

BEFORE THE CITY OF GAHANNA
BOARD OF ZONING AND BUILDING APPEALS

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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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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 Williams & Strohm, LLC 3 By Charles Williams 4 and 5 Jesse M. Kanitz 6 Two Miranova Place 7 Suite 380 8 Columbus, Ohio 43215 9 (614) 228-0207 10 11 On behalf of Academy Ridge 12 Community Association, Inc. 13 Frost Brown Todd, LLC 14 By Frank J. Reed 15 10 West Broad Street 16 Suite 2300 17 Columbus, Ohio 43215 18 (614) 464-1211 19 20 City of Gahanna Planning 21 Commission 22 Underhill & Hodge 23 By David Hodge 24 8000 Walton Parkway Suite 260 New Albany, Ohio 43054 (614) 335-9324 Gallas Zadeh Development, LLC</p>	<p style="text-align: right;">Page 4</p> <p>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</p>
<p style="text-align: right;">Page 3</p> <p>1 Thursday Evening Session, 2 July 27, 2017. 3 --- 4 CHAIRMAN JENSEN: I call the meeting for 5 the City of Gahanna Board of Zoning Appeals. At this 6 time, we'll start with the Pledge of Allegiance. 7 (Pledge of Allegiance taken.) 8 CHAIRMAN JENSEN: First of all, can 9 everybody hear me? The last meeting we had some 10 sound problems. Before we begin this meeting, are 11 there any additions or corrections to the agenda? If 12 not, at this time, we will swear in those who will be 13 speaking regarding the appeals this evening. Please 14 stand. 15 MS. BANNING: Mr. Chair, can we do roll 16 call? 17 CHAIRMAN JENSEN: I'm sorry. At this 18 time, would you do the roll call? 19 MS. BANNING: Adjoua? 20 MR. ADJOUA: Here. 21 MS. BANNING: Eisen? 22 MR. EISEN: Here. 23 MS. BANNING: Jensen? 24 CHAIRMAN JENSEN: Here.</p>	<p style="text-align: right;">Page 5</p> <p>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?</p>

<p style="text-align: right;">Page 6</p> <p>1 CHAIRMAN JENSEN: Yes.</p> <p>2 MR. REED: Frank Reed, Frost Brown Todd,</p> <p>3 special counsel on behalf of the Planning Commission.</p> <p>4 It might be helpful to have all the</p> <p>5 parties introduce themselves and who they represent.</p> <p>6 And I think that -- I don't know this, but I think</p> <p>7 the appellants might object to the motion for</p> <p>8 intervention, and I would urge that the Board at</p> <p>9 least hear them out before they make a decision on</p> <p>10 whether to accept the motion for intervention.</p> <p>11 MR. EWALD: Mr. Chair's point of order,</p> <p>12 if the panel so choses, they can adopt the course of</p> <p>13 action put fourth by the attorney for the Planning</p> <p>14 Commission that's at your discretion.</p> <p>15 MR. ADJOUA: At this point, Mr. Chair,</p> <p>16 there is a motion before. I second it, so it should</p> <p>17 be a roll call on that motion.</p> <p>18 MS. BANNING: Adjoua?</p> <p>19 MR. ADJOUA: Yes.</p> <p>20 MS. BANNING: Eisen?</p> <p>21 MR. EISEN: Yes.</p> <p>22 MS. BANNING: Mecozzi?</p> <p>23 MS. MECOZZI: Yes.</p> <p>24 MR. EWALD: Mr. Chair, the second motion</p>	<p style="text-align: right;">Page 8</p> <p>1 think that we are in a court of law. We rely upon</p> <p>2 our attorney for legal interpretations, so I feel</p> <p>3 that at this point, we got their documentation. We</p> <p>4 got the notice, but we're not attorneys, although, I</p> <p>5 am an attorney, but we're not at a point where we're</p> <p>6 entertaining legal matters before this Commission.</p> <p>7 We're not empowered to do that, and I suggest that we</p> <p>8 vote based upon the recommendation of counsel and</p> <p>9 move forward with our hearing.</p> <p>10 MR. HODGE: And I don't want to -- sir,</p> <p>11 with all due respect, paint myself into a negative</p> <p>12 light as we approach the merits. And we are not</p> <p>13 afraid of the merits here this evening, however, the</p> <p>14 BZA's rule Section 6.10.1, provides that the Chair or</p> <p>15 any other member of the Board, should believe that --</p> <p>16 the Board may not have -- may not have jurisdiction</p> <p>17 to entertain all or part of the appeal. Said member</p> <p>18 shall move prior to the opening of the hearing that</p> <p>19 the Board consider and vote upon the question of its</p> <p>20 jurisdiction.</p> <p>21 This issue is a standing jurisdictional</p> <p>22 issue and, you know, before I get into the merits of</p> <p>23 that argument, I want to hear from you. But, you</p> <p>24 know, I do believe that the Board does have the</p>
<p style="text-align: right;">Page 7</p> <p>1 that was filed with the Board of Zoning and Appeals</p> <p>2 was for a motion to dismiss for basis of lack of</p> <p>3 standing on the part of the appellant in this case,</p> <p>4 which is comprised of the homeowners' association,</p> <p>5 and various residents, including contiguous property</p> <p>6 owners. After a review of the Ohio Revised Code, our</p> <p>7 current rules and code, and based on the filings put</p> <p>8 before the Commission, it's my recommendation that</p> <p>9 you accept the standing of the appellants in this</p> <p>10 case, and that you allow them to proceed forward.</p> <p>11 CHAIRMAN JENSEN: Anybody have any</p> <p>12 questions for them? Go ahead.</p> <p>13 MR. HODGE: Members of the Board, my</p> <p>14 name is David Hodge. I'm an attorney with the law</p> <p>15 firm Underhill and Hodge, 8000 Walton Parkway, Suite</p> <p>16 260, New Albany, Ohio, 43054. And I would appreciate</p> <p>17 a few minutes of your time this evening to address</p> <p>18 the merits of our motion to dismiss for appellant's</p> <p>19 lack of standing.</p> <p>20 CHAIRMAN JENSEN: Do you want to</p> <p>21 entertain that, fellow members?</p> <p>22 MR. ADJOUA: You know, Mr. Chair, I know</p> <p>23 that we are empowered to review the orders of -- and</p> <p>24 this appeal from the Planning Commission. I don't</p>	<p style="text-align: right;">Page 9</p> <p>1 authority to proceed to these rules in this instance</p> <p>2 even on a jurisdictional issue. And reasonable</p> <p>3 authorities have come to different conclusions and</p> <p>4 still --</p> <p>5 MR. ADJOUA: And I think that maybe some</p> <p>6 judge somewhere who will make that determination,</p> <p>7 counselor. I respect your position, but I don't</p> <p>8 think that we have until next week to try that</p> <p>9 determination here this evening.</p> <p>10 I would like to make a -- I'll make a</p> <p>11 motion that we accept the opinion of our city</p> <p>12 attorney in regards to accepting the motion before</p> <p>13 this Board.</p> <p>14 CHAIRMAN JENSEN: Roll call.</p> <p>15 MS. BANNING: Adjoua?</p> <p>16 MR. ADJOUA: Yes.</p> <p>17 MS. BANNING: Mecozzi?</p> <p>18 MS. MECOZZI: Yes.</p> <p>19 MS. BANNING: Jensen?</p> <p>20 CHAIRMAN JENSEN: Yes.</p> <p>21 MS. BANNING: Eisen?</p> <p>22 MR. EISEN: Yes.</p> <p>23 MR. EWALD: Mr. Chair, if you, please</p> <p>24 for a second. We received the original filing for</p>

