



City of Gahanna

200 South Hamilton Road
Gahanna, Ohio 43230

Meeting Minutes

Board of Zoning and Building Appeals

Lorne Eisen, Chair

Paul D. Bryson, Vice Chair

Ross Beckmann

Donald Jensen

Debbie Stefanov

Jeremy A. VanMeter, Clerk of Council

Thursday, January 26, 2023

6:30 PM

City Hall, Council Chambers

Organizational Meeting began at 6:30 pm; Regular meeting & Public Hearing followed

A. OATH OF OFFICE:

Paul D. Bryson for the unexpired term ending December 31, 2024

Ross Beckmann for the term ending December 31, 2025

Lorne Eisen for the term ending December 31, 2025

The Honorable Mayor Laurie A. Jadwin administered the Oath of Office to each of the three BZBA members.

B. CALL TO ORDER (Organizational): Pledge of Allegiance & Roll Call

The City of Gahanna Board of Zoning and Building Appeals met on Thursday, January 26, 2023 in Council Chambers. The Honorable Mayor Laurie A. Jadwin called the organizational meeting to order at 6:35 PM. The agenda for the meeting was published on January 23, 2023.

Present 5 - Ross Beckmann, Paul Bryson, Lorne Eisen, Donald W. Jensen, and Debbie Stefanov

C. ELECTION OF CHAIR:

Mayor Jadwin opened nominations for Chair to serve through December 31, 2023.

Mr. Jensen nominated Mr. Eisen to serve as Chair for 2023. Mr. Eisen accepted the nomination. Hearing no other nominations for Chair, Mayor Jadwin closed nominations.

A motion was made by Stefanov, seconded by Bryson, to elect Lorne Eisen as Chair of the BZBA for 2023. The motion carried by the following vote, whereupon Mayor Jadwin turned the meeting over to the newly elected Chair:

Yes: 5 - Beckmann, Bryson, Eisen, Jensen and Stefanov

D. ELECTION OF VICE CHAIR:

Chair Eisen opened nominations for Vice Chair to serve through December 31, 2023.

Mr. Eisen nominated Ms. Stefanov to serve as Vice Chair for 2023. Ms. Stefanov declined the nomination.

Mr. Eisen nominated Mr. Bryson to serve as Vice Chair for 2023. Mr. Bryson accepted the nomination.

Hearing no other nominations for Vice Chair, Chair Eisen closed nominations.

A motion was made by Jensen, seconded by Beckmann, to elect Paul Bryson as Vice Chair of the BZBA for 2023. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Eisen, Jensen and Stefanov

E. ADJOURNMENT OF ORGANIZATIONAL MEETING:

With no further business before the Board during its organizational meeting, the Chair adjourned the meeting at 6:39 PM.

A. CALL TO ORDER (Regular):

The City of Gahanna Board of Zoning and Building Appeals met on Thursday, January 26, 2023 in Council Chambers. Chair Lorne Eisen called the regular meeting to order at 6:40 PM. The agenda for the meeting was published on January 23, 2023.

Present 5 - Ross Beckmann, Paul Bryson, Lorne Eisen, Donald W. Jensen, and Debbie Stefanov

B. ADDITIONS OR CORRECTIONS TO THE AGENDA:

See transcription attached in BZA-0001-2022.

C. APPROVAL OF MINUTES:

See transcription attached in BZA-0001-2022.

2023-0019 BZBA Minutes 1.20.2022

A motion was made by Jensen, seconded by Stefanov, that the Minutes be Approved. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Eisen, Jensen and Stefanov

D. ADMINISTERING THE OATH:

See transcription attached in BZA-0001-2022.

E. APPEALS - PUBLIC HEARINGS:

See transcription attached in BZA-0001-2022.

BZA-0001-2022 To consider an appeal of a Planning Commission denial of CU-0009-2022, for property located on Johnstown and Morse Roads; Parcel IDs: 025-011244, 025-011243 and 025-011226; Current Zoning NC; Sheetz Gahanna; Sarah Gold, applicant.

A motion was made by Bryson, seconded by Jensen, to find in favor of the Appellant.

Yes: 4 - Beckmann, Bryson, Jensen and Stefanov

No: 1 - Eisen

F. UNFINISHED BUSINESS:

None.

G. NEW BUSINESS:

See transcription attached in BZA-0001-2022.

RULES-0005-20 Rules of Procedure for BZBA - Proposed Redline 2023
23

A motion was made by Jensen, seconded by Beckmann, that the Rules of Procedure be Adopted as Amended. The motion carried by the following vote:

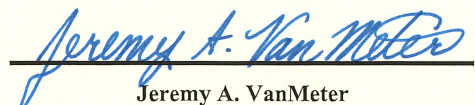
Yes: 5 - Beckmann, Bryson, Eisen, Jensen and Stefanov

H. POLL MEMBERS FOR COMMENT:

None.

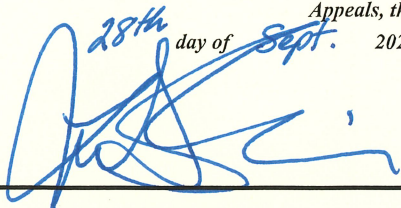
I. ADJOURNMENT:

The meeting adjourned at 9.28 PM. See transcription attached in BZA-0001-2022.



Jeremy A. VanMeter
Clerk of Council

*APPROVED by the Board of Zoning and Building
Appeals, this*
28th day of Sept. 2023.



Lorne Eisen

1 BOARD OF ZONING AND BUILDING APPEALS

2 CITY OF GAHANNA, OHIO

3 _____
4 SHEETZ GAHANNA,

5 Appellant,

6 v.

Case No.

7 PLANNING COMMISSION, CITY OF

BZA-0001-2022

8 GAHANNA,

9 Appellee.
10 _____

11 HEARING

12 DATE: Thursday, January 26, 2023

13 TIME: 6:40 p.m.

14 BEFORE: Lorne Eisen, Chairman

15 LOCATION: Gahanna Zoning Appeals Board

16 200 South Hamilton Road

17 Gahanna, OH 43230

18 REPORTED BY: Nic Joseph Saul, Notary Public

19 JOB NO.: 5690411
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A P P E A R A N C E S

ON BEHALF OF APPELLANT SHEETZ GAHANNA:

MICHAEL T. SHANNON, ESQUIRE
Underhill & Hodge
8000 Walton Parkway, Suite 260
New Albany, OH 43054
mike@ohlawfirm.com

CHRISTOPHER L. INGRAM, ESQUIRE
Vorys Sater Seymour & Pease LLP
52 East Gay Street, PO Box 1008
Columbus, OH 43215
cingram@vorys.com

ON BEHALF OF APPELLEE CITY OF GAHANNA:

RAYMOND J. MULARSKI, ESQUIRE
Gahanna City Government Office, Zoning & Building
Appeals Board
200 South Hamilton Road
Gahanna, OH 43230
ray.mularski@gahanna.gov

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A P P E A R A N C E S (Cont'd.)

ON BEHALF OF APPELLEE PLANNING COMMISSION:

MATTHEW ROTH, ESQUIRE

Gahanna City Government Office, Zoning & Building
Appeals Board

200 South Hamilton Road

Gahanna, OH 43230

ray.mularski@gahanna.gov

ALSO PRESENT:

Ross Beckmann, BZBA Member

Paul Bryson, BZBA Member

Donald Jensen, BZBA Member

Debbie Stefanov, BZBA Member

Michael Tamarkin, Chair, Planning Commission

Michael Blackford, Director of Planning

Thomas J. Wester, Planning Commission Member

Michael Suriano, Planning Commission Member

Jeremy A. VanMeter, Clerk of Council

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16	WITNESS(ES):	DX	CX
17	DREW LAURENT		
18	By Mr. Ingram	51	
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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Appellant:		
Exhibit 1	Record on Appeal	40/88
Exhibit 2	Case No. BZA-1-2022 Appeal of Conditional Use (CU-9-2022) Gahanna Ohio Board of Zoning and Building Appeals Presentation (Exhibit 2 attached.)	40/88

NO.	DESCRIPTION	ID/EVD
Appellee:		
(None marked.)		

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P R O C E E D I N G S

THE CHAIRMAN: Any additions or corrections to the agenda, any changes, please state them now by anyone in the room. Anything? Chairman? Okay. We have no additions or corrections to the agenda.

We now move forward with the approval of the last meeting minutes. Those last meeting minutes were from actually our organizational meeting almost a year -- or just over a year ago on January the 20th.

There were no -- there was not a hearing of any sort. It was elections and, again, the organizational meeting.

So there may have been a member -- a new member -- on the board now who was not even at that meeting. I've explained that to him ahead of time -- ahead of time of right now.

So do I have a motion to approve the meeting minutes from January 20th of 2022?

MR. JENSEN: I move to approve the minutes from the January 20, 2022, BZBA meeting.

THE CHAIRMAN: Second?

MS. STEFANOV: I second.

THE CHAIRMAN: All right. Role call,

1 Mr. Clerk?

2 MR. VANMETER: Jensen?

3 MR. JENSEN: Yes.

4 MR. VANMETER: Stefanov?

5 MS. STEFANOV: Yes.

6 MR. VANMETER: Beckmann?

7 MR. BECKMANN: Yes.

8 MR. VANMETER: Bryson?

9 MR. BRYSON: Yes.

10 MR. VANMETER: Eisen?

11 THE CHAIRMAN: Yes.

12 THE CHAIRMAN: All right. We are now
13 going to move into the formal hearing portion of the
14 evening. But before we do that, we are going to have
15 the City Attorney administer an oath and swear in
16 those who are wishing to speak this evening. So I
17 will ask him to take over. And let's do that before
18 we start.

19 MR. MULARSKI: I had my oath. There it
20 is. Sorry. At this time, we're going to be entering
21 the public hearings portion of the meeting. The
22 public hearing will operate as follows.

23 There will be a public -- I guess
24 before that I would like to make a point of order to
25 try to clarify something with these emails I think

1 came in today. Would you mind?

2 THE CHAIRMAN: Please.

3 MR. MULARSKI: Okay. Let me give you a
4 little history first. What happened was in 2017 there
5 were Rules of Procedure for the BZBA. In 2019 those
6 rules were amended.

7 Now when those rules were amended, they
8 added this public hearing portion. They added the
9 public comment portion to this public hearing. That
10 did not exist previously. That's why I wanted to
11 bring this up now.

12 It doesn't say what public comment is.
13 It does say that public comment would be limited to
14 three minutes. Today and a few days before this we
15 received many emails concerning this situation.

16 I think this Board first needs to
17 determine what happens with those emails. Are they
18 public comment? If so, how do you verify the emails?
19 How do you know where they came from? If they're not
20 public comment, then they cannot be considered.

21 It's complicated by the fact that when
22 they amended this they stated that the evidence will
23 be presented as set forth in Section 6.13. Then they,
24 the Board, deleted Section 6.13.

25 But they didn't change the numbering.

1 So now it says the evidence will be presented as set
2 forth by a board member who believes they have a
3 conflict of interest must withdraw. It has nothing to
4 do with the evidence.

5 So I do not know if they meant to
6 include -- keep Section 6.13 since that was referred
7 to specifically or what that meant. So a
8 determination needs to be made today as to how this
9 hearing is going to be -- how it's going to proceed.

10 If you do decide to include the emails
11 as a public comment I guess it would have to be read
12 and each one would have to be limited to three
13 minutes. And then you can consider it as you would
14 any other public comment.

15 I do not know why they added public
16 comment to this type of hearing. That's something in
17 front of the Planning Commission where the people can
18 make their comments for them to consider.

19 This is a hearing. This is a hearing
20 where it's what we would call a trial de novo. You
21 are not sitting here trying to determine what the
22 Planning Commission did -- was it right or wrong?
23 It's nothing to do with that.

24 You are here to determine the evidence
25 presented before you how you would decide this case.

1 Would you uphold this appeal or not?

2 There has been an invitation for
3 several planning commission members. Now I know it
4 seems a little incongruous because your determination
5 will either uphold or overrule the Planning
6 Commission. But you're not saying they were right or
7 wrong. You're just saying your opinion this is what
8 the facts have presented.

9 I know there was a request to have some
10 planning commission members here so that perhaps you
11 can find out what their thinking was, why they decided
12 how they did decide. That is just opinion; okay?

13 You cannot substitute their opinion for
14 yours. You can take it as, "Okay; well, that's
15 something I might want to think about."

16 But you're not supposed to say, "Well,
17 since they decided it that way is it right or wrong?"
18 It could just be something you could consider; okay?

19 So you have to determine what are going
20 to be the facts that are presented. And the facts are
21 what was presented by the appeal, by the minutes, and
22 by what happened in the Planning Commission.

23 Anything that's an opinion is not a
24 fact. You can only consider facts when you're
25 considering this -- considering the evidence in front

1 of you.

2 So with that said, I think the very
3 first thing we have to do is determine what is going
4 to happen with the emails that were put in. You can
5 either say it doesn't qualify as public comment.

6 This is the first hearing we've had
7 since these rules have been changed that had emails.
8 That's why it's being brought up for the first time.

9 But so you can either say, "Yes; they
10 will be introduced as public comment" and then you can
11 give them whatever weight you deem necessary, whether
12 it's opinion, facts, or whatever.

13 Or you can say, "No; they won't be
14 admitted." And then you have to determine whether or
15 not that's fair.

16 If you're going to admit something that
17 was just presented today is that fair to everybody? I
18 would simply suggest that you ask the parties, "Here's
19 how we've decided we're having this hearing. Are you
20 prepared to go forward under these terms?"

21 If either side is not you may want to
22 consider continuing it to give everyone a fair chance
23 to present their case. You don't have to. It's
24 totally up to you.

25 So before we go any further, I think

1 the first thing we should do is decide what are we
2 going to do with the emails.

3 MR. BRYSON: May I begin?

4 THE CHAIRMAN: Please.

5 MR. BRYSON: Mr. Mularksi, am I correct
6 in remembering that public comments, if they were
7 delivered at this hearing, would be delivered by a
8 person who identifies themselves and will be placed
9 under oath?

10 MR. MULARSKI: Yes.

11 MR. BRYSON: Okay. My suggestion then
12 would be that since these emails can't come to us
13 under oath and since we don't really have an adequate
14 way of determining the identity of the person that we
15 not take them the same way that we would public
16 comment.

17 I do think public comment makes sense,
18 especially in a de novo kind of hearing. I think that
19 previous boards may have been wise to add that,
20 although I would find it inconvenient if I were
21 counsel for either side. I think there is a certain
22 amount of wisdom in that if we're making a new
23 determination.

24 But I think there is a level of
25 capacity for irregularity when we're not getting --

1 when we're getting some information under oath and
2 some of it is not under oath and some by people we can
3 identify and some by people we cannot.

4 I hate to turn down anybody's
5 suggestions or comments to a City body as a citizen.
6 But I think for fairness to everyone involved that
7 seems to be the most appropriate way to handle the
8 emails.

9 THE CHAIRMAN: I'm in agreement. And
10 you know, I also have a concern that, I mean,
11 personally, you know, there was only so much time in
12 the day. And certainly, we also all have day jobs
13 too.

14 And the timing of being able to read
15 all those emails for myself before this hearing
16 tonight did not occur. So I am a little bit leery of,
17 you know, to be honest and fair to both parties to
18 suggest that those should be accepted tonight.

19 We've got a lot of people in the
20 audience. I don't know how many will be speaking
21 tonight. But there will be time for people here in
22 person to speak. And I think we should go in that
23 direction.

24 I would also like to get the opinion of
25 both the appellee and the appellant on this also. I

1 believe you all were sent those emails today?

2 MR. INGRAM: Chris Ingram, 52 East Gay
3 Street, Vorys Sater Seymour & Pease on behalf of the
4 appellant. We did not send emails today on behalf of
5 the appellant but we did receive some emails.

6 MR. BRYSON: Right.

7 MR. INGRAM: The appellant would object
8 to the admission of any emails because we would not
9 have the opportunity to cross-examine any of those
10 folks. And we certainly reserve the right to cross-
11 examine anyone who intends to offer any evidence in
12 this proceeding.

13 THE CHAIRMAN: All right. Thank you
14 for that. And on behalf of the Planning Commission?

15 MR. ROTH: Yes. Matthew Roth,
16 Assistant City Attorney. I would agree. I think I
17 did receive all of the emails that were submitted to
18 the Clerk of Council.

19 And they are what they are. They were
20 received and can be noted that they were received.
21 But I think it would be best to hear from people that
22 have a position on this, you know, live and in person
23 tonight.

24 THE CHAIRMAN: Thank you. Any other
25 commentary from any of the other board members?

1 MR. JENSEN: I've been on the Board for
2 a number of years. And I don't believe that in the
3 past that we really looked at incoming emails on
4 various appeals.

