

BEFORE THE CITY OF GAHANNA
BOARD OF ZONING AND BUILDING APPEALS

- - -

IN RE :
PUBLIC HEARING :
APPEAL BY THE ACADEMY :
RIDGE COMMUNITY :
ASSOCIATION, INC. :
RE: 1022 RIDGE CREST :
DRIVE, GAHANNA, OHIO :
43230, Et Al. :

- - -

Thursday Evening Session
July 27, 2017
Time 6:01 p.m.
City Hall
200 South Hamilton Road
Gahanna, Ohio 43230

BEFORE:

Donald W. Jensen, Chairman,
Hakim Ben Adjoua, Board Member
Debra Mecozzi, Board Member
Lorne Eisen, Board Member
Shane Ewald, City Attorney
Kimberly Banning, Clerk

- - -

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- - -

1 APPEARANCES:

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4 and
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8 Columbus, Ohio 43215
9 (614) 228-0207

10 On behalf of Academy Ridge
11 Community Association, Inc.

12 Frost Brown Todd, LLC
13 By Frank J. Reed
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18 City of Gahanna Planning
19 Commission

20 Underhill & Hodge
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Gallas Zadeh Development, LLC

Thursday Evening Session,

July 27, 2017.

- - -

CHAIRMAN JENSEN: I call the meeting for the City of Gahanna Board of Zoning Appeals. At this time, we'll start with the Pledge of Allegiance.

(Pledge of Allegiance taken.)

CHAIRMAN JENSEN: First of all, can everybody hear me? The last meeting we had some sound problems. Before we begin this meeting, are there any additions or corrections to the agenda? If not, at this time, we will swear in those who will be speaking regarding the appeals this evening. Please stand.

MS. BANNING: Mr. Chair, can we do roll call?

CHAIRMAN JENSEN: I'm sorry. At this time, would you do the roll call?

MS. BANNING: Adjoua?

MR. ADJOUA: Here.

MS. BANNING: Eisen?

MR. EISEN: Here.

MS. BANNING: Jensen?

CHAIRMAN JENSEN: Here.

1 MS. BANNING: Mecozzi?

2 MS. MECOZZI: Here.

3 MS. BANNING: Pack?

4 CHAIRMAN JENSEN: Okay. At this time,
5 we will swear in those who will be speaking regarding
6 this appeal this evening.

7 (Witnesses sworn.)

8 CHAIRMAN JENSEN: This City of Gahanna
9 Board of Zoning and Appeals have been requested to
10 consider the following: A public hearing to consider
11 an appeal from the Planning Commission's approval of
12 application FDP-0001-2017 to consider a final
13 development application for a multi-tenant retail
14 development, for property located at the northwest
15 corner of the intersection of Beecher and Hamilton
16 Road, Parcel ID No. 025-009951 and 025-009952,
17 current zoning CC (Community Commercial), and PCC
18 (Plan Commercial Center), Hamilton Conference Center,
19 Ryan Fowler, applicant.

20 At this time, before we proceed, I would
21 like to request legal counsel to review some
22 preliminary administrative items. Shane?

23 MR. EWALD: Thank you, Mr. Chair. There
24 were additional motions filed with the Board of

1 Zoning and Appeals in the last few weeks, and I --
2 there were additional motions that were filed with
3 the -- before the Board of Zoning and Appeals. The
4 first one is the motion for intervention by third
5 party or interested party. After reviewing the code,
6 Ohio Revised Code, our code, and the motions that
7 were filed, it is my suggestion to the panel that you
8 accept the motion for intervention based on the
9 filings.

10 CHAIRMAN JENSEN: Do we have any
11 questions or discussion? Is there a motion to accept
12 and approve?

13 MR. ADJOUA: Mr. Chair, I make the
14 motion to accept for intervention and approved by the
15 city attorney.

16 CHAIRMAN JENSEN: Do I have a second?

17 MR. EISEN: Second.

18 CHAIRMAN JENSEN: All in favor?

19 MR. ADJOUA: Aye.

20 MR. EISEN: Aye.

21 MS. MECOZZI: Aye.

22 MR. EWALD: It actually would be a roll
23 call.

24 MR. REED: Mr. Chairman?

1 CHAIRMAN JENSEN: Yes.

2 MR. REED: Frank Reed, Frost Brown Todd,
3 special counsel on behalf of the Planning Commission.

4 It might be helpful to have all the
5 parties introduce themselves and who they represent.
6 And I think that -- I don't know this, but I think
7 the appellants might object to the motion for
8 intervention, and I would urge that the Board at
9 least hear them out before they make a decision on
10 whether to accept the motion for intervention.

11 MR. EWALD: Mr. Chair's point of order,
12 if the panel so choses, they can adopt the course of
13 action put fourth by the attorney for the Planning
14 Commission that's at your discretion.

15 MR. ADJOUA: At this point, Mr. Chair,
16 there is a motion before. I second it, so it should
17 be a roll call on that motion.

18 MS. BANNING: Adjoua?

19 MR. ADJOUA: Yes.

20 MS. BANNING: Eisen?

21 MR. EISEN: Yes.

22 MS. BANNING: Mecozzi?

23 MS. MECOZZI: Yes.

24 MR. EWALD: Mr. Chair, the second motion

1 that was filed with the Board of Zoning and Appeals
2 was for a motion to dismiss for basis of lack of
3 standing on the part of the appellant in this case,
4 which is comprised of the homeowners' association,
5 and various residents, including contiguous property
6 owners. After a review of the Ohio Revised Code, our
7 current rules and code, and based on the filings put
8 before the Commission, it's my recommendation that
9 you accept the standing of the appellants in this
10 case, and that you allow them to proceed forward.

11 CHAIRMAN JENSEN: Anybody have any
12 questions for them? Go ahead.

13 MR. HODGE: Members of the Board, my
14 name is David Hodge. I'm an attorney with the law
15 firm Underhill and Hodge, 8000 Walton Parkway, Suite
16 260, New Albany, Ohio, 43054. And I would appreciate
17 a few minutes of your time this evening to address
18 the merits of our motion to dismiss for appellant's
19 lack of standing.

20 CHAIRMAN JENSEN: Do you want to
21 entertain that, fellow members?

22 MR. ADJOUA: You know, Mr. Chair, I know
23 that we are empowered to review the orders of -- and
24 this appeal from the Planning Commission. I don't

1 think that we are in a court of law. We rely upon
2 our attorney for legal interpretations, so I feel
3 that at this point, we got their documentation. We
4 got the notice, but we're not attorneys, although, I
5 am an attorney, but we're not at a point where we're
6 entertaining legal matters before this Commission.
7 We're not empowered to do that, and I suggest that we
8 vote based upon the recommendation of counsel and
9 move forward with our hearing.

10 MR. HODGE: And I don't want to -- sir,
11 with all due respect, paint myself into a negative
12 light as we approach the merits. And we are not
13 afraid of the merits here this evening, however, the
14 BZA's rule Section 6.10.1, provides that the Chair or
15 any other member of the Board, should believe that --
16 the Board may not have -- may not have jurisdiction
17 to entertain all or part of the appeal. Said member
18 shall move prior to the opening of the hearing that
19 the Board consider and vote upon the question of its
20 jurisdiction.

21 This issue is a standing jurisdictional
22 issue and, you know, before I get into the merits of
23 that argument, I want to hear from you. But, you
24 know, I do believe that the Board does have the

1 authority to proceed to these rules in this instance
2 even on a jurisdictional issue. And reasonable
3 authorities have come to different conclusions and
4 still --

5 MR. ADJOUA: And I think that maybe some
6 judge somewhere who will make that determination,
7 counselor. I respect your position, but I don't
8 think that we have until next week to try that
9 determination here this evening.

10 I would like to make a -- I'll make a
11 motion that we accept the opinion of our city
12 attorney in regards to accepting the motion before
13 this Board.

14 CHAIRMAN JENSEN: Roll call.

15 MS. BANNING: Adjoua?

16 MR. ADJOUA: Yes.

17 MS. BANNING: Mecozzi?

18 MS. MECOZZI: Yes.

19 MS. BANNING: Jensen?

20 CHAIRMAN JENSEN: Yes.

21 MS. BANNING: Eisen?

22 MR. EISEN: Yes.

23 MR. EWALD: Mr. Chair, if you, please
24 for a second. We received the original filing for

1 this case from the appellant, homeowner association,
2 and we believed after a review by myself and the
3 clerk, based upon the rules, that the complaint was
4 officially invalid because they didn't properly
5 disclose the caption correctly. Based upon my review
6 of Ohio Civil Procedure, looking back at our rules,
7 we are required when that is filed to make it
8 officially valid. We did go back, we granted lien as
9 an administrative remedy to the homeowner association
10 in this case. To properly reflect the caption, we
11 requested they not change the body or the substantive
12 arguments within the text. They did not to our
13 satisfaction, and we believe that that's not going to
14 be an issue, of course, moving forward. As it
15 relates in court, and this is in court, and the
16 requirements don't apply. We related the original --
17 the second amendment filing back to the original day
18 of filing, therefore, they met the filing deadline.

19 There's no motion on the floor that I'm
20 aware of for dismissing for that. I wanted to make
21 that clarification that was put forward that under
22 our rules, the clerk has that discretion. She
23 exercised it and I agree with her conclusion.

24 MR. HODGE: And since there was some

1 elaboration here, I want to make sure it's on the
2 record that while we are not afraid of the merits
3 here, we prevail on merits. My objection to the
4 hearing on the merits in the record because the
5 result is that the appellants got beyond 30 days.
6 What your code says you get 30 days, not 31, not 43,
7 not 150, it's 30 days to submit the appeal, that
8 meets the form. They failed to do so, and they were
9 given 43 days to be here this evening. It does not
10 comport with due process and they do not, therefore,
11 have a standing. So I just wanted -- since there was
12 some elaboration there, I wanted to make our position
13 in the record.

14 MR. EWALD: And for the record, I don't
15 object to their objection, but I would like to
16 clarify within our rules, it does allow for the
17 review, so thank you for your time.

18 MR. ADJOUA: And thank you for your
19 comments, counsel. As a judge told me many years
20 ago, in 40 years of being an attorney, that you
21 should be able to -- his argument was, I listened to
22 your arguments, you know your way to the Court of
23 Appeals and you're very -- you're paid very well to
24 get there, so I'm sure we'll move forward, but thank

1 you.

2 MR. EWALD: That's all I have this
3 evening, Mr. Chair.

4 CHAIRMAN JENSEN: Thank you. Moving
5 forward, we shall now consider the appeal on the
6 Planning Commission application FDP-0001-2017 to
7 consider a final development plan application for a
8 multi-tenant retail development property located at
9 the northwest corner of the intersection of Beecher
10 and Hamilton Road, Parcel ID Nos. 025-009951 and
11 025-009952, current zoning CC (Community Commercial)
12 and PCC (Planned Commercial Center), Hamilton
13 Commerce Center, Ryan Fowler, applicant. It was
14 advertised in the Dispatch on 4/19/2017, and the
15 Rocky Fork Enterprise on 4/20/2017.

16 At this time -- before we get started, I
17 want to set the framework for the -- under the advice
18 of the Board of Zoning and Appeals legal counsel, and
19 interest of -- also time management, because I see
20 there's a huge interest in this decision here. The
21 Chair has determined the following time frames,
22 unless the Board has other ideas, that there will be
23 15 minutes for the appellant to present their
24 position, and, then another 15 minutes will be open

1 for the appellant representatives and its supporters
2 to speak. Then, followed up by -- and 15 minutes for
3 appellee for the City of Gahanna Planning
4 Commission's staff to present, and, finally, 15
5 minutes for our interested property developer, GZD,
6 will be able to speak. Does anybody on the Board
7 have questions or issues about that?

8 (Unanimously, the Board members say no.)

9 CHAIRMAN JENSEN: After that, we will
10 allow five minutes for each side for
11 cross-examination and rebuttals, and I will be using
12 a timer from my phone. I believe, I have a motion to
13 confirm that or -- anything?

14 MR. EWALD: (Nods head.)

15 CHAIRMAN JENSEN: I can also allow
16 additional time if we feel it's needed or
17 appropriate, and, so on. At this time, would the
18 appellant like to begin? Please state your name and
19 your organization.

20 MR. WILLIAMS: Yes, thank you. Members
21 of the Board, my name is Charles T. Williams, with
22 the law firm of Williams & Strohm. And my address is
23 Two Miranova Place, Suite 380, Columbus, Ohio. I am
24 representing the Academy Ridge Community Association,

1 Inc., one of the appellants in this case. The
2 association itself consists of 81 homes and
3 homeowners in the Academy Ridge subdivision just west
4 of the proposed development. Every lot owner in the
5 association is a member of the association.

6 As a preliminary matter, I'm not really
7 here to be too hard on Mr. Reed. I know he's a nice
8 guy, but I do want to object on behalf of my client
9 to the Planning Commission having legal
10 representation at this hearing because any witness
11 based upon the Safest Neighborhood Association versus
12 the City of Athens Board of Zoning and Appeals, found
13 at 5 Northeast Third 694. It is not proper for the
14 Planning Commission as the neutral administrative
15 body to be advocating for its position at this appeal
16 hearing. I note that the Planning Commission has
17 already -- is going to call three witnesses, either
18 will testify about what they already presented to the
19 Planning Commission or introduce new evidence of some
20 kind, all of which should have been considered by the
21 Planning Commission and not this Board. Any new
22 evidence presented here should be subjected to the
23 same public hearing and comment process before the
24 Planning Commission with the original filing.

