

1 IN RE:
2 CITY OF GAHANNA
3 BOARD OF ZONING AND
4 BUILDING APPEALS
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13 Appeals Hearing
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 January 30, 2020

15 6:30 p.m.

16 Taken at:

 Gahanna City Hall

17 Council Chambers

18 200 South Hamiltion Road

19 Gahanna, Ohio
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25 Daniel R. Cuff, Notary Public

1 APPEARANCES AND ATTENDEES:

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3 BOARD MEMBERS:

4 LORNE EISEN, Chair

5 HAKIM BEN ADJOUA, Vice Chair

6 JASON BROFFORD

7 DON JENSEN

8 DEBRA MECOZZI

9
10 ALSO PRESENT:

11 APRIL BEGGEROW, MPA, CMC, Clerk of
12 Council

13 RAY MULARSKI, City Attorney

14 MATTHEW ROTH, Assistant City
15 Attorney for Planning Commission

16 JESSE M. KANITZ, on behalf of
17 Appellee

18 MICHAEL BLACKFORD

19 GLEN DUGGAR

20 WILLIAM JOHNSON

21 RON STAHL

22 JANE PECK

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PROCEEDINGS

MR. EISEN: Good evening and welcome to the Thursday, January 30th, 2020 meeting of the Board of Zoning and Building Appeals. I will ask Mr. Brofford to lead us in the pledge of allegiance.

(Pledge of Allegiance Conducted.)

MR. EISEN: Madame Clerk, rollcall.

MS. BEGGEROW: Adjoua?

MR. ADJOUA: Here.

MS. BEGGEROW: Brofford?

MR. BROFFORD: Here.

MS. BEGGEROW: Eisen?

MR. EISEN: Here.

MS. BEGGEROW: Jensen?

MR. JENSEN: Here.

MS. BEGGEROW: Mecozzi?

MS. MECOZZI: Here.

MR. EISEN: Thank you. Before tonight's hearing -- tonight's hearing is now formally in session. But before we move any further into proceedings, I need to bring up an issue for which I've already notified Mayor Jadwin, the City Attorney, the Clerk and my fellow board members. I am a partner in an

1 architectural firm that provides professional
2 services to Mt. Carmel Health System, who is a
3 major tenant within this proposed development.

4 To alleviate any conflict of
5 interest with regard to the hearing this
6 evening, I've elected to recuse myself from the
7 deliberations this evening. Therefore at this
8 time I will turn over leadership of the meeting
9 to Mr. Adjoua, our vice chair. And I will
10 leave the podium. Thank you.

11 MR. ADJOUA: Thank you Mr. Eisen.
12 Before we proceed further, there's a couple
13 announcements. One, if anybody else here wants
14 to make a public comment, you need to fill out
15 one of these forms and give them to the Clerk
16 now so we can recognize you.

17 Secondly before we proceed, there
18 are some corrections on our minutes that I'd
19 like to point out for the clerk of the Council
20 on our organizational meeting minutes in
21 regards to our January 9th, 2020. And we have,
22 under "Present" the numbering is wrong. It
23 shows seven, five, five and five for the
24 motion. Those are in error. So if you could
25 correct these please.

1 MS. BEGGEROW: I will correct
2 those.

3 MR. ADJOUA: Thank you. Let me
4 repeat, anybody else who would like to make a
5 public comment, you need to fill out a form
6 with the Clerk.

7 Appellee, if you're an attorney
8 you're welcome to -- you don't probably need
9 one.

10 MR. KANITZ: Thank you.

11 MR. ADJOUA: Okay. At this point I
12 would like to, before we call the -- this is
13 the public hearing for the appeal for BZBA
14 0012020 appeal. And this is the appeal of the
15 Planning Commission FDP 0092019 and DR
16 00262019. At this point, all the persons who
17 will give testimony, I would like them to stand
18 so that they can be administered the oath as
19 any witnesses of people who will give
20 testimony. And Mr. Mularski?

21 MR. MULARSKI: Thank you. Put your
22 hands down for a second. We're now at the part
23 of the public hearing of the meeting. The
24 public hearing will offer it as follows: The
25 public comment will be open for three minutes

1 allowed per speaker. Additional time may be
2 requested. And permission is at the discretion
3 of the chair. The speakers must complete a
4 speaker slip and come to the podium and state
5 their name.

6 The Appellant will then be given 25
7 minutes to comment. This is combined for the
8 Appellant and any interested parties. The
9 Appellee will then be allowed 15 minutes. This
10 is combined for the Appellee and any interested
11 parties. The Appellant will then be allowed
12 five minutes for further argument or rebuttal.
13 The Appellee will be allowed 5 minutes for
14 further argument or rebuttal.

15 If there is more than one appeal
16 pending for a particular address, the
17 presentation on each application may be
18 consolidated and presented as one, if it's
19 preferred.

20 Now, at this time, would people
21 wishing to present testimony this evening
22 please raise their right hand to be sworn in.
23 Please repeat after me. Or please answer my
24 question.

25 (Oath Administered.)

1 MR. MULARSKI: Thank you.

2 MR. ADJOUA: You may be seated. We
3 will now open the public comment section. And
4 I have Ms. Jane Peck. Would you step to the
5 podium please? Jane Peck? Is she present?
6 You have three minutes, Ms. Peck.

7 MS. PECK: Sir, I hadn't planned to
8 speak unless it was absolutely necessary. I
9 relinquish to our attorney.

10 MR. ADJOUA: Okay. Thank you.
11 Mr. Ron Stahl, would you like to speak, sir?
12 Step to the podium. You have three minutes.

13 MR. STAHL: Thank you. Ron Stahl,
14 1022 Ridge Crest Drive, Gahanna, Ohio 43230.
15 Contiguous property owner. I want to thank you
16 for your service to the community. I know this
17 takes some time. And I do appreciate your
18 dedication.

19 I ask you to approve the appeal
20 reversing the decision the Planning Commission
21 made. Since the FDP does not meet the required
22 standards for PCC, Planned Commercial Center.
23 I want to thank the Planning Commission
24 chairman, Mr. Hicks, for recognizing this fact
25 with a vote against approving the FDP since it

1 "does not meet his understanding of
2 permissive[sic] uses."

3 The Planning Commission approved
4 including an offsite emergency department. PCC
5 zoning permits shopping center or other
6 community facility. An offsite emergency
7 department is neither of those.

8 The Planning Commission was
9 incorrect to approve plans that did not match
10 the zoning for the parcel in question. I
11 welcome new development, good paying jobs, good
12 for Gahanna, good for me as a citizen of
13 Gahanna. It helps the community in many ways.
14 This proposal does not meet the standards that
15 PCC zoning requires.

16 Back in November, since I only have
17 three minutes to speak, I asked the Planning
18 Commission to clarify several questions I had.
19 Not all of those questions were asked or
20 answered. The PCC Section C talks about how
21 the planning and development shall contain
22 multiple numerous items in map or text form.

23 I don't see an engineering
24 feasibility study. No one on the Planning
25 Commission asked about it. PCC requires

1 details regarding public improvements and plan
2 for such streets. Looks like Beecher is going
3 to need to be widened. No one at the Planning
4 Commission asked any questions about the need
5 to widen Beecher. There was a discussion about
6 the curb cuts.

7 But the City Engineer wasn't at the
8 meeting. No one at the Planning Commission
9 bothered to asked the detailed questions this
10 type of development deserves.

11 The public service comments on page
12 35 of the FDP says the outlet of the detention
13 system would need to be violated for necessary
14 rock channel protection for erosion control.
15 On page 38, the soil and water conservation
16 district comments say the outlets will have
17 erosive force that differs from existing
18 conditions at those locations, causing erosion
19 and channel invasion.

20 It was stated the -- guidelines of
21 Gahanna would be followed is insufficient.
22 Because how is this possible without violating
23 the preservation zone? After all, the easement
24 states working in the creek bed shall be
25 limited to using hand tool methods.

1 Plus the easement doesn't even go
2 all the way down to the creek. Is this
3 development going to dump water on my property
4 before it gets to the creek? The Planning
5 Commission seemed not to care about the public
6 service or the soil or condensation. District
7 comments that express great concern that the
8 proposed development would have an adverse
9 effect on the preservation zone and the creek.

10 So I ask you tonight to approve the
11 appeal based on the proposed development does
12 not meet the applicable development standards.
13 And secondly, the proposed development will
14 have undesirable effects on the surrounding
15 area. Thanks for your time.

16 MR. ADJOUA: Thank you, sir.

17 MR. DUGGAR: Mr. Chairman, for the
18 record, we object to the -- we already did
19 this. We did this back in -- this isn't a
20 trial and error. This is supposed to be, I
21 think, this is supposed to be an Appellant
22 proceeding. What that was was that gentleman,
23 who is a neighbor, coming and complaining about
24 this again. He had that opportunity. He used
25 it a month ago. Or six weeks ago.

1 This should be about Appellant
2 discussion about whether the Planning
3 Commission's decision was correct or not. Not
4 to have a whole other hearing on the facts on
5 the law before you.

6 MR. ADJOUA: Mr. Duggar?

7 MR. DUGGAR: Yes, sir.

8 MR. ADJOUA: Mr. Duggar, we
9 appreciate your comments. However, we are in a
10 administrative municipal hearing body. And our
11 rules allow public comment.

12 MR. DUGGAR: I understand. For the
13 record, I'm objecting to all testimony that's
14 being given. Other than as a part of the
15 Appellant process.

16 MR. ADJOUA: And we appreciate
17 those comments. Would William Johnson -- is
18 William Johnson present? Will you step forward
19 sir? You have three minutes Mr. Johnson.

20 MR. JOHNSON: Thank you. Hello.
21 My property is a contiguous property. The back
22 of my property faces towards the proposed
23 development. I would also note that there is a
24 facility for elderly people that is also backed
25 up against the proposed development.

1 It's an emergency facility. Going
2 with that would be sirens. Very loud sirens.
3 I heard one on the way over here. They got to
4 the intersection. And they had to honk a lot
5 to get through the intersection. It's a lot of
6 noise.

