

CITY OF GAHANNA  
BOARD OF ZONING AND BUILDING APPEALS  
THURSDAY EVENING SESSION  
THURSDAY, AUGUST 10, 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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1 APPEARANCES:

2 City of Gahanna  
3 By Mr. Shane Ewald  
4 City Attorney  
5 200 South Hamilton Road  
6 Gahanna, Ohio 43230

7 On behalf of the City.

8 Lardiere McNair, LLC  
9 By Mr. Darren A. McNair  
10 Mr. Benjamin Worsowicz  
11 3956 Brown Park Drive, Suite B  
12 Hilliard, Ohio 43026

13 On behalf of the Applicant.

14 Madison & Rosan, LLC  
15 By Ms. Kristin E. Rosan  
16 39 East Whittier Street  
17 Columbus, Ohio 43026

18 On behalf of the Planning Commission.

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EXHIBITS

- City of Gahanna Binder
- Additional Documents
- Proffered Documents
- Reklamation PowerPoint Printout

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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

- - -

CHAIR JENSEN: At this time I will call the meeting to order for the City of Gahanna Board of Zoning and Building Appeals.

Mr. Eisen, would you lead us in the Pledge of Allegiance.

(Pledge of Allegiance.)

CHAIR JENSEN: Would the clerk conduct roll call, please.

MS. BANNING: Adjoua.

MEMBER ADJOUA: Here.

MS. BANNING: Eisen.

MEMBER EISEN: Here.

MS. BANNING: Jensen.

CHAIR JENSEN: Here.

MS. BANNING: Mecozzi.

MEMBER MECOZZI: Here.

MS. BANNING: Pack.

MEMBER PACK: Here.

CHAIR JENSEN: Before we move forward, do we have any additions or corrections to the agenda?

1 - - -

2 SWEARING IN OF WITNESSES

3 CHAIR JENSEN: If not, at this time we  
4 would need to swear in the witnesses for anybody who  
5 desires to give statements or testimony in the  
6 matter.

7 (Witnesses sworn.)

8 PUBLIC HEARING

9 CHAIR JENSEN: We are here this evening  
10 to consider an appeal from the Planning Commission's  
11 denial of the Application: V-004-2017, to consider a  
12 Variance Application to vary section 1155.07(b)(1),  
13 Outdoor Storage Areas, of the Codified Ordinances of  
14 the City of Gahanna; to allow stockpiles to be  
15 25 feet in height; for property located at 1000  
16 Bricklawn Avenue; Parcel ID No. 025-006164; Steve  
17 Geiger, Reklamation, LLC, applicant.

18 At this time the first thing we should  
19 consider, according to the rules or procedure under  
20 6.10 is does the Board have jurisdiction to consider  
21 this application on appeal?

22 MEMBER PACK: Mr. Chairman, I'd like to  
23 make a motion that the Gahanna Board of Zoning and  
24 Building Appeals does have jurisdiction and the case

1 is under the purview of this Board and can hear the  
2 case.

3 MEMBER ADJOUA: I'll second that motion.

4 CHAIR JENSEN: Is there any discussion?  
5 Roll call.

6 MS. BANNING: Point of clarification, is  
7 this for the actual exhibits?

8 CHAIR JENSEN: Not yet.

9 MS. BANNING: This is just the  
10 jurisdiction.

11 MEMBER PACK: Yes.

12 CHAIR JENSEN: Roll call.

13 MS. BANNING: Pack.

14 MEMBER PACK: Yes.

15 MS. BANNING: Mecozzi.

16 MEMBER MECOZZI: Yes.

17 MS. BANNING: Adjoua.

18 MEMBER ADJOUA: Yes.

19 MS. BANNING: Eisen.

20 MEMBER EISEN: Yes.

21 MS. BANNING: Jensen.

22 (Motion passes.)

23 CHAIR JENSEN: We will consider the  
24 proffered documents now.

1 MR. EWALD: Yes.

2 CHAIR JENSEN: Before we move forward,  
3 there are several documents that were presented to us  
4 short of the three-day window as listed in the rules  
5 of procedure for the Board of Zoning and Building  
6 Appeals.

7 Is there any discussion or comments on  
8 that?

9 MEMBER PACK: Mr. Chairman, when you say  
10 short of the window, are you saying inside of the  
11 window?

12 CHAIR JENSEN: I'm sorry, inside of the  
13 three-day window.

14 MS. ROSAN: Mr. Chairman, Kristin Rosan  
15 for the Board -- excuse me -- for the Commission. We  
16 don't have any objection for the Board considering  
17 the exhibits to proceed.

18 CHAIR JENSEN: Thank you.

19 Any discussion?

20 MS. ROSAN: Mr. Chair, I'd like to make  
21 sure the record will include which documents actually  
22 were received within the three-day window prior to  
23 the hearing.

24 CHAIR JENSEN: Well, since I don't

1 have -- annd some of these documents aren't labeled,  
2 per se?

3 MR. EWALD: If I might, the clerk may  
4 have a list of those documents. I just want to make  
5 sure it's added to the record which documents were  
6 specifically received; however, if the Commission  
7 finds in favor of the motion, then it shall be added  
8 to the record anyway.

9 MS. BANNING: There were six documents  
10 received on Tuesday. A letter dated October 13,  
11 2010, to the Ohio EPA.

12 There is a -- this looks like a  
13 presentation from pci, "Information to Build On,"  
14 from that company regarding Reklamation's "Former  
15 Bedford II Landfill, Parcel No. 025-006164,  
16 22.931 Acres," is on the first page of that document.

17 There's another document Code 3745-27-13  
18 at the top.

19 CHAIR JENSEN: Excuse me. Who is that  
20 document from? I wasn't able to understand that.

21 MS. BANNING: It's referenced at the top.  
22 It just says 3745-27-13, Procedures to engage --

23 CHAIR JENSEN: I have the document, but  
24 who is it from? What organization produced this?

1 MR. McNAIR: It's the Ohio Administrative  
2 Code.

3 MS. BANNING: Then there's Resolution  
4 0023-2013, the City's Resolution regarding Geiger  
5 Excavating.

6 And there is OWDA Brownfield Loan  
7 Program, Pre-Application Request Form dated 5/30/13.

8 And there's one last sheet, Geiger  
9 Excavating from Ohio Water Development Authority,  
10 looks like loan information.

11 CHAIR JENSEN: Thank you.

12 MS. BANNING: Yes.

13 CHAIR JENSEN: Is there any discussion or  
14 concerns about these documents?

15 So we have a motion to approve?

16 MEMBER ADJOUA: Mr. Chairman, I make the  
17 motion to approve the acceptance of the documents for  
18 the record.

19 MEMBER EISEN: Second.

20 CHAIR JENSEN: Roll call.

21 MS. BANNING: Adjoua.

22 MEMBER ADJOUA: Yes.

23 MS. BANNING: Eisen.

24 MEMBER EISEN: Yes.

1 MS. BANNING: Jensen.

2 CHAIR JENSEN: Yes.

3 MS. BANNING: Mecozzi.

4 MEMBER MECOZZI: Yes.

5 MS. BANNING: Pack.

6 MEMBER PACK: No.

7 (Motion passes.)

8 CHAIR JENSEN: So we shall move forward  
9 then with the Planning Commission Application  
10 V-0004-2017, to consider an appeal from the Planning  
11 Commission's denial of the Application: V-004-2017,  
12 to consider a Variance Application to vary section  
13 1155.07(b)(1), Outdoor Storage Areas, of the Codified  
14 Ordinances of the City of Gahanna; to allow  
15 stockpiles to be 25 feet in height; for property  
16 located at 1000 Bricklawn Avenue; Parcel ID  
17 No. 025-006164; Steve Geiger, Reklamation, LLC,  
18 applicant, as advertised in the Rocky Fork  
19 Enterprise, April 6, 2017; revised date of the RFE on  
20 May 4, 2017.

21 Before we begin, I'd like to point out to  
22 those who are participating, this public  
23 hearing will open with the appellant being allowed 15  
24 minutes, the appellee 15 minutes, the staff will be

1 allowed five minutes for staff comments, and five  
2 minutes allowed for public comments, and five minutes  
3 each for cross-examination, further arguments, or  
4 rebuttal. Additional time may be allowed by the  
5 chair at the discretion of the chair.

6 So at this point we will begin with the  
7 appellant.

8 I am setting a timer, just to let you  
9 know.

10 MR. McNAIR: Thank you. If it may please  
11 the Board, madam clerk and counsel, counsel, my name  
12 is Darren McNair. I represent Reklamation and Steve  
13 Geiger, the petitioner -- actually, the appellant in  
14 this particular situation.

15 I felt given the documents that Mr. Pack  
16 circulated a couple days ago, I felt it  
17 appropriate -- we felt it appropriate to give a  
18 little history from our perspective about how the  
19 property has been used and what our intentions are.

