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BEFORE THE BOARD OF ZONING AND BUILDING APPEALS

- - -

IN RE: BZA-0001-2003 :

- - -

PROCEEDINGS

in the above-captioned matter, before the City of Gahanna Board of Zoning and Building Appeals, taken before Jennifer L. Parish, a Registered Professional Reporter and Notary Public in and for the State of Ohio, at the Gahanna City Hall, 200 South Hamilton Road, Gahanna, Ohio, commencing on Thursday, January 16, 2003 at 7:00 p.m.

- - -

BOARD MEMBERS

- Timothy W. Pack, Chairman
- Robert D. Fischer
- Michael F. Schirtzinger
- Isobel L. Sherwood, Clerk
- Thomas Weber, City Attorney

- - -



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APPEARANCES

JOHN P. MAZZA, ESQUIRE

HARRIS, TURANO & MAZZA

941 Chatham Lane

Suite 201

Columbus, Ohio 43221

On behalf of the Worlins

- - -

P R O C E E D I N G S

1
2 CHAIRMAN PACK: Good evening. My name is
3 Timothy Pack, and I am the chairman of the City of
4 Gahanna Board of Building and Zoning Appeals. This
5 proceeding and these proceedings is to hear Docket No.
6 BZA-0001-2003, the appeal of James and Janet Worlin,
7 681 Tim Tam Avenue, Gahanna, Ohio, a Denial of
8 Variance Application V-0031-2002 by the City of
9 Gahanna Planning Commission.

10 This hearing will be conducted in accordance
11 with the Gahanna City Charter, Chapter 2506 of the
12 Ohio Revised Code, the City of Gahanna Codified
13 Ordinances, and this Board's rules of procedure. They
14 are:

15 The party to this appeal, in this case the
16 Worlins, or their representative, will be allowed to
17 present their arguments orally and/or in writing, also
18 present witnesses in support of this appeal, as well
19 as cross-examine witnesses not in support of this
20 appeal.

21 Opponents to this appeal will be allowed to
22 present their arguments orally and/or in writing,
23 present witnesses, as well as cross-examine witnesses
24 in support of the appeal.

25 Any exhibits wishing to be placed into

1 evidence will be accepted or rejected by a majority
2 vote of this board. According to the Board's rules of
3 procedure the applicant -- or, excuse me, the
4 appellant or their representative will have ten
5 minutes for their presentation. Opponents will then
6 have ten minutes for their presentation. Each side
7 will then be able to ask questions of the other side
8 for five minutes each. And that's not five minutes
9 per person, but five minutes as a group. These time
10 limits may be extended by a majority vote of the
11 Board. After this, board members may ask questions of
12 the parties, witnesses, or City staff members.

13 All witnesses planning on giving testimony
14 will be sworn in by the clerk. Also, witnesses,
15 please give your name and address for the record when
16 it's your time to speak.

17 This board will rule on any objections,
18 requested exceptions, or procedural matters by a
19 majority vote.

20 A stenographer is recording this proceeding
21 at the expense of the City.

22 Although, what I have read may sound
23 complicated, this board wants our proceedings to be
24 fair, also in the spirit of community service. Any
25 questions regarding our procedure will be gladly

1 answered.

2 I might also take this time to ask for
3 anybody that has cell phones that you turn them off at
4 this time.

5 Now, if there is anyone here planning to give
6 testimony, please stand so that the clerk may
7 administer the oath.

8 THE CLERK: City attorney.

9 CHAIRMAN PACK: Excuse me, city attorney.

10 MR. WEBER: Anybody who is going to be
11 testifying or making statements or who may be making
12 statements.

13 Do you promise or affirm that the evidence
14 that you are about to give today is the truth and the
15 whole truth, so help you God?

16 (All answer in the affirmative.)

17 MR. WEBER: Duly sworn.

18 CHAIRMAN PACK: Before we get started, I'd
19 like to ask the clerk if there was some additional
20 information that was located in front of us.

21 THE CLERK: Yes. Mr. Worlin had submitted a
22 copy today of an article that was in the Rocky Fork
23 Enterprise and asked that that be distributed to you
24 and also asked that the December 18th Planning
25 Commission minutes and the Committee of the Whole

1 minutes from last Monday evening be distributed, and
2 those were put in front of you just prior to the
3 meeting.

4 CHAIRMAN PACK: Okay. The Chairman would
5 entertain a motion that these papers and exhibits be
6 entered in as evidence and part of the record.

7 MR. SCHIRTZINGER: I'll make a motion.

8 MR. FISCHER: I'll second it.

9 CHAIRMAN PACK: Any discussion?

10 (No audible response.)

11 CHAIRMAN PACK: Will the clerk please call
12 the roll.

13 THE CLERK: Schirtzinger.

14 MR. SCHIRTZINGER: Yes.

15 THE CLERK: Fischer.

16 MR. FISCHER: Yes.

17 THE CLERK: Pack.

18 CHAIRMAN PACK: Yes.

19 Now, that being complete, if you folks would
20 like to begin.

21 MR. MAZZA: Yeah. Thank you, gentlemen.
22 Initially, I'm not going to make an opening statement
23 or anything. I just want to --

24 THE CLERK: Name and address for the record.

25 MR. MAZZA: I'm sorry. John Mazza with the

1 firm of Harris, Turano & Mazza. I'm representing the
2 Worlins in their ongoing odyssey here through the
3 zoning requirements. And initially we would like to
4 just begin with some questions from Mr. -- to be
5 answered by Mr. Worlin, after which I'm going to make
6 a statement.

7 MR. WEBER: That's fine.

8 CHAIRMAN PACK: Okay.

9 MR. MAZZA: Can he be heard from there?

10 CHAIRMAN PACK: Actually, I'm somewhat having
11 a problem hearing you. Perhaps if you could speak a
12 little closer to that.

13 MR. MAZZA: Is this better? Yeah, I didn't
14 have it high enough. Okay.

15 Jim --

16 MR. WEBER: Why don't you go up there too,
17 Jim. That would be easier, maybe, so we could all
18 hear you. Share the mic.

19 CHAIRMAN PACK: And just to clarify, because
20 I didn't quite exactly hear your words, if you would
21 repeat it just briefly.

22 MR. MAZZA: Sure. In lieu of beginning with
23 an opening statement, we're just going to have some
24 testimony from Mr. Worlin. I believe that we've
25 submitted a rather extensive packet. I certainly am

1 not going to go over each and every thing that's in
2 the packet. But I believe there's some salient
3 details that we need to have on this record and,
4 again, before this board in the way of testimony.
5 Then I would make references to what constitutes the
6 record points of emphasis.

7 So with your leave, I'll begin with questions
8 to Mr. Worlin.

9 CHAIRMAN PACK: Okay. With one
10 understanding, it would be we'll start the time, and
11 then if you need more time, then we can extend it
12 through the Board, staying with our rules of
13 procedure.

14 MR. MAZZA: Let the little hand get on the 12
15 here.

16 CHAIRMAN PACK: Okay.

17 MR. MAZZA: All right.

18 DIRECT EXAMINATION

19 BY MR. MAZZA:

20 Q. Jim, you've had several years go by that you
21 have been trying to obtain this variance. But I want
22 to take you back to when you were purchasing this
23 house and to briefly give a -- some detail to the
24 Board as to the efforts that you went through in order
25 to select this home and some of the characteristics

1 you were looking for and what you did to ensure that
2 you could have those characteristics.

3 A. Okay. Jim Worlin, 681 Tim Tam.

4 We lived in another house in Gahanna; and as
5 we started to look for a house, one of our primary
6 things was to have a full-size fenced-in backyard.
7 That's one of the things that attracted us to Rose
8 Run. We saw a lot of fences already there.

