

BLUE ASH BOARD OF ZONING APPEALS

MONDAY, OCTOBER 8, 2012

7:00 P.M.

MUNICIPAL & SAFETY CENTER

4343 COOPER ROAD, BLUE ASH, OHIO

CITY COUNCIL CHAMBERS

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4900 Hunt Road - Charleston/Conner Group

Appeal of Downtown Design Review Committee  
decision to approve a proposed multi-family  
residential development and an existing commercial  
building at 4900 Hunt Road

\* \* \* \* \*

4900 Hunt Road - Timothy Lomison

Appeal of Downtown Design Review Committee  
decision to approve a proposed multi-family  
development and an existing commercial building at  
4900 Hunt Road

\* \* \* \* \*

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*Raising the Bar*

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1 MR. SIRKIN: I think most people are  
2 probably here for issues 3(c) and (d), and this  
3 is going to be combined, but before we start,  
4 Mr. Pacheco, we've got two requests from Hills  
5 Development to dismiss the appeals submitted by  
6 the Charleston/Conner Group and Mr. Lomison.  
7 So I need to know how we address this.

8 MR. PACHECO: Thank you, Mr. Sirkin. Two  
9 letters were sent to me by Mr. Trauth on  
10 October 1st, who represents Hills. So my  
11 suggestion is that you allow Mr. Trauth to make  
12 whatever points he wants to make in his letter  
13 and then allow Mr. Lomison and Charleston to  
14 respond.

15 MR. SIRKIN: So I take it Mr. Trauth is  
16 here. This might be a good time, can I swear  
17 everybody in right now?

18 MR. PACHECO: Yeah, that's a good idea.

19 MR. SIRKIN: Anybody who is going to  
20 speak on any of the rest of the issues tonight,  
21 I would like you to raise your hand, even if  
22 it's possible that you will speak on them.

23 Pursuant to the statutes of Ohio, do you  
24 swear or affirm to tell the truth, the whole  
25 truth, and nothing but the truth?

1 ALL WITNESSES: I do.

2 MR. SIRKIN: All right. Mr. Trauth,  
3 we're going to have you come up and discuss the  
4 request to dismiss the appeals.

5 MR. TRAUTH: Thank you, Mr. Chairman,  
6 members of the Board. Do you want me to  
7 address them one at a time?

8 MR. SIRKIN: Sure.

9 MR. TRAUTH: With regard to Mr. Lomison's  
10 appeal, I request a dismissal on the grounds  
11 that his appeal does not state with specificity  
12 why or how certain sections of the code were  
13 supposedly violated. He lists certain sections  
14 of the code, states that they were violated,  
15 but doesn't give any reason or rationale as to  
16 why or how they are violated. So it lacks  
17 specificity as is required by the Blue Ash Code  
18 and is opposite the finding of the -- the  
19 unanimous finding of the Downtown Design Review  
20 Committee that submitted -- that admitted the  
21 plan was fully consistent with the D-1 zoning  
22 code.

23 So, again, it's similar to Mr. Lomison's  
24 first appeal to this Board, no specifics  
25 whatsoever. It's like tilting at windmills.

1 MR. SIRKIN: And you have issues with  
2 Charleston?

3 MR. TRAUTH: On Charleston, I also stated  
4 that there is a lack of specificity. As a  
5 matter of fact, their entire appeal seems to  
6 rely upon the Concept Redevelopment Plan, and  
7 as all of you sitting on the Board know, the  
8 Concept Redevelopment Plan is an aspirational  
9 plan, and the code, the D-1 code is the  
10 implementing vehicle for setting forth the  
11 parts of the code. During our presentation, we  
12 will cite specific sections of the concept plan  
13 and the concept plan proceeding that clearly  
14 states that this is not a code, it's an  
15 aspirational document, and that the code which  
16 was passed after the concept plan on  
17 December 14, 2006, is the implementing  
18 document.

19 So really Mr. Griffith does not cite any  
20 specific code sections whatsoever, strictly  
21 relies on the redevelopment plan, stating that  
22 that is not followed, but as Mr. Pacheco stated  
23 several times and the last time before the  
24 Downtown Review Committee, in your code in 5902  
25 it says unless otherwise provided herein,

1 certain aspects of the concept plan should be  
2 followed. But the unless otherwise provided  
3 herein, it clearly states that the code has no  
4 maximum density, it only has a minimum density.  
5 So that controls over whatever aspirational  
6 statements are in the concept plan.

7 And the second objection against  
8 Charleston's appeal is that it's based purely  
9 on economics. They're claiming that they're  
10 going to be damaged because there will be an  
11 oversupply. That has nothing to do whatsoever  
12 with zoning. So, again, it's an improper venue  
13 for appealing a decision of the Downtown Review  
14 Committee to this Board.

15 So those are the two bases.

16 MR. SIRKIN: So the issue you have with  
17 Mr. Lomison is that he only states code  
18 numbers, he doesn't explain why those code  
19 numbers are an issue, and with Charleston that  
20 they list maximum density, which is not in the  
21 code, and the economics is not an issue of the  
22 Zoning Board.

23 MR. TRAUTH: Correct, that is in essence  
24 the basis of the appeal. And your code does  
25 require specificity when appealing.

1 MR. SIRKIN: All right. I'm going to ask  
2 Mr. Lomison if he wants to come up and make his  
3 comment.

4 MR. LOMISON: Good evening. I'm not sure  
5 if I could have been more specific. I cited a  
6 large number of areas of the zoning code where  
7 their plan did not comply with the code  
8 requirements. Also cited areas in the plan  
9 where it did not meet those as well. So I  
10 think I fairly clearly specified the grounds on  
11 which an appeal hearing should be held. I  
12 don't have much more comment than that.