1 Also, as a preliminary matter, I would
2 like to request an additional 15 minutes, because I
3 don't think I can get through my presentation in
4 15 minutes. It'll be closer to a half, probably not
5 exactly a half hour, but pretty close, and I would
6 request additional time. If --

7 CHAIRMAN JENSEN: Please proceed and --
8 depending how -- well, I guess that -- it would
9 vary --

10 MR. WILLIAMS: If you want to interrupt
11 me that's fine.

12 CHAIRMAN JENSEN: We could be here until
13 midnight. I mean, it's -- I think -- I think that we
14 know the main issues. I mean, we need to hear the
15 main issues, and so please proceed.

16 MR. WILLIAMS: All right. Thank you.
17 Thank you very much. First of all, I want to outline
18 what I already sent you during our filing. We're
19 going to first cover the overall approval process of
20 the Planning Commission. We're going to discuss the
21 developer's attempt to hide the identity of the user,
22 Buffalo Wings and Rings, and how it hindered the
23 Planning Commission from its job. Also, I will talk
24 about the conditional nature of the approval and the

1 final development at the Planning Commission. Next,
2 I will address the unsuitability of the project in
3 the neighborhood, and refer to the standards under
4 the city code. And, finally, I'll talk about the
5 specific ordinance sections not followed by the
6 Planning Commission. These will be the technical
7 failures of the Planning Commission to insist upon
8 all the necessary information that was required by
9 the city code.

10 So, first, I want to talk about in
11 detail the overall approval process of the Planning
12 Commission. An issue I want to address is that the
13 developer attempted to hide the identity of the end
14 user at both May 5th workshop, and at the final
15 May 10th hearing in front of the Planning --

16 MR. HODGE: I object. I object to this
17 line of argument. He's talking about a land use.
18 This property is zoned commercially for restaurants
19 and offices and retail shops, so this is totally
20 irrelevant to the issue we're here to discuss.

21 CHAIRMAN JENSEN: We understand. Thank
22 you.

23 MR. WILLIAMS: And, finally -- may I
24 continue, Your Honor?

1 CHAIRMAN JENSEN: Yes.

2 MR. WILLIAMS: I will be quoting from
3 the minutes of the May 3rd workshop and May 10th
4 approval hearing. You will see during this process,
5 that the developer would not answer the question
6 about who the tenant was going to be, claiming there
7 was a confidentiality rule.

8 At the Planning Commission, no eyebrows
9 were raised at all about this question. No one asked
10 any questions, such as is there going to be a liquor
11 license, what is the demographic for the restaurant,
12 who is the typical customer, what hours will the
13 restaurant be open, nothing of the kind was asked.
14 Instead it was assumed that the developer was going
15 to do the right thing. At the May 10th hearing,
16 Commission Member Burba stated that the Planning
17 Commission has a long -- "a long standing
18 relationship with these builders. They have served
19 our community well, and we hope we work with them in
20 the future." He felt no need to ask any further
21 questions. But by the city code, it is the job of
22 the Planning Commission to find out who the end user
23 will be if it is known. City Code 110810 states that
24 the final development plans shall "encourage the

1 orderly and harmonious development of the area in the
2 manner keeping with the overall character of the
3 community." In B, "Every effort should be made to
4 protect any adjacent residential areas from a
5 potential nuisance created by the proposed
6 commercial, industrial or multi-family development."

7 A discussion of the identity of the user
8 followed the hearing process on both May 3rd at the
9 workshop, and May 10th at the final hearing. It was
10 clear that the developer knew who it was and would
11 not say. At the May 5th workshop hearing, there was
12 much talk about the colors, the branding, and the
13 materials to be used for the intended user. Council
14 Member Suriano asked if the materials were based on
15 the "end user." Mr. Beam -- Bean -- I'm sorry.
16 B-e-a-n -- confirmed that that was true, that was the
17 case.

18 And, then, on May 5th, two days after
19 the workshop on May 3rd, BWR Gahanna, LLC, the end
20 user, filed an application for two liquor permits for
21 the project. So what business reasons was there for
22 hiding the identity of the end user at this point
23 other than to avoid the issue over the end user.
24 Again, referencing the May 3rd workshop minutes, the

1 Commission Member Burba asked "If they anticipate one
2 restaurant?" The developer, Gallas responds, "It's
3 hard to say. We go wherever leasing takes you."
4 It's not the forthright response. As I mentioned a
5 moment ago, the actual liquor permit application was
6 signed the day before the May 3rd hearing, on
7 May 2nd. You can look at that in your package of
8 materials. Developer Zadeh said the project,
9 "primarily will be medical." Again, not a forthright
10 answer. Clearly, the developer knew who the user
11 would be, but they were withholding the information
12 on May 3rd. Again, there was no reason for
13 confidentiality at that point. I'll remind the Board
14 that all witnesses were sworn to tell the truth at
15 the public hearings before the Planning Commission.

16 Now, referring to the May 10th meeting
17 minutes when the plan was approved. I'm talking
18 about the colors of the end user's building, Attorney
19 Underhill states, "They have a tenant driving that
20 color." There were lots of questions about the
21 branding and the red color facade and the materials
22 even. So on May 10th, they "have a tenant,"
23 according to Mr. Underhill. However, Commissioner
24 Member Shepherd asked if they know it's a restaurant?

1 And, then, Underhill responds, "They feel strongly
2 that they will have a lease, but do not have a lease
3 yet, for confidentiality as a corporation they own 35
4 units approximately." So do they or don't they have
5 a tenant? Again, this response -- these responses
6 are not forthright.

7 Again, on May 5th, five days before the
8 final hearing on the development plan, BWR in
9 Gahanna, LLC, filed its application for a liquor
10 license. It was a public record five days before the
11 hearing on May 10th. So on May 10th, what was the
12 need for confidentiality if not to hide the identity
13 of the user. On May 10th, it was already a public
14 record, and the Planning Commission could not get a
15 straight answer on who that end user was. As I said
16 earlier, the witnesses are sworn to tell the truth.
17 In the law, there is no confidentiality protection
18 for discussions between the landlord and the tenant.

19 So I'm an outsider here, and I'm looking
20 at this from the outside, and I feel as if it's
21 almost -- as if the Planning Commission did not want
22 to know who the end user was going to be there, no
23 hard questions asked at all. And least one
24 Commission member assumed that the developer could be

1 present. And so I ask this Board, how can the
2 Planning Commission determine the effects on the
3 neighborhood as it's required to do pursuant to Code
4 Section 110805, if it doesn't know who's going to be
5 the end user. The same kind of confusion followed
6 the liquor permit application process by BWR Gahanna,
7 LLC. We know now that the liquor licenses are
8 requested because of the irregularities in filing of
9 the licenses. Just to recap that a bit, BWR Gahanna,
10 LLC, filed its application D5 or D6 on the liquor
11 permit on May 5th. The application also is a sworn
12 document. BWR Gahanna, LLC, did not even exist until
13 June 19th, over a month later.

14 I want to talk about the conditional
15 approval of the plan. The developer entered its
16 motion to intervene. It maintains that the Planning
17 Commission granted a conditional approval of the
18 final development plan. The appellant agrees that
19 the approval was in fact conditional, however,
20 conditional approval are not permitted by your own
21 city code. The Planning Commission clearly exceeded
22 its authority in granting the conditional approval.

23 Code Section 110805 allows for only one
24 approval, two approvals with modification -- it's not

1 the same as the conditional approval -- or
2 disapproval. To illustrate this conditional
3 approval, the minutes from May 10th, Commission
4 Member Hicks posed to support the approval with
5 "condition." The "condition" was that the developer
6 would provide a new traffic study after the approval.
7 In May 10th minutes, Mr. Underhill says, "We're
8 nearing completion on the traffic study. Happy to
9 comply with the condition based on the satisfaction
10 with the traffic study." Everyone was expecting to
11 get a full traffic study for new use after the
12 approval on May 10th, and the city engineer would
13 review it.

14 On May 10th, Commission Member Wester
15 says, "City engineer would do a great job with the
16 traffic study." At that time, there was no traffic
17 study, applying to the same conclusion.

18 At the workshop, May 3rd, Mr. Zadeh
19 states, "We owe the city an updated traffic study.
20 We ask that the approval be conditional." It was
21 clear what both the developer and the Planning
22 Commission, the end of the traffic study was
23 necessary pursuant to Code Section 110803 (A)13, and
24 without the developer providing an updated study, the

1 Commission should have deemed the final development
2 plan incomplete and deny it.

3 So now we do have an updated traffic
4 study. I believe that's in your material as well.
5 The appellant had just seen it, but it was dated
6 June 21st, over a month ago.

7 I submit that without this appeal before
8 you tonight, that this thing would have never been
9 provided to the Planning Commission. And, indeed,
10 what would the Planning Commission do with it after
11 they already voted to approve the final development
12 plan? So this relates a little on the traffic study
13 proves our point. It illustrates why a conditional
14 approval by the Planning Commission are not allowed,
15 and should not be approved. The new traffic study
16 should have been before the Planning Commission
17 before it was voted on, because as it stands no
18 public hearing on the new traffic study is now
19 available.

20 And whatever the city engineer may say
21 about it, there's no further public examination. So
22 why are public hearings important on this new traffic
23 study? Well, I just want to mention a couple of
24 things from the new traffic study, and I am not a

1 traffic expert by any means. I can only comment on
2 what I see.

3 The user in this traffic study is
4 described as "high turnover, sit down restaurant."
5 That alone should raise a red flag for public
6 comment, if not, for the Planning Commission. And we
7 now know that it's going to have full liquor service
8 as well. One of the charts in this report is on
9 weekday peak hour traffic. It's predicted by this
10 report that there will be 60 cars in and out during
11 that peak hour. That's one car a minute, and that
12 seems like a lot for basically a residential
13 neighborhood. Seriously, there is nothing in the
14 traffic report about peak weekend hours, which I
15 would think would be highly relevant for the sport
16 bar business.

17 I want to talk about the unsuitability
18 of this project in the neighborhood. The end user
19 Buffalo Wild Wings and Rings; this is a sports bar.
20 I want to quote from the website, their own website.
21 "We are a club-level sports restaurant experience
22 where everyone is a VIP, worthy of the ultimate
23 sports dining experience, with bright and inviting
24 dining rooms, 50 plus TVs, and elevated fan

1 experiences." Apparently, "elevated fan experience,"
2 translates into a lot of police calls in Grove City
3 and the Broad Street locations. You have those
4 police reports in your materials. Among those calls
5 are fighting, property damage, OMVI, assault, officer
6 assault, hit and run, general disturbances, and
7 suspicious persons, you get the picture. This high
8 turnover sit down sports bar will be the source of
9 constant police calls and disturbances on Beecher
10 Road. And just to point out, neither the Grove City
11 or the Broad Street BW Wings locations are anywhere
12 near residential areas.

13 Code section 110805 (B)(1)(C), requires
14 that a plan not be approved if "the proposed
15 development will have undesirable effects on the
16 surrounding areas." This appellant submits that BWR
17 most certainly will be undesirable effect --

18 CHAIRMAN JENSEN: Excuse me.
19 Mr. Williams, you knew that coming in here with the
20 rules of procedure -- we had said at the public
21 hearing here to be open for 15 minutes -- that 15
22 minutes will be available to you. I'll grant you
23 another five minutes, but in fairness -- to keep this
24 fair for both sides -- I'm sure that you have much

1 more to present, but if you could boil it down to
2 bullet points would be helpful.

3 MR. WILLIAMS: Thank you. I will move
4 quickly. Beecher Road has minor traffic there. It's
5 classified under your code as a minor right-of-way.
6 The project calls for a curb cut, which makes it a
7 commercial street, and definitely takes it out of
8 minor right-of-way classification, and that should
9 not be permitted. I would say that one of the
10 primary jobs of the Planning Commission is to make
11 judgment on whether the user is suitable for the
12 neighborhood. How does the Planning Commission do
13 its job without knowing who that end user actually
14 is? How can they do their job if the developer hides
15 the identity of the tenant? It knows it has.

16 My last section really is to go through
17 a list of kind of technical items that the Planning
18 Commission did not get and are required to get. And
19 I'll go through these quickly so that we can move on.

20 The first thing has to do with the
21 ravine, and that is a requirement under the Code
22 Section 115306(C)(2), which requires the developer to
23 point out relative problems, wooded areas, the
24 service fees on the site, and -- and this is the

1 ravine question: What's going to happen to the
2 ravine structurally filled in and partially paved?
3 That is -- that is troubling all by itself, but
4 the -- on the hearing -- at the workshop hearing on
5 May 3rd, the developers, they had a permit from the
6 government to fill the ravine, but that permit was
7 never provided until just recently, that permit is
8 dated August 26, 2016.