9 Prior to even putting a contract on the
10 property, we had our attorney review both the plat and
11 the deed restrictions and also the City Code on fences
12 and yard use. And based on his recommendation and
13 assurances from both the buying and selling agent that
14 were very familiar with the area, we proceeded with
15 putting a contract onto the property and purchased it.
16 But that's how serious we were in having a
17 fenced-in -- full-yard fenced-in backyard.

18 When we went, we had significant plans for
19 what we wanted to develop back there. My wife -- we
20 had a full fence in our last piece of property, and my
21 wife has always had fences; and that was really one of
22 her No. 1 priorities.

23 Q. Jim, what are the difficulties you're now
24 encountering with respect to limitations on the use of
25 your property?

1 A. There's a couple of things. First, the fence
2 that we were allowed to put in by the current code
3 cuts diagonally across at about the middle of our
4 backyard. In fact, two-thirds of our backyard is
5 outside of the fence.

6 My wife has a lot of landscaping, and we have
7 the picture books if anyone cares to see. But with
8 the landscaping she likes to work out there. It's a
9 lot of efforts working in the flowers. She likes to
10 take her dogs out with her. Without having the fence
11 around the rest of our yard, that's not what we can do
12 And that -- again, that was one of our initial goals.

13 The fence really doesn't have enough usable
14 property within the area, that we want to do some more
15 landscaping behind the garage. And, actually,
16 literally the fence now goes about 12 feet from the
17 end of our deck across the yard. So it would really
18 restrict -- restricts us from developing any more of
19 our yard landscaping and putting in trees, because
20 there would literally be no room for the dogs to
21 run.

22 Q. And are all these things that you mentioned
23 things that you intended to do when you purchased your
24 lot?

25 A. Yes. That was really our plan. We had --

1 like I said, we had a similar backyard. We did a lot
2 of landscaping in it. We really wanted to use it from
3 that perspective.

4 One hardship that I did miss is that it would
5 also have the -- the pit bull in our neighborhood,
6 that has been an issue ongoing and, in fact, has
7 actually chased my wife into our house; and so from
8 that concern she now really won't even go out in the
9 backyard outside of the fence without me being there
10 to protect her from the pit bull.

11 So that's really another issue.

12 Q. Jim, when we were here before the Planning
13 Commission, there were some statements made about --
14 by Mr. Peck, I believe it was, that indicated a number
15 of variances that had been denied in Rose Run.

16 Were any of those variances that were denied
17 other than you?

18 A. No. There has not been any denial for
19 specifically a fence constructed in a no-build zone.
20 All other ones have been approved by either the
21 Planning Commission or its predecesing groups.

22 Q. And to the last count how many variances have
23 been granted for construction of fences in no-build
24 zones?

25 A. Through the assistance of the City, we've

1 researched and have documentation on 26 other lots
2 within Rose Run that have been granted variances for a
3 fence constructed in a no-build zone. Also through
4 the City we have determined that there's 11 more
5 fences that at some point were issued a permit.
6 Either the fence was constructed not in compliance
7 with the permit or the issue -- a permit was issued to
8 allow a fence in a no-build zone. Again, that's 11
9 more. So a total of 36 fences.

10 MR. FISCHER: Do we have another microphone?

11 THE CLERK: No. He's just standing too close
12 to it.

13 MR. FISCHER: Is that what it is?

14 THE WITNESS: I'm sorry.

15 BY MR. MAZZA:

16 Q. Jim, if you had to approximate, how many man
17 hours have you spent on -- just hours have you spent
18 in attempting to gain the legal capacity to build this
19 fence?

20 A. Well, this is the sixth time in front of a
21 committee from the City. Most of those were two
22 meeting nights. Preparations for those meetings. We
23 have hundreds of e-mails with city officials going all
24 the way back to Mayor McGregor.

25 I would have to say that easily, you know,

1 500 or 1,000 hours. I mean, it's really been a
2 significant effort that we've worked on this.

3 MR. MAZZA: I would like the Board to take
4 notice of several things that are part of the record.
5 One is a -- the memorialization of the testimony
6 provided by Mr. Robert Wallace of 709 Tim Tam before
7 the Planning Commission. Mr. Wallace is a neighbor,
8 abuts the no-build zone; and Mr. Wallace confirms Mr.
9 Worlin's belief that there was a tacit, at least,
10 belief that fences could be built in the no-build zone
11 when he acquired his property, which was actually
12 before when Mr. Worlin acquired his. And, as he
13 indicates, he has seen the wooden fence that exists.
14 He knows what Mr. Worlin would intend to build. He
15 finds no objection to that for any aesthetic or any
16 other reason. And he supports the application as a
17 neighbor.

18 There are other statements of support that
19 were contained in the record which we would, again,
20 ask this board to affirm.

21 What we have here is a situation where the
22 Planning Commission did not believe that there was
23 sufficient evidence to indicate a substantial
24 hardship. And that has to be looked at in the context
25 of other variances which have been approved in this

1 area.

2 Some of these variances, again as outlined in
3 the materials we submitted, have been because somebody
4 had a dog that had a weak bladder. Somebody bought a
5 dog after they had purchased a property and wanted to
6 let that dog run, and they were granted a variance.
7 Somebody bought a house along Route 62 and thought it
8 would be safer to have a fence along Route 62, and
9 they were granted this variance. Clearly they
10 purchased the house with the full knowledge that Route
11 62 was there and that it would -- that they would
12 probably have to buy a fence and build a fence in this
13 area.

14 These kinds of reasons pail in comparison to
15 the money outlay, the dedication, the research that
16 the Worlins put into buying this property.

17 Planning Commission's opinion, they were
18 sympathetic to Mr. Worlin's expenditure in going
19 through the efforts he did by checking with his
20 realtors, the seller realtor, checking through an
21 attorney before he purchased his property.

22 So I believe that he has demonstrated -- the
23 Worlins have demonstrated a substantial hardship when
24 looked at in comparison with the other alleged
25 hardships that allowed for variances to be granted in

1 this area.

2 The only Rose Run residents by record to have
3 been denied a variance in -- by the Planning
4 Commission have been the Worlins, as you heard. There
5 are a total of at least 37 locations where either
6 variances have been granted or the permits have been
7 granted for the building of fences in the no-build
8 zone.

9 We have to look at that because I believe
10 it's part of what the -- this board, as any appellate
11 board, is charged with, examining what the legislation
12 intended to enact. The legislation that existed in
13 1999 when they first came before the Planning
14 Commission and then this board did not include fences
15 in the definition. And I think a thorough review of
16 the materials that we've provided will show that an
17 injustice was committed both by the Planning
18 Commission and by this board in 1999 when they
19 interpreted wrongfully the then ordinance in
20 interpreting the word "structure" to include fences
21 when clearly it did not.

22 I think the proof is in the pudding where
23 later on, based on reasons only known to those persons
24 who promulgated the change in the ordinance, fences
25 was specifically added. I think that demonstrates a

1 recognition that fences were not included in the
2 original definition or at least there was ambiguity
3 that was found not to be prudent to continue to have
4 it.

5 CHAIRMAN PACK: Mr. Mazza, your ten minutes
6 is up.

7 MR. MAZZA: I just need about two more
8 minutes.

9 CHAIRMAN PACK: Sure. I mean, two or five
10 minutes. Or we can --

11 MR. WEBER: Let's give him five minutes.

12 MR. MAZZA: Thank you very much, sir.

13 CHAIRMAN PACK: I need to pass a motion in
14 front of the Board.

15 MR. MAZZA: I would move to -- for an
16 additional five minutes to complete my statement.

17 MR. SCHIRTZINGER: I'll move to let him have
18 the additional five minutes.

19 MR. FISCHER: I'll second.

20 CHAIRMAN PACK: Any discussion?

21 (No audible response.)