13 MR. SIRKIN: And is Mr. Griffith here for  
14 Charleston?

15 MR. TRAUTH: Before he gets up, I did  
16 forget one part of the objection to their  
17 appeal. They did not appear at the Downtown  
18 Design Review Committee, and they had no one  
19 testify at the Downtown Review Committee, so  
20 they lack standing in that sense also.

21 MR. SIRKIN: Mr. Griffith.

22 MR. GRIFFITH: Thank you. With regard to  
23 the last point that Mr. Trauth made, one of the  
24 exceptions to the standing requirements is  
25 that -- the normal standing requirement is that

1 someone has to appear at an administrative  
2 hearing and express opposition, but in this  
3 particular case that rule does not apply. The  
4 reason the rule does not apply is that  
5 Charleston Apartments, LLC, did not receive  
6 notice of the hearing of the Downtown Design  
7 Review Committee, so that rule is inapplicable.

8 With regard to the "aspirational plan,"  
9 it's true that in most zoning that you see,  
10 there is a plan that's put together by  
11 planners. Then in addition there's a legal  
12 code that the planning commission will review  
13 and make a recommendation to council on and  
14 council will approve. The function of the code  
15 under Ohio law is to implement the plan.

16 Blue Ash's code with regard to downtown  
17 development is somewhat different from that  
18 structure. The structure of the Blue Ash code  
19 is that there's simply a requirement that all  
20 new development be reviewed by the Downtown  
21 Design Review Committee, and that committee is  
22 charged under the code with making sure that  
23 the development complies with the plan. That  
24 takes it out of the realm of what your normal  
25 aspirational plan is and puts into the code a

1 binding requirement that the provisions in the  
2 plan, which are actually quite specific as they  
3 apply to this particular property, have to be  
4 complied with.

5 And with regard to specific objections, I  
6 think if you give the, quote-unquote,  
7 aspirational code the legal effect that  
8 Charleston says that it ought to have and that  
9 the code says it ought to have, then there has  
10 been plenty of specificity about what's wrong  
11 with the decision of the Downtown Design Review  
12 Committee.

13 If you'd like, when I have -- I'm going  
14 to have Mr. Terauds of Charleston and also  
15 Mr. Foreman of Charleston testify. Mr. Terauds  
16 will testify regarding the notice issue.

17 MR. SIRKIN: Anything else?

18 MR. GRIFFITH: That's it.

19 MR. SIRKIN: Mr. Pacheco, I don't know  
20 how we cannot deal with this issue. I mean, I  
21 would make a motion to deny the request to  
22 dismiss because I don't see how we're going to  
23 avoid eventually dealing with these appeals.  
24 So I'm going to --

25 MR. PACHECO: The Board's pleasure.



1 MR. SIRKIN: Okay. So I'm going to make  
2 a motion that we deny these requests to dismiss  
3 the appeals, and I believe we'll need a voice  
4 vote for that.

5 MR. COLLETT: I'll second that.

6 MR. SIRKIN: Traci, will you call the  
7 roll.

8 MS. SMITH: Marc Sirkin.

9 MR. SIRKIN: Yes.

10 MS. SMITH: Mike Duncan.

11 MR. DUNCAN: Yes.

12 MS. SMITH: Paul Collett.

13 MR. COLLETT: Yes.

14 MS. SMITH: Mark Kirby.

15 MR. KIRBY: Yes.

16 MR. SIRKIN: So we're going to hear the  
17 appeals. I have a couple of things to go over.  
18 I'm going to explain the whole process how it's  
19 going to go tonight. First we're going to ask  
20 city staff to kind of explain the status of the  
21 proposed development. I will swear in anyone  
22 who is going to testify, which we already did.  
23 Charleston is going to go first and present  
24 their appeal. Hills can cross-examine.  
25 Mr. Lomison can also ask any questions he would

1       like.

2               Second, Mr. Lomison will present his  
3       appeal. Hills can cross-examine him.  
4       Charleston can ask any questions.

5               Hills is then going to have an  
6       opportunity to support its proposed development  
7       and rebut the appeals. Charleston and  
8       Mr. Lomison will then have an opportunity to  
9       cross-examine Hills.

10              Then I'm going to open up the meeting to  
11       public comment. Now, from Barwyn Acres there's  
12       a lot of you here. Maybe to be a little  
13       succinct, there may be issues where you're  
14       completely in agreement with Mr. Lomison. What  
15       I will probably do is maybe ask for a show of  
16       hands of agreement instead of each one of you  
17       coming up and just saying the same thing. It  
18       will be a way that we can see support and  
19       agreement in numbers.

20              Charleston, Lomison, and Hills will have  
21       an opportunity to address any comments made by  
22       the public, if there are any.

23              We're going to close the hearing. We  
24       will discuss the appeals together, just the  
25       Board, and then we will approve, approve with

1 conditions, or deny.

2 This is obviously an emotional issue and  
3 I'm going to ask everybody to remain very  
4 civil. Anyone who wishes to speak is going to  
5 get their chance to speak. That being said,  
6 let's be succinct. Of course, we said you have  
7 to fill out a form if you're going to talk and  
8 I hope you've done that.

9 Everybody has been made aware of the  
10 suggested order, presentation, rebuttal, and  
11 cross-examination, and we'll try to stick to it  
12 within reason. I encourage any party to cite  
13 the zoning code and/or the comprehensive plan  
14 when it's appropriate to their argument, and  
15 I'm certainly going to ask Mr. Pacheco and  
16 Mr. Johnson to please try to dive in when you  
17 feel it's appropriate, intercede whenever you  
18 feel we need some guidance.

19 We were all given a copy of the Downtown  
20 Design Review Committee's minutes, so we've all  
21 read them and we're pretty up-to-date of what  
22 went on and what was approved at the Downtown  
23 Design Review Committee.