9 Again, no public comment is now
10 available on that -- that permit, and as I read it --
11 it's already expired. It contains this language:
12 "All of the existing NWPs (Nationwide Permits) are
13 scheduled to be modified, reissued or revoked on
14 March 18th, 2017. The Planning Commission would
15 have, I'm sure, like to have that information before
16 it voted on May 10th. That permit should have been
17 submitted at the Planning Commission.

18 Marketing analysis under 115306(C)(9),
19 "No storm water analysis 115365, no filing
20 engineering report under 115306(C)(9)." The final
21 traffic report we have already talked about, this
22 approval was conditional.

23 The developer also has failed to comply
24 and to submit the materials required by the

1 115306(C) (8). The Planning Commission itself failed
2 to take into account the changes on Beecher Road for
3 the new entrance under 1109.02(A) (4).

4 So those are kind of some of the
5 technical things that are in our appeal brief that
6 you should already have. So we come before you and
7 request the following based upon the developer
8 misleading the Planning Commission, regarding the
9 identity of the end user. Based upon the conditional
10 approval of the development plan, based upon the
11 unsuitable nature of the user to the neighborhood,
12 and based on the failures of the developer to provide
13 the required materials to the Planning Commission, we
14 ask that this appeal be granted. Thank you.

15 CHAIRMAN JENSEN: Thank you. Mr. Reed,
16 the Planning Commission.

17 MR. REED: You indicated you wanted the
18 intervention party next or --

19 CHAIRMAN JENSEN: No.

20 MR. REED: Okay. Very well. Thank you.

21 Good evening, Frank Reed on behalf of
22 the law firm of Frost Brown Todd. I represent today
23 the Planning Commission in the City of Gahanna. I've
24 been appointed as special counsel to represent the

1 City of Gahanna Planning Commission, because the
2 Gahanna Charter provides that the city attorney shall
3 be the attorney for this Board, that is the Board of
4 Building and Zoning Appeals. I have the upmost
5 respect for Mr. Williams and his law firm, and his
6 clients. I have the upmost respect for Mr. Aaron
7 Underhill and his colleague, Mr. Hodge, who
8 represents the intervening party.

9 On May 10th, 2016, in a six to one
10 decision, the City of Gahanna Planning Commission
11 approved the final development plan for a property
12 located on the corner -- west corner of Beecher and
13 Hamilton Road in the City of Gahanna. The proposed
14 use is to construct two proposed commercial
15 buildings, consisting of 14,572 square feet. The
16 building will cover 36.2 percent of the parcel. The
17 proposed cost is 3 million. This is a target 3-D
18 site. It's consistent with the 2015 economic
19 development plan as a priority development area, that
20 will generate 39,000 annually for tax increment
21 financing district known as the northern triangle for
22 the City of Gahanna. It will have a 415-foot buffer
23 from the nearest residence to protect from possible
24 light, noise and odors.

1 As I understand it, the members of this
2 Board have already read the things that are in the
3 record, which occurred before the Planning
4 Commission, which have been supplemented since the
5 Planning Commission's decision dated May 10th, 2017,
6 as well as those items that have been submitted by
7 the appellants. So for all the things that's
8 contained on the record, as well as the evidence that
9 will be submitted in today's hearing, the Planning
10 Commission will respectfully request that the Board
11 of Zoning and Building Appeals affirm the decision of
12 the Planning Commission on May 10th.

13 We have three witnesses we would like to
14 call at this time. The first is Deputy Chief of the
15 City of Gahanna Police Department Jeff Spence.

16 (Discussion held off the record.)

17 DEPUTY CHIEF JEFFREY SPENCE,
18 being by me first duly sworn, as hereinafter
19 certified, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. REED:

22 Q. All right. Would you state your name
23 for the record, please?

24 A. Jeffrey Spence.

1 Q. Okay. And what is your position, Deputy
2 Chief, with the City of Gahanna?

3 A. I'm the deputy chief of police.

4 (Discussion held off the record.)

5 Q. Chief, what's your position with the City
6 of Gahanna?

7 A. I'm a deputy chief of police.

8 Q. And how long have you been a sworn
9 police officer?

10 A. 26 years.

11 Q. And then what jurisdictions have you
12 worked as a police officer?

13 A. My entire time here in the City of
14 Gahanna.

15 Q. All right. Are you a resident of the
16 city?

17 A. Yes, I am.

18 Q. All right. And can you tell us have you
19 had any training in the area of traffic?

20 A. Yes, I have.

21 Q. All right. I don't want you to go
22 through everything, but can you give me a few of the
23 highlights?

24 A. Basically, advanced crash investigation,

1 traffic volume studies, traffic enforcement,
2 everything from speed and motor vehicle operation to
3 advanced detection of impaired drivers.

4 Q. Thank you, Chief. Can you tell me --
5 are you familiar with the intersection of Beecher and
6 Hamilton Road?

7 A. Yes, I am.

8 Q. Okay. At some point were you asked to
9 do any kind of examination or study of the volume of
10 cars and the speed of those cars at that
11 intersection?

12 A. Yes, we were. We were requested to do a
13 speed volume study on the roadway of Beecher Road and
14 we were also requested by the city engineer to
15 provide traffic actually at that intersection.

16 Q. Chief, I've handed you four pages of
17 documents that are already in the record. Can you
18 identify the first page for me?

19 A. The first page is from our record
20 management system. It is a report for the entire
21 calendar of 2016, and it's accessed by street name/
22 intersecting street for Beecher Road and Hamilton,
23 and -- for both roadways.

24 Q. Okay. And who created that report for

1 you?

2 A. That was created from our records
3 management system.

4 Q. All right. And who assembled the data
5 for that report?

6 A. It looks like Lieutenant Moffet ran
7 the -- ran the report. It's says CAD report in our
8 system.

9 Q. Thank you. And did Lieutenant Moffet do
10 that at your request?

11 A. Yes, he did.

12 Q. Okay. And did you review the raw data?

13 A. Yes, I did.

14 Q. Did you create this report or is this
15 something Lieutenant Moffet did?

16 A. Lieutenant Moffet created this report.

17 Q. All right. And what about the remaining
18 three pages? Can you tell us what those are?

19 A. The second -- the report is the same
20 access by street name, and the second street, that is
21 from our CAD Records Management System, and that is
22 for January 1st, 2017, through June 29th, 2017.

23 Q. The third page?

24 A. The third page is a -- part of our speed

1 volume survey, that was done for Beecher Road, and it
2 is the indicator of -- first the speed enforcement
3 evaluator, and that is the indicator of traffic
4 volume.

5 Q. Thank you, Chief. What does that report
6 conclude, please?

7 A. It concludes the speed on the section of
8 roadway where the equipment was positioned. It had
9 to be -- it was very low. That the --

10 Q. Let me interrupt you. Was that on the
11 east side or west side of the Hamilton Road?

12 A. It would be on the west side.

13 Q. And that's where the proposed
14 development is, correct?

15 A. Yes. As a matter of fact, I was with
16 Lieutenant Moffet on the day that he installed this
17 device.

18 Q. Okay. And do you believe that that
19 report is consistent with your personal observations
20 in the 26 years you've been a police officer here in
21 the City of Gahanna?

22 A. Yes, it is.

23 Q. Okay. Let me ask you a different
24 question. One of the things that the appellants have

1 raised in their appeal, and in the hearing today, is
2 sort of police calls that occurred at BW3s. Are you
3 familiar with that argument?

4 A. Yes, I am.

5 Q. All right. And can you tell me do you
6 have an opinion as to whether or not the -- I want
7 you to assume for my question that the proposed
8 development will be a restaurant similar to BW3s
9 restaurant. I don't know that, but I want you to
10 assume it, and I want you to tell me do you have an
11 opinion as to whether or not that sort of restaurant
12 will create more or less police calls in your
13 judgment as Deputy Chief of the City of Gahanna?

14 A. I believe that any -- any permit premise
15 holder will have some degree of police response. I
16 do not believe that -- and again, I would say, we
17 deal in police work with facts and evidence, and it's
18 very clear for us -- it's very hard for us to take a
19 hypothetical situation and make it an application to
20 the hearing now. But what I would say is that every
21 permit holder in our city, whether they sell alcohol,
22 is unique in and of themselves, as a business seller.
23 There are responsible business owners. There are
24 irresponsible business owners.

1 It is my estimation when -- when -- as
2 history tells us, if somebody is a permit holder has
3 a higher food to alcohol sales that there are less
4 issues with that particular premises.

5 Q. Thank you, Chief. Are you familiar with
6 the developer that's the subject of this appeal
7 today, Gallas?

8 A. No, I'm not.

9 Q. Okay. You don't know if they have any
10 other developments here in the of City of Gahanna?

11 A. No, I do not.

12 MR. REED: Okay. Chief, I have no
13 further questions.

14 Do you want to ask if there's any
15 questions from the appellants or the intervention or
16 do you want to save that for the end?

17 CHAIRMAN JENSEN: I think we prefer to
18 save it for the end so we can direct --

19 MR. REED: Great. Thank you. Chief,
20 you can have a seat. I would like to ask Mike -- if
21 you take the stand, please?

22 MICHAEL BLACKBURN,
23 being by me first duly sworn, as hereinafter
24 certified, testified as follows:

DIRECT EXAMINATION

BY MR. REED:

Q. Please state your full name for the record?

A. Michael Blackburn.

Q. And what is your position, Mr. Blackburn?

A. I am the deputy director of Planning and Development Department.

Q. And how long have you held that position?

A. A little over three years.

Q. And how long have you worked for the City of Gahanna?

A. Three years.

Q. And have you worked for any other cities prior to this?

A. I've previously worked for St. Johns down in Florida.

Q. Okay. For the county down there in Florida?

A. County, yes.

Q. What was your position there?

A. I worked there for about ten years, and

1 I was a planner, and, then, the planning and zoning
2 manager.

3 Q. And did you work anywhere before that?

4 A. No, sir.

5 Q. And what's your educational background?

6 A. I have a bachelor's degree in urban
7 studies from Cleveland State.

8 Q. Thank you. Mr. Blackburn, did you have
9 an occasion to review this application?

10 A. Yes, sir.

11 Q. Okay. And can you tell the Board when
12 was it you first heard about this proposed
13 development?

14 A. I believe my first analysis of this
15 proposal was in the spring of 2016. I believe the
16 developer reached out to the planning and development
17 department to request a meeting to talk about the
18 proposal.

19 Q. Okay. Did you ultimately have an
20 occasion to make a recommendation as to whether the
21 final development plan should be approved or
22 disapproved by the Planning Commission?

23 A. I did have a staff report associated
24 with the application, yes.

1 Q. All right. Mr. Blackburn, what was the
2 conclusion of that staff report?

3 A. That the final development plan was
4 consistent with applicable 2002 maintenance plan as
5 far as being located within a mix use district. The
6 uses were appropriate and consistent with that plan.
7 And then if the development was consistent with our
8 2015 economic development strategy, it was
9 specifically included at the target site to recognize
10 that retail office was an appropriate use, upwards in
11 the neighborhood of four to five source of use of the
12 property.

13 Q. Thank you, Mr. Blackburn. You heard the
14 appellant say that there was an approval, but that
15 approval was conditional. Did you understand that
16 argument?

17 A. I believe so.

18 Q. All right. Let me ask you,
19 Mr. Blackburn, in your experience with the City of
20 Gahanna, is it routine or nonroutine for an approval
21 to be conditional on certain items?

22 A. Various applications, yes, there will be
23 modifications or conditions associated with those
24 approvals.

1 Q. So one of the conditions was approval
2 for final engineering; is that right?

3 A. I cannot speak to that.

4 Q. Okay. Another approval was the final
5 storm water engineering. Let me ask you this: Is it
6 normal to have final engineering and final storm
7 water approval done and submitted prior to the
8 Planning Commission's approval of the proposal or is
9 that something that usually comes after the Planning
10 Commission approves of this development?

11 A. It is my understanding that is usually
12 after approval of the development.

13 MR. REED: Thank you. I have no further
14 questions, Mr. Blackburn. My next witness is Rob
15 Priestas, the city engineer.

16 ROB PRIESTAS,
17 being by me first duly sworn, as hereinafter
18 certified, testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Reed:

21 Q. Thank you, Mr. Priestas. Can you say
22 and spell your full name, please?

23 A. Yes, Rob Priestas, R-o-b,
24 P-r-i-e-s-t-a-s.

1 Q. And what is your position?

2 A. City engineer.

3 Q. And how long have you held that
4 position?

5 A. Not quite three years.

6 Q. All right. And before you were city
7 engineer for Gahanna, where did you work?

8 A. City of Marysville.

9 Q. All right. And what was your position
10 there?

11 A. First project engineer and then
12 assistant to the engineer.

13 Q. I see, and prior to the city of
14 Marysville, where did you work?

15 A. Floyd Browne Group.

16 Q. And what was your position there?

17 A. Project engineer.

18 Q. Okay. Thanks for speaking into the
19 microphone, that helps. What is your educational
20 background, Mr. Priestas?

21 A. I have a bachelor's in civil engineering
22 from Ohio University.

23 Q. All right. And are you a PE?

24 A. Yes, I am.

1 Q. So you're a professional engineer.

2 Mr. Priestas, did you have an occasion to review the
3 final development and the application associated with
4 this appeal today?

