

City of Gahanna

*200 South Hamilton Road
Gahanna, Ohio 43230*



Meeting Minutes

Wednesday, December 18, 2002

Committee of the Whole - 6:00 P.M.

7:00 PM

City Hall

Planning Commission

Richard A. Peck, Chair

Jane Turley, Vice Chair

Cynthia G. Canter

Candace Greenblott

P. Frank O'Hare

Donald R. Shepherd

Othelda A. Spencer

Tanya M. Word, Deputy Clerk of Council

A. CALL MEETING TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL.

Gahanna Planning Commission met in Regular Session in the Council Chambers of City Hall, 200 South Hamilton Road, Gahanna, Ohio on Wednesday, December 18, 2002. The agenda for this meeting was published on December 11, 2002. Chair Richard A. Peck called the meeting to order at 7:09 P.M. with the Pledge of Allegiance led by Planning Commission member, Richard Peck.

Members Absent: P. Frank O'Hare

Members Present: Richard Peck, Jane Turley and Candace Greenblott

B. ADDITIONS OR CORRECTIONS TO THE AGENDA - None

C. APPROVAL OF MINUTES: December 4, 2002

A motion was made, seconded by Greenblott, to approve the minutes of December 4, 2002. The motion carried by the following vote:

Yes	3	Chairman Peck, Vice Chairman Turley and Greenblott
Absent	1	O'Hare

D. HEARING OF VISITORS - ITEMS NOT ON AGENDA - None

E. APPLICATIONS:

Chair stated Public Hearing Rules that would govern all public hearings this evening. Assistant City Attorney Ray King administered an oath to those persons wishing to present testimony this evening.

Z-0014-2002

To consider a zoning change application for 1.8 acres located at 4574 N. Hamilton Rd.; current zoning ER-2, Estate Residential; proposed zoning of CC2, Community Commercial; Mercado Real Estate Investments, applicant. (Public Hearing. Advertised in RFE on 10/3/02 and 10/10/02). (Public Hearing Re-advertised in RFE on 10/24/02). (Public Hearing held on 10/23/02, 11/6/02, 11/20/02, 12/18/02, 01/22/03).

Chair opened Public Hearing at 7:13 P.M.

Angela Alexander-Savino, Perez & Morris Attorneys at Law, 92 North Woods Blvd., thanked the Commission for the opportunity to be here to discuss the progress of this application; Mercado has submitted an application to rezone what is currently a residential parcel to Community Commercial in accordance with the Triangle North Concept Plan; in evaluating the zoning application, the City has raised two concerns relating to sewer capacity, and Hamilton Road access to the property; the time the Commission has allowed us to work on these concerns has resulted in the following resolutions: (1) intense study of the current sewer system's design and pump capacity has revealed that the system has the capacity to handle this zoning change for the intended use of a restaurant, provided minimal changes to the float settings are made by the City; yet, it must be noted, that once the restaurant taps into the system, it will be at the maximum pump capacity; therefore, without future changes to the sewage system, no other parcels will be able to tap into the current system; we have understood that with development of the property; we will be responsible to lay the sewer one from a tributary point that is 300' south of the property line; hence a 10' sewer easement has been requested by the City on the two parcels south of the Property, along each's east borders for development and future access to the sewage line; further, the City has

represented that it will not object to the sewer easement's location being on the 10' setback along these borders; we have initiated discussions regarding the need for the sewer easement with the property owners affected, and each is willing to consider granting the same once all of the easement particulars have been determined; the plan discourages direct access to Hamilton Road in intervals less than 600' ; further, the City has determined that in order to ease traffic congestion, a service road providing Hamilton Road access to the property and its neighboring properties must be located south of the property; yet, development of the service road is to be performed by the individual property owners as they re-zone and re-develop the properties for commercial use; in this instance, re-development must occur on at least five parcels before the service road and joint access to Hamilton Road is complete; this zoning application and re-development is the first of these five parcels to be considered; it is unknown when the remaining four parcels will commence re-development; therefore, in resolution, the City is agreeable to granting the property its own right-in/right-out access to Hamilton Road in exchange for our agreement to develop at the easterly border of the lot, to the extent necessary, the portion of the service road located on the property, for future and joint use as complete access to Hamilton Road; this is agreeable in providing the right-in/right-out access immediately provided to the property will continue after the full development of the service road; additional concerns to the zoning application have been raised by residents of Gahanna; these concerns focus on a request that the property's use be aggregated with other parcels and that vague issues pertaining to food odors are first resolved; the plan does not require or even suggest that the now residential parcels must be aggregated to the same use in order to satisfy requirements for permitted mixed, commercial or office zoning classifications; contrary to the comments raised, the plan does not preclude awarding of this zoning application for commercial use; as to the vague concerns raised about restaurant odors and its effect on the condominium properties southeast of the property, Mercado Enterprises currently runs a restaurant in Gahanna and it has never received complaints concerning an emission of offensive odors; while experience reveals that odor is not a real issue, for the sake of argument, it must be noted that the condominium owners are located a considerable distance from the southeastern border of the property; should there be any odors, those odors would most likely dissipate before ever reaching the properties; additionally there is currently a thick brush of trees lining the eastern border of the property and we are willing to leave a few trees that are aesthetically pleasing to the applicant, to act as a natural border to dissipate odor, if any; for the record, it should also be noted that thick brush of trees also line the undeveloped portion of phase II of the condominium complex; likewise, we suggest that the condominium developer also retain some of the trees and greenery to function as a natural border to any odors; happy to answer any remaining questions the Commission may have.