5 And I think the people that make the
6 effort to do show up and to participate are more
7 likely to be, you know, appropriate people to be
8 listened to so --

9 THE CHAIRMAN: Okay. Mr. Mularski, do
10 we need to formally vote on this or what do we need to
11 do with this issue so we can put it to rest?

12 MR. MULARSKI: I believe it was unclear
13 for me. So I think to make it perfectly clear you
14 guys should have a motion as to how you're going to
15 treat the emails and vote on that formally. And then
16 that way it's in the record as to how this will be --

17 THE CHAIRMAN: Excellent.

18 MR. MULARSKI: -- proceeding.

19 MR. JENSEN: Would this go forward
20 then? Is this just for this meeting or would we be
21 not using the emails going forward for all future
22 appeals?

23 MR. MULARSKI: Well, at the end of this
24 we're going to be addressing the Rules of Procedure
25 for the BZBA. And at that time, I would say that'd be

1 a good time to address that. But it will definitely
2 go forward for this hearing today.

3 THE CHAIRMAN: Yes. So I would like to
4 suggest whoever wants to make the motion on the group,
5 the Board, that we include in the motion that our
6 decision is respective to this meeting tonight.

7 And that this -- you know, we will
8 further discuss it at the end of the meeting when we
9 are having a review of the Rules of Procedure. So I
10 would ask for a motion to -- on the issue of the
11 emails.

12 MR. BRYSON: Paul Bryson. And I move
13 that we do not accept the emails as evidence or public
14 comment for the reasons that we stated before.

15 And that this determination is for the
16 purposes of this hearing. Any further hearings would
17 be governed by the Rules of Procedure that will fix
18 the uncertain order.

19 THE CHAIRMAN: Do I have a second?

20 MR. JENSEN: I second.

21 THE CHAIRMAN: We have a motion and a
22 second. Any further discussion? With that, roll
23 call, please.

24 MR. VANMETER: Bryson?

25 MR. BRYSON: Yes.

1 MR. VANMETER: Jensen?

2 MR. JENSEN: Yes.

3 MR. VANMETER: Eisen?

4 THE CHAIRMAN: Yes.

5 MR. VANMETER: Stefanov?

6 MS. STEFANOV: Yes.

7 MR. VANMETER: Beckmann?

8 MR. BECKMANN: Yes.

9 THE CHAIRMAN: Okay. That motion
10 passes then. The rules that we were just talking
11 about -- the Rules of Procedure for the Board of
12 Zoning and Building Appeals -- are dated January 17th
13 in 2019.

14 And within those rules it states how
15 the process will work tonight. And I'm going to
16 explain that. And then we'll move forward into the
17 swearing in.

18 We will read -- we will mention and
19 read what the appeal is. But then we will have public
20 comment first. Three minutes will be allowed for any
21 member of the public here tonight to give a comment.
22 And you will be stating your name, address, and your
23 relationship to the case.

24 We will then move on and ask -- the
25 appellant will have 25 minutes -- up to 25 minutes --

1 for a presentation, followed by the appellee will also
2 have an equal 25 minutes.

3 Then we will have five minutes of
4 rebuttal, five minutes of rebuttal, and then we will
5 move on. And we will have questions along the way and
6 will -- also be from the Board. And then we will move
7 on through the agenda.

8 So with that, I will move on and ask
9 Mr. Mularski again to help us out there by swearing in
10 those who plan on speaking this evening.

11 MR. MULARSKI: Thank you. And if I may
12 have one more procedural question? Mr. Blackford,
13 there were three issues set before the Planning
14 Commission. Only one was decided.

15 So if the appeals -- the appellant is
16 to be -- is upheld today are those other two still
17 pending in front of the Commission or does this Board
18 need to remand it to the Commission to have them hear
19 those other two?

20 MR. BLACKFORD: I believe there were a
21 total of four applications that night. So one was
22 acted on -- the conditional use. So there was no
23 action taken on the final Gahanna plans, design,
24 review, or variance at that time.

25 MR. MULARSKI: So those are still

1 pending. So they could be heard later in --

2 MR. BLACKFORD: Correct.

3 MR. MULARKSI: They're not being
4 remanded for --

5 MR. BLACKFORD: Yes.

6 MR. MULARSKI: -- that reason?

7 MR. BLACKFORD: Yep.

8 MR. MULARSKI: Okay. Thank you.

9 MR. BLACKFORD: That's correct.

10 MR. MULARSKI: All right. Now I'm
11 ready to swear people in. All right. Anyone who
12 wants to speak must complete a speaker slip and come
13 to the podium and state their name and address.

14 At this time will all persons wishing
15 to present testimony this evening please raise and
16 raise your right hand to be sworn in?

17 Do you solemnly swear that the
18 testimony you're about to provide will be the truth,
19 the whole truth, and nothing but the truth? If so,
20 state, "I do."

21 MULTIPLE SPEAKERS: I do.

22 MR. MULARSKI: Thank you.

23 THE CHAIRMAN: Thank you. For the
24 record, our appeal this evening is BZA-0001-2022 to
25 consider an appeal of a Planning Commission denial of

1 CU-000922 for property located on Johnstown and Morse
2 Roads, Parcel IDs 025-01124, 025-011243, and 025-
3 01126. Current zoning is in C, neighborhood
4 commercial. Sheetz Gahanna, Sarah Gold, applicant.

5 So at this time, we are going to have
6 the opportunity for members of the public to speak.
7 We do have three people who filled out a speaker form.
8 But Mr. Mularski, there looked there were a lot of
9 hands raised out there.

10 If people did not fill out the form but
11 they are still members of the public who want to speak
12 we can still allow them to speak; is that correct?

13 MR. MULARSKI: I would have them come
14 up and get a speaker form. And they can fill them out
15 and turn them in as the other three are speaking would
16 be my --

17 THE CHAIRMAN: Okay.

18 MR. MULARSKI: -- recommendation.

19 THE CHAIRMAN: So any of you others who
20 want to speak -- I have got the first three. We will
21 start with these three citizens in order of the
22 numbering that the Clerk has put on here. And then
23 while we're doing that we'll continue on with getting
24 those names.

25 So with that, again, when your name is

1 called please come up to the podium, identify yourself
2 by name, address, relationship to the project. You
3 can deem what that means on your own. And we will
4 start with Susan Ferris.

5 And if I mispronounce anybody's name I
6 apologize in advance. We'll do our best. And you'll
7 be able to pronounce your name correctly also.

8 MS. FERRIS: My name is Susan Ferris.
9 And my address is 4695 Collingville Way, Columbus
10 43230. I am concerned that the development proposed
11 by Sheetz, if approved, would have undesirable effects
12 on Collingwood residents and the surrounding area.

13 I have not seen any studies or
14 assessments or heard about any studies or assessments
15 from Sheetz saying that this gas station will not have
16 undesirable effects. I suspect they are not able to
17 prove as much.

18 I understand that Gahanna Zoning staff
19 said Sheetz has satisfied the criteria for its
20 proposed development. But I do not know how Zoning
21 came to this opinion.

22 From the presentation I saw online
23 there was no reference to any studies or assessments
24 to support the belief that conditions were met by
25 Sheetz.

1 With its close proximity to the
2 Collingwood Pointe driveway, the roundabout, the
3 Goddard School and its students, and the surrounding
4 residential properties -- which will be increased by
5 one more large development on the south side of Morse
6 Road in the near future -- I cannot understand how the
7 Sheetz gas station can say there will be no
8 undesirable effects on our entire area.

9 Sheetz has not addressed these
10 undesirable effects or the underlining -- underlying
11 concerns associated with their proposed project.

12 Likewise, the Sheetz gas station does
13 not suit the intended use and purpose of the land. I
14 read the Gahanna Land Use Plan.

15 That plan says that the proposed
16 development is in a neighborhood commercial district.
17 The plan specifically says gas stations and drive-
18 throughs are not suited for neighborhood commercial
19 districts. Instead, the plan encourages low-intensity
20 commercial projects.

21 Likewise, the plan says development in
22 North Gateway where the property is located is
23 supposed to enhance walkability and mitigate traffic
24 impacts. Sheetz gas station is not in keeping with
25 any of this.

1 I am glad the Gahanna Planning
2 Commission saw fit to deny Sheetz's application. The
3 appeal being considered here today should also be
4 denied. Thank you.

5 THE CHAIRMAN: Thank you very much.
6 Our next speaker this evening will be Jeri --

7 MS. FIGLIOLA: Figliola.

8 THE CHAIRMAN: Figliola. Sorry. I
9 should have brought my reader glasses tonight.

10 MS. FIGLIOLA: That's all right.

11 THE CHAIRMAN: Thank you.

12 MS. FIGLIOLA: I'm Jeri Figliola. And
13 I live at 4665 Wenham Park. I'm in Collingwood
14 Pointe. And here goes.

15 Those of you who represent Sheetz do
16 not live in our community. What you are proposing
17 will destroy our peaceful community. We do not need
18 another gas station convenience store. We have nine
19 within three miles down Morse Road.

20 I am going to tell you about our area
21 as I feel I'm more capable. I walk the sidewalk and
22 paved path on Morse Road. I collect trash. You might
23 say I am a garbage lady. Generally, I pick up trash
24 two to three times a week depending on the weather and
25 my schedule.

1 I am going to tell you the bulk of my
2 observation. Traffic is horrible. We do not need the
3 problems of a gas station and more traffic and
4 accidents and trash.

5 I pick up car parts, cigarette butts,
6 drink bottles, cans, carryout food containers, and
7 much more.

8 Sheetz plans to put 50 gas stations in
9 the Columbus area by 2025. That they sell cigarette
10 prices lower than most customers to bring them in.
11 Sorry -- most businesses to bring them in. Where do
12 those cigarette butts land but in the street?

13 Most important, we do not need a gas
14 station near our children. The Goddard School does
15 not need gas tanks on -- or the traffic near our
16 children. We don't need the noise, commotion in a
17 community filled with seniors.

18 If the appeal passes, shame on you.
19 Not everything is about money. Just think. Noise,
20 traffic, accidents, already nine gas stations, basic
21 disruption of our community, and most of all the
22 children. Thanks for listening.

23 THE CHAIRMAN: Thank you. Our next
24 speaker is last name Buchanan. I don't want to
25 mispronounce your first name.

1 MS. BUCHANAN: It's Edye.

2 THE CHAIRMAN: Edye. Okay.

3 MS. BUCHANAN: That probably matters.

4 So I pretty much represent this entire half of the
5 room. So if you'll indulge me a little bit more than
6 three minutes -- if not there's other speakers --

7 THE CHAIRMAN: Just for the record,
8 your name, address, and relationship to the project.

9 MS. BUCHANAN: Edye Buchanan, 4560
10 Collingwood Pointe Place, Columbus. We live across
11 the street from the proposed location.

12 THE CHAIRMAN: Thank you.

13 MS. BUCHANAN: I am Secretary at
14 Collingwood Pointe at the Preserve Condominium
15 Association. We're not listed as a contiguous
16 property.

17 However, anyone familiar with the
18 neighborhood would know that the property is exactly
19 across the street. And we will be adversely affected
20 by this development.

21 Make no mistake -- this is our
22 neighborhood, not simply a geographical area between
23 two thoroughfares -- thoroughfares with pass-through
24 use by young couples pushing strollers, children from
25 Albany Glen and the LC riding bikes, people like my

1 neighbors Ray and Nancy that walk their dogs along
2 Morse Road, or simply people like myself trying to get
3 my steps in before the end of the day.

4 While we understand that this property
5 should be developed, we stand in opposition to this
6 development on the grounds that it will have an
7 undesirable effect on the surrounding area and
8 decrease our quality of life.

9 Traffic at the circle to the east of us
10 will definitely increase if drivers need to negotiate
11 to make righthand turns or access the road that's
12 there on Morse Road.

13 I fear illegal lefthand turns into
14 Sheetz from both Morse and Johnstown Road as being
15 more the rule than the objection as that is the
16 experience happening with the Sheetz on North Hamilton
17 in New Albany.

18 Already the crosswalks at the traffic
19 circles are a hazardous endeavor for joggers and
20 bicyclers. Additional traffic isolates us from using
21 the beautiful paved paths to the north and east of us.

22 Planning Commission staff presentation
23 made during the November 2, 2022, meeting included
24 photographs of some of the surrounding businesses.
25 This included the newest addition -- High Banks

1 Distillery.

2 Like the barn located across the
3 street, it features rustic architecture, giving it a
4 warm, quaint, hometown feel. Architecturally the
5 proposed development will be in sharp contrast to
6 these surrounding businesses.

7 The area businesses close at reasonable
8 hours and manage to be successful without adversely
9 impacting our neighborhood. What is being proposed is
10 a high-traffic, 24/7 gas station with 20-foot-tall
11 lights.

12 While we hope the lighting will deter
13 crime, the fact is studies prove that violent crimes
14 are more prevalent at night and at the type of
15 business that's being proposed.

16 THE CHAIRMAN: I apologize. In order
17 to keep it fair to everybody, including the appellants
18 and appellee, I need you to come to a close. I'm
19 sorry.

20 MS. BUCHANAN: Okay. I will summarize.
21 And as I said, one of my neighbors will finish this.
22 I document three different studies, including one from
23 the FBI, that is -- that was 2020 crime statistics
24 that say that convenient stores account for 3 percent
25 of all reported violent crimes.

1 We're talking rape, murder, robbery,
2 driving while impaired. Another study from Arizona
3 State University that says that crime is particularly
4 prevalent in 24-hour-a-day businesses such as this.

5 I will conclude with saying we don't
6 want or need this business. And as I said, one of my
7 friends will finish the rest of my statement. Thank
8 you.

9 THE CHAIRMAN: Thank you very much.
10 Our next speaker is John Sanders.

11 MR. SANDERS: John Sanders, 4566
12 Collingwood Pointe Place. Live across the street.
13 The traffic -- well, let's put it this way. I was not
14 prepared because I wrote a letter. Well, two letters
15 really.

16 The closeness of the preschool to that
17 many vehicles being parked right across the fence line
18 to me presents a safety problem to youngsters that are
19 out in the playground.

20 Mainly the opportunity for the
21 disgruntled parent that doesn't have visiting,
22 kidnappers, et cetera being so close -- that's one
23 thing.

24 The other is the -- several times
25 sometimes in the day the traffic eastbound backs up

1 past the entrance to the school and almost up to the
2 StoryPoint entrance. The westbound traffic coming out
3 of the roundabout act like they're leaving a starting
4 gate.

5 The other thing -- I had one more
6 there. But my last point is I've lost count of the
7 number of shootings that have taken place at gas
8 stations in the town, especially the one where an
9 innocent bystander was shot at a Sheetz station. So
10 thank you.

11 THE CHAIRMAN: Thank you, Mr. Sanders.
12 Our next speaker this evening is Mary Beth Thomas.

13 MS. THOMAS: Hello. I am Mary Beth
14 Thomas. I live at 4582 Collingwood Pointe Place in
15 the Collingwood Pointe community -- just across the
16 street from the proposed development.

17 I had sent my email. But luckily, I
18 have printed it off. So I plan to -- I do live with
19 my husband and daughter. But I know you can only take
20 one testimony. But we happen to be a family of three.

21 Okay. I state here -- state my opinion
22 that the appeal by Sheetz Gahanna should be denied. I
23 meant to pull -- bring up my app. I have a Sheetz
24 app.

25 I love Sheetz. I love their grilled

1 cheese and their frozen Cokes so -- but I want Sheetz
2 to be one and a half miles or five miles the other
3 way.

4 My family and I live just a few feet
5 across the street from this proposed use of the land
6 in Columbus. But we, along with the Gahanna residents
7 along Johnstown Road, will be negatively impacted by
8 the following -- increased traffic and safety,
9 increased crime, light pollution.

10 Also, with the Goddard School adjacent
11 to the proposed Sheetz that will be a negative
12 environment that will be superfluous and depletory to
13 that particular school.

14 I quote from the Gahanna Land Use Plan
15 adopted September 16, 2019, Page 26. "The big-box
16 retail chain establishments and large parking lots,
17 which do little to distinguish Gahanna from other
18 communities, should be limited at gateways."

19 The Morse Road and Hamilton Road area
20 is only secondary gateway I understand from the maps.
21 But this needs the same considerations as developments
22 at Gahanna's primary gateways.

23 Also noted in the Land Use Plan is this
24 statement that, quote, "City Planning shall seek to
25 optimize the available land so that it reflects the

1 needs and the desires of the community."

2 And it's really not lost on anyone that
3 there's very little usable land that's buildable. We
4 had considered building property when we moved here in
5 2015. But it's like, "We're going to take what's
6 available in the place where we are."

7 Therefore, I hold that Sheetz is a
8 deterrent to that image in the north gateway focus
9 area, which is a mostly residential area that contains
10 some retail but not 24/7 businesses.