<p style="text-align: right;">Page 10</p> <p>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</p>	<p style="text-align: right;">Page 12</p> <p>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</p>
<p style="text-align: right;">Page 11</p> <p>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</p>	<p style="text-align: right;">Page 13</p> <p>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,</p>

<p style="text-align: right;">Page 14</p> <p>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.</p>	<p style="text-align: right;">Page 16</p> <p>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?</p>
<p style="text-align: right;">Page 15</p> <p>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</p>	<p style="text-align: right;">Page 17</p> <p>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</p>

<p style="text-align: right;">Page 18</p> <p>1 orderly and harmonious development of the area in the</p> <p>2 manner keeping with the overall character of the</p> <p>3 community." In B, "Every effort should be made to</p> <p>4 protect any adjacent residential areas from a</p> <p>5 potential nuisance created by the proposed</p> <p>6 commercial, industrial or multi-family development."</p> <p>7 A discussion of the identity of the user</p> <p>8 followed the hearing process on both May 3rd at the</p> <p>9 workshop, and May 10th at the final hearing. It was</p> <p>10 clear that the developer knew who it was and would</p> <p>11 not say. At the May 5th workshop hearing, there was</p> <p>12 much talk about the colors, the branding, and the</p> <p>13 materials to be used for the intended user. Council</p> <p>14 Member Suriano asked if the materials were based on</p> <p>15 the "end user." Mr. Beam -- Bean -- I'm sorry.</p> <p>16 B-e-a-n -- confirmed that that was true, that was the</p> <p>17 case.</p> <p>18 And, then, on May 5th, two days after</p> <p>19 the workshop on May 3rd, BWR Gahanna, LLC, the end</p> <p>20 user, filed an application for two liquor permits for</p> <p>21 the project. So what business reasons was there for</p> <p>22 hiding the identity of the end user at this point</p> <p>23 other than to avoid the issue over the end user.</p> <p>24 Again, referencing the May 3rd workshop minutes, the</p>	<p style="text-align: right;">Page 20</p> <p>1 And, then, Underhill responds, "They feel strongly</p> <p>2 that they will have a lease, but do not have a lease</p> <p>3 yet, for confidentiality as a corporation they own 35</p> <p>4 units approximately." So do they or don't they have</p> <p>5 a tenant? Again, this response -- these responses</p> <p>6 are not forthright.</p> <p>7 Again, on May 5th, five days before the</p> <p>8 final hearing on the development plan, BWR in</p> <p>9 Gahanna, LLC, filed its application for a liquor</p> <p>10 license. It was a public record five days before the</p> <p>11 hearing on May 10th. So on May 10th, what was the</p> <p>12 need for confidentiality if not to hide the identity</p> <p>13 of the user. On May 10th, it was already a public</p> <p>14 record, and the Planning Commission could not get a</p> <p>15 straight answer on who that end user was. As I said</p> <p>16 earlier, the witnesses are sworn to tell the truth.</p> <p>17 In the law, there is no confidentiality protection</p> <p>18 for discussions between the landlord and the tenant.</p> <p>19 So I'm an outsider here, and I'm looking</p> <p>20 at this from the outside, and I feel as if it's</p> <p>21 almost -- as if the Planning Commission did not want</p> <p>22 to know who the end user was going to be there, no</p> <p>23 hard questions asked at all. And least one</p> <p>24 Commission member assumed that the developer could be</p>
<p style="text-align: right;">Page 19</p> <p>1 Commission Member Burba asked "If they anticipate one</p> <p>2 restaurant?" The developer, Gallas responds, "It's</p> <p>3 hard to say. We go wherever leasing takes you."</p> <p>4 It's not the forthright response. As I mentioned a</p> <p>5 moment ago, the actual liquor permit application was</p> <p>6 signed the day before the May 3rd hearing, on</p> <p>7 May 2nd. You can look at that in your package of</p> <p>8 materials. Developer Zadeh said the project,</p> <p>9 "primarily will be medical." Again, not a forthright</p> <p>10 answer. Clearly, the developer knew who the user</p> <p>11 would be, but they were withholding the information</p> <p>12 on May 3rd. Again, there was no reason for</p> <p>13 confidentiality at that point. I'll remind the Board</p> <p>14 that all witnesses were sworn to tell the truth at</p> <p>15 the public hearings before the Planning Commission.</p> <p>16 Now, referring to the May 10th meeting</p> <p>17 minutes when the plan was approved. I'm talking</p> <p>18 about the colors of the end user's building, Attorney</p> <p>19 Underhill states, "They have a tenant driving that</p> <p>20 color." There were lots of questions about the</p> <p>21 branding and the red color facade and the materials</p> <p>22 even. So on May 10th, they "have a tenant,"</p> <p>23 according to Mr. Underhill. However, Commissioner</p> <p>24 Member Shepherd asked if they know it's a restaurant?</p>	<p style="text-align: right;">Page 21</p> <p>1 present. And so I ask this Board, how can the</p> <p>2 Planning Commission determine the effects on the</p> <p>3 neighborhood as it's required to do pursuant to Code</p> <p>4 Section 110805, if it doesn't know who's going to be</p> <p>5 the end user. The same kind of confusion followed</p> <p>6 the liquor permit application process by BWR Gahanna,</p> <p>7 LLC. We know now that the liquor licenses are</p> <p>8 requested because of the irregularities in filing of</p> <p>9 the licenses. Just to recap that a bit, BWR Gahanna,</p> <p>10 LLC, filed its application D5 or D6 on the liquor</p> <p>11 permit on May 5th. The application also is a sworn</p> <p>12 document. BWR Gahanna, LLC, did not even exist until</p> <p>13 June 19th, over a month later.</p> <p>14 I want to talk about the conditional</p> <p>15 approval of the plan. The developer entered its</p> <p>16 motion to intervene. It maintains that the Planning</p> <p>17 Commission granted a conditional approval of the</p> <p>18 final development plan. The appellant agrees that</p> <p>19 the approval was in fact conditional, however,</p> <p>20 conditional approval are not permitted by your own</p> <p>21 city code. The Planning Commission clearly exceeded</p> <p>22 its authority in granting the conditional approval.</p> <p>23 Code Section 110805 allows for only one</p> <p>24 approval, two approvals with modification -- it's not</p>

<p style="text-align: right;">Page 22</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 24</p> <p>1 traffic expert by any means. I can only comment on 2 what I see.</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 23</p> <p>1 Commission should have deemed the final development 2 plan incomplete and deny it.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 25</p> <p>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.</p> <p>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 --</p> <p>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</p>

<p style="text-align: right;">Page 26</p> <p>1 more to present, but if you could boil it down to 2 bullet points would be helpful.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 28</p> <p>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).</p> <p>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.</p> <p>15 CHAIRMAN JENSEN: Thank you. Mr. Reed, 16 the Planning Commission.</p> <p>17 MR. REED: You indicated you wanted the 18 intervention party next or --</p> <p>19 CHAIRMAN JENSEN: No.</p> <p>20 MR. REED: Okay. Very well. Thank you.</p> <p>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</p>
<p style="text-align: right;">Page 27</p> <p>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.</p> <p>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 NWP's (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.</p> <p>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.</p> <p>23 The developer also has failed to comply 24 and to submit the materials required by the</p>	<p style="text-align: right;">Page 29</p> <p>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.</p> <p>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.</p>