7 I don't know for those of us with
8 property along the back whether when we go to
9 sell our properties there won't be some concern
10 about sirens in the middle of the night. And
11 that this will force us to discount our
12 property when we sell it.

13 But perhaps more important than
14 that, we have 90, 100 year old people. Very
15 vulnerable people. Living just within very
16 close, 100 feet, 200 feet. It's not far. From
17 where these emergency vehicles are going to
18 drive into the facility.

19 I understand that there was a point
20 about this before the Planning Commission. And
21 then they were told that the ambulances would
22 turn off their siren. But it's not the
23 facility that determines whether they turn on
24 their siren or not. It's the driver. And so I
25 would ask that you consider that this is a

1 serious consideration.

2 And the Planning Commission did not
3 take as such, at least, if you look at what
4 they had to say about it. Thank you very much.

5 MR. ADJOUA: All right. Thank you,
6 Mr. Johnson. Do we have anyone else who
7 submitted a form?

8 MS. BEGGEROW: No, sir.

9 MR. ADJOUA: Okay. All right. Now
10 the Appellant will get their opportunity now to
11 present their argument. And that is the
12 Academy Ridge[sic] Community Association.
13 Would you introduce yourself, sir, and proceed?
14 You have 25 minutes. So go right ahead.

15 MR. KANITZ: Yes. Thank you. My
16 name is Attorney Jesse Kanitz. I'm appearing
17 on behalf of the Appellant, Academy Ridge
18 Community Association. The association is here
19 and I am to appeal a Planning Commission
20 approval of the Shops at McKenna Creek
21 development plan application.

22 Before I begin, I would like to
23 thank everyone for being here. And for
24 considering the association's arguments with an
25 open and an impartial mind. With a mind open

1 to what the Gahanna city code and zoning
2 ordinances require. Not what someone can push
3 through without objection.

4 I would also like to make it clear
5 that I'm not here to attack the Planning
6 Commission. Neither is my client. By the very
7 nature of our position, I think it's clear that
8 we're going to be here arguing that they made a
9 mistake when they approved this plan. That
10 argument is not meant to be a personal attack
11 on the Commission or members thereof. And I
12 hope that that's very clear.

13 Now, my client is no stranger to
14 the Appellant process. We've all seen this
15 here before at this point. And the Board may
16 be tired of seeing us. And the City may be
17 tired of seeing us. I know the Applicant is
18 tired of seeing us.

19 The last time we were here for the
20 preliminary hearing on January 9th, as I was
21 walking back to sit in the public lobby of city
22 hall, I heard Mr. Roth and Mr. Duggar talking
23 about my client, disparaging them. Sitting
24 outside a public hall, waiting for a public
25 hearing, I heard them comment and laugh

1 jokingly that my client's only came into this
2 matter because they had too much money to
3 spend. After that comment someone closed the
4 door.

5 I can assure you that my client is
6 not here because it has too much money to
7 spend. My client is not here because it wants
8 to waste it's time or because it wants to waste
9 your time. My client is not here to be a
10 nuisance.

11 My client is here to make sure the
12 City follows the rules. My client is here to
13 make sure that what gets done here is not
14 getting down with backroom deals and closed
15 door conversations.

16 Further, my client is directly
17 impacted by this. Probably more than any other
18 residents in this city. The Academy Ridge
19 subdivision directly abuts this property. What
20 you decide here tonight is going to have
21 lasting impact on their property values and on
22 their enjoyment of their properties.

23 So yes, they're very interested in
24 what happens. They're very interested in
25 ensuring that this zoning process follows the

1 code. They're very interested in ensuring that
2 the zoning process is followed through. That
3 what this property was zoned for, what it was
4 zoned for when they bought their properties is
5 what actually occurs.

6 And I think we can all recognize
7 that a group of homeowners participating in a
8 public process ought not be ostracized for
9 participating in this process. But rather
10 should have their arguments listened to with an
11 open and an impartial mind. And I'm thankful
12 to be here before the Board because I know you
13 will do just that.

14 Moving to the substance of the
15 appeal, I think you will all be happy to know I
16 don't think I'm going to need 25 minutes. The
17 association's arguments are essentially
18 comprised of two points. The first is very
19 simple.

20 A hospital surrounded by medical
21 offices is not a shopping center. It seems so
22 self-evident you wonder why we're here. The
23 second is simply that the Planning Commission
24 failed to even consider the negative traffic
25 effects of this development. And by failing to

1 do that they abrogated the duty they had to the
2 code. Either of these two points is sufficient
3 to justify overturning their decision in this
4 matter.

5 Moving to the first point. The
6 crux of the association's position is that the
7 final development plan application in this
8 matter simply did not comply with the zoning
9 ordinance. Gahanna City Code 1108.05(a)1
10 states as follows: "The Planning Commission
11 shall approve an application for a final
12 development plan if the following four
13 conditions are met; A, the proposed development
14 meets the applicable development standards of
15 this zoning ordinance. B, the proposed
16 development is in accord with appropriate plans
17 for the area. C, the proposed development
18 would not have undesirable effects for the
19 surrounding area. And D, the proposed
20 development would be in keeping with the
21 existing land use, character and physical
22 development potential of the area."

23 These requirements are
24 nondiscretionary. If an application fails to
25 meet even one of these four requirements it

1 must be denied. The Planning Commission
2 doesn't have the authority to skip over one and
3 decide, ah, even though it doesn't meet I'm
4 still going to -- all four of these elements
5 must be met.

6 In this case, the application
7 doesn't make it past the very first one. And
8 that's because it's intended use for medical
9 use for this property does not comply with the
10 property's zoning designation. Specifically,
11 this property is zoned as a planned commercial
12 center district. And it's set forth in Gahanna
13 City Code 1153.06. It's commonly referred to
14 as a PCC district. And that's how I will refer
15 to it tonight.

16 The PCC zoning designation
17 expresses the City's specific intent for this
18 property. It designates certain permitted uses
19 and certain conditional uses. As such,
20 pursuant to Gahanna City Code, a PCC district
21 shall be used for only the following permitted
22 uses: A shopping center, community facilities.

23 And then goes on to list two
24 conditional uses that may be potentially
25 possible. Modified commercial use, which

1 really isn't applicable here tonight. And
2 lodging places.

3 It's hard to envision how a small
4 hospital surrounded by doctors offices meets
5 any of these intended uses. As described in
6 the application, the uses for this property
7 include professional office, medical office.
8 And then offsite emergency department.

9 Indeed, if we look at the staff
10 report that was attached to this application it
11 states that the primary use for this property
12 is medical use. When we close our eyes and
13 envision a shopping center, it isn't a hospital
14 that we see. But what they put here is not
15 something that you're going to be bringing your
16 families to on the weekends. Hopefully. It's
17 not some place you're going to be coming with
18 your significant other to shop or to have a
19 coffee.

20 And to that point, in this instance
21 we actually have physical illustrations that
22 show what was supposed to be in this property.
23 There is an Ordinance 111-1990 that also is
24 attached to this property and contains certain
25 illustrations.

1 Now I'm not going to stand here
2 today and say the developer was required to
3 match those illustrations brick by brick and
4 parking spot by parking spot. But those
5 illustrations are included in the ordinance for
6 a reason. They illustrate what was supposed to
7 be here. At least in the general nature of
8 what was supposed to be here.

9 And what do these illustrations
10 show? Well, not surprisingly, they show shops.
11 With people shopping. Not a hospital. Not law
12 offices. And not medical offices. Shops.

13 Beyond these illustrations, the
14 code further accentuates that this is not what
15 this property was meant to be zoned for or
16 developed for. When we look at the Gahanna
17 City Code, we can see many instances where they
18 had zoned and explicitly set forth medical
19 uses, hospital uses, office uses.

20 Indeed, if we look at Gahanna City
21 Code 1153.01(A) and (B), which sets forth the
22 city's suburban office and institutional
23 district zoning designations, they explicitly
24 provide for professional offices engaged in
25 providing tangible and intangible services.

1 And these are permitted uses.

2 That designation goes on to list
3 "hospital" as an authorized conditional use.
4 Likewise, if we look at the City's neighborhood
5 commercial district and community commercial
6 district zoning designations, medical and
7 professional offices are included as either
8 permitted for conditional uses.

9 Those designations aren't included
10 in the PCC designation. And the City just
11 didn't simply forget how to do it when it wrote
12 that zoning code. They're not there because
13 they're not intended to be there. The City
14 knew what it was doing. The fact that PCC
15 zoning designations don't include medical use
16 or legal offices or professional offices means
17 that they're not supposed to be there.

18 So when we look at this, and we see
19 that the proposed development for this property
20 doesn't match the planned meaning of the
21 statute, when it doesn't even resemble the
22 illustrations for the ordinance attached to the
23 property, when the code doesn't support what's
24 there, why are we here? How did this get
25 approved? On what basis?

1 Well, a review of the minutes show
2 how. The minutes refer to some letter. Not in
3 the record. Not even clearly identified. And
4 based on that letter, sent to someone else, the
5 city determined yes, we think it meets the
6 zoning code.

7 That's not what the code requires.
8 The code requires the final development plan
9 application be approved based on the zoning
10 ordinances. Not a letter sent to a third party
11 that's not before anybody. And it's still not
12 in the record today.

13 It was record in the Applicant's
14 motion. Again, not attached. Not submitted as
15 exhibit for review. It's nowhere before us.
16 Based on that document that no one's seen,
17 that's how this got approved? That's
18 incorrect.

19 So why is this important? This is
20 a hospital. Everyone likes hospitals. I'm
21 certainly not going to sit up here and tell you
22 that hospitals are horrible things. It's
23 important because if a hospital is going to be
24 seen as a shopping center, if you're going to
25 allow that to pass, what does the code even

1 require?

2 Is the real question what does the
3 Planning Commission want approved? Who
4 Applicant is? What the mood of the day is?
5 That's not how things should be run.
6 Especially when we're dealing with development.
7 People depend on the development -- plan. They
8 should be based on black and white requirements
9 set forth in the code that people can look at.
10 They shouldn't be based on backroom
11 conversations.