11 As stated by Vorys Sater -- excuse me
12 for mispronunciation -- Seymour & Pease, the land has
13 been unsuccessfully marketed for five plus years. But
14 that does not mean, however, that the proposed Sheetz
15 is the best fit for that land's use.

16 Again, I refer the Board to the two
17 statements from its own Land Use Plan. I ask each
18 member of the Board to ponder this question. And this
19 is you're talking in your head.

20 If my home was the most -- if my home
21 was in this mostly residential area would this Sheetz
22 optimize the use of this site and reflect the needs
23 and desires of not only my family, Gahanna family
24 community, but my Columbus neighbors which would be
25 close to the back road?

1 Ponder this question, please, as you
2 consider this issue. The only vote that can be made
3 tonight is to deny the appeal by Sheetz on this site.
4 Thank you.

5 THE CHAIRMAN: Thank you, Mrs. Thomas.

6 THE REPORTER: At this time can we go
7 off the record so I can start a new file, please? All
8 right. We're going to go off the record at 7:14 p.m.

9 (Off the record.)

10 THE REPORTER: We are back on the
11 record at 7:15 p.m.

12 THE CHAIRMAN: Thank you. Our next
13 speaker is Mr. David Poepelman.

14 MR. POEPELMAN: Hello. My name is
15 David Poepelman at 4604 Collingville Way, 43230. I'm
16 here with my wife Joan and my wonderful neighbors that
17 have been concerned.

18 We moved up here a year and a half ago
19 to be close to our two daughters and six grandchildren
20 who live in Gahanna and Westerville.

21 The main reason we moved here is to see
22 our grandchildren do their sporting events and
23 extracurricular activities, babysitting our littlest
24 grandchildren.

25 We were informed that Sheetz gas

1 station is wanting to build -- develop on Morse Road.
2 It is very, very difficult to turn right or left from
3 our complex, especially after three o'clock p.m., on
4 Morse Road. Adding a Sheetz gas station would make it
5 more difficult leaving our complex because of the
6 extra traffic that would occur.

7 We were also informed that a 250 new
8 apartment complex on Morse Road, west of Collingville
9 Point, will add even more traffic and cause more of a
10 back-up.

11 All you have to do is watch the morning
12 news and be informed of the crime at gas stations. We
13 do not need violent people running in our condo
14 complex to escape and hide from their crime.

15 A Sheetz gas station will be
16 undesirable in our neighborhood and will be a huge
17 eyesore. It also will increase more trash in our
18 area. And who wants that?

19 We hope to have made the right choice
20 by relocating to this area. Thank you for listening
21 to our concerns.

22 THE CHAIRMAN: Thank you, Mr.
23 Poeppelman. Our next speaker today, Roberta Kelley
24 Marchal. I'm sure I've totally --

25 MR. MARCHAL: Robert.

1 THE CHAIRMAN: Robert? Sorry, Robert.

2 MR. MARCHAL: You probably couldn't
3 read my writing.

4 THE CHAIRMAN: Okay.

5 MR. MARCHAL: My name is Robert Kelley
6 Marchal. I live at 4625 Wenham Park in the condos.
7 It's a wonderful neighborhood.

8 I really didn't have anything prepared
9 tonight. I wasn't planning on speaking. But I'm just
10 here in support of my neighbors and to echo their
11 concerns.

12 Living right off of Morse International
13 Speedway can be quite challenging. Regularly people
14 are doing 60 plus miles an hour down that road.

15 Adding a gas station -- all you have to
16 do is sit and look at the -- get a lawn chair and
17 watch the traffic circle for an hour. It's crazy.

18 People have a really difficult time
19 with roundabouts. Adding a busy gas station right
20 next to it is not going to help things at all.

21 I don't have anything personal against
22 Sheetz or their people. But I just don't think it's
23 the right fit for our community. And I thank you for
24 the time and consideration.

25 THE CHAIRMAN: Thank you. Our next

1 speaker is Nancy Starkloff.

2 MS. STARKLOFF: Hi, my name's Nancy
3 Starkloff. My address is 4541 Collingwood Pointe
4 Place, Gahanna, Ohio 43230. I'm continuing part of
5 the presentation that wasn't able to be finished.

6 First of all, I just want to emphasize
7 that this Sheetz -- big Sheetz gas station is going to
8 be exactly next door to a childcare center.

9 There are plenty of studies to prove
10 high crime rates at convenience stores and gas
11 stations in general, but especially violent crimes at
12 those operating 24/7 format. You read the dispatch or
13 watch the news -- this is simply common knowledge. No
14 speculation or opinion.

15 For the appellant to state that the
16 development will be providing essential food, fuel,
17 and beverage services to their users ignores three
18 service stations at the corner at Morse and Hamilton,
19 which is one mile away from the proposed location, and
20 two more gas stations on Hamilton Road less than a
21 mile in either direction.

22 Food and beverages -- there are too
23 many options to count in a three-mile radius. As a
24 matter of fact, it's only three miles from the
25 proposed location to a Sheetz on North Hamilton Road

1 near East Dublin Granville Road. I hardly believe
2 essential to be true.

3 Finally, Figure 5.10 of the Gahanna
4 Land Use Plan, as shown on Page 80, identifies
5 properties being zoned neighborhood commercial.

6 On Page 59 of the same document the
7 neighborhood commercial district is intended to serve
8 residents in close proximity with a low-intensity
9 commercial product.

10 Neighborhood commercial developments
11 should be small in scale, complement the adjacent
12 development patterns nearby. These uses should serve
13 the everyday needs of the nearby residents and
14 employees.

15 It specifically states drive-throughs,
16 big-box stores, gas stations, and other auto-related
17 uses are discouraged in these areas.

18 In conclusion, I have discussed the
19 traffic issues that will not only impact the residents
20 but limit access to existing businesses.

21 I have provided three sources citing
22 the potential for increased crime in the neighborhood
23 based on the proposed type of business operating
24 overnight.

25 I have cited the information in

1 Gahanna's Land Use Plan that specifically indicates
2 the proposed project violates the definition of the
3 current zoning as neighborhood commercial. Don't want
4 or need this business. Thank you for the opportunity
5 to address this issue.

6 THE CHAIRMAN: Thank you very much.
7 Our last speaker who has actually filled out a form is
8 getting ready to come up now. I'm going to make this
9 last call for speakers. If anybody wants to come up,
10 do it right now and fill out a form and give it to the
11 Clerk.

12 And with that, we are going to hear our
13 last speaker. And then we are going to move on to
14 presentation by the appellant. Our ninth speaker is
15 Judith Braun or Braun.

16 MS. BRAUN: Good evening. My name is
17 Judy Braun. I live at 4592 Collingville Way, Columbus
18 43230. I am a resident of Collingville -- Collingwood
19 Pointe.

20 Many of the comments that I prepared
21 have already been addressed. But I would like to
22 publicly state that both my husband and I are in
23 opposition to the proposed development of the Sheetz
24 gas station directly across from our home. Thank you.

25 THE CHAIRMAN: Thank you very much.

1 Looks like we might have one more speaker. And we do.
2 Okay. Ms. Brenda, that was you that just walked up?

3 MS. WILS: Mm-hmm.

4 THE CHAIRMAN: Why don't you come on
5 up?

6 MS. WILS: Where?

7 MR. MULARSKI: Were you sworn in in the
8 beginning?

9 MS. WILS: No.

10 MR. MULARSKI: Would you -- yes; if you
11 would, please. Please raise your right hand. Do you
12 solemnly swear that the testimony you're about to
13 provide will be the truth, the whole truth, and
14 nothing but the truth? If so, state I do.

15 MS. WILS: I do.

16 MR. MULARSKI: Thank you.

17 MS. WILS: So my name is Brenda Wils.
18 I live at 4550 Faneuil Hall Place with all my
19 neighbors. And I really wasn't very prepared. But
20 let me be -- speak because I've lived in Gahanna for
21 the last over 50 years.

22 And I worked at the City. I graduated
23 from the high school. Sheetz is wonderful. Beautiful
24 building. But Johnstown Road is the part -- when I
25 looked up those parcels and saw where this is -- you

1 know, Morse Road there's heavy traffic.

2 But Johnstown Road -- the use on
3 Johnstown Road is certainly not the same as a Sheetz
4 gas station. It's still in a big-acreage residential,
5 very limited commercial, and small units.

6 And I really am surprised that people
7 from Gahanna aren't speaking. So I guess in my --
8 because I kind of have been a Gahanna person -- I'm
9 speaking on their behalf. This just doesn't belong
10 there. Thank you.

11 THE CHAIRMAN: Thank you very much.
12 And with that, if there is no further speakers, I will
13 formally close the public comment portion of the
14 public hearing for tonight.

15 We'll now move on and I will ask our
16 appellants -- as I said earlier, just so we all
17 remember, again there will be 25 minutes -- up to 25
18 minutes of presentation is allowed by the appellant,
19 the same for the appellee. Five minutes of rebuttal
20 each way is our next phase of the hearing. So with
21 that, I'll turn it over to you --

22 MR. INGRAM: And, Mr. Chairman, before
23 we commence, just we note for the record that the
24 appellant objects to this Board's consideration of any
25 lay opinions.

1 And note for the record that
2 Collingwood Pointe is actually in the city of
3 Columbus, such that not a single Gahanna resident is
4 providing public comment tonight except for the last
5 one. Thank you.

6 MR. SHANNON: Good evening, Mr.
7 Chairman. My name is Mike Shannon, attorney on behalf
8 of the applicant.

9 By way of introduction, I've been
10 practicing law for 42 years. Thirty-eight of those
11 have been in the zoning area. And previously I was
12 the Chief Zoning and Building Official for the City of
13 Columbus for a number of years.

14 First, Mr. Chairman, a procedural
15 matter. We'd like to move that the exhibits that were
16 submitted as part of the Planning and Zoning
17 Application were carried forward tonight. We would
18 like those officially introduced into evidence.

19 (Exhibit 1 and Exhibit 2 were marked
20 for identification.)

21 THE CHAIRMAN: Okay. And our process
22 for that --

23 MR. MULARSKI: Mr. Roth, do you have an
24 objection to those being admitted?

25 MR. ROTH: No objection.

1 MR. MULARSKI: Then you can make the
2 decision. Since there's no objection, I would say
3 that you would admit them.

4 THE CHAIRMAN: No objection.

5 MR. SHANNON: Thank you, Mr. Chairman.
6 Also, I think Ray and Matt -- or Ray actually did a
7 good job of explaining the de novo hearing.

8 I think one of the most important
9 things he said -- that this is an evidentiary hearing,
10 a de novo hearing, and it's based on facts, not
11 opinion. Opinions are exactly that -- opinions.

12 Also, it's not only a de novo hearing
13 where you're kind of starting from scratch and forming
14 your own opinion. But this ALGOS body is acting as a
15 quasi-judicial body.

16 And as such it should be treated as a
17 judicial proceeding. And adverse finding by this
18 Board would most certainly lead to a 2506 appeal in
19 Franklin County Common Pleas Court.

20 One of my strengths is knowing my
21 weaknesses. In a legislation -- in a litigation of
22 this magnitude it's best to defer to skilled attorneys
23 who litigate on a daily basis. And in that regard,
24 I'd like to introduce my co-counsel, who can continue.
25 Thank you.

1 MR. INGRAM: Good evening. You know,
2 as we heard earlier with the swearing in of the new
3 members of the Board this year, this Board is
4 responsible for discharging its duty to apply the
5 zoning code as it's written to the evidence in the
6 record concerning this conditional use application
7 that is before you.

8 As you will see, the scope of your
9 review tonight is quite narrow. And it is easily
10 satisfied here.

11 The subject property is comprised of
12 approximately 4.19 acres that is bordered by Morse
13 Road to the north and Johnstown Road to the south.

14 Due to its unique orientation, size,
15 and location between both Morse Road and Johnstown
16 Road, the property has been unsuccessfully marketed
17 for development for more than eight years and, as you
18 can see from the aerial, remains vacant today.

19 The property is zoned, as we've heard,
20 within the neighborhood commercial district. It is
21 surrounded by a wide array of businesses, as they do
22 are in the neighborhood commercial districts.

23 And for purposes of the record, that
24 includes the High Bank Distillery, Donatos Pizza,
25 Beauty Barn Salons, 1837 Wine & Spirits Emporium, The

1 Barn at Rocky Fork, the Goddard School of Gahanna, as
2 well as the Growing Solutions Garden Center.

3 And I just want to note, as we
4 articulated in our Notice of Appeal to this Board, a
5 conditional use as the Ohio Supreme Court has put it
6 is "a species of administrative permission which
7 allows a property owner to put his property to a use
8 which the regulations expressly permit under
9 conditions specified in the zoning regulations."

10 Okay. So what are Gahanna's
11 conditions? They're articulated right here. This is
12 a screenshot straight from your code in which the
13 Planning Commission shall approve an application for
14 conditional use if four conditions are met.

15 And there's no discretion here. If the
16 four conditions are met this application has to be
17 approved. And so let's look at each of the conditions
18 in turn.

19 First of all, the proposed use is a
20 conditional use of the neighborhood commercial zoning
21 district. Gasoline service stations, eating places,
22 and drive-through facilities are expressly provided in
23 your zoning code as an acceptable and permitted
24 conditional use.

25 Likewise, there is no dispute here that

1 the development standards are met. We have here the
2 City's Professional Department of Planning Staff
3 Report. And as the staff has pointed out for this
4 Board's consideration that each and every one of the
5 applicable development standards are satisfied.

6 And I want to point out that this
7 application that's here tonight in January was filed
8 in early June of last year.

9 So this has been the product of
10 significant work, diligent work on behalf of this
11 applicant, the City and its staff, and numerous design
12 professionals and engineers.

13 And as the City's Professional
14 Department Planning Staff Report correctly concludes,
15 the development is designed to exceed the applicable
16 setback requirements.

17 The landscaping plan exceeds what is
18 required by code. For example, the code requires 37
19 anterior trees for this development, yet this Sheetz
20 will have 86 new trees added to this property.

21 Likewise, the lighting meets all code
22 requirements and will be shielded from abutting
23 property owners. Now that's not our word. That's the
24 City staff's own review, own admission.

25 And finally, all of the applicable

1 design review criteria have been met by the -- by
2 these development plans that are before the City.
3 Okay. So that takes care of the first condition.

4 The second condition. This proposed
5 use complies with the Land Use Plan. Here again you
6 don't have to take our word for it. The City's
7 professional staff -- they reviewed it. And they
8 concluded it's fairly straightforward.

9 The Land Use Plan recognizes that this
10 site's unique location along two major arterial
11 roadways makes it well-suited for community commercial
12 development.

13 The Land Use prescribes that property
14 be developed with medium to large-scale commercial
15 uses that serve the larger community or the regional
16 area. That's a gas station.

17 And in fact this gas station is less
18 intense than what the Land Use Plan would even include
19 in its prescription for this property.

20 So that takes us to the third
21 condition. And here there is absolutely no direct
22 evidence of an undesirable effect on the surrounding
23 area. A gasoline service station that serves food
24 will only benefit the surrounding area and the
25 motoring public.

1 Now we've heard unsubstantiated,
2 unfounded traffic concerns. And frankly, as a matter
3 of Ohio zoning law, that is --

4 THE CHAIRMAN: Excuse me just a minute.
5 I appreciate people have opinions this evening. But
6 counsel representing the appellant, you know, made it
7 -- was very nice in not interrupting anybody or
8 allowing those to speak.

9 And I guess I'm going to ask that
10 members of the audience give them the same courtesy.
11 Sorry to interrupt. Go ahead.

12 MR. INGRAM: Thank you, Mr. Chairman.
13 Traffic concerns are a common argument that we see in
14 these kinds of proceedings. But the reality is as a
15 matter of law they are irrelevant in this case.

16 And that's because any problem of
17 additional traffic, which is not even present here,
18 must be secondary to the rights of the property owner
19 to have the use of his property in a manner that is
20 consistent with its location. And this is coming from
21 the Ohio Court of Appeals.

22 And what that means is because this
23 property is zoned neighborhood commercial, and because
24 your zoning code permits gas stations, food locations
25 within this zoning code, that right -- the right to

1 put the property to that use -- is permitted.

2 And you can't elevate or escalate
3 traffic concerns -- general traffic concerns which,
4 oh, by the way as we've heard, are part of the
5 existing conditions -- not related specifically to
6 this development. You cannot put those above this
7 property owner's right to use this property.

8 And I would note that the case that we
9 are quoting from here was a Speedway case where these
10 exact arguments were raised and were rejected by the
11 Court of Appeals with respect to a Speedway.

12 Next, we've heard concerns about
13 lighting. And quite frankly, those too are unfounded
14 because the lighting plan that this City's
15 professional staff has reviewed and concluded that the
16 lighting is designed in a way which meets all code
17 requirements and will be shielded from above -- the
18 abutting properties.