20 We purchased this property, which is  
21 essentially a landfill, in 2009. It had been -- it  
22 had had materials dumped on it that were contaminated  
23 and was essentially an unsaleable piece of land.

24 My client has what I'll call a great

1   knack for crushing rocks, selling gravel, and  
2   remediating things and fixing things that are broken.  
3   He had an idea to come in, and with the help of the  
4   EPA, the Ohio Watershed District, and his own  
5   personal capital to develop this landfill.

6           The problem was since it was so  
7   contaminated, we needed Ohio EPA approval, so we've  
8   been working since 2009 for what is called a no  
9   further action letter, NFA. We've heard that a  
10   couple times and that was mentioned by the Planning  
11   Commission.

12           That's kind of what our goal has been.  
13   It's been a process remediating this property and  
14   capping it and doing the things we needed to do.  
15   It's a piece of property with no access. You can see  
16   it best if you're flying from John Glenn. If you  
17   take off going somewhere, you can see it. It's right  
18   below the flight pattern.

19           Throughout the process we applied for  
20   different -- well, in 2010, '12, '14, '16 for a  
21   Conditional Use Application to stockpile our gravel,  
22   rocks, and other items we use in our trade and our  
23   business above the 10-foot level that Mr. Jensen  
24   referenced in 1102.57(b)(1), so that was what we were

1 asking for a deviation from, conditional use  
2 stockpiling. That has been granted since 2010  
3 multiple times.

4           The last time we were in front of the  
5 Planning Commission -- I will restate that. Two  
6 times ago when we were in front of the Planning  
7 Commission when our conditional use was granted for  
8 an additional two years, that was at a meeting that  
9 was held on February 10, 2016, so we have a  
10 conditional use at this property until February 10,  
11 2018 to stockpile our material higher than 10 feet,  
12 up to the 25-foot level we're asking for the variance  
13 on today.

14           We have been getting, I'd like to call it  
15 pushback because that would mean we got a response,  
16 from the EPA regarding this no further action letter,  
17 which would then allow us to continue to develop the  
18 property. It wasn't even until May that they were  
19 allowed to go out and do any soil testing, I believe  
20 that was what it was, water testing and the soil.

21           We know it's going to happen. We are  
22 going to go back before the Planning Commission after  
23 the two years, apply for an additional two-year  
24 conditional use, we're going to have to show the

1 progress, and that is what I would like this Board to  
2 focus on, and I'll get to that in just a little bit.

3           The Gahanna City Code 1131.04 sets forth  
4 three factors. And I put in front of all of your  
5 places a PowerPoint we put together. It's a slide.  
6 I'm not showing it on the screen tonight, but it's a  
7 slide of relevant information regarding some points  
8 I'm touching on. The reason I put it in writing is  
9 so we have these factors in black and white.

10           There was zero discussion at the Planning  
11 Commission level about these factors that they were  
12 mandated to consider under the code in whether they  
13 were going to grant a variance.

14           I was relistening to the hearing again  
15 this morning and was trying for the last time to find  
16 one question that mentioned or touched upon factor  
17 No. 1, whether there was a special circumstances  
18 condition applying to the land, building, or use that  
19 was referred to in the application. So it would mean  
20 is this a street down the road? Is this a farm? Is  
21 this a cesspool landfill? Is there a special  
22 circumstance why we should grant this?

23           No. 2, the granting of the variance is  
24 necessary for the preservation and enjoyment of

1 substantial property rights. So what we are asking  
2 for is a variance to stockpile our materials that we  
3 use in our business to earn money and provide jobs to  
4 the people in the city of Gahanna, pay taxes to the  
5 City of Gahanna so that we can run a business, run an  
6 operation, and put more money into this landfill.

7 We have put over \$200,000 of our  
8 money over the past -- it's their money, not my  
9 money. It's their money -- for the past eight years  
10 into a landfill to try to remediate it and try to  
11 bring it back. Who does that? Someone who thinks he  
12 can make a difference.

13 The third factor the Commission was  
14 supposed to consider was whether or not the  
15 application will materially affect adversely the  
16 health and safety of persons residing. I haven't  
17 heard what the audience is going to say, but this is  
18 unlike the meeting the last time where we had public  
19 outcry about not putting up a drug rehab center in an  
20 old senior citizens home. This was a piece of  
21 abandoned cesspool that we purchased and have  
22 remediated.

23 When we look at the special  
24 circumstances, we are under a continuing what we call

1 a 13 authorization from the EPA. That's actually  
2 Ohio Administrative Code 3745-27-13, which gives us  
3 the right to stockpile concrete, asphalt, and dirt  
4 for the use and closure of the property and retail.

5 And, in addition, at the Planning  
6 Commission meeting we heard some testimony from  
7 the deputy director of planning and development,  
8 Mr. Michael Blackford, and the city engineer, Robert  
9 Priestas, where they testified about a service road,  
10 Leavitt Road, being a road that provides access to  
11 the property. What wasn't on the record was this  
12 road ends at a 25- to 35-foot bluff, so getting  
13 anything in and out of that road is not serviceable  
14 right now, so it's ironic that it's called a service  
15 road.

16 For preservation of property rights, it  
17 was almost as if -- with all due respect to the  
18 Planning Commission. Especially the beginning of the  
19 questions to my client, Wendy Geiger, it was almost  
20 as if the Planning Commission thought they owned the  
21 property.

22 We think that's interfering with our  
23 property rights. We should be able to conduct a  
24 business like anybody else, do what we do as our

1 trade, and do it efficiently based on 30 or more  
2 years -- that's generous to Steve -- of engaging in  
3 this business.

4 He knows how tall the stockpiles need to  
5 be. If we thought we could do this with 10-foot  
6 stockpiles of gravel or eight-foot stockpiles of  
7 concrete or rocks, we wouldn't be here. We know the  
8 way to efficiently run this type of business, and  
9 it's going to require a mandate, which is mentioned  
10 in some of the documents that we proffered a little  
11 bit late -- which I apologize about and I want to  
12 thank counsel for not objecting to -- showing the EPA  
13 allowing us to stockpile these materials.

14 We're really only asking for a formal  
15 extension of this -- let me strike that.

16 I am going to go to factor 3, looking at  
17 my time here, factor 3, the safety and health of  
18 neighboring property. If anything, this project,  
19 this reclamation, has been a positive one on the  
20 community and the neighboring properties. Like I  
21 mentioned, and I don't want to say it again but I'll  
22 say it one more time, this was a rotting cesspool of  
23 material and liquid and sewage that was wreaking  
24 havoc upon this land that we've come in and

1 remediated.

2           What I'm concerned about and why I hit on  
3 these points, members of the Board, why I've hit on  
4 these points is because in your own Gahanna City Code  
5 it talks about what the Planning Commission is  
6 supposed to look at when they're to consider a  
7 variance. There was no testimony, no questions, no  
8 deliberation -- there was testimony from my client,  
9 Ms. Geiger, regarding a lot of the factors that I  
10 just went through. I didn't just make this  
11 PowerPoint up. She typed it a year and a half ago,  
12 most of it, so I will give credit where credit is due  
13 on that.

14           We went through the factors. No  
15 questions from any of the panel members about, Well,  
16 prove to me the safety and health of the neighboring  
17 property is not being adversely affected, nothing.  
18 What they concentrated on was their perceived notion  
19 that we were changing our plans. We put \$200,000  
20 into a landfill and need to be able to operate our  
21 business successfully so we can continue while we're  
22 waiting for the Ohio EPA to give us their NFA,  
23 operate our business, continue to make money, provide  
24 jobs, and pay taxes.

1 I'd like to, with the permission of  
2 Mr. Chairperson, preserve three or four minutes I  
3 have remaining for the closing at the end.

4 CHAIR JENSEN: All will be allowed a  
5 closing at the end. If you have more.

6 MR. McNAIR: I do have a little more. I  
7 wanted to be respectful of everybody's time.

8 Let's get back to the call of action,  
9 what we are asking the Board of Zoning and Building  
10 Appeals to do. We are asking the Board of Zoning  
11 Appeals to reverse the Planning Commission's denial  
12 of our variance.

13 Now, in speaking with the city attorney  
14 earlier today, I want to clear up an issue that may  
15 be discussed during deliberations. We have a  
16 conditional use with respect to 1155.07(b)(1), which  
17 is with respect to the height of the type of  
18 materials. (B)(1) has nothing to do with the type of  
19 material or the placement of that material.

20 What can lead to a little bit of  
21 confusion is when we filed our application for  
22 variance, we also asked for an additional conditional  
23 use to sell salt and topsoil from this location,  
24 which would be asking for different types of

1 materials. I don't believe we needed a conditional  
2 use to do that because they're not hazardous  
3 materials, but we were also asking to stack those  
4 additional materials up to 25 feet.