12 At the time these residents
13 purchased their houses, this property had a
14 zoning ordinance telling them they were going
15 to get a shopping center put in next door. The
16 illustrations paint a picture of a pleasant
17 place with cafes and shops. That's not what's
18 been approved here. And the Planning
19 Commission's approval of that was in error and
20 it should be reversed.

21 The association's second point
22 deals with traffic issues. Pursuant to the
23 Gahanna City Code 1108.05(A)1(C) the Planning
24 Commission is required to ensure the proposed
25 development would not have undesirable effects

1 on the surrounding area. The Planning
2 Commission has a duty to enforce this
3 provision. They have a duty to review
4 applications to see if there are negative
5 effects, and to address those.

6 My client raised real and
7 significant traffic issues at the hearing. The
8 final development plan application for this
9 property contains a curb cut allowing access to
10 the property from Beecher Road.

11 Beecher Road is the sole road
12 providing access to 81 homes that make up my
13 client's association. That's 81 families.

14 My client presented testimony at
15 that hearing describing how horrible the
16 traffic already is on that local road. How at
17 times, it's hard for them to get in and out of
18 their properties. They explained how this was
19 only going to be exacerbated by this
20 development.

21 Instead of listening to those
22 concerns, instead of engaging in any discussion
23 about those, the association was told that
24 based on an easement agreement that, again, was
25 not in the record, that granted these curb

1 cuts, that the issue of curb cuts was off the
2 table. It was not going to be considered. The
3 Planning Commission completely abrogated their
4 role in reviewing that based on this.

5 However, the Gahanna City Code
6 places the approval authority for a final
7 development plan on the Planning Commission.
8 Not on a deed agreement. Not on any of these
9 things. The Planning Commission has a duty to
10 look at that. And they shouldn't approve an
11 application unless it shows that there are no
12 negative effects.

13 And beyond that, even if they
14 wanted to allow the curb cuts, they engaged in
15 no back and forth, no discussion whatsoever to
16 figure out if there was any way to mitigate
17 those effects. They simply viewed the matter
18 as closed, as off the table, as outside of
19 their purview. They abandoned their role in
20 reviewing whether or not there were negative
21 effects.

22 And that abandonment, my client
23 relied on the Planning Commission to review
24 that. To help them. It abandoned that role.
25 And that abandonment and the approval in light

1 of this negative consequences of the traffic is
2 also reversible. Thank you.

3 MR. ADJOUA: Thank you. Members of
4 the Board, do you have any questions of the
5 Council for the association, Mr. Brofford?

6 MR. BROFFORD: None.

7 MR. ADJOUA: Ms. Mecozzi?

8 MS. MECOZZI: None.

9 MR. ADJOUA: Mr. Jensen?

10 MR. JENSEN: Well, yes. I guess my
11 question would be, so if this was a shopping
12 that is being proposed, not -- if the emergency
13 room is not part of this plan, would the
14 association have trouble with that?

15 MR. KANITZ: Well, they would
16 certainly want to see the plans. But if it
17 matched the zoning plans and complied with all
18 of the code requirements, I don't believe that
19 they would. No.

20 MR. JENSEN: Because I saw a
21 drawing, earlier on, where there was a -- like
22 three different buildings. And one was like
23 that emergency room building spot. Another one
24 along the creek. And then another one to the
25 north side on the Beecher Road spot. Or in the

1 middle there. So instead of an emergency room
2 being back there, if there was another
3 restaurant or something else back there, the
4 association would be okay with that?

5 MR. KANITZ: We would certainly be
6 open to it. I mean that's something we would
7 want to look at it. It's hard for me just to
8 approve it hypothetically.

9 MR. JENSEN: What do you mean by
10 "open"?

11 MR. KANITZ: Well, if what they
12 propose is something fitting of the zoning
13 code, was aligned with what that ordinance
14 required, then yes, my client would be
15 agreeable to that.

16 MR. JENSEN: But it would be the
17 same issues as far as traffic, noise and
18 breaking and --

19 MR. KANITZ: Well, we still want to
20 address the traffic issue. My client has real
21 traffic concerns regarding anything that goes
22 in that property. In this case my client's
23 position is twofold. A, the use that they're
24 trying to assign to the property aren't
25 supported by the code. And two, yes, the

1 development of this property and the curb cuts
2 into Beecher do create significant issues that
3 my client needs addressed. And has tried to
4 get addressed. Those are all ongoing issues
5 that we have.

6 MR. JENSEN: So the problem is more
7 with, at this point in time the argument is
8 about the emergency room development?

9 MR. KANITZ: Well, emergency room,
10 professional offices, medical uses. I don't
11 think really any of those are allowed.

12 MR. JENSEN: I understand.

13 MR. KANITZ: But yes.

14 MR. ADJOUA: Okay. Do you have
15 anything further? Thank you. Along that same
16 line. So the professional medical offices you
17 also have an objection to, the association?

18 MR. KANITZ: I don't believe that
19 it matches what the code requires for the
20 property, no.

21 MR. ADJOUA: And also it says
22 restaurants. What's the association's position
23 if there was a restaurant there? You mentioned
24 cafes or shops in your presentation.

25 MR. KANITZ: Yeah. They put

1 restaurants. I haven't seen any restaurants
2 actually proposed. If they proposed a plan
3 that was restaurants and shops and actually was
4 a shopping center, that would be something we
5 could look at. That's not really what we have
6 in front of us though.

7 MR. JENSEN: But it seems I recall
8 a couple years ago Wild -- what was it, Wild
9 Rings and things, Wild, whatever it was was in
10 there that was on the north side. And there
11 was an appeal against that one, at that time.
12 And we on the Board approved it. But then
13 luckily for everybody, all of us, the financing
14 fell through.

15 MR. KANITZ: Well, I think that
16 highlights the specificity that's required when
17 looking at any of these. Would my client
18 object to a nice family restaurant? No. Did
19 it have issues with a sports bar going in that
20 was of ill repute and was going to be primarily
21 a bar, going on a busy road that was local
22 access? Yeah, they had issues with that. But
23 I stand by, and I believe the association
24 stands by their objection to that as not being
25 suitable for that property.

1 And again that does highlight each
2 of those applications is something you have to
3 look at and see what's being proposed.

4 MR. ADJOUA: Thank you. Anything
5 questions for Ms. Mecozzi or Mr. Brofford?

6 MR. BROFFORD: No.

7 MS. MECOZZI: No.

8 MR. ADJOUA: Thank you very much
9 for your presentation. We will now have
10 Appellee or any interested parties step forward
11 and introduce yourself.

12 MR. ROTH: Mathew Roth. Assistant
13 City Attorney here on behalf of the Gahanna
14 Planning Commission.

15 MR. ADJOUA: Okay. Go ahead,
16 Mr. Roth.

17 MR. ROTH: Board members, as
18 indicated just now, I'm here representing the
19 Planning Commission. Mr. Duggar is here, he
20 has filed a motion to intervene on behalf of
21 the developer that proposed this plan.

22 As I see it, based on Appellant's
23 appeal, there were three main issues that they
24 have listed in their brief. One, that it
25 doesn't meet the zoning standards. In regard

1 to that, their argument is it's zoned for a
2 shopping center. The problem with that is
3 there's no clear definition of what a shopping
4 center is.

5 Shopping centers are not just
6 retail establishments. Shopping centers have
7 all kinds of uses in them. In fact, I think
8 you would find if you go up and down Hamilton
9 Road the vast majority of shopping centers and
10 strip centers also have medical uses in them.
11 You'll have a Panera Bread with a dentist next
12 door. So when you argue a shopping center does
13 not medical uses I think that's incorrect.

14 The Planning Commission relied on
15 the City's planning and zoning director,
16 Mr. Blackford, who explained that. When you
17 have issues with definitions, there is a city
18 code 1123.01 that refers us to the Illustrative
19 Book of Development Definitions. And it's an
20 extensive book. And it starts here and goes to
21 here, and goes to here, and goes to here.

22 But what you will find and what Mr.
23 Blackford would say and what Mr. Blackford told
24 the Planning Commission is services, like
25 medical uses, are part of shopping centers.

1 That's what the Planning Commission took into
2 account.

3 That was also done -- the developer
4 of this property met extensively with the City
5 staff before making this proposal. Including
6 with Mr. Blackford. And they went through all
7 of these definitions. And they believed that
8 this plan complied with all of the zoning
9 codes.

10 The other argument in the
11 Appellant's brief is that the Planning
12 Commission relied on something that was not
13 part of their materials or part of the record,
14 which is the City's land use plan that was
15 recently adopted.

16 Land use plans aren't part of the
17 zoning code. It's kind of a wish list.
18 They're looking at it 20 years and saying, hey,
19 we think this corner of the town would be good
20 for this. But it's not binding on anything
21 because it's not part of the code. And quite
22 frankly, when I look at the minutes from the
23 Planning Commission meeting, there was not
24 heavy reliance on the land use plan.

25 Finally, the third major branch of

1 the Appellant's appeal is that the Planning
2 Commission failed to consider negative
3 consequences. What the Planning Commission
4 heard from and what you can hear from, I have
5 Mr. Blackford here tonight, is that when you're
6 looking at negative consequences, they look at
7 traffic studies. They look at things that
8 they're taught to look at. People who have
9 professional experience in this know what roads
10 can handle.

11 There was testimony from Mr.
12 Blackford, who is a zoning professional, that
13 there would be no negative consequences.

14 The Planning Commission also heard
15 from citizens that reside in this neighborhood.
16 Who said there would be -- traffic's tough.
17 But the planning commission can take into
18 account the weight of that. Someone who is a
19 professional who deals with this every day
20 versus somebody who gets stuck at the
21 stoplight. And I think the Planning Commission
22 did that.

23 As indicated, I have Mr. Blackford
24 here if the Commission has any questions in
25 regard to these proposals versus our code. But

1 that's the argument I have. And like I said,
2 Mr. Duggar is here to intervene on behalf of
3 the developer.

4 MR. ADJOUA: Okay. Thank you,
5 Mr. Roth. Members of the Zoning Appeals Board,
6 do you have any questions of Mr. Roth, Mr.
7 Jensen?