Chair asked for Opponents.

Mo Dioun, 41 N. High Street, New Albany, OH, stated that there were a number of issues raised this evening; if you recall a few weeks ago when you heard the plans for Phase II for Shagbark based on the recommendations from the City, Stonehenge Company agreed to delay the development of our condominium buildings that are on the east side of the subject property in order to be sensitive to the intention of the North Triangle Plan, meaning cohesive development of that whole area; we agreed to delay that to see a better plan come around; we are willing to work with that plan and alter our plan; we made this commitment to the City of Gahanna; this application contradicts the plan; in terms of access, I have some concerns; we agreed that after 25 residences are sold, our entrance becomes right-in/right-out; at that time there was an overall plan that there would be an access road; the traffic that this application will create is a major issue for us; as for there being no one to the immediate east, the applicant is talking about our

condos that have been built already; but we have 15 condos that we are going to be building next to these parcels; we have promised to our residents that have purchased that those condos are going to be consistent with what they have been buying; so it may not have as much of an impact on the residents that are on the southeast portion of our land in relation to this application; however, it will change our marketing plan, our construction plan, and the type of units that we are going to put in there; one final issue, not that we have made any representation to our buyers, but we have told everyone of them that all of these parcels along Hamilton Road are going to be commercial; we have shown that in our marketing material; however, we understood from the first day when we came with our Shagbark project that the City of Gahanna is going to look at developing this in an assembling aggregating land fashion and that is what I told my buyers; have a commitment to what I given to my board; in total objection of this application.

Will Bird, resident at Shagbark Condominiums, stated that he would like the Commission to be aware of the fact that these are very expensive condominiums; we bought into a unit that we totally have confidence in; the price range that most of us purchased in is anywhere from the mid \$200,000's - \$400,000; as a taxpayer, asking this Planning Commission to protect our investment; we have made a substantial investment into Gahanna; as a board member of the Shagbark Condominium Community, I can tell you that we are going to watch this very closely.

Hank Schlake, resident at Shagbark Condominiums, stated if any of you have tried commuting up and down Hamilton Road, you have noticed that the traffic is terrible; there are all kinds of problems with ingress and egress; I have been told that there won't be any additional traffic lights in that section between the entrance of The Villa apartments and the Giant Eagle light; the addition of a restaurant is going to add a great deal of additional traffic; as far as the restaurant is concerned, while they may be kept immaculate on the inside, they do generate a tremendous amount of trash outside behind the properties; in this case, that would be adjacent to Dioun's proposed condominiums; also believe that this would reduce the value of our homes further back; in terms of the plans for this particular restaurant, read in the Rocky Fork Enterprise that this would be designed as an upscale family restaurant; have some experience in the food service business, can tell you there is no such thing as an upscale family restaurant; if that is the plan, it is doomed for failure; family restaurants are for families (i.e. Bob Evans or Skyline Chili); upscale would be something like Cap City Diner; the two can not co-exist in one particular location; 80% of new restaurant concepts fail within three years; the National Restaurant Association has indicated that the Columbus district or commercial area is over populated in restaurants; with the economy as low as it right now, I can tell you there are a lot of operators in this City that are operating at a loss today.

Chair asked for Rebuttal.

Savino emphasized that Mercado Enterprises is a very successful restaurant owner within Gahanna; they supply jobs in this City; they have also been a good resident of Gahanna and would like to stay here; they would like to build on their own property here in Gahanna; they are not bad neighbors nor do they want to be bad neighbors.

Chair closed Public Hearing at 7:30 P.M.