<p style="text-align: right;">Page 30</p> <p>1 As I understand it, the members of this</p> <p>2 Board have already read the things that are in the</p> <p>3 record, which occurred before the Planning</p> <p>4 Commission, which have been supplemented since the</p> <p>5 Planning Commission's decision dated May 10th, 2017,</p> <p>6 as well as those items that have been submitted by</p> <p>7 the appellants. So for all the things that's</p> <p>8 contained on the record, as well as the evidence that</p> <p>9 will be submitted in today's hearing, the Planning</p> <p>10 Commission will respectfully request that the Board</p> <p>11 of Zoning and Building Appeals affirm the decision of</p> <p>12 the Planning Commission on May 10th.</p> <p>13 We have three witnesses we would like to</p> <p>14 call at this time. The first is Deputy Chief of the</p> <p>15 City of Gahanna Police Department Jeff Spence.</p> <p>16 (Discussion held off the record.)</p> <p>17 DEPUTY CHIEF JEFFREY SPENCE,</p> <p>18 being by me first duly sworn, as hereinafter</p> <p>19 certified, testified as follows:</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. REED:</p> <p>22 Q. All right. Would you state your name</p> <p>23 for the record, please?</p> <p>24 A. Jeffrey Spence.</p>	<p style="text-align: right;">Page 32</p> <p>1 traffic volume studies, traffic enforcement,</p> <p>2 everything from speed and motor vehicle operation to</p> <p>3 advanced detection of impaired drivers.</p> <p>4 Q. Thank you, Chief. Can you tell me --</p> <p>5 are you familiar with the intersection of Beecher and</p> <p>6 Hamilton Road?</p> <p>7 A. Yes, I am.</p> <p>8 Q. Okay. At some point were you asked to</p> <p>9 do any kind of examination or study of the volume of</p> <p>10 cars and the speed of those cars at that</p> <p>11 intersection?</p> <p>12 A. Yes, we were. We were requested to do a</p> <p>13 speed volume study on the roadway of Beecher Road and</p> <p>14 we were also requested by the city engineer to</p> <p>15 provide traffic actually at that intersection.</p> <p>16 Q. Chief, I've handed you four pages of</p> <p>17 documents that are already in the record. Can you</p> <p>18 identify the first page for me?</p> <p>19 A. The first page is from our record</p> <p>20 management system. It is a report for the entire</p> <p>21 calendar of 2016, and it's accessed by street name/</p> <p>22 intersecting street for Beecher Road and Hamilton,</p> <p>23 and -- for both roadways.</p> <p>24 Q. Okay. And who created that report for</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. And what is your position, Deputy</p> <p>2 Chief, with the City of Gahanna?</p> <p>3 A. I'm the deputy chief of police.</p> <p>4 (Discussion held off the record.)</p> <p>5 Q. Chief, what's your position with the City</p> <p>6 of Gahanna?</p> <p>7 A. I'm a deputy chief of police.</p> <p>8 Q. And how long have you been a sworn</p> <p>9 police officer?</p> <p>10 A. 26 years.</p> <p>11 Q. And then what jurisdictions have you</p> <p>12 worked as a police officer?</p> <p>13 A. My entire time here in the City of</p> <p>14 Gahanna.</p> <p>15 Q. All right. Are you a resident of the</p> <p>16 city?</p> <p>17 A. Yes, I am.</p> <p>18 Q. All right. And can you tell us have you</p> <p>19 had any training in the area of traffic?</p> <p>20 A. Yes, I have.</p> <p>21 Q. All right. I don't want you to go</p> <p>22 through everything, but can you give me a few of the</p> <p>23 highlights?</p> <p>24 A. Basically, advanced crash investigation,</p>	<p style="text-align: right;">Page 33</p> <p>1 you?</p> <p>2 A. That was created from our records</p> <p>3 management system.</p> <p>4 Q. All right. And who assembled the data</p> <p>5 for that report?</p> <p>6 A. It looks like Lieutenant Moffet ran</p> <p>7 the -- ran the report. It's says CAD report in our</p> <p>8 system.</p> <p>9 Q. Thank you. And did Lieutenant Moffet do</p> <p>10 that at your request?</p> <p>11 A. Yes, he did.</p> <p>12 Q. Okay. And did you review the raw data?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Did you create this report or is this</p> <p>15 something Lieutenant Moffet did?</p> <p>16 A. Lieutenant Moffet created this report.</p> <p>17 Q. All right. And what about the remaining</p> <p>18 three pages? Can you tell us what those are?</p> <p>19 A. The second -- the report is the same</p> <p>20 access by street name, and the second street, that is</p> <p>21 from our CAD Records Management System, and that is</p> <p>22 for January 1st, 2017, through June 29th, 2017.</p> <p>23 Q. The third page?</p> <p>24 A. The third page is a -- part of our speed</p>