19 And so before you is simply one of the
20 lighting plans that are part of this application that
21 is in the record.

22 And you can see that the illumination
23 from the lights on this site will not exceed one
24 footcandle measured at the property line, which meets
25 the minimum code requirements. So again, pursuant to

1 the standards in the City zoning code, lighting is not
2 an issue.

3 And we've also heard speculation that a
4 gasoline service station could lead potential -- to
5 potential future crime. Well, quite frankly, that's
6 blatant discrimination. That's discriminatory.
7 That's just unfounded speculations and fears.

8 There's no evidence at all that this
9 specific location in this particular development has
10 any inherent attachment to crime. You can't single
11 out a use.

12 And as, again, Court of Appeals has
13 held with the same exact kind of fears and speculation
14 about what could happen -- that is not -- anecdotal
15 speculation is not competent or credible evidence.
16 And this Board must base its decision on competent,
17 credible evidence.

18 So that leads us to the fourth
19 condition -- fourth and final condition, which is
20 simply that the -- that these proposed uses are in
21 keeping with the existing land use character and
22 physical development potential of the area.

23 Well, ladies and gentleman of the
24 Board, the proposed uses are certainly in keeping with
25 the land use character of the neighboring properties.

1 There's a vast array of businesses surrounding this
2 site, which is zoned neighborhood commercial.

3 And it's consistent. This development,
4 these uses are obviously consistent with that because
5 they're prescribed in your zoning code.

6 Additionally, the development of
7 vacant, unproductive land will only improve the area's
8 physical development potential because you're taking,
9 again, an unproductive eyesore and making it into a
10 resource and an amenity for the community.

11 So the four conditions that are set
12 forth in the zoning code are plainly met. To the
13 extent there's any ambiguity whatsoever in the zoning
14 code, as a matter of well-settled zoning law in our
15 state the ambiguity must be construed in favor of the
16 applicant in the applicant's use of the land.

17 Now we were very concerned with the
18 Planning Commission's actions because, quite frankly,
19 this is a very standard application of the zoning
20 code. And you can review the staff report, which is
21 part of the record, to show that the criteria for
22 these four conditions is easily met.

23 And the fact that we've worked several
24 months -- or the applicant worked several months to
25 design a development that meets and exceeds each and

1 every of the criteria set forth in the zoning code --
2 the City's professional staff agreed that the zoning
3 code requirements were met. The four conditions were
4 met.

5 Yet despite these four conditions this
6 application was denied simply because it's going to be
7 a Sheetz gas station. There's no legitimate basis
8 under law to deny this conditional use.

9 The arbitrary denial for other reasons
10 violates the applicant's and the landowner's rights to
11 due process and equal treatment under the law, which
12 these constitutional violations expose the City and
13 its official -- officers to unnecessary liability to
14 delay damages and attorney fees under 42 USC 1983 and
15 1988.

16 Ladies and gentlemen, your duty as a
17 Board is to apply the zoning code as it is written
18 against the direct competence of evidence.

19 While some may prefer that this use be
20 anywhere but in their backyard, the reality is that
21 this use is entirely legitimate for this property
22 under its zoning.

23 This Board must therefore reverse the
24 Planning Commission's decision and approve this
25 conditional use application.

1 And Mr. Chairman, there were several --
2 given that there were several concerns and statements
3 made about the traffic, at this time we would call
4 Drew Laurent.

5 THE CHAIRMAN: Again, please state your
6 name and address and relationship to the project. And
7 you were sworn in earlier this evening?

8 MR. LAURENT: Yes.

9 THE CHAIRMAN: Thank you.

10 MR. LAURENT: Drew Laurent with
11 Carpenter Marty Transportation, transportation planner
12 for about nine years. And I'm working on behalf of
13 the client.

14 DIRECT EXAMINATION

15 BY MR. INGRAM:

16 Q And, Mr. Laurent, can you please describe
17 your background and qualifications for the record?

18 A Yes. I am a certified transportation
19 planner working with Carpenter Marty Transportation.
20 I have performed over 500 traffic impact studies in my
21 career. It's probably even closer to a thousand now.
22 But I've lost track.

23 Q Okay. So you've performed -- and did you
24 perform a traffic impact study for this proposed
25 gasoline station?

1 A Yes.

2 Q You prepared a written report?

3 A Yes.

4 Q Did you provide that written report to the
5 City of Gahanna's Engineering Office?

6 A Yes.

7 Q And they approved your report; correct?

8 A Yes.

9 Q All right. You previously testified to the
10 Planning Commission about the recommendations from
11 your report?

12 A Yes.

13 Q Okay. So before I get into your report can
14 you explain to the members of the Board what pass-by
15 traffic is?

16 A Yes. So all developments generate two
17 different types of traffic. It's pass-by and non-
18 pass-by. Pass-by traffic is generally folks who are
19 traveling along the roadway, stop in at a development,
20 and then exit and continue on their way. So it's
21 absorbing existing traffic on the roadway.

22 Non-pass-by traffic would be the opposite
23 where it's a destination. You're traveling
24 specifically to that location and then returning to
25 where you came from. So that's the difference between

1 those.

2 Q Okay. So fair to summarize that pass-by
3 traffic is essentially the existing motorists would be
4 using that road?

5 A Correct.

6 Q Now reviewing your testimony before the
7 Planning Commission is it fair to say that a gasoline
8 station does not generate much new additional traffic?

9 A Correct.

10 Q Okay. And why is that?

11 A At least the data shows that the majority --
12 clear majority -- of gasoline station traffic is pass-
13 by traffic. So you know, the very vast majority of
14 the traffic that would be using the Sheetz development
15 are folks who are already driving on Morse and
16 Johnstown Roads.

17 Q So is it fair to say it's more of a matter
18 of convenience when you're driving down the route
19 you're taking and you see a gas station and you need
20 gas you stop? Or if you're hungry you get a bite to
21 eat?

22 A Yes.

23 Q Okay. You know, based on the study you
24 performed, sir, what improvements are recommended as a
25 result of the development for this particular site?

1 A So there are two improvements that were
2 recommended and supported by the City -- a left turn
3 lane extension for the access point on Johnstown Road.

4 There's an existing two-way left turn lane
5 there that services other drives for the other
6 properties along the corridor. That would need to be
7 extended a little bit further south for the Sheetz
8 access point.

9 And then the other improvement is a
10 signalization of the Morse Road and Albany Chase Drive
11 intersection just west of the Sheetz development.

12 Q Okay. So for purposes of the record we have
13 here on the screen an aerial of the site. You said
14 that first there would be a left turn lane extension.
15 Can you point out to the Board where you're referring
16 to and why you're referring to it as an extension?

17 A Yeah. It's kind of hard to tell on this
18 image. But if you're heading northeast bound on US-
19 62, Johnstown Road, when you get to a certain point --
20 it looks like about where the eastern parcel edge of
21 the Sheetz development is -- it widens to allow a two-
22 way left turn lane in the middle between the
23 southbound and northbound traffic.

24 That will need to be extended further south
25 so that left-turn ingress can be provided to the

1 Sheetz without impeding through traffic on Johnstown
2 Road.

3 Q Okay. And why is the extension necessary?

4 A Because the development traffic warrants a
5 left turn lane based on ODOT standards, which are
6 supported by Columbus and Gahanna.

7 Q Okay. And this site's zoned commercial.
8 Would any commercial use that's developed on this
9 vacant site require a similar extension?

10 A In my opinion, yes.

11 Q Okay. And regarding the traffic signal --
12 can you point on here to the Board -- for the Board's
13 attention where that would be located?

14 A Yes. So you can see that there's a frontage
15 road that connects to the proposed site in front of
16 the Goddard School. That main access there to the
17 front -- the north leg is called Albany Chase Drive I
18 think it is.

19 And that is where the signal would be placed
20 where, you know, that would be a shared access between
21 all of these developments -- the Goddard School, the
22 Sheetz, and then the development just west of Goddard.

23 Q So fair to say with this new signal that
24 will provide multiple properties along that access
25 road with safer lefthand turns onto Morse Road? Is

1 that correct?

2 A That's correct.

3 Q Mr. Laurent, based on your experience as a
4 professional transportation planner are there any
5 safety concerns with installing a traffic light at the
6 Albany Chase Road and Morse Road intersection?

7 A No. This will provide safer egress for
8 folks wanting to turn left onto Morse Road at that
9 intersection as well as provide some speed control on
10 Morse Road for those occasional red lights.

11 Q And sir, based on your experience as a
12 professional transportation planner do you have any
13 traffic safety concerns with this proposed
14 development?

15 A No. Given the growth of this region, you
16 know, in the surrounding area everybody knows this
17 area's continuing to grow. The commercial zoning and
18 the site's location -- I think these improvements
19 would be needed for any commercial development in this
20 location.

21 MR. INGRAM: Thank you. We have no
22 further questions at this time.

23 THE CHAIRMAN: Any questions at this
24 point from the Board for Counsel?

25 MR. BRYSON: There have been in the --

1 before the Planning Commission there was some concern
2 raised about an access road being added. It doesn't
3 look to me like in this plan there would be an added
4 access road.

5 Am I interpreting that map and the
6 testimony correctly that there's not a plan for an
7 additional access road here?

8 MR. INGRAM: Mr. Bryson, that is
9 correct. It would just basically connect to the
10 existing access road that is already servicing the
11 other property owners to the west.

12 MR. BRYSON: That kind of L -- the
13 backward L shape we see there?

14 MR. INGRAM: Exactly.

15 MR. BRYSON: That was the only question
16 I have at this time. Thank you.

17 MR. BECKMANN: I have a question to
18 validate -- and I believe I saw this in the report.
19 But the traffic improvements as proposed -- the
20 alterations to the existing roadways -- whose
21 responsibility is that?

22 Is that to be paid for by the
23 construction contract for Sheetz or is that falling on
24 a shared responsibility with the City? Who's paying
25 for the improvements?

1 MR. SHANNON: That would be the -- at
2 the expense of the applicant, sir.

3 THE CHAIRMAN: And is that an absolute
4 condition of the property being approved as a Sheetz
5 that those will go through?

6 There seem to be, as Mr. Laurent was
7 talking, that these are, you know, would be helpful or
8 very good ideas to do or another -- if there was
9 another business in that location it would be
10 suggested.

11 So are those two things absolutely
12 written into the agreement if the Sheetz comes to this
13 location?

14 MR. INGRAM: Yeah. So as was discussed
15 in the Planning Commission hearing, and you can read
16 that in the minutes, I think it was the City Planner
17 or one of the city officials instructed the Planning
18 Commission members that these improvements are
19 separate and apart from the decision to approve the
20 conditional use.

21 But what you need to know is once the
22 development -- this development plan is approved it
23 has to go through Engineering. And if the Engineering
24 requires it, it has to be built before the Sheetz or
25 this development can open and operate if that makes

1 sense.

2 MR. JENSEN: I've got a couple of
3 questions. Is this a typical type of location that
4 Sheetz would be -- I mean, you know, the congestion
5 and the way that other properties are around there --
6 the Sheetz that I've seen in many other areas are, you
7 know, wide open, highly visible, more traffic.

8 To me, yes, there's traffic there but
9 not the traffic that you see at some of the other
10 typical locations.

11 In a business of Sheetz's level seems
12 to me there'd be some sort of market studies or sales
13 -- are we going to -- is this going to pay for itself
14 or whatever? Was there anything done on -- along
15 those lines?

16 THE REPORTER: Can I start a new file
17 if we're going to introduce a new -- sorry.

18 THE CHAIRMAN: Hold that thought.
19 Thank you.

20 MR. SHANNON: Okay.

21 THE REPORTER: We're going to go off
22 the record at 7:51 p.m.

23 (Off the record.)

24 THE REPORTER: We are back on the
25 record at 7:52 p.m.

1 THE CHAIRMAN: Excuse me one minute.
2 I'm going to ask Mr. Jensen just to repeat the
3 question.

4 MR. INGRAM: Sure.

5 THE CHAIRMAN: And then you can
6 introduce yourself and answer the question. Thank
7 you.

8 MR. HENSLEY: Okay.

9 MR. JENSEN: This is kind of a two-part
10 question, I guess. But is this a typical location
11 that Sheetz would want to locate themselves given the
12 fact about where the location is -- that it's kind of
13 tight in there, congested with other properties? It
14 seems to me that a lot of the Sheetz that I've seen
15 are in wide open, highly visible areas.

16 And the second part of that is in most
17 businesses there's some sort of study on sales volume
18 and capacity and what have you. Was there anything
19 like that done that would warrant the interest in
20 having the location there?

21 MR. HENSLEY: Sure. Errin Hensley, 630
22 Morrison Road, Suite 150, Gahanna, Ohio. Second
23 question, yes. We study every site. If we don't feel
24 it warrants the sales, we think it will warrant then
25 we wouldn't be in contract with the site. Your first

1 question --

2 MR. JENSEN: Is this a typical type --

3 MR. HENSLEY: -- is a typical site --

4 MR. JENSEN: -- of location --

5 MR. HENSLEY: Yes.

6 MR. JENSEN: -- given the other
7 locations that I've seen up in New Albany or around --
8 not Stelzer but Stygler. I mean, wide open, highly
9 visible, higher traffic area whereas this is --

10 MR. HENSLEY: I'll be honest, I would
11 love to be sitting on the corner. But it's not
12 available. And you know, this is a corridor. We want
13 to be in this market. And it was an available site
14 that was zoned for our use.

15 But yeah. We study every site pretty
16 good because it's a -- you know, I'll mention it's
17 about a \$7 million investment at each site. So yeah;
18 we have to do our homework or, yeah, Mr. Sheetz
19 wouldn't be happy. Does that answer?

20 MR. JENSEN: Yes; it does.

21 MR. HENSLEY: All right.

22 MR. BECKMANN: I have another question.
23 I'm not exactly sure who answers this. But to what
24 degree through the Engineering Plan Review has this
25 been taken into account? Said another way, has the

1 City staff reviewed this application for construction
2 enough that we know that they're going to agree with
3 the traffic reconfigurations without significant
4 alteration or reduction in what's being suggested?

5 MR. BRUCKELMEYER: Good evening. My
6 name is David Bruckelmeyer, address 630 Morrison Road,
7 Suite 150, Gahanna, Ohio 43230.

8 Yes; we have done a significant amount
9 of engineering with our consultants. We have
10 submitted a full TIS, you know, agreeing with the
11 traffic situations there.

12 And we've done significant amount of
13 engineering just to bring this before the Planning
14 Commission. So we've done everything from --
15 everything but a grading plan. We've done site plans,
16 lighting, landscaping, stormwater, that type of thing.

17 MR. BECKMANN: And the City staff has
18 reviewed it on a preliminary basis?

19 MR. BRUCKELMEYER: On a preliminary
20 basis. Nothing in final engineer. That --

21 MR. BECKMANN: So that's --

22 MR. BRUCKELMEYER: -- won't happen
23 until approval.

24 MR. BECKMANN: Understood. So it still
25 could be --

1 MR. BRUCKELMEYER: So we wouldn't be in
2 a --

3 MR. BECKMANN: -- subject to change
4 down the road?

5 MR. BRUCKELMEYER: It would be subject
6 to some engineering changes; yes. But in general,
7 we've submitted enough with the site plan. The layout
8 is probably not going to change much. It may have
9 some slight tweaks. But really that would be final
10 engineering details.

11 MR. INGRAM: And, Mr. Beckmann, if I
12 could, you know, from my experience as a zoning lawyer
13 it is highly unusual that we're talking about final
14 engineered plans when -- at the initial zoning
15 decision because the application that's before you is
16 merely the approval of a permitted conditional use.

17 Typically you would approve this use
18 and then we would go meet with our engineers and we
19 would create these plans.

20 And all these questions would be dealt
21 with many months later. But you know, thankfully with
22 the diligence and thoroughness of the City staff we've
23 already done that. And these concerns have been
24 worked through in the many months. And that's why
25 this is before you.

1 But that's why, you know, I noted for
2 your attention, you know, traffic and these kinds of
3 considerations are irrelevant to this initial zoning
4 question. So we're kind of getting the cart ahead of
5 the horse here.

6 MR. BECKMANN: I understand. I was
7 just curious as to what level of review it's been
8 through with the City if any. So thank you.

9 MR. BRUCKELMEYER: Thank you.

10 THE CHAIRMAN: I'm going to ask a
11 question. And with no deference to the excellent work
12 by City staff Sheetz has worked with.

13 But something that I saw and read and
14 saw on the video was a question by Planning Commission
15 member Mr. Shapaka from the November 2nd meeting.

16 And he said, "Was there ever a workshop
17 on this project?" And again, I'm paraphrasing. There
18 was some more question.

19 But I guess my question to you all is -
20 - and I'm not suggesting that somebody was thinking
21 there was going to be problems or issues or it was
22 going to go through perfectly or whatever.

23 But was there consideration and/or why
24 was not this project not run through workshops with
25 Planning Commission before it eventually came up to

1 their vote and meeting on November the 2nd?