5 A. Yes, I did.

6 Q. All right. What are some of the things
7 that you reviewed?

8 A. I reviewed city limit access, utilities,
9 traffic impasse, and any provisions for storm water
10 management on the north end.

11 Q. Okay. Mr. Priestas, I hand to you
12 what's been marked as the traffic study dated, I
13 believe, July 21st, 2017. Do you have that document
14 in front of you?

15 A. Yes.

16 Q. I will represent to you that's been made
17 a part of the record in this proceeding and it has
18 been available to all of the parties. Is that a
19 report that you requested?

20 A. Yes, it is.

21 Q. Okay. Who provided that report to you?

22 A. Trans Associates.

23 Q. Okay. And who does Trans Associates
24 work for?

1 A. Gallas Zadeh Development.

2 Q. And did the city ask you or anyone else
3 to review that traffic report?

4 A. Yes.

5 Q. Who did you ask to review it?

6 A. I reviewed it and I also had an outside
7 consultant review the traffic report as well.

8 Q. Thank you, Mr. Priestas. Who's the
9 outside consultant that reviewed it?

10 A. Carpenter Marty.

11 Q. All right. And did they come to an
12 opinion as to whether or not the traffic study was
13 appropriate for this development?

14 A. We agreed that it was, yes.

15 Q. All right. In terms of other items that
16 you reviewed, did you review the pavement thickness
17 as it relates to Beecher?

18 A. Yes.

19 Q. And what did you conclude, if anything,
20 about the pavement thickness as it relates to
21 proposed development on West Beecher?

22 A. The existing pavement is sufficient for
23 the development.

24 Q. And how did you reach that conclusion?

1 A. According to its composition.

2 Q. All right. Can you explain to me -- was
3 there a rating of that particular pavement?

4 A. It's currently rated, I believe, an 81,
5 which is in fairly good shape, that's on the scale of
6 0 to 100, and that section of pavement is actually
7 about 25 years old.

8 Q. What's an acceptable rating in terms
9 of -- out of 100?

10 A. Our goal is to maintain a 75 or better.

11 Q. I see. So 81 is above 75, so you're
12 good?

13 A. Yes, sir.

14 Q. What about the east side of Beecher?
15 How is that road rated?

16 A. East side rates, I believe, a 95, and,
17 actually, it's a 19-year old pavement.

18 Q. I see. So did you come to an opinion as
19 to whether or not something different is going to
20 have to be done either at the cost of the developer
21 or the City of Gahanna's cost on the west side of
22 Beecher if this development were allowed?

23 A. Not regarding pavement composition.

24 Q. So your conclusion that nothing really

1 needs to be done?

2 A. Correct.

3 MR. REED: No further questions for this
4 witness.

5 CHAIRMAN JENSEN: Excuse me, Mr. Reed.
6 Are you about finished on your section here?

7 MR. REED: Thank you, Mr. Chair. I will
8 tell you that it's incumbent upon me to do all I can
9 to represent the Planning Commission. I understand
10 you've given each side 15 minutes, that is my only
11 three witnesses. If I can have one minute, I'd like
12 to conclude?

13 CHAIRMAN JENSEN: All right. Yes. Go
14 ahead.

15 MR. REED: Thank you. Members of the
16 Board, the other thing I will tell you is that I
17 reviewed the Gahanna City Charter. I noticed that
18 the Charter Commission spells out what the Planning
19 Commission's duties are and that is to look out for
20 the harmonious improvement of the municipality, to
21 evaluate the planning and design, location of new
22 structures. The jurisdiction of the Board of Zoning
23 and Building Appeals is to hear and decide appeals
24 from the decision of the Planning Commission

1 pertaining to zoning and buildings, and decide its
2 cases to avoid justice.

3 I will tell you that the burden of proof
4 here is upon the appellant, and the burden is by the
5 preponderance of the evidence. And I will tell you
6 that 1105.06 talks about an application for a final
7 approval and it indicates that it should be approved
8 unless one of the three following conditions exist:

9 Either one, the application shall
10 adversely affect the health and safety of persons
11 living or working within the area. No. 2, the
12 application materially is detrimental to the public,
13 welfare, or interested property improvements. No. 3,
14 that the application is contrary to the existing city
15 development standard zoning ordinance or master
16 development plan.

17 I will submit to you that I have read
18 the case cited by the appellant's counsel in this
19 matter. I believe that the case does not stand for
20 the fact that if the city wants to have separate
21 counsel for the Planning Commission, that's within
22 the city's prerogative. I don't believe that is
23 official -- a procedural error. I think that case
24 more rather has to deal with who is a proper party to

1 any appeal presented to 2506, if this matter was
2 appealed in Common Pleas Court.

3 For all reasons contained in the record
4 as well as the evidence submitted today, it's the
5 Planning Commission of the City of Gahanna's position
6 that the Board of Zoning and Building Appeals affirm
7 the decision dated May 10th, 2017.

8 Thank you for your service. I'll be
9 happy to answer any questions.

10 CHAIRMAN JENSEN: At this time, would
11 the intervening party like to speak?

12 MR. HODGE: Thank you. Again, David
13 Hodge on behalf of the applicant. I'm not going to
14 request any additional time. I'm not going to use
15 it. I don't need 20 minutes.

16 I think I can say one thing that negates
17 approximately 14 minutes of the appellant's argument,
18 and that is the fact that this a commercial zoned
19 property. All of the discussion about restaurants,
20 and liquor permits and other uses is totally
21 irrelevant to the consideration tonight. The
22 property is zoned in a commercial district, which
23 allows a host of commercial uses; hardware stores,
24 department stores, variety stores, miscellaneous

1 general merchandise stores, miscellaneous food
2 stores, women clothing stores, men clothing stores,
3 drug stores, liquor stores, tobacco stores,
4 veterinarian services. All of those uses are allowed
5 by right along the property, so the discussion
6 regarding Buffalo Wings and Rings or, whoever it is,
7 is totally irrelevant for the consideration before
8 the Board this evening.

9 Regarding some argument made that the
10 plan is unsuitable to this neighborhood. You know, I
11 think, we have to consider Mr. Blackburn's testimony.
12 We can even look to the appellant's own book of
13 exhibits, which you have, and we can talk about what
14 is suitable for this neighborhood, and what is
15 planned to be suitable for the neighborhood, not just
16 the zoning, but 2002 future management plan. It says
17 it's designated for mixed use. The objective of
18 mixed use include a development that promotes the
19 building applied laws, commercial and high density
20 residential. If you can go back through the various
21 staff comments, all of them are supportive of the
22 notion to having this property development in the
23 tenant's intent, commercial way.

24 There was some discussion about a

1 failure of the Planning Commission to consider all of
2 the required information, and Mr. Blackburn testified
3 on that element as well, and I want to draw your
4 attention to Section 110803 of the Gahanna Code,
5 which reads, "Upon the filing of a final development
6 plan, if the Planning and Zoning administrative or
7 the designee, it shall be examined and confirmed
8 whether or not it complies with the requirements
9 listed in the section, and, then, shall be referred
10 for a city staff review. If the plan does not meet
11 the requirements of the Planning and Zoning
12 administrator or the designee, the Planning and
13 Zoning administrator or the designee shall return to
14 the owner with instructions who shall revise and
15 re-file."

16 This application was submitted, it was
17 reviewed, it was accepted. It went to the Planning
18 Commission meeting. It went to the workshop meeting.
19 It came back to a Planning Commission meeting, and
20 during that process, there were, at least, two
21 meetings that surrounded the property owners in
22 effort at -- a collaboration, cooperation with the
23 neighbors.

24 There was some discussion about a

1 traffic study, and you heard from the Gahanna's city
2 engineer, Rob Priestas, regarding that traffic study.
3 And there's some argument made, and some information
4 in the appellant's material are about the same. And,
5 essentially, the issue with the traffic study is that
6 originally it contemplated much more intense
7 development. And in working through the process of
8 both Gahanna and neighbors, but the scope of the
9 development was minimized, and, therefore, the
10 traffic study needed to be updated through --
11 evaluate the actual impact as opposed to -- to
12 propose it to another impact, which could be much
13 greater than what was actually going to be done.

14 So in terms of the Planning Commission's
15 action, ultimately, which was a conditional approval
16 as Mr. Blackburn testified, it is certainly
17 customary, not only in Gahanna, but in every
18 municipal or township jurisdiction. I do zoning
19 work; it is the -- it's frequent that approvals are
20 given with conditions. Those conditions are
21 enforceable. They're enforceable by Gahanna. If we
22 don't have an update to the traffic study and submit
23 it in accordance with that condition, and we have --
24 we have issues with the -- the legality of our

1 zoning.

2 So Mr. Read touched on some of this, and
3 I want to touch on it a little bit too. What we're
4 looking at here is whether it is -- it is more likely
5 than not that the Planning Commission got it wrong,
6 more likely than not that the Planning Commission got
7 it wrong. The vote was six to one from the Gahanna
8 Planning Commission. They hear these cases month in,
9 month out, and many of those Planning Commission
10 Members have been on that commission for a very long
11 time. They come to monthly meetings. They come to
12 workshop meetings. They have expertise in this area,
13 and by a vote of six to one, they concluded that the
14 proposal meet the following requirements.

15 The proposed development meets the --
16 the applicable development standards of the zoning
17 ordinance. Nobody speaks that it doesn't, no
18 variance -- no variances were requested. The
19 proposed development did accord with the appropriate
20 plans for the area. It's zoned commercially and the
21 land use plan calls it a mixed use property. The
22 proposed development would have -- would not have
23 undesirable affects on the surrounding area. This
24 applicant worked with the neighbors. It worked with

1 Gahanna to minimize the scope. It has a huge setback
2 from the west, a huge setback from the north. It
3 incorporates sound, storm water mitigation. It has a
4 traffic study. You heard the chief testify this is
5 not going to be -- create undesirable affects on the
6 surrounding area.

7 And last, the proposed development will
8 be keeping with the existing land use character and
9 physical development potential of the area. As we've
10 mentioned, this has been a significant minimized
11 proposal before the city, and when the Planning
12 Commission considered those four criteria, they voted
13 six to one, that the proposal meets those criteria.
14 And, so, I would take the position, and I am taking
15 the position, that those experts on your Planning
16 Commission did not get it wrong. More likely than
17 not, they got it right.

18 We're happy to answer questions.

19 CHAIRMAN JENSEN: At this time -- we
20 appreciate it. At this time, I'd like to move
21 forward. Prior to the meeting, there was six
22 individuals that wanted to speak during the meeting,
23 and we would like to hear from them. I'm going to
24 adjust the conversation -- the speaking time to five

1 minutes per speaker. Is that acceptable to -- with
2 the Board?

3 (Unanimous yes.)

4 CHAIRMAN JENSEN: Okay. The first name
5 that I call here is Amy -- Sim -- I'm sorry.

6 MS. SEYMORE: Seymore.

7 CHAIRMAN JENSEN: I'm sorry.

8 MS. SEYMORE: My name is Amy Seymore. I
9 am a resident at 355 Beecher in Gahanna. I'm also a
10 teacher at Columbus Academy. I lived in this
11 neighborhood for two years and I love it because it's
12 really a safe neighborhood. My students come running
13 through the neighborhood all the time. I sit and ID
14 students walking. It's a very pedestrian
15 neighborhood. My kids have plans tonight to go out,
16 and I told them I was coming here because of this,
17 and here they are. Can you guys come to the aisle,
18 Kate and Jack. Come stand in the aisle, please.
19 They actually -- they had other plans. To sit
20 through this -- no offense, you guys are doing a
21 great job, but it's not superexciting for a 10 and a
22 12-year old. Those two kids play with dozens of
23 other kids in this neighborhood all the time. They
24 ride their bikes. They get on their scooters. They

1 run around from house to house. You know, they talk
2 to all of the neighbors.

3 And maybe this is zoned for commercial
4 and industrial development, but it doesn't really
5 mean it's the right thing to do it. It doesn't mean
6 that it should be developed. I will ask you to look
7 at those two kids and think about the fact that
8 there's dozens of other kids that look just like them
9 in this neighborhood. I would ask yourself to look
10 at your own neighborhoods and say would I want a bar
11 on the corner of my neighborhood, the entrance to my
12 neighborhood, where my kids, or my grandkids, or my
13 nieces and nephews are riding their bikes around.
14 Just because something is zoned for commercial use,
15 just because our law says that we can have something
16 like this, doesn't mean it's the right thing, and it
17 certainly isn't the right thing for kids like those.
18 Thank you.

19 (Applause.)

20 CHAIRMAN JENSEN: Next, the name that I
21 have is Bryan Clay.

22 MR. CLAY: I'm going to pass. Thank
23 you.

24 CHAIRMAN JENSEN: Tracy Clay.

1 MS. CLAY: Hi. I appreciate what the
2 lawyer had to say, so I'm good.

3 CHAIRMAN JENSEN: Jim Wells.

4 MR. WELLS: Hi, my name is Jim Wells.
5 And just a little bit of background, I have a PhD in
6 engineering. I taught at Purdue, and spent 35 years
7 in industrial building research and development for a
8 number of patents. And you know one thing I really
9 sort of know, to make a successful project -- you
10 know, if you can get any project, and let's say get
11 by, but what you really want is what's best. And I
12 think it's incumbent on the Planning Commission to
13 take more of that attitude.

