

CITY OF GAHANNA  
BOARD OF ZONING AND BUILDING APPEALS  
MONDAY EVENING SESSION  
THURSDAY, MAY 4, 2017, 6:00 P.M.

- - -

BEFORE:

Donald W. Jensen, President  
Debra Mecozzi, Vice President  
Hakim Ben Adjoua  
Lorne Eisen  
Timothy W. Pack

- - -

Kim Banning, Clerk of Council

- - -

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APPEARANCES:

City of Gahanna  
By Mr. Shane Ewald  
City Attorney  
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Gahanna, Ohio 43230

On behalf of the City.

Plank Law Firm, LPA  
By Mr. Donald T. Plank  
Mr. David Watkins  
Mr. Christopher R. Kessler  
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Columbus, Ohio 43215-4748

On behalf of the Applicant.

Frost, Brown, Todd, LLC  
By Mr. Frank J. Reed, Jr.  
10 West Broad Street, Suite 2300  
Columbus, Ohio 43215-3484

On behalf of the Planning Commission.

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P R O C E E D I N G

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CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

PRESIDENT JENSEN: Call the meeting to order of the City of Gahanna, Board of Zoning and Building Appeals.

At this time, Mr. Pack, would you lead the Pledge of Allegiance.

(Pledge of Allegiance.)

PRESIDENT JENSEN: We can take roll call.

MS. BANNING: Adjoua.

MEMBER ADJOUA: Here.

MS. BANNING: Jensen.

PRESIDENT JENSEN: Here.

MS. BANNING: Mecozzi.

VICE PRESIDENT MECOZZI: Here.

MS. BANNING: Pack.

MEMBER PACK: Here.

MS. BANNING: Eisen.

MEMBER EISEN: Here.

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ADDED DISCUSSION TOPIC

PRESIDENT JENSEN: At this time we have a couple items we need to discuss if we want to add

1     them as discussion topics. All of you have the  
2     documents. One is from correspondence from Jean  
3     Mathews-Mitchell which is outside the two-day window  
4     to be submitted to the Board; however, we can still  
5     introduce it as evidence under Section 6.13.

6             Have you all looked at it?

7             MR. EWALD: Mr. Chair, does appellant and  
8     appellee counsel have a copy of this and received it  
9     and reviewed it?

10            MS. BANNING: Mr. Chair, I did send an  
11     e-mail of paper copies of both exhibits that were  
12     sent both yesterday and today.

13            Do you gentlemen need paper copies?

14            MR. WATKINS: We did get -- we got some  
15     exhibits yesterday and some today. Is that what you  
16     are talking about?

17            MS. BANNING: Yes.

18            MR. WATKINS: We object to them being  
19     introduced because they're late.

20            PRESIDENT JENSEN: Attorney Ewald, what  
21     is your position as city attorney? What would be  
22     your position on receiving these exhibits as evidence  
23     in this matter?

24            MR. EWALD: The Board -- given the fact

1 that they are late, obviously, appellee's counsel's  
2 objection is noted for the record, the Board has  
3 complete discretion in accepting late documents even  
4 past the three-day window if they chose to do so.  
5 They need to determine whether the documents are  
6 relevant to the case in hand. Then in addition to  
7 that, they need to look and see whether the probative  
8 value outweighs the prejudicial impact in the case.  
9 That would be by motion and vote of the Board.

10 I would take them one by one.

11 PRESIDENT JENSEN: Thank you.

12 MS. BANNING: Mr. Chair, make sure your  
13 microphone is a little bit closer. People are having  
14 trouble hearing. Thank you.

15 PRESIDENT JENSEN: Do I have a motion to  
16 approve this first item, a letter from Jean  
17 Mathews-Mitchell be accepted?

18 PARTICIPANT: Still can't hear.

19 MEMBER PACK: Mr. Chairman, I'd like to  
20 make a motion to enter into the record a letter by  
21 Jean Mitchell, dated Wednesday, May 3, 4:11 p.m.,  
22 sent to the clerk of council. That's my motion, to  
23 enter it into the record. Make sure we have the  
24 correct document.

1 PRESIDENT JENSEN: Do we have a second?

2 MEMBER EISEN: Second.

3 PRESIDENT JENSEN: Any discussion?

4 MEMBER ADJOUA: I think, Mr. Chair, the  
5 point taken by the city attorney is, in fact, does it  
6 have potential probative value. I think we need to  
7 consider that carefully since it is a late date and  
8 outside the window. This hearing has been set now  
9 for what, about three weeks?

10 PRESIDENT JENSEN: More than that.

11 MEMBER ADJOUA: Obviously, there was an  
12 opportunity to present this within the time  
13 constraints. So that would be my comment, to see if  
14 it has more probative than prejudicial value at this  
15 late date.

16 PRESIDENT JENSEN: Anyone else?

17 MEMBER PACK: I believe I concur as well.

18 (Microphone check taken.)

19 PRESIDENT JENSEN: The first letter,  
20 which is a letter from Jean Mathews-Mitchell, all in  
21 favor of accepting this correspondence into the  
22 record as possible evidence.

23 MR. EWALD: I would ask for a second.

24 PRESIDENT JENSEN: We have a second.

1 Roll call.

2 MS. BANNING: Pack.

3 MEMBER PACK: No.

4 MS. BANNING: Eisen.

5 MEMBER EISEN: No.

6 MS. BANNING: Adjoua.

7 MEMBER ADJOUA: No.

8 MS. BANNING: Jensen.

9 PRESIDENT JENSEN: No.

10 MS. BANNING: Mecozzi.

11 VICE PRESIDENT MECOZZI: No.

12 PRESIDENT JENSEN: The second item we  
13 received was a petition received today again, which  
14 is outside the three-day window to be submitted to  
15 the Board. Again, it can be accepted as relevant  
16 evidence as per BZA Rule 6.13.

17 MEMBER ADJOUA: I make a motion we do not  
18 accept this petition.

19 PRESIDENT JENSEN: Is there a second?

20 MEMBER EISEN: Second.

21 PRESIDENT JENSEN: Any discussion?

22 MEMBER ADJOUA: I think the same reason I  
23 stated earlier. I think it has been set for three  
24 weeks or so, and it is very, very entirely late to



1 come in at this point.

2 PRESIDENT JENSEN: I think that on one  
3 hand while it holds a lot of merit that the community  
4 is reaching out, speaking out strongly, it just backs  
5 up what we already have seen in the minutes we have  
6 been provided already, so it just reconfirms  
7 everything. So I would -- I see some value, but for  
8 the Board's decision-making, I'm not sure if it is.

9 PARTICIPANT: We still can't hear you.

10 PARTICIPANT: Your voice is too low.

11 PRESIDENT JENSEN: Can you hear me now?

12 PARTICIPANT: When you yell.

13 MEMBER PACK: A couple of us are having  
14 mic problems up here.

15 (Microphone check taken.)

16 PRESIDENT JENSEN: So you want to take a  
17 vote if we want to accept this community petition?

18 Take a roll call, please.

19 MS. BANNING: Adjoua.

20 MEMBER ADJOUA: No.

21 MS. BANNING: Eisen.

22 MEMBER EISEN: No.

23 MS. BANNING: Jensen.

24 PRESIDENT JENSEN: No.

1 MS. BANNING: Mecozzi.

2 VICE PRESIDENT MECOZZI: No.

3 MS. BANNING: Pack.

4 MEMBER PACK: No.

5 - - -

6 SWEARING OF WITNESSES

7 PRESIDENT JENSEN: The next item on the  
8 agenda is swearing in the witnesses that will be  
9 participating in this evening's appeal.

10 (Witnesses sworn.)

11 MR. EWALD: Mr. Chair, one final note.  
12 The documents that were submitted tonight are public  
13 documents. They may not be in the record, but they  
14 are available to anyone.

15 PRESIDENT JENSEN: Where would they be  
16 available, in the department?

17 MR. EWALD: Through a public records  
18 request or they can come into council office and ask  
19 for a copy.

20 PRESIDENT JENSEN: Thank you.

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2 PUBLIC HEARING

3 PRESIDENT JENSEN: At this time we will  
4 begin the public hearing. BZA 0001-2017, to consider  
5 an appeal from the Planning Commission's denial of  
6 the application, CU-0009-2016, to consider an amended  
7 Conditional Use Application to allow a residential  
8 drug and alcohol rehabilitation facility in a  
9 Community Commercial (CC) zoning district, for  
10 property located at 121 James Road and 175 West  
11 Johnstown Road; Parcel ID Nos. 025-000855,  
12 025-000798, 025-000890; Access Ohio, LLC, Donald T.  
13 Plank, applicant.

14 To set some of the rules for the process  
15 for the public meeting, this hearing will be open  
16 with the appellant's being allowed 15 minutes. The  
17 appellee 15 minutes, the staff will be allowed five  
18 minutes for comments, and we will have to determine  
19 the number of minutes for public comment.

20 According to the rules, according to the  
21 City of Gahanna Rules of Procedure, Board of Zoning  
22 and Appeals, five minutes is allowed for public  
23 comment. Additional time may be allowed at the  
24 discretion of the chair.

1           Comments and questions of the Board shall  
2 be allowed during the course of the meeting, the  
3 hearing, and the Board can consider any relevant  
4 evidence discussed not contained in the record.

5           At this time would the appellant begin  
6 your presentation.

7           MR. PLANK: Members of the Board, my name  
8 is Donald Plank. I'm the attorney for the appellant.  
9 The appellant is an et al. It's Access Energy, owner  
10 of the property, and Access Ohio, who will be the  
11 operator of the property. They are in health  
12 services in central Ohio and southern Ohio.

13           At the outset I'd like to make a couple  
14 of objections. I was introduced this evening to  
15 Mr. Reed, who is the attorney for the Planning  
16 Commission. It's very unusual that the Planning  
17 Commission or the deciding body would be represented  
18 at a subsequent appeal. I don't understand in any  
19 situation during an appeal in which the deciding  
20 Board who is supposed to be an independent body is  
21 actually appearing before the appeal level and  
22 arguing. With that, I'll make that objection.

23           The second objection is the time period.  
24 I will try to comply with the 15 minutes, but if I

1 need more than that, by 2506 if the appeal has a  
2 defect in the hearing, if I can't get through my  
3 hearing -- I'll do what I can to get by in 15  
4 minutes, but it will be difficult to.

5 PRESIDENT JENSEN: Well, the thing is I'm  
6 sure you saw the rules.

7 MR. PLANK: I saw the rules.

8 MR. WATKINS: I would add to the  
9 objection, the rules on their face provide us with a  
10 lack of due process. The Board is allowed 15 minutes  
11 and then the staff is allowed five minutes. That's  
12 20 minutes for one side and 15 minutes for the other  
13 side, and it just brings the fact what Mr. Plank is  
14 just talking, and that is, it's very unusual to have  
15 this kind of situation where the Board itself is a  
16 party.

17 MR. PLANK: With those two objections,  
18 I'll start my presentation. I believe we are all  
19 working out of this set of documents, and typically  
20 I've got exhibits that I'm showing. I'm going to  
21 refer by page to the documents. And I don't know  
22 that you want to go through these at this time or it  
23 will take significantly more than 15 minutes. I will  
24 refer to the pages and, if necessary, cite sections,

1 as you choose.

2 This appeal is from a decision of the  
3 Planning Commission denying Access Ohio's application  
4 for a Conditional Use permit. The property, and I  
5 don't know how familiar you are with it, but it's  
6 actually three parcels. It's 4.25 acres, and that's  
7 found on page 131 of the exhibits. It has access  
8 from both Johnstown Road and from James Road.

9 The property, the entire property, is  
10 zoned CC, Community Commercial. I refer to the  
11 official zoning map at page 182 in your documents.  
12 The building, the property is improved with two  
13 buildings. The 175 Johnstown Road building is an  
14 office, and the 121 James Road is a former nursing  
15 home. The living quarters that we're proposing would  
16 be in the James Road building. It was built in 1979.

17 I have a series of exhibits. I will give  
18 you the page numbers and then the document. On  
19 page 138 is the building permit application from  
20 1979. On page 137 is the zoning certificate that was  
21 issued for the nursing home in 1979. On page 151 is  
22 the actual building permit that was issued, and on  
23 page 150 the fire department gave its notice that it  
24 could be occupied.

1           The Certificate of Approval & Occupancy  
2 was issued. That's on page 152. And there was  
3 actually evidence the City participated in the  
4 funding of the building back in 1979, and that  
5 evidence is at page 188 and page 192.

6           Our search of the City records -- and I  
7 need to state also on the record the transcript or  
8 the recording of the hearing before the Planning  
9 Commission was not available. It just didn't work,  
10 so we're working without the verbal. So I'll tell  
11 you what my testimony was, but I won't be able to  
12 point to any particular section of that.

13           But the testimony at the previous hearing  
14 was based on our search of the City records and a  
15 records request from the City and no zoning  
16 violations for the building were ever submitted.

17           The point being that the building was  
18 built and used as a 90-bed nursing home. It was  
19 built for living quarters. The surrounding area --  
20 quickly, the zoning map of the property is at  
21 page 182. The surrounding area is zoned  
22 predominantly commercial.