22 CHAIRMAN PACK: Clerk, would you please call
23 the roll.

24 THE CLERK: Schirtzinger.

25 MR. SCHIRTZINGER: Yes.

1 THE CLERK: Fischer.

2 MR. FISCHER: Yes.

3 THE CLERK: Pack.

4 MR. PACK: Yes.

5 MR. MAZZA: Thank you.

6 The Planning Commission seems to have
7 recently tried to make this a political football; and
8 that's unfortunate, because I don't think the Planning
9 Commission ought to engage in public statements to the
10 media about what it has done or what City Council
11 intends to do. But I believe it is common knowledge
12 that City Council has previously expressed an
13 indication that it wants to pass an ordinance to
14 remove this ambiguity and which would have the effect
15 of allowing for this fence to be built.

16 That is not the sole purpose of the proposed
17 ordinance, but it would have that effect. However,
18 because of this political football, I believe that
19 it's safe to say that there are some council people
20 now who are reluctant to go forward with the passage
21 of this ordinance, especially in light of the Planning
22 Commission which rejected uncharacteristically the
23 recommendations of the City Council.

24 This all relates to one thing, gentlemen.
25 This is probably, I can say with some certainty, the

1 only application for a variance where there were some
2 neighbors who were disgruntled and objected to it. We
3 all know that the objections of neighbors in the face
4 of an otherwise appropriate variance request and a
5 variance request consistent with variance requests
6 made by others is not a valid reason to reject the
7 variance, but it appears to be the sole reason here.

8 City Council is on the right road, but it
9 might be deterred or it might not take place. I
10 believe this board in enforcing the charter of this
11 city to obtain a just effect needs to look at what has
12 happened here, and it's nothing short of one very
13 simple thing. There has been selective enforcement
14 which has occurred to the prejudice of my clients.
15 I'm not familiar with whether any of you are
16 attorneys, but I don't believe I have seen in my own
17 practice a more vivid example of a denial of equal
18 protection than I have seen here with respect to the
19 Worlins.

20 Equal protection is the basis of justice,
21 equal laws equally enforced against persons of the
22 same class. You can't have 26 variances or fences in
23 no-build zones and deny the same people three times
24 and expect to have that considered equal protection.
25 You can't grant a variance to somebody because the dog

1 has a bad bladder or they just got a dog or they built
2 their -- or they bought a house where there's a major
3 thoroughfare and then tell these people that they
4 can't have a variance.

5 Justice is what your charter requires, and I
6 don't think that you can have justice in this instance
7 unless this board, not waiting to see what City
8 Council does, but looks at the actions of the Planning
9 Commission, sees it to be the selective enforcement
10 that it is, sees that a prima facie case for
11 substantial hardship was proven, and reverses the
12 Planning Commission.

13 Mr. Weber as recently as January 13th has
14 indicated his support for the legislation, Sadicka
15 White has publically indicated hers, Nick Hogan, other
16 council people; I think it's because they recognize
17 not only the plight of the Worlins, but they recognize
18 that there needs to be clarification, there needs to
19 be ambiguity. And one of the things that you can do
20 is undo first the error from 1999 but, more
21 importantly, undue the selective enforcement which has
22 occurred, grant to these people what have been granted
23 to 26 others and 11 improper permit grantees, and
24 overturn the Planning Commission.

25 Thank you very much.

1 CHAIRMAN PACK: Thank you.

2 Any opponents to the appeal wishing to give
3 testimony?

4 MR. WEBER: Mr. Chair, I believe they also
5 have a right to cross-examine at some point. I don't
6 know how you want to handle that.

7 CHAIRMAN PACK: I was going to do that after
8 we have opening statements.

9 MR. WEBER: That's fine. Very good. Thank
10 you.

11 CHAIRMAN PACK: And also please remember,
12 please state your name and address for the record.

13 MR. DELLIGATTI: Hello. My name is Scott
14 Delligatti of 689 Tim Tam Avenue. I'm a direct
15 neighborhood to the Worlin family.

16 Having spent the last four years and probably
17 hundreds of hours discussing this problem, I wanted to
18 state again that I oppose the granting of this
19 variance.

20 My opposition rests on the three criteria
21 needed to grant a variance, of which all three
22 conditions must apply. I want to review these three
23 criteria of which, contrary to what we just heard, a
24 hardship is not one of them. It also, based on just
25 the information I've received from the Planning and

1 Zoning Commission, has nothing to do with what others
2 have or have not received. It has everything to do
3 just with the variance that we're reviewing here.

4 If you look at the three conditions or the
5 three criteria needed to approve this, basically it
6 states the following:

7 First of all, there are special circumstances
8 or conditions applying to the land, building, or use
9 referred to in the application.

10 Second, the granting of the variance is
11 necessary for the preservation and enjoyment of the
12 property.

13 Third, there's either some kind of health or
14 safety concern or also that it's detrimental to the
15 public welfare or injurious to property or
16 improvements in such neighborhood.

17 Let's talk about the first one. Are there
18 any special circumstances applying to this land?
19 First of all, I would think that if there were,
20 sometime in the last 12 years prior to the Worlins
21 ever moving into the home that would have surfaced.
22 There would have been a special circumstances. Now,
23 to me personally, a highway running through your
24 backdoor is a special circumstance. Safety is
25 probably your No. 1 concern when you buy a home.

1 So, in my opinion, we would fail to accept,
2 or in this case reject, the variance based on just
3 Section A alone. But I walked down through the other
4 three, and I started asking myself similar questions.

5 For Section B, is having a fence necessary to
6 enjoy your property or even to preserve it, it appears
7 to me that in this case we're talking more about
8 expanding property rights than enjoying them. You
9 would now be forcing adjoining neighbors to do
10 additional work to maintain the fence line.

11 Again, in my opinion, we would fail to reject
12 -- we would fail to accept under this consider- --
13 under this heading and we would reject the variance.

14 I wanted to continue on to Section C.
15 Section C first asks, is there a safety issue? Now, I
16 thought long and hard on this one. The only thing
17 that truly came to mind was potentially a child
18 inadvertently impaling himself on a fence. I mean,
19 that's kind of morbid in itself; but that in itself
20 kind of -- I couldn't come up with anything from a
21 safety standpoint that would actually stop it. But
22 what I will do is continue on and talk about material
23 impact.

24 I've reported in a couple of other instances
25 the impact that open areas and green pastures have on

1 property values. Typically, the vast majority of
2 people would admit that open areas, park-like settings
3 are an attractor to a property, not fences. I believe
4 during the last Planning and Zoning Commission I
5 actually even talked specifically about that. But I
6 wanted to quote Mr. Richard Peck from the Gahanna
7 Planning Commission on this one.

8 "Allowing a fence to be erected in a
9 subdivision that was expressly designed to maximize
10 natural vistas and open areas injures the property
11 rights not only to the immediate neighbors, but all
12 174 owners who bought property with the same
13 restrictions and subject to the same zoning
14 ordinance."

15 To me this would fail not only on A, not only
16 on B, but also on C. So you would end up failing on
17 all three.

18 So I would ask just for the sixth time in
19 four years just please reject the variance.

20 Thanks.

21 CHAIRMAN PACK: Anybody else wishing to
22 speak?

23 MS. KREIDLER: Mary Jane Kreidler, 938
24 Cordero Lane. The north side of our backyard joins
25 the back of Worlins' backyard.

1 At the previous variance requests we have
2 submitted evidence from several of our neighbors, some
3 letters, that they were opposed to the fence. So we
4 are not only -- we are not the only three individuals
5 who are opposed to this fence. We all wish to
6 preserve the openness and the park-like setting of the
7 property that we have back there.