14 You know, a good example of what I'm
15 talking about, obviously, we're all carrying around
16 the phones. Well, you want the phone to be as loud
17 as possible, right, that's a desire. You want the
18 phone to have a longest battery life, that you can,
19 that's a desire, but there's compromise. You have to
20 have balance and compromise. Now, being a resident
21 of the Academy Ridge, you know, there's some things I
22 want. The developer has another list of things that
23 they want, so the issue is how can we maximize both
24 sides and get it as much as what they want and need.

1 You know, my want, No. 1, is no
2 compromising of the safety of the residents, their
3 children, the Columbus Academy's children. We have
4 -- if you have consumption of alcohol on the corner,
5 and a high traffic of children up and down that
6 street to be crossed, if there's a curb cut on
7 Beecher, there eventually will be an accident. It's
8 Russian roulette. It may be a year. It may be two
9 years, but it's going to happen.

10 No. 2, you know, we worried about
11 worsening traffic congestion. At certain times, it
12 gets congested. Now, if you spread it out over all
13 kinds hours, I will admit, sometimes there's nobody
14 on Beecher Road, but there is congestion at certain
15 times.

16 Third, there's a question of noise. A
17 very quiet, nice residential neighborhood, I don't
18 know if there's going to be a patio outside, loud
19 music. Sometimes, you can hear the music from -- the
20 fact it degrades the quality of the neighborhood.

21 Fourth, and we'll be picky now. I love
22 the woods. They're beautiful in the fall, but, you
23 know, that may be too far to go. We realized that
24 the developer wants to put something there. But, you

1 know, in the hearings, we talk to -- we had earlier,
2 he said, for example, do we have to have a cut onto
3 Beecher? And my position, is no, we don't. Hey,
4 Sherwin-Williams doesn't have any kind of cut, and
5 they do fine, and they have done for years. And,
6 then -- I -- let's just talk about that. People who
7 are southbound on Hamilton, who are entering
8 southbound and exiting southbound, there's no
9 problem. Everybody agrees with that, right? It's
10 only the people coming from the south northbound on
11 Hamilton and wanting to exit and go north on
12 Hamilton. Let's see what can happen. For those
13 wanting to exit and return to north, if the entry and
14 exit was only on Hamilton Road, this would be a piece
15 of cake. They turn south on Hamilton, pass Beecher,
16 make a left turn into Silver Lane, left turn into
17 Beecher Crossing, left turn onto Beecher, there you
18 are, Hamilton Road again, and you go north. It's
19 easy.

20 How about people approaching -- going in
21 from the south wanting to get into the development.
22 There's no left turn, agree with that. But, you
23 know, it was stated you can't make an U-turn on Vista
24 Drive. Well, I didn't want to try it in my Ford

1 Explorer, because it's illegal right now, but you
2 know, leaving off the parking lot, I made -- I made
3 that U-turn with 3 or 4 feet to spare. Then, as a
4 matter of fact, that was considering that got about 2
5 feet possible separating that left-turn lane at Vista
6 Drive from the left-hand northbound lane on Hamilton
7 that doesn't need to be painted out. It's not
8 painted out at the first entrance to Stone Ridge.
9 It's not painted out at Stone Ride Drive. It's not
10 painted at Morse Road. It's not painted out at any
11 other left-turn lane all the way up past Home Depo,
12 only there, that's not a requirement. So that would
13 give you another 2 feet.

14 Now my Ford big -- you know, Ford
15 Explorer is fairly good size. Like I said, I did it.
16 But if you didn't want to, how about turning right on
17 Vista Drive? We've got an area of concrete bigger
18 than this room. It's the easiest thing. You make a
19 right turn. You just do a 180, and there you are,
20 back at the stop light on Hamilton Road where you can
21 safely make a left turn. If anybody wanted, they can
22 even paint a dotted line showing how to do it. It's
23 really easy.

24 You know, I mentioned that -- you know,

1 I still do -- I don't think that this is the best use
2 of the land, but, the priorities should be upheld.
3 You know, I said I taught at Purdue. I tell you, I
4 had a lot of students. If I was going to give
5 somebody a grade on this for a balance of all the
6 desired attributes of the project and how it met the
7 needs of each of the constituents, this is not an A
8 project as it stands. It's not a B. It's not a C,
9 maybe it's a D. I don't think so. I think it fails
10 to address what can be done to satisfy most people,
11 and that is to have entries and exits only from
12 Hamilton Road.

13 The only thing that it will do for
14 customers is slow them down a minute, plus or minus a
15 few seconds, but even if it saves one life or one
16 serious injury, it's certainly worth it, and I think
17 the Planning Commission ought to revisit the plan.

18 CHAIRMAN JENSEN: Next, we have Howard
19 Sitton.

20 MR. SITTON: I can speak from here. I
21 just want everyone that's against this project to
22 stand up so you can see how many -- how many of us
23 are here. Everyone that's against it, please stand
24 up. That's all I have.

1 CHAIRMAN JENSEN: Lastly, Alvin McKenna.

2 MR. MCKENNA: Thank you, Mr. Chairman,
3 and Members of the Board. Mr. Adjoua, I'm an
4 attorney too. I'm not here as a lawyer, so I didn't
5 have to wear a sports coat. I'm here as a resident.
6 I reside at 202 Academy Court. I'm here to speak
7 this evening regarding this appeal. I'm speaking on
8 behalf of both my wife and I who have been owners of
9 our home in the Academy for 43 plus years, and as a
10 representative of our civic association and on behalf
11 of other residents in the Academy. My wife is the
12 president of the civic association, and so, we can
13 understand how I volunteered to speak tonight.

14 I know that the other Gahanna residents
15 that we've heard from and the representatives were
16 here to express concerns about the impact of this
17 proposed project, the problems that will proceed it,
18 and the process with which the prior development so
19 far have gone, and resulting in the approval that has
20 been given. While I share many of those concerns, I
21 will lead with those -- or the particular concerns.

22 One of my remarks is the potential
23 increase storm water flooding and damage done to our
24 property and home in the Academy Acres, as well as

1 other neighboring developments. As I'm sure the
2 Members of the Board know, there has been unenclosed
3 storm water drainage system close to Academy Acres,
4 as well as through several other developments, south
5 and west of the proposed development.

6 Over 43 plus years, we have lived in our
7 home in Academy Acres. We have seen numerous
8 instances when the unenclosed storm water drainage
9 system has overflowed its normal banks and gone into
10 the yards and basements of several homes in our
11 development and in other developments. These are not
12 just the yards and homes immediately adjacent to the
13 drainage system, and it has come even -- come over
14 the bridge on the street and flooded Academy Court
15 itself.

16 A bit of Gahanna trivia, I will tell you
17 that the unenclosed storm water draining system name
18 is McKenna Creek; it was named after me. I say that
19 not to brag, but to indicate how long this flooding
20 has been an issue. After having served two four year
21 terms on Gahanna City Council between 1972 and 1979,
22 and before I was appointed to fill a vacancy in late
23 1982, a developer brought up a plan to develop south
24 of Academy Acres to the city for approval. That plan

1 was then unnamed unenclosed drainage system, a creek,
2 through that supposed development and the adjacent
3 one. The Franklin County recorder said that the
4 creek had to have a name in order to apply and move
5 forward. When it was brought back to the City of
6 Gahanna to address, the then mayor announced at a
7 Gahanna council meeting that the creek should be
8 named McKenna Creek, and I quote, "Since he always
9 complained about it when he was on city council." So
10 this is not a new issue, but one dating back, at
11 least, 40 years.

12 Anyway, we appreciate what the city of
13 Gahanna has done over the years such as the retention
14 basin coming off of Hamilton Road, and the extensive
15 work at the Academy Acres itself. Some of it, just
16 last year, had cost hundreds of thousands of
17 taxpayer's dollars to try to alleviate the constant
18 flooding problems. However, even though it has not
19 been sufficient, it's well demonstrated by its
20 continued flooding during the rain so far in the
21 spring and summer. And I have neighbors who have
22 trouble getting out of it. If it continues for
23 another few hours, I'll take you out there, but we
24 will not be able to drive to my house because the

1 water will be coming over the bridge and flooding
2 into the street down three and four houses to the
3 side.

4 To now allow the proposed project that's
5 been involved, as I understand it, in the elimination
6 of the retention area and the natural retention of
7 the ravine in the Academy Ridge certainly works in
8 cross purposes of the city's efforts so far to
9 provide relief from potential flooding in the area.
10 And it almost certainly -- it certainly almost
11 appears to be a lack of communication and
12 coordination between two areas of the Gahanna city
13 government all for the detriment of the existing
14 Gahanna residents and homeowners, and to the benefit
15 of a new commercial development.

16 CHAIRMAN JENSEN: Mr. McKenna, how much
17 more time do you need?

18 MR. MCKENNA: About two minutes.

19 CHAIRMAN JENSEN: Okay. Thank you.

20 MR. MCKENNA: Neither this proposed
21 project nor any other mistakes in the concrete
22 drainage flow, if we approve to go forward without a
23 complete flood analysis of the impact on McKenna
24 Creek and existing neighboring residents, it will not

1 further then -- it should not be allowed to proceed
2 without adequate assurance that it will not further
3 exacerbate the flooding potential.

4 To save time, Mr. Chairman, I have a
5 copy of this, okay? You can give it to the clerk,
6 and I ask that it be part of the record. The
7 interesting thing I heard in some of these comments
8 before us is there's no storm water plan or storm
9 water study has been done, but it's approval upon the
10 plan with blacktop filing in the ravine, and
11 everything else.

12 I think that the -- and based on the
13 fact that -- one argument, apparently this is one of
14 the most useless bodies in the world, because if the
15 Planning Commission approves something by the
16 majority, that means there's no question about what
17 it has done. But that is why you exist, to examine
18 what they've done, whether they've done the right
19 thing. I and my neighbors in the Academy Acres, do
20 not believe that this is the right thing, and we are
21 asking you to grant the appeal, send this matter back
22 to the Planning Commission with the instructions for
23 a full storm water study before anything is approved,
24 and the requirement that there be some sort of

1 compliance with that storm water study so that we do
2 not have to sit with the water coming into our
3 basements -- I mean, our yards. We've had it already
4 this year. Thank you.

5 MS. BANNING: Mr. Chairman, I
6 respectfully request to submit a rather important
7 document from Council Member Shepherd, who's ward
8 represents for this area. I submitted it to all the
9 parties on Monday and he'd like for it to be a part
10 of the record for review at this point.

11 MR. HODGE: And I object to the letter,
12 it's prejudicial.

13 CHAIRMAN JENSEN: Do we need to discuss?

14 MR. EWALD: Since the information has
15 been proffered to the Board, the Board would have to
16 review -- discuss if they want to allow or not allow
17 the letter.

18 CHAIRMAN JENSEN: Have you seen -- has
19 everybody seen this letter?

20 MS. BANNING: I have a paper copy. I
21 submitted it digitally on Monday.

22 MR. EWALD: Sure. It's actually not
23 officially part of the record until the Board either
24 accepts or rejects it.

1 CHAIRMAN JENSEN: And we can enter this
2 under the same category as the external speakers --
3 with this?

4 MR. EWALD: It may be added as input
5 from the community or a particular individual, but
6 under 6.13 if a Member of the Board objects, now it
7 should be put to a vote.

8 MR. ADJOUA: I have no objection,
9 Mr. Chair.

10 MS. MECOZZI: I actually do object. The
11 volume of the materials that we have provided before
12 us, the degree involved with this, the timely and
13 equal manner to getting it to us considered prior to
14 tonight, and to read a letter of this length, sitting
15 here, I don't feel I can give it the proper time and
16 attention that it would need to be a part of the
17 official record.

18 MR. EWALD: And at the point given the
19 fact that there's an objection, the Board will either
20 have to vote by simple majority to accept or reject
21 the admission.

22 CHAIRMAN JENSEN: Do you want to take a
23 roll call?

24 MS. BANNING: So a motion by Adjoua and

1 second by --

2 MR. JENNINGS: Jensen.

3 MS. BANNING: Adjoua?

4 MR. ADJOUA: Yes.

5 MS. BANNING: Jensen?

6 CHAIRMAN JENSEN: No.

7 MS. BANNING: Mecozzi?

8 MS. MECOZZI: No.

9 MS. BANNING: Eisen?

10 MR. EISEN: No.

11 MS. BANNING: Thank you.

12 MR. EWALD: So the letter will be
13 available as a public record but not proffered for
14 evidence.

15 CHAIRMAN JENSEN: At this time, we'll
16 now begin with the board members directing their
17 questions to the appropriate individuals to answer
18 questions that we feel that -- we would like to know
19 before -- before making their decisions, so I'll
20 start with Mr. Eisen. Do you have --

21 MR. EISEN: Yes, I think this question
22 should be for Mr. Hodge. And it's very similar in
23 nature to what Mr. Wells or Dr. Wells -- is that
24 correct for your title? I was just wondering how

1 much time and effort was spent to understand if there
2 was a second way to have only access and egress from
3 Hamilton Road other than just -- we realize that's
4 right in and right out. Possibly the fire department
5 would want a second way in and out and maybe there
6 could have been a special entrance off of Beecher and
7 I -- I understand as a professional in what I do,
8 that a second curb cut would not have been allowed
9 very close to the intersection of Hamilton/Beecher
10 just because of the nature of it's a large
11 intersection there. And I also understand that
12 there's a raised curb to promote the turn lane, but
13 with all that said, and what was said by the party
14 who spoke, Mr. Wells, what, if anything, could have
15 been done to have access only from Hamilton Road?