24 Anybody on the Board have anything to add  
25 to that?

1 All right. If not, then let's get going.  
2 I think what we're doing first is Charleston is  
3 up first to present their appeal. And  
4 everybody please talk into the microphone. And  
5 the way this building is situated, everything  
6 you guys say we hear, it's just murmurs. So  
7 it's really hard if people are talking in the  
8 back, you cannot hear up here very well.

9 MS. SMITH: Can I have your speaking  
10 sheets first, please. Thank you.

11 MR. GRIFFITH: The first thing I would  
12 like to do is --

13 MR. SIRKIN: Microphone.

14 MR. GRIFFITH: The first think I would  
15 like to do is ask Mr. Alex Terauds of  
16 Charleston to testify essentially regarding  
17 what his background is and what he does for  
18 Charleston and regarding this issue of notice  
19 of the hearing to Charleston.

20 MR. TERAUDS: I work for the management  
21 group of the Conner Group, and I'm a financial  
22 analyst in that company. And when it comes to  
23 this matter, I was assigned to be the project  
24 manager for the opposition of the Hills  
25 Properties development. Any notice that should

1 have been -- or any notice that would have been  
2 received should have come to me. After  
3 receiving the objection to our appeal, I  
4 checked multiple sources to see if we received  
5 a notice and did not -- and everyone said we  
6 did not receive a notice. Furthermore, prior  
7 to that meeting I had contact with Kelly  
8 Harrington, the Assistant City Manager, about  
9 the Hills Properties development. The only  
10 hearing that was ever mentioned to me was the  
11 September 13th City Council hearing regarding  
12 the appeal on the first iteration of the Hills  
13 plan, and the August 22nd meeting was never  
14 mentioned.

15 MR. GRIFFITH: I think you had mentioned  
16 that you are fairly well familiar with all the  
17 documents in the appeal.

18 MR. SIRKIN: Yes. We got all the minutes  
19 and I'm sure we all spent as much time as I did  
20 reading through it a few times.

21 MR. GRIFFITH: Right. So I won't bore  
22 you with repeating everything that was in the  
23 appeal letter except to say that it was  
24 specific that really the objections are to the  
25 density of the project as it affects the

1       downtown or the 2005 code plan, and secondly  
2       the lack of parking with regard to the plan.

3               And Mr. Trauth had mentioned that  
4       Charleston's objections are economic, and while  
5       it's true that in general economic objections  
6       would not be really relevant to a zoning case,  
7       what is relevant to a zoning case is the impact  
8       of permitting uses in a neighborhood on the  
9       value of property in that neighborhood. And  
10      the whole function of zoning in many respects  
11      is to keep the values of property at a certain  
12      level, and in the kind of business that an  
13      apartment operator is in, the lack of  
14      prospective tenants, the vacancy of that  
15      particular building can have an impact on the  
16      economic value of that building. So,  
17      therefore, what's permitted to be operated next  
18      door to the existing apartment building the  
19      Charleston Apartments has will have an impact  
20      on the value of that building. And to give you  
21      a better idea of how that happens, I'm going to  
22      ask Sean Foreman, who is with Charleston, to  
23      come up and testify.

24               MR. SIRKIN: Mr. Pacheco, am I allowed to  
25      ask what their occupancy rate is?

1 MR. PACHECO: You can ask whatever you  
2 want.

3 MR. SIRKIN: Okay. What's your occupancy  
4 rate, do you know, at Charleston? Do you know  
5 what the occupancy rate is?

6 MR. GRIFFITH: I'll ask Mr. Foreman that.  
7 Mr. Foreman, can you let the Board know your  
8 name and your duties at Charleston.

9 MR. FOREMAN: Yes. My name is Sean  
10 Foreman. I am Vice President of Operations for  
11 the Conner Group. I operationally oversee 23  
12 apartment communities. Charleston in Blue Ash  
13 is one of those communities.

14 MR. GRIFFITH: And what's your background  
15 in terms of what you've done for Charleston and  
16 what's your background in terms of operating  
17 this type of property?

18 MR. FOREMAN: I've been in the apartment  
19 industry, management industry for almost seven  
20 years, and as such at Charleston of Blue Ash  
21 I've served as the regional head in charge of  
22 operations since acquisition in December of  
23 2007.

24 MR. GRIFFITH: And, Mr. Foreman, how much  
25 has Charleston invested in that property since

1 buying it in 2007?

2 MR. FOREMAN: We spent over \$2.1 million  
3 in capital expenditures since December of 2007  
4 or \$1,880 per unit annually.

5 MR. GRIFFITH: And how does that kind of  
6 investment expenditure compare to that in the  
7 industry?

8 MR. FOREMAN: Our underwriting provides  
9 for an annual replacement reserve of \$250 per  
10 unit annually, so our expense in acquiring  
11 Charleston of Blue Ash is seven times that  
12 amount.

13 MR. GRIFFITH: And, Mr. Foreman, why are  
14 you spending so much money?

15 MR. FOREMAN: The lion share of the money  
16 has gone to unit upgrades. We upgrade units to  
17 increase the value of the property. If we  
18 upgrade the interior of the apartments in the  
19 common amenities, we can increase rental rates.  
20 If we increase rental rates, we'll be able to  
21 track a better caliber of resident and increase  
22 our revenue, which increases the value of our  
23 community. Since beginning the upgrades some  
24 22 months ago, we've increased rental rates in  
25 excess of 15 percent.