5 The Planning Commission denied that  
6 conditional use. We did not appeal that. We are  
7 only here on the denial of our application for a  
8 variance to stack the materials we have been stacking  
9 there since 2009 in piles higher than 10 feet and no  
10 greater than 25 feet.

11 We believe, as we've discussed with  
12 Mr. Ewald, that the Gahanna Board of Zoning and  
13 Building Appeals has great discretion and power on  
14 what it can do. It can affirm the decision of the  
15 Planning Commission, which we don't want. It could  
16 reverse the decision of the Planning Commission,  
17 which we would want very much. It could modify the  
18 decision, or it could remand back to the Planning  
19 Commission for further hearing, discussion, or to  
20 enter a different order, in my opinion.

21 We're asking wholeheartedly and  
22 respectfully for the Board of Zoning Appeals to  
23 reverse the Planning Commission and grant our  
24 variance to simply continue doing what we're doing so

1 we can run our business.

2 Thank you for all your time.

3 CHAIR JENSEN: Thank you.

4 Ms. Rosan.

5 MS. ROSAN: Thank you, Mr. President, and  
6 members of the Board. Kristin Rosan on behalf of the  
7 Gahanna Planning Commission.

8 I want to start off by saying I agree  
9 with the appellant. The appellant has done great  
10 work over at this landfill. They've made great  
11 improvements to our city. Their work to date is  
12 nothing short of admirable.

13 The question before us today is as they  
14 move into the next phase of what they are going to do  
15 with this particular piece of property, whether or  
16 not the Planning Commission acted properly in denying  
17 the new conditional use and denying the variance  
18 application, so I think that has to be evaluated,  
19 whether or not the action was proper.

20 Let's take a step back and look at what  
21 the law requires and what was before the Planning  
22 Commission. So we know this particular piece of  
23 property is in an OCT zoning district, office,  
24 commerce, and technology. We also know that

1 stockpiling of materials is not a permitted use in an  
2 OCT district, but it is a permitted conditional use.

3           So the layman's way of looking at that is  
4 you are allowed to stockpile materials in this  
5 particular zoning district and on this particular  
6 piece of land providing you get approval by the  
7 Planning Commission for the conditional use.

8           Now, as you heard from opposing counsel,  
9 for a number of years at two-year intervals the  
10 appellant has come before the Planning Commission and  
11 has made application for these conditional uses. The  
12 justification for this conditional use has always  
13 been we need to be able to stockpile materials so  
14 that we can complete the capping process in the  
15 landfill.

16           No. 2, we need to stockpile additional  
17 materials, things that aren't used in capping,  
18 because we the need revenue from the sale of those  
19 materials to be able to complete the capping process.

20           Now, the application, that's kind of part  
21 one. Part two is that the provision on the  
22 conditional use says you can stockpile materials in  
23 an OCT district provided you comply with 1155.07,  
24 which is the stockpiling provision. So first comes

1 the conditional use. Second comes the stockpiling  
2 provision.

3 Now, keep in mind, to date these have  
4 been temporary conditional use permits at two-year  
5 intervals, and the stockpiling provision was not  
6 enforced by the staff because why go out and make  
7 sure the screening is 10 feet and all the other  
8 requirements of the stockpiling ordinances are  
9 complete if it is only going to occur for two years,  
10 right? It makes sense.

11 So now we have the application that comes  
12 before the Planning Commission, and the application  
13 was two parts. Let me preface this by saying that  
14 the previous application for conditional use was  
15 granted for a two-year period expiring in February of  
16 2018, so there is a current conditional use that  
17 expires in February of 2018 that allows them to  
18 stockpile certain materials. I believe it's gravel.  
19 I believe there's some lumber, and that was granted  
20 back in 2016.

21 Before the Planning Commission were two  
22 applications, only one is on appeal for you today.  
23 The first application was for a new conditional use.  
24 There was no limitation for code, so, in essence,

1 seeking a permanent conditional use, that they be  
2 permitted to continue to stockpile the materials that  
3 they were currently stockpiling, lumber, gravel,  
4 concrete, whatever, asphalt, and we add to those salt  
5 and topsoil, so expanding the list of those items  
6 that would be used for stockpiling on the subject  
7 property.

8 And then number two, looking at a  
9 stockpiling provision of the code saying, We want a  
10 variance from this provision, the 10-foot limit. We  
11 want to be able to go up to the 25 feet.

12 What I really want you to focus on here  
13 is that when the Planning Commission considered this  
14 application, they were considering something that was  
15 completely different than what they considered in the  
16 past. In the past the reasons and justification for  
17 the conditional use were for the higher purpose of  
18 completing the landfill. Now the application  
19 presented before the Planning Commission are for the  
20 purpose of an ongoing, permanent business of  
21 stockpiling certain types of materials, sometimes at  
22 very high heights, and have that be a permanent  
23 source of revenue. In other words, it's no longer  
24 temporary; it's a permanent business at the location.

1 And the Planning Commission deliberated, asked its  
2 questions, heard testimony, and made its decision.

3           Upon appeal, curiously, appellant only  
4 appealed the variance. I want to make it clear that  
5 should you grant the appeal and reverse the Planning  
6 Commission's decision, the impact of that is to allow  
7 a variance that can only occur until February of 2018  
8 because, understand, that you cannot have stockpiling  
9 on this property without a conditional use, and so  
10 absent a conditional use, there can be no  
11 stockpiling.

12           I would respectfully suggest the proper  
13 thing for the Board to do is either deny the variance  
14 because it's improper -- and I think if you were to  
15 look back at this you would say, Well, the Planning  
16 Commission were to consider the conditional use, they  
17 would consider a permanent conditional use, and they  
18 would consider all the elements in the stockpiling  
19 provisions.

20           Some of the elements are setbacks,  
21 height, placement, materials, screening, and that's  
22 why you see in the minutes a lot of discussion about,  
23 Well, gee, what's the big-picture plan here? If you  
24 are going to stockpile salt, what's the runoff going

1 to be? Is the salt going to be in a building?

2 Then we hear testimony, Well, the  
3 building is going to come down the road. We want our  
4 approvals now, but we don't know for sure whether we  
5 are going to build a building and we don't know where  
6 that building is going to be.

7 And, by the way, on the sight plan that  
8 they provided the Planning Commission, they actually  
9 proposed a road, an expansion of Leavitt Road on the  
10 site. The road that they said today is impossible,  
11 they proposed an expansion into the site.

12 So I think you understand the Planning  
13 Commission is looking out at a more global, permanent  
14 use of this property, and there's lot of other  
15 factors that need to be considered than just we need  
16 to stockpile something 25 feet. They need to know  
17 where the buildings are going to be. They need to  
18 know where the stockpile is going to be. They need  
19 to know whether there's going to be runoff, height  
20 requirements, setbacks, screening, so on and so  
21 forth.

22 So you will see at the end of the remarks  
23 in the Planning Commission's discussion, they invite  
24 the appellant to go back and put together a final

1 plan, a more permanent plan, and visit the Planning  
2 Commission again on what it is they propose to do  
3 going forward with the property.

4 I would suggest that the Board tonight  
5 has really two options. The first option would be to  
6 find that it is improper to grant a variance  
7 retroactively on a previously approved conditional  
8 use, because understanding the time the Planning  
9 Commission approved this conditional use, they were  
10 not approving a height limitation of 25 feet, so it's  
11 improper to backdoor a variance into a previously  
12 granted conditional use, which is exactly what  
13 appellant is asking you to do.

14 The number two option for the Board, if  
15 you find merit in the appellant's argument and would  
16 like for them to begin to stockpile the existing  
17 materials that they have up to 25 feet, that you  
18 modify the Commission's decision by granting the  
19 variance just until February 2018. That way we don't  
20 have an issue about a variance on the books with no  
21 conditional use on the books. And then in February  
22 of 2018, the appellant would be then invited back to  
23 present a plan, present a new conditional use, and,  
24 if desired, present a variance at that point in time.

1                   Thank you for your consideration and  
2 time.

3                   CHAIR JENSEN: Thank you.

4                   Do we have any comments from staff or  
5 public comments?

6                   Is there any cross-examination or  
7 questions from either side before final rebuttal and  
8 presentation?

9                   MR. McNAIR: Final rebuttal and  
10 presentation, if possible.

11                   Thank you, Board.

12                   Thank you, Ms. Rosan.

13                   I think a couple points that were left  
14 out of the appellee's argument was that this was an  
15 industrial. This was zoned M-1 when we bought it.  
16 So the fact we improved it to OCT, it seems a little  
17 disingenuous to say we can't store the materials we  
18 stored there because we improved it.

19                   Now, the materials under 1155.07 that  
20 they stockpile, there's no lumber. But they don't  
21 violate 1155 (a), (b), (2), or (3) anyway because we  
22 don't even need a conditional use for those types of  
23 materials.