Turley stated that one of the considerations that the Commission has to think about with zoning changes is the traffic; would like to see a master plan as to how the whole thing is going to work. Peck stated that he concurred with Turley regarding the traffic; we have had a number of situations where people have acted in good faith and said this is what

we intend to do down the road, only to find out when we get down the road, either it is not working out accordingly or the memory of people start to differ; one particular situation is the proposed Walgreens development; there is a lot of controversy surrounding that development regarding the traffic access; understand that the Engineering Department is in a tough bind with this issue; there are a lot of what if's in your development proposal understandably because these parcels have not been aggregated; you are willing to do access in the back, however, when the other parcels may or may not come is a big question mark; how that is all going to fit together leaves a lot of room for variables and for differences; do note that development principle #4 of the North Triangle Development Plan states "Direct access to the major streets adjacent to the Triangle area (Hamilton, Morse, and Johnstown [U.S., Rt. 62]) shall be discouraged at intervals less than 600 feet between access points. Agreements between adjacent property owners shall be required assuring joint access to major streets prior to formal consideration of redevelopment proposals by the City; this application will be taken to workshop on January 15th; the Clerk's in Council office can advise you as to the time.

Heard by Planning Commission in Public Hearing

V-0038-2002

To consider a variance application to vary Section 1150.05(b) - General Downtown Commercial; for property located at 200 Granville St.; to allow a variance to the conditional uses to permit used car sales as a Conditional Use; Karz "R" Us by Lawrence R. Floridi, applicant. (Public Hearing. Advertised in RFE on 12/12/02). (Public Hearing held on 12/18/02).

Chair opened Public Hearing at 7:38 P.M.

Lawrence Floridi, 7062 Steeplebush Avenue, Westerville, OH, stated that we would like to use this location to sell previously owned cars; the type of vehicles that will be sold at this location will be mid to late 90's Import and American made; we intend to carpet the floor of the entire building; paint the inside walls and ceiling so we can use it as an indoor showroom for our cars; the landlord has agreed to landscape the property and have new asphalt put down next spring; we are also going to paint the building trim in the spring

Ron Brofford, 2621 Reynoldsburg-New Albany Road, stated that he is here in proxy of the landowner Kalayane (Kay) Ishida, she wants me to inform the Commission that she is in favor of this application.

Chair asked for Opponents. There were none.

Chair closed Public Hearing at 7:41 P.M.

Greenblott stated that you mentioned that the cars will be in the showroom; asked will there be cars shown outside the building. Floridi remarked there will be probably 10 cars at the most outside the building; about 7 or 8 at the most on the inside. Peck asked are you aware of the staff comments from the internal review process. Floridi replied yes.

Canter stated that she can't support the application; Olde Gahanna is a very special part of the City; the only existing conditional uses permitted under automotive is automobile parking; don't believe it is the intent of the City to increase the number of automotive uses that are conditionally allowed in the Olde Gahanna district.

Shepherd remarked that he will not be supporting the application; do believe that we need to stick closely to the Olde Gahanna plan.

Peck commented that from the standpoint of the applicant, he sees another car lot in Olde Gahanna, it should be noted that the car lot is there is a grandfathered non-conforming use prior to the zoning change; if that were for any reason to cease being in existence for six months as a car lot, it would no longer be a permitted use.

A motion was made, seconded by Greenblott, that this matter be Approved. The motion failed by the following vote:

- Yes** **0**
- No** **3** Chairman Peck, Vice Chairman Turley and Greenblott
- Absent** **1** O'Hare

Chair advised applicant of his right to appeal this decision to the Board of Zoning and Building Appeals within 30 days. Contact the Clerk of Council's office for further information.

CU-0010-2002

To consider a Conditional Use application to allow a Used Car Sales Lot; for property located at 200 Granville St.; by Karz "R" Us, Lawrence Floridi, applicant.

See discussion on previous application.

A motion was made, seconded by Greenblott, that this matter be Approved. The motion failed by the following vote:

- Absent** **1** O'Hare
- Yes** **0**
- No** **3** Chairman Peck, Vice Chairman Turley and Greenblott

Chair advised applicant of his right to appeal this decision to the Board of Zoning and Building Appeals within 30 days. Contact the Clerk of Council's office for further information.

FDP-0019-2002

To consider a Final Development Plan for Gahanna Animal Hospital; to be located at 144 W. Johnstown Rd.; Gahanna Animal Hospital, by Dean A. Wenz, Architects, Karla Trott, applicant. (Public Hearing. Advertised in RFE on 12/12/02). (Public Hearing held on 12/18/02).

Chair opened Public Hearing at 7:49 P.M.

Karla Trott, Dean Wenz Architects, 2463 E. Main Street, Bexley, OH, stated the existing facility is located just east of Olde Ridenour Road, the rear of the face is on Route 62, and the front is on Johnstown Road; currently, there is an existing house with a small parking lot to the front of it; what we would like to do is to add a one story addition to the west side of the building connecting into the existing southwest corner; also a second floor addition will be added to the northwest section's existing first floor; we have met the parking requirement of 23 spaces and have exceeded that by three spaces; we have met all landscape requirements for shade trees and screening; we have also met the lot coverage requirement of 75% which we have exceeded and only provided 67%; we are requesting a variance to the front yard parking setback line and we do have a few more spaces, but we are not exceeding the existing parking line; we are continuing this on with the new spaces that we are providing in this location; we are doing this as a need

that the hospital has for more parking requirements in the evening; in terms of additional use, most of the additional space that we are adding on is not creating new space with new demand; basically we are reallocating the spaces that are there and making it a bit more comfortable; for instance in the second story addition that will become office space; then from an aesthetics standpoint, what we have done in the past when the addition was put on there, attention was paid to the front of it; there was a stone entrance way added in nice arch feature; we are taking that same motif and repeating that throughout the building; this building is somewhat hidden by the landscape and the berming along 62, by adding the second story structure, the building will become more visible; the end of the second story structure will be seen from 62; we will be removing the existing sign which is attached to the shingles and making a new pylon sign.