1 MR. GRIFFITH: And what do you have  
2 planned for the property in the future?

3 MR. FOREMAN: The first thing we're going  
4 to do is finish what we deem as first  
5 generation upgrades, and let me tell you a  
6 little bit about what that looks like. When we  
7 do a first generation upgrade, we go into the  
8 interior of the apartments, we install new  
9 appliances, new nickel lighting and hardware,  
10 upgraded countertops and flooring.  
11 Additionally, since acquiring the property,  
12 we've spent over \$125,000 on fitness, the  
13 fitness center and fitness center upgrades.  
14 We've repaved the community, we've done an  
15 entire wood and paint replacement, and we've  
16 added various upgrades to the three-story  
17 parking structure.

18 What's next for us? What's next for us  
19 would be our desire to do what we deem is  
20 second generation upgrades. That's the  
21 interior of the apartments, new cabinets,  
22 upgraded countertops, backsplashes, crown  
23 molding.

24 We believe that the Hills development  
25 program is targeted at a similar resident

1           profile and we believe there's no such demand  
2           for the additional product at this time.

3           MR. GRIFFITH: And how do you know that  
4           there's not enough demand?

5           MR. FOREMAN: Since acquiring the  
6           property, our average vacancy rate at  
7           Charleston of Blue Ash has been 8 percent.  
8           Today it's currently at 9 percent vacant.

9           MR. GRIFFITH: And what does that vacancy  
10          evidence?

11          MR. FOREMAN: I'm sorry, you'll have to  
12          repeat.

13          MR. GRIFFITH: What does that vacancy  
14          evidence?

15          MR. FOREMAN: I'm not following the  
16          question.

17          MR. GRIFFITH: That's all right. Would  
18          the vacancy be evidence of demand for these  
19          particular types of units?

20          MR. FOREMAN: I certainly believe so,  
21          yes.

22          MR. SIRKIN: Is that an unusually high  
23          vacancy rate for the industry?

24          MR. FOREMAN: In Cincinnati/Dayton today,  
25          based on my experience, an 8 to 9 percent

1       vacancy rate is certainly higher than the  
2       industry average. Recent reports would suggest  
3       vacancy rates in apartment communities in the  
4       Cincinnati/Dayton area hover around 5 percent.

5               MR. GRIFFITH: And what kind of upgrades  
6       would you have done had you known that Hills  
7       was planning this type of development?

8               MR. FOREMAN: Well, we may not have done  
9       any upgrades. When we look to invest at the  
10      rate that we have invested in the Charleston of  
11      Blue Ash, we do that predicated on the belief  
12      that we can increase rental rates as a result  
13      of the investment in the property, attract a  
14      better caliber of person, renter that is, and  
15      increase rental rates revenue, as a result the  
16      value of the property.

17              MR. SIRKIN: Is there any other  
18      objections that you guys have other than  
19      competition? Am I pretty much summarizing it  
20      there?

21              MR. GRIFFITH: Well, the competition, but  
22      also the fact that you have a density  
23      requirement of 14 to 18 units, which by the  
24      plan is being exceeded because I think that  
25      your request is for a 43-unit density.

1 MR. SIRKIN: Jump in at any time, please.

2 MR. DUNCAN: I have a question. What is  
3 the density of the Charleston apartments?

4 MR. FOREMAN: It's my understanding it's  
5 36 units per acre, built in 1992.

6 MR. SIRKIN: And there is no maximum  
7 density in D-1, correct? I know it's suggested  
8 in certain drawings.

9 MR. JOHNSON: The code says there's no  
10 maximum density, correct.

11 MR. COLLETT: You keep referring to  
12 having received notification. What  
13 notification did you not receive? This  
14 property has been available to develop for  
15 several years.

16 MR. GRIFFITH: The lack of notice, we  
17 refer to the lack of notice of the actual  
18 meeting of the Downtown Design Review  
19 Committee.

20 MR. SIRKIN: Is that required, Dan? I  
21 mean, it's on the website.

22 MR. JOHNSON: No.

23 MR. SIRKIN: Anything else? Thank you.  
24 Hills, the representative from Hills, if they  
25 want to cross-examine anything that

1 Mr. Griffith or -- what's your name there?

2 MR. FOREMAN: Foreman.

3 MR. SIRKIN: Or Mr. Foreman. Go ahead.

4 MR. TRAUTH: Mr. Foreman, who is Lauren  
5 Burkhart in your organization?

6 MR. FOREMAN: Lauren Burkhart is a  
7 leasing associate at Charleston of Blue Ash.

8 MR. TRAUTH: Were you aware that she  
9 indicated to Mr. Michael Copfer of Hills  
10 Development, Land & Development Company on  
11 October 2nd that the vacancy rate at Charleston  
12 Apartment was only 3 percent and that it was  
13 97 percent occupied?

14 MR. FOREMAN: I'm not aware of any such  
15 conversation.

16 MR. TRAUTH: You have 6.5 acres of land  
17 and you have 242 apartment units; is that  
18 correct?

19 MR. FOREMAN: That sounds correct.

20 MR. TRAUTH: And that comes out to 37.74  
21 units per acre -- I'm sorry, it comes out to  
22 37.2 units per acre; is that correct?

23 MR. FOREMAN: It sounds about right.  
24 I'll trust your math.

25 MR. TRAUTH: And are you aware that the

1 Hills development is about 37.7 density?

2 MR. FOREMAN: I'm not aware of that exact  
3 number.

4 MR. TRAUTH: In preparation for your  
5 testimony here, have you hired an appraiser to  
6 appraise the property as it currently exists  
7 versus appraise the property if Hills builds  
8 218 units?

9 MR. FOREMAN: I know of no such action,  
10 no.

11 MR. TRAUTH: And you say that your  
12 average vacancy has been 8 percent, but it's  
13 now 9 percent; is that right?