2 MR. SHANNON: Mr. Chairman, I think I
3 can address that. With the amount of due diligence
4 that was done upfront on this project -- I have
5 utilized the workshop on many occasions here in your
6 jurisdiction.

7 But we didn't think it was really
8 necessary given the amount of front-end loading that
9 Sheetz does on all their projects.

10 For example, they do a traffic impact
11 study on every site whether or not one's even required
12 for example. They do the access study whether one's
13 required.

14 So based on their experience they
15 anticipate these questions and try to answer them
16 before they're asked, as is evidenced by the
17 overwhelming staff support of approval.

18 THE CHAIRMAN: Okay. I have another
19 question, but I'll defer to anybody else. Yes?

20 MR. BRYSON: One other one. It seemed
21 to me as we were looking at this appeal that if we
22 were to grant the appeal that there would need to be
23 additional determinations by the Planning Commission
24 anyway on the final development plan, design review
25 application, and the variance request because they

1 didn't get to those. Is that correct?

2 MR. INGRAM: Technically that's
3 correct.

4 MR. BRYSON: Thank you.

5 THE CHAIRMAN: My last question is this
6 is not New Albany. This is Gahanna. But New Albany,
7 if you look at the development up at New Albany Road
8 and Fodor Road -- and we don't need to bring the
9 pictures up. I'll just explain where I'm going here.

10 As far as design of the buildings up
11 there there's a Burger King and a Wendy's, Bob Evans,
12 Subway. I'm not necessarily comparing a Sheetz to
13 that.

14 But I'm just saying there are retail
15 locations like that where if you looked at those
16 buildings you wouldn't know, "That's a Subway. That's
17 a Burger King. That's a Wendy's."

18 So they had some design -- whether
19 required by New Albany, which it may have been, or
20 because there was a penchant to maybe being a little
21 more harmonious, as you used that word, with the
22 surroundings.

23 Does Sheetz ever do that? I've been on
24 your website and looked at pictures. And I'm not
25 saying I saw every one. But I tried to see, you know,

1 Sheetz locations in the various states and didn't see
2 that.

3 But I guess my question is: Is that
4 something that Sheetz ever considers is changing the -
5 - not necessarily the floorplan inside or any of the
6 finishes thereof or functions but actually the
7 exterior aesthetic?

8 MR. HENSLEY: During the due diligence
9 of this project, we did go through the Mako Design
10 Review Committee. And that included everything from
11 architectural site plan review, landscaping, et
12 cetera.

13 We are making some changes to our
14 architectural. We're doing some specialty
15 architecture here, some nontypical brick. I'm trying
16 to remember back. But we're doing some nontypical
17 things for our prototype.

18 So we have some different colorings on
19 some of the awnings, some things like that to make it
20 blend in a little more as approved by the Mako Design
21 Review Committee.

22 THE CHAIRMAN: Okay. So we're talking
23 more in color rather than in exterior, facade,
24 architectural design?

25 MR. HENSLEY: So the articulation of

1 the building's not going to change -- the way it steps
2 in and bumps out.

3 THE CHAIRMAN: That's my question.

4 MR. HENSLEY: Yeah. So we're not going
5 to do anything like that. I believe we agreed to
6 raise the parapet, make it a little taller, screen it.
7 Don't quote me on that because it has been a little
8 bit since I've seen the elevation.

9 But we did agree to do some of those
10 architectural changes to make it a little bit more
11 appealing and match in with the surrounding area.

12 THE CHAIRMAN: Thank you.

13 MR. SHANNON: Mr. Chairman, if I could
14 add to that. The reason they're remarkably similar is
15 obviously the one in New Albany involves the New
16 Albany Company.

17 And this tract is also owned by the New
18 Albany Company. So they had to go through the same
19 rigorous review process before they even were
20 authorized to file an application.

21 THE CHAIRMAN: I understand that. And
22 I understand, right, that the New Albany Company still
23 owns the property. And of course, it wouldn't be
24 purchased until everything went through. Makes sense.
25 Very normal.

1 But I probably would not agree that the
2 extent of what I'm hearing and the extent of what I'm
3 seeing as a design professional myself in what was
4 done in the New Albany area -- that goes totally
5 against what is a standard Burger King both in lines
6 of the building, colors, materials, heights, and all.

7 It doesn't appear to me from what I've
8 heard that to that extent is what was considered or
9 the concessions that were made. Just stating the fact
10 and not asking for anything beyond that.

11 MR. SHANNON: Okay. I didn't know if
12 it was universally known that they owned both tracts.
13 And that's why they went through a similar process. I
14 didn't get the gist of what you were getting at.
15 Thank you.

16 THE CHAIRMAN: Thank you. Any other
17 questions from the Board?

18 MR. BRYSON: There was the reference
19 there to the elevation. In the record we have in the
20 Department of Plannings' recommendations there's a
21 west elevation and a north elevation.

22 Were those the elevation pictures you
23 were referring to? Would they be the same ones that
24 you just haven't seen in a while?

25 MR. HENSLEY: Yes. They should be.

1 There should be two additional elevations somewhere in
2 the record showing the other sides of the building.

3 MR. BRYSON: So it's the same that we
4 have in the record?

5 MR. HENSLEY: Yes. Correct.

6 THE CHAIRMAN: Okay. Just for me I'm
7 going to ask one more time. The items that were on
8 the November 2nd Planning Commission that -- the
9 question was even asked at the end of the meeting --
10 should we go further with voting on the other, you
11 know, I think it was signage and landscaping,
12 development plan, whatnot -- how will those, no matter
13 what we decide on this evening, how and when will
14 those be voted upon and approved or discussion go to
15 that? When will that happen?

16 MR. MULARSKI: What will happen is if
17 you do not uphold the appeal then they will not be
18 voted on. If you do uphold the appeal, then Mr.
19 Blackford has said that they're on hold.

20 They're still at the Planning
21 Commission Zone. Just be brought back up and -- in
22 front of the Planning Commission.

23 So just you don't have to remand this
24 for that to happen. They are still in front of the
25 Planning Commission.

1 THE CHAIRMAN: That's what I was
2 getting at. So --

3 MR. SHANNON: Including design review.

4 THE CHAIRMAN: Okay. All right.
5 That's what I wanted -- to make sure of that -- that
6 that portion of the approval of the project still has
7 to go through Planning Commission.

8 MR. MULARSKI: That's correct.

9 THE CHAIRMAN: And discussion?

10 MR. MULARSKI: Yes.

11 THE CHAIRMAN: Excellent. Thank you.
12 All right. Any other questions right now? If not,
13 thank you. And we will move on to the appellee and
14 ask Mr. Roth to speak.

15 MR. ROTH: Thank you. I am not here
16 tonight to argue for or against the Sheetz gas
17 station. The City staff works with the applicants
18 prior to it even coming to Planning Commission.

19 I think there's eight different
20 entities that review what is submitted. They work
21 with them. They make changes. Once everybody is
22 satisfied it comes to Planning Commission.

23 Mr. Blackford, the Director of
24 Planning, appears at the Planning Commission meetings
25 and sets forth their position on these things.

1 If you look at the record from Planning
2 Commission, Mr. Blackford said that the criteria for
3 the conditional use have been met.

4 He did have some issues on behalf of
5 the City staff as far as the variances for the signs
6 and the dumpster locations. Those issues were never
7 resolved. But we are here tonight for the conditional
8 use application.

9 I represent the Gahanna Planning
10 Commission. I'm here to argue that their decision on
11 November 2nd was just and was accurate.

12 The Planning Commission, like I said,
13 hears applications. It is not an adversarial board.
14 We hear the application. They put forth their case
15 for the conditional use. And Planning Commission
16 considered the relevant factors.

17 The appellant has argued here tonight
18 that the Planning Commission shall approve the
19 conditional use if the four conditions are met.
20 Nobody's contesting that.

21 The question is: Were the four
22 conditions met? The Planning Commission found that
23 they were not. The presentation you heard went
24 through the four conditions. I'm not even going to
25 deal with the first two because I believe they are

1 met.

2 We're dealing with the third condition
3 that there be no undesirable effects and the fourth
4 condition that it keeps with the existing land use
5 character and then the physical development potential
6 of the area.

7 The appellant argues that anything that
8 has been heard about undesirable effects is just
9 speculation. I don't believe that's true. It is
10 common knowledge and not speculation that this is a
11 largely residential part of the city.

12 The adjoining parcels directly abutting
13 it are commercial. But I think you have to take note
14 that none of those existing commercial businesses in
15 the area operate on a 24-hour basis.

16 The Goddard School closes at, like,
17 6:00 p.m. The two restaurants that are nearby close I
18 believe at 9:00 p.m. or take their last reservation at
19 9:00 p.m. The Donatos Pizza shop that's right next
20 store closes at 10:00 p.m. There are no 24-hour
21 businesses in the area.

22 I think it's also common knowledge and
23 not speculation that none of those businesses there
24 have a 20-foot-high canopy with lights. That is a
25 distinction between this business and the existing

1 businesses in the area.

2 The job of determining whether those
3 factors constitute undesirable effects falls initially
4 on the Planning Commission and now on you. You are
5 considering the same issue -- whether there would be
6 undesirable effects from this development.

7 The determination of whether there's
8 undesirable effects is not solely on Michael Blackford
9 the Director of Planning. He sets forth that the
10 staff has considered this plan and believes that the
11 criteria are met.

12 But the ultimate issue is will there be
13 undesirable effects? The appellant's saying there
14 aren't going to be does not make it true.

15 The fourth issue is whether it keeps
16 with the existing land use character. Again, there
17 are commercial properties all the way around this.
18 It's zoned commercial and no zoning changes necessary.

19 It's residential -- what is the --
20 residential commercial or neighborhood commercial.
21 That means it's in a neighborhood and it's meant to
22 serve the neighborhood.

23 We're not contesting that a gas station
24 will serve the residents in the area. But when you
25 look at the existing land use character the businesses

1 -- I think one of the neighbors mentioned, you know,
2 it's like a barn, rustic type look on the adjoining
3 properties. It's not a gas station with 20-foot-high
4 canopies with lights underneath.

5 So when you look at whether it's -- you
6 know, it's up to this Board to consider whether it
7 keeps with the existing land use character.

8 This is the last undeveloped parcel.
9 And the current land use character is everything
10 pretty much but a 24-hour gas station with a tall
11 canopy. So how can you say that this keeps with the
12 character when it's the only one that would have that?
13 How can it be consistent?

14 The minutes of the November 2nd
15 Planning Commission meeting you've all had to review.
16 The Planning Commission honed in on those third and
17 fourth criteria as I have tonight.

18 Mr. Shapaka said he voted "no" because
19 a 24/7 business doesn't belong in a residential area.
20 Mr. Suriano voted "no" because he doesn't feel a gas
21 station was compatible with the existing development
22 in the area, would result in significant undesirable
23 effects.

24 He also was concerned with ingress and
25 egress so close to the traffic circle. That and a

1 canopy with lighting would be different from
2 everything in the area.

3 Mr. Tamarkin indicated he's very
4 familiar with the area because he lives nearby and
5 that a 24-hour business with neon signs and round the
6 clock traffic is different from everything in the
7 area. Mr. Wester agreed the 24-hour operation doesn't
8 occur in a residential area.

9 The Planning Commission considered the
10 correct criteria. And they came to their conclusion
11 that this was not fitting. That is our argument.

12 They didn't consider anything
13 inappropriate. They just considered what the factors
14 are, and they came to the conclusion and voted no.
15 Thank you.

16 THE CHAIRMAN: Any questions from the
17 Board for Mr. Roth?

18 MR. JENSEN: So to confirm though, Mr.
19 Blackford did recommend that the -- that it should be
20 approved?

21 MR. ROTH: The staff report was in
22 favor; yes.

23 MR. JENSEN: So he was saying it met
24 the criteria? There was some questions, as you're
25 saying, items three and four. But the City staff, not

1 just -- it was several individuals within the City
2 that approved -- that thought that it would be
3 appropriate?

4 MR. ROTH: Every plan that comes into
5 the City there is a panel that reviews it. Someone
6 from Engineering, someone from Water Resources,
7 someone from Parks and Recreation, the Township Fire
8 Department, you know, weighs in on it.

9 At the stage where they get it, they
10 all meet. They make their comments on it. It goes
11 back to the applicant. The applicant can make plans -
12 - plan changes. All of that was done between June and
13 November.

14 And what came forth November 2nd, Mr.
15 Blackford said that the City staff and everybody that
16 reviewed it said the conditions had been met.

17 MR. JENSEN: So these are all
18 professional City people that are -- that work on this
19 year-round? That's their only duty and job?

20 MR. ROTH: They were all doing their
21 jobs within the City when they review it; yes.

22 MR. JENSEN: That's all I have right
23 now.

24 MR. BRYSON: I have a couple questions.
25 There is an objection raised by the appellants to the

1 consideration of any lay opinion that's been raised
2 here. Do the appellees have any position on that
3 objection?

4 MR. ROTH: I'm familiar with the case
5 law they cited. I believe, you know, the Board can
6 hear any credible evidence. People that live nearby
7 can say, "I see cars speeding through there all the
8 time." That is evidence.

9 The traffic engineer said he studied
10 the, you know, the situation there. There were
11 recommendations based on federal criteria and state
12 criteria and that they're complying with all of that.

13 So there we don't have anybody to
14 contest their professional engineer saying that we
15 took into account all the traffic measurements, all
16 the warrants that are out there, and this fits. We
17 don't have anybody to counter that if that's your
18 question.

19 But I think the panel can hear from a
20 neighbor who says, you know, "I've seen wrecks. I've
21 seen car parts laying in the street. I've seen people
22 going 60 miles an hour." That is evidence. It's not
23 professional evidence.

24 MR. BRYSON: Thank you. That
25 answered -- I have lost my other question. It may

1 come up as the rest of you have anything.

2 THE CHAIRMAN: Okay. Any other
3 questions?

4 MR. JENSEN: I have another question.

5 THE CHAIRMAN: Go ahead, Mr. Jensen.

6 MR. JENSEN: Maybe it's aimed to
7 Mularski. But if we as the Board here decide against
8 the appellant -- I think I picked it up from Mr.
9 Shannon earlier that they still can appeal to a higher
10 court, higher authority. Is that correct?

11 MR. MULARSKI: Yes. There is a
12 provision that an appeal from here can go to the Court
13 of Common Pleas.

14 MR. JENSEN: So no matter what we would
15 be saying it could still be moved to a higher level?

16 MR. MULARSKI: That is correct. I
17 would not vote based upon that consideration. You
18 should vote based upon what you think --

19 MR. JENSEN: Well, I know. But --

20 MR. MULARSKI: -- is correct. But
21 yeah.

22 MR. JENSEN: -- just good information.

23 MR. BRYSON: That actually helped me.
24 Thank you. That reminded me of my other question. I
25 know the standard suggested by the appellants is that

1 this is -- and Mr. Mularski said that this is truly a
2 de novo, that our decision will be completely
3 independent from that of the Planning Commission.

4 Is there anything that would constrain
5 that decision-making based on what the Planning
6 Commission decided below?

7 MR. ROTH: My job is to argue that they
8 did their job correctly. And I think they did. This
9 appeal the burden of proof is on the appellant. They
10 have a preponderance of evidence standard that they
11 have to meet.

12 MR. BRYSON: Thank you.

13 THE CHAIRMAN: Anything else from the
14 Board? As I said earlier, and we can still have a few
15 more questions if something comes up, at this point we
16 will have five minutes for the appellant in rebuttal
17 and then five minutes for the appellee.

18 And then we'll move forward from there.
19 So with that, I will turn it over to Mr. Shannon and
20 Mr. Ingram.

21 MR. INGRAM: Thank you, Mr. Chairman.
22 And you know, as we just heard, the appellee is only
23 taking issue with the third and fourth condition.

24 And with respect to the third condition
25 concerning any undesirable effects I listened for and

1 heard no actual evidence of any specific undesirable
2 effect.

3 Now all you hear of are, you know, the
4 fact that there's going to be 24/7 operations. Now
5 that's conflating the land use -- the question that's
6 before this Board -- whether or not a gas station that
7 serves food that's conditionally permitted is
8 permissible for this -- is permitted for this site
9 with the specific operations -- with its operations.

10 And when you're talking about these
11 operational questions that's why you can't really come
12 up with any direct evidence because it hasn't opened
13 yet. This is a question for another day.

14 There are no inherent dangers that
15 arise from a business being in operation at night. If
16 anything, the access to fuel and food would be a
17 significant benefit to someone who happens to be out
18 of gas or happened to work late at night after the
19 restaurants nearby have closed.

20 Essentially what the 24/7 operational
21 concern is doing is just recasting the concerns we've
22 heard about either traffic, lighting, or speculation
23 of some future safety or crime element. But all those
24 fears are entirely unfounded.