16 MR. HODGE: Mr. Eisen, you're probably
17 going to object to this motion. Our traffic engineer
18 is here, and available for questions if anybody feels
19 the need to direct a question specifically to our
20 traffic engineer that submitted it to the city's
21 traffic engineer who then as Mr. Priestas testified
22 sent out for an independent third opinion. So he may
23 be the best person to answer that question and if the
24 Board wants him to come up, and he will certainly do

1 that if anything needs to be cleared.

2 However, the applicant here looked at
3 the various alternatives. I believe as part of the
4 underlying city process, the police department
5 analyzed the plan with the Beecher Road access as did
6 the fire department, and both of them concluded that
7 there is adequate moveability on and off that site,
8 the Beecher Road access. My clients feel that this
9 being as viable of a commercial site it can be, that
10 access to Beecher Road is imperative.

11 There is some difficulty of getting on
12 and off of the site, maneuvering both north and south
13 directly from Hamilton Road, and, so, the Beecher
14 Road access point is critical to the commercial
15 viability and the availability of the property, and
16 even if we -- as I mentioned, submitted traffic
17 engineer -- traffic studies, which they had reviewed
18 by a third party.

19 MR. EISEN: Okay. I have a question
20 that may be directed to Mr. Reed. I found it
21 interesting that there was a Gahanna area commission
22 pre-application just one week after the approval for
23 this project which was for the southwest corner of
24 Beecher and Hamilton for another retail property

1 called The Shops of McKenna Creek, and from the
2 drawing that we got, initial drawing, there will be a
3 curb cut onto Beecher fairly close across. I didn't
4 measure it. Was -- so I'll ask a question that I may
5 not -- may or may not know enough about. Was the
6 Planning Commission -- did they understand even
7 though that property is zoned similarly and would
8 allow for commercial projects -- that -- did the
9 Planning Commission consider that another property
10 was going in with a similar curb cut off of Beecher?
11 Maybe they didn't have to, so I'm just asking the
12 question, was that part of the analysis and
13 discussion in approving this project?

14 MR. REED: Thank you, Mr. Eisen. I will
15 tell you as I read the Charter, the Gahanna City
16 Code, and my familiarity with the Ohio Revised Code
17 whether or not the Planning Commission looked at
18 another development, even if it's adjacent, it's
19 probably not relevant, but I think that you're
20 entitled to an answer. And I would ask Mr. Blackburn
21 and Mr. Priestas, if they have any knowledge of that?

22 MR. PRIESTAS: We have made contact. We
23 realized that probably would -- could be coming
24 forward. Obviously, I'm not sure of the timing of

1 the plan approval, but it was dated in my comment,
2 specifically, from the staff that minor widening on
3 this project would be required to account for any
4 future access points on the south side of Beecher.

5 CHAIRMAN JENSEN: Do you know --
6 Beecher?

7 MR. PRIESTAS: Yes, that's correct.

8 CHAIRMAN JENSEN: How far down?

9 MR. PRIESTAS: At the access point to
10 the northern development.

11 CHAIRMAN JENSEN: But I mean how far
12 west?

13 MR. PRIESTAS: How far west?

14 CHAIRMAN JENSEN: From Hamilton?

15 MR. PRIESTAS: I don't know the detail
16 of distance, but several feet.

17 MR. ADJOUA: Does that approach the
18 residential area at that point?

19 MR. PRIESTAS: That would not, no, sir.

20 MR. EISEN: I'm just going to ask one
21 more question, because I know that you guys -- and I
22 might have some more later on. I see that the
23 calculations were done -- this may be back to you
24 again -- for only the requirement for -- it was

1 either 44 or 49 parking spaces on site. I understand
2 that there are some 131 spaces is what in -- what was
3 in the current design, was -- was there any plans or
4 was it looked at to have fewer spaces and with that,
5 maybe, there was more of the ravine could have been
6 kept as is, maybe some more of the treeline along
7 Beecher could have been left to provide another noise
8 and visual buffer, otherwise, or how was a 132 gotten
9 to and, you know, maybe that would have also
10 allowed -- if lesser spaces the property could be
11 moved a little more to the north? Again, save
12 somewhere at the ravine also.

13 MR. HODGE: And some of the soft
14 discussion during the underlying hearings address
15 this issue, and I think on the part from the planning
16 office addressed it and the applicant as well. At a
17 site like this -- a site like this -- because of the
18 underlying zoning of the property it probably talked
19 about it a little too much. It allows a variety of
20 users to come in and out of these spaces, and --
21 which means that different use types have different
22 parking requirements. So, for example, a restaurant
23 requires more parking spaces than an office, and, so,
24 to make sure that long term if the property could

1 have accounted for tenants comings and goings, you
2 have to provide enough parking for the maximized
3 demand on the tenant's use, that's -- that's how we
4 arrived at the parking number above what it would
5 require in the underlying code.

6 Now, in terms of the set back and the
7 storm water, and the preservation, and I think,
8 400 feet use of the property line, so we are -- we
9 have been working very hard to setback the buffer and
10 preserve the perimeters with an eye towards not
11 maximizing the developability of the site,
12 sensitivity to the environment, the buffering of
13 neighbors, and size of the locations.

14 MR. EISEN: I'll pass it on for now.

15 CHAIRMAN JENSEN: Mr. Adjoua.

16 MR. ADJOUA: Thank you. Engineer
17 Priestas, I have a question. I was trying to get an
18 understanding about the storm water issue and I
19 wanted to -- has there ever been a final storm water
20 engineer analysis that's been done on the property?

21 MR. PRIESTAS: There has not been. As I
22 stated previously, that's typically done during the
23 final engineering phase. We don't typically do that
24 at the Planning Commission phase, however, they did

1 provide reasonableness when filing the plan
2 pertaining to the storm water management or city
3 code.

4 MR. ADJOUA: And how do you think it
5 will impact based upon the public comments of
6 Dr. Wells in terms of the existing flooding issues in
7 the neighborhood?

8 MR. PRIESTAS: I believe it actually
9 helps to mitigate some of the flooding issues they're
10 having currently. The property is uncontrolled now.
11 With the development, it would be partly controlled
12 by our storm water management regulation, which is
13 critical storm -- so, essentially, once the
14 development goes in, it would take a 25-year post
15 developed storm event and reduce that all the way
16 down to pre-developed one storm event, so it would be
17 a significant decrease of storm water runoff from
18 that property.

19 MR. EISEN: Is onsite retention being
20 followed?

21 MR. PRIESTAS: That's correct, yes.

22 CHAIRMAN JENSEN: Even with the parking
23 lot wouldn't that cause a lot more water to run off
24 even on a slab like that?

1 MR. PRIESTAS: It will create an
2 increase of runoff, however, it will be controlled
3 onsite, so it's at a much reduced rate than
4 previously.

5 MR. ADJOUA: And also in terms of --
6 I've read some of the materials in terms of the
7 retention of the trees as far as the -- how we're
8 going to really discuss how that's going to be
9 achieved.

10 MR. WARNER: Good evening. If I may, my
11 name is Tom Warner with Advanced Level Design, and
12 presently project manager for my firm. I've been
13 working with the client on this project for some time
14 now. We've also been working with the city. We've
15 done a lot of civil design projects here in the
16 community.

17 My office is located right across the
18 street, so I'm also familiar with the -- I see the
19 site every day from the office. I'd like to share
20 with the Board tonight an exhibit that we have shared
21 with the neighbors before we went to the Planning
22 Commission to secure approval from the Planning
23 Commission, and I just wanted to have the Board
24 understand that we have addressed the footprint of

1 the development. This was the development when we
2 first introduced it to neighbors. It was a lot more
3 parking, a lot more lot coverage. This included a
4 lot more office space with a mix retail here at the
5 corner. So this was contemplated, and I can show
6 you. This was the, I think, some of you have
7 previously quoted it, but this was at the -- to the
8 neighborhood group. I don't have the status here,
9 but eyeballing this is the -- it is still a method
10 and intent of the Gahanna code from a lot coverage
11 standpoint. We would still follow all the principles
12 required by the City of Gahanna from the storm water
13 perspective.

14 Based upon feedback, we have reduced the
15 footprint to what we have today, which is much -- our
16 lot coverage is just over 36 percent in total for the
17 land. I know there's some concerns about storm
18 water. Rob was touching on it, and I can even rattle
19 off the standards we have to follow in closing it.

20 So the pre-developed total land area has
21 a released rate calculated at .93 CFS. Our storm
22 water basin will control all of our storm water
23 onsite. We'll max that .93 CFS. As you go up to the
24 25-year storm event, the release rate would be .93,

1 which is max release rate at one year storm
2 pre-developed. When we get a hundred year storm
3 event, the release -- the pre-developed release rate
4 today, we get a hundred year gully washer out there.
5 It's a -- without the development, it's an 8.17 CFS,
6 and this basin will reduce that down to under four,
7 so it's a less than half of what -- we post about
8 what the existing conditions with putting in that
9 creek at any given moment.

10 So we are doing our part. We are
11 reducing. This project that is before you and was
12 approved by the Planning Commission, was sensitive to
13 the trees. There are a lot more trees being saved by
14 this concept versus the one we had. So there's
15 certainly a reduction, and when we talk about the
16 sensitivity to McKenna Creek, we recognize -- I've
17 got FEMA access too with the Board. FEMA has studied
18 this McKenna Creek, and there is a 100 year
19 anti-flood plan associated with the McKenna Creek.
20 We are not impacting the flood zone at all at McKenna
21 Creek. We do have an active permit with the Board.
22 When -- they -- when it's active, but I can read a
23 statement from this report. It says this -- this
24 approval from U.S. Army Corps of Engineers developed

1 for a period of five years from the date of the
2 letter, date of the letter is August 26th, 2016.

3 The ditch that we're filling is along
4 the north side of Beecher Road, and I can share with
5 you -- this is the FEMA map. The FEMA map has a 100
6 year flood elevation associated with McKenna Creek
7 and not with the ditch we're filling. When it comes
8 to being sensitive, we had a choice, and if we're to
9 not impact this ditch along Beecher Road some more,
10 we would impact McKenna Creek flood plain in the
11 right corridor. We would rather be sensitive to the
12 area has been flooding a lot more than the ditch that
13 is basically the drainage system on Hamilton Road,
14 the 48-inch pipe that drains Hamilton Road currently.
15 We're going to let that just -- continue that same
16 forward. Not mixing our -- our water with that water
17 in that ditch until we treat all of our storm water
18 in our rentention basin. So I hope that may clear up
19 some efforts that we had from early on to where we
20 are today which the Planning Commission approved, and
21 some of the storm water principles that we
22 contemplated. The final plan has not yet been
23 submitted to the city engineer yet for their
24 approval, but we do have to follow a certain line of

1 rules both with the city and the Ohio EPA, and those
2 will be met in our construction drawings which will
3 follow this.

4 MR. ADJOUA: Thank you.

5 MR. WARNER: Thank you.

6 MR. ADJOUA: Deputy Chief Reed, in your
7 investigation of the potential -- Spence. I'm sorry.
8 Deputy Chief Spence. I don't want to get the
9 lawman's name wrong here. In your investigation and
10 review of the potential police calls to the new
11 tenant, I believe, it's potentially Wings and Rings,
12 did you make any inquiry of any other police
13 jurisdiction where this type of establishments are
14 located?

15 DEPUTY CHIEF SPENCE: No, sir, but we
16 were provided with a call -- I believe, from one of
17 the residents in the subdivision had done an inquiry.
18 There are two -- two other Buffalo Wild Wings and
19 Rings, there are maybe more than two that were
20 provided to us where one was at a Grove City
21 location, and one was in the City of Columbus, which
22 is on East Broad. The one in Grove City is
23 Stringtown Road.

24 MR. ADJOUA: And -- so you didn't talk

1 to any of the police officers about the general types
2 of police calls?

3 DEPUTY CHIEF SPENCE: As I said, I
4 believe, in my testimony, is that we deal with facts
5 and evidence and when trying to compare one business
6 and one city with another business, there are
7 environmental factors, there's location, the manner
8 in which, you know, Grove City categorized and
9 prioritize their runs, and how they respond. There's
10 a way the City of Columbus does. You know, the
11 review of the Grove City runs, really a lot of those
12 were service related. They were related to the
13 roadway in front of the restaurant. They were, you
14 know -- so there really weren't a lot of runs to that
15 particular location. None of those were any liquor
16 law violations that we saw. Columbus -- the Columbus
17 location, there were more runs to that location, but
18 there's a couple Extended Stay hotels right next
19 door, so there's some environmental factors that is
20 beyond the restaurant's control. In a cursory review
21 of that, I know liquor violations would be found in
22 this. Yes, there were fight calls and other
23 domestics and alike, but, again, there were
24 environmental factors.