14 MR. FOREMAN: That is what I testified,  
15 yes.

16 MR. TRAUTH: And right now the apartment  
17 market is fairly strong, is it not?

18 MR. FOREMAN: I would say yes.

19 MR. TRAUTH: And you said the average in  
20 the industry is usually about a 5 percent  
21 vacancy; is that right?

22 MR. FOREMAN: What I said was in recent  
23 publications it's been noted that the physical  
24 occupancy or the vacancy average in  
25 Cincinnati/Dayton hovers around 5 percent.

1 MR. TRAUTH: But has the Charleston  
2 Apartments always been above the industry  
3 average in this area?

4 MR. FOREMAN: I just testified that it  
5 was below the industry average.

6 MR. TRAUTH: I'm sorry, you're currently  
7 at 9 percent, so the average is 5, so it's  
8 below the industry average, and you said it was  
9 historically 8 percent. Is the 8 percent also  
10 below the industry average?

11 MR. FOREMAN: I don't know what the  
12 industry average would be if you spread it  
13 across the time December of 2007 to current.

14 MR. TRAUTH: Thank you. No further  
15 questions.

16 MR. SIRKIN: Mr. Lomison -- am I  
17 pronouncing your name correct?

18 MR. LOMISON: Lomison.

19 MR. SIRKIN: Lomison. Do you have  
20 anything you want to direct towards Charleston?

21 Mr. Foreman, can you come back, please.  
22 Mr. Lomison has some questions.

23 MR. LOMISON: Were you aware that this  
24 Downtown Design Review Committee was an  
25 unscheduled meeting and wasn't posted on the

1 city's website and was also scheduled without  
2 following the 13-day posted deadline and  
3 necessary documentation being submitted prior  
4 to that meeting being scheduled?

5 MR. FOREMAN: I was not aware of that.

6 MR. LOMISON: Also, I was not sure if you  
7 were aware that in the code they do cite that  
8 the general welfare of the city is a criteria  
9 on deciding it on appeal, and would it be your  
10 belief that the viability of certain businesses  
11 and their proximity to similar businesses  
12 within the city could impact the general  
13 welfare of a neighboring property?

14 MR. FOREMAN: I would think so.

15 MR. LOMISON: That's all the questions I  
16 have.

17 MR. SIRKIN: Thank you. Mr. Lomison, if  
18 you want to stay up there, it's your turn to  
19 present your appeal.

20 MR. COLLETT: Mr. Lomison, did you say  
21 that the city did not comply with the  
22 notification parameters?

23 MR. LOMISON: I believe that the city  
24 does not have a listed notification policy for  
25 the Downtown Design Review Committee. They do



1 post the schedule for the year of the scheduled  
2 meetings, and the August 22nd was not a  
3 scheduled date on that list that was publicly  
4 available.

5 MR. COLLETT: You were at the meeting  
6 though?

7 MR. LOMISON: No, I was not able to make  
8 it.

9 MR. COLLETT: You did not have a  
10 representative?

11 MR. LOMISON: I kept the September date  
12 free because that was the next scheduled  
13 meeting.

14 MR. PACHECO: Ms. Klecker presented --  
15 well, you're in the middle of your questions.  
16 I can ask you questions later. Remind me to  
17 ask questions of Mr. Lomison later. Right now  
18 he's in his questioning.

19 MR. COLLETT: So you're saying that it  
20 was an unscheduled meeting and there was no  
21 public notification?

22 MR. LOMISON: Correct. Bear with me one  
23 moment, I have to get my paperwork.

24 MR. PACHECO: Mr. Sirkin, we need to make  
25 sure Charleston is done with what it wanted to

1 present.

2 MR. SIRKIN: Charleston, do you have  
3 anything else?

4 MR. GRIFFITH: Not at this time, although  
5 I understand there's rebuttal later  
6 essentially.

7 MR. SIRKIN: Thank you.

8 MR. LOMISON: Good evening, everyone. My  
9 name is Tim Lomison. I live at 9490 Wynnecrest  
10 Drive in Blue Ash, and I represent a number of  
11 my Barwyn Acres neighbors.

12 Here we are again. Unfortunately, not  
13 much has changed. The current proposal by  
14 Hills Properties does not meet the zoning code,  
15 it does not meet the intent of the Master  
16 Plan's Concept Redevelopment Plan, and it still  
17 negatively impacts the general welfare of the  
18 neighboring properties. The Downtown Design  
19 Review Committee again failed to perform their  
20 duties as prescribed to them in the zoning  
21 code, so we are here today to ask you to right  
22 that wrong.

23 Hills Properties submitted their first  
24 proposal in the spring and they were sure that  
25 it completely met the zoning code, which we all

1 know it did not, which is why our appeal was  
2 approved by the Board of Zoning Appeals.

3 Then they submitted a second plan, and  
4 this time they were really sure that they met  
5 the zoning code, but again they did not and it  
6 was denied by the DDRC. Now we have Plan 3.

7 I can't tell you the number of times that  
8 Hills and their attorney said during the DDRC  
9 meeting that they were a hundred percent  
10 meeting the zoning code. Their attorney said  
11 that his client "succeeded beyond his wildest  
12 imagination" in meeting the D-1 code  
13 100 percent. Their definition of 100 percent  
14 must be very different from mine because they  
15 are still not meeting many requirements of the  
16 zoning code.

17 The first of those is Section 1159.01,  
18 which is the purpose of the D-1. So it states  
19 the purpose of the D-1 downtown commercial  
20 district is to, and includes: Encourage the  
21 maintenance and redevelopment of properties  
22 within the vision established in the Master  
23 Plan for the development of downtown Blue Ash  
24 and supplemented by the Blue Ash Town Center  
25 Concept Redevelopment Plan; create pedestrian

1 oriented development through the integration of  
2 a mixture of uses; ensure neighborhood  
3 compatibility with surrounding neighborhoods.