<p style="text-align: right;">Page 34</p> <p>1 volume survey, that was done for Beecher Road, and it</p> <p>2 is the indicator of -- first the speed enforcement</p> <p>3 evaluator, and that is the indicator of traffic</p> <p>4 volume.</p> <p>5 Q. Thank you, Chief. What does that report</p> <p>6 conclude, please?</p> <p>7 A. It concludes the speed on the section of</p> <p>8 roadway where the equipment was positioned. It had</p> <p>9 to be -- it was very low. That the --</p> <p>10 Q. Let me interrupt you. Was that on the</p> <p>11 east side or west side of the Hamilton Road?</p> <p>12 A. It would be on the west side.</p> <p>13 Q. And that's where the proposed</p> <p>14 development is, correct?</p> <p>15 A. Yes. As a matter of fact, I was with</p> <p>16 Lieutenant Moffet on the day that he installed this</p> <p>17 device.</p> <p>18 Q. Okay. And do you believe that that</p> <p>19 report is consistent with your personal observations</p> <p>20 in the 26 years you've been a police officer here in</p> <p>21 the City of Gahanna?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Okay. Let me ask you a different</p> <p>24 question. One of the things that the appellants have</p>	<p style="text-align: right;">Page 36</p> <p>1 It is my estimation when -- when -- as</p> <p>2 history tells us, if somebody is a permit holder has</p> <p>3 a higher food to alcohol sales that there are less</p> <p>4 issues with that particular premises.</p> <p>5 Q. Thank you, Chief. Are you familiar with</p> <p>6 the developer that's the subject of this appeal</p> <p>7 today, Gallas?</p> <p>8 A. No, I'm not.</p> <p>9 Q. Okay. You don't know if they have any</p> <p>10 other developments here in the of City of Gahanna?</p> <p>11 A. No, I do not.</p> <p>12 MR. REED: Okay. Chief, I have no</p> <p>13 further questions.</p> <p>14 Do you want to ask if there's any</p> <p>15 questions from the appellants or the intervention or</p> <p>16 do you want to save that for the end?</p> <p>17 CHAIRMAN JENSEN: I think we prefer to</p> <p>18 save it for the end so we can direct --</p> <p>19 MR. REED: Great. Thank you. Chief,</p> <p>20 you can have a seat. I would like to ask Mike -- if</p> <p>21 you take the stand, please?</p> <p>22 MICHAEL BLACKBURN,</p> <p>23 being by me first duly sworn, as hereinafter</p> <p>24 certified, testified as follows:</p>
<p style="text-align: right;">Page 35</p> <p>1 raised in their appeal, and in the hearing today, is</p> <p>2 sort of police calls that occurred at BW3s. Are you</p> <p>3 familiar with that argument?</p> <p>4 A. Yes, I am.</p> <p>5 Q. All right. And can you tell me do you</p> <p>6 have an opinion as to whether or not the -- I want</p> <p>7 you to assume for my question that the proposed</p> <p>8 development will be a restaurant similar to BW3s</p> <p>9 restaurant. I don't know that, but I want you to</p> <p>10 assume it, and I want you to tell me do you have an</p> <p>11 opinion as to whether or not that sort of restaurant</p> <p>12 will create more or less police calls in your</p> <p>13 judgment as Deputy Chief of the City of Gahanna?</p> <p>14 A. I believe that any -- any permit premise</p> <p>15 holder will have some degree of police response. I</p> <p>16 do not believe that -- and again, I would say, we</p> <p>17 deal in police work with facts and evidence, and it's</p> <p>18 very clear for us -- it's very hard for us to take a</p> <p>19 hypothetical situation and make it an application to</p> <p>20 the hearing now. But what I would say is that every</p> <p>21 permit holder in our city, whether they sell alcohol,</p> <p>22 is unique in and of themselves, as a business seller.</p> <p>23 There are responsible business owners. There are</p> <p>24 irresponsible business owners.</p>	<p style="text-align: right;">Page 37</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. REED:</p> <p>3 Q. Please state your full name for the</p> <p>4 record?</p> <p>5 A. Michael Blackburn.</p> <p>6 Q. And what is your position,</p> <p>7 Mr. Blackburn?</p> <p>8 A. I am the deputy director of Planning and</p> <p>9 Development Department.</p> <p>10 Q. And how long have you held that</p> <p>11 position?</p> <p>12 A. A little over three years.</p> <p>13 Q. And how long have you worked for the</p> <p>14 City of Gahanna?</p> <p>15 A. Three years.</p> <p>16 Q. And have you worked for any other cities</p> <p>17 prior to this?</p> <p>18 A. I've previously worked for St. Johns</p> <p>19 down in Florida.</p> <p>20 Q. Okay. For the county down there in</p> <p>21 Florida?</p> <p>22 A. County, yes.</p> <p>23 Q. What was your position there?</p> <p>24 A. I worked there for about ten years, and</p>

<p style="text-align: right;">Page 38</p> <p>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.</p>	<p style="text-align: right;">Page 40</p> <p>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.</p>
<p style="text-align: right;">Page 39</p> <p>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.</p>	<p style="text-align: right;">Page 41</p> <p>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.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. So you're a professional engineer.</p> <p>2 Mr. Priestas, did you have an occasion to review the</p> <p>3 final development and the application associated with</p> <p>4 this appeal today?</p> <p>5 A. Yes, I did.</p> <p>6 Q. All right. What are some of the things</p> <p>7 that you reviewed?</p> <p>8 A. I reviewed city limit access, utilities,</p> <p>9 traffic impasse, and any provisions for storm water</p> <p>10 management on the north end.</p> <p>11 Q. Okay. Mr. Priestas, I hand to you</p> <p>12 what's been marked as the traffic study dated, I</p> <p>13 believe, July 21st, 2017. Do you have that document</p> <p>14 in front of you?</p> <p>15 A. Yes.</p> <p>16 Q. I will represent to you that's been made</p> <p>17 a part of the record in this proceeding and it has</p> <p>18 been available to all of the parties. Is that a</p> <p>19 report that you requested?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Okay. Who provided that report to you?</p> <p>22 A. Trans Associates.</p> <p>23 Q. Okay. And who does Trans Associates</p> <p>24 work for?</p>	<p style="text-align: right;">Page 44</p> <p>1 A. According to its composition.</p> <p>2 Q. All right. Can you explain to me -- was</p> <p>3 there a rating of that particular pavement?</p> <p>4 A. It's currently rated, I believe, an 81,</p> <p>5 which is in fairly good shape, that's on the scale of</p> <p>6 0 to 100, and that section of pavement is actually</p> <p>7 about 25 years old.</p> <p>8 Q. What's an acceptable rating in terms</p> <p>9 of -- out of 100?</p> <p>10 A. Our goal is to maintain a 75 or better.</p> <p>11 Q. I see. So 81 is above 75, so you're</p> <p>12 good?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What about the east side of Beecher?</p> <p>15 How is that road rated?</p> <p>16 A. East side rates, I believe, a 95, and,</p> <p>17 actually, it's a 19-year old pavement.</p> <p>18 Q. I see. So did you come to an opinion as</p> <p>19 to whether or not something different is going to</p> <p>20 have to be done either at the cost of the developer</p> <p>21 or the City of Gahanna's cost on the west side of</p> <p>22 Beecher if this development were allowed?</p> <p>23 A. Not regarding pavement composition.</p> <p>24 Q. So your conclusion that nothing really</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Gallas Zadeh Development.</p> <p>2 Q. And did the city ask you or anyone else</p> <p>3 to review that traffic report?</p> <p>4 A. Yes.</p> <p>5 Q. Who did you ask to review it?</p> <p>6 A. I reviewed it and I also had an outside</p> <p>7 consultant review the traffic report as well.</p> <p>8 Q. Thank you, Mr. Priestas. Who's the</p> <p>9 outside consultant that reviewed it?</p> <p>10 A. Carpenter Marty.</p> <p>11 Q. All right. And did they come to an</p> <p>12 opinion as to whether or not the traffic study was</p> <p>13 appropriate for this development?</p> <p>14 A. We agreed that it was, yes.</p> <p>15 Q. All right. In terms of other items that</p> <p>16 you reviewed, did you review the pavement thickness</p> <p>17 as it relates to Beecher?</p> <p>18 A. Yes.</p> <p>19 Q. And what did you conclude, if anything,</p> <p>20 about the pavement thickness as it relates to</p> <p>21 proposed development on West Beecher?</p> <p>22 A. The existing pavement is sufficient for</p> <p>23 the development.</p> <p>24 Q. And how did you reach that conclusion?</p>	<p style="text-align: right;">Page 45</p> <p>1 needs to be done?</p> <p>2 A. Correct.</p> <p>3 MR. REED: No further questions for this</p> <p>4 witness.</p> <p>5 CHAIRMAN JENSEN: Excuse me, Mr. Reed.</p> <p>6 Are you about finished on your section here?</p> <p>7 MR. REED: Thank you, Mr. Chair. I will</p> <p>8 tell you that it's incumbent upon me to do all I can</p> <p>9 to represent the Planning Commission. I understand</p> <p>10 you've given each side 15 minutes, that is my only</p> <p>11 three witnesses. If I can have one minute, I'd like</p> <p>12 to conclude?</p> <p>13 CHAIRMAN JENSEN: All right. Yes. Go</p> <p>14 ahead.</p> <p>15 MR. REED: Thank you. Members of the</p> <p>16 Board, the other thing I will tell you is that I</p> <p>17 reviewed the Gahanna City Charter. I noticed that</p> <p>18 the Charter Commission spells out what the Planning</p> <p>19 Commission's duties are and that is to look out for</p> <p>20 the harmonious improvement of the municipality, to</p> <p>21 evaluate the planning and design, location of new</p> <p>22 structures. The jurisdiction of the Board of Zoning</p> <p>23 and Building Appeals is to hear and decide appeals</p> <p>24 from the decision of the Planning Commission</p>