8 MR. JENSEN: Well, I'd like to hear
9 what Mr. Blackford has to say as far as why the
10 City didn't approve something.

11 MR. ADJOUA: Mr. Blackford, would
12 you like to step up? Thank you.

13 MR. BLACKFORD: Sorry, Mr. Jensen.
14 I didn't hear all of that question.

15 MR. ADJOUA: Identify yourself
16 please.

17 MR. BLACKFORD: I'm sorry. Michael
18 Blackford. I'm the internal director of
19 planning and development.

20 MR. JENSEN: Well, my question
21 would be what was the process or the steps as
22 to why the City administration approved the
23 development to even be presented to the
24 Planning Commission? What were the steps or
25 what were the check points that allowed it to

1 be --

2 MR. BLACKFORD: Sure. Great
3 question. So I think this development was
4 somewhat typical in how it started, and then
5 how it proceeded through the Planning
6 Commission process. And that is typically
7 staff will receive a phone call, an email of
8 some type. Someone is interested in a piece of
9 property, developing that property. They will
10 say we have a specific use. In this case,
11 there was a freestanding medical facility.
12 Would this property be zoned properly for that
13 use?

14 So the steps that the staff takes
15 is, we would look at the zoning. The state of
16 this is PCC, Planned Commercial Center. Each
17 zoning category in the City is a little bit
18 different. So you have to look at how it's
19 done, like was previously stated, some of our
20 other zoning categories are more specific in
21 what uses are permitted.

22 They will cite certain codes either
23 the North American Industrial Classification
24 System makes or the SIC code, which is the
25 Standard Industrial Classification system.

1 PCC is different. It does not cite
2 those specific uses. It does not refer back to
3 those documents. It simply says shopping
4 center. Now that's a very broad, vague term.
5 It goes on to say shopping center is a series
6 of commercial establishments, commercial uses.

7 And then the staff, what we do with
8 that information our commercial -- again,
9 that's very broad. What exactly does that
10 mean? What we do is we look at the definitions
11 contained within our zoning code.

12 In this case, commercial is not
13 defined within the zoning code. And what the
14 can zoning code says then is they refer to this
15 book, which is the latest Illustrative Book of
16 Development Definitions. And so when we go to
17 this book, we go look at commercial, and it
18 defines commercial uses. And they are
19 activities involving the sale of goods or
20 services carried out for profit.

21 So in my opinion, this is a very
22 broad definition. That would include all sorts
23 of activities. This is not the kind of
24 language we would use in new zoning code when
25 we're writing it. Because it's just so broad.

1 So if I were to question what exactly is
2 service, this book tells me what a service is.
3 It's an establishment primarily engaged in
4 providing assistance as opposed to products to
5 individual businesses, industry, government and
6 other enterprises.

7 It goes on to list some examples
8 which include professional offices, legal
9 offices, healthcare services, barbershops, nail
10 salons, things of that nature.

11 So this would be the first step
12 staff would take to say, does this property
13 allow for this use?

14 MR. JENSEN: Well, I'm confused
15 with that question. Because in the -- I don't
16 know if it's a dated code book they have here.
17 But 1153.06 PCC has already been talked about,
18 shopping centers, community uses, et cetera, et
19 cetera. But under 1153.01, there's an SO
20 suburban office and institutional district.
21 And under there, it's got listed number 806, I
22 believe.

23 MR. BLACKFORD: Yes.

24 MR. JENSEN: Offices and medical
25 practitioner -- 80 -- B3, professional includes

1 hospitals, dental laboratories, yadda, yadda,
2 yadda.

3 MR. BLACKFORD: So that zone
4 district is written differently in allowable
5 uses than PCC. So again, that number, 803,
6 that would refer back to the SIC codes. And
7 you would have to go into the, I believe it's
8 the Department of Labor contains what those
9 definitions are. And that website will define
10 what exactly a medical office is. And under
11 that definition it would include freestanding
12 medical clinics.

13 Now, that's helpful because that's
14 very specific if this was a suburban office
15 piece of property. This is not. So I can't
16 rely on those definitions. I have to stick
17 within the Planned Commercial Center. And
18 again, it defines shopping center as a group of
19 commercial establishments with commercial uses.

20 So in order to determine what
21 exactly would be permissible within that
22 zoning, I have to first look at the zoning code
23 to see how it defines commercial uses. Then I
24 have to look at this book, the latest
25 Illustrative Book of Development Definitions.

1 In this case, it says retail and
2 services. Which is very broad. It allows for
3 a whole lot of different uses. What you
4 wouldn't be allowed to do would be
5 manufacturing types of uses. Maybe a few other
6 types of uses as well.

7 So that's sort of step number one,
8 is determine if this property needs to be
9 rezoned or not. Staff's interpretation --
10 again, this is very broad. It's probably not
11 the language, if we were writing a new zoning
12 code, that we would use --

13 MR. ADJOUA: Excuse me, Mr.
14 Blackford. Does that book that you're
15 referring to, does it mention emergency rooms
16 as part of the commercial establishment?

17 MR. BLACKFORD: It does not. It
18 lists health services as part of the service
19 industry that's allowed.

20 MR. ADJOUA: Now the ordinance that
21 Mr. Jensen was -- part of the suburban, that
22 does mention emergency rooms as suburban --

23 MR. BLACKFORD: Correct. That's
24 written. And it references a totally different
25 -- has a totally different style of zoning

1 code. That's not the same style as Planning
2 Commercial Center. That's really an apples to
3 oranges comparison. And if you go throughout
4 our zoning code, the various zoning districts
5 cite different, some of them that's the SIC
6 code. Some of them will cite the nicks code.
7 Some of them will use broad just general terms.
8 In this case, this is one of those that just
9 uses the general term of shopping center.

10 MR. ADJOUA: Now, you mentioned
11 that you used the land use plan. When was that
12 adopted?

13 MR. BLACKFORD: I believe that was
14 September of 2019.

15 MR. ADJOUA: Okay. And so was this
16 the first instance of what you referred to by
17 the Planning Commission, that you can recall?

18 MR. BLACKFORD: Probably not. It
19 would have been one of the first. And that's
20 -- the land use plan, as was stated at least in
21 the state of Ohio, it's a guide. The zoning
22 code is law. So even if the land use plan was
23 to say industrial for this site, we couldn't
24 approve an industrial development because the
25 PCC zoning wouldn't allow for that use.

1 MR. ADJOUA: Okay. So it really
2 was a nonfactor, supposedly.

3 MR. BLACKFORD: Yeah, I would say
4 absolutely it was a nonfactor.

5 MR. ADJOUA: Okay. You know, you
6 mentioned the traffic study. Was a traffic
7 study done?

8 MR. BLACKFORD: I did not mention
9 the traffic study. But yes, a traffic study
10 was done. City engineer reviews the traffic
11 study. That happens, that often happens before
12 an official application. When I say official,
13 final development plan application is
14 submitted.

15 They'll deal directly with the City
16 Engineer. The City Engineer reviews that.
17 Sometimes with an outside consultant. They'll
18 have back and forth on the information within
19 there.

20 And then as part of the final
21 development plan review by the City Engineer,
22 he will put in comments related to the traffic
23 study. In this case, there weren't any
24 comments because the City Engineer agreed with
25 the findings of the traffic study. Which was

1 that there wasn't any detrimental impacts
2 associated with this development that caused
3 any concerns.

4 MR. JENSEN: Another question. I'm
5 aware of these area commissions. Was this
6 brought forward, this development hasn't this
7 been brought before the area commission in the
8 past?

9 MR. BLACKFORD: The 2018
10 application I believe was brought forward.

11 MR. JENSEN: And what was the
12 consensus of that?

13 MR. BLACKFORD: I believe it was
14 received positively. And in 2018, the area
15 commission review is supposed to be limited to
16 rezonings, conditional uses and annexations.
17 This is none of those. So this time around
18 they weren't required to. I believe in 2018
19 they were asked to. But not this time around.

20 MR. JENSEN: But in general, the
21 area commission is composed of people
22 throughout the area, and not just contiguous
23 neighbors?

24 MR. BLACKFORD: Correct. It would
25 be, generally the area commissions follow the

1 wards for City Council. So it would be a
2 larger area. But it would be residences who
3 are within, still, somewhat in this vicinity.

4 MR. JENSEN: And so that area
5 commission group in general, it was a positive
6 response then?

7 MR. BLACKFORD: Yes. That is my
8 recollection.

9 MR. JENSEN: But not for emergency
10 room.

11 MR. BLACKFORD: Not for -- it was
12 the 2018 application, which was essentially the
13 same, except for instead of emergency room, it
14 was the restaurant.

15 MR. BROFFORD: How often were those
16 studies done? I mean, just upon proposal? Or
17 are we talking more frequently?

18 MR. BLACKFORD: What, the traffic
19 study? The traffic study would be specific to
20 the project. So it would be the -- so for each
21 final development plan would get submitted.
22 Based on the type of development proposed,
23 there would be a site specific traffic study
24 that would be submitted with the final
25 development plan that gets reviewed by the city

1 engineer. So there was one submitted in 2018.
2 And there was an updated one submitted with
3 this request as well.

4 MS. MECOZZI: You had started to
5 explain the process that the staff follows when
6 considering an application prior to the
7 Planning Commission. You mentioned about the
8 definitions were there additional steps before
9 we --

10 MR. BLACKFORD: Yeah. So that was
11 a really longwinded way of saying that's
12 determinative use. Most folks, again, that
13 determines what your first step is. Because if
14 the use isn't allowed, if they want to go
15 forward they would need to rezone it.

16 In this case, again, staff
17 determination was that there wasn't a rezoning
18 required. So then, traffic study's part of
19 that review. The final development plan
20 application which includes an offsite plan,
21 which has the set packs.

22 They have also design review
23 application. Which has landscaping, lighting,
24 architecture, colors, building materials.
25 Things of that nature. Those get submitted to

1 staff. Staff reviews that.

2 When I say "staff" that would
3 consist of approximately eight different
4 departments. Police department. Fire
5 department. Planning and development. Zoning
6 department. Our engineering department.
7 Building department. All those various --
8 parks and recreation.