1 We don't really get into the business of
2 speaking for other jurisdictions' response, and we
3 would not want them to speak to ours so --

4 MR. ADJOUA: Okay. Thank you. I have
5 nothing further.

6 CHAIRMAN JENSEN: Ms. Mecozzi.

7 MS. MECOZZI: I just have a couple
8 questions I want to clarify procedure. And
9 Mr. Blackburn, if you could come to the podium,
10 please. The zoning district of this development as
11 proposed -- decided as proposed, the permitted uses
12 include restaurants --

13 MR. BLACKBURN: Correct.

14 MS. MECOZZI: -- of this nature?

15 MR. BLACKBURN: And there's two
16 different zoning districts for this property. I
17 believe, going on north is planning commercial
18 center, on the south, restaurants are permitted in
19 both.

20 MS. MECOZZI: So the Planning
21 Commission, they're looking at the -- they are
22 reviewing the site plan, the development plan for the
23 entire parcel, not specifically evaluating the
24 specific users within a development?

1 MR. BLACKBURN: Correct. And that's the
2 typical process is to evaluate, again consistency
3 with the use in general, and focus on specific
4 tenant. One of the reasons is that -- especially a
5 multi-tenant scenario often times the full intent is
6 not known, and there is also the probability that the
7 tenant will change over time. So it's dangerous to
8 base it on one particular tenant, because there's no
9 guarantee over time who that tenant will be.

10 MS. MECOZZI: Thank you. And then the
11 question regarding the condition with the Planning
12 Commission, how are those followed up or enforced,
13 and if a plan is not submitted or it's submitted,
14 does meet approval of the appropriate staff member
15 what's the protocol for the property from that point.

16 MR. BLACKBURN: I am not -- not actually
17 in the office that would oversee those conditions, so
18 it won't be appropriate for me to answer that.

19 MS. MECOZZI: Okay. Thank you. Is that
20 something you can answer, city attorney?

21 MR. EWALD: I could not since I'm
22 advising the Board tonight, but you may want to refer
23 to the Planning Commission's attorney if he has
24 knowledge or the city engineer.

1 MS. MECOZZI: Attorney Reed to the
2 podium. Would you be able to answer this question?

3 MR. REED: I don't remember. Ms.
4 Mecozzi, can you restate that specific question you
5 have for us?

6 MS. MECOZZI: One of the things that
7 have been talked about tonight, is the action of the
8 Planning Commission in requiring that the storm water
9 and the traffic study receive further review by the
10 city's staff, and its to be referred to as a
11 condition?

12 MR. REED: Thank you. So it's my
13 understanding that when the developers comes to a
14 city -- and the city is including City of Gahanna,
15 the developers says things like, well, we want to
16 know if you preliminarily approve of our development
17 plan, and we haven't taken the time and trouble and
18 money to spend -- to do the final engineering. We
19 haven't taken the time, money and energy to do final
20 storm water engineering, but assuming you, the city,
21 were to approve this development, we will make sure
22 that those things get done, and done to the
23 satisfaction of the Planning and Zoning Commission
24 officials and professionals who work for the City of

1 Gahanna.

2 So it's my understanding on May 10th,
3 the Planning Commission said, we -- in a six to one
4 vote, we give our approval to this final development
5 plan subject to certain conditions, and those
6 conditions are things that you asked about. Does
7 that answer your question?

8 CHAIRMAN JENSEN: How is it enforced,
9 that plan as it moves forward?

10 MR. REED: That's a very good question,
11 Mr. Chairman. I think that in the event that --
12 let's say the developer were to not submit something
13 that would be appropriate or consistent with the
14 zoning professionals, the planning professionals that
15 work for the City of Gahanna, I think that the city
16 code provides the city attorney to take action
17 against the developer in a form of an injunction to
18 be filed in Common Pleas Court. I think that there
19 is other mechanisms available to the city should
20 that -- no final plan approval not be granted. There
21 are lots of things in the of City Code. As a
22 practical matter, the developer would be foolish to
23 do that. The developer in this case, I understand,
24 has been very cooperative, and has had a lot of

1 meetings both before the application, as well as
2 after the application has been submitted. Thank you.

3 MR. EISEN: I have a quick question for
4 Deputy Chief Spence. And this is related to the
5 discussion earlier when you were down here talking
6 about speed and volume studies, and I wrote your
7 quote about speed is low on the west side of Hamilton
8 there on Beecher.

9 DEPUTY CHIEF SPENCE: That's correct.

10 MR. EISEN: And, you know, obviously
11 that's a condition of now. We know there's a traffic
12 light at the corner of Beecher and Hamilton, and I
13 believe on the access that way, there's a stop sign
14 at Ridge Crest and Beecher, so we've got two points
15 where traffic would stop. Traffic is then going to
16 be coming -- and traffic is probably a little slow in
17 that area because it's 25 miles an hour. Cars are
18 going to be -- so, I'm thinking ahead -- excuse me --
19 I'm thinking ahead from when there are curb cuts on
20 both sides for both developments there on Beecher.
21 Cars could be coming down that kind of blind winding
22 hill, there are two curb cuts of major developments
23 there, and I'm wondering, maybe not from a speed
24 perspective, with your expertise, do you have any

1 concerns from traffic, there's not going to be a
2 light there, any kind of traffic concerns of -- kind
3 of four way converging traffic at that point at the
4 bottom of that hill?

5 DEPUTY CHIEF SPENCE: Well, tonight is
6 the first time I knew that there was a proposal for
7 another development to the south, so I'm unfamiliar
8 with that. Obviously, if the roadway -- you know,
9 for us the concern is, is it wide enough, is it, you
10 know, sufficient room for a turn, and for us it's
11 really not about visibility. Obviously, there are --
12 there are a number of trees through there. It is a
13 winding stretch of roadway, but, from our concern, I
14 think it will properly illuminated at night. And I
15 think from a visibility standpoint, you know, it
16 should be sufficient. Again, but I -- full
17 transparency, I was unaware of the proposal. I
18 haven't seen a site plan, so, you know, it certainly
19 adds to the volume, but, again, it's pretty short
20 distance from -- where that curb cut is proposed to
21 where the shop/bar is going to be or where that
22 traffic is going, that would be directionally facing
23 eastbound on Beecher.

24 MR. EISEN: Thank you.

1 DEPUTY CHIEF SPENCE: Thank you.

2 CHAIRMAN JENSEN: Anything else?

3 MS. MECOZZI: One quick question, if I
4 may?

5 CHAIRMAN JENSEN: Sure.

6 MS. MECOZZI: This is for Attorney
7 Ewald. Is my understanding correct, that this Board
8 is not -- has no jurisdiction or it's not an
9 applicable matter regarding the liquor license for
10 the end user? If that's a city decision whether in
11 terms of supporting or objecting to the liquor
12 license itself?

13 MR. EWALD: I will state for the record
14 that I will be attending the hearing to object to the
15 liquor permit, which has not been presented yet
16 before the Division of Liquor Control. The issue
17 whether or not to issue the permit is debatable by
18 the admissibility. It would probably fall outside of
19 the scope of this hearing. Whether or not it's an
20 establishment that uses the liquor permit may fall
21 within your purview, but not the issuance of it.

22 MS. MECOZZI: Okay. Thank you.

23 MR. EWALD: Does that help?

24 MS. MECOZZI: It does. Thank you.

1 CHAIRMAN JENSEN: I don't have too many
2 more further questions. I think everybody has
3 covered a lot of the issues and the questions that I
4 had already. Is there any cross -- is there any
5 questions from cross-examination from either side of
6 the appellant or appellee? Further comments?

7 MR. WILLIAMS: We have no further
8 examination. Thank you.

9 MR. REED: Nothing further.

10 MR. HODGE: Nothing further.

11 CHAIRMAN JENSEN: Very good.

12 MS. MECOZZI: Mr. Chair?

13 CHAIRMAN JENSEN: Yes.

14 MS. MECOZZI: I propose that we take a
15 slight recess?

16 CHAIRMAN JENSEN: Yes. Restart at 8:00
17 o'clock.

18 (A short recess was taken.)

19 CHAIRMAN JENSEN: At this time, we don't
20 have any further -- with discussion. Moving to
21 discussion and deliberation phase among the Board.
22 Mr. -- legal counsel, did you have some conversation
23 or some point for us?

24 MR. EWALD: Just point of order, did the

1 Chair want to add for additional time for closing
2 statements for either side?

3 CHAIRMAN JENSEN: I'm sorry?

4 MR. EWALD: Did you want to add time for
5 closing statements for either side?

6 AUDIENCE MEMBER: Is the mic on?

7 MR. EWALD: Can you hear me now? It's
8 typical -- that we've done in the past, but it's not
9 necessarily a requirement.

10 CHAIRMAN JENSEN: Do the participants
11 want to present?

12 (Several people from audience expressed
13 they could not hear.)

14 (Discussion held off the record.)

15 CHAIRMAN JENSEN: Do the participates
16 want to make a final statement?

17 MR. WILLIAMS: Yes, Chairman, the
18 appellant has the desire to do that.

19 MR. REED: If the appellant -- we would
20 like to make a brief statement as well if the
21 appellant does.

22 MR. HODGE: And the intervener too, very
23 briefly.

24 CHAIRMAN JENSEN: Yes. Please make it

1 brief.

2 MR. WILLIAMS: Thank you, Mr. Chairman.
3 I'll make this very brief. This is a final
4 development plan that was approved conditionally.
5 Conditional approvals are not allowed by the code.
6 The simple reason that conditional approval calls for
7 additional information provided after the fact, not
8 subject to the public hearing process, that's what
9 happened in this case. Beecher Road is the only
10 ingress and egress point for 81 homes in the Academy
11 Ridge subdivision. To change that road, to make it a
12 commercial ingress and egress for this project will
13 seriously impact the residents in the subdivision.

14 Mr. Hodge made the point that all he had
15 to do really is check the boxes at the Planning
16 Commission. Does it fit into the zoning? Does it
17 fit into the use? That is not the case, quality of
18 the judgments have to be made. Is it suitable to the
19 neighborhood? At the May 10th hearing, the Planning
20 Commission Member Price, votes no, and she cites the
21 code regarding suitability for this plan in the
22 neighborhood. We agree that when we don't know who
23 the end user is going to be, it's okay to be general,
24 no problem, but when you do know, and you get asked a

1 question -- isn't it important information for the
2 Planning Commission to know to make those
3 quantitative judgments? Missing information: It
4 comes in later after the approval is not subject to
5 the building hearing process. There's no way the
6 public can comment. What is the role of the Board of
7 Zoning Appeals here? If you want your Planning
8 Commission to act according to your city code, you
9 have to tell them that. If you let this one slide
10 and others like it, then that will be a field day for
11 any developer who wants to come in and slide one
12 further. Thank you.

13 MR. REED: First of all, I would like to
14 thank the Members of the Board. For having, myself,
15 worked for 13 years in public service, I know you do
16 this not for money, but for the public calling, and I
17 could tell by each of the questions that each of you
18 have asked of all the parties in this, that you've
19 read the records very carefully, and that you take
20 your duty very seriously, so I applaud you for that.

21 I believe that the evidence has been
22 presented in a way that shows the Planning Commission
23 has followed the ordinance. I respectfully disagree
24 with my colleague, Mr. Williams, who represents the

1 appellants on what the code requires. I believe
2 that, in fact, it's appropriate for the Planning
3 Commission to say we have approved this final
4 development plan subject to certain conditions,
5 because we want to retain jurisdiction over the
6 ability to review the final development plan, the
7 final storm water plan, to review and make sure that
8 all of the appropriate permits either from ODOT, from
9 City of Columbus, from the City of Gahanna, from Ohio
10 EPA, whatever jurisdiction, from the Army Corps of
11 Engineers are satisfied.

12 The appellant has made some allegations
13 that the final identity of the tenant is somehow
14 relevant. I would submit to you that it is not. I
15 think that the zoning has been specific to what
16 specific businesses are allowed in these two zonings,
17 and, so, I believe that the Planning Commission
18 followed the law and asked the appropriate questions.
19 For all of these reasons, we'd ask that the decision
20 of the Planning Commission dated May 10th 2017 be
21 affirmed.

22 MR. HODGE: As we established the
23 property is zoned for a variety of commercial uses.
24 There was some discussion about -- from Chairman

1 Jensen and also Ms. Mecozzi about the enforceability.
2 I'm not sure if they ever got a real firm conclusion
3 on that issue. I want you to understand that the
4 condition is enforceable. If the applicant does not
5 comply with the condition, then the engineer doesn't
6 sign the plan and the city does not issue the
7 building permits, so the city is still in control.
8 It's not just the enforceability of the condition
9 that no one has to meet. So if that lingers out
10 there, the applicant must comply with that condition
11 or they can't do their development.

12 This was a -- this was a very thorough,
13 very public process, and the Gahanna Planning
14 Commission heard the testimony that this Board heard
15 tonight. This neighborhood was engaged in the
16 process. They were at the Planning Commission
17 meeting, and they were at the workshop meeting, so --
18 so -- much of it, if not all of what you heard
19 tonight is what the Planning Commission heard and
20 considered, and weighed that information and its
21 testimony, and the Planning Commission saw it
22 appropriate to vote by six to one margin to support
23 the application, finding that it met the final
24 development plan approval criteria under 11805 of the

1 Gahanna Zoning Code. And it is our sincere hope,
2 obviously, that this Board agrees with that six to
3 one vote of the Planning Commission and overrule this
4 appeal. Thank you

5 CHAIRMAN JENSEN: Thank you. Mr. Legal
6 Counsel, do you know the next step?

7 MR. EWALD: The public hearing must be
8 closed if the Board is done deliberating and
9 debating.

10 CHAIRMAN JENSEN: Is there any further
11 questions from the Board or any visitors?

12 (Unanimously no.)