<p style="text-align: right;">Page 46</p> <p>1 pertaining to zoning and buildings, and decide its 2 cases to avoid justice.</p> <p>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:</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 48</p> <p>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.</p> <p>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.</p> <p>24 There was some discussion about a</p>
<p style="text-align: right;">Page 47</p> <p>1 any appeal presented to 2506, if this matter was 2 appealed in Common Please Court.</p> <p>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.</p> <p>8 Thank you for your service. I'll be 9 happy to answer any questions.</p> <p>10 CHAIRMAN JENSEN: At this time, would 11 the intervening party like to speak?</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 49</p> <p>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."</p> <p>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.</p> <p>24 There was some discussion about a</p>

<p style="text-align: right;">Page 50</p> <p>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</p>	<p style="text-align: right;">Page 52</p> <p>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</p>
<p style="text-align: right;">Page 51</p> <p>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</p>	<p style="text-align: right;">Page 53</p> <p>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</p>

<p style="text-align: right;">Page 54</p> <p>1 run around from house to house. You know, they talk 2 to all of the neighbors.</p> <p>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.</p>	<p style="text-align: right;">Page 56</p> <p>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</p>
<p style="text-align: right;">Page 55</p> <p>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.</p>	<p style="text-align: right;">Page 57</p> <p>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</p>

<p style="text-align: right;">Page 58</p> <p>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.</p> <p>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.</p> <p>24 You know, I mentioned that -- you know,</p>	<p style="text-align: right;">Page 60</p> <p>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.</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 59</p> <p>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.</p> <p>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.</p> <p>18 CHAIRMAN JENSEN: Next, we have Howard 19 Sitton.</p> <p>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.</p>	<p style="text-align: right;">Page 61</p> <p>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.</p> <p>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.</p> <p>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</p>

<p style="text-align: right;">Page 62</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 64</p> <p>1 further then -- it should not be allowed to proceed 2 without adequate assurance that it will not further 3 exacerbate the flooding potential.</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 63</p> <p>1 water will be coming over the bridge and flooding 2 into the street down three and four houses to the 3 side.</p> <p>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.</p> <p>16 CHAIRMAN JENSEN: Mr. McKenna, how much 17 more time do you need?</p> <p>18 MR. MCKENNA: About two minutes.</p> <p>19 CHAIRMAN JENSEN: Okay. Thank you.</p> <p>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</p>	<p style="text-align: right;">Page 65</p> <p>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.</p> <p>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.</p> <p>11 MR. HODGE: And I object to the letter, 12 it's prejudicial.</p> <p>13 CHAIRMAN JENSEN: Do we need to discuss?</p> <p>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.</p> <p>18 CHAIRMAN JENSEN: Have you seen -- has 19 everybody seen this letter?</p> <p>20 MS. BANNING: I have a paper copy. I 21 submitted it digitally on Monday.</p> <p>22 MR. EWALD: Sure. It's actually not 23 officially part of the record until the Board either 24 accepts or rejects it.</p>

<p style="text-align: right;">Page 66</p> <p>1 CHAIRMAN JENSEN: And we can enter this</p> <p>2 under the same category as the external speakers --</p> <p>3 with this?</p> <p>4 MR. EWALD: It may be added as input</p> <p>5 from the community or a particular individual, but</p> <p>6 under 6.13 if a Member of the Board objects, now it</p> <p>7 should be put to a vote.</p> <p>8 MR. ADJOUA: I have no objection,</p> <p>9 Mr. Chair.</p> <p>10 MS. MECOZZI: I actually do object. The</p> <p>11 volume of the materials that we have provided before</p> <p>12 us, the degree involved with this, the timely and</p> <p>13 equal manner to getting it to us considered prior to</p> <p>14 tonight, and to read a letter of this length, sitting</p> <p>15 here, I don't feel I can give it the proper time and</p> <p>16 attention that it would need to be a part of the</p> <p>17 official record.</p> <p>18 MR. EWALD: And at the point given the</p> <p>19 fact that there's an objection, the Board will either</p> <p>20 have to vote by simple majority to accept or reject</p> <p>21 the admission.</p> <p>22 CHAIRMAN JENSEN: Do you want to take a</p> <p>23 roll call?</p> <p>24 MS. BANNING: So a motion by Adjoua and</p>	<p style="text-align: right;">Page 68</p> <p>1 much time and effort was spent to understand if there</p> <p>2 was a second way to have only access and egress from</p> <p>3 Hamilton Road other than just -- we realize that's</p> <p>4 right in and right out. Possibly the fire department</p> <p>5 would want a second way in and out and maybe there</p> <p>6 could have been a special entrance off of Beecher and</p> <p>7 I -- I understand as a professional in what I do,</p> <p>8 that a second curb cut would not have been allowed</p> <p>9 very close to the intersection of Hamilton/Beecher</p> <p>10 just because of the nature of it's a large</p> <p>11 intersection there. And I also understand that</p> <p>12 there's a raised curb to promote the turn lane, but</p> <p>13 with all that said, and what was said by the party</p> <p>14 who spoke, Mr. Wells, what, if anything, could have</p> <p>15 been done to have access only from Hamilton Road?</p> <p>16 MR. HODGE: Mr. Eisen, you're probably</p> <p>17 going to object to this motion. Our traffic engineer</p> <p>18 is here, and available for questions if anybody feels</p> <p>19 the need to direct a question specifically to our</p> <p>20 traffic engineer that submitted it to the city's</p> <p>21 traffic engineer who then as Mr. Priestas testified</p> <p>22 sent out for an independent third opinion. So he may</p> <p>23 be the best person to answer that question and if the</p> <p>24 Board wants him to come up, and he will certainly do</p>
<p style="text-align: right;">Page 67</p> <p>1 second by --</p> <p>2 MR. JENNINGS: Jensen.</p> <p>3 MS. BANNING: Adjoua?</p> <p>4 MR. ADJOUA: Yes.</p> <p>5 MS. BANNING: Jensen?</p> <p>6 CHAIRMAN JENSEN: No.</p> <p>7 MS. BANNING: Mecozzi?</p> <p>8 MS. MECOZZI: No.</p> <p>9 MS. BANNING: Eisen?</p> <p>10 MR. EISEN: No.</p> <p>11 MS. BANNING: Thank you.</p> <p>12 MR. EWALD: So the letter will be</p> <p>13 available as a public record but not proffered for</p> <p>14 evidence.</p> <p>15 CHAIRMAN JENSEN: At this time, we'll</p> <p>16 now begin with the board members directing their</p> <p>17 questions to the appropriate individuals to answer</p> <p>18 questions that we feel that -- we would like to know</p> <p>19 before -- before making their decisions, so I'll</p> <p>20 start with Mr. Eisen. Do you have --</p> <p>21 MR. EISEN: Yes, I think this question</p> <p>22 should be for Mr. Hodge. And it's very similar in</p> <p>23 nature to what Mr. Wells or Dr. Wells -- is that</p> <p>24 correct for your title? I was just wondering how</p>	<p style="text-align: right;">Page 69</p> <p>1 that if anything needs to be cleared.</p> <p>2 However, the applicant here looked at</p> <p>3 the various alternatives. I believe as part of the</p> <p>4 underlying city process, the police department</p> <p>5 analyzed the plan with the Beecher Road access as did</p> <p>6 the fire department, and both of them concluded that</p> <p>7 there is adequate moveability on and off that site,</p> <p>8 the Beecher Road access. My clients feel that this</p> <p>9 being as viable of a commercial site it can be, that</p> <p>10 access to Beecher Road is imperative.</p> <p>11 There is some difficulty of getting on</p> <p>12 and off of the site, maneuvering both north and south</p> <p>13 directly from Hamilton Road, and, so, the Beecher</p> <p>14 Road access point is critical to the commercial</p> <p>15 viability and the availability of the property, and</p> <p>16 even if we -- as I mentioned, submitted traffic</p> <p>17 engineer -- traffic studies, which they had reviewed</p> <p>18 by a third party.</p> <p>19 MR. EISEN: Okay. I have a question</p> <p>20 that may be directed to Mr. Reed. I found it</p> <p>21 interesting that there was a Gahanna area commission</p> <p>22 pre-application just one week after the approval for</p> <p>23 this project which was for the southwest corner of</p> <p>24 Beecher and Hamilton for another retail property</p>