4 Now, some have interpreted this code to  
5 mean that the rest of Chapter 1159, which is  
6 the D-1 code, falls within this purpose so this  
7 section of code doesn't have any relevance  
8 itself and is just a summary of the purpose of  
9 1159. But if you look at the language of the  
10 section, it says this is the purpose of the D-1  
11 downtown commercial district, not the D-1 code,  
12 the district itself.

13 The zoning code 1159 does not address all  
14 of these purposes directly. 1159.01 is  
15 included to ensure that any proposed  
16 development must meet these purposes to be part  
17 of that district. This proposal does not meet  
18 the purpose of the D-1 district. It does not  
19 follow the visions established in the Master  
20 Plan or Concept Redevelopment Plan. The  
21 proposal is not a pedestrian oriented  
22 development with a mixture of uses. The  
23 proposal is not compatible in any way with the  
24 surrounding neighborhood.

25 1159.05, site redevelopment requirements.

1 This includes, under setbacks, all buildings  
2 with frontage on Kenwood Road, Cooper Road, or  
3 on Hunt Road between Kenwood Road and Cooper  
4 Road shall be built to the back of the public  
5 sidewalk. The proposed building has two points  
6 where it is built to the back of the sidewalk,  
7 but there's a very large gap in the middle  
8 where this requirement is not being met. Not  
9 only is it not being met, the entrance is over  
10 a hundred feet from the sidewalk.

11 1159.06, general design requirements.  
12 For landscaping, the site shall be landscaped  
13 in accordance with the landscape standards in  
14 Chapter 1188 and a separate plan shall be  
15 submitted detailing each of the landscape  
16 elements at the site.

17 The landscaping plan submitted with the  
18 proposal does not meet code. The plan  
19 indicates that existing trees will be used as  
20 the buffer yard, but does not identify all of  
21 the trees being used to meet the buffer yard  
22 code. There's no indication that any deciduous  
23 trees are over 3 inches in caliber, or that the  
24 tree types used in the buffer yard are included  
25 in 1188.07. Also the trees and other plants

1        used to satisfy the buffer yard and landscaped  
2        area must be of first class nursery grade. The  
3        majority of the streets in that area are  
4        certainly not in first class nursery grade  
5        condition.

6                In Dan Johnson's notes in the agenda  
7        packet to the DDRC, he outlines several areas  
8        where the plan would need to be altered to  
9        satisfy the code. This includes plants along  
10       Hunt Road, additional hedges in addition to  
11       deciduous trees shown. Deciduous trees listed  
12       in the proposal shows they are under the 3-inch  
13       diameter minimum. Dan also notes that the  
14       existing mound would remain unaltered except  
15       for adding vegetation, but the proposal shows  
16       that sewer line changes would disturb that  
17       mound and the vegetation on it. Additionally,  
18       the code is not satisfied regarding the number  
19       of plants in landscaped areas required in and  
20       around the surface parking lots.

21               Section 1159.07 relates to parking,  
22       loading, and access requirements. Included in  
23       there is all parking areas and walkways shall  
24       be illuminated so as to produce a minimum  
25       illumination of 1.0 footcandles within such

1 areas. All exterior lighting shall be erected  
2 so as to minimize light onto adjacent  
3 single-family residential areas and no exterior  
4 lighting shall exceed 10 footcandles. All  
5 lighting shall be served with underground cable  
6 and underground served poles. Pole lighting  
7 shall be compatible with city streetlights with  
8 a pole light of 24 feet in addition to the  
9 possibility of a 2-foot city approved concrete  
10 base.

11 The lighting plan submitted and supplied  
12 by Hills Properties in their submittal to the  
13 DDRC does not meet the D-1 code. There are no  
14 lighting instruments for any of the walkways,  
15 which is required by the code. The type of  
16 lighting is not compatible with the city  
17 streetlights in that area. City lighting in  
18 that area is LED lighting. The proposal  
19 indicates metal halide lighting will be used.  
20 Metal halide lighting is a high intensity  
21 discharge lighting source that is often used  
22 for stage lighting, photographic lighting, and  
23 athletic facilities. Metal halide lights are  
24 also poor at maintaining the lumen output  
25 during their life, resulting in inadequate and

1 inconsistent lighting, and they also have a  
2 habit of overheating and shutting off. The  
3 light plan also indicates that the height of  
4 the lights is 27 feet, which is one foot above  
5 what the code allows, and that is assuming a  
6 2-foot concrete base.

7 Section J of that same area under parking  
8 structures, Aboveground parking structures  
9 shall comply with the following standards,  
10 which includes, all parking structures should  
11 be located in the rear of the building to the  
12 maximum extent feasible. Parking structures  
13 shall be visually similar of character and  
14 scale to the adjacent buildings and shall have  
15 architecturally articulated facades designed to  
16 screen the view of parked cars. And vehicle  
17 entries to off-street parking structures shall  
18 be integrated into the placement and design of  
19 adjacent building or oriented away from the  
20 primary street frontage.

21 The parking structure is not located in  
22 the rear of the building. It is across the  
23 property and is as much in front as it is in  
24 the rear of the proposal. Also, the parking  
25 structure may be similar in scale to the



1 residential buildings that are part of the  
2 proposed plan but is not similar in character  
3 or scale to the adjacent residential  
4 neighborhood homes or the retail buildings on  
5 that site or on the adjacent site. Lastly, the  
6 vehicle entry is not oriented away from the  
7 primary street frontage. It faces on the road.  
8 The parking structure also only has one exit.  
9 This was called out as a concern by the police  
10 department in case there was an accident.  
11 Hills Properties has also stated previously  
12 that they would use that entrance for garbage  
13 services to access the dumpster, which would  
14 cause additional blockage at times.