23           The Community Commercial District permits  
24 restaurants, convenience stores, carry-outs, liquor

1 stores, nursing homes, convalescent homes, rest  
2 homes, as examples. I mean, they obviously allow  
3 their uses. The testimony was that there were a  
4 number of bars in the area. There's a United Dairy  
5 Farmers across the street and various commercial in  
6 the area.

7           The south property line of this  
8 4.25 areas and everything to the north of 62,  
9 practically all of that is zoned CC, commercial, so  
10 that and the surrounding area is CC, commercial.

11           The next most prevalent zone that is  
12 typical or is similar to, there's an AR, multifamily  
13 family, and there's an SF-3, single-family. There is  
14 a home to our east, a home immediately to our south.

15           We had met with the neighbors, City  
16 staff, Planning Commission members a number of times  
17 through their workshops. It resulted in the  
18 conditions that you will see at page 5. Initially  
19 those conditions started out on my behalf of just  
20 addressing land-use issues. If you see No. 5 of the  
21 conditions, it deals with a complaint that the  
22 neighbors had of the prior nursing home, and that was  
23 smoking in the back; likewise, No. 6 deals with  
24 outside activity. Those were all then moved to the



1 front under the conditions that you have in front of  
2 you.

3 We also dealt with screening by putting a  
4 fence up, and we also dealt with the likelihood we  
5 would change the access into the site, take the  
6 access off of James Road away and come in through  
7 Johnstown Road. We did that, again, at the request  
8 of at least one of the neighbors.

9 The testimony at that hearing was that no  
10 traffic study was required for this change of use.  
11 Understand, it may be what we call a traffic or an  
12 access study. That would just be dealing with the  
13 change in access and using the parking that's on  
14 Johnstown Road as parking for the entire site. So  
15 that's the background.

16 The law and argument, it's important to  
17 understand what the conditional use that we are  
18 requesting is. The conditional use is to permit  
19 living quarters as an integral part of a  
20 permitted-use building, living quarters as part of a  
21 permitted-use building. That's what 1153(b)(2) --  
22 that's at page 178. That request was clearly stated  
23 in both our applications, page 98 and page 114.

24 The proposed use, that has been

1 categorized as a residential drug and alcohol  
2 rehabilitation facility, but the conditional use  
3 request is for living quarters as part of a  
4 permitted-use building. The permitted use is for the  
5 drug and alcohol treatment center and outpatient  
6 clinic. Staff report pages 108 and 123 acknowledges  
7 the permitted use in the CC zoning district.

8           The outpatient portion is a permitted use  
9 in the CC zoning district. The proposed use is  
10 living quarters in a former 90-bed nursing home,  
11 designed, permitted, constructed, and operated as  
12 living quarters for the elderly and the infirm.

13           Our specific use is living quarters for  
14 up to 70 days in an existing building with interior  
15 renovation not involving structural changes. On page  
16 199 we requested an adjudication order from the  
17 building department to determine what we needed to  
18 bring this up to code. Page 201 is our architect's  
19 response to that adjudication order.

20           The issue of whether or not we had a  
21 one-hour fire rating, three-quarter-hour fire rating  
22 on the doors. In fact, the building has that. The  
23 only thing we have to do to bring it up to code is  
24 the alarm system. The individual beds had to be

1 attached to the alarm system, and that had to do more  
2 with the passage of time than the previous use. The  
3 previous use if it went in today would have to do the  
4 same thing.

5 The testimony was there is no expansion  
6 or enlargement in the proposed plan. The only change  
7 from the nursing home use will be the handicapped  
8 status of the people living there. We're going from  
9 infirmed and elderly to individuals with the handicap  
10 of drug and alcohol rehabilitation.

11 1169.04 states the four conditions in  
12 which the Board or the Planning Commission was to  
13 review in determining whether or not the use was  
14 permitted. I don't know if I have what page that is,  
15 but it's in your book.

16 MEMBER EISEN: It's on page 1, right on  
17 your appeal.

18 MR. PLANK: Thank you. "The Planning  
19 Commission shall approve an application for  
20 conditional use if the following four conditions are  
21 met."

22 And the first is that "the proposed use  
23 is a conditional use of the zoning district and the  
24 applicable development standards established in this

1 Zoning Ordinance are met."

2           The City has acknowledged at page 108  
3 that this was indeed a conditional use of that zoning  
4 district. And that gets us into my argument. My  
5 argument is Nos. 2, 3 and 4 don't talk about proposed  
6 use. They talk about proposed development. My  
7 argument was and remains that the code clearly makes  
8 a distinction between proposed use and proposed  
9 development.

10           The proposed development, the development  
11 occurred in 1979. Any conditions dealing with the  
12 proposed development occurred in 1979. As to items  
13 2, 3, and 4, those conditions are not appealable --  
14 I'm sorry. They're not applicable -- they're clearly  
15 appealable -- not applicable to developed property.  
16 It makes no sense.

17           Now, the City in their staff report,  
18 page 108 -- if I might read this because this is how  
19 we get to the problem with the appeal. "The question  
20 has been raised" -- and this is from the staff  
21 report, page 108 -- "if the application is considered  
22 'development' or not" -- my argument before the  
23 Planning Commission. "It has been stated by the  
24 applicant that the request is not 'development' and

1 therefore the conditions which refer to 'development'  
2 are not applicable. To answer this question we must  
3 review the Code. The Code does not define the term  
4 'development.' In cases where words are not defined  
5 in the Code, then the definition found in The Latest  
6 Illustrated Book of Development Definitions shall be  
7 used." And that quote cites no code section.

8 I'd like to present to the Board  
9 Section 1123.01(b), which is where that quote  
10 supposedly came from, and I'd like to share that with  
11 the Board if I might, and it is the code.

12 So the citation in the staff report is  
13 really referring to (a) of that section, and (a)  
14 reads, "Words not particularly defined herein shall  
15 be defined and found in The Latest Illustrated Book  
16 of Development Definitions, 2004, by Harvey S.  
17 Moskowitz," and it goes on.

18 (B) of that section, "Except where  
19 specifically defined herein, all words used in the  
20 Zoning Ordinance shall carry their customary  
21 meanings."

22 We have gone back and forth in our office  
23 as to what the heck that means. The City obviously  
24 chose (a). We chose (b). And I think there's a

1 conflict in the language. And I can tell you based  
2 on 35 years of doing zoning work, the words  
3 "development" and "use" are not synonymous. Common  
4 ordinary use of that word is not that they are --  
5 that they mean the same. In fact, if you take a look  
6 at the code itself, 1169.04 talks about proposed use  
7 and then three times it talks about proposed  
8 development. If they wanted to say proposed use,  
9 that's a simple word to put into the code text, and  
10 it was not. If you take a look at 1169.04(a)(4), one  
11 of the conditions, it also distinguishes between land  
12 use and land development.

13 PRESIDENT JENSEN: Mr. Plank, excuse me.  
14 How much more time do you need?

15 MR. PLANK: Ten minutes maybe.

16 PRESIDENT JENSEN: Can you make it less?

17 MR. PLANK: I can proffer my information.

18 MEMBER PACK: I'd like to make a motion  
19 that Mr. Plank get another ten minutes to make his  
20 full presentation.

21 MEMBER EISEN: I second.

22 PRESIDENT JENSEN: All in favor?

23 (Vote taken; motion passes.)

24 MR. PLANK: Then quickly, 1169.04(a)

1 again uses the word "land use" and "physical  
2 development." It uses those two words. They're not  
3 used synonymously.

4 And, finally, the testimony before the  
5 Planning Commission by the City was that no  
6 development plan was required for our change of use.  
7 We will need a zoning certificate for change of use,  
8 as you would in any jurisdiction, but no development  
9 plan is required as a part of this change of use.

10 I would also, as to Section (a) of that,  
11 I have an affidavit from my secretary I'd like to  
12 submit for the record in her efforts to obtain this  
13 book. If I can read from the affidavit, it says  
14 basically that the book is available at the Miami  
15 University and Ohio State law libraries and the  
16 University of Cincinnati, but it is missing right  
17 now.

18 The City of Gahanna does have a copy. We  
19 came in to take a look at it and make copies, and we  
20 could not make copies because of the copyright law.  
21 Fine, I understand that, but zoning codes, zoning  
22 codes that affect how I can and if I can use my  
23 property have to be available. They have to be in a  
24 situation that I can read it and know what I can do

1 with my property. I can't do that with (a).

2 And so the result of the City's  
3 definition and by using "use" and "development" the  
4 same resulted in the proposed development, basically,  
5 that the application allowed for the application of  
6 outdated planning areas, dated 15 and 17 years ago.  
7 They were contradictory. Some said I could have it.  
8 Some said I couldn't. In fact, one of the plans that  
9 the City cited as not being able to justify our use  
10 actually showed our building and said that building  
11 is to remain.

12 That's not my argument. My argument, we  
13 don't even get to that argument. I would for the  
14 record just state also we also believe that we are a  
15 permitted use. We asked for a conditional use. We  
16 applied conditions to it, and I've made this argument  
17 in letters pages 6 through 11, and that is that  
18 definition 1123.31, which is at page 176 of your  
19 document, defines nursing home, convalescent home,  
20 rest home as permitted uses in the CC district.

21 When you look at that definition, it also  
22 includes homes for substance abuse individuals. By  
23 including that definition with the definitions that  
24 are permitted in the zoning district, my argument is



1 that is, in fact, permitted use. The problem is that  
2 a substance abuse home for substance abuse users is  
3 not included anywhere else in the code, but it is  
4 included in those definitions that are permitted in  
5 the CC zoning district. If it is permitted use, the  
6 conditions we agreed to will not apply.

7 Finally, and in summary, I respectfully  
8 submit to the Board that the strict application of  
9 the code entitles my client to the requested  
10 conditional use.

11 You know, we take a look at these codes,  
12 and we have these hearings, and I have been in many  
13 emotional hearings. I used to represent people in  
14 halfway houses, and I've been through this before,  
15 but the code is not what we want it to be. It's not  
16 what we think it should be. It's what it says, and  
17 what this code says -- and all laws should be such.  
18 These are not popularity contests. We got the code.  
19 It has to be applied, especially when we are dealing  
20 with zoning codes.

21 Understand that zoning codes affect  
22 significant property rights, and when we talk  
23 interpreting codes that conflict or that I can't find  
24 code sections, codes have to be -- zoning codes have

1 to be interpreted in a manner that allows for the  
2 free use of property, and the Supreme Court has said  
3 on a number of occasions if there is a conflict in  
4 the code, it has to be interpreted in favor of the  
5 free use of land.

6 With that, I conclude my argument.

7 MR. WATKINS: And I'd just like to make  
8 one objection. Mr. Plank mentioned that the  
9 transcript is not available and that a recording of  
10 the hearing is not available. We make a formal  
11 objection to that, and it is our position that  
12 without a transcript, I think you have to take  
13 Mr. Plank's characterization of what happened and  
14 what the testimony was at the hearing as fact.

15 MEMBER ADJOUA: I have a question,  
16 Mr. Plank. Mr. Plank, how long was this used as a  
17 nursing home?

18 MR. PLANK: From 1979, I believe, to  
19 about two years ago.

20 MEMBER ADJOUA: Okay. And you said your  
21 living quarters would have 70 beds.

22 MR. PLANK: Yes.

23 MEMBER ADJOUA: What about what's the  
24 projected number of patients or people for the

1 outpatient area?

2 MR. PLANK: You know, we agreed in the  
3 conditions that the outpatient would be used in the  
4 office building, and that would be done by  
5 appointment only.

6 MEMBER ADJOUA: Any anticipated number or  
7 number of people projected?

8 MR. PLANK: We do not. But it would be  
9 limited to the office building on Johnstown Road and  
10 not the nursing home, not at the living quarters  
11 facility.

12 MEMBER ADJOUA: So would that be a  
13 24-hour outpatient facility?

14 MR. PLANK: No, it would not. We have  
15 doctors' hours. It's manned by doctors and  
16 therapists. And that, by the way, is a permitted  
17 use. That portion of the use of the property is  
18 permitted.

19 MEMBER ADJOUA: Thank you.

20 MR. REED: Mr. Chairman, my name is Frank  
21 Reed. I'm a lawyer at the law firm of Frost, Brown,  
22 Todd, and I've been asked to be special counsel to  
23 the Planning Commission.

24 And I think that the reason that the City

1 of Gahanna -- of course, every city is a little bit  
2 different. When a person has an application before a  
3 zoning matter, it first has to go to the Planning  
4 Commission. And the Planning Commission heard a lot  
5 of evidence. There were several days of hearings.

6 Your clerk of council put together a very  
7 nice book, which I think is available to anybody that  
8 wants to see it, including people in the audience,  
9 that shows the application. It shows each of the  
10 meeting agendas. It shows very complete minutes of  
11 what occurred at each meeting.

12 And at the final two hearings, there was  
13 a lot of residents that appeared. I think the clerk  
14 did a nice job of trying to summarize some of the  
15 points made by each of the residents, as well as by  
16 the applicant.

17 I have very high regard for Don Plank.  
18 Don is a wonderful zoning lawyer. His firm is  
19 well-known in the central Ohio community, and I have  
20 great respect for him.