<p style="text-align: right;">Page 70</p> <p>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?</p> <p>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?</p> <p>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</p>	<p style="text-align: right;">Page 72</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 71</p> <p>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.</p> <p>5 CHAIRMAN JENSEN: Do you know -- 6 Beecher?</p> <p>7 MR. PRIESTAS: Yes, that's correct.</p> <p>8 CHAIRMAN JENSEN: How far down?</p> <p>9 MR. PRIESTAS: At the access point to 10 the northern development.</p> <p>11 CHAIRMAN JENSEN: But I mean how far 12 west?</p> <p>13 MR. PRIESTAS: How far west?</p> <p>14 CHAIRMAN JENSEN: From Hamilton?</p> <p>15 MR. PRIESTAS: I don't know the detail 16 of distance, but several feet.</p> <p>17 MR. ADJOUA: Does that approach the 18 residential area at that point?</p> <p>19 MR. PRIESTAS: That would not, no, sir.</p> <p>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</p>	<p style="text-align: right;">Page 73</p> <p>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.</p> <p>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.</p> <p>14 MR. EISEN: I'll pass it on for now.</p> <p>15 CHAIRMAN JENSEN: Mr. Adjoua.</p> <p>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?</p> <p>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</p>

<p style="text-align: right;">Page 74</p> <p>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?</p>	<p style="text-align: right;">Page 76</p> <p>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,</p>
<p style="text-align: right;">Page 75</p> <p>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</p>	<p style="text-align: right;">Page 77</p> <p>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</p>

<p style="text-align: right;">Page 78</p> <p>1 for a period of five years from the date of the</p> <p>2 letter, date of the letter is August 26th, 2016.</p> <p>3 The ditch that we're filling is along</p> <p>4 the north side of Beecher Road, and I can share with</p> <p>5 you -- this is the FEMA map. The FEMA map has a 100</p> <p>6 year flood elevation associated with McKenna Creek</p> <p>7 and not with the ditch we're filling. When it comes</p> <p>8 to being sensitive, we had a choice, and if we're to</p> <p>9 not impact this ditch along Beecher Road some more,</p> <p>10 we would impact McKenna Creek flood plain in the</p> <p>11 right corridor. We would rather be sensitive to the</p> <p>12 area has been flooding a lot more than the ditch that</p> <p>13 is basically the drainage system on Hamilton Road,</p> <p>14 the 48-inch pipe that drains Hamilton Road currently.</p> <p>15 We're going to let that just -- continue that same</p> <p>16 forward. Not mixing our -- our water with that water</p> <p>17 in that ditch until we treat all of our storm water</p> <p>18 in our retention basin. So I hope that may clear up</p> <p>19 some efforts that we had from early on to where we</p> <p>20 are today which the Planning Commission approved, and</p> <p>21 some of the storm water principles that we</p> <p>22 contemplated. The final plan has not yet been</p> <p>23 submitted to the city engineer yet for their</p> <p>24 approval, but we do have to follow a certain line of</p>	<p style="text-align: right;">Page 80</p> <p>1 to any of the police officers about the general types</p> <p>2 of police calls?</p> <p>3 DEPUTY CHIEF SPENCE: As I said, I</p> <p>4 believe, in my testimony, is that we deal with facts</p> <p>5 and evidence and when trying to compare one business</p> <p>6 and one city with another business, there are</p> <p>7 environmental factors, there's location, the manner</p> <p>8 in which, you know, Grove City categorized and</p> <p>9 prioritize their runs, and how they respond. There's</p> <p>10 a way the City of Columbus does. You know, the</p> <p>11 review of the Grove City runs, really a lot of those</p> <p>12 were service related. They were related to the</p> <p>13 roadway in front of the restaurant. They were, you</p> <p>14 know -- so there really weren't a lot of runs to that</p> <p>15 particular location. None of those were any liquor</p> <p>16 law violations that we saw. Columbus -- the Columbus</p> <p>17 location, there were more runs to that location, but</p> <p>18 there's a couple Extended Stay hotels right next</p> <p>19 door, so there's some environmental factors that is</p> <p>20 beyond the restaurant's control. In a cursory review</p> <p>21 of that, I know liquor violations would be found in</p> <p>22 this. Yes, there were fight calls and other</p> <p>23 domestics and alike, but, again, there were</p> <p>24 environmental factors.</p>
<p style="text-align: right;">Page 79</p> <p>1 rules both with the city and the Ohio EPA, and those</p> <p>2 will be met in our construction drawings which will</p> <p>3 follow this.</p> <p>4 MR. ADJOUA: Thank you.</p> <p>5 MR. WARNER: Thank you.</p> <p>6 MR. ADJOUA: Deputy Chief Reed, in your</p> <p>7 investigation of the potential -- Spence. I'm sorry.</p> <p>8 Deputy Chief Spence. I don't want to get the</p> <p>9 lawman's name wrong here. In your investigation and</p> <p>10 review of the potential police calls to the new</p> <p>11 tenant, I believe, it's potentially Wings and Rings,</p> <p>12 did you make any inquiry of any other police</p> <p>13 jurisdiction where this type of establishments are</p> <p>14 located?</p> <p>15 DEPUTY CHIEF SPENCE: No, sir, but we</p> <p>16 were provided with a call -- I believe, from one of</p> <p>17 the residents in the subdivision had done an inquiry.</p> <p>18 There are two -- two other Buffalo Wild Wings and</p> <p>19 Rings, there are maybe more than two that were</p> <p>20 provided to us where one was at a Grove City</p> <p>21 location, and one was in the City of Columbus, which</p> <p>22 is on East Broad. The one in Grove City is</p> <p>23 Stringtown Road.</p> <p>24 MR. ADJOUA: And -- so you didn't talk</p>	<p style="text-align: right;">Page 81</p> <p>1 We don't really get into the business of</p> <p>2 speaking for other jurisdictions' response, and we</p> <p>3 would not want them to speak to ours so --</p> <p>4 MR. ADJOUA: Okay. Thank you. I have</p> <p>5 nothing further.</p> <p>6 CHAIRMAN JENSEN: Ms. Mecozzi.</p> <p>7 MS. MECOZZI: I just have a couple</p> <p>8 questions I want to clarify procedure. And</p> <p>9 Mr. Blackburn, if you could come to the podium,</p> <p>10 please. The zoning district of this development as</p> <p>11 proposed -- decided as proposed, the permitted uses</p> <p>12 include restaurants --</p> <p>13 MR. BLACKBURN: Correct.</p> <p>14 MS. MECOZZI: -- of this nature?</p> <p>15 MR. BLACKBURN: And there's two</p> <p>16 different zoning districts for this property. I</p> <p>17 believe, going on north is planning commercial</p> <p>18 center, on the south, restaurants are permitted in</p> <p>19 both.</p> <p>20 MS. MECOZZI: So the Planning</p> <p>21 Commission, they're looking at the -- they are</p> <p>22 reviewing the site plan, the development plan for the</p> <p>23 entire parcel, not specifically evaluating the</p> <p>24 specific users within a development?</p>