25 With respect to the lighting, there is

1 no question as a matter of your zoning call -- code
2 this lighting plan follows all of the requirements.

3 Next, traffic. There is only one
4 witness who's competent to provide evidence to this
5 Board concerning traffic. And you heard from Mr.
6 Laurent the traffic expert. He provided you direct
7 expert evidence.

8 Everything else you're hearing about
9 these unsubstantiated concerns are just that -- lay
10 opinions. You're not allowed to consider those lay
11 opinions.

12 And so there is no competent evidence
13 concerning any actual undesirable effects of a
14 gasoline station or one that happens to also serve
15 food to anyone.

16 And then finally with respect to the
17 fourth condition and the overall character -- the
18 existing land use character -- you know, there's
19 nothing about the overall design, the plans of this,
20 that can be said to be contrary to the character
21 because, first of all, the design review comes next
22 after this.

23 But secondly, the plans that are
24 presently sitting at the Planning Commission have been
25 reviewed against the design review code itself. And

1 it meets all the requirements.

2 So for this Board to conclude that the
3 site, which has been designed and compiles with the
4 current code, the design review code, to then take the
5 position that the appellee is urging would be contrary
6 to its own code.

7 And so for those reasons there's just
8 no legitimate basis to deny the approval of the
9 conditional use application.

10 And I think what really -- what some of
11 the questions tonight have been geared towards come
12 later in this process when the final development plan
13 and site review and variances are considered. Thank
14 you.

15 THE CHAIRMAN: All right. Mr. Roth?

16 MR. ROTH: I would just reiterate the
17 burden of proof in this matter is on the appellant. I
18 don't have to prove anything. Whether there are
19 undesirable effects or not -- it's not up to me.

20 I don't even live in Gahanna. You live
21 in Gahanna. So I don't have to call a witness to say
22 whether there's undesirable effects.

23 That's up to this panel to decide if a
24 24/7 gas station at this location would have
25 undesirable effects. Planning Commission thought

1 there would be. That's all I can say. Thank you.

2 THE CHAIRMAN: Thank you. Any other
3 questions from members of the Board at this time?
4 Okay. Mr. Mularski, so where we go from here, we --
5 our next step would be to make a motion.

6 However, per the BZBA Rules of
7 Procedure the possible dispositions to how that motion
8 is made and to what happens next we -- the Rules of
9 Procedure allows us to find in favor of an appellee or
10 appellant, to find in favor and amend with
11 modifications, or third, to remand with instructions.

12 My belief was back to Planning
13 Commission. The official words that we've been given
14 is the City official, employee, or body for further
15 consideration or action.

16 So I want to make sure before I ask my
17 fellow board members to make a motion is that if that
18 third choice is of consideration.

19 And I'm not certainly saying that
20 that's the way I will be or pushing that on anybody up
21 here. But that does -- that will have an effect on
22 how the motion is made. Is that correct?

23 MR. MULARSKI: Yes. You can make a
24 motion to find in favor of the appellant. You can
25 make a motion to find in favor of the appellee.

1 You can make a motion to find in favor
2 of either one with modifications. And I find it a
3 little difficult -- I'm not exactly sure how you would
4 do that in this case as to what modifications you
5 would make.

6 But you can do the third one, which is
7 remand it back to the Planning Commission with certain
8 instructions that you feel weren't dealt with or
9 resolved. If you think that they dealt with all the
10 issues, probably should -- remanding is not the issue.

11 You should just vote whether or not you
12 believe the appellant has presented a case or whether
13 or not the appellee should prevail. Does that answer
14 the question?

15 THE CHAIRMAN: Yes; it does.

16 MR. MULARSKI: Okay.

17 THE CHAIRMAN: Are we allowed as a
18 Board -- because I'm going to call for a motion and
19 there will be somebody that is the first one to speak
20 could frame the motion in any of those three
21 directions.

22 Is this group allowed to have any
23 nonpublic discussion -- and I'm sure I know the answer
24 to that -- prior to the motion being made as if one
25 board member -- a motion could be made and another

1 board member is thinking, "I would be good. But I
2 want the motion made for one of the other three
3 choices"?

4 MR. MULARSKI: Can't have a private
5 discussion on that. But one board member makes a
6 motion. And another board member wants to amend that
7 motion -- they can move to amend that motion.

8 THE CHAIRMAN: Okay. Thank you.

9 MR. INGRAM: And, Mr. Chairman, before
10 you proceed, just for purposes of the record, the
11 appellant moves the presentation that we made tonight
12 into the record.

13 THE CHAIRMAN: So noted.

14 MR. INGRAM: Thank you.

15 THE CHAIRMAN: All right. So our next
16 step would be to make that motion. And I know I just
17 asked Mr. Mularski a couple of questions.

18 Are there any of the other board
19 members that need any kind of clarification or have a
20 question? Again, not back to the appellee or
21 appellant but more back to a procedural question that
22 you might need to ask Mr. Mularski about.

23 MR. BRYSON: It isn't clear to me as I
24 sit here whether the motions to admit both the record
25 and the presentation into evidence were granted. The

1 word I heard for both of them was "noted." So I would
2 want to move that we do actually accept those into
3 evidence for our proceeding tonight.

4 THE CHAIRMAN: Any disagreement there?

5 MR. ROTH: No.

6 MR. INGRAM: No. Thank you for
7 clarifying the record.

8 MR. ROTH: Thank you.

9 THE CHAIRMAN: So if you'd like to make
10 a motion and then we'll go from there?

11 MR. BRYSON: I move that we accept the
12 evidence that was proffered to us tonight -- that was
13 offered, rather, being the record on appeal and the
14 presentation that was made by appellants into the
15 record.

16 THE CHAIRMAN: Do I have a second?

17 MS. STEFANOV: I second.

18 THE CHAIRMAN: All right. Let's have a
19 roll call, please.

20 MR. VANMETER: Bryson?

21 MR. BRYSON: Yes.

22 MR. VANMETER: Stefanov?

23 MS. STEFANOV: Yes.

24 MR. VANMETER: Eisen?

25 THE CHAIRMAN: Yes.

1 MR. VANMETER: Jensen?

2 MR. JENSEN: Yes.

3 MR. VANMETER: Beckmann?

4 MR. BECKMANN: Yes.

5 (Exhibit 1 and Exhibit 2 were received
6 into evidence.)

7 THE CHAIRMAN: Okay. Well, back to
8 where we were just a second ago. We are now ready to
9 move forward with a motion.

10 And again, any help needed by Mr.
11 Mularski not on the opinionated side of how you're
12 making the motion but just to make sure that we're
13 making it correctly, please be sure to ask. Do I have
14 a motion for this evening's hearing?

15 MR. BRYSON: Hate to be the one to talk
16 all the time but it doesn't look like anybody's going
17 to beat me to it. I move for a finding in favor of
18 the appellant.

19 MR. JENSEN: I --

20 THE CHAIRMAN: Do I have a second?

21 MR. JENSEN: I second.

22 THE CHAIRMAN: Any discussion? And I
23 think you've all seen that this is the point of the
24 meeting that if -- we are allowed some additional
25 comments by any or all members of the Board prior to

1 the final roll call. So with that, I will just go
2 from left to right and start with Ms. Stefanov. If
3 you have any questions --

4 MS. STEFANOV: Oh --

5 THE CHAIRMAN: -- or any comment --

6 MS. STEFANOV: No --

7 THE CHAIRMAN: -- or discussion point.

8 MS. STEFANOV: No comments.

9 THE CHAIRMAN: All right. Mr. Jensen?

10 MR. JENSEN: Well, I think I've -- you
11 know, this to me is a very 50-50 kind of thing because
12 I do -- as it was already stated by the appellee, Mr.
13 Roth, that this situation does meet the first two
14 standards -- the zoning standard and the plans.

15 The question is the undesirable effects
16 of the existing land use. That kind of question is
17 debatable, opinionated, up in the air, to be
18 determined, to be proved. Who knows what it will be
19 like?

20 But that makes it a question -- but
21 that's why I asked the question earlier about no
22 matter how we decide to go it seems that the deep
23 pockets of the appellant would still pursue further up
24 the ladder even if we do decide against it. So I'm
25 most likely -- I will be voting in favor of the

1 appellant.

2 THE CHAIRMAN: Mr. Beckmann?

3 MR. BECKMANN: I'll start out by
4 saying, you know, I'm a lifetime resident of this area
5 as well. I grew up in Blacklick. I've been around
6 this area forever.

7 I have my own mixed feelings about
8 whether or not the business being proposed is the
9 perfect business for the area.

10 But given the points that we're asked
11 to consider here and to take the opinion out of the
12 consideration and only consider the facts, you know, a
13 lot of the things that I've heard tonight in
14 opposition to the appeal have to do with disdain about
15 traffic patterns on Morse Road, have to do with, you
16 know, questioning whether or not the lighting is
17 correct or the safety is correct and all that kind of
18 stuff.

19 And I believe that that is, at the end
20 of the day, all opinions of those in the immediate
21 area. So I'm forced to support the appeal.

22 THE CHAIRMAN: Mr. Bryson?

23 MR. BRYSON: It was my motion. And I
24 think everybody's entitled to an explanation. I don't
25 live too far away. I go this way regularly. My

1 previous place I lived was one way down the street.
2 Where I live now is the other way down the street of
3 Morse.

4 And traffic on Morse Road is terrible.
5 And I don't like seeing the trash either. And I thank
6 you who said that, you know, you go down and pick up.
7 We all got to take care of our neighborhoods.

8 I live a little further away. I do the
9 same thing over in my immediate surroundings. And I
10 think that's what all community members need to do.

11 We're in a situation where the zoning
12 code, the Land Use Plan, says that these should be
13 rare. But conditional uses are those rare things that
14 are still okay in the Land Use Plan.

15 And that's kind of where I come to
16 this. Not necessarily the 24-hour or having all the
17 full services it has, but the type of business that it
18 is -- gas station, convenience store, prepared foods
19 place.

20 Those are all conditional uses that are
21 allowed under our Land Use Plan. And they're okay as
22 long as they meet those four standards.

23 I was in agreement at the beginning
24 that the first two are pretty well established here.
25 Three and four leave a lot of room for reasonable

1 minds to disagree.

2 For the Planning Commission members to
3 look at it and go, "You know what? I think there will
4 be some undesirable effects" or, "I don't think it's
5 really in keeping with the character and physical
6 development potential" -- because there is a lot of
7 judgment called for there.

8 But in looking at the record and
9 looking what was presented, the existence of this type
10 of business on this lot doesn't seem like it would be
11 a reason for undesirable effects on the surrounding
12 area.

13 There was a lot of -- there's been a
14 lot of talk about things we fear people might do. I'm
15 not prepared to hold any landowner accountable for
16 certainly not the criminal actions of somebody they
17 don't have control over, whether it's littering or
18 whether it's murdering probably the clerk at the
19 Sheetz if, you know, the violence statistics were the
20 thing we were worried about.

21 And when it's keeping with the land use
22 character it is another retail establishment that is
23 one that provides goods and services to people in the
24 area.

25 And for all of those reasons I feel

1 like it meets -- my belief, my opinion, is that it
2 meets the criteria that are laid out for conditional
3 use and that we should be ruling in favor of the
4 appellant.

5 THE CHAIRMAN: Thank you. Well, I
6 guess I am last here. I know the comment was made
7 earlier about there's a lot of people on the north
8 side of Morse Road that were here tonight and Columbus
9 residents. I am a Gahanna resident for over 30 years.
10 And I live not too far from this area of town.

11 A lot of what I'm going to say is going
12 to be what you've already heard tonight. But I'll
13 start with -- and again, similarly, my biggest
14 concerns were items three and four as others have
15 said.

16 From a design perspective, Mr.
17 Blackford made a comment at the November 2nd hearing
18 that the building is brick veneer and traditional
19 architecture and is similar in appearance to the
20 Goddard School and senior living facility to the west.
21 I disagree with that.

22 Maybe this building has brick has on
23 it. But I don't see as a design professional that
24 this building does fit in with Goddard School or
25 StoryPoint.

1 And also, you've got on the other side
2 the Market at Roger's Corner's buildings that are more
3 of the -- call it barn-like architecture. It does not
4 have a name. The barn is called the barn. But
5 corrugated metal panel, sloped metal roofs.

6 I realize that those are not similar to
7 Goddard School and StoryPoint. But I feel like this
8 building is, as you said, completely harmonious with
9 the surroundings. I disagree. We have difference of
10 opinion there. That's my opinion that it doesn't
11 work.

12 And that's why I asked the questions
13 earlier about a canopy height change or a change in
14 the color of brick would not satisfy me as either a
15 citizen or a Planning Commission or BZBA member that
16 that's enough.

17 As far as lighting, signage, trees --
18 we're not going to talk about those here. Those will
19 be handled elsewhere, albeit large neon signs are not
20 found anywhere in this neighborhood either at the
21 restaurants or at the entrances of any of the
22 residential or school developments.

23 The whole idea of 24/7 -- yes, High
24 Banks, ten o'clock, eleven o'clock, midnight. The
25 Barn, 10:00 p.m. on Saturdays and Sundays. Donatos,

1 10:00 p.m. or midnight.

2 Does not fall with that --within those
3 kind of restrictions -- or not restrictions but
4 falling within the commercial properties of the area.
5 And this will be 24/7, 24 hours a day.

6 There was a comment made earlier about
7 we're not -- we can't deny just because it's a Sheetz
8 gas station. I don't think anybody here would do
9 that. So I take a little deference to that comment.
10 But I'll keep moving on.

11 It was also mentioned that this could
12 be an asset to somebody who needs food or fuel. It
13 was also said earlier there are three gas stations at
14 the corner of Morse and Hamilton.

15 You can go into New Albany. You can go
16 into Johnstown. You can go all over Gahanna and
17 Elmira to Kroger. There are plenty of gas stations.

18 I hope nobody -- that without a gas
19 station at this corner or a facility like this is
20 going to be detrimental to their getting to work or
21 home or anywhere else like that.

22 I appreciate the opinion of Carpenter
23 Marty and Mr. Laurent. No matter what -- and I saw
24 the case law up on the screen -- I am still concerned
25 about traffic. I don't believe that adding that light

1 is going to help.

2 I would be concerned if I ran the
3 Goddard School or at StoryPoint if there were traffic
4 from the gas station for those who want to go
5 westbound on Morse Road are cutting through that cut
6 through that we saw up there and going around to the
7 Albany Glen. I see problems with offroad traffic
8 concerns too on that connector road.

9 And certainly, there have been some
10 citizens that have approached me. And you've heard
11 some opinions tonight.

12 And with all of that, I would say I am
13 a believer that items three and four are not met to my
14 satisfaction. And I will be voting against this
15 appeal tonight.

16 So with that, any other comments by the
17 members up here? Otherwise we are going to move right
18 on to roll call. Anybody else?

19 MR. JENSEN: I want a couple of follow-
20 ups. I mean, I'm a 30-year resident of Gahanna also.
21 One of the things I would say there is when you were
22 talking about design or whatever -- to me, and this is
23 not a knock against Dan, but nothing in Gahanna is
24 harmonious.

25 There's not a consistent architectural

1 design. And that's not a knock or negative or
2 whatever. It's you're going to have that
3 inconsistency over the years that we've lived here.

4 I can see why the Planning Commission
5 would have rejected it. I think that they were doing
6 their job based upon evidence that they had at the
7 time.

8 But I don't see -- I mean, since I've
9 lived here Morse Road has gotten every year busier,
10 busier, and busier and busier. And it's if we don't
11 like it I guess we have to learn to live with it or
12 move.

13 So but I would think that that traffic
14 light that they're talking about up there is going to
15 help, you know, adjust some of that depending on how
16 the light is set up and moderated. So anyway, that's
17 all I have.

18 THE CHAIRMAN: Anybody else? Anything
19 else we need to do, Mr. Mularski, before we move onto
20 roll call that you can see?

21 MR. MULARSKI: No; not if everyone's
22 satisfied with their comments.

23 THE CHAIRMAN: Okay. And with that, I
24 will turn over the roll call to the Clerk.

25 MR. VANMETER: Bryson?

1 MR. BRYSON: Yes.

2 MR. VANMETER: Jensen?

3 MR. JENSEN: Yes.

4 MR. VANMETER: Stefanov?

5 MS. STEFANOV: Yes.

6 MR. VANMETER: Beckmann?

7 MR. BECKMANN: Yes.

8 MR. VANMETER: Eisen?

9 THE CHAIRMAN: No.

10 MR. SHANNON: Thank you for your time
11 and consideration.

12 MR. INGRAM: Thank you.

13 MR. ROTH: Thank you.

14 THE CHAIRMAN: With that, we will take
15 a short break and allow those who want to leave, which
16 is probably a good bit of you, because we just have
17 one -- a little bit of time we need to spend on Rules
18 of Procedure. So take your time. We can maybe take
19 five minutes if that's what we need.