21 I want to thank each of you because I  
22 know you don't get paid for this job, being on the  
23 Board of Zoning Appeals. I know you do it out of  
24 public service. I know that each of you care about

1 the City of Gahanna very greatly. So I know you have  
2 each taken prior to today an opportunity to review  
3 this very long book, and some of you have read the  
4 minutes very completely and the application.

5 And I recognize that not everyone on this  
6 Board is a lawyer, and so you're asked to decide  
7 legal arguments. So what I'd like to do is to point  
8 out to you a couple things that are in your charter  
9 and in your City Code and sort of outline what I  
10 understand the procedure to be.

11 So the first part is your City Charter.  
12 Your City Charter says that the Planning Commission  
13 may establish its rules of operation. Meetings shall  
14 be open to the public, and a record of its  
15 resolutions, findings, and determinations shall be  
16 maintained.

17 The charter also says at 12.03, "The  
18 Board shall decide its cases to afford justice and  
19 avoid unreasonable hardship to citizens."

20 There's another provision of the Gahanna  
21 City Code, which is, of course, different from the  
22 charter. It starts with 1105.06, and it talks about  
23 planning and zoning and platting, and it talks about  
24 if you were to ask for a plat or a subdivision, one

1 of the things you have to look for is whether the  
2 application will adversely affect the health and  
3 safety of persons living or working within the area,  
4 whether the application is materially detrimental to  
5 the public welfare, whether the application is  
6 contradictory to existing city development standards,  
7 zoning and ordinances.

8           1127 governs your appeal of  
9 administrative orders, that's to this body, the Board  
10 of Zoning & Building Appeals, and we know if one side  
11 or the other didn't like the result of that, there  
12 could be an appeal to court. So, in other words, it  
13 doesn't go to your elected city council. It goes  
14 directly to court.

15           1169.01 of your code says about  
16 conditional use, and it gives you some instructive  
17 language about intent. It says, the intent is to set  
18 forth the development standards and criteria for  
19 locating and developing a conditional use in  
20 accordance with the nature of the surrounding area.

21           Finally, Mr. Plank and I absolutely agree  
22 that the relevant section for this Board to look at  
23 today is 1169.04, and that's the Actions of the  
24 Planning Commission. The commission shall approve an

1 application for a conditional use, and that's what  
2 this application is, if all of the four conditions  
3 are met.

4 One, the proposed use is a conditional  
5 use of the zoning district. Now, Mr. Plank has a  
6 creative argument for you to consider. He says,  
7 Well, there's a determination that his is already a  
8 conditional use. I would say that that definition is  
9 subsumed in what the meaning of the definition is.  
10 So what I say is you would have to look at all four  
11 prongs to really understand what this means.

12 The second prong is, is the proposed  
13 development in accord with the appropriate plans for  
14 the area.

15 No. 3 is the proposed development will  
16 not have undesirable effects on the surrounding area.

17 And fourth and finally, the proposed  
18 development will be in keeping with the existing land  
19 use character and physical development potential of  
20 the area.

21 I will submit to you, members of the  
22 Board, that this proposed development, because it's a  
23 residential drug and alcohol facility, does not meet  
24 what is provided under the code. And if this

1 application were to say to either the Planning  
2 Commission or to this Board or to the City of  
3 Gahanna, Look, we want to have an outpatient  
4 facility, I don't think we'd have this hearing today.

5 I know that there were some discussions  
6 about, you know, Hey, if we were to make certain  
7 conditions about fencing or lighting or security or  
8 things like that, well, that puts you into a  
9 different category of your code. That means you  
10 approve with modifications, and I would submit to  
11 you, ladies and gentlemen of the Board, we're not  
12 there. Where we are is under 1169.04(a), and that  
13 is, these four conditions we've submitted.

14 Mr. Chairman, I know that you want to  
15 hear from several residents today. I know that the  
16 book that has already been provided to each of you is  
17 already part of the record. There's only one part of  
18 that I'd like to highlight.

19 I'd like to ask the clerk of courts to  
20 assist me because I see you have a projector. Maybe  
21 we can use that exhibit. What I'm looking for is a  
22 report, it's in the book, from the Gahanna Police  
23 Department.

24 Kim, while you're doing that, I'll get my



1 copy.

2 MS. BANNING: What page is that on?

3 MR. REED: I have to look it up. One  
4 second here. It starts at tab 7 of the book,  
5 starting with pages 203 to 206, and there's some  
6 pictures behind it.

7 MS. BANNING: Start with the memorandum  
8 or e-mail?

9 MR. REED: 203.

10 Mr. Chairman, members of the Board, the  
11 Planning Commission would like to call its only  
12 witness, Lieutenant Sheila Murphy from the Gahanna  
13 Police Department.

14 MR. WATKINS: We will object to the  
15 calling of the witness. It has not been disclosed,  
16 and we had no way of preparing.

17 MR. REED: Mr. Chairman, thank you for  
18 the opportunity to be heard on that. The rules are  
19 clear that if there is an exhibit to be introduced,  
20 it has to be shared with the other side and with this  
21 Commission three days in advance.

22 I submit to you that these documents are  
23 part of the appeal binder. They start at  
24 page 203 and they go to page 227. There is not,

1 Mr. Chairman, a rule that says that you have to in  
2 advance notify what witnesses you're going to call.

3 I believe that Lieutenant Murphy has been  
4 with the police department for 23 years. I know she  
5 testified in front of the Planning Commission. I  
6 think her testimony today would be instructive to the  
7 Board today to understand what the Planning  
8 Commission had to look at.

9 MR. WATKINS: I'd like to make a second  
10 objection, again renew our objection to the fact the  
11 transcript is not available and the recording is not  
12 available. While she did testify before the Planning  
13 Commission, we didn't know she was going to testify  
14 here. We have no idea if what she is going to say  
15 here is going to conflict with what she said then.  
16 So, again, the fact that there is no transcript and  
17 the fact that this witness has not been given to us  
18 before, we renew our objection.

19 MR. REED: Mr. Chairman, I will tell you  
20 that the rules that govern the Planning Commission  
21 are different than the rules that govern the Board of  
22 Zoning Appeals. The rules that govern the Board of  
23 Zoning Appeals provide for a court reporter if  
24 somebody had asked for it, and the court reporter is

1 here.

2 In many respects this is your opportunity  
3 to hear firsthand from various witnesses, much like  
4 you will hear from various witnesses, the general  
5 public, who neither counsel for either side knew who  
6 was going to be here or what they would say. I  
7 believe that this testimony is relevant. I believe  
8 that there's no obligation to make a tape-recording  
9 of any meeting of the Planning Commission. The only  
10 requirement under Ohio law under 122 is to make  
11 accurate minutes, and that has been done.

12 So I would ask that the Board allow  
13 Lieutenant Murphy to testify today.

14 PRESIDENT JENSEN: Anyone on the Board  
15 have an objection?

16 MR. WATKINS: I'd like to also state the  
17 record speaks for itself. There's no need for her  
18 testimony.

19 MEMBER PACK: I would like 30 seconds to  
20 review our rules and procedure, Mr. Chairman, if  
21 that's okay.

22 PRESIDENT JENSEN: Yes.

23 Mr. Pack, are you prepared?

24 MEMBER PACK: Mr. Chairman, I'd like to

1 make a motion we allow Lieutenant Murphy's testimony  
2 to be entered into the record.

3 MEMBER ADJOUA: And I second that motion.

4 PRESIDENT JENSEN: I agree. Any  
5 discussion?

6 MEMBER ADJOUA: I think the objection is  
7 null. I believe there are business records in this  
8 book that we received in the notebook. She's just  
9 really confirming they are business records.

10 PRESIDENT JENSEN: She was part of the  
11 testimony previously at the Planning Commission. We  
12 had seen what she said before but she can reconfirm.

13 Go ahead.

14 MEMBER PACK: I would as part of the  
15 discussion, I want this hearing to be even-handed.  
16 We gave the appellant extra time. This Board --  
17 under our rules of procedure we can admit evidence as  
18 well as witnesses that we feel are relevant, in which  
19 case Lieutenant Murphy has some testimony inside our  
20 appellant booklet for preparation, so I feel it's  
21 relevant at this time.

22 PRESIDENT JENSEN: Roll call.

23 MEMBER ADJOUA: Yes.

24 MS. BANNING: Pack.

1 MEMBER PACK: Yes.

2 MS. BANNING: Jensen.

3 PRESIDENT JENSEN: Yes.

4 MS. BANNING: Mecozzi.

5 VICE PRESIDENT MECOZZI: Yes.

6 MS. BANNING: Eisen.

7 MEMBER EISEN: Yes.

8 MR. REED: Thank you, Mr. Chairman.

9 Lieutenant Murphy, can you take the  
10 witness stand for us, please.

11 - - -

12 LIEUTENANT SHEILA MURPHY

13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Reed:

17 Q. You don't have the benefit of a  
18 microphone. I would count on you to speak loudly,  
19 all right?

20 A. That won't be a problem.

21 Q. Lieutenant Murphy, state your full name  
22 for the record.

23 A. Lieutenant Sheila Murphy.

24 Q. And what is your position?

1           A.    I'm the administrative lieutenant for the  
2 Gahanna Police Department.

3           Q.    And how long have you been a sworn  
4 officer for the Gahanna Police Department?

5           A.    I'm in my 23rd year.

6           Q.    Very well.  Where are you originally  
7 from, Lieutenant Murphy?

8           A.    From the Gahanna area.

9           Q.    I see.  So you went to high school here?

10          A.    Yes.

11          Q.    Grew up here?

12          A.    Yes.

13          Q.    Thank you.  And what did you do after  
14 high school?

15          A.    I joined the military.

16          Q.    All right.  And what branch of the  
17 military?

18          A.    I was in the U.S. Army.

19          Q.    All right.  How many years did you serve?

20          A.    Three.

21          Q.    What did you do in the United States  
22 Army?

23          A.    I was a military police officer.

24          Q.    Wonderful.  Thank you for your service.

1 What did you do after serving in the United States  
2 Army?

3 A. I went to Kroger until I got my job here.

4 Q. Okay. And where did you go to take your  
5 test for the police department?

6 A. The tests were given at the high school.

7 Q. Okay. And what academy, if any, did you  
8 go through?

9 A. The Ohio State Highway Patrol.

10 Q. All right. Did you graduate successfully  
11 from the State Highway Patrol Academy?

12 A. Yes, I did.

13 Q. All right. And what was your first job  
14 as a sworn police officer?

15 A. I was a patrol officer.

16 Q. Okay. In what jurisdiction?

17 A. City of Gahanna.

18 Q. Thank you. And at some point did you  
19 have an opportunity, Lieutenant Murphy, to conduct an  
20 investigation with regard to the application for  
21 Access Ohio on its conditional use permit?

22 A. Yes, sir.

23 Q. All right. Tell us a little bit about  
24 that investigation.

1           A.     I was tasked by my boss to go to Dayton  
2 at the request of Access Ohio to look at the facility  
3 area and the surrounding area.

4           Q.     All right.  And explain to the members of  
5 the Board why Dayton?

6           A.     Apparently that's where the Access Ohio  
7 facility is, the only one.

8           Q.     Okay.  So the applicant has an existing  
9 facility; is that right?

10          A.     Yes.

11          Q.     That's in the city of Dayton?

12          A.     Yes.

13          Q.     Thank you, Lieutenant.  And did you, in  
14 fact, go to that facility and visit it?

15          A.     Yes.

16          Q.     Okay.  And what day did you go?

17          A.     It was in January.  I believe the 27th.

18          Q.     Okay.  So if I can ask Kim to help on the  
19 large screen so the audience and opposing counsel can  
20 see this.  Page 205, please.

21                   Lieutenant Murphy, we probably have an  
22 extra copy in the room if you need it.  I ask you to  
23 direct your attention to the top of the screen.  I  
24 believe each of the members of the Board have their



1 own book. This is page 205 of the appeal binder.  
2 What is that document, please?

3 A. That is a summary of my visit to the  
4 Dayton Access Ohio facility.

5 Q. And who wrote this report?

6 A. I did.

7 Q. Okay. And who did you write it to?

8 A. Deputy Chief Spence.

9 Q. Okay. And can you tell us without  
10 reading this report what exactly does the report say?

11 A. It's a summary of what we observed around  
12 the area of the facility and a summary of speaking to  
13 one of the sergeants from the Dayton Police  
14 Department.

15 Q. Okay. Did you go with anybody else from  
16 the Gahanna Police Department?

17 A. Yes.

18 Q. And who did you go with?

19 A. Detective Blair Thomas.

20 Q. Thank you. And what did you observe once  
21 you got to the facility in Dayton owned and operated  
22 by Access Ohio?

23 A. It appeared to be an old hospital. It  
24 had a large parking lot. Probably over, I'd say,

1 100 yards from the facility was surrounded by  
2 residences. There was a track about 50 yards from  
3 the back of the facility, a school, and a police  
4 substation.

5 Q. Okay. Let me ask you about the track.  
6 You said that was part of what, a high school then?

7 A. Yeah. There's a school over there.

8 Q. Okay. And you said that there was some  
9 residential?

10 A. Yes, there were houses.

11 Q. Okay. Lieutenant Murphy, how far away  
12 were the houses from Access Ohio's facilities?

13 A. They were at least 100 yards, maybe more,  
14 more than about a football field, maybe a football  
15 field and a half.