24                   I think the Board can pick up on our

1 frustration with what's happening. Providing a  
2 variance for the same period of time as our  
3 conditional use is not what we're asking the Board to  
4 do. We are asking the Board to allow us to run our  
5 business so we can continue to remediate and improve  
6 this piece of land.

7 We can hire engineers. We can hire  
8 architects, and we can hire more EPA guys to come out  
9 and do testing and spend 20, 30, 50, 100 thousand  
10 dollars on plans, but until we get the different  
11 administrative agencies in Ohio to move forward, we  
12 are throwing money away, even worse than we did when  
13 we bought the landfill.

14 So we respectfully ask the Board to give  
15 us the variance we need to run our business on the  
16 piece of property that we -- we really have nothing  
17 further to add at this point. Thank you for your  
18 time.

19 CHAIR JENSEN: At this time I will open  
20 it up for the Board if there are any questions as  
21 they see fit.

22 Ms. Mecozzi.

23 MEMBER MECOZZI: No questions at this  
24 time.

1 CHAIR JENSEN: Mr. Pack.

2 MEMBER PACK: Yes, I have a few

3 questions.

4 I'm sorry, Mr.--

5 MR. McNAIR: McNair.

6 MEMBER PACK: McNair, I'm sorry.

7 Mr. McNair, on behalf of your clients I have a few

8 questions.

9 There are two parcels, if I'm not  
10 mistaken. One parcel purchased in 2009 and another  
11 parcel next to it.

12 MS. GEIGER-STEINER: Correct.

13 MEMBER PACK: When was the latter parcel  
14 that I'm referring to which I would be assuming that  
15 would be part of that main section of the landfill,  
16 when was that purchased?

17 MS. GEIGER-STEINER: Wendy  
18 Geiger-Steiner.

19 MR. McNAIR: I am going to pass this off  
20 to a person on the dirt ranch every day.

21 MEMBER PACK: Before her answers, I want  
22 to put on the record at the beginning of last week, I  
23 called, spoke to Mr. Geiger, told him who I was. He  
24 graciously allowed me to come out and look at the

1 property. I rode around in their nice Ford pickup  
2 truck with Ms. Geiger-Steiner. We didn't talk about  
3 the merits of the case, but I got a really good look  
4 at the parcel, and that's to orient myself, and I  
5 appreciate that and appreciate the hospitality.

6 MR. McNAIR: Thank you for your time.

7 MS. GEIGER-STEINER: I'm Wendy Geiger.  
8 I've been working with my father at Reclamation and  
9 Geiger Excavating for 20-some years now.

10 Your question is about the second parcel  
11 that was purchased, the one off of the City of  
12 Gahanna?

13 MEMBER PACK: Well, I think it's the much  
14 larger one.

15 MS. GEIGER-STEINER: That was the one  
16 that was purchased in 2009. That is the 22.931 acres  
17 that Reclamation owns.

18 MEMBER PACK: Okay. If I may continue.

19 MR. McNAIR: Absolutely.

20 MEMBER PACK: Did you enter into any  
21 covenant or agreement with the City of Gahanna as a  
22 precondition to purchasing the property, reclaiming  
23 it from a status of a landfill, and then dictating in  
24 that agreement or covenant what you would be doing

1 afterwards or selling it or any other future use of  
2 that property?

3 MS. GEIGER-STEINER: Not that I'm aware.  
4 I would like to ask Steve Geiger. He would have more  
5 general knowledge on that.

6 MEMBER PACK: And you know what I'm  
7 getting at.

8 MS. GEIGER-STEINER: I do, but not to my  
9 knowledge.

10 MEMBER PACK: If Mr. Geiger can answer  
11 the question, I'd like to know the answer.

12 Mr. Geiger, when you purchased the  
13 property, one parcel from the City and another  
14 parcel, were there ever any covenants or agreements  
15 with the City of Gahanna as part of the reclamation  
16 process that you were going to then, once the NFA is  
17 received and the landfill is essentially not a  
18 landfill anymore, do you have an agreement or  
19 covenant with the City you must sell the property or  
20 was there a restriction on the use in the sense of  
21 once you received the NFA then you got to sell the  
22 property?

23 MR. GEIGER: Prior to closing on the land  
24 on March 9th of 2009, I had a meeting with the mayor,

1 and the engineering department, and Bonnie Guard I  
2 think was there. Also Sadica was there, and this was  
3 on March the 2nd, 2009, prior to purchasing the land,  
4 and they all knew the plans and what our goals were  
5 to go for an NFA. An NFA is so important because a  
6 financial institution will not -- I don't care how  
7 many plans you have for development. The bank won't  
8 loan to a member on a parcel. You can't do it  
9 without an NFA.

10 MEMBER PACK: Am I correct in just saying  
11 without the NFA -- I mean, the landfill, essentially  
12 the landfill is not closed until you get the NFA.

13 MR. GEIGER: Yes.

14 MEMBER PACK: Okay. But as far as your  
15 knowledge, there are no written covenants or  
16 agreements that dictate because of the benefits of  
17 the help that the City extended to you with regard to  
18 loans or helping you get loans or grants, whatever,  
19 you didn't write and sign and say, As soon as we get  
20 the NFA, we have to sell the property?

21 MR. GEIGER: No.

22 MEMBER PACK: Okay. That was the answer  
23 I was looking for.

24 MR. GEIGER: Thank you.

1                   MEMBER PACK: I'll be asking the same  
2 question of Mr. Blackford later on, if he knows of  
3 any covenants or agreements with the City, because I  
4 got the impression in the testimony from the Planning  
5 Commission, maybe they knew something, there was an  
6 agreement that there was something on file that we  
7 didn't know about.

8                   We've established you're still waiting on  
9 NFA. Why 25 feet?

10                  MS. GEIGER-STEINER: Well, as you saw  
11 when you came to the site, most equipment for this  
12 type of processing of concrete and asphalt is all we  
13 do. We don't do anything with lumber. The stackers  
14 that actually run the material up to a stockpile are  
15 25 feet high. It takes additional manpower and  
16 additional money to continuously knock those down to  
17 a 10-foot level. Again, we did not want to go any  
18 higher than 25 because it takes additional manpower  
19 and hours to stockpile over 25. All we are asking  
20 for is the current limitations of the equipment.

21                  MEMBER PACK: Next question, on the  
22 Gahanna operation alone, how many employees do you  
23 have?

24                  MS. GEIGER-STEINER: We have seven

1 people.

2 MEMBER PACK: Next question, once you get  
3 the NFA, what are your plans for the property? And I  
4 mean what do you think you might want to do with the  
5 property?

6 MS. GEIGER-STEINER: There have been  
7 multiple discussions. We have looked at splitting  
8 part of the property off for sale. We looked at  
9 downsizing our operation to a smaller section of the  
10 property, maybe about 15 acres. There aren't a whole  
11 lot of buyers, even at the NFA stage, for landfills  
12 crying out "pick me." So it's going to depend on the  
13 end uses, what we can actually do with it once we get  
14 an NFA.

15 MEMBER PACK: Okay. Right now what is  
16 the -- I remember reading with regard to limited  
17 public access to your site. Let me back up just for  
18 a second. Do you have full public access to your  
19 site at this time?

20 MS. GEIGER-STEINER: I have limited  
21 access on Enterprise Drive, which comes across a  
22 railroad track that the Planning Commission requested  
23 I not use that access due to they're afraid that the  
24 dump trucks might damage the tracks.

1           It keeps getting brought up to use  
2 Leavitt. Unfortunately, the way the property was  
3 when we took over the property, there's a 25-foot  
4 cliff right at the end of Leavitt. Actually, the  
5 fire department uses it to practice on.

6           Bricklawn, the only other access I have  
7 to the 22 acres is through two other parcels that I  
8 had to buy, one from the City of Columbus and one  
9 from an adjoining property owner. Part of Bricklawn  
10 weren't secured by the City, which they are working  
11 to secure. McNelius Trucking and Stagg is on the  
12 corner to provide access through to Bricklawn. But,  
13 again, that will have to go through another  
14 corporation to get access to.

15           MEMBER PACK: And I apologize. One more  
16 question. You had mentioned something about -- I  
17 read something in the minutes of the Planning  
18 Commission that if the variance -- as part of the  
19 requested variance you would be installing shielding  
20 of a natural source, trees. Am I correct recanting  
21 that?

22           MS. GEIGER-STEINER: Yes. Actually, we  
23 have started all the embankment around the entire  
24 Enterprise access point. We have trees ordered.