Tom Komlanc, Assistant City Engineer, City of Gahanna, 200 South Hamilton Road, stated presently there are two taxable parcels and we would like to see the two lots joined and become one lot; the second is in regards to Section 1108.01(e) which states that the City Engineer or Planning Commission may impose additional requirements regarding design and construction of streets, curbs, gutters, sidewalks, and access; with particular regard to sidewalks, at the Engineering approval, should this Final Development Plan proceed forward we would like to review the extension of the sidewalks as a part of the plot grade plan submitted to the Engineering Department.

Chair asked for Opponents. There were none.

Chair closed Public Hearing at 7:56 P.M.

Peck asked Sherwood if Engineering wants to go back and change or review this package at the end; does the Final Development Plan need to be revised. Sherwood commented that it would depend on the issues that are revised. Turley asked what about the issue of making it one parcel. Sherwood replied that is not a process that we handle; it is handled by the County.

Greenblott thanked the applicants for a stellar application package and presentation. Turley stated that she concurs with Greenblott, this is a wonderful application package; looking forward to another attractive building along the 62 corridor; will also be supporting the variance application; it is necessary for this existing business to stay here; it will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.

A motion was made by Greenblott that this matter be Approved. The motion carried by the following vote:

- Yes** **3** Chairman Peck, Vice Chairman Turley and Greenblott
- Absent** **1** O'Hare

V-0039-2002

To consider a variance application to vary Sections 1167.15 - Building Lines Established for building setback and parking setback; 1171.04(a)(7) - Fence Standards (privacy and/or chain link fences shall be prohibited in the side and front yards); for property located at 144 W. Johnstown Road; to vary front parking setback; to allow a privacy fence in the side yard; Gahanna Animal Hospital by Dean A. Wenz Architects, Karla Trott, applicant. (Public Hearing. Advertised in RFE on 12/12/02). (Public Hearing held on 12/18/02).

See discussion on previous application.

A motion was made by Greenblott that this matter be Approved. The motion carried by the

following vote:

- Yes** **3** Chairman Peck, Vice Chairman Turley and Greenblott
- Absent** **1** O'Hare

DR-0083-2002

To consider a Certificate of Appropriateness; for property located at 144 W. Johnstown Rd.; Gahanna Animal Hospital by Dean A. Wenz Architects, Karla Trott, applicant.
See discussion on previous application.

A motion was made by Greenblott that this matter be Approved. The motion carried by the following vote:

- Yes** **3** Chairman Peck, Vice Chairman Turley and Greenblott
- Absent** **1** O'Hare

V-0040-2002

To consider a variance application to vary Section 1171.04(a) - Fence Standards; for property located at 983 Windbourne St.; to allow a privacy fence in the side yard; by Steve & Stephanie Spaulding, applicant. (Public Hearing. Advertised in RFE on 12/12/02). (Public Held on 12/18/02).

Chair opened Public Hearing at 8:03 P.M.

Steve and Stephanie Spaulding, 983 Windbourne, stated that the neighbor to the left has a privacy fence; the placement of the houses is staggered; we just want to match the neighbors; we had started to put up a fence, however, we did not know we needed a permit. Greenblott asked what type of fence will it be. Spaulding replied it will be a scalloped wooden fence the same height and material as the neighbors. Shepherd asked how much forward is the fence from the house. Spaulding replied 8 ft.

Chair asked for Opponents. There were none.

Chair closed Public Hearing at 8:08 P.M.

Turley commented that she will be supporting the approval of this variance; agree with staff comments when they say that there is a special circumstance in this case, and that is the staggered placement of the houses; think it will look and function better; don't see it having a negative affect on the neighborhood; in fact see it having a positive impact.

A motion was made by Vice Chairman Turley that this matter be Approved. The motion carried by the following vote:

- Absent** **1** O'Hare
- Yes** **3** Chairman Peck, Vice Chairman Turley and Greenblott

F. UNFINISHED BUSINESS:

G. NEW BUSINESS:

DR-0084-2002

To consider a Certificate of Appropriateness for Signage; for property located at 80 Hamilton Rd.; Affordable Tax Solutions by Mid Ohio Signs, Stephen Word, applicant.