8 We knew when we moved into the neighborhood
9 that these -- that there were restrictions, there was
10 a no-build zone, there were things that were not to be
11 there.

12 Mr. Worlin has brought up to the issue of the
13 pit bull. The pit bull, if it is an issue that
14 everyone -- that it is a dangerous animal, then I
15 think it's something that the City needs to take care
16 of rather than put up a fence to protect one
17 individual from it. None of the rest of us have seen
18 this. There are approximately 15 children in the
19 neighborhood, and none of those families have fences
20 around their properties. One neighbor had asked to
21 put a fence along the back line of their property so
22 that the pit bull could not see their children; and
23 the last I knew, that fence had not been erected.
24 That variance was approved. They had said that they
25 would take the fence down if the dog was gone.

1 Again, I am stating that we are opposed to
2 having this fence in there. We do not want to have to
3 go out into our backyard, sit on our deck, and have
4 family or relatives, friends over and have to look at
5 a fence when all the rest of our area does not have a
6 fence. We want to continue to have the park-like
7 setting that we have.

8 Thank you.

9 CHAIRMAN PACK: (Affirmative nodding of
10 head.)

11 MR. KREIDLER: Good evening. My name is Eric
12 Kreidler, 938 Cordero Lane.

13 As my wife said, we knew when we purchased
14 the property that fences were not allowed in the
15 no-build zones. That was partially due to the city
16 ordinances which, contrary to what the attorney for
17 Mr. Worlin has said, was changed in 1999. Mr. Peck
18 has indicated that the law has not changed and the
19 ordinances have not changed since the land was
20 platted. So there's obviously a difference of opinion
21 about that.

22 I think it would be injurious to my property
23 rights to have a fence constructed on the property
24 line which would be approximately 15 feet from my
25 patio.

1 I and other neighbors who directly abut the
2 Worlins' property have been very patient with Mr.
3 Worlin. We've been portrayed as enemies. We've
4 been -- even tonight I felt that there was some
5 attempt to intimidate us from saying what our feelings
6 are about the issues, and that came from his attorney.

7 I really don't want a fence there because I
8 don't want to take the risk of a reduction in my
9 property values or the appeal of my property when it
10 comes time to sell. I'm 63 years old, and since 9-11
11 I have watched my investments suffer enormously; and
12 the property that I own is a major part of my
13 retirement funds, and I do intend to sell the property
14 after retirement. I don't want to risk losing any
15 value in that property.

16 And it has not been demonstrated to me --
17 it's been claimed that fences have no effect on
18 property values. When I discuss it with my neighbors
19 and people in other areas of Gahanna, the common
20 perception of all of us is that, first of all, fences
21 aren't to be put in no-build zones and, secondly, to
22 do so would reduce property values.

23 So I oppose this appeal and ask you to vote
24 in favor of the majority of the citizens in Gahanna
25 who don't want to see either this case happen or, I

1 might add, that there are a number of us citizens who
2 are opposed to any change in the city ordinances. And
3 we will deal with that when that comes up for
4 discussion in City Council.

5 Thank you very much.

6 CHAIRMAN PACK: Anyone else wishing to give
7 testimony?

8 MR. PECK: Not necessarily to testify. My
9 name is Richard Peck, 122 Oklahoma Avenue. I'm the
10 former chair of the Planning Commission.

11 Having sat on the body that deliberated this
12 matter, I don't feel that it's appropriate for me to
13 offer testimony one way or the other. However, I did
14 want to appear tonight so that if there were questions
15 about what the Planning Commission's decision was or
16 if there were any misconceptions that needed to be
17 corrected, I would be available to offer that
18 information.

19 I believe you already have the minutes of
20 that meeting and have the substance of what the
21 Planning Commission's decision was. As I said, I
22 don't feel it would be proper for me to take a
23 position personally, because that's -- having sat on
24 this -- having decided this position, I don't think it
25 would be appropriate. But I am available here to

1 answer any questions either from Commission members or
2 from parties if that would become necessary.

3 Thank you.

4 CHAIRMAN PACK: Okay. Anyone else?

5 (No audible response.)

6 CHAIRMAN PACK: There being none, that
7 concludes the opening statement portion of our
8 meeting. Next comes the portion by which one party
9 can ask questions of the other side. We'll begin with
10 proponents of the appeal. You will have five minutes
11 if there are questions that you would like to ask of
12 anyone that's given testimony tonight that has opposed
13 your appeal. And I would also assume that would also
14 include Mr. Peck, who has also allowed -- availed
15 himself to the process as well.

16 You folks, if you want to cross-examine any
17 of the opponents to the appeal that have given
18 testimony or people of record, you have this time to
19 do so.

20 MR. MAZZA: Just -- yeah, just briefly, if I
21 might.

22 CHAIRMAN PACK: Sure. You have five
23 minutes, and the same additional time requirements
24 with regards to the majority vote of the Board still
25 stand.

1 MR. MAZZA: I can ask these questions. They
2 can stay where they are. Some of the same stuff that
3 we raised at the Planning Commission.

4 I believe that if you're going to come in to
5 any body that's making a decision on your objection,
6 you can't just come in and say, "My property values
7 are going to go down if there's a fence," without
8 having a real estate appraiser or realtor come in and
9 say that's true. That is not something that this body
10 can take some kind of judicial knowledge of.

11 So my question to the Kreidlers and Mr.
12 Delligatti is, as it was in November, where is your
13 documentation, where is the realtor report, where is
14 the real estate appraiser report that documents how
15 much value your property will lose as a result of this
16 fence being there?

17 MR. KREIDLER: As you yourself have said in
18 past meetings, this is a non-quantifiable statement.
19 So if it's not non-quantifiable in support of the
20 statement, it's also non-quantifiable in objection.
21 And what I said was, it is the perception of me and
22 most of the people I've talked to -- and all of the
23 people I've talked to in Gahanna and in other areas of
24 -- in Rose Run and in other areas of Gahanna, that the
25 purpose of the no-build zones was to enhance property

1 values and property appearance and to violate the
2 conditions of the no-build zones would destroy the
3 appearance and reduce property values ultimately.

4 Thank you.

5 MR. MAZZA: So I would take it, then, that
6 the answer is, no, you don't have anything in the way
7 of what I've just described as evidence.

8 MR. KREIDLER: You want me to answer that?

9 MR. MAZZA: It's a question.

10 CHAIRMAN PACK: Yes, it is a direct question,
11 sir.

12 Sir, this gentleman still has the podium.

13 MR. KREIDLER: The answer is, no, I do not
14 have any such quantifiable statements. The answer --
15 but I would say to you, neither do you.

16 MR. DELLIGATTI: Can I?

17 CHAIRMAN PACK: Sure.

18 MR. DELLIGATTI: This question was directed
19 at me. Again, my name is Scott Delligatti of 689 Tim
20 Tam.

21 I'm an engineer by training, which in itself
22 obviously doesn't make me an expert in real estate.
23 But I do believe it makes me an expert in research.
24 Research through the Internet -- there's a vast amount
25 of information out there -- does show that anywhere

1 from 3 to 10 percent increase in property value for
2 people living next to park-like settings, greeneries,
3 open areas if you will, of which I think that the Rose
4 Run area does end up falling in that behalf.

5 So as far as I'm concerned, yeah, I think we
6 do have data; and I think the data does speak for
7 itself, and we did present that to the last Planning
8 and Zoning Commission, that that information is
9 available to everybody, that our property values do
10 suffer because of it.