15 1159.08 for signs. Signs should be  
16 carefully integrated within the site landscape  
17 and architectural design context within which  
18 they're located. The size, type, height, and  
19 number of signs shall be regulated by Section  
20 1181.05. The proposal indicates that a kiosk  
21 sign will be positioned at the edge of the  
22 property on Hunt Road, but in the submittal to  
23 the DDRC, there are no details regarding this  
24 sign to prove that it will comply with 1159.08  
25 or 1181.05 of the code.

1           1159.05, site development requirements.  
2           Lot area and density. This was referenced  
3           earlier by Dan, but I want to read the entire  
4           line of the code to make sure that all the  
5           conditions are heard there.

6           There's no maximum residential density in  
7           this district provided the residential uses  
8           meet the setback, height, and other site design  
9           requirements. Despite everything I just  
10          listed, Hills Properties still believes that  
11          they have met a hundred percent of the zoning  
12          code and site design requirements, so this  
13          section of code should not apply to them. They  
14          clearly have not met all the requirements,  
15          which means there should be a maximum density  
16          in place. The D-1 code does not offer maximum  
17          density, but the 2005 Concept Redevelopment  
18          Plan does offer density range for this specific  
19          site. The upper end of that ranges 18 units  
20          per acre. This proposal has 41 units per acre,  
21          what is over double the maximum density.

22          On top of all this, the proposal includes  
23          a bullet that says, "The detail design process  
24          that will follow the approval of this final  
25          plan may result in changes to the layout,

1 utility, grading, and landscape designs that  
2 are posted herein."

3 Hills Properties is saying that if you  
4 approve this property, they can make any  
5 changes they want later on. No proposal should  
6 be approved that has language in there like  
7 that.

8 1159.02, conformity with plans. Unless  
9 otherwise permitted herein, all development in  
10 the D-1 district shall be consistent with the  
11 plan approved by Council as set forth in the  
12 Master Plan of Development of Downtown Blue Ash  
13 dated November 18, 1982 and adopted by  
14 Ordinance 82-101 and the supplemental Blue Ash  
15 Town Center Concept Redevelopment Plan dated  
16 December 2005 and adopted by Ordinance 2006-20.  
17 The Downtown Design Review Committee shall  
18 review all plans for new construction and  
19 building additions and ensure proper conformity  
20 in its approvals.

21 Hills Properties continues to say that  
22 the Master Plan's Concept Redevelopment Plans  
23 are aspirational documents and are not a part  
24 of the law. They are incorrect. Those  
25 documents were brought in by ordinance from

1 City Council. Blue Ash's website says, "An  
2 ordinance is a law or regulation formally  
3 enacted by Blue Ash City Council in accordance  
4 with the terms set forth in Blue Ash's charter  
5 and with the State of Ohio laws." Those  
6 documents are part of Blue Ash law. This is  
7 further supported by the fact that the plans  
8 are cited in the zoning code and require all  
9 development in the D-1 district to follow the  
10 intent of those documents. These plans also  
11 appear multiple times in Chapter 1133, which is  
12 the Board of Zoning Appeals section of the code  
13 where it says the Board must "interpret the  
14 provisions of the zoning code in such a way as  
15 to carry out the intent and purpose of the  
16 Master Plan." It also states the proposal in  
17 an appeal may not "go against the intent of the  
18 Master Plan of the city."

19 Hills Properties is also claiming that  
20 since Chapter 1159 for the D-1 district was  
21 updated after the 2005 plan was created, that  
22 1159 already includes everything needed to  
23 follow the intent of all of those plans.  
24 Chapter 1159 is seven pages in length. The  
25 2005 plan is 56 pages. 1982 plan is 69 pages.

1       The 2003 plan is 36 pages. The 2007  
2       streetscape plan is 72 pages, which, by the  
3       way, was adopted after the last code change.  
4       Chapter 1159 couldn't possibly include  
5       everything needed to demonstrate the intent  
6       documented in those plans, which is why they  
7       are referenced specifically in the D-1 code.

8               Hills Properties and their attorney are  
9       also citing the first line in 1159.02 where it  
10      says "unless otherwise permitted herein" to  
11      mean that the plan documents do not need to be  
12      referenced. This line simply means that if the  
13      zoning code says something is specifically  
14      permitted, then the D-1 code trumps the plan.  
15      So if the plan says you can't have a two-story  
16      building, but the D-1 code says that buildings  
17      must be a minimum of two stories, then two  
18      stories is permitted because the D-1 code says  
19      specifically that it is permitted. This line  
20      of code does not mean you should ignore the  
21      rest of the language in 1159.02 and ignore the  
22      plan documents. The zoning code does not say  
23      that negatively impacting the welfare or  
24      quality of life for a neighboring residence is  
25      permitted. It does not say a floor area ratio

1 of around 1.9 is permitted. This is where the  
2 intent of those plan documents should be used.

3 The 2005 plan includes guidelines for the  
4 floor area ratio for development of the  
5 downtown Blue Ash. Floor area ratio represents  
6 the total area a building occupies or a measure  
7 of the intensity of a site being developed. It  
8 is calculated by taking the total area of each  
9 floor of the building and dividing it by the  
10 total space of the property. So if you have a  
11 thousand square foot single-story building on a  
12 4,000 square foot property, the floor area  
13 ratio would be .25.