Stephen Word, stated this application is for a face replacement for an existing sign cabinet; the panel measures 12' x 2' with 8" text; the colors will be white, black, and green avery A0662-T; text for the pylon sign will be white; background will be bronze to match other panels. Shepherd asked will the background color be the same on the sign out front as the same existing signs. Word replied yes it will match the existing signs.

A motion was made, seconded by Vice Chairman Turley, that this matter be Approved. The motion carried by the following vote:

Yes	3	Chairman Peck, Vice Chairman Turley and Greenblott
Absent	1	O'Hare

DR-0085-2002

To consider a Certificate of Appropriateness for Signage; for property located at 111 N. Stygler Rd.; El Rayo Family Mexican Restaurant by Continental Sign Group, Inc., John Holub, applicant.

John Holub, stated that this application is for three wall signs; all signs will include the following colors: white, black, forest green, chrome yellow, and cardinal red; the main sign, above the front doors facing Stygler will measure 30" x 96"; the sign on the south side of the building will measure 39" x 120"; the third sign is for the drive-thru and will measure 24" x 37".

A motion was made, seconded by Greenblott, that this matter be Approved. The motion carried by the following vote:

Yes	3	Chairman Peck, Vice Chairman Turley and Greenblott
Absent	1	O'Hare

DR-0086-2002

To consider a Certificate of Appropriateness for Signage; for property located at 153 Mill St.; The Batter's Box by Sign-A-Rama, Frank Zura, applicant.

Frank Zura stated this is a request for signage for The Batter's Box located at 153 Mill Street; the existing sign was the original NAPA store; Gard has an architectural drawing of what will be awnings and the colors; the sign itself will be the actual sign frame and post; which will supposedly be painted black this weekend; The Batter's Box itself will be standard white facing; the original yellow color has been changed to a soft ivory or almond color; the PMS number is 155C; the blue is the same as the original submission; PMS # is 288C; displayed a sample of color for the awning which is PMS 141 Dark Blue.

Turley commented that in one of the sketches it showed something like some potted plants with a base. Zura replied that is all cement underneath with blacktop over the top; there is a requirement of 50 sq. ft. around that pole which has never been there before' but with the parking lot being there and the Clark Station being adjacent to it, it sort of lends itself to some extent to possibly (depending on how large it would become) getting hit; my recommendation to Gard was to possibly invest in 3 30 inch clay pots; in these pots would be some type of shrubbery or plants. Gard said the location of the pole is very close to right-of-way. Greenblott asked is that a good idea. Gard replied as long they are not high, there should not be a problem. Greenblott commented that her concern with the pots will be the maintenance and care of the pots and plants; think in a case like this, it might be best not to have anything. Gard replied that it is an existing sign; it's not like a new sign where we say that you have to have this. Turley said if they are well maintained they could look really nice. Canter commented let's give a shot. Greenblott asked will the planters match what the City puts out. Zura said whatever Planning Commission wants, we will comply. Gard asked Zura to meet with her regarding the planters.

A motion was made by Greenblott that this matter be Approved. The motion carried by the following vote:

Yes	3	Chairman Peck, Vice Chairman Turley and Greenblott
Absent	1	O'Hare

CC-0006-2002

To recommend to Council the approval of changes to Sections 1123.40A, No Build Zone; 1123.53, Structure; 1136.08, Yard Requirements; 1137.08, Yard Requirements; 1139.08, Yard Requirements; 1141.08, Yard Requirements; 1143.08, Yard Requirements; 1147.08, Yard Requirements of Chapter 1123, Definitions, of the Codified Ordinances of the City of Gahanna.

Sadicka White, Director, Department of Development, City of Gahanna, stated that she is here to ask consideration on a Motion Resolution from the City Council to request the Planning Commission review proposed zoning changes for no build zones/fences; the code change in essence allows for and changes the code so that certain types of fences would no longer be considered by definition a structure; in changing those codes sections then in effect as it relates to the no-build zones in our current code by zoning definition; No Build Zone states "No Build Zone" means a designated area planted by a developer, either residential or commercial; so it is usually initiated by a developer either for residential or commercial development which generally prohibits the placement of residential or commercial buildings, structures; in the past the definition for a structure included fences as a structure; in the revised code, we would say that specific types of fences are excluded or certain types of fences are allowed; also by definition what is a structure as I just indicated; it says a structure means a combination of materials, other than a building, to form a construction that is safe and stable and includes, among other things, stadiums, platforms, radio towers, storage bins, sheds, (we would take out fences), display signs; so the effect of this proposed zoning change would then by definition allow certain types of fences within the no build zone; when we look at the intention of a no build zone and what impact they are supposed to have on a particular area (particular as it relates to your residence or commercial) is to effectively say it will provide for an open space a buffering, a visual aesthetic impact, be it for topographical reasons or for other site issues; in looking at some analysis that was precipitated from Rose Run and the impact of how the City has imposed the definition of a no build zone, we had several variances that were being granted; in looking at these variances and looking at the root cause of the variances that were actually happening and being asked for, it was basically because the no-build zone was being interpreted stricter than what the plat easements and deed restrictions are within the various sub-divisions; in looking at the deed restrictions and in most cases in zoning, we do not have to; but when it comes to the no build zone, it clearly states that we have to refer to the plat notes and the plat notes say we in fact have to look at the deed easements; studying the deed easements, it does say except for a few restricted areas that fences could be allowed within the no build zones, except there would be certain type of fences that would be excluded and certain types of fences that would be included; it appears that those type of fences follow a certain aesthetic; either they are open or have a least a 50% opacity which would be either a split rail type or picket fence; this means that it would not necessarily impact or obstruct the vistas or the aesthetics or the openness of the particular area, but then would allow for substantial property rights and use and enjoyment of the property; this code change was given to Council since it was requested by our department; asking for your consideration of this motion resolution; asked if there were any questions.