16 Q. All right. Lieutenant Murphy, you have  
17 been a police officer here in Gahanna for 23 years.  
18 Are you familiar with the site that is the subject of  
19 this application?

20 A. Yes.

21 Q. Where is that Lieutenant Murphy?

22 A. On the corner of James Road and West  
23 Johnstown.

24 Q. Okay. Are there residences in that area?

1           A.    Yes.

2           Q.    And how close are the residences,  
3 Lieutenant Murphy, to this proposed facility?

4           A.    I would say maybe 20 yards, maybe a  
5 little bit more.

6           Q.    Okay.  So much closer than the one in  
7 Dayton?

8           A.    Yes.

9           Q.    All right.  What did you do when you got  
10 to the Dayton area?

11          A.    We drove onto the facility grounds, went  
12 around the back of the building trying to observe  
13 cameras, how close the houses were, the condition --  
14 we even looked at the condition of the lot and took  
15 several pictures to try to catch the range of how far  
16 the houses were from the facility.

17          Q.    And are those digital pictures a part of  
18 your report?

19          A.    Yes.

20          Q.    And are those included in the record?

21          A.    Yes.

22          Q.    I will ask Kim to show those in a minute,  
23 but I have a couple other questions before we do  
24 that.  What did you do next after you visited Access

1 Ohio?

2 A. We went to the Dayton substation, which  
3 is located right off the back of the property.

4 Q. And who, if anyone, did you speak to?

5 A. To Sergeant Beavers.

6 Q. And what did you learn after speaking  
7 with the police officer in Dayton?

8 A. We asked him about calls for service, did  
9 they have any problems, just the general activity  
10 around the location.

11 Q. Did you ask about any crimes at that  
12 facility that they were called to run upon?

13 PRESIDENT JENSEN: Mr. Reed, that's 15  
14 minutes. How much more time do we need for the  
15 testimony?

16 MR. REED: Thank you. I believe we can  
17 complete this testimony in three minutes and I have  
18 probably two minutes of remarks.

19 PRESIDENT JENSEN: Is that okay with  
20 everybody else?

21 Proceed.

22 MR. REED: Thank you, Mr. Chairman.  
23 Thank you, members.

24 Q. (By Mr. Reed) Were there any crimes that

1 you asked the Dayton police officers about as it  
2 relates to where they were called to that facility to  
3 deal with, either calls or disturbances, things like  
4 that?

5 A. Yes. We asked them what their call  
6 volume was there.

7 Q. And what did you learn?

8 A. The majority of calls was when they had  
9 to take prisoners to hospitals, doctors'  
10 appointments, court appointments, and anything else  
11 that they need to be escorted to.

12 Q. Was there anything else?

13 A. He said they had mental health issues  
14 where they had to use pinks slips, thefts, and some  
15 crimes where someone pulled a shard of glass on one  
16 of the employees there.

17 Q. So a patient?

18 A. Yes.

19 Q. I see. And looking at your report, you  
20 put down warrant arrests. What do you mean by that?

21 A. I assume that when someone comes into  
22 their facility, they have to run some sort of check  
23 on who they are, and if there's a warrant on them,  
24 they have to arrest them.

1 Q. And Sergeant Beavers was the person you  
2 talked to. At the bottom of your report you talked  
3 about domestic violence issues.

4 A. Yes.

5 Q. And people bringing in contraband and  
6 ODs.

7 A. Overdoses.

8 Q. Thank you. And that's what you also  
9 learned?

10 A. Yes, sir?

11 MR. REED: All right. Ms. Banning, I ask  
12 you to show the pictures briefly.

13 Q. (By Mr. Reed) Are these fair and accurate  
14 depictions of what you saw at the facility as it  
15 relates to nearby residences in Dayton?

16 A. Yes.

17 Q. All right. I will ask you to flip  
18 through all of those as we ask the last couple of  
19 questions.

20 Lieutenant Murphy, you have been a patrol  
21 officer; is that right?

22 A. Yes.

23 Q. What other positions have you held in the  
24 Gahanna Police Department?

1           A.     I was a bike patrol officer and most  
2 recently in the detective bureau.

3           Q.     And what is your rank today?

4           A.     Lieutenant.

5           Q.     All right. During the time you were on  
6 patrol or during the time you were a detective, did  
7 you ever have occasion to go to a Parkside  
8 residential facility?

9           A.     Yes.

10          Q.     What is Parkside?

11          A.     It's an inpatient and outpatient alcohol  
12 and drug rehabilitation center.

13          Q.     I see. And where is located, please?

14          A.     On Olde Ridenour Road, on the corner of  
15 Chapelfield and Olde Ridenour.

16          Q.     All right. Can you tell the members of  
17 the Board what were some of the calls you personally  
18 were involved in as it relates to Parkside, this  
19 alcohol/drug treatment facility?

20          A.     I've been personally sent on fights,  
21 thefts, patients stealing from patients, patients  
22 stealing from staff, suicides, ODs, domestic  
23 violences, fire alarms, and patients that just walk  
24 away that we have to find.

1 Q. Uh-huh. Has there been any use of  
2 illegal drugs or alcohol at the facility?

3 A. Yes. We get calls from the staff when  
4 they find narcotics on patients, and we actually  
5 had -- most recently this year we had a staff person  
6 who was selling drugs to one of the patients, who was  
7 then selling it to other patients.

8 MR. REED: Thank you, Lieutenant Murphy.

9 I have no further questions, and I would  
10 ask if counsel would like to ask any questions of  
11 this witness.

12 MR. PLANK: I need the Board to tell me I  
13 can.

14 PRESIDENT JENSEN: Go ahead.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Plank:

18 Q. A couple of questions. Now, when you  
19 went down to Dayton, did you inquire as to what was  
20 being done at the hospital facility that Access Ohio  
21 was running?

22 A. The only person I spoke to was Sergeant  
23 Beavers.

24 Q. But no one at the facility.



1           A.    No.  We did not have contact with anyone  
2   at the facility.

3           Q.    You are not aware that most of that  
4   facility is a psychiatric ward?

5           A.    I was only going to check out the area.

6           Q.    You have no idea when Access Ohio started  
7   operating their residential treatment facility at  
8   that location?

9           A.    No.

10           MR. PLANK:  And I would submit to you  
11   that was discussed at great length, we don't have a  
12   transcript, a good majority of those calls are from  
13   the psychiatric ward.  They have been only operating  
14   their residential facility since 2015.  They have an  
15   arrangement with the police department down there  
16   that police drop off people that are having psychotic  
17   episodes.  They then move them back and forth.

18           I have a member from Access Ohio here to  
19   refute what was said, but I'd basically ask --

20           PRESIDENT JENSEN:  How long has Access  
21   Ohio been in business?

22           MR. REED:  Mr. Chairman, I'd like to ask  
23   this witness be excused today and thank her for her  
24   time.

1                   PRESIDENT JENSEN: Thank you.

2                   At this point the question was, how long  
3 has Access Ohio been in business.

4                   MS. PARSLEY: Access Ohio has been in  
5 business since 2006. We did not purchase Wayne  
6 Avenue until 2010. We did not start operations until  
7 September 26, 2015, and that was with a psychiatric  
8 ward. The residential program did not start until  
9 September 14, 2015.

10                  PRESIDENT JENSEN: Your length of  
11 experience in this inpatient/outpatient business is  
12 less than two years.

13                  MS. PARSLEY: Correct, at that location.

14                  PRESIDENT JENSEN: How about just  
15 overall?

16                  MS. PARSLEY: I mean, as far as  
17 Dr. Johnson, our owner, he has 35 years of  
18 experience.

19                  PRESIDENT JENSEN: Access Ohio being in  
20 business dealing with patients.

21                  MS. PARSLEY: He started in business in  
22 2006.

23                  PRESIDENT JENSEN: With inpatient and  
24 outpatient?

1 MS. PARSLEY: Correct.

2 MEMBER ADJOUA: Is there a residential  
3 facility also?

4 MS. PARSLEY: We started the residential  
5 facility at that location on September 14, 2015.

6 MEMBER ADJOUA: How many beds does it  
7 have?

8 MS. PARSLEY: It has 54 beds.

9 PRESIDENT JENSEN: At this time do we  
10 have City staff that has any comments or has it been  
11 covered by Mr. Reed?

12 MR. EWALD: Thank you, Mr. Chairman.  
13 There will not be anyone from staff to testify. We  
14 stand on the record as submitted.

15 PRESIDENT JENSEN: At this time at the  
16 back of meeting room there were some forms that we  
17 asked folks to sign up and fill out if they wanted to  
18 speak this evening. We have seven.

19 In the interest of people and fairness to  
20 everybody, we will -- I don't know any of these folks  
21 here, so I have no idea or what agendas, opponent or  
22 proponent, so we will start with Gregory Russell,  
23 102 James Road. You will be allowed five minutes.

24 MR. REED: I just want to make a

1 clarification. If you let each witness speak five  
2 minutes, that could be a long time. It's up to the  
3 Commission, however you want to do it.

4 PRESIDENT JENSEN: Our rules state five  
5 minutes. If we as a Board want to adjust that, I  
6 have no idea how long each person is speaking.

7 Mr. Pack, do you have suggestions?

8 MEMBER PACK: So let me get this correct.  
9 We are going to be listening to opponents.

10 PRESIDENT JENSEN: It's my understanding  
11 there are mixed public comments.

12 MEMBER PACK: Public comments.

13 MR. REED: Mr. Jensen, on behalf the  
14 Commission I think your rule for the Board of Zoning  
15 Appeals says the entire public is allowed five  
16 minutes. I think each of you would say that is  
17 probably not sufficient given the number of people.  
18 So I have a suggestion. My suggestion is that you  
19 ask anyone who asked to testify today be limited to  
20 two minutes. I think that will still give people a  
21 chance to speak and give you their opinion, but also  
22 I think it recognizes there's a lot of people who  
23 already testified, maybe duplicate times in front of  
24 the Planning Commission. That would be my

1 recommendation, Mr. Chairman.

2 PRESIDENT JENSEN: Anybody on the Board  
3 have an opinion?

4 Does the appellant have an opinion?

5 MR. PLANK: I have a lot of opinions.

6 PRESIDENT JENSEN: On that issue.

7 MR. PLANK: I do not. I think you're  
8 going to see mostly opponents. I sat through it  
9 before.

10 MEMBER PACK: Mr. Chairman, my  
11 recommendation is to -- if people want to speak, we  
12 should let them speak, let them be heard. Maybe  
13 limit them to about 60 seconds or so or 90 seconds  
14 and go from there.

15 PRESIDENT JENSEN: I will give two  
16 minutes max. That way it is equal and fair. I  
17 assume some people will be less than two minutes and  
18 some people will have to be stopped.

19 Mr. Russell.

20 MR. RUSSELL: I live directly across the  
21 street from this facility, and my argument is nothing  
22 new. I just don't really want a drug and rehab  
23 facility across the street from my house simply  
24 because I know it will make my property value go

1 down, and I worry for the safety of my grandchildren  
2 as well.

3 Thank you.

4 PRESIDENT JENSEN: The Board would like  
5 to call Carma Godby, 102 James Road.

6 MS. GODBY: Hi. My name is Carma Godby.  
7 I live at 102 James Road, and I am both a resident  
8 and professional realtor in the neighborhood. I've  
9 been a realtor for 24 years.

10 I wanted to bring some information here.  
11 There was an actual study done in Virginia on the  
12 treatment centers and how they affect home prices,  
13 and I will leave this for you. This was done in  
14 Farmington, Virginia, and the information was  
15 compiled from the MLS data, and it was found within  
16 one-eighth mile radius of any residential treatment  
17 center, the property values were affected with an  
18 8 percent reduction. And if there are heroin or  
19 morphine addiction in there, those cases, then the  
20 home values are reduced by up to 17 percent. That is  
21 what the research has found.

22 I can tell you when we're talking about  
23 use, I am all for nursing homes and elderly  
24 facilities. We actually had a family member that

1 lived in the previous nursing home. And if given the  
2 choice to live there with that being a drug and  
3 alcohol rehab center, we would not have bought there.  
4 So I can tell you it does affect our values.

5 Thank you.

6 PRESIDENT JENSEN: Thank you.

7 MR. WATKINS: I would object to the  
8 introduction of this evidence. It is last minute and  
9 also hearsay.

10 PRESIDENT JENSEN: We are not accepting  
11 it.

12 The Board now calls Jean Mitchell.

13 MS. MATHEWS-MITCHELL: I'm Jean Mitchell,  
14 and I have a master's degree in nursing, almost a  
15 doctorate in nursing, in executive nursing. I was  
16 born and raised in Gahanna and am very familiar with  
17 the nursing home facility that was there. Actually,  
18 I went to school with the daughter of the person who  
19 built the nursing home and worked in there as well,  
20 so I'm very familiar with that area.

21 I just wanted to point out a couple  
22 things new from the testimony of Mr. Plank that are  
23 just questions that I just really have pondered.

24 So the nursing home residents require

1 medical care. They did in 1979. They were never  
2 just left in there as residents. There was always a  
3 doctor. There was always a nurse around the clock in  
4 there.

5           And in AOD, alcohol and drugs, which I  
6 will refer to as AOD, AOD residents, this facility  
7 that they want to open, it's a nonmedical residential  
8 facility, so there are not going to be medical  
9 personnel.