9 All those various folks have some
10 type of role to play within the final
11 development plan. Most of those departments
12 aren't heavily involved because although the
13 title is final development plan, there are
14 several applications that would be required in
15 order for folks to actually start construction.

16 So some of the question about, from
17 the City Engineer about drainage, that gets
18 refined in the engineering plans. Not in the
19 final development plan. So at this stage, it's
20 really informational comments. Letting them
21 know if they have a detail on there that this
22 detail might need to get refined if the final
23 development plan is approved and if they submit
24 engineering plans.

25 So this back and forth with City

1 staff goes on until all the comments are
2 addressed. If all those comments are
3 addressed, then we would probably say they need
4 a variance application. Otherwise staff
5 couldn't support this because it wouldn't meet
6 those criteria that were listed before.

7 So the staff review portion goes
8 on. And it's common that there might be two or
9 three or four submittals on a final development
10 plan after all those issues are addressed. And
11 then it gets scheduled for a public hearing.

12 MS. MECOZZI: Thank you.

13 MR. ADJOUA: Any more questions of
14 members of the --

15 MR. BROFFORD: The only thing I
16 have is, we do not have a definition of
17 shopping center.

18 MR. BLACKFORD: Our zoning code
19 does not. But again, the zoning code is
20 written to say that if something is not
21 defined, there is a series of steps that you
22 have to take to define it.

23 So although the zoning code doesn't
24 define it, the zoning code specifically says
25 your next step to define is to go to, like I

1 said, this particular book. And then it says
2 if it's not in this book you go to another
3 book. And then you go to the dictionary and
4 then you use plain English, I believe is the
5 way that goes.

6 So the PCC zoning goes on to say
7 shopping center. And then it says a shopping
8 is a group of commercial establishments would
9 have commercial uses and activities that go on
10 there.

11 So again, commercial is very broad.
12 I have to go look at exactly what commercial
13 is. Then I go to this book right here, the
14 latest definitions book.

15 MR. ADJOUA: Okay. Thank you. Mr.
16 Duggar, we're going to provide you with 15
17 minutes. Do you think you'll need more, sir?

18 MR. DUGGAR: I hope not.

19 MR. ADJOUA: Okay. Well, I want to
20 make sure. I'm a recovering attorney. So I
21 know that attorneys can be a little wordy at
22 times.

23 MR. DUGGAR: Well, I appreciate Mr.
24 Roth's economy. And I thank --

25 MR. MULARSKI: May I make a point

1 of order please?

2 MR. ADJOUA: Yes.

3 MR. MULARSKI: Regarding the motion
4 to file on Mr. Duggar to intervene, I think it
5 would be appropriate to rule on that motion
6 first prior to this.

7 MR. ADJOUA: Okay. Is there any
8 discussion of Mr. Duggar's motion to intervene?
9 Any objection? Any motion to that would allow
10 him to intervene, I would think -- Ms. Mecozzi,
11 do you want to make a motion to allow his
12 intervention?

13 MS. MECOZZI: Sure. I would move
14 to accept Mr. Duggar's request to intervene on
15 this matter, and present evidence in support
16 for the matter this evening.

17 MR. ADJOUA: Okay.

18 MR. JENSEN: I second.

19 MR. ADJOUA: All right. Could we
20 take a roll call vote on that matter?

21 MS. BEGGEROW: Sure. Mecozzi?

22 MS. MECOZZI: Yes.

23 MS. BEGGEROW: Jensen?

24 MR. JENSEN: Yes.

25 MS. BEGGEROW: Brofford?

1 MR. BROFFORD: Yes.

2 MS. BEGGEROW: Adjoua?

3 MR. ADJOUA: Yes. Okay, Mr.
4 Duggar?

5 MR. DUGGAR: Thank you very much,
6 Mr. Chairman Adjoua. My name is Glen Duggar.
7 I'm an attorney for the Applicant in this
8 Academy development for the partners. And I
9 appreciate the Board permitting me to
10 participate. Since this is our application, I
11 think that's probably appropriate.

12 To put some of these things in
13 context, first of all there was an application
14 filed which was for a new member. For one
15 final development plan. And one design review
16 for the Mt. Carmel building. We subsequently
17 filed two more design review applications for
18 two more buildings. Which were approved in
19 December. This case, from November, got
20 appealed to you.

21 The other buildings that were
22 approved in December have not been appealed
23 until -- expired. Those were additional
24 buildings that are part of the development that
25 would occur on this property. Those buildings

1 were found by the Planning Commission to be
2 appropriate in accordance with the zoning for
3 the property those buildings contain retail
4 offices, restaurants, and those uses. About
5 which there is no fair debate, I think, as to
6 whether they are appropriate for a shopping
7 center.

8 I appreciate Mr. Blackford's
9 elaboration about how practitioners such as
10 myself have to go through this process. We
11 meet with City staff. We meet with City
12 development directors. Apparently that what
13 brings about the term "backroom deals" that
14 occur, which I think perhaps -- you know, if
15 you have evidence of a backroom deal, I'd like
16 to hear about it.

17 But what you're accusing is the
18 City's largest Catholic health system of making
19 some backroom deal with the City. And so if
20 you've got some evidence of that, please bring
21 it forward. But if you don't, then you ought
22 to be quiet about it. And you shouldn't bring
23 that before the Board's attention.

24 MR. KANITZ: If Mr. Duggar would
25 like to contest --

1 MR. ADJOUA: You'll have a chance
2 on your rebuttal, Counsel. Please continue.

3 MR. DUGGAR: I apologize. But
4 occasionally we are accused of paying people
5 off and backroom deals. And it really bothers
6 me. Because I've spent 35 years not being a
7 part of that. And I apologize. I apologize to
8 Mr. Kanitz. But it's -- that stuff gets thrown
9 around. And it's so inappropriate when we're
10 talking about with this particular, with this
11 particular applicant.

12 Mr. Blackford, I think, walked
13 through very appropriately what we do as we
14 work through this process. We meet with the
15 city. We talk to them about this use. We talk
16 to them about the proposed development. We
17 file an application.

18 That application is prepared by
19 landscape architect. A traffic engineer. A
20 civil engineer. A landscape architect. A land
21 planner. It contains enormous amounts of
22 information.

23 That all gets provided to Mr.
24 Blackford and the staff. I really appreciate,
25 I know it took eight city departments to go

1 through it. I knew that the city had extensive
2 review processes in order for them to accept
3 the application.

4 They don't go forward with that
5 application, they will not place that
6 application on the Planning Commission agenda
7 unless an application is viewed as complete and
8 in compliance with Gahanna city law. Because
9 they can't. All right?

10 If it's not in compliance, what
11 they do is they come back to us and say, hey,
12 you need a variance for this. You need a
13 variance for storm water requirement. You need
14 a variance from the last time we were before
15 this Board. We'd asked for a variance on one
16 of our exterior sub-materials. That's what
17 happens. Okay?

18 So if staff notifies us of
19 something that is deficient, we have to change
20 it. But when it goes to -- from staff to the
21 Planning Commission, then, as Mr. Blackford
22 outlined, the application is viewed by staff as
23 being complete and appropriate for any
24 compliance with all of Gahanna's City rules and
25 regulations. Okay?

1 So we didn't ask for any variances.
2 Our application is prepared by all of these
3 people. Including the traffic reporters, as
4 Mr. Blackford noted. It was prepared by
5 American Structurepoint. They are traffic
6 consulting engineers based out of Indianapolis.
7 They've got roomfuls of city traffic engineers.

8 They prepare a report. That report
9 is submitted to the City. The City Engineer
10 reviews it. Okay? Our traffic report. The
11 City's review of that traffic report were found
12 that that is in compliance with Gahanna law.
13 There are some things we have to do.

14 One of the gentleman who spoke
15 earlier, I assume he was -- I don't know if he
16 was a traffic engineer or not. He didn't
17 identify as such. But one of the things that
18 has to happen is there has to be some widening
19 done to Beecher Road. That was a part of the
20 application. It was a part of the traffic
21 study. It was a part of that proposal.

22 To say that nothing was looked at
23 or nothing was done with reference to the
24 traffic on this case absolutely ignores the
25 process that we have to go through to get

1 through the Planning Commission process.

2 So, as you heard today, and as a
3 part of the presentation that Mr. Blackford
4 gave that's in the minutes, he indicated that
5 the staff supported both final development plan
6 and the design review applications. That
7 occurs after extensive professional staff
8 experts to review all those things.

9 Now, I understand the passion that
10 people have. I understand that everybody
11 believes they're a traffic engineer because
12 they know how to drive. But when you have on
13 the one hand a traffic report submitted by
14 professional engineers, reviewed and approved
15 by professional engineers.

16 On the other hand, opinion
17 testimony, okay? In an administrative process,
18 the expert testimony on the one hand, which was
19 what was provided was objected to by the
20 opinions of people who did not identify
21 themselves as traffic engineers, as engineers,
22 as having professional capability to question
23 the results. And the statement that was made
24 by staff that this is in compliance with City
25 rules and regulations.

1 So on that basis, the City Planning
2 Commission who is charged with reviewing those
3 things says, I have a nice group of people who
4 believe that the traffic here is terrible. It
5 may well be. But I also have a traffic report.
6 The traffic report has been prepared by
7 professional engineers. The traffic report has
8 been reviewed by the City Engineer. And they
9 say it's okay.

10 The law in the state of Ohio is
11 expert testimony trumps opinion testimony.
12 Okay? We can line up as many people who have
13 that opinion as we want. But it's the opinion
14 of the professional in an administrative
15 process that truly matters. Okay?

16 Now, as to use. I think Mr. Kanitz
17 said through three or four times, he called
18 this a hospital. It's a complete and total
19 mischaracterization of what we're doing. What
20 this is --

21 By the way, I'm not just bandying
22 these things about. A hospital is defined
23 under Ohio law, administered by the Ohio
24 Department of Health. This is an offsite
25 emergency department. It's going to be 7,000

1 square feet. There are two additional
2 buildings which are used for, clearly, shopping
3 center purposes. All right?