11 MR. MAZZA: Just hold on just a second, Mr.
12 Delligatti.

13 I assume that you have a printer with your
14 computer.

15 MR. DELLIGATTI: Sure.

16 MR. MAZZA: Would it have been too much
17 trouble to have had a printout of that data that you
18 claim supports your proposition of 3 to 10 percent
19 loss in value?

20 MR. DELLIGATTI: I believe I gave that during
21 the last Zoning and Planning Commission.

22 CHAIRMAN PACK: If you would be so kind, come
23 closer to the mic.

24 MR. DELLIGATTI: I'm sorry. I believe I
25 submitted that during the last Planning and Zoning

1 Commission.

2 MR. MAZZA: I did not see it. I apologize.
3 One other thing.

4 You also had the opportunity of going to
5 somebody who was based in Gahanna, or even in central
6 Ohio, and asking them the specific question as to
7 whether this would reduce your property value; and you
8 have not presented anything that is consistent with
9 Gahanna or central Ohio expectations on what the
10 property value effect would be.

11 Is that a correct statement?

12 MR. DELLIGATTI: Other than Mr. Peck's
13 comments, no, I have not gone to anybody else.

14 MR. MAZZA: You consider Mr. Peck to be an
15 authority on real estate values in the city of
16 Gahanna?

17 MR. DELLIGATTI: I would consider his law
18 degree and his participation as the Planning and
19 Zoning Commission lead as an expert, yes.

20 CHAIRMAN PACK: Counselor, your five minutes
21 is up for cross-examination.

22 MR. MAZZA: That's all I would have.

23 CHAIRMAN PACK: If you would like to extend
24 it, again, subject to the rules of the Board.

25 MR. MAZZA: That's fine.

1 CHAIRMAN PACK: Okay. Would opponents to the
2 appeal want the same opportunity to -- for the five
3 minutes of asking questions of the proponents for the
4 appellants.

5 MR. DELLIGATTI: I just had a couple
6 questions for Mr. Worlin.

7 Did you sign a purchase agreement for your
8 home prior to buying it?

9 MR. WORLIN: Yes, I did.

10 MR. DELLIGATTI: Did you within those
11 conditions stipulate that the only way you would
12 purchase the home is if you had a fence?

13 MR. WORLIN: I would have to review the
14 contract, but I don't think that that was the
15 specifics; but it might have been. Again, we had
16 those discussions and an opinion from our attorney,
17 who has actually represented us at this BZA the first
18 time, three, we testified that prior to submitting a
19 contract he did check the Code.

20 I'm not sure if it was on the actual
21 document. If that's an important thing, I can find
22 out.

23 MR. DELLIGATTI: Would you consider your
24 current fence a self-imposed hardship?

25 MR. WORLIN: No. I think it's a hardship

1 that's been created by the City that I have to endure.
2 It was the only amount of fence that I could put in.

3 CHAIRMAN PACK: Speak up just a tad.

4 MR. WORLIN: No, it's not a self-imposed
5 hardship. It's a hardship that I feel the City has
6 placed upon me by improperly identifying the Code.
7 Again, you know, I've not been able to place the fence
8 where I expected to when I purchased the property and
9 where 26 or 36 of my neighbors have placed the fence.

10 MR. DELLIGATTI: That's all.

11 MR. KREIDLER: Mr. Worlin, I recall that in a
12 past hearing a member of the Planning and Zoning
13 Commission asked you to provide documentation as to
14 the precautions you took prior to purchasing your
15 home. I recall that you made a statement to the
16 effect that you had a fax but it had deteriorated to
17 the point that it could not be used.

18 That made me curious; and so I began to look
19 over past records of the Planning and Zoning
20 Commission, the Appeals Board, for any documentation
21 that proves that you did, in fact, take these
22 precautions.

23 Do you have any such documentation?

24 MR. WORLIN: Yes. I did state that the
25 documentation really is public record of this meeting,

1 actually the BZA three years ago when our attorney was
2 here, and in that meeting testified that he had done
3 the research prior to us purchasing the property. And
4 part of that was some of the e-mails that initially
5 went back and forth where he confirmed that. I looked
6 in my file and could not find it. At that point I did
7 offer to go to the attorney and see if he would have
8 the original in his file, and it was not indicated
9 that it was necessary. Since his testimony was of
10 public record, the Committee didn't feel it was
11 necessary.

12 MR. KREIDLER: If it's a matter of public
13 record, then, I would have to ask you, why can't I
14 obtain copies of that information, which we asked for
15 and we have not received?

16 MR. WORLIN: Again, it was the Committee that
17 was asking for it. As far as copies of the public
18 record of where the attorney testified, is that -- I
19 can probably dig out those. They are public record of
20 the City.

21 So I have researched hundreds or possibly
22 even thousands of documents over the last three years,
23 and I'm sure you could have done the same thing. I
24 can give you a date of when this meeting was three
25 years ago, and the minutes would reflect that. And if

1 it's of interest to the Committee, we can take a few
2 minutes and I'm sure that someplace I have that
3 documentation, or probably Isobel can pull it out of
4 her file in a couple of minutes.

5 CHAIRMAN PACK: Okay. So I imagine there's
6 no one else wishing to ask questions of the opponents.

7 (No audible response.)

8 CHAIRMAN PACK: Okay. There being none,
9 we'll move on to the next phase; and that is basically
10 if any of the board members would have any questions
11 of the appellant or anyone else.

12 MR. SCHIRTZINGER: Mr. Chairman?

13 CHAIRMAN PACK: Yes.

14 MR. SCHIRTZINGER: I have a couple of
15 questions for Mr. Worlin's attorney.

16 Sir, you state that selective enforcement has
17 been used by the City of Gahanna. Could you go into
18 depth in that?

19 MR. MAZZA: Well, I think by definition
20 selective enforcement is when -- well, I'll tell you
21 what, selective enforcement is a term that arises out
22 of considerations of equal protection. Where you have
23 selective enforcement, per se, and do not have equal
24 protection.

25 Equal protection of the law means a

1 protection of all laws. The prohibition against the
2 denial of equal protection of the law requires that
3 the law shall have an equality of operation on persons
4 according to their relation. So long as the laws are
5 applicable to all persons under like circumstances and
6 do not subject individuals to an arbitrary exercise of
7 power and operate alike upon all persons similarly
8 situated, it is not a constitutional -- there is not a
9 constitutional prohibition.

10 So, conversely, if the exercise of power is
11 not operated alike upon all persons similarly
12 situated, you have a violation of equal protection.
13 And in this instance the violation occurs because you
14 have people being granted variances who have far less
15 reason to get those variances; and one can only
16 believe, then, that that is a suggestion of
17 arbitrariness. And I won't say capricious.

18 But I, again, point back to the same thing.
19 You have these folks here who have steadfastly -- and
20 I admire them for their steadfastness -- opposed this
21 for their own personal reasons. There are no safety
22 issues here. They can't cite any safety issues. And
23 special circumstances, Mr. Delligatti is right,
24 special circumstances is a condition. I'm citing Mr.
25 Peck. Mr. Peck says they couldn't demonstrate a

1 substantial hardship.

2 Special circumstances would be a substantial
3 hardship. That's why we went into what the
4 substantial hardship was. It's a special circumstance
5 when you go to a lot of trouble to find out if you can
6 build a fence, have lawyers check the Code, and then
7 you find out you can't build a fence.

8 I think you have to come in with a lot more
9 than your say-so about property values in order to
10 make any kind of a probative case on that issue.
11 There is no demonstration of that. They want to
12 object. It's their burden, not my burden, to provide
13 that kind of information.

14 So, again, to get back to your question, when
15 you have 26 variances granted to build fences in a
16 no-build zone, you have 11 permits issued to build
17 fences in a no-build zone, and you have the only
18 variance ever sought in Rose Run denied, I'm pretty
19 satisfied about my satisfying my burden of proof in
20 that case in a court.