1 They don't deliver until November.

2 MEMBER PACK: What kind of trees are  
3 they?

4 MS. GEIGER-STEINER: White pine.

5 MEMBER PACK: If you get them, what would  
6 be the spacing between the trees?

7 MS. GEIGER-STEINER: Two to three feet.

8 MEMBER PACK: Thank you very much.

9 And I have one question for Mr. Blackford  
10 regarding any covenant or agreement that the City of  
11 Gahanna -- not hearsay, not adult-beverages  
12 conversation, entertainment -- if there is an  
13 agreement in writing, a covenant as a precondition to  
14 the selling of a property from the City of Gahanna to  
15 Mr. Geiger as to what use they must do or what they  
16 should do with the property or have to do with the  
17 property per agreement after the NFA was received.

18 - - -

19 (Witness sworn.)

20 MR. BLACKFORD: For full disclosure, much  
21 of this property and some of the discussions predate  
22 my time here with the City. I have been involved in  
23 a couple of the Planning Commission applications. I  
24 met with the applicants numerous times. I have also

1 been involved with city staff regarding the  
2 development of the property in the short term and  
3 long term, and I'm not aware, I have not seen any  
4 documents that stated an end use for this property as  
5 a condition of the sale.

6 MEMBER PACK: Very good. Thank you very  
7 much.

8 No further questions, Mr. Chairman.

9 CHAIR JENSEN: Thank you, Mr. Pack.

10 Mr. Eisen, do you have anything?

11 MEMBER EISEN: I have just one question,  
12 and I want to make sure because I wrote something  
13 down that Mr. McNair said, that salt and topsoil are  
14 not being asked for today. Whether that's in the  
15 conditional use -- I just want to make sure that no  
16 matter what this Board decides today, whether we are  
17 talking conditional use or variance, that we are not  
18 allowing at this time salt to be stored on your site  
19 at any height whatsoever.

20 MR. McNAIR: That's correct.

21 MS. GEIGER-STEINER: That is correct.

22 MR. McNAIR: That was part of the  
23 conditional use we had asked for when we filed the  
24 variance application, and we lost that part, decided

1 to only pursue the appeal of the variance denial and  
2 not the extended conditional use for salt and  
3 topsoil. That's correct. Irrespective of anything  
4 you do, we can't do salt. We can't stockpile salt.

5 MEMBER EISEN: Thank you very much.

6 That's it, Mr. Chairman.

7 CHAIR JENSEN: Thank you.

8 Mr. Adjoua.

9 MEMBER ADJOUA: Mr. McNair, do you agree  
10 with Ms. Rosan's assertion if we grant the variance  
11 it's only going to be effective for six months to  
12 February of 2018?

13 MR. McNAIR: I don't agree that if you  
14 grant the variance it's only going to be effective  
15 till February 10, 2018. I believe that you have the  
16 ability to reverse the Planning Commission and  
17 implement a variance, which wouldn't have to  
18 necessarily an end.

19 I believe what Ms. Rosan was asking the  
20 Board to do was take Option 4, which was to modify  
21 their decision and grant the variance for the term of  
22 the conditional use. I don't believe that's all the  
23 Board can do, and we ask that the Board not do that  
24 and grant the variance.

1                   MEMBER ADJOUA: Now, on February 10,  
2 2018, would you be required, do you believe, to  
3 request a continued additional conditional use  
4 permission from the Planning Commission?

5                   MR. McNAIR: I'm not aware why we would  
6 need to ask for the conditional use. The conditional  
7 use that we had was to stockpile higher. We didn't  
8 need the conditional use to do anything with respect  
9 to where the material was placed, and we're not  
10 stockpiling hazardous drugs, flammable or chemical  
11 materials, so we didn't ask for any conditional use  
12 to do that.

13                   I did hear Ms. Rosan say that because  
14 it's OCT that she believes we would need a  
15 conditional use to stockpile materials that we are  
16 already stockpiling, yet that's never been brought to  
17 my attention. I can't fully respond with my legal  
18 opinion on that. I've not -- I don't know the answer  
19 to that question, but I don't believe that we need  
20 to.

21                   MEMBER ADJOUA: Thank you.

22                   Now, if the NFA is granted, what impact  
23 would that have on the value of this property?

24                   MR. McNAIR: Well --

1 MS. GEIGER-STEINER: We will be able to  
2 borrow against it.

3 MR. McNAIR: I am certainly not any sort  
4 of appraiser by trade at all. I would imagine it  
5 would increase the value of the property if an NFA  
6 was granted just because you could borrow money  
7 against it, and then you could do more -- for lack of  
8 a better term, do more stuff to it.

9 MEMBER ADJOUA: What traditionally -- if  
10 you have knowledge of or maybe Ms. Geiger. You say  
11 you acquired this in 2009. What sort of time line  
12 have you seen in the past of the EPA granting NFAs?

13 MS. GEIGER-STEINER: I have actually  
14 never gotten to the NFA stage. This is our third  
15 landfill. We are getting very close. We are in the  
16 VAP program. At the last meeting, the VAP, it's  
17 called the VAP Pay-As-You-Go Program. At our last  
18 meeting they required me to install three water wells  
19 for groundwater sampling to make sure that nothing  
20 was leaving from the site from the old landfill.  
21 They require methane monitoring reports every six  
22 months for the life of the landfill and until there  
23 is no more methane on the site.

24 They are also requiring soil sampling

1 boring. The first soil sampling boring we took 92  
2 samples. They want to see more. They requested  
3 more. They also requested us to do some off the site  
4 to make sure nothing is bleeding, nothing left the  
5 site before we took over.

6 I honestly don't know. I can't give you  
7 a time line. I can tell you we are required under  
8 our 13 authorization, which I was giving you a copy  
9 of, we have to have this in order to operate on the  
10 site through the EPA. We can't touch a piece of dirt  
11 on the site without them. It is ongoing, and Allen  
12 Hurtt with Ohio EPA came out about two months to our  
13 office, and we were explaining the situation that was  
14 going on with Gahanna. He said whether it takes two  
15 more years or ten more years, however long it takes.

16 MEMBER ADJOUA: Thank you.

17 Thank you, Mr. McNair.

18 Ms. Rosan, I'm trying to get some  
19 clarification on the issue about this conditional  
20 use. My understanding it's granted every two years  
21 by the Planning Commission, and it will be up for  
22 renewal on February 10, 2018. Explain if we did  
23 grant the variance, would there not be a need for  
24 them to seek additional conditional use for the

1 property?

2 MS. ROSAN: There's two questions there.  
3 The first one, I want to backtrack. We are in an OCT  
4 district, so what is a permitted use in an OCT  
5 District is set forth in 1155.02. There's a whole  
6 list of all kinds of uses.

7 Then in 1155.03 it lists approved  
8 conditional uses, and if you go down to (a)(9), it  
9 has outdoor storage area meeting the regulations  
10 found in Section 1155.470.

11 So we know now that for an OCT zoning,  
12 regardless of what was done before, today it's OCT  
13 zoning. So we know for OCT zoning you can only have  
14 stockpiling of any material, doesn't matter what  
15 material it is, any material can only be stockpiled  
16 if your conditional use is granted. Such is  
17 precisely why since 2009 every two years the  
18 appellant has come before the Planning Commission and  
19 gotten approval for a conditional use for  
20 stockpiling. That's why, and the most recent  
21 conditional use will expire in February of 2018.

22 Now, the second part of that requirement,  
23 so conditional use approved, has to comply with the  
24 statutory provisions for stockpiling. Stockpiling

1 says it can't be more than 10 feet. It's got to be  
2 screened. You need to tell us where it's going to be  
3 located, so on and so forth.

4 So appellant is just asking for a  
5 variance of a height requirement on the stockpiling  
6 provision. You don't get to stockpile unless you  
7 have a conditional use. Such is precisely why I said  
8 if the Board is inclined to find merit in appellant's  
9 appeal, I would request, just so it's crystal clear  
10 for everybody, to modify your approval and limit the  
11 variance to the time of the concurrent conditional  
12 use on file, which is February 2018.

13 That way come February 2018, everybody  
14 comes back to the Planning Commission. We've got a  
15 new Conditional Use Application. We've got a new  
16 hearing. We've got new testimony, and if they still  
17 need a merit on height requirement, the Planning  
18 Commission considers it at that point.

19 Alternatively, you can find that the  
20 appeal does not have merit because, in essence,  
21 they're adjusting the variance, the height  
22 requirement, retroactively after the Planning  
23 Commission has already ruled on the underlying  
24 conditional use, and that would not be proper.

1                   MEMBER ADJOUA: Thank you. I have  
2 nothing further.

3                   CHAIR JENSEN: Mr. Pack, did you want to  
4 clarify, can we get a copy of the conditional use?

5                   MEMBER PACK: I was going to ask the  
6 clerk if we could get a copy of the current  
7 conditional use, and I was remiss. I should have  
8 done that. I'd love to look at the language on the  
9 conditional use.

