

Reklamation Inc.

Presentation to Gahanna BZA

August 10, 2017

History of the Property

- Petitioner purchased the property at issue “The Landfill” in 2009. Petitioner expressed its intention to remediate the property and sell it to another investor. While it was remediating, Petitioner needed to continue to do what it had done at this site and others (buy/sell dirt, gravel, rocks, crush same with contractors).
- Petitioner applied for conditional use permits to stack material over 10'. While time passed and Petitioner continued to spend significant cash on EPA, engineers, and remediation, the Planning Commission continued to demand answers that Petitioner did not have. For instance, when the site would be totally remediated, when the EPA would be satisfied, etc.
- Throughout the process, Petitioner had been generous with, but mindful of the money it spent on this project.
- Decision was made to apply for a variance so that Petitioner could focus on recouping funds spent on remediation and attempt to bring the Reclamation venture back into the black.

Procedural Events

- Petitioner, Reclamation, set forth specific evidence and reasoning for the proposed variance in its application for the same that it filed in or around February of 2017.
- The Planning Commission was provided the application prior to the public hearing, for consideration. A public hearing was set as required by GCC 1131.04, which occurred on May 10, 2017. No neighbors or other “interested” property owners appeared, despite having been put on notice.
- In fact, as evidenced by the Record, despite having been provided with data on all factors that needed to be considered (within the variance application), the Commission failed to ask any questions or discuss any of the factors upon which a decision about a variance must be based. Instead, the Commission focused on the change in plans for the site and the pace at which the EPA was moving on the NFA (no further action) letter, a process which petitioner cannot control.

Gahanna Code § 1131.04 - Factors to be considered when granting a Variance

- There are special circumstances or conditions applying to the land, building or use referred to in the application.
- The granting of the variance is necessary for the preservation and enjoyment of substantial property rights.
- The granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.

FACTOR 1- Special Circumstances or Conditions

- This property is a closed landfill under a continuing O.A.C. 3745-27-13 authorization from the Ohio EPA with rights to stockpile concrete, asphalt and dirt for use in the closure of the property and retail (under section 2). In addition, the owner has spent hundreds of thousands of dollars on remediating this parcel as well as obtaining Ohio Water Development Authority (OWDA) funding to provide further watershed testing to ensure no contaminants are leaving the site.
- Deputy Director of Planning and Development Michael Blackford, who testified at the Planning Commission Meeting, acknowledged that this property is never going to be appropriate for the type of development that has occurred on some neighboring parcels – and now that the south runway flight path at John Glenn airport has been diverted directly over the site, it will never be a high density area.
- City Engineer Robert Priestas, a city staff person, testified at the Planning Commission Meeting that the public access to the property is via Leavitt Service Road, but that road dead ends at a 25-30 foot bluff. Therefore, the service road doesn't actually provide practical access to the property.

FACTOR 2 - Preservation of Property Rights

- This factor boils down to being able to use the property productively. Because this property is inaccessible from a public road, sale or lease is impractical until easements and rights-of-way along Bricklawn Road can be negotiated.
- Further, it was the petitioner that invested immensely into getting this property to the stage where it can be developed at all. It was, quite literally, a pile of garbage when the petitioner bought it.
- The petitioners are only asking for a formal extension of the conditional use that has been granted for years, as they have realized that they will need to continue it going forward to complete the environmental work and recover costs associated with development.

FACTOR 3- Safety and Health of Neighboring Property

- If the Petitioner's use truly affects the safety and health of neighboring property it has only been a positive one.
- Certainly, if this requested use posed a threat to the safety and health of the neighbors, it would not have been permitted or by:
 - the Planning Commission as a conditional use for the last seven years;
 - the Ohio EPA under the 3745-27-13 authorization; OR
 - by the City of Gahanna, which passed a resolution encouraging this enterprise, thus allowing OWDA to provide financial assistance to Geiger Excavating for making the remediation of the property financially feasible.

The Hearing on May 10, 2017

- The minutes of the Planning Commission are telling: there was almost no discussion of the elements necessary to establish a zoning variance.
- Discussion was focused on why the NFA process has been taking so long and why the petitioners were suddenly asking for a permanent variance.
- Though these questions are beside the point, the answers are simple: environmental science requires extensive and detailed data which have not all be collected yet, and it is the petitioners' prerogative to change its plans for its property – the Planning Commission seems to have forgotten that it is not the property owner.

The Hearing (cont.)

- The fact of the matter is this: if the Planning Commission is going to determine that it is going to deny the variance, it needs to tell the petitioner why that is, with credible evidence, based on the factors outlined in the Gahanna City Code.
- There was no mention of the criteria upon which a variance can be granted – only the vague assertion that with further investment into a more detailed site plan, the Commission would be open to review of the property.
- This suggestion gives no relief to petitioners, because they could invest heavily in having an architect and engineer design a site plan for this purpose only to be summarily dismissed by the Planning Commission Again.

Other Factors to Consider

- It is telling that there has never been an opponent to one of Reklamation's petitions in the years that they have been routinely appearing before the Planning Commission.
- The only ways to get to the property are across a deeded railroad easement and/or across a neighbor's property.
- This property has been subject to this use for 7 years.
- This property was zoned industrial when it was purchased, and subsequently was rezoned OCT.

What are we requesting of the BZA?

- **Reverse the denial by the PC and find that the PC did not act in accordance with the zoning ordinance Ch. 1131.01 et seq.**
- In the alternative, remand back to PC with an order to hold another hearing wherein the factors outlined in the law are required to be discussed in an open forum, giving the PC the ability to grant the variance.