20 THE REPORTER: We're going to go off
21 the record at 8:40 p.m.

22 (Off the record.)

23 THE REPORTER: We are back on the
24 record at 8:56 p.m.

25 THE CHAIRMAN: Thank you. We are going

1 to move ahead with new business, which is Rules-0005-
2 202, Rules of Procedure for BZBA, proposed Redline
3 2023. And the date -- does everybody have their
4 packet? I believe you do.

5 So I'm going to turn this portion over
6 to you because doubtful that any of us have had any
7 time to look at this.

8 And I'll let you run through what has
9 been done and by whom and then what we are actually
10 needing to do. Are we approving language line item by
11 line item or how best to work our way through this?

12 MR. MULARSKI: I would go through the
13 whole thing or through each item and decide on each
14 item if there's anything you want to change different
15 than what's on here. And debate each item. And then
16 at the end vote on the proposal as amended.

17 THE CHAIRMAN: Okay.

18 MR. MULARSKI: If there are any
19 amendments.

20 THE CHAIRMAN: Okay.

21 MR. JENSEN: How come there's two?
22 There's the --

23 MR. MULARSKI: It's one redlined and
24 one's --

25 THE CHAIRMAN: Yeah.

1 MR. MULARSKI: One's red and one's --

2 THE CHAIRMAN: The one in your left
3 hand I think was the current for tonight's meeting.

4 MR. JENSEN: Okay.

5 THE CHAIRMAN: Isn't it? I can't see
6 it from here.

7 MR. MULARSKI: No. That's the clean
8 version. That's a redlined version. So this is what
9 it would look like if you accepted every --

10 MR. JENSEN: Okay.

11 MR. MULARSKI: -- everything. There's
12 no redlines in here. So --

13 MR. JENSEN: Okay.

14 THE CHAIRMAN: Yeah. I think it'll be
15 easiest for us to use the redlined version.

16 MR. MULARSKI: Better to use the
17 redline so you can see --

18 MR. JENSEN: Yeah.

19 MR. MULARSKI: -- what changes are
20 being proposed.

21 MR. JENSEN: I got you.

22 MR. MULARSKI: Now and then as far as
23 procedurally I would suggest that we -- Jeremy and I
24 tag team this.

25 THE CHAIRMAN: Yes.

1 MR. MULARSKI: I have to give him and
2 Pam 99.9 percent of the credit because they prepared
3 most of these changes and then asked me what I thought
4 about them afterward because we had talked about the
5 general idea.

6 But he actually kind of did it so I
7 think maybe you can go through until you need me to
8 jump in. Does that work, Jeremy?

9 MR. VANMETER: Yeah; that works.

10 MR. MULARSKI: Okay.

11 MR. VANMETER: I'm trying to show where
12 the redlines are and all that on the screen here.
13 Here we go. Okay. A lot of this, as I had noted I
14 think in my emails, is just a little bit of clean-up
15 in terms of the formatting -- so the renumbering of
16 articles.

17 And then specifically what the Clerk's
18 Office, the Council Office brought forward were some
19 changes to the duties of the Clerk.

20 And those changes in there reflect
21 language that we use in other boards and commissions.
22 So basically, make those conform with what we have
23 elsewhere.

24 There are then some different movements
25 that take place because after talking with Attorney

1 Mularski we thought that certain sections belong with
2 certain articles rather than their own separate thing.

3 So we'll just go down through the list
4 here. Just the first changes would be to the cover,
5 putting the amendment date if you guys decide to make
6 any amendments today.

7 Article 1, just reformatting again. So
8 nothing except when we go down to what would be the
9 new 1.3. We've stricken some language there regarding
10 Robert's Rules of Order -- just that we're going to go
11 by the current edition.

12 That would serve as the parliamentary
13 authority should matters not addressed in these rules
14 or code -- should those not be addressed elsewhere.

15 Article 2, just noting that January the
16 Board is going to meet for their organizational
17 meeting. Article 3, reformatting. And this is where
18 the duties of the Clerk and the Board have been just
19 modified slightly.

20 Just to note that our office, Council
21 Office, will provide a clerk to this Board. It may
22 not always be me. But we will have somebody here to
23 provide that for the Board's proceedings.

24 THE CHAIRMAN: Okay.

25 MR. VANMETER: The addition of G and H

1 here under the Clerk's duties -- again this is
2 language that we use elsewhere in other boards and
3 commissions. Standard protocols. Let me know if you
4 have any questions too. Okay.

5 THE CHAIRMAN: We'll just keep shaking
6 our head --

7 MR. VANMETER: Okay.

8 THE CHAIRMAN: -- if we are in
9 agreement. And anybody that wants to speak up do so.
10 Otherwise just keep on going.

11 MR. VANMETER: Certainly. Article 4,
12 some reformatting here. Article 4.4 is a new number.
13 Just adding here at the end to verify that there is a
14 four.

15 4.5 has been added in here. If it's
16 determined that a quorum will not be present the Chair
17 shall postpone the meeting and the Clerk shall notify
18 the members and any applicants.

19 THE CHAIRMAN: Okay.

20 MR. VANMETER: Under Article 5,
21 reformatting. And then we get to the new what is 5.3
22 adding to our order of business that we're going to
23 approve the minutes. Been doing that as kind of a
24 standard practice. We're just putting that in the
25 rules.

1 Modifying some language here around
2 administering the oath. Appeals. That's our public
3 hearings that we have. Since this Board --

4 MR. MULARSKI: If I may --

5 MR. VANMETER: Sorry.

6 MR. MULARSKI: -- where it talks about
7 administering the oath -- you did it correctly.
8 However in the statute itself it says you will say
9 this is how it's going to happen -- if they're going
10 to do 25 minutes, 25 minutes, 5, 5. And which you did
11 do. And then I administered the oath.

12 So I don't -- if we just leave it
13 administering the oath -- but prior to that you should
14 describe what's going to happen on the -- during the
15 public hearings.

16 I didn't know if you wanted to be more
17 specific and add that or if you just want to leave it
18 as approval of administering the oath.

19 MR. BRYSON: I guess the real question
20 would be is somebody going to forget that we need to
21 do that if we don't have your institutional knowledge
22 at the time of that. That'd be the only reason I'd
23 say stick it in there. Otherwise, it being in the
24 statute would be fine.

25 THE CHAIRMAN: Yeah. I'm fine with

1 that too.

2 MR. MULARSKI: So --

3 THE CHAIRMAN: Just make it so that
4 it's clear to whoever is sitting in these two chairs
5 up here.

6 MR. MULARSKI: Okay. So the language
7 in the statute is --

8 MR. VANMETER: Are we adding to Item D?

9 MR. MULARSKI: 5.3(D), yes. I can't
10 find the language. But it's not difficult. You just
11 start with Chairperson or just use Chair through this.
12 That just made me realize that we still them Chairmen.
13 Chair. Just Chair; okay?

14 THE CHAIRMAN: Yeah.

15 MR. MULARSKI: So the --

16 MR. VANMETER: And I guess just to
17 clarify -- this section here is the outline of our
18 agenda.

19 MR. MULARSKI: Right. So just start D
20 with the Chair shall describe how the public hearing
21 shall commence period. And administering the oath.
22 Does that sound sufficient?

23 THE CHAIRMAN: Yep.

24 MR. MULARSKI: Okay.

25 THE CHAIRMAN: Yes.

1 MR. MULARSKI: All right. So then we
2 get back to VI.

3 MR. VANMETER: So I'm actually going
4 through the document as we're discussing it. On the
5 screen I've changed to add this --

6 THE CHAIRMAN: Okay.

7 MR. VANMETER: -- request. You see it
8 here. Is that correct?

9 THE CHAIRMAN: Well, it's Chair shall
10 describe how the public hearing shall commence. And
11 City Attorney shall admit -- shall administer the
12 oath; right?

13 MR. MULARSKI: Yeah. Yes. That is
14 correct. The City Attorney or designee. Yes, that
15 looks good.

16 MR. VANMETER: Okay. We've taken out
17 Item G -- what was Item G -- establishing next meeting
18 dates -- since this Board just meets as-needed. Just
19 changing a little bit of language in Item H just that
20 we reference on the agenda, poll members for comment.

21 Article 6, some reformatting that we
22 have. Except I will note pursuant to earlier
23 conversation under six -- what is proposed to be just
24 the new 6.1 there was an earlier reference to Rule
25 6.13. And as Mr. Mularski pointed out, this doesn't

1 really match up or align with what we had for 6.13.

2 MR. MULARSKI: Yeah. That's under 6.1,
3 the very end of the first paragraph and the very end
4 of the second paragraph. That previously referred to
5 a 6.13, which was since also stricken.

6 What the previous 6.13 said -- "The
7 Board may consider any relevant evidence not contained
8 in the record. The Chair may order exhibits to be
9 entered into the record.

10 "If a member of the Board objects the
11 matter shall be put to a vote of the Board and the
12 Board shall order the exhibit entered or rejected by
13 majority vote." That is what was removed previously.

14 And then also, well, it changed in
15 amounts and the time. But then also the part of
16 adding public comment under 6.11. So do you want that
17 wording on -- that was previously 6.13?

18 Because that's really what we did do
19 today. The Chair ordered exhibits entered into the
20 record. And then if there was no objection it was
21 voted on. That's no different than how we did it. We
22 voted on whether the exhibit should be admitted.

23 One of those two ways should be put in
24 there so that it's clear as to how the procedure will
25 go. The big part that was left out was it says, "The

1 Board may consider any relevant evidence not contained
2 in the records."

3 Now that I don't know why that was in
4 there. I would think that that's the part they wanted
5 to take out. I'm not sure --

6 THE CHAIRMAN: Yeah.

7 MR. MULARSKI: -- why they took out the
8 rest. The rest of it I think is probably necessary.

9 THE CHAIRMAN: Yeah; I think we should
10 have voted just like we did today; right? What do you
11 think?

12 MR. BRYSON: So I mean, does it really
13 matter whether we want to vote or whether that's just
14 the power the Chair has? I'm comfortable with the
15 Chair just having the power to say, "Yeah; that's
16 admitted."

17 The only reason I made it a motion
18 tonight was I thought it was unclear. And if we voted
19 against it and there was an appeal I didn't want us
20 overlooking that to be the reason that the appeal got
21 determined correctly. I just wanted to make it clear
22 what we had considered.

23 MR. MULARSKI: And this did say that if
24 any board member objects then you vote on it. So that
25 is the protection there. So --

1 THE CHAIRMAN: Okay. Well, then that -
2 -

3 MR. BRYSON: I think that makes sense.

4 MR. MULARSKI: So all right. So we'll
5 add that back in. And let's see. So if we make that
6 16.13 then we can leave the previous section as
7 16.1 -- 6.13 I mean. Because it will then refer to
8 that section.

9 MR. VANMETER: So okay.

10 MR. MULARSKI: Okay. So there's going
11 to be a new 6.13.

12 MR. VANMETER: So where the old one was
13 will now be here?

14 MR. MULARSKI: Right.

15 MR. VANMETER: And that language again,
16 Mr. Mularski?

17 MR. MULARSKI: Would be the Chair may
18 order exhibits to be entered into the record. If a
19 member of the Board objects, the matter shall be put
20 to a vote of the Board and the Board shall order the
21 exhibit entered or rejected by majority vote.

22 MR. VANMETER: Sorry; I couldn't keep
23 up.

24 MR. MULARSKI: Yeah; I know. I started
25 getting faster. Then my mic went out.

1 MR. VANMETER: The Board shall --

2 MR. MULARSKI: Okay. What do you have?

3 MR. VANMETER: I have "the matter shall
4 be put to a vote of the Board and the Board shall
5 enter" --

6 MR. MULARSKI: Shall order the exhibit
7 entered or rejected by a majority vote.

8 MR. VANMETER: Okay.

9 MR. MULARSKI: So with that, in 6.1 we
10 can leave that reference to 6.13.

11 MR. VANMETER: Well, it would be a new
12 6.6 is what -- how it all ends up with the
13 renumbering.

14 THE CHAIRMAN: Okay. So yeah. Just
15 get it to tie back to the right --

16 MR. VANMETER: Yes.

17 THE CHAIRMAN: -- reference.

18 MR. MULARSKI: I'm sorry. What is the
19 new 6.6?

20 MR. VANMETER: What we just read.

21 THE CHAIRMAN: Yeah.

22 MR. BRYSON: The thing that used to be
23 6.13 just with the new numbering scheme would actually
24 be 6.6.

25 MR. MULARSKI: Okay.

1 MR. BRYSON: Because now there's not
2 6.101 too.

3 MR. MULARSKI: Okay. I'm reading from
4 the 2017 document and I'm not seeing that. I'm like,
5 what? Okay. I got you.

6 MR. BRYSON: Yeah; it's way easier when
7 you're looking at the red.

8 MR. MULARSKI: Yeah, yeah. Yeah. But
9 I got a 2017 document and then a 2023 document on
10 that. Okay. Anyways, so that's good.

11 Then the other thing to discuss is
12 6.11. It adds public comment. Each speaker will be
13 allowed three minutes. That's where we ran into the
14 problem with the emails.

15 I see two solutions to that. One, you
16 can say, "Yes; we can accept emails" if you think -- I
17 mean, there were a lot of good reasons as to why
18 emails shouldn't be accepted.

19 But if you were to think they should
20 be, I would put a time limit on it -- that are
21 received at least seven days prior to the hearing or
22 something like that.

23 Or if you just think it's -- I mean,
24 since everything else is under oath and emails aren't
25 you -- I thought that was a good reason --

1 THE CHAIRMAN: Yeah.

2 MR. MULARSKI: -- not to include
3 emails. But so that's up to you guys as to what you
4 think.

5 THE CHAIRMAN: Yeah. I mean, it's just
6 a tough one if somebody is not physically able to
7 come --

8 MR. MULARSKI: Right.

9 THE CHAIRMAN: -- how can their voice
10 be heard? Well, do they choose a proxy to come read
11 as one lady here who had too much to read had somebody
12 else read it?

13 And I mean, does that sound fair?
14 Because I would agree. I mean, anybody could be
15 sending in emails.

16 MR. BRYSON: I agree.

17 THE CHAIRMAN: It's a tough one.

18 MR. BRYSON: I agree.

19 THE CHAIRMAN: Yeah.

20 MR. MULARSKI: Okay.

21 MR. BRYSON: The thing that I'd like us
22 to try to figure out -- and this probably isn't a
23 tonight thing -- I was very uncomfortable with the
24 idea that someone who comes and delivers public
25 comment being subject to cross-examination.

1 I don't think that's something that
2 either of the parties has an absolute right to you in
3 an administrative proceeding. But I don't know the
4 answer to that question.

5 I would love to specify -- if we don't
6 have to allow that cross-examination, I would love to
7 specify that the public comment speakers don't get to
8 be cross-examined because that just sounds --

9 MR. MULARSKI: The thing you got to
10 keep in mind is this is a trial; okay? And when you
11 have a trial you have certain rights. You have a
12 right to confront your accuser. As you see on TV,
13 it's not actually your accuser but people who are
14 saying things against you.

15 You have a right to confront them and
16 say, "Well, wait a second. You might say there's --
17 crime's going to increase. But why would you say
18 that? Why would you say it?"

19 Yeah. So I understand what you're
20 saying. But I think that it's probably just a basic
21 fairness of trial that if someone's going to present --
22 - if we're going to count this as evidence -- I guess
23 there's a better way to say it.

24 We're counting the public comment as
25 evidence; okay? Now you take it -- give it how much

1 weight as you think is necessary because it's just an
2 opinion. It shouldn't be given any weight.

3 You know, if someone comes up and has a
4 public comment saying, "Well, here in this FBI report
5 so-and-so says this" you're probably going to give
6 more weight to that; okay?

7 So you can give a different weight as
8 to what that public comment is depending on what it is
9 as opposed to someone's just opinion. But if we're
10 going to allow public comment I think you need to
11 allow it to be cross-examined. That's just fairness.

12 Otherwise it can come up -- because the
13 problem I had with the public comment was it just
14 happens that day. And no one knows what's going to be
15 said.

16 THE CHAIRMAN: Yeah.

17 MR. MULARSKI: And so that's why it
18 makes it difficult. If you're going to have it, we
19 should be able to address that issue -- whoever it
20 goes against.

21 MR. JENSEN: Well, the problem with
22 public comment also is it's very personal and very
23 emotional and very -- I mean, it's all very one-sided.

24 Every ones that I've been on in the ten
25 years that I've been on there's always -- you know,

1 there's not a two-sided kind of thing on it. It's all
2 just one side that's against it.

3 So I mean, I don't know what it really
4 -- I mean, I understand the reasons, whatever, but I
5 don't know what really it benefits other than letting
6 the people vent about their frustration.