<p style="text-align: right;">Page 82</p> <p>1 MR. BLACKBURN: Correct. And that's the</p> <p>2 typical process is to evaluate, again consistency</p> <p>3 with the use in general, and focus on specific</p> <p>4 tenant. One of the reasons is that -- especially a</p> <p>5 multi-tenant scenario often times the full intent is</p> <p>6 not known, and there is also the probability that the</p> <p>7 tenant will change over time. So it's dangerous to</p> <p>8 base it on one particular tenant, because there's no</p> <p>9 guarantee over time who that tenant will be.</p> <p>10 MS. MECOZZI: Thank you. And then the</p> <p>11 question regarding the condition with the Planning</p> <p>12 Commission, how are those followed up or enforced,</p> <p>13 and if a plan is not submitted or it's submitted,</p> <p>14 does meet approval of the appropriate staff member</p> <p>15 what's the protocol for the property from that point.</p> <p>16 MR. BLACKBURN: I am not -- not actually</p> <p>17 in the office that would oversee those conditions, so</p> <p>18 it won't be appropriate for me to answer that.</p> <p>19 MS. MECOZZI: Okay. Thank you. Is that</p> <p>20 something you can answer, city attorney?</p> <p>21 MR. EWALD: I could not since I'm</p> <p>22 advising the Board tonight, but you may want to refer</p> <p>23 to the Planning Commission's attorney if he has</p> <p>24 knowledge or the city engineer.</p>	<p style="text-align: right;">Page 84</p> <p>1 Gahanna.</p> <p>2 So it's my understanding on May 10th,</p> <p>3 the Planning Commission said, we -- in a six to one</p> <p>4 vote, we give our approval to this final development</p> <p>5 plan subject to certain conditions, and those</p> <p>6 conditions are things that you asked about. Does</p> <p>7 that answer your question?</p> <p>8 CHAIRMAN JENSEN: How is it enforced,</p> <p>9 that plan as it moves forward?</p> <p>10 MR. REED: That's a very good question,</p> <p>11 Mr. Chairman. I think that in the event that --</p> <p>12 let's say the developer were to not submit something</p> <p>13 that would be appropriate or consistent with the</p> <p>14 zoning professionals, the planning professionals that</p> <p>15 work for the City of Gahanna, I think that the city</p> <p>16 code provides the city attorney to take action</p> <p>17 against the developer in a form of an injunction to</p> <p>18 be filed in Common Pleas Court. I think that there</p> <p>19 is other mechanisms available to the city should</p> <p>20 that -- no final plan approval not be granted. There</p> <p>21 are lots of things in the of City Code. As a</p> <p>22 practical matter, the developer would be foolish to</p> <p>23 do that. The developer in this case, I understand,</p> <p>24 has been very cooperative, and has had a lot of</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. MECOZZI: Attorney Reed to the</p> <p>2 podium. Would you be able to answer this question?</p> <p>3 MR. REED: I don't remember. Ms.</p> <p>4 Mecozzi, can you restate that specific question you</p> <p>5 have for us?</p> <p>6 MS. MECOZZI: One of the things that</p> <p>7 have been talked about tonight, is the action of the</p> <p>8 Planning Commission in requiring that the storm water</p> <p>9 and the traffic study receive further review by the</p> <p>10 city's staff, and its to be referred to as a</p> <p>11 condition?</p> <p>12 MR. REED: Thank you. So it's my</p> <p>13 understanding that when the developers comes to a</p> <p>14 city -- and the city is including City of Gahanna,</p> <p>15 the developers says things like, well, we want to</p> <p>16 know if you preliminarily approve of our development</p> <p>17 plan, and we haven't taken the time and trouble and</p> <p>18 money to spend -- to do the final engineering. We</p> <p>19 haven't taken the time, money and energy to do final</p> <p>20 storm water engineering, but assuming you, the city,</p> <p>21 were to approve this development, we will make sure</p> <p>22 that those things get done, and done to the</p> <p>23 satisfaction of the Planning and Zoning Commission</p> <p>24 officials and professionals who work for the City of</p>	<p style="text-align: right;">Page 85</p> <p>1 meetings both before the application, as well as</p> <p>2 after the application has been submitted. Thank you.</p> <p>3 MR. EISEN: I have a quick question for</p> <p>4 Deputy Chief Spence. And this is related to the</p> <p>5 discussion earlier when you were down here talking</p> <p>6 about speed and volume studies, and I wrote your</p> <p>7 quote about speed is low on the west side of Hamilton</p> <p>8 there on Beecher.</p> <p>9 DEPUTY CHIEF SPENCE: That's correct.</p> <p>10 MR. EISEN: And, you know, obviously</p> <p>11 that's a condition of now. We know there's a traffic</p> <p>12 light at the corner of Beecher and Hamilton, and I</p> <p>13 believe on the access that way, there's a stop sign</p> <p>14 at Ridge Crest and Beecher, so we've got two points</p> <p>15 where traffic would stop. Traffic is then going to</p> <p>16 be coming -- and traffic is probably a little slow in</p> <p>17 that area because it's 25 miles an hour. Cars are</p> <p>18 going to be -- so, I'm thinking ahead -- excuse me --</p> <p>19 I'm thinking ahead from when there are curb cuts on</p> <p>20 both sides for both developments there on Beecher.</p> <p>21 Cars could be coming down that kind of blind winding</p> <p>22 hill, there are two curb cuts of major developments</p> <p>23 there, and I'm wondering, maybe not from a speed</p> <p>24 perspective, with your expertise, do you have any</p>

<p style="text-align: right;">Page 86</p> <p>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.</p>	<p style="text-align: right;">Page 88</p> <p>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</p>
<p style="text-align: right;">Page 87</p> <p>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.</p>	<p style="text-align: right;">Page 89</p> <p>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</p>