10           They're different types of residents from  
11 nursing homes, so the living quarters that they're  
12 saying are not really the same as nursing-home  
13 patients. Nursing-home patients were there to  
14 receive medical care, so I was just thinking that  
15 would be a difference in conditional use for what it  
16 is.

17           Also there are different rules that  
18 regulate nursing homes as well as these AOD  
19 facilities, so nursing homes in 1979 were governed by  
20 HCFA, which is now CMS, you know, for the state. So  
21 they go by state regulations, but, you know, they  
22 just can't do whatever they want to do. They have to  
23 do that according to those regulations. AOD is  
24 licensed by OMHAS.



1 PRESIDENT JENSEN: That's two minutes.

2 MS. MATHEWS-MITCHELL: That's just a  
3 little.

4 MR. WATKINS: We are going to object to  
5 this testimony. I believe this person is not a  
6 resident and has no interest, and she is attempting  
7 to testify as an expert. She's not an expert as far  
8 as this Board is concerned.

9 MS. MATHEWS-MITCHELL: I've worked in the  
10 field for over 40 years.

11 MR. WATKINS: Do you live in Gahanna?

12 MS. MATHEWS-MITCHELL: I had. I just  
13 moved recently out of Gahanna.

14 PRESIDENT JENSEN: Thank you. That's  
15 fine. Please sit down.

16 The Board now calls to speak Christine  
17 Unverzagt.

18 MS. UNVERZAGT: I'm Christine Unverzagt.  
19 I live at 84 Orchard Drive. I am the author of the  
20 letter you received this morning. The letter that I  
21 received on this meeting on April 3 did not have a  
22 deadline as far as when anything needed to be  
23 submitted, just as a point of interest.

24 In my letter I stated that we understand

1 the need exists for those who have addictions. We  
2 also know that physical addictions carries with them  
3 emotional and mental complexities. Our Gahanna  
4 officials are just now taking some notice and  
5 research into how badly our own addiction issues are  
6 here in Gahanna.

7 The people who signed this, we have 140  
8 signatures, and we all had agreement this was just a  
9 token of the number of people in Gahanna, but we all  
10 were in agreement that we don't need a place, this  
11 facility, in our quiet area that could become a place  
12 of interest to addicts that are not seeking help.

13 The referenced properties, to speak to  
14 your information earlier, the referenced properties  
15 are 1,500 feet from the Gahanna public park trails, a  
16 swimming pool, a softball field, a Veterans of  
17 Foreign Wars Post, and multiple baseball, soccer  
18 fields. The referenced properties are a five- to  
19 seven-minute walk to Creekside.

20 They are also, which is one of my issues,  
21 they are no more than 796 feet from a bar that has  
22 been there, The Pub, which in itself advertises --  
23 The Pub is described online as a friendly  
24 neighborhood bar in Gahanna that offers pizza, pool,

1 karaoke, live music, a great outdoor bar and patio.

2 Placing any drug and alcohol treatment  
3 center within this area is a temptation leading  
4 people who are struggling with addiction to fail,  
5 whether inpatient or outpatient.

6 What disturbs me the most is that Access  
7 Ohio is a for-profit agency. I don't doubt that the  
8 people who are working there as counselors and  
9 doctors care about the patients. Please don't doubt  
10 that I don't care about the patients because I do  
11 care about drug and alcohol addiction but it does not  
12 belong in this area.

13 Why Access would not have done their  
14 homework prior to the purchase, I don't know.  
15 Obviously, they are for profit because alcoholism and  
16 drug addiction is at an all-time high, and addict  
17 relapses are at an all-time high, so it's a revolving  
18 door around and around of being able to make a  
19 profit.

20 There is no land -- I don't see any  
21 exercise, places for exercise inside or out that I'm  
22 aware of that they're going to build, which is needed  
23 when someone is facing an addiction.

24 PRESIDENT JENSEN: I'm sorry.

1 MS. UNVERZAGT: Thank you very much.

2 PRESIDENT JENSEN: The Board calls Cheryl  
3 Halsey, 102 Orchard Drive.

4 MS. HALSEY: Thank you, ladies and  
5 gentlemen. My name is Cheryl, and I thank you for on  
6 point with the zoning and how it impacts the  
7 surrounding area.

8 I want to pick up where Christine had  
9 left off because her idea, let's go and listen to  
10 what the neighborhood has to say, and, hopefully, by  
11 that petition that the weight of their signatures  
12 would carry, their feelings.

13 But it got me thinking that let's listen  
14 to both sides. Let's see why you don't want it there  
15 or see why you do want it there. And I got into some  
16 very long conversations with a few residents on their  
17 rehab experience and how come the first two didn't  
18 work and what was it about that third one that hit it  
19 over the top for you.

20 And I got a lot of feedback. I got a lot  
21 of interesting points, and I took them and I also  
22 came up with an idea on in the future how can we get  
23 our residents to not let it get this far. You know,  
24 it shouldn't always have to end in rehab.

1           So I have some ideas and a program --  
2       which you have my number, call me -- through the  
3       City, and I think there's just got to be a way  
4       somewhere in the middle that we can work so it  
5       doesn't end up like there.

6           And I concur with everybody that it just  
7       doesn't belong in our city. Although I feel for the  
8       people, it doesn't belong in our city. I spoke to  
9       the general manager over at UDF, and some of the  
10      people from the woods are just coming in, walking to  
11      the freezer and start drinking beer, and they end up  
12      having to call the police. And a lot of these people  
13      are underage. They don't want them to have a bad  
14      record. So, I mean, it's coming from the far -- I  
15      mean, far away, that's six blocks from this new  
16      place. That's it.

17           PRESIDENT JENSEN: Thanks, Cheryl.

18           The Board now calls Patty Parsley, 99  
19      North Brice Road.

20           MS. PARSLEY: I'm Patty Parsley, Access  
21      Ohio. Again, we feel very strongly about the need  
22      for drug and alcohol rehab.

23           In terms of people walking over to UDF,  
24      we have plans in place. It's a secured facility.

1 They are monitored. It is proven treatment. I  
2 honestly don't know what else there is to say.

3 Thank you.

4 PRESIDENT JENSEN: The last speaker  
5 request is Charlotte Leopard.

6 MS. LEOPARD: Good evening. My name is  
7 Charlotte Leopard. I moved to 309 James Road 26  
8 years ago back when Bon-Ing Care was Gahanna Care  
9 Nursing Home.

10 I've been trying to educate myself in the  
11 last few months about drug treatment centers, and  
12 I've attempted to keep an open mind. I discovered,  
13 as everyone else has said, that facilities are  
14 important, and it is growing.

15 And Access Ohio's website states that it  
16 caters to the poor and underserved, very noble. That  
17 said, I have unfortunately become a NIMNA, which  
18 we're called, the people that say "not in my  
19 neighborhood."

20 As stated, property values go down. The  
21 location in Dayton is totally different than what  
22 they're proposing right down the street.

23 And I've not been able to ascertain from  
24 past meetings if the outpatient facility approved

1 will treat opiate addictions. When you research that  
2 information, those centers, you discover quite a few  
3 eye-opening facts. Too many patients, not enough  
4 time slots available, that leads to the people  
5 waiting outside facilities, including drug dealers,  
6 who supply methadone at a reduced cost, sort of a no  
7 line, no wait. Those clients with appointments  
8 waiting for the center to open wait outside. So that  
9 means waiting at UDF. And we are talking again,  
10 remember, the underserved and poor, so when they can  
11 get a ride, they get a ride.

12 Proponents for these facilities say  
13 crime does not increase as much as an increase for  
14 the liquor store. Is that really a fair comparison?  
15 Are we supposed to feel better about that analogy?

16 Almost done.

17 It was my understanding that to pacify  
18 neighbors and quell their fears, the driveway leading  
19 to James Road was to be blocked off, and now that  
20 changed in waiting two years in deciding if it  
21 warrants closure. The excuse that Access Ohio  
22 presents is that the change was needed for emergency  
23 vehicles. They had no problem with that when  
24 Dr. Goldman's office was separate and they only had

1 one way in or out for the nursing home.

2 Mr. Plank did address that question at  
3 the last meeting, but I felt his reply was an attempt  
4 to pacify our objections and left me believing that  
5 they have no intention of blocking that driveway for  
6 at least two years.

7 PRESIDENT JENSEN: Ms. Leopard, your two  
8 minutes is up.

9 MS. LEOPARD: Okay, thank you.

10 PRESIDENT JENSEN: Thank you.

11 The only reason I do that is fairness.

12 MS. LEOPARD: Oh, I understand. I  
13 understand. I was just going to say I took my Girl  
14 Scout troop down to the nursing home, but I wouldn't  
15 take them to Access Ohio.

16 PRESIDENT JENSEN: At this time I'd like  
17 to see if the Board has any questions. I have a few  
18 questions for the appellant or appellee.

19 Mr. Eisen, do you have any questions?

20 MEMBER EISEN: Yes, I have a couple  
21 questions.

22 Mr. Plank, you mentioned earlier that you  
23 gave us a second on the requirements or approvals  
24 needed for the City based on the development plan and



1 zoning approval. Can you go over the again? I want  
2 to know -- and I'm talking about for both  
3 facilities -- what has the City ruled and is that  
4 documentation in our notebook as far as where the  
5 City stands on both of those?

6 MR. PLANK: On both buildings?

7 MEMBER EISEN: On both the development  
8 plan needed or not needed and zoning approval needed  
9 or not needed.

10 MR. PLANK: I can't speak for the City.  
11 I can tell you what the code says and what I  
12 testified at the hearing. The code requires -- a  
13 change of use of any building anywhere requires a  
14 zoning certificate. I have to prove that my use is  
15 permitted under the zoning code. That's whether they  
16 call it a zoning certificate, site compliance plan.  
17 Different jurisdictions call it different things. I  
18 have to prove to the jurisdiction that I, in fact,  
19 meet the zoning code before I change the use of a  
20 building.

21 The next thing, though most jurisdictions  
22 require a development plan, consistent with every  
23 jurisdiction, the City of Gahanna does not require a  
24 development plan for an existing building if I am not

1 going to do a redevelopment of the site or if I'm not  
2 expanding or enlarging the building. I do not need a  
3 development plan for that.

4 MEMBER EISEN: Nobody has gone and met  
5 with the City officially?

6 MR. PLANK: That was testified to at the  
7 last hearing, that we do not need a development plan  
8 for this site.

9 MEMBER EISEN: Okay. The 17 conditions  
10 mentioned, there would be a full time, I'm assuming  
11 24/7, security officer on the premises; is that true?

12 MR. PLANK: Let me address the conditions  
13 briefly. We met with the neighbors in an effort to  
14 be neighborly. We intend to continue with those  
15 conditions. Don't get me wrong. I'm not trying to  
16 get out of the conditions. We believe -- the only  
17 conditions I proposed initially were truly the land  
18 use, noise fencing, screening, traffic. The other  
19 issues are operational issues typically not found in  
20 zoning. Because what we are dealing with is  
21 operational issues, it regulates behavior, and the  
22 zoning codes do not regulate behavior. They regulate  
23 land.

24 That said, yes, it would be 24 hours on

1 staff.

2 MEMBER EISEN: What staff in general? I  
3 know someone brought that up. So there will be  
4 nursing staff, doctor staff? What hours of the day  
5 will that be in that facility?

6 MR. PLANK: The nursing and doctor staff  
7 are there from 8:00 to 8:00, and after that they have  
8 trained staff personnel to deal with emergencies.  
9 And, again, we are willing to live by those  
10 conditions, the conditions that were made, but  
11 understand they were also operational, not land-use  
12 issues.

13 PRESIDENT JENSEN: Anything else?

14 Mr. Adjoua.

15 MEMBER ADJOUA: I have nothing at this  
16 time.

17 PRESIDENT JENSEN: I have a couple, three  
18 questions.

19 From your perspective you indicated that  
20 you have gone through a number of these zoning  
21 disputes, discussions in the past. The Planning  
22 Commission meetings that you had, there were at least  
23 three meetings that you attended, plus a couple  
24 workshops.

1                   MR. PLANK: On this particular matter,  
2 yes. I believe there were two public meetings and  
3 two workshops.

4                   PRESIDENT JENSEN: So from your  
5 experience is that typical? Is that more or less  
6 what you would go through? And, second of all, was  
7 that process and procedure you went through fair?  
8 Did you get fair treatment in the hearing at the  
9 Planning Commission?

10                  MR. PLANK: We are appealing their  
11 decision so we would not suggest they were fair.

12                  Let me compare that to my practice. I  
13 have standard land use when we are doing apartments,  
14 hospitals, and residential, and we go through a  
15 process in each jurisdiction, and those are pretty  
16 straightforward. I'm showing development standards,  
17 building plans, et cetera.

18                  But I've also got the client Community  
19 Housing Network, Creative Housing. I've done  
20 housing, usually in the '90s, where we were doing  
21 group homes for the mentally ill and the disabled,  
22 and I can tell you those meetings were typical in  
23 what we're seeing today, and we don't see those  
24 anymore. Fortunately, that's not the case anymore.