Scott DelliGatti, 689 Tim Tam, stated that when he came to the meeting, he picked up the agenda for the meeting and noticed Gahanna's mission which reads "Gahanna's mission is to ensure an exceptional quality of life by providing comprehensive services, financial stability, and well-planned development which preserves the natural environment, so that city government will continue to be responsive, accessible, and accountable to our diverse and growing community of citizens;" the one thing I kept asking myself, is why would they change the code; what is the motivation; one person in the City of Gahanna is denied a variance and therefore the code must change; asked myself does that make sense; my response was no it did not; the system as it stands now

works; nobody said you couldn't place a fence in a no build zone; what the Planning Commission has stated in all of the meetings is that a variance is required to do so; so now we want to soften the code to allow fences in no build zones; the problem quit being just a Rose Run problem, it became an extension to the Greens at Clarenton with 102 homes; 20 homes in Sycamore Mill; I thought it had stopped there, so I stopped by the Zoning Department and asked who specifically is affected by this; what I found out is that there is something in Gahanna called a preservation zone; the preservation zone and the no-build zone are similar; when you read through and then read through the other, they are similar except for one thing, preservation zone preserves trees; I kept asking myself should it stop there and the simple answer that I came to was when I started reading what one calls a structure and what the other calls a structure; when you look at the Code under preservation zones, they were put in place under very similar guides under no build zones; preservation zones are very similar if not identical constraints to a no build zone; they both prohibit the placement of a structure, building, or fence within the defined zone; believe that if you focus in on just the no build zone, you are being very discriminatory toward people with a no build zones; if you are going to look at this, you need to look at this as the whole picture and not one-half or one-third; you have to look at all the City of Gahanna and you have to combine both the preservation zone and the no build zone; if you go through and look at plat drawings for just about every development that has a no build zone, you will see very specific that all these no build zones are there to contain the environment; if you look at Sycamore Mill, it even more specifically calls it a "reserve"; reserves are not for parking lots, ball fields, or developments; it's a controlled environment that is actually pleasing to the eye; asking the Commission to take a look at all the plat drawings.

Eric Kreidler, 938 Cordero Lane, stated that he is in sympathy with the arguments that DelliGatti presented this evening; would like to add to that he has been told at various times that the reason for this proposed change in code is that the code is confusing; I have read the code and the proposed changes, and I don't find it confusing at all; think it would be certainly confusing if you hired a lawyer to advise you who never bothered to read the code or if you did not bother to read the code; in that case any code that you enact will not serve any purpose; people just don't bother to do the research on it; furthermore, when I purchased my property, I had a clear understanding that there were deed restrictions and I had a clear understanding that fences were not allowed in part because of Gahanna Code; the City of Gahanna has made me a promise or guarantee as a property owner that I would not be forced to live in an area that had fences along the property line or in no build zones; have also discussed this with some of the neighbors and the general consensus that I get is that fences will give us a risk concerning our property value; therefore we don't want to see fences; believe that granting a fence that is along the property line obligates the homeowner on the other side of the fence; I do not care to be obligated; have heard that one of the fences that would be allowed would be a split rail fence with wire mesh attached onto it; that is getting much too close to comfort for me; fail to see how a split rail fence with mesh would be any more attractive than a chain link fence; I am in total opposition of the code change; one of things that my wife & I both felt when we first looked at the proposed code changes, is that it leaves too much undefined; I have no idea what a non-privacy fence is. Gard replied it is defined in the Code; don't see any urgency to change the code.

Mary Jane Kreidler, 938 Cordero Lane, stated that as this code change is being looked at, we need to take into consideration not only the no build zones, but the preservation areas that are in the whole City of Gahanna; because this no longer will just affect the 174 houses in Rose Run; it is important to look at this with the effect it will have on all the subdivisions with the very expensive homes and the values that it could affect; asking the Commission to give this very careful consideration before making any

decision.