4 It contains medical offices. It
5 contains emergency rooms. And it contains
6 doctors offices. It contains things that are
7 commonly found today in shopping centers. All
8 right? That isn't necessarily my conclusion.
9 Mr. Blackford I think walked you through that
10 that was his conclusion.

11 He is the acting -- I'm going to
12 get this wrong -- planning and development
13 director for the City of Gahanna. He cited
14 this previous determination by the City's prior
15 director. Also coming to the same conclusion.

16 Now, he held up the letter, I
17 believe. For whatever reason it did not get
18 into the record. But you have the conclusion
19 of two Gahanna City zoning and planning
20 administrators that this use is a permitted use
21 in this zoning district. Okay?

22 So I appreciate Mr. Kanitz
23 mischaracterizing this as a hospital. Number
24 one, that isn't what it is. Number two, it
25 only partly describes the number of uses that

1 are going to occur on the property. And number
2 three, it's contrary to the determination of
3 professional zoning administrators at the city.
4 All right. That's as far as it goes.

5 Now, we present this information,
6 opinion testimony and expert testimony. Okay?
7 In this process, your process, they have to
8 prevail by a preponderance of the evidence.
9 Okay? The weight has to be significantly more
10 on their side than ours.

11 In this particular instance, what
12 you have was the Planning Commission, Planning
13 Commission is made up, historically, of
14 professionals who are competent in these things
15 that we are talking about.

16 To my recollection, Mrs. Burke is a
17 realtor. I know that Mr. Wester worked for
18 ODOT as an administrator for decades. Was a
19 division representative for ODOT. Ms. Soriano
20 is an architect.

21 These people are uniquely well
22 qualified, as probably are you, to make these
23 determinations. Okay? So they made those
24 determinations based upon the staff report that
25 was provided to them, which wholeheartedly

1 endorsed the application. All right? And the
2 documents contained as a part of the
3 application, including the traffic report and
4 the other studies that were prepared as a part
5 of that. One small part. Much larger program.
6 Not a hospital.

7 So, the other thing I think that
8 there was a question about was, well, we didn't
9 get to really talk about the traffic issue
10 because the City Attorney sort of took that off
11 the table by talk of the easement. Well, the
12 City Attorney -- prior city attorney. I'm
13 sorry, Mr. Mularski -- ruled that the city in
14 2013, agreed to accept an easement. The
15 easement stated -- there wasn't any discussion
16 -- there was a great deal of discussion about
17 it -- that the city agreed to permit an access
18 point onto Beecher.

19 As a part of that, the quid pro
20 quo, as they say, was the preservation of the
21 westernmost 150, 200 feet of this particular
22 property -- preservation.

23 That was a decision of the Planning
24 Commission. Mr. Kanitz seemed to suggest that,
25 or does suggest that somehow an action of

1 Council is reviewable by the Planning
2 Commission.

3 Now the Planning Commission, as we
4 all know, makes recommendations to City
5 Council. But the Planning Commission is not
6 superior to City Council. Planning commission
7 cannot countermand something that the City
8 Council has chosen to do. And I think that's
9 what he is suggesting.

10 We have a decision made by the
11 City, by ordinance, that was approved by City
12 Council. That was then recorded, of record, so
13 we can all take notice of it. And that
14 document is the agreement between the City and
15 this property owner that we would have an
16 access point onto Beecher.

17 That -- at that point, the City
18 Attorney said, hey guys, that decision was made
19 by Council. It's really not your decision. At
20 best they can make a recommendation. They
21 can't countermand that decision of City
22 Council. City Council is elected. Planning
23 Commission is appointed. Many of whom are
24 appointed by City Council. So who is the
25 superior organization? It's City Council.

1 I don't want to use up all my time
2 because I'd like to hand some of this back to
3 Mr. Roth. By the way. I've known Mr. Roth for
4 20 years. His mentor was a good friend of
5 mine, Bill Underwood, who was the former City
6 Attorney for the city of Reynoldsburg, I think.

7 Like many times when you see old
8 friends who have lost old friends, we recall
9 Bill fondly. If that means that I'm engaged in
10 some sort of snickering and back room deals,
11 then I guess I'll take the hit for that.

12 I guess I'd like thank you for
13 listening to me today. I just want to leave
14 you with three thoughts. They have to prevail
15 by a preponderance. Which they haven't done.
16 We have Appellant's opinions versus our
17 provision of professional testimony and
18 documentation. And third, in Ohio
19 administrative hearings there is a presumption,
20 you all have to engage in a presumption of the
21 validity of that Board's approval. Okay?

22 So if it is a coin flip, we win.
23 All right? You have to presume that they acted
24 appropriately. That's the law in the state of
25 Ohio. So if there are any questions, I'm happy

1 to answer them. I relinquish whatever time I
2 have to Mr. Roth.

3 MR. ADJOUA: All right. Thank you,
4 Mr. Duggar. Mr. Jensen, you have something?

5 MR. JENSEN: Yeah. I've got a
6 question. Earlier in your presentation, maybe
7 I misunderstood or lost attention or whatever.
8 But is there plans for other -- is there firm
9 plans for other buildings going in there at the
10 same time as the emergency room?

11 MR. DUGGAR: Yeah. And we
12 submitted those plans. Those plans don't --

13 MR. JENSEN: So those other
14 buildings are going to be going in there no
15 matter even if we approve the ER, those other
16 two buildings are still going to be put out?

17 MR. DUGGAR: We filed, earlier this
18 fall, we filed a plan for finding development
19 plan. And a plan for design review for the Mt.
20 Carmel building. Those went to Planning
21 Commission. Those are the subject of today's
22 appeal subsequent to that, we filed two
23 additional plans, final development plans for
24 two additional buildings. So it would be three
25 buildings. If you look at the final

1 development plan, it actually shows three
2 buildings.

3 MR. JENSEN: I understand.

4 MR. DUGGAR: So those other two
5 buildings would be --

6 MR. JENSEN: They would be in
7 progress --

8 MR. DUGGAR: Yes, sir.

9 MR. JENSEN: -- proceeding and
10 that's not a part of --

11 MR. DUGGAR: Yes, sir. And that's
12 not part of this appeal except to the extent
13 that the final development plan you have before
14 you accommodates and makes provisions for those
15 two additional buildings. Which are retail,
16 restaurant, office, et cetera. Again,
17 conventional office -- err, shop type use.

18 MR. ADJOUA: And those are medical
19 offices at this point. Those final two
20 buildings, are those medical offices?

21 MR. DUGGAR: No, sir. The only
22 medical use is the --

23 MR. ADJOUA: The emergency room.

24 MR. DUGGAR: Is the offsite
25 emergency.

1 MR. ADJOUA: In your design review
2 application that's part of this appeal, DR
3 022019, does that only encompass the emergency
4 medical room --

5 MR. DUGGAR: It does.

6 MR. ADJOUA: It doesn't encompass
7 any other retail space?

8 MR. DUGGAR: No, it does not.
9 Those two additional buildings, we brought back
10 through December, those were approved.

11 MR. ADJOUA: Okay. And Mr. Jensen,
12 do you have any further questions?

13 MR. JENSEN: So the DR 0026-2019 is
14 only for the emergency room?

15 MR. DUGGAR: Yes, sir. Offsite
16 emergency room. Which again, very specific.
17 It's a defined term under Ohio --

18 MR. JENSEN: It's saying for the
19 Shops at McKenna Creek, it's not saying -- I
20 guess I'm -- it's not saying Mt. Carmel ER.
21 It's saying the Shops at McKenna Creek.

22 MR. DUGGAR: Mt. Carmel is the
23 owner operator, though.

24 MR. ADJOUA: Ms. Mecozzi and
25 Mr. Brofford, do you have any questions?

1 MS. MECOZZI: No.

2 MR. BROFFORD: No.

3 MR. ADJOUA: Thank you, Mr. Duggar.

4 MR. DUGGAR: Thank you.

5 MR. ADJOUA: You can have one
6 minute, Mr. Roth, if you have anything you want
7 to add.

8 MR. ROTH: I have nothing further.

9 MR. ADJOUA: Okay. Thank you very
10 much. Mr. Kanitz, sir, would you like to
11 rebuttal, please? You have five minutes, sir.

12 MR. KANITZ: Well, I have a lot to
13 get to in this five minutes. So if it's
14 abbreviated, I apologize for that. At one
15 point, Mr. Roth, and I believe Mr. Blackford
16 said that the land use plan played no part in
17 the Planning Commission's approval. The
18 minutes state on page 7, Commissioner Soria
19 stated, I quote, "He agrees with Webster and
20 that he believes this is appropriate for the
21 area when looking at the land use plan."

22 The land use plan was what was
23 being discussed. And it was based on that mini
24 mission -- commission. Not the zoning code.
25 The land use plan. Which Mr. Roth and

1 Mr. Blackford both characterized as a wish
2 list. That's not binding.

3 Mr. Blackford told you that the
4 zoning code for PCC is not written very well.
5 That it's somewhat broad. He then used a book
6 to define the word commercial. Defined it so
7 broadly that almost anything in manufacturing
8 use could be put in there.

9 When you look at the PCC code
10 statute, look at it, it also has conditional
11 uses. One of the conditional uses is for motel
12 or lodging places. If the codes use of the
13 word commercial in the PCC was meant to be so
14 broad, why do we need to carve out things like
15 motels or lodging places? They would just fall
16 underneath that definition naturally, as he
17 describes it. It doesn't. Because that's not
18 what it's meant to use in the statute, or how
19 it's used in the statute.

20 And further to that point, I think
21 the adage "a picture is worth a thousand words"
22 comes very much into play in this instance.
23 Again we've been told that the statute isn't
24 written very well. That it's somewhat broad.
25 Well, we also have the ordinance. If you look

1 at the pictures from the ordinance, and these
2 are in the record, this is what this property
3 is supposed to look like. This is in the
4 record.

5 This isn't an offsite emergency
6 department. And I believe I referred to it as
7 a small hospital. But when I go to the
8 mortgage emergency room, usually it is in a
9 hospital. So I apologize for that. But I
10 think the difference is lacking in this
11 instance.