<p style="text-align: right;">Page 90</p> <p>1 brief.</p> <p>2 MR. WILLIAMS: Thank you, Mr. Chairman.</p> <p>3 I'll make this very brief. This is a final</p> <p>4 development plan that was approved conditionally.</p> <p>5 Conditional approvals are not allowed by the code.</p> <p>6 The simple reason that conditional approval calls for</p> <p>7 additional information provided after the fact, not</p> <p>8 subject to the public hearing process, that's what</p> <p>9 happened in this case. Beecher Road is the only</p> <p>10 ingress and egress point for 81 homes in the Academy</p> <p>11 Ridge subdivision. To change that road, to make it a</p> <p>12 commercial ingress and egress for this project will</p> <p>13 seriously impact the residents in the subdivision.</p> <p>14 Mr. Hodge made the point that all he had</p> <p>15 to do really is check the boxes at the Planning</p> <p>16 Commission. Does it fit into the zoning? Does it</p> <p>17 fit into the use? That is not the case, quality of</p> <p>18 the judgments have to be made. Is it suitable to the</p> <p>19 neighborhood? At the May 10th hearing, the Planning</p> <p>20 Commission Member Price, votes no, and she cites the</p> <p>21 code regarding suitability for this plan in the</p> <p>22 neighborhood. We agree that when we don't know who</p> <p>23 the end user is going to be, it's okay to be general,</p> <p>24 no problem, but when you do know, and you get asked a</p>	<p style="text-align: right;">Page 92</p> <p>1 appellants on what the code requires. I believe</p> <p>2 that, in fact, it's appropriate for the Planning</p> <p>3 Commission to say we have approved this final</p> <p>4 development plan subject to certain conditions,</p> <p>5 because we want to retain jurisdiction over the</p> <p>6 ability to review the final development plan, the</p> <p>7 final storm water plan, to review and make sure that</p> <p>8 all of the appropriate permits either from ODOT, from</p> <p>9 City of Columbus, from the City of Gahanna, from Ohio</p> <p>10 EPA, whatever jurisdiction, from the Army Corps of</p> <p>11 Engineers are satisfied.</p> <p>12 The appellant has made some allegations</p> <p>13 that the final identity of the tenant is somehow</p> <p>14 relevant. I would submit to you that it is not. I</p> <p>15 think that the zoning has been specific to what</p> <p>16 specific businesses are allowed in these two zonings,</p> <p>17 and, so, I believe that the Planning Commission</p> <p>18 followed the law and asked the appropriate questions.</p> <p>19 For all of these reasons, we'd ask that the decision</p> <p>20 of the Planning Commission dated May 10th 2017 be</p> <p>21 affirmed.</p> <p>22 MR. HODGE: As we established the</p> <p>23 property is zoned for a variety of commercial uses.</p> <p>24 There was some discussion about -- from Chairman</p>
<p style="text-align: right;">Page 91</p> <p>1 question -- isn't it important information for the</p> <p>2 Planning Commission to know to make those</p> <p>3 quantitative judgments? Missing information: It</p> <p>4 comes in later after the approval is not subject to</p> <p>5 the building hearing process. There's no way the</p> <p>6 public can comment. What is the role of the Board of</p> <p>7 Zoning Appeals here? If you want your Planning</p> <p>8 Commission to act according to your city code, you</p> <p>9 have to tell them that. If you let this one slide</p> <p>10 and others like it, then that will be a field day for</p> <p>11 any developer who wants to come in and slide one</p> <p>12 further. Thank you.</p> <p>13 MR. REED: First of all, I would like to</p> <p>14 thank the Members of the Board. For having, myself,</p> <p>15 worked for 13 years in public service, I know you do</p> <p>16 this not for money, but for the public calling, and I</p> <p>17 could tell by each of the questions that each of you</p> <p>18 have asked of all the parties in this, that you've</p> <p>19 read the records very carefully, and that you take</p> <p>20 your duty very seriously, so I applaud you for that.</p> <p>21 I believe that the evidence has been</p> <p>22 presented in a way that shows the Planning Commission</p> <p>23 has followed the ordinance. I respectfully disagree</p> <p>24 with my colleague, Mr. Williams, who represents the</p>	<p style="text-align: right;">Page 93</p> <p>1 Jensen and also Ms. Mecozzi about the enforceability.</p> <p>2 I'm not sure if they ever got a real firm conclusion</p> <p>3 on that issue. I want you to understand that the</p> <p>4 condition is enforceable. If the applicant does not</p> <p>5 comply with the condition, then the engineer doesn't</p> <p>6 sign the plan and the city does not issue the</p> <p>7 building permits, so the city is still in control.</p> <p>8 It's not just the enforceability of the condition</p> <p>9 that no one has to meet. So if that lingers out</p> <p>10 there, the applicant must comply with that condition</p> <p>11 or they can't do their development.</p> <p>12 This was a -- this was a very thorough,</p> <p>13 very public process, and the Gahanna Planning</p> <p>14 Commission heard the testimony that this Board heard</p> <p>15 tonight. This neighborhood was engaged in the</p> <p>16 process. They were at the Planning Commission</p> <p>17 meeting, and they were at the workshop meeting, so --</p> <p>18 so -- much of it, if not all of what you heard</p> <p>19 tonight is what the Planning Commission heard and</p> <p>20 considered, and weighed that information and its</p> <p>21 testimony, and the Planning Commission saw it</p> <p>22 appropriate to vote by six to one margin to support</p> <p>23 the application, finding that it met the final</p> <p>24 development plan approval criteria under 11805 of the</p>

<p style="text-align: right;">Page 94</p> <p>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</p>	<p style="text-align: right;">Page 96</p> <p>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,</p>
<p style="text-align: right;">Page 95</p> <p>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</p>	<p style="text-align: right;">Page 97</p> <p>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</p>

<p style="text-align: right;">Page 98</p> <p>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.</p> <p>10 So at this point, you know, for further 11 discussion, I'm still on the fence as far as the next 12 steps.</p> <p>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</p>	<p style="text-align: right;">Page 100</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 99</p> <p>1 for it.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 101</p> <p>1 important too.</p> <p>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.</p> <p>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?</p> <p>13 MR. EWALD: Mr. Chair, are you prepared 14 to vote at this time?</p> <p>15 CHAIRMAN JENSEN: Is the Board prepared 16 to vote?</p> <p>17 (Unanimously yes.)</p> <p>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,</p>

<p style="text-align: right;">Page 102</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>19 CHAIRMAN JENSEN: Do we have a second? 20 MR. EISEN: Second.</p> <p>21 CHAIRMAN JENSEN: Discussion? Is there 22 any discussion? 23 MR. EWALD: Mr. Chair, for 24 clarification, the affirmation of the appeal would</p>	<p style="text-align: right;">Page 104</p> <p>1 If you deny it -- 2 (Audience members stated no.) 3 AUDIENCE MEMBER: No, Shane, it's the 4 other way.</p> <p>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.</p> <p>9 CHAIRMAN JENSEN: I make a motion -- I'm 10 making a new motion then.</p> <p>11 MR. EWALD: Based on our rules, 12 Mr. Chair, it's counterintuitive --</p> <p>13 CHAIRMAN JENSEN: Right. Right. 14 MR. EWALD: -- I understand.</p> <p>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?</p> <p>19 MR. EWALD: Yes.</p> <p>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.</p>
<p style="text-align: right;">Page 103</p> <p>1 approve the appellant's proposition.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>15 MR. EWALD: That would be sufficient. 16 CHAIRMAN JENSEN: Second? 17 MR. EISEN: Second.</p> <p>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.</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. ADJOUA: Second.</p> <p>2 CHAIRMAN JENSEN: Counsel, can you 3 restate -- rephrase to make sure everybody here 4 understands how --</p> <p>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.</p> <p>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.</p>

<p style="text-align: right;">Page 106</p> <p>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.)</p>	
<p style="text-align: right;">Page 107</p> <p>1 CERTIFICATE 2 I do hereby certify that the foregoing 3 is a true and correct transcript of the proceedings 4 taken by me in this matter on Thursday, 5 July 27, 2017, and carefully compared with my 6 original stenographic notes. 7 8 9 _____ Ebony M. Reynolds Registered Professional Reporter 10 11 --- 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	