Chair asked for Rebuttal.

White thanked DelliGatti and the Kreidlers for coming out; this is part of the process that is important in planning, that we have opportunities for dialogue and opposition in a proposal; when we look at the preservation zone with respect to the no buffer zone, there are substantial differences between the two; the preservation zone restricts everything; it restricts everything to the point that it is a do not disturb zone; it means that you can not plant grasses, you can't plant trees, it means you can't go in and weed or thin that area out; it literally means that you can't go in and disturb that particular area and the intent of that zone is to preserve it as is because there is usually some type of flora that is there that is specific; those are in specific areas usually because there has been an analysis done for that particular area indicating there is something substantially worth (i.e. a creek, a ravine that has certain of animals, etc.); whereas a no build zone can be disturbed; you can plant, you can landscape it.

Shepherd stated that he understands that it is the right of Council to go in and change definitions if they want and make recommendations; not sure that I would support pulling fences from this definition of which would seem to me precipitated this whole thing.

Greenblott stated that she is opposed to changing the code; I concur with DelliGatti when he stated in his comments and that is that there is a mechanism in place for this already and that is called applying for a variance.

Canter commented that she concurs with her colleagues and is not in favor of this code change; don't think that what is before us is the correct way to modify the code; don't understand how you could not consider a fence a built structure; will not support the recommendation.

Peck stated that he rejects the suggestion that the Planning Commission has some how imposed requirements on somebody; the section of the code designating a variance in a no build zone was adopted by Council the same night it adopted the plat for Rose Run; an interpretation of that definition is not an imposition, especially in the case of some of the more recent applications where the applicants are coming in 10 years after the fact and then arguing that the City is some how imposing a heightened standard on them; there is nothing different about these applications; the property rights have not changed; they were established as to these properties in 1989 when they were platted and they remain the same to this day; also want to echo some of the concerns that have been voiced here this evening about preservation zones; while I appreciate White's distinction between the preservation and the no build zone, I understand that they are to serve for different purposes; however, the process is largely the same, there is nothing in this system that would prevent a resident who wants to put a swing set in a preservation zone which is now an act that is clearly prohibited from coming in and lobbying and complaining that they couldn't and they couldn't, followed by a reaction for a legislative change; while that is part of the legislative process, one of the strengths of the Gahanna Development process over the past 10-15 years has been its consistency; we tend to say what we mean and do what we say; that tends to not change, although the body of this Commission has changed pretty regularly and it changes as people's terms expire; the same is true for Council, it changes with elections; think that this is one of the strengths of the City in that we have been development friendly in that you may not like the process and you may find it tough to get what you want, but once you get there, it's a consistent result; since this was developed in 1989, in Rose Run we have seen

significant development in McKeena Creek, Sycamore Mill, Academy Ridge, and The Greens at Clarenton; all of which are significant developments that add a lot to the tax base of this City and have relied on these same definitions; would like to also add that the fact that someone does not like the result of what a code says or does not like the interpretation as it applies to them does not make it ambiguous; the code language is very clear; no build means no build; even the new definition that was applied in 2000 does not restrict that; again no build means restricting the placement of commercial or residential buildings, structures, fences, or storage buildings; it says it's a general definition, but it still keeps the principle no build in that it is what it is and you don't make it into something different by calling it something different; the current definition says that plat notes must be referenced to obtain specific information regarding subdivision containing a no build zone; so it still upholds the integrity of the plat; I see those as consistent; this information was all in the plat and all on the deed restriction; spent quite of bit of time previously explaining my reasons for my decision; I would agree with those who say that if the law is imposing a great burden on a majority of the community or even a significant set of the community, that it really ought to be evaluated as to whether it should be changed; everyone breaking the law doesn't make the law enforceable; enforceability of laws depends on a mutual respect and willingness of people to follow the laws; an example would be the tax law; a lot of people feel it's okay to cheat on their taxes because they understand it or it's confusing or whatever; think there is a general sentiment that it is hard to comply with the tax code even if you wanted to because you don't know what it is; don't see a support of people here that says this needs to be changed; Council itself in 1994 enacted a whole section of code to regulate fences; that I take as Council's statement on it; as Shepherd said they are free to change the law; think there is a very clear and thorough application of what fences are and what they should be and what Council meant to do with them; they didn't intend to supercede any deed restrictions or any plat notes; in 1997, the City Charter was amended and it created the Planning Commission in its current form; since 1997, I have gone back over the past six years of variances; we have had 37 applications for fence variances in six years, that is an average of 6 per year; given the number of houses there are in Gahanna, I don't see six applications upon this Planning Commission as an overwhelming burden or an outcry of support saying this needs to be changed; this past year we have had 10 applications for fence variances, which is a little higher than normal; five of the ten have been from Rose Run; four of them have been approved, and one has been denied which was Worlin; three of the four that were approved were approved because the owner in good faith came to the City, got a permit to build their fence, they tried to comply with the law and the City gave them a permit and the City Attorney advised this Planning Commission that it would be unfair to give somebody under the auspices of the government and the auspices of the City the permission to put up a fence only to later say "we told you that you could put up a fence, but never mind you need a variance, we shouldn't have given it to you, you lose." It's the City's mistake, the City bears the responsibility for that mistake; in another application that was approved, it was because the Planning Commission was convinced as a whole that there was a significant hardship imposed upon a neighbor because there was documented enforcement problems with a Pit Bull that was in the immediate line of sight of children playing in that yard; find that to be a special circumstance; I will continue to find that to be a special circumstance that applies as long as there is an enforcement problem; don't see a special circumstance when someone says that the Pit Bull has to come out of the yard, cross the street, and jump over my 50% opacity fence to get to me; then when it's a grown up society does not have a heightened obligation; we have a heightened obligation to protect our children; hate to say "adults you're on your own", because that's not the case; there is certainly not a heightened standard that would apply in that case that would create a special circumstance; see this as a proposed solution to a problem that does not exist; empathize with the Worlins; however, will tell you the Worlin's have