1           But in those cases my client would reach  
2 out to the neighbors in an effort more than I would  
3 if I was doing a building next to them because  
4 they're not only reaching out to talk with them about  
5 the building and the landscaping and the planning,  
6 which I typically do, but they're also reaching out  
7 for operational issues. We enter into neighbor  
8 agreements, basically what we got when we have the  
9 conditions in this case. I believe that everyone put  
10 the effort to try to make this work, but there's a  
11 lot of opposition to this.

12           PRESIDENT JENSEN: So, in general, in a  
13 facility like this, you're going to have many, many  
14 more meetings than compared to an apartment complex  
15 or something like where you'd have one or two  
16 meetings.

17           MR. PLANK: Meetings like this. I  
18 typically don't have a mayor writing letters in  
19 opposition, having council members show up in  
20 opposition. That is unique to this case.

21           PRESIDENT JENSEN: On page 5 then where  
22 we have the 17 conditions you brought up, I'm not  
23 going to go through all those, but is this normal,  
24 unusual, average?

1 MR. PLANK: When you say -- you mean on  
2 these type of matters?

3 PRESIDENT JENSEN: In this particular  
4 instance here as compared to other AODs -- I'm going  
5 to pick up the lingo here -- are there other appeals  
6 and applications you have gone through that is this  
7 extensive?

8 MR. PLANK: In the '90s during our  
9 initial group homes, we would reach out and have  
10 neighborhood agreements that would have 10, 15 items  
11 in them. That would not be uncommon.

12 PRESIDENT JENSEN: But in the past  
13 five to ten years?

14 MR. PLANK: No, I have not done anything  
15 like this in the last five or ten years. This may be  
16 the new group home.

17 PRESIDENT JENSEN: Last question, and I  
18 don't know how this fits in, but you mentioned the  
19 term "behavior," and you also talked about nursing  
20 home versus outpatient facility. Isn't there a big  
21 difference in behaviors that are in those type of  
22 nursing home facilities versus --

23 MR. PLANK: There's a difference in  
24 behavior between two different residential houses.

1 We can't deal with that in the zoning context.  
2 That's why you have civil laws that the police  
3 enforce, but not in the land-use context. In the  
4 land-use context, I'm dealing with property rights.  
5 I'm dealing with, I have a piece of property and by  
6 common law I can do whatever I want with the  
7 property.

8 But we don't live by common law. We live  
9 by zoning ordinances. The Supreme Court, all courts,  
10 have recognized that, nevertheless, I have a property  
11 right, and it has to be protected, and I have to have  
12 codes that I can read. I have to have codes that I  
13 can find, and they have to be interpreted in favor of  
14 the property owner, and that's not what we have in  
15 this case.

16 PRESIDENT JENSEN: When this property was  
17 acquired, was there any due diligence to find out if  
18 it was going to be covered in the code?

19 MR. PLANK: You know, I was not involved  
20 in the acquisition. I can tell you that it would not  
21 be uncommon for someone to look at a nursing home  
22 with living quarters and think, I'm going to put a  
23 residential treatment facility in there for  
24 overnight. That would not be an uncommon assumption.

1           If it were a shopping center and I were  
2 moving it into a facility as we are talking about,  
3 that would be -- I would expect there to be more due  
4 diligence, but we're dealing with -- I'm not trying  
5 to defend my client. I would always suggest they get  
6 an attorney and then talk to them before they  
7 purchase. I don't know if they did that or didn't do  
8 that. I'm just saying it's not an unreasonable  
9 assumption that I can continue to use a nursing home  
10 as a residential facility.

11           PRESIDENT JENSEN: So the property was  
12 acquired without checking to see --

13           MR. PLANK: I can't tell you that. I  
14 don't know.

15           PRESIDENT JENSEN: Would that make a  
16 difference to our --

17           MR. PLANK: No, it would not. It would  
18 not.

19           PRESIDENT JENSEN: I have no other  
20 questions at this time.

21           MEMBER PACK: Thanks for being here,  
22 Mr. Plank. I have a few questions.

23           First off, who owns the structure?

24           MR. PLANK: Access Ohio Energy, LLC.



1 MEMBER PACK: Access Ohio Energy, LLC.

2 Okay. So with respect to client-patient, if they  
3 will, who do they sign an agreement with, the  
4 patient.

5 MR. PLANK: Access Ohio.

6 MEMBER PACK: Two separate entities?

7 MR. PLANK: Two separate entities, and  
8 that's not uncommon in real estate. You have an  
9 entity that leases it to another entity, and they  
10 would be the provider.

11 MEMBER PACK: Got you. The list of  
12 conditions that everybody keeps referencing, who came  
13 up with that? Was that a joint agreement between you  
14 and the Planning Commission?

15 MR. PLANK: It evolved. Initially, as I  
16 said, I proposed the land-use issues because that's  
17 what I deal with. We also then had meetings with the  
18 neighbors, and they raised some issues that we then  
19 looked at. And I actually sent them a letter.

20 The next thing I know we were meeting  
21 with the City in a workshop, and my letter had been  
22 incorporated into a set of conditions that the City  
23 prepared for us saying what we could and could not  
24 agree to.

1           Now, I can tell you the way that -- the  
2 things that we agreed to are not compromises in how  
3 we operate. I always say to my client if you are  
4 going to do it anyhow, agree to it. So that's  
5 exactly how that evolved.

6           Now, the land-use issues involved --  
7 especially the fence and moving the parking area  
8 involves money. That would involve capital, so that  
9 was something I proposed, and I added to it -- that  
10 was over and above what they had planned.

11           MEMBER PACK: So Access Energy purchases  
12 the building, and then your application to the  
13 Planning Commission was subsequent to that,  
14 afterwards?

15           MR. PLANK: Correct.

16           MEMBER PACK: Okay. So walk me through.  
17 It's 10:00 o'clock at night. Who is present in the  
18 facility --

19           MR. PLANK: You know --

20           MEMBER PACK: -- from the staff  
21 standpoint?

22           MR. PLANK: I can defer to -- this was  
23 all part of the past record. I could defer to Patty  
24 Parsley to respond to that. But, again, we are

1 talking behavior. I have no problem responding to  
2 that, but our -- in my strict interpretation of the  
3 code, we would not be having this discussion. But at  
4 the same time, I have no problem with that,  
5 responding to that.

6 MEMBER PACK: You are talking about use,  
7 aren't you, operational --

8 MR. PLANK: I am talking about use, but  
9 I'm talking about conditional use that it has already  
10 been acknowledged it's permitted, and, therefore,  
11 once that's done, if you read the four standards, my  
12 position is we satisfied the four standards.

13 MS. PARSLEY: 10:00 o'clock at night, we  
14 are going to have resident assistants on staff,  
15 possibly, depending on who we have at our facility,  
16 it would be a licensed therapist, LISCs. We always  
17 have a four-to-one ratio.

18 MEMBER PACK: Approximately how many  
19 staff members would be there at 10:00 o'clock?

20 MS. PARSLEY: We always have a  
21 four-to-one ratio, so one staff member for every four  
22 people.

23 MEMBER PACK: So at 10:00 o'clock a  
24 patient decides to leave. What happens?

1 MS. PARSLEY: When our patients are  
2 admitted into our program, there's the whole intake  
3 process that occurs, and part of that intake, because  
4 we are not a jail -- right? -- we cannot hold people  
5 against their will. But part of that intake entails  
6 signing and understanding if at any time they decide  
7 to leave, they must wait until between the hours of  
8 8:00 and 8:00. They cannot leave in the middle of  
9 the night. If they insist, we can't hold them, but  
10 our staff takes them either to where they're living  
11 or to a homeless shelter. We don't just open the  
12 door and let them out.

13 MEMBER PACK: Okay. So you mentioned the  
14 hours of 8:00 to 8:00. It's five o'clock. Somebody  
15 says, I want to leave. So they can leave --

16 MS. PARSLEY: They can never just walk  
17 out the door. One of our staff members will take  
18 them either to their home or a homeless shelter. We  
19 just don't say, Okay, there you go. You can go.  
20 They understand that when they're admitted to our  
21 program. Because they don't have a car, they don't  
22 drive their car to our facility, they're brought to  
23 our facility either by a family member or we go and  
24 pick them up from a hospital. They are not allowed

1 to have a vehicle at our facility, right? So they're  
2 taken out the same way they're brought in, either by  
3 us or a family member.

4 MEMBER PACK: Okay. Is it possible for  
5 someone to just walk out the door and go off --

6 MS. PARSLEY: Not without us knowing.

7 MEMBER PACK: Because of the alarm  
8 systems on the doors?

9 MS. PARSLEY: Correct.

10 MEMBER PACK: What if they just keep on  
11 going?

12 MS. PARSLEY: If they go out the door,  
13 our staff members will accompany them.

14 MEMBER PACK: What if they don't want to  
15 come back?

16 MS. PARSLEY: The staff member will take  
17 them where they want to go. We've never had an issue  
18 with someone just walking out the door not  
19 accompanied.

20 MEMBER PACK: Okay. You mentioned the  
21 word "patient." Describe the patients that will be  
22 here that will be using this facility.

23 MS. PARSLEY: The people that will be  
24 using our facility will be people that have

1 addictions to either drugs or alcohol. Age group  
2 will be over 18. I mean, typically it's been 18 and  
3 65, but we have had a couple of 70-year-olds in the  
4 program.

5 MEMBER PACK: So you are saying they do  
6 have an addiction.

7 MS. PARSLEY: Yes.

8 MEMBER PACK: So it would be a current  
9 addiction?

10 MS. PARSLEY: Yes. But they've agreed to  
11 a recovery. They've detoxed somewhere else. So they  
12 have to go through a five- to seven-day detox  
13 program, either at a hospital or somewhere that is  
14 licensed for detoxification. They are referred to us  
15 from those programs. That could be a hospital. That  
16 could be a number of facilities that provide  
17 detoxification. So they've gone through their  
18 initial withdrawal, right? And then they come to us  
19 for the therapeutic side of rehabilitation.

20 PRESIDENT JENSEN: Okay. What percentage  
21 of the people that you have go into relapse?

22 MS. PARSLEY: I don't have the numbers on  
23 that. I'm not a clinician.

24 PRESIDENT JENSEN: So you were in

1 business you said how many years?

2 MS. PARSLEY: Since 2015 at the Dayton  
3 location.

4 PRESIDENT JENSEN: You don't have any  
5 numbers. Off the top of your head how many patients  
6 have you been servicing in that period of time?

7 MS. PARSLEY: I can tell you that me  
8 personally, I'm only aware of two that have come back  
9 to us. I can't speak to what happens to them when  
10 they leave. When they graduate the program and when  
11 they leave, I can't speak to that if they don't come  
12 back to me. Do you get me?

13 PRESIDENT JENSEN: Yes.

14 MS. PARSLEY: I can't give you that.

15 PRESIDENT JENSEN: Again, the total  
16 number of patients that you have been servicing. I  
17 mean, you started in 2015. Are the same people  
18 there? How long typically are they in treatment?

19 MS. PARSLEY: It depends on their level  
20 of addiction, and it depends on what they're addicted  
21 to, and it depends on what the treatment plan is when  
22 they come in. I mean, they work very intensively  
23 with a therapist. It can be anywhere from 30 days to  
24 six months. It just depends.

1 MEMBER PACK: Mr. Chairman, I have  
2 similar questions, if I may.

3 PRESIDENT JENSEN: Please.

4 MEMBER PACK: Ms. Parsley, will the  
5 Gahanna facility be operating like all your  
6 residential facilities?

7 MS. PARSLEY: Correct, we operate  
8 everything the same.

9 MEMBER PACK: Okay. So the treatment and  
10 procedures will all be the same as well as admission  
11 all be the same.

12 MS. PARSLEY: Correct. Correct.

13 MEMBER PACK: Okay. What struck me was  
14 that I went to the website. You had mentioned that  
15 people, patients, prospective clients have to go  
16 through a detox. But I was intrigued by something I  
17 found on the website, which is a pamphlet by Access  
18 Ohio, and I can pass this to the other Board members,  
19 or I can just read from it, or you can have a copy of  
20 it to see. And it intrigued me because it says, "It  
21 is not necessary to stop using prior to coming to  
22 treatment." Is that correct?

23 MS. PARSLEY: We have a MAT program,  
24 which is an outpatient program, not being operated in



1 Gahanna. It is operated at 6400 East Broad Street.  
2 That's the program that pamphlet is referring to, not  
3 for the residential treatment program.

4 MR. REED: So they would go there first?

5 MS. PARSLEY: Not necessarily. You have  
6 people -- when you're reaching out to people and  
7 offering help to people in addiction, a residential  
8 program is for people who've detoxed and they've  
9 admitted they need assistance and they can't live out  
10 in your world and not use, right? So they come in  
11 for intensive therapy.

12 Then you have people who maybe they  
13 haven't reached that point yet. They have jobs  
14 they're afraid they're going to lose. You have  
15 mothers who are going to lose their children if they  
16 go into an inpatient program. You have to offer  
17 something in which to help these people, right? And  
18 that's an outpatient medication-assisted treatment  
19 program, and that's where we use Suboxone and  
20 Vivitrol.