10                  MR. EWALD: Mr. Chair, there's a copy on  
11 the printer. It's already been printed off earlier.

12                  MS. BANNING: It was also in the  
13 additional packet.

14                  CHAIR JENSEN: I have a question. I have  
15 the Ground Lease document. I'm not sure from who or  
16 what the purpose of it was. Anybody want to clarify  
17 that?

18                  MS. ROSAN: Mr. Chair, I believe that was  
19 a document that Mr. Pack asked for from counsel's  
20 office. It was provided to all the Board members. I  
21 believe he was just looking for background.

22                  MEMBER PACK: That's entirely correct. I  
23 just wanted to be fair in my research to let people  
24 know that was a document I had been given, and I

1 didn't want to allow the other Board members not to  
2 have the resources that I had also.

3 CHAIR JENSEN: So when the Planning  
4 Commission is looking at situations like this, they  
5 are -- there's talk of the past and future. I'm a  
6 small, small, small business myself, and there's this  
7 expectation of talking about the future and such.  
8 How is that all supposed to be sorted out? I mean,  
9 every week, every month, every day things are  
10 changing.

11 MS. ROSAN: I completely understand. I  
12 think that is best echoed by some of the remarks at  
13 the end of the minutes right before the votes were  
14 taken where several of the Planning Commission  
15 members expressed the desire to see more complete  
16 information as to what the plans were, especially  
17 considering the fact that the appellant was asking to  
18 store salt.

19 There was not a definitive plan for a  
20 building. There was no plan for where the building  
21 would be located. There wasn't any information about  
22 runoff or any requirements that they would be dealing  
23 with the runoff from the salt.

24 So what I believe -- if you want my

1 personal opinion, it is what I would believe to be a  
2 proper application come February 2018. There would  
3 be a final development plan saying, This is our plan.  
4 Even if that occurs within phases, this is our plan  
5 for the site. These are the materials we want to  
6 stockpile. This is where they're going to be  
7 located. This is where the fencing is. This is  
8 where the screening is going to be, all of those  
9 sorts of things, and if we have any buildings, these  
10 are the locations of the buildings. These are the  
11 materials that will be in the buildings, so on and so  
12 forth.

13           Unfortunately, what we had appear before  
14 the Planning Commission was sort of a mishmash of a  
15 haphazard final development plan with a conditional  
16 use and a variance request, and I believe that's why  
17 the commissioners expressed at the conclusion of  
18 their remarks a desire that the appellant come back  
19 with really more complete plans exactly what they  
20 want to do with the property by way of a stockpiling  
21 business going forward.

22           CHAIR JENSEN: Wouldn't that be related  
23 to the NFA? We keep hearing about they can't really  
24 do anything until that gets clarified.

1 MS. ROSAN: My understanding from the  
2 testimony is that the absence of the NFA would not  
3 preclude them from continuing their stockpiling  
4 business. The critical importance of the NFA is  
5 being able to get financing to make further  
6 improvements.

7 I will tell you the Planning Commission,  
8 at least in my tenure in working with the City in  
9 various roles, the Planning Commission will routinely  
10 consider developments that don't necessarily all  
11 occur at once. They occur in stages. And, in fact,  
12 those are the kinds of applications that are easier  
13 to approve because you know going forward this is  
14 what is going to be occurring with respect to the  
15 subject property.

16 CHAIR JENSEN: Okay.

17 MS. ROSAN: Thank you.

18 MR. McNAIR: If I can reiterate one  
19 point, if it pleases this Board.

20 I guess I find it disconcerting that we  
21 bought a piece of land that was zoned Industrial,  
22 M-1. We improve it, and that somehow is the position  
23 that the Planning Commission is taking on prohibiting  
24 us from doing what we were doing to begin with.

1                   Now, under Chapter 1131 of the Gahanna  
2 City Code 1131.01, in accordance with the Ohio  
3 Revised Code, the Planning Commission could, and the  
4 Board, in appropriate cases and subject to  
5 appropriate conditions and safeguards, vary the  
6 strict application of the terms of the zoning  
7 ordinance, in harmony with its general purpose and  
8 intent, in accordance with the specific rules  
9 contained therein.

10                   And I would propose that that is the way  
11 that this Board grants the variance on a  
12 going-forward basis to allow us to do what we have  
13 been doing and continue to do it.

14                   MS. ROSAN: Mr. President, if I might,  
15 and I won't engage in a tit for tat. If you and the  
16 Board members would indulge me for a brief rebuttal,  
17 before you is not a variance of the OCT District.  
18 The applicant did not apply to the Planning  
19 Commission for a variance of the zoning requirements  
20 of the OCT District. The appellant also did not  
21 appeal the denial of the conditional use.

22                   I would respectfully submit it is  
23 improper for the Board to now consider a completely  
24 new application, as the appellant suggests, to vary

1 the requirements of the OCT District and allow a  
2 permanent conditional use. That is well beyond what  
3 is before the Board today.

4 What is before the Board today is whether  
5 or not to allow stockpiling above 25 feet, knowing  
6 that the conditional use will expire in  
7 February 2018, and without a new conditional use or a  
8 variance of the OCT District, which, of course, would  
9 be a subsequent application before the Planning  
10 Commission, the variance is immaterial.

11 Thank you.

12 CHAIR JENSEN: I guess I am kind of  
13 confused. So what we are talking about here today is  
14 the application to approve up to 25-foot, and then in  
15 February of 2018 they're going to have to come back  
16 to the Planning Commission for approval. Are we  
17 talking about a permanent or a temporary 10-foot up  
18 to 25-foot?

19 The appeal here is only saying -- it  
20 seems like we're going a lot of different directions.  
21 What I am reading is to allow stockpiling to 25-foot  
22 in height. I want to get that clarified.

23 MS. ROSAN: Unfortunately, the appellant  
24 did not appeal the denial of the conditional use.

1 Think of it this way. You know how you have to have  
2 a foundation before you can build a house. The  
3 appellant is asking to build a house but the  
4 foundation expires in February of 2018. You can't  
5 stockpile without a conditional use. The conditional  
6 use has to come first.

7 CHAIR JENSEN: So if we approve the  
8 25-foot appeal, then it's only temporary to  
9 February 2018.

10 MS. ROSAN: That's correct. For purposes  
11 of the record, my request is that you make it -- if  
12 you decide to merit with the appeal, that you make it  
13 clear that your modification is that it will be  
14 approved but to expire in February 2018 along with  
15 the current conditional use.

16 CHAIR JENSEN: Does anyone else have any  
17 further questions?

18 MEMBER PACK: Mr. Blackford, are you able  
19 to address the access issue to the property from the  
20 City's standpoint? I read -- it was something online  
21 that I read regarding the Brownfield Loan  
22 application. And this was dated, I believe, in 2012  
23 or 2011, that the City was going to provide funds to  
24 improve public access to the site, but that was five

1 years ago, if I'm not mistaken. I can find the  
2 article. I have a lot of paperwork, a lot of paper  
3 in front of me.

4 Has the City done anything to make up  
5 what they said they were going to do with regards to  
6 access to the property?

7 MR. BLACKFORD: It's difficult for me to  
8 speak too much about what may have transpired prior  
9 to 2014 when I came on with the City. When I came on  
10 with the City in 2014, this is the third set of  
11 applications for this request, and access has come up  
12 at least two of the three times at public hearing. I  
13 believe the last conditional use approval talked  
14 about access from Enterprise.

15 That was an area of concern in the 2014  
16 set of applications. I believe they were allowed to  
17 access from Enterprise. The staff has given the  
18 option of requiring signage if we receive complaints  
19 from neighbors. So there is access from a public  
20 road, Enterprise. I know as far as --

21 MEMBER PACK: But that is the access over  
22 the railroad tracks that the City of Gahanna owns,  
23 correct?

24 MR. BLACKFORD: Yes, correct. So they're

1 not prohibited from accessing through Enterprise.

2 They're also able to access through Bricklawn.

3 I did have conversations with the City  
4 engineer this week regarding the status of us, the  
5 City, acquiring the necessary deeds and information  
6 and sign-off of the various parties in order to  
7 provide, have access. And, as you can tell, I'm not  
8 the city engineer. In his words, we're 99 percent to  
9 securing all the documents we need to make Bricklawn  
10 a city road.

11 As far as what happened in 2011, 2012,  
12 what discussions, I can tell you that I believe in  
13 our capital means assessment, the extension of  
14 Leavitt Service is identified as a potential  
15 improvement, but I believe it's a category 3. So, I  
16 mean, it is not an overly high priority for the City  
17 right now. Obviously, there's a lot of meetings.

18 MEMBER PACK: I appreciate you trying to  
19 answer the question. Thank you very much.

20 CHAIR JENSEN: At this time we will close  
21 the open session and go to deliberations.

22 - - -

23 DELIBERATION

24 CHAIR JENSEN: Is there any discussion?

1                   MEMBER EISEN: It's coincidentally six  
2 months to the day until the February 10, 2018, I  
3 guess, deadline and reapplication date of the  
4 conditional use, and I believe that seeing an overall  
5 plan of what the future looks like and what is wanted  
6 seems to be, for me, the best course of action rather  
7 than maybe piecemeal approvals and decisions by this  
8 group.