13 CHAIRMAN JENSEN: At this time, the
14 public hearing is closed. We shall move to
15 conversation -- deliberation.

16 MS. MECOZZI: You're looking over here?

17 CHAIRMAN JENSEN: Do you -- starting
18 with you first.

19 MS. MECOZZI: This is a complicated
20 case. There are a lot interested parties, and I --
21 oh, my mic.

22 I said this has been a complicated case.
23 There are so many interested parties, and the volume
24 of the materials supporting your position has been

1 actually great. They're very much appreciated, and
2 it has taken a considerable amount of time to review
3 it, but it's been invaluable to reaching the decision
4 that we will need to reach tonight. So I want to
5 thank you all, regardless of your position in this
6 case for the work, for the time you have invested in
7 this matter.

8 I believe that it is my role as a member
9 of the BZA, to specifically look at the actions of
10 the Planning Commission and not whether I agree on
11 what decisions that they've made, or the opinions
12 that they had, but whether or not they followed
13 proper procedures, whether or not the matter received
14 a fair and impartial hearing, all of the interested
15 parties given an opportunity on the record to state
16 their opinion and asked questions about whether it
17 was the city staff or Planning Commission members, or
18 the public or developer, whether qualified ordinances
19 appeared to be met.

20 We talked a lot tonight about 1108
21 and -- for final development plans. We talked a
22 little bit specifically about 05 -- 110805, when --
23 which the Planning Commission is required to find
24 that the four conditions have been met. I asked the

1 question earlier about the conditions and the staff
2 followed up on that, and I think that, I believe,
3 that it is a requirement that when a condition like
4 that is imposed, that it's appropriate for the city
5 staff member, whether that's the engineer,
6 development director, or service director, that they
7 are evaluating those plans when they are at the
8 appropriate stage to be finalized, and if those plans
9 do not meet with city code, then they reject them or
10 they don't issue the permits. So I appreciate that
11 was clarified tonight, and that would be the case
12 should this application move forward and how these
13 conditions will be met.

14 I also wanted to clarify tonight, and I
15 received that clarification as a response as well,
16 that it's not the purview of this Board to look at
17 the end user. Although, I know that is a matter of
18 serious concern for many of the people -- interested
19 parties in this, that is not a matter of this Board,
20 the Board of Zoning and Appeals to consider. And,
21 again, I'm going to go back to what I believe our
22 jurisdiction, and our power is specifically to look
23 at the Planning Commission instead of whether to
24 consider, valid, justice, and fairness. And, again,

1 this is a tough case. Again, I appreciate that you
2 were all here regardless of what the outcome is this
3 evening. I appreciate that you took the time and
4 patience to participate in the Planning Commission
5 hearing this evening. That's all I have.

6 CHAIRMAN JENSEN: Thank you, Ms.
7 Mecozzi. I think I'll go next because the other
8 speakers behind me -- I'm not a public speaker, so I
9 apologize. I will say that I'm very torn about this
10 because I only live very, very short spot from
11 Beecher and Hamilton. I go through that intersection
12 daily, several times a day, so I understand the
13 traffic there. I think the biggest issue for a lot
14 of people is the traffic, primarily the Academy
15 traffic, but that's in the past, that's history.
16 There's nothing that can be done about it. I agree
17 with Ms. Mecozzi as far as our role and jurisdiction
18 in this decision and process, is that our role is to
19 see did the Planning Commission follow the process as
20 assigned, and it seems to me that the three --
21 multiple meetings and the reach outs, it has been
22 done, and they are doing that.

23 I guess, one of my concerns is also
24 is -- is -- with the city and/or the space that has

1 been zoned in that manner for a number -- a number of
2 years, that could have been zoned differently, and
3 that's here nor there now, but, I think, that adds to
4 the complexity of this whole issue. But, then, when
5 I look at this -- when you have the city staff people
6 from the police, to the engineering, to the
7 development presenting positive information for us,
8 it's kind of confirms that, you know, everything is
9 appropriate.

10 So at this point, you know, for further
11 discussion, I'm still on the fence as far as the next
12 steps.

13 MR. ADJOUA: Thank you, Mr. Chairman.
14 First of all, I want to thank the attorneys. It's
15 always good to see good hard fighting counsel,
16 attorneys. Your work makes me feel proud to see
17 that. I also want to thank you for all of the very
18 organized materials that you've provided to us. It
19 made our job easier, led us to understand what the
20 issues were and get a full viewpoint of what was
21 going on. And, then, more importantly, I thank the
22 residents for being involved and taking a stance and
23 making sure that you make your voice known, and
24 standing up for what you believe, and you're fighting

1 for it.

2 I think, again just -- I want to go
3 along with what one of my colleagues said in terms of
4 what our role is to look at it and see whether the
5 record shows that the Planning Commission has done
6 things they were required to do, and whether the
7 appellant showed by the preponderance of the evidence
8 that they did not, and I think those are the
9 standards that I look at as we move forward to make a
10 final determination.

11 MR. EISEN: Thank you. A lot of passion
12 in the room tonight. Certainly, mostly by quite a
13 few neighbors, but also by legal counsel sitting up
14 front here, and I appreciate all that they've done
15 also.

16 As a design professional myself, I've
17 dealt with a lot of these cases, and certainly
18 sitting in a different location than I am right now,
19 but I get it, and I understand where you all are
20 coming from. And, you know, I've mentioned passion,
21 you know, I take my position up here very seriously.
22 I've spent parts of the last two-weeks reading
23 diligently all of the materials that came, and, then,
24 more came, and then more came even on Monday. So

1 I've taken a lot of time, including about two hours
2 before this proceedings to look through it again, and
3 this is not about me. This is about you. But I just
4 want you to feel confident that as one of the four
5 members sitting up here today, that I really thought
6 about, you know, what all the issues are and where
7 they need to be -- issue could go.

8 It's a tough case. And, you know, I
9 asked some questions that I thought were important,
10 whether I got the answer that I wanted or not, maybe
11 the ones that I expected, kind of all those things
12 happened, but it's still -- I took it all in. I know
13 Mr. Warner's firm and while some of those numbers
14 that he was spewing off may not mean a lot to you. I
15 understood where he was coming from, and you have to
16 feel confident that a firm of his stature has, you
17 know, one cog in the wheel of all this that they've
18 done their part, you know, to the full -- need -- you
19 know, to help their client, but also make sure, you
20 know, for his liability and all of you that live in
21 the neighborhood that he has done his part to make
22 sure that the retention has been reached and the
23 flooding won't happen, and -- you know, I asked the
24 question of the Deputy Chief also, and that was

1 important too.

2 So, again, a tough one, and I talked
3 with my fellow Board Members here, and I hope that
4 while their might be some inconsistencies along the
5 way that we come to a decision that everybody can
6 live with, and that we can all move forward, and
7 hopefully, you know, we'll see where we go from
8 there. Thank you.

9 CHAIRMAN JENSEN: At this time,
10 Mr. Counsel, was there further directions on the --
11 motions that -- directions that could be moved on
12 this?

13 MR. EWALD: Mr. Chair, are you prepared
14 to vote at this time?

15 CHAIRMAN JENSEN: Is the Board prepared
16 to vote?

17 (Unanimously yes.)

18 MR. EWALD: Okay. Given the fact that
19 the Board has reached this stage, it would behoove us
20 to review the standard of review before the
21 Commission tonight. The appellant or the proponent
22 before the Board has the burden of proof by the
23 preponderance of the evidence. The Board shall
24 consider all relevant evidence brought to it tonight,

1 that it has admitted and prior to tonight's meeting,
2 provided, however, evidence that is not disclosed as
3 required, may be only admitted in accordance with the
4 Board's rules. Tonight, the only thing not admitted
5 was a letter from a resident, but was submitted as a
6 document for public record.

7 Evidence not admitted into the record by
8 the Board may be properly entered in the record by
9 the party, and that has not occurred. Tonight, by
10 disposition for the appeal, there are four methods by
11 which you dispose of an appeal. You can affirm the
12 appeal, deny the appeal, modify the appeal, or remand
13 with instruction to the Planning Commission.

14 CHAIRMAN JENSEN: Do we have a motion?

15 MR. ADJOUA: Mr. Chair, I would like to
16 make a motion to affirm Planning Commission's
17 application of FDP-0001-2017 and to deny the appeal
18 of the appellant in this instance.

19 CHAIRMAN JENSEN: Do we have a second?

20 MR. EISEN: Second.

21 CHAIRMAN JENSEN: Discussion? Is there
22 any discussion?

23 MR. EWALD: Mr. Chair, for
24 clarification, the affirmation of the appeal would

1 approve the appellant's proposition.

2 MR. ADJOUA: The affirmation of the
3 appeal would approve the -- would affirm the
4 application of the Planning Commission and deny the
5 appeal of the appellant.

6 MR. EWALD: As a matter of point, the
7 motion has to be in the affirmative either in favor
8 of the appeal, which would be the appellant's
9 position or a denial of that appeal, not necessarily
10 the Planning Commission's approval of that.

11 MR. ADJOUA: I withdraw my previous
12 motion, and I'd like to make a motion to deny the
13 appeal of the appellant, and the affirm the decision
14 of the Planning Commission.

15 MR. EWALD: That would be sufficient.

16 CHAIRMAN JENSEN: Second?

17 MR. EISEN: Second.

18 CHAIRMAN JENSEN: So what we're saying
19 then is if we -- how the vote turns, a yes vote means
20 what and no vote means?

21 MR. EWALD: If the Board by simple
22 majority, which needs at least three members, would
23 vote in favor of the motion, then the proponents
24 would prevail, and you would agree with the appeal.

1 If you deny it --

2 (Audience members stated no.)

3 AUDIENCE MEMBER: No, Shane, it's the
4 other way.

5 MR. EWALD: The motion has to be in the
6 affirmative, so if you affirm the appeal, you're
7 affirming the position of the proponent. I know it's
8 counterintuitive.

9 CHAIRMAN JENSEN: I make a motion -- I'm
10 making a new motion then.

11 MR. EWALD: Based on our rules,
12 Mr. Chair, it's counterintuitive --

13 CHAIRMAN JENSEN: Right. Right.

14 MR. EWALD: -- I understand.

15 CHAIRMAN JENSEN: Right. I make a
16 motion to approve the application being appealed,
17 FDP-0001-2017, that means that -- that would mean
18 that if we vote yes then we are approving the appeal?

19 MR. EWALD: Yes.

20 CHAIRMAN JENSEN: And if we vote no,
21 then we are denying the appeal?

22 MR. EWALD: That's correct. I
23 apologize, but that's the way the rules are
24 established, and it is counterintuitive.

1 MR. ADJOUA: Second.

2 CHAIRMAN JENSEN: Counsel, can you
3 restate -- rephrase to make sure everybody here
4 understands how --

5 MR. EWALD: And, again, I apologize to
6 the residents. It's the way our rules are
7 established. If -- you have to have a vote in the
8 affirmative, and so if you vote in favor of the
9 appeal, it approves the position of the appellant in
10 this case, which is homeowners association and the
11 residents, if that's a yes vote, then you approve
12 that. It has to be done by a simple majority of the
13 members who are up here, which require at least three
14 votes. If it's a denial of that appeal, then you
15 would deny the appeal, and it would be a no vote, and
16 it would affirm the decision of the Planning
17 Commission, and that's required by rules.

18 CHAIRMAN JENSEN: If we vote yes, does
19 it go back to the Planning Commission for further
20 review then?

21 MR. EWALD: No, but a third option would
22 be remand with instruction to the Planning Commission
23 based upon the conditions you would establish. That
24 motion is not on the floor as of yet.

1 CHAIRMAN JENSEN: Is there any further
2 discussion from the Board? Ready for a vote. Roll
3 call.

4 MS. BANNING: Mr. Chair, just for point
5 of clarification though, your -- the last motion on
6 the table you're voting on is to grant or approve the
7 appeal of FDP-0001-2017?

8 CHAIRMAN JENSEN: That's in the positive
9 format that's recommended.

10 MS. BANNING: Yes. Jensen?

11 CHAIRMAN JENSEN: No.

12 MS. BANNING: Adjoua?

13 MR. ADJOUA: No.

14 MS. BANNING: Eisen?

15 MR. EISEN: No.

16 MS. BANNING: Mecozzi?

17 MS. MECOZZI: No.

18 CHAIRMAN JENSEN: So moved.

19 MR. ADJOUA: I would like to make a
20 motion to adjourn.

21 CHAIRMAN JENSEN: So moved.

22 - - -

23 (Thereupon the hearing concluded on
24 Thursday, July 27, 2017 at 8:33 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,
July 27, 2017, and carefully compared with my
original stenographic notes.

Ebony M. Reynolds
Registered Professional
Reporter

- - -