21 MEMBER PACK: Okay. I guess what I'm a  
22 little confused about is the pamphlet says it's not  
23 necessary to stop using prior to coming to treatment.  
24 The next thing it says is if individuals want to

1 detox, if they want to detox and/or reduce their  
2 amount of use before starting treatment, they can,  
3 which means that sounds like to me it's optional. Is  
4 that a fair statement?

5 MS. PARSLEY: It's a fair statement in  
6 terms of the marketing you have to do to get these  
7 people to seek help. If I put in that pamphlet you  
8 have to stop using before you come see us, no one is  
9 going to get treatment. And they are going to be  
10 out, and they are going to be stealing from you, and  
11 they're going to be using drugs, and they will be  
12 neglecting their children. They are going to be  
13 doing all those things that we are trying to prevent.

14 So no, they don't have to stop using, but  
15 once they come in and once they do the intake  
16 process, and once they meet with their therapist and  
17 once they meet with their physician, the physician is  
18 going to put them on Suboxone or Vivitrol. If they  
19 put them on Suboxone, if they use, it's not going to  
20 affect them because Suboxone is a blocker. I don't  
21 know all the ins and outs. I'm not a clinician. If  
22 the doctor puts them on Vivitrol, they are going to  
23 get an injection. If they use, they will get sick.

24 MEMBER PACK: So that occurs in the

1 Gahanna facility?

2 MS. PARSLEY: No, no. It's a different  
3 treatment program. A MAT program is an outpatient  
4 program that we will not operate out of Gahanna.  
5 That gets operated out at 6400 East Broad Street in  
6 Columbus. It's totally different.

7 Again, for inpatient, you have to detox  
8 before you come, and then you participate in  
9 cognitive behavioral therapy, an intensive  
10 therapeutic treatment.

11 MEMBER PACK: Okay. So people that have  
12 the addiction, they will go to a separate facility,  
13 what you're saying, to be detoxed --

14 MS. PARSLEY: People that come into our  
15 residential treatment are referred to us by hospitals  
16 and detoxification programs from people that are  
17 requesting inpatient residential treatment.

18 MEMBER PACK: Okay. Okay. All right.

19 Mr. Plank, can I ask you a question, sir?  
20 What is the transcript, since you keep referencing  
21 it?

22 MR. PLANK: The Planning Commission  
23 hearing, we intended to have it taped, and the tape  
24 didn't take. So there was no what I call a verbal

1 transcript. There's no word-for-word transcript of  
2 the hearing, which would have been a different  
3 discussion -- not different, but you would have had  
4 that in front of you and would have seen what people  
5 actually said in the testimony, and many of the  
6 questions you are now asking would have been in that  
7 transcript.

8 MEMBER PACK: Okay. You know, Mr. Plank,  
9 while you're there, I'm kind of intrigued by your  
10 letter of December 5, 2016, to the City Attorney, and  
11 a paragraph in it struck me. It says -- if I can go  
12 ahead and read it, give you a minute to pull it up if  
13 you want.

14 MR. PLANK: Go ahead.

15 MEMBER PACK: It says, "This  
16 correspondence is intended to put the City of Gahanna  
17 on notice that all the residents of the proposed  
18 above-referenced facility will be individuals  
19 recovering from drug and/or alcohol addiction. As  
20 such, all are considered by the Fair Housing Act to  
21 be handicapped and thus, protection of the Act  
22 relative to choice of housing."

23 So I guess I'd like a little further  
24 expounding on that, if you will, from your

1 perspective of the Fair Housing Act, as well as  
2 reasonable accommodation.

3 MR. PLANK: The Fair Housing Act, as we  
4 know it, was passed to allow for -- to prohibit  
5 discrimination in housing, initially for race,  
6 religion, and sexual orientation was added recently.  
7 When I say "recently," my recent past, 10, 15 years,  
8 and also included handicapped.

9 In recent court cases it's been  
10 determined those recovering from alcohol and drug  
11 addiction are handicapped under the Fair Housing Act,  
12 and they are entitled to protection of that act.  
13 People cannot discriminate in housing for the  
14 handicapped, nor can municipalities do anything in  
15 their code or in their interpretation of their code  
16 to deny the handicapped the rights under the Fair  
17 Housing Act.

18 It's the obligation of the attorney that  
19 represents any situation that that could arise to  
20 notify the jurisdiction in which they're exercising  
21 and put them on notice and also to ask for reasonable  
22 accommodation.

23 My request for reasonable accommodation  
24 was that I believe we are a permitted use, and it

1 would not be unreasonable to interpret the code in  
2 such a way that my use would be determined to be  
3 permitted under the Fair Housing Act, and that is the  
4 nature of the letter. That's not for this Board to  
5 decide, but, understand, that was the purpose of that  
6 letter.

7 MEMBER PACK: Okay. It intrigued me  
8 because I felt it was a fairly bold letter.

9 MR. PLANK: The Fair Housing Act is a  
10 very bold statute.

11 MEMBER PACK: Yeah, it is. I've spent  
12 the last several days reading it, as well as  
13 reasonable accommodation and trying to be familiar  
14 with it.

15 So you believe then the denial -- let's  
16 say hypothetically we deny the application today, or  
17 your appeal, that we would be in violation of the  
18 Fair Housing Act?

19 MR. PLANK: "We" being this Board?

20 MEMBER PACK: Yes, the City or this  
21 Board.

22 MR. PLANK: The Board is an independent  
23 Board, not unlike the Planning Commission. I don't  
24 think they are liable under the Fair Housing Act.

1 The accommodation needs to be done by the  
2 municipality, not the Board. We made a request for a  
3 conditional use. If granted, it provides the housing  
4 that we're seeking; and, therefore, there is probably  
5 no claim under the Fair Housing Act.

6 MEMBER PACK: I don't have any further  
7 questions at this time. Thank you, sir.

8 MEMBER EISEN: I definitely spent some  
9 time looking at all 300 pages. I felt fairly  
10 comfortable with it based on my day job. I couldn't  
11 help coming back to page 1 every time that I was  
12 going through the book and, in particular, item 1 on  
13 page 1.

14 That is some pretty strong language  
15 there. So help me understand again, and maybe for  
16 the benefit of my fellow Board members and those in  
17 the audience, as far as conditional use is concerned,  
18 is what we are talking about here today conditional  
19 use? Are you still in disagreement with how the  
20 Planning Commission made their decision on what they  
21 thought you were asking for, conditional use versus  
22 conditional use where you were just asking that the  
23 living quarters be allowed as a permitted use of the  
24 building? That was a long question. I know you know

1 where I'm going.

2 MR. PLANK: Our application was clear.  
3 The code is clear that we are applying for the permit  
4 for living quarters as an integral part of a  
5 permitted use building.

6 I can't fault the City for calling what  
7 they see that it is. I've called it that, too, as we  
8 were working with the neighbors and trying to allay  
9 their fears with the conditions. But that's not what  
10 the code says. The code doesn't say it's a  
11 conditional use for a rehab facility. The code says  
12 it's a conditional use for living quarters. That  
13 really, I think, limits your review of what we're  
14 doing. You've got an existing nursing home designed  
15 and built for living quarters, and we are proposing  
16 to put living quarters, different personnel,  
17 different residents, but living quarters in that  
18 location.

19 And so in my presentation it became  
20 pretty simple. And, anyhow, I don't write the code.  
21 I deal with the code the City wrote. The City,  
22 founders, fathers, have determined that a drug and  
23 alcohol outpatient facility in the CC zoning district  
24 is a permitted use. The code permits living quarters



1 as an integral part of the permitted-use building.

2 The City attorney has acknowledged, and I  
3 agree with him, that it is, in fact, a conditional  
4 use under the code, but it's living quarters. I  
5 think when we start calling it drug and rehab, it  
6 probably is what it is, but that's not the condition  
7 we requested and it taints the discussion because now  
8 we start talking about what everyone believes  
9 substance abusers are and do. That's not what zoning  
10 is about.

11 PRESIDENT JENSEN: Well, a couple  
12 different things from my point. Number one, my  
13 understanding of our duties as a Board of Zoning  
14 Appeals is to review that the Planning Commission  
15 gave a fair hearing to the applicant for their usage.  
16 And the second thing is when they made their  
17 decision, was it a fair decision based upon the codes  
18 that we have, the City codes that we have before us.

19 It looks to me like the Planning  
20 Commission had multiple hearings and meetings and  
21 workshops, and that there was a major effort made to  
22 the hearing request.

23 And decisions, as I read them, when they  
24 rejected was -- and I'm disappointed that someone

1 from the Planning Commission wasn't here that would  
2 be able to speak to us, but the main reason for  
3 rejection was that it has not been a long-term  
4 planning goal for the area. This basically is an  
5 extension of Old Gahanna and repair a recreational  
6 spine of the city. That's one.

7 And the second reason under the code is  
8 the development will have undesirable effects on the  
9 surrounding area, which is why the public is here.

10 MR. REED: Mr. Chairman, I have a  
11 suggestion. I know that the Commission wants to get  
12 to deliberation. I would suggest that the Board  
13 today allow Mr. Plank, on behalf of the appellant, to  
14 make a short closing argument and allow the Planning  
15 Commission to make a short closing argument. Then I  
16 would ask that the Board deliberate and state some of  
17 the same reasons, perhaps, that you're saying now and  
18 issue their decision.

19 MEMBER PACK: Mr. Chairman, I don't find  
20 any fault with that. I think that is fine, but I  
21 just suggest after the closing arguments that we take  
22 a five-minute recess or ten-minute recess and then  
23 come back.

24 PRESIDENT JENSEN: Mr. Plank, do you want

1 to give us a five-minute summary? Mr. Chairman, I  
2 would say that the Board's review of the Planning  
3 Commission's decision is more than just whether it  
4 was fair or not. It doesn't follow the law. I  
5 didn't write the code, but the code needs to be  
6 interpreted as it's written, and as it's written we  
7 are putting living quarters in a former nursing home  
8 that was built and designed for living quarters.

9 As the code is written, the proposed use,  
10 is it a conditional use? Absolutely, it's been  
11 agreed to. The other three conditions talk about  
12 proposed development. This is not a proposed  
13 development. This building is built. I don't need a  
14 development plan. My position is 2, 3 and 4 does not  
15 apply.

16 The absurd result of including those  
17 proposed use and proposed development as the same, as  
18 simultaneous, is you then start taking a look, does  
19 the building fit in? The building is there. This  
20 building is the character of the neighborhood.  
21 That's why Sections 2, 3, and 4 of that section do  
22 not apply, and the Planning Commission was obligated  
23 to issue the conditional use that was applied for.

24 We have submitted conditions. We agreed

1 to those conditions on top of that, and our  
2 contention is they should have approved that with  
3 those conditions that we agreed to.

4 Thank you.

5 PRESIDENT JENSEN: Mr. Reed.

6 MR. REED: Thank you, Mr. Chairman.

7 Thank you, members of the Commission for listening to  
8 the arguments on both sides today.

9 I would tell you first there's been some  
10 questions about a transcript. Ohio law is very  
11 clear. You're not required to have a tape-recording  
12 of each and every meeting of the City Council.  
13 You're not required to have a tape-recording of the  
14 Planning Commission. You're not required to have a  
15 tape-recording of the Board of Zoning Appeals.

16 In fact, the City of Gahanna does have a  
17 tape recorder and it was activated and working on one  
18 of the meetings that they had. There were two  
19 additional workshops. There were very complete  
20 minutes. So I would say there is no procedural  
21 defect by the fact that the tape recorder wasn't  
22 working that day.

23 And we're prepared -- and Kim could get  
24 up and testify and say that they thought it was

1 working. There was no malicious intent. They had  
2 someone come in and look at the tape recorder as to  
3 why it wasn't working and since fixed the problem.

4           The other thing is that 1169.04,  
5 Mr. Plank and his client's argument to you today is  
6 the only thing you have to look at today is that the  
7 proposed use is a conditional use, and that you need  
8 to ignore Items 2, 3, and 4. I would suggest that  
9 puts this ordinance on its head. I would say that  
10 the intent of this ordinance is meant to look at what  
11 is the existing use of that neighborhood.

12           I would say Parkside is different.  
13 Parkside is right across from a golf course. I would  
14 say Access Ohio in Dayton is different. It's more  
15 than 100 yards away from any residential facility.

16           And we've said before, you know, you  
17 can't just use your property for anything you want  
18 to. You have to comply with the reasonable  
19 regulations of a municipality if you want to work  
20 inside the municipality. That's why we have a zoning  
21 code.

22           The zoning code here says that "The  
23 proposed development" -- I would say that means what  
24 you are going to use this building for -- "is in

1 accord with the appropriate plans for the area."

2 Three, "The proposed development" -- and  
3 that's what you are going to use this development  
4 for -- "will not have undesirable effects on the  
5 surrounding area."

6 You've heard from Lieutenant Murphy.  
7 You've seen lots of evidence in the record that there  
8 is a swimming pool. There's a nature trail. There's  
9 lots of residences. They are not consistent with a  
10 residential facility. It would be different if this  
11 were outpatient. Yes, I've seen codes for drug and  
12 alcohol facilities for outpatient that are different  
13 than residential.

14 This applicant wants to do residential.  
15 It's, unfortunately, not zoned for that, and so they  
16 need a conditional use permit, and it's up to the  
17 Planning Commission and ultimately this Board whether  
18 or not it be granted.