9                   So that's my thought process right now,  
10 and I will end my comments at that point and pass it  
11 on to the next Board member.

12                   MEMBER ADJOUA: All right. Thank you,  
13 Mr. Eisen.

14                   I concur with Mr. Eisen's point in regard  
15 to I think I would be concerned if we approved this  
16 variance we could potentially muddy the waters when  
17 we get back to February 10, 2018.

18                   I do want to applaud the appellants for  
19 improving the property. I think you will continue to  
20 be an asset in paying taxes because when I see my tax  
21 bill, I feel like I'm the only one with taxes  
22 sometimes.

23                   But I just think it's going to be better  
24 back in front of the Planning Commission to put your

1 plan forward to make sure it's all done formally  
2 instead of us having it just for six months, and,  
3 hopefully, after six months -- I'm a small business  
4 owner, too. It's not going to be so detrimental that  
5 you can't work for that period of time.

6 CHAIR JENSEN: Well, seems to me based  
7 upon -- I was down in the neighborhood down there  
8 over the weekend myself on Saturday, and I said, I  
9 don't think you can get there from here. There's no  
10 direct route in there.

11 But as I read the request and we're  
12 seeing 25-foot, whether it ends in February or never  
13 ends, I don't see where that's a big issue. To me  
14 that's the issue that we're talking about, just the  
15 25-foot. Whether we extend it or whether it's  
16 discussed in February for permanent, it's an  
17 industrial site. It's a commercial site that nobody,  
18 as I said, sees unless they're flying over the top of  
19 it. I think that there is some merit in the appeal.

20 Mr. Pack.

21 MEMBER PACK: You know, this goes back  
22 many, many, many years. And just to speak impromptu  
23 here, many years, many decades ago, the City of  
24 Gahanna had a serious, serious problem with the area,

1 the Claycraft manufacturing area. It was from  
2 someone who actually saw going back almost four  
3 decades, it was a blight on this area, and I'm  
4 referring to the landfill. It goes back to the  
5 1930s.

6 And the City was under a lot of pressure  
7 from the State, maybe even federal EPA people, fines  
8 of hundreds of thousands of dollars if not maybe  
9 millions and the City had to do something. They had  
10 to get the landfill cleaned up. And it took a lot of  
11 thinking out of the box, people like Barry Fromm,  
12 Value Recovery Group, the Geigers.

13 And the City was all too happy to say,  
14 You know, if you could buy the property and do what  
15 you can with it, we are going to help you get loans.  
16 We are going to help you get grants.

17 I read the document from the Brownfield  
18 Loan Fund Program where actually Sadica White and  
19 another staff member were talking about the sweat  
20 equity that Mr. Geiger has put into this property to  
21 get the approval for the Brownfield Loan Fund. So I  
22 want to recognize the efforts that they put forward.

23 The other is the access. In the same  
24 application for the loan, the City said, Hey, we are

1 going to have the Leavitt and -- not the Enterprise  
2 Drive. What was the other name of the street?  
3 Bricklawn, we are going to fix that with the money,  
4 and yet, it hasn't been done. That was -- I believe  
5 this goes back to the December 12, 2013, meeting.

6 Mr. Jones was there. It's not his fault.  
7 The city engineer was involved, but these people have  
8 been dealing with a lack of public access to their  
9 property for quite a while. That was a little bit of  
10 a covenant on the City's standpoint, on their part.  
11 They were going to fix the public access, and they're  
12 still trying to fix it, from what I'm gathering, and  
13 I wanted to make note of that.

14 As far as development right now, as I  
15 read the code, they're in development no man's land.  
16 The Planning Commission wanted a final development  
17 plan, but 1159.03, paragraph (q), says you can't put  
18 buildings, essentially, in a landfill, so if you  
19 can't put buildings in the landfill, then how can you  
20 get a final development plan?

21 So they wanted a final development plan,  
22 but right now without the NFA they can't get a final  
23 development plan, as I read the code, the preclusions  
24 in 1159. So they're, in my opinion, in development

1 no man's land. They're doing what they can. They're  
2 making the best out of their property, making money,  
3 paying taxes, employing people.

4 I was over at the property, as I  
5 mentioned earlier. I don't see any problems with  
6 respect to, as the chairman said, with regards to  
7 height, and reading the code, I think 25 feet would  
8 be fine.

9 Now, the issue of the conditional use,  
10 going in here tonight as I was thinking about the  
11 conditional use, I have to agree with Ms. Rosan, that  
12 that variance is part of the conditional use. I wish  
13 I could approve it based on what these folks have  
14 done permanently, but I don't think legally you can  
15 do that. The variance I think is part of the  
16 conditional use.

17 So I would be in favor of voting for a  
18 variance as part of the conditional use and it would  
19 expire February 10, 2018. I wish legally you could  
20 go beyond that, but I think you have to get over the  
21 hurdle of the conditional use for the variance to be  
22 part of that.

23 You know, it troubled me a little bit  
24 reading the minutes of the Planning Commission, I

1 don't think anybody quoted any code in there. And I  
2 think when you go down the road of not citing code in  
3 your judgments and decisions, you start going down  
4 the road of arbitrary and capricious, and I'm a  
5 little bit concerned. That gives me some concern.

6 With respect to what I think, would the  
7 variance be appropriate? Yes. And reciting 1131.04,  
8 No. 8, Are there special circumstances or conditions?  
9 Yes. These folks are dealing with a landfill.  
10 They're trying to make the best of it. They're  
11 trying to have a viable business. It is their land.  
12 There were no preconditions as to what they have to  
13 do with this land once they get the NFA.

14 Second, the granting of the variance is  
15 necessary for the preservation of enjoyment and  
16 substantial property rights, I thoroughly agree with  
17 that.

18 And paragraph (c) the granting of the  
19 application will not materially affect adversely the  
20 health or safety of persons residing. I was over  
21 there. I saw the site, the piles. It's well  
22 secured. I don't think it presents a safety issue.

23 So under 1131.04 for the variance that  
24 would be concurrent with the conditional use, I think

1 they qualify under 1131.04, and I will be voting for  
2 it.

3 I would like to put a motion before us  
4 before we vote, that the variance be approved  
5 concurrent with the conditional use that will expire  
6 February 10, 2018, along with what Ms. Geiger said  
7 about the shielding of the trees, I believe on the  
8 north side.

9 And I was looking at that, and I was kind  
10 of concerned that the contiguous property owners may  
11 not have concern now. They may have in the future,  
12 but the shielding would help that in that regard.

13 So I'm hoping that if it is approved  
14 tonight from the reasons of my standpoint, they can  
15 come back in February and they get the NFA, and if  
16 they need some permanent structures then, they can  
17 work with the Planning Commission and put forth a  
18 final development plan.

19 Thank you.

20 CHAIR JENSEN: Ms. Mecozzi.

21 MEMBER MECOZZI: I'll keep my comments to  
22 a minimum because many of the things that are going  
23 into the decision that I want to make tonight have  
24 been stated here in the final points of deliberation.

1 I do believe that conditional use is a key component  
2 to what is being requested here, so I am going to --  
3 I would support the variance.

4 I will add 1131.04 -- I was disappointed  
5 that the Planning Commission didn't provide the code  
6 justification for denying the variance. When I look  
7 at the provisions of 1131.04, as well (a), (b), and  
8 (c), I believe those conditions do apply and have  
9 been met in this case.

10 Again, without the approval through a  
11 conditional use to even store materials, it becomes  
12 irrelevant. I agree the granting of the variance  
13 would have to follow the approval period of the  
14 conditional use. So I would support the variance  
15 provided that it was conditioned on that time frame  
16 to coincide with the approval of the conditional use  
17 that allows the storage of the materials.

18 And I appreciated the information to  
19 understand what the 25-foot relevance was to the  
20 applicant. To understand that the stackers and the  
21 way the materials are brought on and taken off I  
22 think is a key piece to understanding why you needed  
23 that variance. I appreciate that explanation tonight  
24 as well.

1           I didn't go on the site, but I did drive  
2 it from every possible angle using the great map that  
3 was provided to us, and I do not believe that the  
4 additional height creates a burden for a neighboring  
5 property or area.

6           That concludes my comment.

7           CHAIR JENSEN: Anything further from  
8 other members?

9           MEMBER PACK: Do you have any comments?

10          CHAIR JENSEN: I had a comment, brief.

11          Do we have a motion from anybody on how  
12 to proceed?

13          MEMBER PACK: Mr. Chairman, I would like  
14 to make a motion that we grant the variance  
15 concurrent with the current operable conditional use  
16 for the property. Also as a condition of approval of  
17 a variance, the screening on the north side,  
18 Ms. Geiger, Geiger-Steiner, has recanted for us this  
19 evening that if the variance would be approved, that  
20 they would do this, and the trees would not be here  
21 until November, so that the trees have to be planted  
22 by the end of the year.