21 MR. SCHIRTZINGER: I did have one more
22 question for you.

23 MR. MAZZA: Sure.

24 MR. SCHIRTZINGER: Why is it your belief that
25 this also has to do with some type of political

1 statement by the Planning Commission, City Council?
2 What makes you think this is political?

3 MR. MAZZA: I think it's political because
4 you have a City Council that is on record and that has
5 been publicly reported to wanting to pass an ordinance
6 that's going to remove the probable impediment to the
7 Worlins building their fence, a City Council that's
8 going on record saying they believe there's ambiguity
9 here, the Code has changed -- was changed in 2000, and
10 they want to try to set it right and they're going
11 through the public promulgation period doing what
12 they're supposed to do.

13 I think that it has now become a situation
14 where the City Council is being characterized as
15 giving in to the Worlins and changing a code to please
16 one person, which I don't think gives very much credit
17 to a City Council that's been doing a pretty good job
18 over the years.

19 The Planning Commission, from what I
20 understand -- and I will admit I have not done a
21 thorough research of this, but I have been told by
22 people who have been around Gahanna politics for a
23 long time -- that is very uncharacteristic and
24 atypical for the Planning Commission to reject a
25 recommendation from the City Council.

1 I believe that that is an effort to try to
2 save face. I have seen articles where this is being
3 publicly discussed, and I think what you have here is
4 an effort by the Planning Commission to try to make
5 the City Council look bad and hopefully the City
6 Council back off of the position where they're in.
7 And it's unfortunate that it has become political. To
8 me it's a very simple thing.

9 If you're going to enforce a no-build zone
10 and you think that it calls for not building fences,
11 then you don't let people have fences who have dogs
12 with bad bladders. And if you allow somebody to build
13 a fence along Route 62 when they moved in there
14 knowing they were along Route 62, that's not a special
15 circumstance. Then don't buy that house. But when
16 you have people that buy a house, do the research that
17 they did, have a plan for landscaping that includes a
18 very tasteful fence so they can get full use of the
19 yard that they paid for and why they moved there and
20 they're denied when all these other people are granted
21 variances and permits, that's selective enforcement.

22 MR. SCHIRTZINGER: Thank you.

23 MR. MAZZA: My pleasure.

24 CHAIRMAN PACK: Mr. Fischer?

25 MR. FISCHER: I just got the packet tonight,

1 although I've heard a couple of times, I believe, when
2 Mr. Worlin's been in. So I would like to have some
3 time to read through this three quarters of an inch of
4 material here before I can make a decision and ask any
5 questions about it. I would like to reserve some
6 questions for a later time, and with that thought I
7 would like to make a motion later on that maybe we
8 continue this so that I do have some time to review
9 the material.

10 CHAIRMAN PACK: Okay. I have a couple of
11 questions.

12 First off, I remember reading in the packet
13 regarding the pit bull; and I'm not exactly sure as to
14 the orientation of where the pit bull resides in
15 relation to your home and what the circumstances were
16 with respect to the pit bull and your home.

17 MR. WORLIN: Okay. If you stand at my front
18 door, it's across the street at about this angle.
19 Directly across the street is another road that comes
20 out. There's a house to the left, house to the right;
21 and then the second house is the house that has the
22 pit bull. It's right kind of on the corner.

23 So probably from the front corner of my
24 property, if you go straight across is the front
25 corner of the property across the street; and it would

1 be the one to the right.

2 The circumstances were, our dogs were out in
3 the yard and my wife, the pit bull came up to the
4 fence and was trying to get in and over the fence. My
5 wife brought the dogs in the house and then, since
6 they were in the back, went to go to the neighbor's
7 house to try to let them know that their pit bull was
8 loose.

9 CHAIRMAN PACK: Was your wife in the front
10 part of the yard?

11 MR. WORLIN: She was first in the -- she was
12 inside the fenced-in part of the yard. She was
13 sitting outside when the dogs -- our dogs, of course,
14 ran out to the fence and the other dog was barking
15 running around.

16 She brought our dogs in. She went out the
17 front door to go across the street and to the
18 neighbor's house. She went to knock on their door to
19 let them know that the pit bull was loose. They
20 didn't answer. No one -- there actually was someone
21 home, but they didn't answer. And as we came -- she
22 came back across the street, the pit bull came in from
23 the back of our house, caught her coming across the
24 front yard, and chased her -- which it's not a good
25 thing to run from a pit bull -- but chased her. And

1 as she was trying to get in the house, the pit bull
2 scooted in between her legs and ran into the house.

3 I was upstairs working in my office. She
4 started screaming. I went downstairs, immediately
5 opened the front door, and got my dogs to run out
6 hoping the pit bull would chase out behind them. My
7 wife was just petrified.

8 The pit bull did go outside, and then by -- I
9 went out with a broom and was able to get our dogs
10 into the house with the pit bull in the yard. At that
11 point we called the police. This happened Memorial
12 Day last year. It would be a public record. The
13 police came actually with their guns drawn. And one
14 of the others neighbors was able to come out and get
15 the pit bull coaxed into his garage until they came
16 home.

17 But, you know, based on that event, my wife
18 has really been concerned about the pit bull. Now,
19 I'd say it hasn't been loose since then. At that
20 point it was a puppy. It's now full-grown. Again, it
21 still has apparently been an issue in the area. The
22 City has tried to enforce against it; but nothing they
23 can do, I guess.

24 CHAIRMAN PACK: Did the Animal Control
25 officer come out at that time or afterwards?

1 MR. WORLIN: No. It was just, I think,
2 probably -- I think that if I recall the
3 circumstances, the Animal Control person was out of
4 the area that day, so the policeman did, again with
5 one of the neighbors, coax him into a garage and
6 closed the garage door on him across -- the neighbor
7 that lives next door that -- it's about a 15-year-old
8 boy that knows the dog, got him into their garage; and
9 they kept him locked in the garage until the neighbors
10 came home.

11 So, no. The animal warden was, like I said,
12 I think he was out of the area and would have taken an
13 hour or so to get there; but based on that they were
14 able to get him locked up.

15 CHAIRMAN PACK: Did I hear you say that it
16 was a puppy at this time?

17 MR. WORLIN: It was probably six months old.
18 It was definitely not full-grown.

19 CHAIRMAN PACK: Okay. I have another
20 question regarding the initial contact with the
21 attorney, Mr. Barone I believe it was.

22 MR. WORLIN: Yes.

23 CHAIRMAN PACK: With respect to his
24 interpretation of the Zoning Code of Gahanna --

25 MR. WORLIN: Yes.

1 CHAIRMAN PACK: -- relaying that information
2 to you as to your availability to go ahead and put a
3 fence --

4 MR. WORLIN: Yes.

5 CHAIRMAN PACK: -- around the full portion of
6 your backyard in the no-build zone. Did Mr. Barone
7 issue anything, a statement in writing, to you, or was
8 it just word of mouth?

9 MR. WORLIN: No. At that point he did issue
10 a legal opinion and he testified to that fact. Again,
11 that was the faxed copy that I had; and at that point
12 I'm sure I could have gone back and gotten his copy.
13 But he literally -- it was a big enough key piece that
14 we asked him to look at it. And then he testified
15 that he did check both the deed restrictions, which
16 you have in your packet and clearly allowed for
17 fences. He also read the City Code, which I have in
18 your packet how the Code read back at that point.
19 And, I mean, even since then -- and he represented us
20 in front of this group the first time -- the Code has
21 some significant difficulty. It has been not accepted
22 by a lot of the City since then; but I think now it's
23 become very clear that the Code back then, even after
24 trying to change it a couple of times, still was
25 confusing.