12 Essentially looking at Mr. Duggar's
13 argument, it was look at all these people and
14 all the things they have done. They're smarter
15 then we are. So they have to be right. The
16 City approved it. So it has to be right.
17 Well, if just the fact that it went through all
18 the City processes and the City approved it, if
19 that's sufficient, what are we doing here? Why
20 do we even have an appeal process? The City
21 already said it's correct so it must be so.

22 That's not the case. The City's
23 been wrong before. In fact, the Planning
24 Commission was wrong when they approved this
25 application. Thank you.

1 MR. ADJOUA: Okay. Do you have any
2 further questions of Mr. Kanitz? Okay. Thank
3 you. Mr. Roth or Mr. Duggar, would you like
4 your five minutes of rebuttal?

5 MR. ROTH: Just briefly, your
6 Honor. The Appellant just said that based on
7 what Mr. Blackford said was the process and the
8 reference books they looked at that commercial
9 can be anything. I think that's true. When
10 you look at strip centers, some have grocery
11 stores, some have a gas station in front of the
12 grocery store. Like I said earlier, you'll
13 have a Panera Bread with a dentist next to it.
14 Shopping centers as not being retail uses. And
15 I think that's what they're trying to say goes
16 here.

17 The staff put a lot of work into
18 this before the plan was filed. They worked
19 with the developer. And they said this meets
20 all of the criteria. You don't need any
21 variance. Because it meets the criteria.
22 There was substantial work that went in. It
23 wasn't a whim, that said, okay, you can put it
24 an emergency room here. I think the Board
25 should take that into account.

1 The people that work in this
2 building did their job. The Planning
3 Commission did their job. And the Appellant
4 has not proven by a preponderance that they
5 didn't. Thank you.

6 MR. ADJOUA: Thank you, sir. Mr.
7 Duggar, would have anything further to say?

8 MR. DUGGAR: No, sir.

9 MR. ADJOUA: Okay. Thank you. At
10 this time -- you had your opportunity for
11 public comments. I'm sorry I can't recognize
12 you at this point.

13 Mr. Mularski, would you like to add
14 anything as the attorney for the City?

15 MR. MULARSKI: No, sir.

16 MR. ADJOUA: Okay. Well folks, we
17 need to have comments or go over what we've
18 heard. Would you like to start us off Mr.
19 Jensen?

20 MR. JENSEN: Yes, I would ask Mr.
21 Mularski what are the options that we have
22 moving forward on this?

23 MR. ADJOUA: We can find in favor
24 of the Appellant or Appellee. We can find in
25 favor of either and remand with modifications.

1 Or we can remand with instructions to the
2 appropriate city official, employee or body for
3 further consideration or action. Those are our
4 three options.

5 MR. JENSEN: Thank you.

6 MR. BROFFORD: I guess what I'm
7 really concerned about is how this land use
8 plan is taken into consideration at the
9 Planning Commission. You know. I guess it's
10 not part of the code. But I want to know how
11 much weight that was actually taken into
12 consideration for the Planning Commission when
13 actually making the decision in regards to the
14 proposal.

15 MR. ADJOUA: Thank you. Ms.
16 Mecozzi, questions or comments about anything?

17 MS. MECOZZI: Yeah. Can Mr. Roth
18 speak to that? I mean, we have the PCC
19 minutes. So we do know that it was discussed.

20 MR. ROTH: I was not employed here
21 when that happened. So I was not in attendance
22 at that meeting. Mr. Duggar was. I was
23 referred -- my comments were referring to the
24 minutes that had very few mentions of it.

25 MR. DUGGAR: I'm not sure I

1 understand the question.

2 MR. BROFFORD: I guess my question
3 is that according to the minutes, they did
4 reference the land use code as part of the
5 decision making process, for Mr. Soriano. And
6 I'm just a little concerned how that was
7 presented to them, and the use, and that it was
8 part of the decision making process in regards
9 to this code.

10 MR. DUGGAR: I don't know that I'm
11 the appropriate person to answer that question.

12 MR. ADJOUA: Mr. Blackford, could
13 you step forward, sir?

14 MR. DUGGAR: -- was probably the
15 one testifying at that time, not me. So I
16 wouldn't be telling you what he said -- or at
17 least my recollection what he said.

18 MR. ADJOUA: He's available.

19 MR. DUGGAR: Yeah. I think the
20 only thing that I wanted to bring to you on
21 that particular point is that there is --

22 MR. ADJOUA: Mr. Duggar, you had
23 your chance, please.

24 MR. DUGGAR: I'm sorry.

25 MR. BLACKFORD: So the land use

1 plan gets mentioned in most applications.
2 Especially for new development. In particular
3 because the criteria of 1108, which has
4 criteria for approval and final development
5 plan. It says in accord with appropriate plans
6 in the area. And the land use plan is the
7 appropriate plan for this area.

8 So again, we always talk about it
9 being, I wouldn't necessarily say it's a wish
10 list. But it is high level here in theory
11 would be permissible uses, it indicates. It
12 was designated mixed use. Mixed use allows for
13 certain residential commercial office uses. So
14 this particular final development plan is
15 consistent with the broad statements of the
16 land use plan.

17 I couldn't tell you exactly how
18 much discussion it got. I would characterize
19 it as minimal. That's typical because, quite
20 honestly, in a city such as Gahanna, where it's
21 primarily built out, land use plans really play
22 more of a part, a role in developing areas when
23 you see a lot of development, a lot of
24 rezonings.

25 Because then we're talking about

1 changing the use to look at feature land use
2 map. You start talking about how does that
3 align with this five, 10, 20 year vision of a
4 land use plan? In this case when we're talking
5 about final development plans, it's more about
6 consistency with the zoning in place. So
7 again, we mention it because final development
8 criteria specifically states is this in accord
9 with appropriate plans for the area?

10 MR. BROFFORD: Thank you.

11 MR. ADJOUA: Thank you.

12 MR. JENSEN: Mr. Blackford, what
13 is, again, going back to my earlier question
14 about 1153 versus whatever the numbers are.
15 What's the difference between how difficult is
16 it for the City, what's the process to change
17 it back to that suburban office as opposed to
18 PCC, which would then encompass the medical
19 office kind of thing?

20 MR. BLACKFORD: How difficult?

21 MR. JENSEN: Can it be done?

22 Because, to me, this code is -- how many years
23 old is this code?

24 MR. BLACKFORD: So I tried to do a
25 little research. It looks like the PCC zoning

1 was -- first time I saw it was in the 1975
2 zoning ordinance. And I think it was repealed
3 in 2007. So you can't even rezone it to PCC.
4 It's -- the process for rezoning takes, on
5 average probably six to eight months. While a
6 final development plan may take two months.

7 So you're adding six to eight
8 months onto a two month process just for the
9 final development plan. Final development plan
10 is approved, there's other processes that have
11 to be followed, engineering plans, building
12 plans. So you're doubling, already, what most
13 folks would say is a lengthy timeframe.

14 You don't rezone the property if
15 the use is allowed. And again, this was
16 multiple times looked at. Different staff
17 personnel. And each time it was determined
18 that medical is allowed.

19 And I know we've talked about just
20 how intensive medical use. That comes into
21 play if this was a suburban office. Because
22 suburban office does say, clinics, offsite
23 medical hospital, those are all classified
24 differently. And that's because the SIC code
25 classifies those differently.

1 In this case, it's a broad
2 definition. We look at. It's commercial in
3 service. Healthcare is a service industry. So
4 in the staff's view it's permissible. So no
5 rezoning necessary.

6 MR. JENSEN: All right.

7 MR. ADJOUA: Any other questions?
8 Any other questions of Mr. Blackford?

9 MS. MECOZZI: No.

10 MR. ADJOUA: Okay. Thank you, sir.
11 Members of the Board of Zoning Appeals, would
12 you like to have any comments? Mr. Jensen?

13 MR. JENSEN: Well, I live very
14 close to the same intersection. I go through
15 that intersection on a regular basis almost
16 daily. So I'm very aware of the so-called
17 traffic issues. But I don't think the traffic
18 is as bad as what is perceived.

19 Now, granted, I'm not on the other
20 side. I don't see the same traffic. I'm
21 confused and concerned about the difference
22 between the zonings because, to me, following
23 up with what the appeal is questioning is that
24 me strictly reading it, I look at it as being
25 more of a -- I don't see where it says medical

1 in there. So that's why I'm questioning where
2 it's coming from. On the other hand, if we
3 deny this, does that put a cramp on the other
4 buildings that are going to be going in?

5 MS. MECOZZI: So one of our options
6 is to remand it. But we would have to place
7 certain conditions on that. And expectations
8 for what we were asking the PCC to do. You're
9 talking about something specific to traffic.

10 MR. ADJOUA: I don't know if we can
11 dictate to a developer what they want to do
12 with their parcels of land or property. So I
13 think our instructions, really, if we have some
14 modifications, I don't think we can compose if
15 they put this in there or that -- I think
16 that's up to them.

17 Now we can have instructions to a
18 city official or to the Planning Commission
19 about something. But I don't think in this
20 instance that would be appropriate, as I see
21 it. It looks like there was the basic question
22 of the zoning standards and whether the PCC,
23 what it allows.

24 And I think, clearly, it pretty
25 well spells out what it allows. Shopping

1 centers, community facilities, modified
2 commercial use and lodging places. There's
3 been great discussion here about shopping
4 centers and an emergency medical center.

5 Now, my wife is the biggest shopper
6 in the world. And if I told her to go to an
7 emergency to do some shopping, I wouldn't be
8 here. At least my American Express card
9 wouldn't be here.

10 So it's clear to me that the
11 proposed emergency medical center does not
12 comply with the zoning standards of the PCC.
13 By any definition by any book if you define
14 shopping. And I think even Mr. Roth said or
15 Mr. Blackford said that when you use this kind
16 of language, and I want to applaud the efforts
17 of the Planning Commission and the members of
18 trying to make sure we have good sound
19 development in Gahanna.

20 But we all have to work together to
21 ensure this is our community, and we do have
22 that. So we need the officials. We need the
23 people who look over these plans. We need the
24 citizens. We need the Planning Commission.
25 And we need us, the Board of Zoning Appeals.

