELLIGATTI: But why would you limit it?  
19 I mean, by not open it to everything if you're going  
20 to remand it back?

21 MR. FISCHER: What's your question?

22 MR. DELLIGATTI: I would ask that question.  
23 Why wouldn't you give every bit of information that  
24 same opportunity?

25 CHAIRMAN PACK: Well, that would be my

1 extent, to let them look at this in the light of the  
2 memorandum in Article 10, and that's it.

3 MR. FISCHER: When you say everything, are  
4 you talking about the package, the appeal package?

5 MR. DELLIGATTI: No. I'm talking like, you  
6 know, data. I'm talking like the mayor's response to  
7 the -- I'm sure there's some charter that says the  
8 mayor has the same, I guess, jurisdiction as the city  
9 attorney since he's representing -- I don't know that.  
10 I'm not an attorney. But why wouldn't you take her  
11 legal rendering as being the city CEO, for lack of a  
12 better word? She runs the city.

13 CHAIRMAN PACK: Okay. Thank you very much.

14 MR. FISCHER: I don't disagree with that.  
15 And I've said that before. You've got this memo from  
16 the city -- I mean from the city attorney that says  
17 one thing. Obviously, you've got three members of the  
18 council and the city administration that had this memo  
19 and disagreed with it. So --

20 CHAIRMAN PACK: Well, we have a motion on the  
21 floor. Obviously, we're in the discussion phase.

22 Do we have any more discussion on the motion  
23 on the floor?

24 MR. FISCHER: Make an amendment -- a motion  
25 to amend.

1 MS. MECOZZI: I wouldn't support an  
2 amendment.

3 MR. FISCHER: You wouldn't support an  
4 amendment?

5 CHAIRMAN PACK: I wouldn't either.  
6 Would the clerk please call the roll.

7 THE CLERK: Schirtzinger.

8 MR. SCHIRTZINGER: Yes.

9 THE CLERK: Fischer.

10 MR. FISCHER: Yes.

11 THE CLERK: Mecozzi.

12 MR. MECOZZI: Yes.

13 THE CLERK: Pack.

14 CHAIRMAN PACK: Yes.

15 - - -

16 Thereupon, at 8:20 p.m. on February 27, 2003,  
17 the public hearing was concluded.

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STATE OF OHIO :  
: SS.  
COUNTY OF FRANKLIN :  
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I, Jennifer L. Parish, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing is a true, correct, and complete transcript of the public hearing before the City of Gahanna Zoning and Building Appeals taken on February 27, 2003, as reported by me in stenotype and transcribed from my stenographic notes.

DATED this 4th day of March, 2003.

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JENNIFER L. PARISH, RPR/NP.  
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