1 So I could probably contact him, and I'm sure
2 he still has a record of it in his file. I just have
3 not done that because no one has asked for it.

4 CHAIRMAN PACK: Did he relay to you that he
5 communicated with the City regarding the zoning
6 regulations?

7 MR. WORLIN: He said he didn't -- I think
8 that he testified that he did not. I'd have to go
9 back, and that's my recollection. Again, it would be
10 of public record from three years ago.

11 I believe he just had the Code of the City.
12 I mean, he does a lot of closings. I'm sure -- he was
13 based in Westerville, so very familiar with Gahanna,
14 had the Code, and he said -- read, you know, both the
15 fence section code and the yard use code; and then
16 reviewing our deed restrictions is what he based it
17 on.

18 CHAIRMAN PACK: The question of the realtor,
19 did the realtor contact anybody with the City and then
20 relay that information to you in some sort of a
21 document?

22 MR. WORLIN: No. That was just verbal. And
23 I would say that the realtors were very familiar with
24 the area. They're one of the larger HER realtors in
25 the area, had sold a lot of property. In fact, had

1 told -- I mean, was even surprised and, I think, even
2 frustrated that we were asking that that be checked
3 out before they would -- we would put a contract on.
4 Obviously they're always very aggressive, and that was
5 something we checked out before we would even put a
6 contract in place.

7 I mean, they -- in fact, when it became an
8 issue, they were just blown away, because they had
9 sold a lot of property. They said, "There's fences
10 all over the neighborhood, that's not a non-fenced
11 neighborhood, we just don't understand it." And, in
12 fact, you know, there's still some confusion; and I
13 think actually Mr. Weber even spoke at the local
14 realtors earlier this summer to help clarify them what
15 the Code is. So even three years later there's a lot
16 of confusion and basically an assumption by the
17 realtors that you can have fences in Rose Run.

18 CHAIRMAN PACK: Okay. Thank you. I don't
19 have any additional questions.

20 MR. MAZZA: Mr. Pack, may I address Mr.
21 Schirtzinger for a second?

22 CHAIRMAN PACK: Yes, sir.

23 MR. MAZZA: Mr. Schirtzinger, I couldn't find
24 it at this time. But the Rocky Fork Enterprise
25 January 2, 2003, I think this was a recent addition to

1 the record; but the heading in bold is Fence Codes
2 Creating Divisions. Underneath that, Planning
3 Commission Doesn't Like City Council's Proposed Rule
4 Changes. And then there's a quote from Jane Turley,
5 who was a Commission member, saying, "I think we all
6 know why we're here. It's to appease one very vocal
7 member of the community. I don't think that's fair."

8 That is not the kind of statement from a
9 member of an administrative agency of any municipality
10 or any organization that should ever appear public
11 and, I think, demonstrates a bias that preexisted the
12 decision of the Planning Commission. I don't normally
13 make a practice of introducing newspaper articles,
14 because generally they're not evidence in any court;
15 but I think this is evidence here. That's why we
16 wanted to put it in.

17 CHAIRMAN PACK: Okay. Thank you very much.

18 MR. SCHIRTZINGER: Thank you.

19 CHAIRMAN PACK: Yes, sir.

20 MR. DELLIGATTI: There was a question earlier
21 about submission of news articles. I mean, I would
22 like to give that information as a part of evidence to
23 the articles I was referring to in terms of the
24 property.

25 CHAIRMAN PACK: May I see it, please?

1 MR. DELLIGATTI: Sure. Basically my
2 information.

3 CHAIRMAN PACK: As chairman of the Board, I
4 find that the information that has been given to me is
5 of relevant substance and that I would also like to
6 share this with the other board members and then
7 entertain a motion as to if this be entered into the
8 evidence or not.

9 MR. MAZZA: Mr. Pack?

10 CHAIRMAN PACK: Yes, sir.

11 MR. MAZZA: Traditionally the opposition
12 would get to see what it is in order --

13 CHAIRMAN PACK: You know, you're absolutely
14 very correct.

15 MR. WEBER: Show Mr. Mazza.

16 MR. MAZZA: I don't have any idea what it
17 was. It wasn't presented at the last Planning
18 Commission, and it may be that Mr. Delligatti
19 presented it at a later time outside my presence. I
20 don't know what it is.

21 CHAIRMAN PACK: Absolutely.

22 MR. MAZZA: At your convenience.

23 CHAIRMAN PACK: Before we make a motion, I
24 will make sure you get a copy of it. We'll give it to
25 the clerk and maybe she or someone can make a copy of

1 it for you.

2 MR. MAZZA: Thank you, sir.

3 MR. WEBER: It does seem to have some
4 relevance as to what we're talking about here today.

5 CHAIRMAN PACK: Mr. Mazza, if you would like
6 to take a look at these documents.

7 MR. MAZZA: Thank you. I promise I won't
8 take too long. Maybe longer than I thought. (Reviews
9 documents.)

10 As I had indicated, I believe Mr. Delligatti
11 at the time he brought it to the attention of the
12 Planning Commission, these studies -- I am familiar
13 with these studies as a result of some other work --
14 they're from Landscape Architects and they're talking
15 about green belt. They're talking about wooded areas,
16 huge open spaces bordering on golf courses. And while
17 I appreciate that the developer of Rose Run tried to
18 create as much open space as possible, I would submit
19 that you can choose to do -- and accept them if you
20 want; but they have very little application to the
21 scenario we have here.

22 Thank you.

23 MR. SCHIRTZINGER: Mr. Chairman?

24 CHAIRMAN PACK: Yes.

25 MR. SCHIRTZINGER: I wish to entertain a

1 motion to accept all those documents as evidence.

2 CHAIRMAN PACK: Do I hear a second?

3 MR. FISCHER: I'll second it.

4 CHAIRMAN PACK: Any discussion?

5 (No audible response.)

6 CHAIRMAN PACK: There being none, would the
7 clerk please call the roll.

8 THE CLERK: Schirtzinger.

9 MR. SCHIRTZINGER: Yes.

10 THE CLERK: Fischer.

11 MR. FISCHER: Yes.

12 THE CLERK: Pack.

13 CHAIRMAN PACK: Yes.

14 I would also like the clerk, if I might ask,
15 if you could perhaps after the meeting is over make
16 sure that Mr. Mazza gets a copy of this.

17 MR. MAZZA: At your convenience, Isobel.

18 Thank you, Mr. Pack.

19 CHAIRMAN PACK: Okay. Are there any other
20 questions of the board members?

21 MR. SCHIRTZINGER: Yes, Mr. Chairman. I had
22 a couple more to Mr. Worlin.

23 I had been looking through the packet of
24 information I have. I was able to find a copy of the
25 City of Gahanna Police Department incident report that

1 was taken June 3, 2001, Incident Report No. 01-9512.
2 It was taken at your residence by Officer John A.
3 This is concerning the incident you were talking about
4 with Chairman Pack. I just wanted to clear a couple
5 of inconsistencies.

6 It does appear that the Animal Control
7 officer, as stated here in the incident report, Unit
8 517, which is Charlie Henderson, did respond and
9 caught the Code 18, which is the law enforcement code
10 for animal, and that it was his belief that the dog
11 was a non-aggressive puppy and was scared at 681 Tim
12 Tam Avenue at neighbor's. It also states here by the
13 Officer A that the pit bull appears to be playful.

14 Just wanted to clarify real quick that the
15 Animal Control officer did show up. But it's your
16 opinion that -- you know, obviously your wife was
17 scared, correct?