7 But obviously we didn't make a decision
8 based upon the public comment anyway. So I just --
9 it's the same thing, like, with the emails. It's the
10 emails should be directed to somebody other than to
11 us.

12 I don't know who you would -- maybe to
13 the -- Mr. Blackford or somebody on the -- in the City
14 administration should be getting that stuff.

15 MR. MULARSKI: Or to the appellant.
16 And then that way --

17 MR. JENSEN: Yeah. Somebody in the
18 administration --

19 MR. MULARSKI: -- they can call them as
20 a witness if they feel --

21 MR. JENSEN: Yes. Yeah.

22 MR. MULARSKI: -- it's appropriate.

23 MR. JENSEN: Because it's not like
24 we're going for votes or anything, running for office
25 or whatever. Right?

1 THE CHAIRMAN: But we know that just
2 because they send an email also doesn't mean that
3 they're going to show up. So they can't be
4 questioned, cross-examined, call it what you want
5 because they may not be sitting out there. So --

6 MR. MULARSKI: So I guess the first --

7 THE CHAIRMAN: Yeah. I mean, you
8 saying --

9 MR. MULARSKI: -- thing at issue is --

10 THE CHAIRMAN: -- right --

11 MR. JENSEN: Were you saying --

12 MR. MULARSKI: -- public comment.

13 MR. JENSEN: Were you saying -- Paul,
14 you were saying earlier that there would be cross-
15 examination of the public?

16 MR. BRYSON: That was the right that
17 the appellate claimed tonight was that if you're going
18 to take public comments and they're going to be
19 witnesses then I get to cross-examine them like
20 they're witnesses in a court. And it could be --

21 MR. JENSEN: I didn't get that.

22 MR. BRYSON: -- that they actually have
23 that right. I mean, I couldn't bring up Westlaw and
24 try to research that issue while we were listening to
25 people.

1 But if they really do have that right I
2 don't think that -- you know, when you're called into
3 court or you go into court to testify you know that's
4 going to happen. If you show up and that happens by
5 surprise that could be a pretty horrible experience.

6 MR. JENSEN: I didn't realize that.

7 MR. MULARSKI: So the first thing is do
8 you want public comment at all?

9 MR. JENSEN: That's I guess what I'm --

10 MR. MULARSKI: Yeah; that's what you
11 were saying. So that's the first issue. And keep in
12 mind there is public comment in the Planning
13 Commission.

14 MR. JENSEN: Yeah.

15 MR. MULARSKI: What really happened
16 here tonight was this is right across the street from
17 Columbus people. And Columbus people weren't involved
18 in the Planning Commission issue. And they're the
19 ones who came and were complaining here.

20 Now whether or not you should even
21 consider what the Columbus residents state -- that's
22 totally up to you. But that's why they weren't part
23 of this up to that point.

24 But generally, any Gahanna residents
25 had the right to go -- and Columbus residents had the

1 right too if they knew it was going on.

2 But to go to the Planning Commission
3 and make their public comment there, which would then
4 be part of the record because the -- right,
5 Chairman -- he would put the public comments in the
6 minutes.

7 MR. VANMETER: Okay. So well, I think
8 we would do it similar to what Planning Commission
9 would do. The Chair would say, "We received this
10 correspondence. All in favor of having --"

11 MR. MULARSKI: No. I'm saying in the
12 Planning Commission itself you can put what the public
13 comments are in the minutes.

14 MR. VANMETER: Correct. Yes.

15 MR. MULARSKI: So when it's --

16 MR. VANMETER: I'm sorry. I misheard.

17 MR. MULARSKI: So when it's presented
18 to the BZBA they will have gotten the public comments
19 that were made at the Planning Commission?

20 MR. VANMETER: Yes.

21 MR. MULARSKI: Okay.

22 MR. VANMETER: Okay. Sorry.

23 MR. MULARSKI: It's just a
24 consideration.

25 THE CHAIRMAN: Public comment --

1 MR. MULARSKI: You're not going to take
2 out public comments altogether. You're just taking
3 the ones from the Planning Commission.

4 MR. JENSEN: But if we are being looked
5 upon as being some sort of judges or something isn't
6 that a different kind of thing than the Planning
7 Commission?

8 MR. MULARSKI: Yes; it is. And that's
9 my reason why I don't think you should have public
10 comment -- because you should have evidence. You
11 should only have evidence because I think you should
12 be able -- subject to cross-examination. It should be
13 ran more like a trial.

14 MR. JENSEN: And that's why I'm saying
15 that I would like to see where if there is public, you
16 know, emails or public comments, whatever, that
17 they're directed to a City administrator who then part
18 of the -- during this session then they would bring,
19 "This is what we had, these 50 people.

20 And this is some of the things that
21 they were saying" as opposed to having the emotion and
22 whatever of the public crying and whatever that
23 they're going to be --

24 MR. MULARSKI: Because if it's done
25 that way both the appellant and appellee have to

1 present their evidence seven days prior to the
2 hearing.

3 MR. JENSEN: Yeah.

4 MR. MULARSKI: So there is -- they're
5 given that ahead of time.

6 MR. JENSEN: Is there --

7 MR. BRYSON: I think this was well-
8 intentioned --

9 MR. JENSEN: Yes.

10 MR. BRYSON: -- to add public comment.

11 MR. MULARSKI: Right.

12 MR. BRYSON: Like emotionally it feels
13 right to give people a chance to come and be heard.
14 But I don't know that in this format, like you all
15 were just discussing, that it makes a ton of sense,
16 especially when we can get that information out of the
17 record from the Planning Commission.

18 MR. JENSEN: Well, and then I'm sure
19 you noticed that half the people started walking out
20 of here when they could get the temperature of what we
21 were going to be doing up here.

22 Then they're all, you know, making,
23 like, a statement, like, "We don't like what you guys
24 are doing and so we're going to leave." So --

25 MR. MULARSKI: Yeah.

1 MR. JENSEN: -- that's all that gets
2 said.

3 MR. BECKMANN: Yeah. I like the idea
4 that they have an avenue to get it to us by way of --

5 MR. JENSEN: Yeah.

6 MR. BECKMANN: -- the way prescribed.
7 But like tonight, I mean, clearly there was an outcry
8 amongst the community. We got to go tonight. We got
9 to tell them what we think. That's why it all came in
10 last-minute and --

11 THE CHAIRMAN: But there seems to be --

12 MR. MULARSKI: And I'm really glad you
13 shut them down early when they started grumbling. It
14 was like --

15 THE CHAIRMAN: I felt like I had to do
16 that.

17 MR. MULARSKI: Yeah. Yeah. I know.

18 MR. BECKMANN: The pitchforks had come
19 out.

20 MR. MULARSKI: -- why but then they
21 kept --

22 THE CHAIRMAN: It was either way.

23 THE REPORTER: I'm only able to take
24 down one person --

25 THE CHAIRMAN: I was going to do it.

1 THE REPORTER: -- at a time. I'm so
2 sorry.

3 THE CHAIRMAN: Okay. I guess we could
4 talk about this for a long time and there's -- I see
5 one side as freedom of speech. But I don't know
6 whether it's in Planning Commission workshops or here.

7 But is there anything that you can do
8 to reach out? I'm not saying what other jurisdictions
9 do in these kinds of meeting. Is there any kind of
10 finding out what -- just like I said -- what some of
11 the other --

12 MR. MULARSKI: Okay.

13 THE CHAIRMAN: -- some of your other --
14 yeah. What are some of the other benchmarks? And
15 maybe you can bring that back or something.

16 Because I'm not sure we've got -- I
17 mean, as much as I'd like to -- we're on a roll and
18 we're getting through everything. This one seemed
19 like not only was it sticky in the hearing but it's
20 sticky here.

21 And I'm not pushing one way or the
22 other. I don't personally know at this point right
23 now after we've been talking for 15 minutes which way
24 is right.

25 MR. MULARSKI: And that definitely --

1 THE CHAIRMAN: And fair.

2 MR. MULARSKI: -- could be done. But I
3 would recommend you go in one way or the other tonight
4 because who knows the next time you're going to meet.
5 It's two years since the last meeting --

6 THE CHAIRMAN: Well, yeah. You're
7 right on that.

8 MR. MULARSKI: So you know, if you'd
9 like, you know, so before you change it again -- you
10 know, I really didn't like changing the rules prior to
11 the hearing. We had this on.

12 And Jeremy and I talked. I said, "Make
13 sure you put the changing of the rules after the
14 hearing because we're not changing the rules on people
15 right before the hearing."

16 MR. BRYSON: Yeah. If we don't have --
17 if we don't feel like we have a good consensus and we
18 want some additional information I think it makes
19 sense to go through the rest of these and then have
20 that as the follow-up to try to figure out --

21 MR. JENSEN: Or can we just make a
22 motion and vote on it?

23 MR. BRYSON: I think we vote, like, if
24 we think that we've got enough decision and everybody
25 feel -- and people feel like they have enough

1 information.

2 MR. JENSEN: Well, first of all, do we
3 want to vote on it? And then second of all -- and
4 then --

5 MR. BECKMANN: Then we come back to it.

6 MR. JENSEN: Yeah. Do we want to vote
7 on it? Do we want to make a motion on it?

8 MR. BECKMANN: I'm fine with voting on
9 it and making a decision.

10 THE CHAIRMAN: Yeah. So this is one of
11 those you're not looking for me to make decision. I
12 think we've talked just enough here that we want input
13 from five people to make this decision.

14 MR. MULARSKI: And you don't
15 necessarily in the vote because this is procedural.
16 So you can just say, "This is how I feel, how I feel,
17 how I feel, how I feel, how I feel."

18 Okay. We'll go this way. And it's
19 three out of five feel that way. So and I would say
20 the first thing is do you want public comment at all?
21 Discuss that and see how you guys feel on that first.

22 MR. JENSEN: Well, I've already stated
23 how I feel. I think public comment should be directed
24 to a City administrator. And what's Michael
25 Blackford's official title?

1 THE CHAIRMAN: Director of Planning.

2 MR. JENSEN: Director of Planning.

3 THE CHAIRMAN: Or Development and
4 Planning, I think.

5 MR. JENSEN: Development and Planning.
6 And that it's to be presented at the BZBA meeting as
7 part of the appellee's testimony or --

8 MR. BECKMANN: I agree. I say we
9 strike public comment and they direct it to the
10 council.

11 MS. STEFANOV: I'm in agreement.

12 THE CHAIRMAN: I am too. And I hope --
13 I know that they can't have every project at workshop.
14 But hoping that some of that will happen at that level
15 before it ever got here.

16 MR. MULARSKI: Okay. Strike that,
17 Jeremy. Then we don't have to worry about emails
18 either. That takes care of them both.

19 MR. VANMETER: Okay. So I guess just
20 for my information so I understand, if people were to
21 email and reach out to the Board regarding appeal I'm
22 to direct them to the Director of Planning?

23 MR. MULARSKI: Well, it depends on
24 whose side they're on.

25 MR. VANMETER: Right.

1 MR. MULARSKI: You should direct them
2 to say, "You need to contact either --"

3 MR. JENSEN: Couldn't it just go to --

4 MR. MULARSKI: -- sake of the
5 attorneys --

6 MR. JENSEN: -- both sides?

7 MR. MULARSKI: Yeah. I would just say
8 I think you should contact either of Matt Roth or Mike
9 Shannon depending on, you know --

10 MR. VANMETER: Got you.

11 MR. JENSEN: Right.

12 MR. MULARSKI: -- he represents this
13 side --

14 THE CHAIRMAN: It's going to appellee
15 and appellant.

16 MR. MULARSKI: -- and contact who you
17 want.

18 MR. BRYSON: Let them decide if it's
19 worth bringing up.

20 MR. JENSEN: Yeah.

21 MR. MULARSKI: Yeah.

22 MR. JENSEN: Exactly.

23 MR. MULARSKI: All right. We're all
24 clear on that? I think that's the only thing --

25 THE CHAIRMAN: Yeah; I thought that was

1 good. Good decision there.

2 MR. BRYSON: Yeah. And for that many
3 people who feel like they didn't get listened to it's
4 they can either be mad at the party they supported or
5 the elected official who didn't bring it up so --

6 THE CHAIRMAN: All right.

7 MR. MULARSKI: All right.

8 MR. VANMETER: Okay. So again, we've
9 added 6.6, which was already discussed. Article 7,
10 renumbering. Article 8, renumbering.

11 Article 9, we have some renumbering
12 except the new -- this used to be Article 7. It is
13 now Article 9. And the 9.2 vote without discussion
14 we've inserted "except for a motion to amend a motion
15 under discussion." Ray, you had -- I don't know if
16 you want to comment anymore on that.

17 MR. MULARSKI: Yeah. First, we moved
18 it to IX because we just thought it was a better place
19 for it. Before it was 7 up in the middle. And we
20 felt it should have been put at the end. But that's
21 why it's 9.

22 And then -- oh yeah. So seven point --
23 oh, 9.2. Okay. I was looking at the exhibit number.
24 9.2 it says, "Vote without discussion."

25 So it said, "Motions can be voted on

1 without discussion except for a motion to amend." I
2 felt that that needed to have discussion.

3 Because if you're -- if someone, like I
4 said earlier, if someone had made a motion that we
5 uphold the appellant and someone wanted to amend that
6 motion, well, that should be discussed. That's why I
7 put that part in there.

8 MR. BRYSON: Okay.

9 MR. VANMETER: And then we have added
10 9.6 through 9.8 from another section. I'm trying to
11 think of where were these before.

12 MR. BRYSON: Oh, were they in the
13 voting section before?

14 THE CHAIRMAN: It looks like they were
15 stricken out on Page 9. They were 8.22. They're
16 these ones --

17 MR. VANMETER: Yes.

18 THE CHAIRMAN: -- on the right?

19 MR. VANMETER: Yes.

20 THE CHAIRMAN: 8.22 --

21 MR. VANMETER: That's correct. Yes.

22 THE CHAIRMAN: -- 23, 24 --

23 MR. VANMETER: Yes. We --

24 THE CHAIRMAN: And they've jumped over
25 to 9.6, 9.7, and 9.8.

1 MR. MULARSKI: Yeah. That's why.
2 We're combing sections we thought were better and
3 placed in a better location.

4 MR. VANMETER: Article 10 we have some
5 renumbering. And then we've moved what was 8.21,
6 8.22, 8.23, and 8.25 to another section.

7 THE CHAIRMAN: Got you.

8 MR. VANMETER: Yeah. Article 11 has
9 been renumbered. And Article 12 has those previous
10 items that I just said were moved to another section
11 under disposition of appeals.

12 The new 12.3 -- again this is language
13 from other boards. Just that after the Board has
14 rendered its decision the Clerk of Council will send
15 all parties the official record of action.

16 The Clerk's minutes serve as the
17 official record of the hearing unless a stenographer
18 is present, and a transcript is provided. And that
19 brings us to the end.

20 THE CHAIRMAN: Okay.

21 MR. MULARSKI: So if as we have amended
22 it throughout this day, if you guys are in favor of
23 that, you can just vote on it now and make it the new
24 Rules of the Board. Do you want --

25 THE CHAIRMAN: Informal or by formal

1 roll call?

2 MR. MULARSKI: Do it formal.

3 THE CHAIRMAN: With a motion?

4 MR. MULARSKI: Yeah. Yes.

5 THE CHAIRMAN: Okay. Anybody want to
6 make a motion regarding the revisions made this
7 evening?

8 MR. JENSEN: I move that we approve the
9 revisions to the procedure -- BZBA procedure dated
10 January 26, 2023.

11 THE CHAIRMAN: Do I have a second?

12 MR. BECKMANN: Second.

13 THE CHAIRMAN: Any other discussion?

14 Roll call.

15 MR. VANMETER: Jensen?

16 MR. JENSEN: Yes.

17 MR. VANMETER: Beckmann?

18 MR. BECKMANN: Yes.

19 MR. VANMETER: Bryson?

20 MR. BRYSON: Yes.

21 MR. VANMETER: Eisen?

22 THE CHAIRMAN: Yes.

23 MR. VANMETER: Stefanov?

24 MS. STEFANOV: Yes.

25 THE CHAIRMAN: All right. Any other

1 business of the evening? Otherwise, we will call the
2 meeting closed. Anybody else? All righty. With
3 that, we will close the BZBA meeting on January 26,
4 2023. Thank you all.

5 THE REPORTER: We are going to go off
6 the record at 9:28.

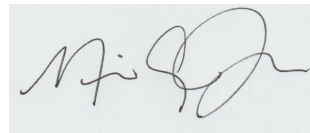
7 (Whereupon, at 9:28 p.m., the
8 proceeding was concluded.)
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CERTIFICATE OF DEPOSITION OFFICER

I, NIC JOSEPH, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



NIC JOSEPH
Notary Public in and for the
State of Ohio

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CERTIFICATE OF TRANSCRIBER

I, LEANN SULLIVAN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



LEANN SULLIVAN

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