19 I will tell you there were three exhibits  
20 that were offered today. They were not entered into  
21 evidence. I would ask that they be proffered so that  
22 in the event there is an appeal, it's clear that the  
23 Planning Commission wanted those into evidence.

24 The last thing I will tell you is that I

1     urge you to go back and look at this 300-page record.  
2     I believe there was a lot of time and effort spent by  
3     the Planning Commission. I certainly know and  
4     recognize there was a lot of time and effort spent on  
5     behalf of the applicant. They're very fine lawyers.  
6     But this was a five-zero decision. It wasn't close.  
7     They ultimately decided this was not in the same  
8     character as the neighborhood and that it would do  
9     harm to the neighborhood if a residential drug and  
10    alcohol facility were allowed at this location.

11                     Thank you very much.

12                     PRESIDENT JENSEN: Okay. It is now  
13    8:00 o'clock. Let's reconvene in ten minutes.

14                     (Recess taken.)

15                     - - -

16                     DELIBERATION

17                     PRESIDENT JENSEN: At this time the Board  
18    will proceed with our deliberations. The Board will  
19    deliberate and discuss the appeal.

20                     Mr. Pack, do you have anything?

21                     MEMBER PACK: Well, first off, I want to  
22    thank the appellant for their presentation, well  
23    prepared, and for all the work effort that you put  
24    into it, the City staff members that are here, as

1 well as residents, because this is all part of the  
2 process, and everyone has a part and contribution  
3 into that process.

4           You know, getting back to the conditional  
5 use, I think it's very clear that, Mr. Plank, you  
6 agreed to the conditional use. That's very clear in  
7 a couple of your letters and even here in your  
8 testimony today.

9           But I think what you are asking me and  
10 asking the rest of the Board to do is to ignore the  
11 full comprehensive parts, four parts, of conditional  
12 use. Unfortunately, you know, you can't do that.  
13 And you talk about zoning and uses, but when you  
14 agreed to the conditional use, the application was  
15 for conditional use. We cannot ignore three parts  
16 and only consider one part.

17           As far as part of your appeal, I believe,  
18 was the differentiation between the use as well as a  
19 development, and you cited essentially that this  
20 would not be a development. But I also believe in  
21 the filings there were a million dollars of  
22 conversion or improvements, changing the parking lot,  
23 even that I feel compelled to call it a development,  
24 based also on staff comments.



1           But I also want to read something for you  
2 to understand where we're coming from. You  
3 referenced one part of the code regarding  
4 definitions, but I'm going to reference something in  
5 1121.02. I ask your indulgence for a moment while I  
6 do this. And this is what I look at for  
7 interpretation, not only parts of the code but even  
8 definitions.

9           It says, "In interpreting and applying  
10 the provisions of the zoning ordinance, such  
11 provisions shall be held to meet the minimum  
12 requirements for promotion of public health, safety,  
13 convenience, comfort, prosperity, and the general  
14 welfare. Wherever the regulations of this zoning  
15 ordinance require a greater width or size of yards or  
16 open spaces, a lower height of building or less  
17 number of stories, a greater percentage of lot to be  
18 unoccupied, a lower density of population, a more  
19 restricted use of land or impose other higher  
20 standards than are required in any other ordinance or  
21 regulation, private deed or restriction or private  
22 covenant, the provisions of the zoning ordinance  
23 shall govern."

24           So to me, I'm going back that I'm not

1 only obligated to trying to envision this as a  
2 development, I'm obligated to consider it as a  
3 development based on the conversion of use, as well  
4 as, you know, other changes to the structure.

5 The other thing I was intrigued about was  
6 the Fair Housing Act, which I spent about two days  
7 reading about reasonable accommodation. It's very  
8 clear that under the Fair Housing Act, and what I was  
9 trying to come down -- and I still really, to my  
10 satisfaction, did not get an answer, that a person  
11 that is unfortunately addicted to an illegal  
12 controlled substance would not be a current user at  
13 the time. And because of that, to me, they don't  
14 qualify or they don't fall under the Fair Housing  
15 Act.

16 I could be wrong. I never got an answer  
17 to what I was searching for. Seven days -- even from  
18 what I read, seven days may not even qualify as  
19 someone not being a concurrent user.

20 So after hearing this tonight, I felt  
21 that the argument of the Fair Housing Act and the  
22 putting the City on notice was a little bit of a weak  
23 argument in that regard.

24 The other part of the Fair Housing Act

1 was that "An accommodation is reasonable if it does  
2 not cause undue hardship, fiscal, or administrative  
3 burdens on the municipality or does not undermine the  
4 basic purpose a zoning ordinance seeks to achieve."

5 I think what you're asking us to consider  
6 is a conditional use but not apply three-quarters of  
7 that conditional use; and, therefore, I kind of  
8 interpret that as basically if we did that, we would  
9 be undermining our own zoning ordinance and,  
10 therefore, I don't think that would be fair to do.

11 So with saying all that, I will be voting  
12 no on the appeal tonight.

13 PRESIDENT JENSEN: Ms. Mecozzi.

14 VICE PRESIDENT MECOZZI: Like Mr. Pack, I  
15 want to thank those of you that participated. In  
16 going back looking at the PC minutes, looks like this  
17 started back in September of '16, so over the last  
18 eight months. Whether you submitted something in  
19 writing, attended a Planning Commission meeting, you  
20 met with applicant, others of you that are here  
21 tonight, whether you spoke or not, I certainly  
22 appreciate your participation.

23 In considering the application, we did  
24 have a lot of material, and that's to the credit of

1 all of you in this room. In looking at those  
2 284 pages of not only testimony, but references to  
3 the code, in addition to tonight, it certainly  
4 provided, in my mind, everything that I needed to  
5 make the decision that we are going to make tonight.

6 Chair Jensen mentioned earlier the role  
7 of the BZA, it is certainly something that I  
8 considered before a review of the material provided  
9 to me, and I believe, as he mentioned, ensuring due  
10 process has occurred at all stages prior to the  
11 application coming to this Board, that that has been  
12 met.

13 In reviewing all of the evidence,  
14 certainly in doing that, considering the City  
15 charter, especially the rules for this Board, as well  
16 as the codified ordinance allows us to dispose of a  
17 case in any one of five ways -- four ways.

18 In addition to our rules of procedure,  
19 looking at the applicable codes, I do believe that  
20 all sections of 1169 do apply in this case, similar  
21 to what Mr. Pack said. I do not believe that you can  
22 pick and choose which of the four criteria that  
23 you're evaluating a conditional use application  
24 against.

1           So I believe, in reading the Planning  
2 Commission meetings, particularly the meeting of  
3 February 22, that the proponents and the opponents  
4 were given opportunity through extensions of time,  
5 similar to tonight, to provide information, and the  
6 PC openly deliberated all that they heard and  
7 discussed what they heard and noted on the record in  
8 the minutes that they were taking into consideration  
9 in granting -- considering whether or not to grant or  
10 deny each of those four criteria.

11           And so I -- tonight after considering all  
12 that, I will not be in support of approving the  
13 appeal and returning the application.

14           PRESIDENT JENSEN: Mr. Eisen.

15           MEMBER EISEN: Again, thanks to everybody  
16 who has been involved. My other two members of the  
17 Board have been very helpful. I won't repeat all  
18 that they said.

19           But, again, I've spent a lot of time  
20 looking through all this material, quite a bit of  
21 time, and as a design professional, I even spent a  
22 lot of focus on the building code and the  
23 understanding of the dollars that were being spent  
24 and some of the things that had to change to those

1 buildings to make it a suitable facility for this  
2 kind of use.

3 I know we can mince words on development  
4 and proposed development, but it is -- it's two  
5 buildings. It's a facility. It's a change of use.  
6 It's a change of use group classification, and,  
7 again, I would agree that all four points of 1169.40  
8 are pertinent in this case, and that's how my  
9 decision will be made when we vote here shortly.

10 Thank you.

11 PRESIDENT JENSEN: Mr. Adjoua.

12 MEMBER ADJOUA: I want to take a very  
13 short time. I want to thank both counsel because  
14 it's always great to hear great lawyers, also being a  
15 lawyer, so I know if I get in trouble, I know who to  
16 call if I need help. On both sides, gentleman, very  
17 well done.

18 I also want to thank the citizens for  
19 coming out and showing interest. We say people don't  
20 care and are apathetic, but you proved that you are  
21 very involved. We saw that.

22 I've done these zoning battles also  
23 before, so I understand how that goes.

24 But this, I came here with very, very

1 mixed feelings tonight because I have been to five  
2 overdose funerals in the last two years of young  
3 people, one in Arlington, one in Bexley last month,  
4 one in Pickerington, one in Newark, and one in  
5 Columbus. Four of those suburban kids, three very  
6 beautiful girls, young women in their late teens and  
7 20s.

8           So I want to applaud Access Ohio because  
9 we do have a drug and alcohol epidemic in our  
10 society. I want you to keep going, keep fighting  
11 because people do need help and they do need  
12 assistance, both the poor as well as -- the kids in  
13 Bexley and Arlington weren't poor but still are dead.

14           But looking now, I almost recused myself  
15 from this because of the emotional impact that those  
16 funerals have had on me. But looking at and  
17 listening to everybody and looking at the record and  
18 considering what our zoning ordinance is, I think  
19 that the decision of the Planning Commission should  
20 be supported, so I will be voting against the appeal  
21 tonight.

22           PRESIDENT JENSEN: First off, I thank the  
23 rest of the Board members. Obviously, we invested a  
24 lot of time in studying the appeal that the

1 Commission provided, and I thank you, the City  
2 representatives, for the information and support. I  
3 respect everybody that has been involved as far as on  
4 both sides, from the records on trying to work this  
5 process through.

6 It's a challenging situation, because I  
7 agree with the sentiments of Mr. Adjoua, that there  
8 is a real crisis as far as drug and rehab work that  
9 needs done. I'm just not sure this type of situation  
10 is appropriate.

11 I looked in our city charter at the  
12 section called Jurisdiction of the Board of Zoning  
13 and Building Appeals.

14 "Section 12.03, Jurisdiction.

15 "The Board of Zoning and Building Appeals  
16 shall have the power to hear and decide appeals as  
17 follows:

18 "(a) For exceptions to ordinances,  
19 resolutions, and regulations of the City pertaining  
20 to zoning, building, and landscaping in the City.

21 "(b) From the decisions, measures and  
22 orders of City officials, boards, commissions and  
23 agencies pertaining to zoning, building, and  
24 landscaping in the City.



1           "(c) The Board shall decide its cases to  
2 afford justice and avoid unreasonable hardship to  
3 citizens," which I think is a key line there as well.

4           At this time, Mr. Ewald, you had a couple  
5 points you wanted to make.

6           MR. EWALD: Thank you. There are two  
7 points I wanted to make. First, is the standard for  
8 review. The standard for review tonight is de novo.  
9 The appellant in the case has the burden of proof  
10 beyond the preponderance of the evidence, and the  
11 Board shall consider all relevant evidence brought  
12 before it, either in the binder or in this evening's  
13 testimony.

14           In discussion the Board shall consider  
15 all evidence even if it was not disclosed. If it was  
16 proffered, it goes into the record but is not  
17 actually considered for review. And I think there  
18 were a couple items that were proffered tonight that  
19 are outside the record.

20           The second thing is prior to the vote  
21 tonight, there are four possible outcomes that can  
22 occur. A motion has to be made that is affirmative,  
23 so it has to be a motion in favor of granting the  
24 appeal. You can vote yes, which would grant the

1 appeal. If you vote no, it would deny the appeal.

2 You can also -- so that's two parts,  
3 either affirm it or deny it. You can also affirm  
4 with modification, and you can also remand it for  
5 action to the Planning Commission. Those are your  
6 four options.

7 Again, the motion needs to be made in the  
8 affirmative.

9 PRESIDENT JENSEN: Thank you, counselor.

10 MEMBER PACK: Mr. Chairman, I'd like to  
11 make a motion to grant this evening's appeal -- let  
12 me repeat that.

13 Mr. Chairman, I would like to make a  
14 motion to grant appeal BZA-0001-2017.

15 PRESIDENT JENSEN: Do I have a second?

16 VICE PRESIDENT MECOZZI: Second.

17 PRESIDENT JENSEN: Any further  
18 discussion?

19 MEMBER EISEN: No.

20 PRESIDENT JENSEN: Roll call.

21 MS. BANNING: Pack.

22 MEMBER PACK: No.

23 MS. BANNING: Mecozzi.

24 VICE PRESIDENT MECOZZI: No.

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MS. BANNING: Adjoua.

MEMBER ADJOUA: No.

MS. BANNING: Jensen.

PRESIDENT JENSEN: No.

MS. BANNING: Eisen.

MEMBER EISEN: No.

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ADJOURNMENT

MEMBER ADJOUA: Mr. President, I make a motion to adjourn.

PRESIDENT JENSEN: Second.

MEMBER EISEN: Second.

PRESIDENT JENSEN: Adjourned.

(The hearing adjourned at 8:26 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, May 4, 2017, and carefully compared with my original stenographic notes.

\_\_\_\_\_  
Rosemary Foster Anderson,  
Professional Reporter and Notary  
Public in and for the State of  
Ohio.

My commission expires April 5, 2019.

(rfa-83604)

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