testified that they knew what they were getting into when they bought the house; they perhaps have received some incorrect legal advice and for that I empathize with them; don't question their sincerity when they got the legal advice, but the City of Gahanna is not responsible for bad legal advice; making the City of Gahanna responsible for bad legal advice by changing the Code, opens a can of worms; that is Pandora's box if you want to see what happens when the City becomes responsible for bad advice that a person got when they entered into a real estate deal; finally equal protection of the laws does not guarantee or even require equal results; ask any police officer who is sitting on Granville Street or if you're the fourth person driving that goes through when the officer is there ticketing people and he catches all four people going over 25 m.p.h. and he happens to ticket you, it is not a defense to say that the other three in front of me were speeding, you should have got them; this Commission has acted consistently and we are not alone; all of this material has been reviewed by the Board of Zoning and Appeals; the Board of Zoning and Appeals agreed with our initial decision the first time; Worlin chose not to file an appeal the second time; he apparently has filed an appeal on this third application, but is waiting to see what happens with the City Council action on the third one; all the way along, he has had a remedy; if he really wants to fight this, he can take the legal advice that he may or may not get; he has the right of appeal to go to the Common Pleas Court and ask them to review the decision of the Gahanna Planning Commission and the Gahanna Board of Zoning and Appeals; so as to his individual problem, he does have a remedy; for those reasons, can't support this motion resolution; understand what Council is trying to do; respect Council's ability to enact legislation as they see fit; just think that this change sets a dangerous precedent and is not in the City's best interest.

Turley stated that she can't support this recommendation; removing fence from the definition of structure will have a major impact not only on Rose Run residents but also all the other neighborhoods that you mentioned; we have a duty to uphold the Code as it is because it is unfair to the residents who bought their houses with the Code as it is with the understanding that there wouldn't be fences built in the no build zones; to have the rug pulled out from under them is not fair.

A motion was made by Vice Chairman Turley that this matter be Recommended to Council for Approval. The motion failed by the following vote:

Yes	0	
No	3	Chairman Peck, Vice Chairman Turley and Greenblott
Absent	1	O'Hare

Chair advised that the recommendation of Planning Commission to Council is that these Code Changes not be adopted; at this point, this matter will go back to Council for their further discussion; continue to watch the legal ads for the Public Hearing.

H. COMMITTEE REPORTS:

Committee of the Whole

Gahanna Jefferson Joint Committee - Canter - No Report

Creskide Development Team - Greenblott.- No Report

I. OFFICIAL REPORTS:

City Attorney - No Report

City Engineer

Komlanc wished everyone a Merry Christmas.

Department of Development.

White and Gard wished everyone a Merry Christmas.

Chair.

J. CORRESPONDENCE AND ACTIONS

Clerk advised Planning Commission of HOP-0005-2002; a Home Occupation Permit for Kim's Shear Distinction; located at 366 Canfield Drive was administratively approved by Zoning Administrator, Bonnie Gard on 12/18/02.

K. POLL MEMBERS FOR COMMENT -

Turley presented Peck with a going away present from the Commission; thanked Gard for the recent changes in the application packets when they come; they have a lot more pictures and detail.

Peck advised that this is his last Planning Commission for now; has some personal and professional commitments over the next year that are going to make it difficult to commit the time needed for Planning Commission.

Members wished all a Merry Christmas and a Happy New Year.

L. ADJOURNMENT - 9:05 P.M.

TANYA M. WORD
Deputy Clerk of Council

Isobel L. Sherwood, MMC
Clerk of Council

*APPROVED by the Planning Commission, this
day of 2012.*

Chair Signature