23          And I guess I need to go back and state  
24 this a little clearer, that we grant the variance

1 concurrent with the current conditional use, along  
2 with natural screening on the north side of the  
3 property, spaced every three feet, screening to be  
4 established by the end of 2017.

5 MEMBER ADJOUA: Point of order, is this  
6 going to be -- is your proposed motion going to be  
7 conditional on being in effect only to February 10,  
8 2018?

9 MEMBER PACK: Yes, because the  
10 conditional use expires February 10, 2018.

11 MEMBER EISEN: Is there any penalty or  
12 other thing that might happen if those trees aren't  
13 planted by December 31 of this year?

14 MEMBER PACK: The zoning administrator  
15 would probably come out and issue a citation, but I  
16 will take -- that would be up to Zoning and the  
17 Geigers to work it out. Maybe there would be a  
18 situation beyond their control they couldn't get the  
19 trees in in time. I don't know.

20 MEMBER ADJOUA: Weather.

21 MEMBER PACK: Weather, but at least it  
22 would be in the grant, and then they can get with the  
23 zoning enforcement people.

24 CHAIR JENSEN: Do we have a second? Does

1 everyone understand the motion?

2 MEMBER MECOZZI: Second.

3 MEMBER ADJOUA: Would the motion be read  
4 back, please?

5 MS. BANNING: I couldn't understand part  
6 of the motion.

7 CHAIR JENSEN: Can you restate?

8 MS. BANNING: I think in part of  
9 discussion, I know you've had discussion on it but  
10 can we restate the motion?

11 MEMBER PACK: Okay.

12 MR. EWALD: Mr. Pack, the court reporter  
13 could read back what you stated for the record.

14 (Record read.)

15 MEMBER ADJOUA: I think we need to put  
16 the date.

17 MEMBER MECOZZI: Concurrent with the  
18 conditional use.

19 MEMBER ADJOUA: But the dates.

20 MEMBER PACK: Can you live with the  
21 screening on that?

22 MS. GEIGER-STEINER: Oh, yes, we're doing  
23 that.

24 MEMBER PACK: Then the language is what

1 I'm trying to get across.

2 MR. EWALD: Do we have a second,  
3 Mr. Chair?

4 CHAIR JENSEN: Do I have a second?

5 MEMBER MECOZZI: I second the motion.

6 MR. EWALD: Point of order, Mr. Chair.  
7 Since the motion has been proffered in the manner it  
8 has, under 147-05 it would serve as a modification,  
9 not an affirmation or rejection of the order from  
10 below. It would be a modification of the order by  
11 the Planning Commission. I want to make sure that's  
12 clearly under 147-05(c).

13 MEMBER ADJOUA: Point of order, are we  
14 clear this variance, proposed variance, motion is  
15 only in effect until February 10, 2018?

16 MR. EWALD: Based on the document we  
17 pulled tonight, it's a two-year window beginning in  
18 February of 2016.

19 MEMBER EISEN: That's the conditional  
20 use. We are talking about this motion.

21 MEMBER ADJOUA: This variance, how long  
22 is this variance?

23 MR. EWALD: It runs concurrently with the  
24 underlying conditional use, which will expire in

1 February of 2018, February 10.

2 MEMBER EISEN: We're not voting on two  
3 years. We're voting on six months.

4 MEMBER PACK: We also have the option --  
5 point of order, if I may -- to start the clock again  
6 on the conditional use and variance today. Wouldn't  
7 we be able to?

8 MR. EWALD: I don't believe that issue is  
9 before the panel.

10 MEMBER PACK: Okay.

11 MR. EWALD: As the applicant presented  
12 the -- I'm sorry, the appellant in this case  
13 proffered their brief, it allows for a permanent  
14 variance. The commission tonight is seeking option  
15 (c), which is a modification of that appeal, and it  
16 would modify the denial by the Planning Commission of  
17 the variance.

18 CHAIR JENSEN: So, therefore, they would  
19 appear again in front of the Planning Commission  
20 going through the whole process again.

21 MR. EWALD: Assuming the motion passes  
22 and runs concurrent with the underlying conditional  
23 use, that conditional use and variance, if approved,  
24 would expire in February of next year, and they would

1 have to go back to the Planning Commission for  
2 renewal.

3 MEMBER EISEN: I want to make sure,  
4 Ms. Rosan, is there anything we have talked about  
5 that you think we didn't understand from what your  
6 position was or anything we are saying here that  
7 seems out of order?

8 MS. ROSAN: Thank you, Mr. Eisen. I  
9 think this discussion is well within what we talked  
10 about. The only thing, being a lawyer, that I think  
11 would make it crystal clear is if Mr. Pack would  
12 restate his motion to include the termination date on  
13 the variance rather than just saying "concurrently,"  
14 so that should appellant elect to appeal, any review  
15 in court clearly understands the motion itself,  
16 rather than your discussion, exactly what your intent  
17 was this evening.

18 MEMBER EISEN: Thank you very much.

19 MR. McNAIR: Chairperson.

20 CHAIR JENSEN: Yes.

21 MR. McNAIR: Could the motion also if a  
22 conditional use is granted, we don't have to come  
23 back and try to ask for another two-year variance, a  
24 four-year variance, a permanent variance, if it runs

1 with the conditional use and we come back in February  
2 and it's granted again, it would seem like the Board  
3 would be giving the direction to the Planning  
4 Commission on whether or not to grant it. We  
5 wouldn't have to come back again and file another  
6 application for a variance.

7 CHAIR JENSEN: You're saying 25-foot  
8 permanent and then conditional use would be  
9 reconsidered in February.

10 MR. McNAIR: Right. We are either going  
11 to get the conditional use again or not. Hopefully,  
12 we will, and then that precludes us from having to  
13 come back again. It also precludes the Planning  
14 Commission from having to decide the 25-foot issue  
15 that this Board clearly understands.

16 MEMBER ADJOUA: Point of order, there's a  
17 motion on the floor and properly seconded. I ask a  
18 vote be taken on the motion.

19 CHAIR JENSEN: I'm not sure I understand  
20 this motion. I'm putting -- I want to make sure we  
21 understand the motion.

22 MEMBER PACK: Well, the word  
23 "concurrent," I choose that the variance would expire  
24 along with the conditional use because the variance

1 is dovetailed into the conditional use. You can't  
2 have a variance without the conditional use.

3 MEMBER ADJOUA: Expires February 10,  
4 2018.

5 MEMBER PACK: I understand Mr. McNair's  
6 issue and would hope that -- I mean, unless Ms. Rosan  
7 can think of a better way -- that this variance be  
8 part of that conditional use, so that I see his point  
9 you would be arguing two different issues again. I  
10 mean, legally do you know how we phrase it if we want  
11 to vote on the variance as part of this conditional  
12 use?

13 MS. ROSAN: Yes. I think one of the  
14 things I argued to the Board earlier is that one of  
15 the things that the Planning Commission considers  
16 when permitting stockpiling as a conditional use is  
17 whether or not that stockpiling is compliant with  
18 1155.

19 And the reason I asked the Board to  
20 consider terminating the variance on February 10,  
21 2018, it gives the Commission the ability when  
22 considering the conditional use in February of next  
23 year to then also revisit the provisions of 1155,  
24 screening, limitations, all of those things, and make

1 a determination as to whether or not a variance is  
2 necessary.

3 MEMBER ADJOUA: Point of order,  
4 Mr. Chairman. There's a motion on the floor. I ask  
5 a vote be taken.

6 MS. BANNING: Mr. Chairman, may I ask  
7 Shane a question?

8 So would we change the motion then to  
9 where it's a modification, not granting the variance?

10 MR. EWALD: If a motion comes from the  
11 floor, then they can entertain that motion, but right  
12 now a call to order has been made.

13 MS. BANNING: Okay.

14 CHAIR JENSEN: Roll call.

15 MS. BANNING: Pack.

16 MEMBER PACK: Yes.

17 MS. BANNING: Mecozzi.

18 MEMBER MECOZZI: Yes.

19 MS. BANNING: Adjoua.

20 MEMBER ADJOUA: Yes.

21 MS. BANNING: Eisen.

22 MEMBER EISEN: Yes.

23 MS. BANNING: Jensen.

24 CHAIR JENSEN: Yes.

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(Motion passes.)

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ADJOURNMENT

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

CHAIR JENSEN: Is there a second?

MEMBER PACK: I second.

CHAIR JENSEN: Okay. Meeting adjourned.

(The meeting adjourned at 7:35 p.m.)

- - -

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, August 10, 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-84387)

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