18 MR. WORLIN: Yes. And I would say that -- I
19 mean, that's -- I've never seen that police report,
20 never looked for it. I know that the Animal Control
21 person was notified, and I think a couple days later
22 we were called -- I'd have to recall, my wife got a
23 call -- from the police department and said that they
24 had actually gone over and talked to the neighbor.
25 Well, the Animal Control also had said that there was

1 a law that they had to have \$100,000 liability. I
2 mean, I don't remember all the detail about it.

3 But if that's what the report says, I would
4 say that it's not truly accurate. I don't know that
5 it has a bearing on this case. The reality is the dog
6 was loose, and my wife is to this day concerned of
7 going out in that yard without me being there to
8 protect her.

9 MR. SCHIRTZINGER: Now, you said that the
10 officers that arrived on the scene did show up with
11 their firearms drawn; is that correct?

12 MR. WORLIN: There was an officer on the
13 scene; and, yes, he did get out with his firearm drawn.
14 Now, again, as I testified, at that point it was
15 probably a six-month-old. I don't know where they end
16 up being a puppy or bigger. But obviously if it's
17 hanging on your leg, even if it's a six-month puppy,
18 it might be concerned.

19 I wasn't terribly concerned of it, but I
20 wasn't going to trust it either.

21 MR. SCHIRTZINGER: The reason I asked that
22 question, sir, I am a police officer. I'm very
23 familiar with incident reports. And if that is the
24 case, I would believe, at least in my opinion, that
25 the officer would note that inside the report.

1 Especially any time an officer draws his firearm for
2 any particular reason, it should be noted in the
3 incident report.

4 That's the only question I have.

5 MR. WORLIN: Okay. We potentially -- I would
6 say that maybe that officer still recalls that
7 incident and could clarify it. There seems to be some
8 inconsistency, and if the Board thinks that has any
9 merit on this case.

10 MR. SCHIRTZINGER: Okay. Thank you.

11 CHAIRMAN PACK: Mr. Fischer, any additional
12 questions?

13 MR. FISCHER: Not at this time.

14 CHAIRMAN PACK: I have none.

15 Any questions of the City staff?

16 (No audible response.)

17 CHAIRMAN PACK: I have none as well.

18 The Chair will entertain a motion to close
19 the public meeting portion of this meeting.

20 MR. SCHIRTZINGER: I'll make a motion to
21 close.

22 MR. FISCHER: If we close the public meeting,
23 what I would like to do is continue this meeting so I
24 have a chance to read the information in front of me;
25 and I would like to keep the meeting open so if I do

1 have some questions --

2 MR. WEBER: It sounds like what you might
3 want to do, then, is recess the hearing until a
4 certain date and then --

5 CHAIRMAN PACK: We can close it at this time
6 and then reopen it later on.

7 MR. FISCHER: Well, if we can reopen it at a
8 future time, then I'll second the motion.

9 CHAIRMAN PACK: Okay. Any discussion? Mr.
10 Schirtzinger?

11 MR. SCHIRTZINGER: I just want to make sure
12 with closing this that we are able to reopen it again.

13 CHAIRMAN PACK: To my knowledge, I know --

14 MR. WEBER: I think you can. But I might
15 prefer that you simply recess the hearing until
16 another date, and then you can move to recess the
17 hearing not really -- because you might want to come
18 back and ask additional questions or have additional
19 questions. So it's probably better to recess it than
20 just close it.

21 MR. SCHIRTZINGER: Then I wish to withdraw my
22 motion to close and make a motion to recess until a
23 later date.

24 MR. WEBER: Do you know the date you want to
25 do this?

1 CHAIRMAN PACK: I think in the organizational
2 meeting last night the next date of meeting would be
3 February 29th.

4 MR. WEBER: Why don't you recess it, then,
5 until February 29th, if that was the date. Is it
6 February 29th this year?

7 MR. FISCHER: I don't see a 29th on this
8 calendar.

9 CHAIRMAN PACK: My apologies.

10 MR. WEBER: There are not 29 days, so it's
11 got to be the -- Thursday is the 27th? Recess it
12 until the 27th.

13 CHAIRMAN PACK: Okay. So we have -- the
14 Chair has a motion in front of it with respect to
15 recessing the public portion of the meeting.

16 Do I hear a second?

17 MR. FISCHER: I'll second that.

18 CHAIRMAN PACK: With this also being the
19 understanding that the public portion of the meeting
20 will remain open until the next stated meeting of the
21 Board of Building and Zoning Appeals.

22 MR. MAZZA: So I understand, does that mean
23 that there's still a record opportunity --
24 opportunities to supplement the record?

25 CHAIRMAN PACK: Yes, I would agree with that,

1 concur with that.

2 MR. FISCHER: If we agree to subject it --

3 CHAIRMAN PACK: Subject to the rules of
4 procedure of the BZBA.

5 MR. MAZZA: Oh, understood. And, finally,
6 since Mr. Fischer wants to review this, if, in fact,
7 he is satisfied after his review that he doesn't need
8 any more discussion, would you let us know that we
9 don't actually have to appear on the 27th, or do you
10 anticipate another appearance on the 27th?

11 CHAIRMAN PACK: I would anticipate another
12 appearance with respect to -- you mean Mr. Worlin and
13 yourself?

14 MR. MAZZA: Yes. If Mr. Fischer didn't have
15 any other questions and you and Mr. Schirtzinger
16 didn't have any questions, is the record closed at
17 that point or --

18 MR. FISCHER: The public meeting is still
19 open.

20 CHAIRMAN PACK: The public meeting is still
21 open. Bear in mind also we have two members of the
22 BZA -- BZBA that are not present this evening. It has
23 been of past practice that if they are absent in the
24 first meeting of an appeal, that the transcript then
25 will be available to them and they can review that --

1 MR. MAZZA: They may have questions.

2 CHAIRMAN PACK: -- and then come in. So they
3 may ask -- they may want to ask additional questions
4 as well, not only -- particularly of all witnesses of
5 record.

6 So I would say, Counselor, perhaps you better
7 circle the 27th of February.

8 MR. MAZZA: Thank you.

9 MR. WEBER: Review of the record might
10 actually cause more questions to occur. That's why
11 the hearing is being recessed to give the board
12 members a chance to go over the record and then other
13 questions and concerns might be raised. So there is a
14 possibility of additional questions and additional
15 testimony being requested on that date. That's why
16 the hearing is, in fact, left open.

17 CHAIRMAN PACK: Understood.

18 Madam Clerk, what has transpired in your
19 absence is, there is a motion in front of the Chair,
20 which has been seconded, to recess.

21 MS. SHERWOOD: Motion by?

22 CHAIRMAN PACK: Motion by Mr. Schirtzinger,
23 seconded by Mr. Fischer, to recess this meeting with
24 the public portion still open --

25 MR. WEBER: Until February the 27th.

1 CHAIRMAN PACK: -- until February 27th, which
2 is the next date of meeting of the Gahanna Board of
3 Building and Zoning Appeals.

4 With the motion and a second, is there any
5 discussion?

6 (No audible response.)

7 CHAIRMAN PACK: Clerk, would you please call
8 the roll.

9 THE CLERK: Schirtzinger.

10 MR. SCHIRTZINGER: Yes.

11 THE CLERK: Fischer.

12 MR. FISCHER: Yes.

13 THE CLERK: Pack.

14 CHAIRMAN PACK: Yes.

15 - - -

16 Thereupon, at 8:15 p.m. on January 16, 2003,
17 the public hearing was concluded.

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STATE OF OHIO :
: SS.
COUNTY OF FRANKLIN :

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I, Jennifer L. Parish, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing is a true, correct, and complete transcript of the public hearing before the City of Gahanna Zoning and Building Appeals taken on January 16, 2003, as reported by me in stenotype and transcribed from my stenographic notes.

DATED this 28th day of January, 2003.

JENNIFER L. PARISH, RPR/NP.

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