1 So I also want to piggyback some of
2 what you said about the land use. And what you
3 said, Mr. Brofford, that there were several
4 instances, I read through the record, where
5 they talk about the land use. That's a wish
6 list. That's not the code. We have to go by
7 the code. And I just don't think that this
8 complies with the code.

9 So those are the two reasons at
10 this point, I would say, I would be voting in
11 favor of opposing the appeal.

12 Any comments, Ms. Mecozzi,
13 Mr. Brofford?

14 MR. BROFFORD: Not yet.

15 MS. MECOZZI: I will also be
16 supporting the Appellant. Up until this
17 second, there's been such good information
18 shared, really, on both sides. And -- but I
19 agree with the chair that the code does not
20 permit an emergency room use.

21 And I can appreciate the resources
22 that are used by the City and the development
23 department, and the PCC considered in that
24 interpreting that definition of what a shopping
25 center is and isn't.

1 But I do not believe that the PC
2 met their duty under the provisions of 1125 to
3 properly conclude that and make that
4 interpretation, and consider all aspects as
5 required for a final development plan. And
6 ensuring that the development is harmonious
7 with the neighborhood. And an improvement to
8 the City. It's a difficult decision. Very
9 difficult. But I will be voting in favor of
10 the motion to support the appeal.

11 MR. ADJOUA: Is there a proposed
12 motion on the floor?

13 MR. BROFFORD: I guess my thoughts
14 are, you know, what can we do in the future to
15 kind of help us with this definition of
16 commercial use? Because this is so broad, I'm
17 not sure that we're ever going to get anywhere.
18 And this is just going to be a circle that
19 we're going to keep going down. It sounds like
20 this is something that's been going on for
21 years.

22 MR. ADJOUA: Well, I think the City
23 Attorney and administrators can work on, like
24 we've indicated, looks like the law needs to be
25 updated. We all know commercial. I think

1 Mr. Roth mentioned that commercial means, you
2 know, selling stuff for profit. I think we all
3 have a clear understanding of what commercial
4 means. And we need to spell out, I think,
5 shopping, you know.

6 Again, I didn't see the matching
7 book that they were referring to. But I know
8 what shopping means. And that means going out
9 and buying stuff and, you know, spending honey.

10 MR. BROFFORD: A lot of hospitals
11 are nonprofit.

12 MR. ADJOUA: Yeah. And I think
13 that's not our determination of whether it's a
14 nonprofit or profit. Or emergency room only --
15 we know what an emergency room is, too.
16 Whether it's onsite or offsite. We know it's
17 not shopping. And it's not a hotel and
18 lodging. It's not a library or a public
19 agency.

20 So none of those things, if you
21 look at the four criteria of the PCC, it
22 doesn't fit within that framework no matter how
23 we try to squeeze it in. And again, I think it
24 would be a plus for the community to have an
25 emergency room. And we hope that Mt. Carmel

1 doesn't run away, as something that would be
2 positive. But that's not the place that the
3 code allows it to be in. And we have to -- I
4 think we are governed by what the code
5 provides, what the facts show.

6 MR. JENSEN: Well, I think the code
7 is so broad and also dated that --

8 MR. ADJOUA: But again, we can't
9 rectify that tonight.

10 MR. JENSEN: Right. Fair enough.
11 I'm just saying -- but that makes it that much
12 more difficult for -- or for the Planning
13 Commission to make the --

14 MR. ADJOUA: Well, just maybe it
15 needs to be revamped. But that's not our
16 decision tonight.

17 MR. BROFFORD: So I just want to
18 confirm that we have no other action to get
19 back to this -- back to the Planning Commission
20 at our level to try to get modifications?

21 MR. ADJOUA: I think the Planning
22 Commission will get the decision. If they
23 don't understand what was spoken here and what
24 was said, I think it's going to be -- the
25 emphasis is on them. I don't think the Board

1 of Zoning Appeals is in the vague practice of
2 changing the zoning code or telling the
3 Planning Commission what to do.

4 I think our mission in this appeal,
5 as Mr. Duggar said, how do we consider this
6 appeal tonight? If you are in favor of it --
7 if you're not for it you vote against. I think
8 it's simple as that. We have heard the
9 information. We've got a packet. We listened
10 to the testimony. We listened to the
11 statements. And I think we need to proceed
12 with a vote.

13 MS. MECOZZI: For clarification, we
14 have two appeals before us this evening. One
15 is the final development plan. One is the
16 design review. So in voting on those
17 separately, can one stand without the other?

18 MR. ADJOUA: My understanding from
19 Mr. Duggar that the design review application
20 is based on what the emergency building is.

21 MS. MECOZZI: Correct.

22 MR. ADJOUA: One could not stand
23 without the other.

24 MR. DUGGAR: Can I clarify?

25 MS. MECOZZI: Pardon?

1 MR. DUGGAR: Can I clarify? You
2 can vote on this separately.

3 MS. MECOZZI: Right.

4 MR. DUGGAR: The final development
5 can proceed. The design review you can't
6 proceed without the approval --

7 MS. MECOZZI: Agree. I just want
8 to clarify that for everyone in the room that
9 was -- thank you.

10 MR. KANITZ: Just to add my take,
11 Mr. Duggar, I would say it's the development --
12 design review -- the final development plan.
13 If the final development plan is rejected at
14 that point the design review plan also falls.

15 MR. ADJOUA: What's the pleasure of
16 the board?

17 MS. MECOZZI: You want to give it a
18 try then, the motion?

19 MR. ADJOUA: Yeah.

20 MR. JENSEN: I could use -- go
21 ahead.

22 MS. MECOZZI: All right.

23 MR. JENSEN: You've got more
24 experience in this.

25 MS. MECOZZI: Let's see. So the

1 motion, then, Mr. Mularski is to uphold.

2 MR. MULARSKI: The appeal. Well,
3 you have three options. You can uphold the
4 appeal or you can uphold it with modifications
5 or you can send it back for additional
6 considerations.

7 MS. MECOZZI: And we have
8 discussion every time about making sure that
9 our motion is in the positive to -- that the
10 motion is to uphold the appeal even though that
11 might not be the decision of the board, the
12 motion is always in the affirmative. So I
13 would make a motion to uphold or to support
14 Appellant's appeal, a Final Development Plan
15 0009-2019, a final development plan application
16 for the Shops at McKenna Creek located at North
17 Hamilton, Beecher Road parcel ID number
18 025-009953.

19 MR. ADJOUA: I believe as a point
20 of order, the final development plan 007-2019.

21 MS. MECOZZI: Okay. I'm looking at
22 the agenda.

23 MR. ADJOUA: And I'm looking at the
24 summary agenda in our packet.

25 MS. BEGGEROW: Hang on.

1 MR. ADJOUA: 7 and 9. That's open.

2 MR. JENSEN: So your motion would
3 be upholding their appeal.

4 MR. ADJOUA: Correct.

5 MS. BEGGEROW: So it is 0007-2019.

6 MS. MECOZZI: Okay. Correction,
7 then. A motion to support the appeal for Final
8 Development Plan 0007-2019.

9 MR. JENSEN: Second.

10 MR. ADJOUA: There's been a
11 properly made motion and second. Could we have
12 rollcall vote from April?

13 MS. BEGGEROW: Mecozzi?

14 MS. MECOZZI: Yes.

15 MS. BEGGEROW: Jensen?

16 MR. JENSEN: Yes.

17 MR. ADJOUA: There's been a motion
18 made and motion is carried. We need a second
19 motion.

20 MS. MECOZZI: Second motion. Okay.

21 Mr. Chair, I would move to uphold or support
22 the Appellant's appeal of Design Review
23 Application 0026-2019 a design review
24 application for site plan, landscaping plan and
25 building design for the same parcel of

1 property, parcel number 025009953-00.

2 MS. BEGGEROW: Can we clarify that
3 that number should be 0022?

4 MR. ADJOUA: 0022.

5 MS. MECOZZI: Also still looking at
6 the agendas.

7 MS. BEGGEROW: Technical glitch. I
8 apologize. Do we have a second?

9 MR. BROFFORD: Second.

10 MR. ADJOUA: There's been a motion
11 made and properly seconded on the floor. Could
12 we have a rollcall vote by the clerk?

13 MS. BEGGEROW: Mecozzi?

14 MS. MECOZZI: Yes.

15 MR. BROFFORD: Yes.

16 MS. BEGGEROW: Mr. Jensen?

17 MR. JENSEN: No.

18 MS. BEGGEROW: Mr. Adjoua?

19 MR. ADJOUA: Yes. Okay. The
20 motion has been made and carried. Do we have
21 any other new business before the board this
22 evening?

23 MS. BEGGEROW: No.

24 MS. MECOZZI: No.

25 MR. ADJOUA: Do we have any

1 unfinished business before the body?

2 MS. MECOZZI: Not that I'm aware.

3 MR. ADJOUA: Okay. A motion to
4 adjourn would be in order.

5 MR. JENSEN: I move we adjourn.

6 MR. BROFFORD: Second.

7 MR. ADJOUA: There's been a motion
8 to adjourn. Could we have a rollcall vote
9 please, Mrs. Clerk?

10 MS. BEGGEROW: Jensen?

11 MR. JENSEN: Yes.

12 MS. BEGGEROW: Brofford?

13 MR. BROFFORD: Yes.

14 MS. BEGGEROW: Mecozzi?

15 MS. MECOZZI: Yes.

16 MS. BEGGEROW: Adjoua?

17 MR. ADJOUA: Yes. This meeting is
18 adjourned.

19 (Hearing was adjourned at 8:04 p.m.)
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25

REPORTER'S CERTIFICATE

I, Daniel R. Cuff, do hereby
certify that as such Reporter I took down in
Stenotypy all of the proceedings had in the
foregoing transcript; that I have transcribed
my said Stenotype notes into typewritten form
as appears in the foregoing transcript; that
said transcript is the complete form of the
proceedings had in said cause and constitutes a
true and correct transcript therein.

A handwritten signature in cursive script, appearing to read "Daniel R. Cuff".

Daniel R. Cuff, Notary Public
within and for the State of Ohio

My commission expires July 27, 2021.

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