14 When putting the 2005 plan together, the  
15 authors calculated the floor area ratio of  
16 downtown at that time and found its average was  
17 .33. The recommendation of the plan was to try  
18 to average .50, which they thought would  
19 constitute high intensity land use development.  
20 The proposed development has a floor area ratio  
21 of almost 1.9. That is almost four times what  
22 the plan recommends for a high intensity  
23 downtown. This proposal has a larger footprint  
24 and a larger floor area ratio than the first  
25 plan submitted by Hills Properties, which the

1 Board of Zoning Appeals affirmed the appeal of  
2 in June. The first proposal was too big, and  
3 for some reason Hills Properties chose to make  
4 this proposal even larger and expects you to  
5 allow this one to go through.

6 When Hills Properties presented this  
7 proposal to the DDRC, they showed misleading  
8 figures for the floor area ratio of their  
9 building. They said it was 1.3. What they  
10 failed to mention was that this figure didn't  
11 include the garage, which is almost a quarter  
12 of their structure. Hills then used the same  
13 figure to show that they had the same floor  
14 area ratio as Charleston Apartments. They  
15 intentionally misled the DDRC members on  
16 information important to their decision whether  
17 to approve this plan or not.

18 The 2005 plan also says the project  
19 should have broad community support. As was  
20 evidenced by the turnout at the DDRC and again  
21 here tonight, this project does not have broad  
22 community support and certainly does not have  
23 the support of the neighborhood adjoining the  
24 property.

25 The 2005 plan has recommendations for the

1       former Thriftway site. It recommends townhomes  
2       or flats. It recommends a compact building  
3       form with open spaces. I don't think this  
4       massive building packed with the parking fits  
5       that recommendation.

6               The plan also recommends a density of 14  
7       to 18 units per acre, which I already mentioned  
8       is greatly exceeded in this proposal.

9               Now, Hills Properties likes to point out  
10      that the 2005 plan is a concept document and  
11      not an implementation strategy. They are  
12      correct. It is intended to provide guidance  
13      when reviewing potential developments being  
14      proposed. The spirit of the plan is what is  
15      important. This proposal does not meet the  
16      spirit of the plan. What Hills Properties  
17      fails to point out is that right after the plan  
18      says those things, it also says that "specific  
19      renderings or site plans are for illustrative  
20      purposes only and not meant to dictate specific  
21      outcomes." During the DDRC meeting, Hills  
22      showed some of the renderings in the plan and  
23      tried to demonstrate how their proposal was  
24      better than what the renderings showed, while  
25      not accounting for the fact that the renderings



1           were not meant to be taken literally.

2           In addition to the 2005 plan, the D-1  
3           code and the Board of Zoning Appeals code both  
4           reference the Master Plan documents as well.  
5           The 1982 Master Plan document talks about this  
6           same site and says that development there  
7           should not create a visual intrusion into the  
8           single-family neighborhood to the east.  
9           There's even an illustration showing that the  
10          residents should not have a line of sight to  
11          see any commercial properties. This document  
12          may be outdated, but the principles it outlines  
13          for how commercial interests should not impact  
14          residents is not something that has an  
15          expiration date.

16          This plan also includes design criteria,  
17          and part of the purpose of that criteria is to  
18          help developers foster harmony between their  
19          buildings -- their particular sites and  
20          neighboring structures. I don't think this  
21          building would meet that criteria considering  
22          its footprint is around a hundred times the  
23          footprint of many of the neighboring  
24          structures.

25          The 2003 plan says that the quality of

1 the residential areas of the city should be  
2 maintained, protected, and improved as the  
3 primary policy of the city. All other land use  
4 policies and plans should recognize this  
5 residential policy as a primary interest of the  
6 community. This proposal does not fit the  
7 intent of either of those plans.

8 Section 1133.05(A) of the Blue Ash Code  
9 relates to the orders of the Board of Zoning  
10 Appeals. It reads, "In considering all  
11 appeals, the Board shall, before making any  
12 findings in a specific case, first determine  
13 that the proposed change will not constitute  
14 change in the zoning district map and will not  
15 impair an adequate supply of light and air to  
16 adjacent property, nor increase the congestion  
17 of public streets, nor increase the public  
18 danger of fire and safety, nor materially  
19 diminish or impair established property values  
20 within the surrounding area, nor in any other  
21 respect impair the public health, safety,  
22 comfort, morals, and welfare of the city, nor  
23 go against the intent of the Master Plan of the  
24 city."

25 I want to talk about some of these points

1 included in that line of code. "Will not  
2 impair an adequate supply of light and air to  
3 adjacent properties." For light, we have a  
4 shading study that was created by Renee Martin,  
5 Master of Architecture, and Rebecca Wood. Now,  
6 this shading study was created based on the  
7 first plan submitted by Hills Properties, but  
8 it still illustrates the point. They have  
9 submitted so many plans that we can't afford to  
10 continually have this plan revised  
11 unfortunately.

12 This study shows the shadow that would be  
13 created by this massive building during  
14 different times of the year and different times  
15 of day. You can see a dramatic difference from  
16 the shadow created by the current Thriftway  
17 building and the proposed structure. So what  
18 we can see here is on the top is a view showing  
19 the shadows with the current building and below  
20 is a view showing the shadows with the proposed  
21 structure. It shows a time lapse in one view  
22 here as well. During the winter we have as  
23 little as 9.2 hours of sunlight per day. This  
24 shading study shows that the neighboring  
25 properties would lose two hours of sunlight at

1       that time of year. That's over 20 percent of  
2       their natural light taken away.

3               Hills Properties has claimed that the  
4       existing trees between this building and the  
5       neighborhood form an impenetrable wall that  
6       doesn't allow any light or air to flow through  
7       currently, so their building would have no  
8       impact to our access to light or air. It feels  
9       a little ridiculous to have to address this,  
10      but a line of trees does not have the same  
11      impact as concrete and steel. This is  
12      especially true when the trees in question are  
13      in as poor a condition as the ones there now.  
14      Many of the conifer trees that are there have  
15      some branches at the top but then are bare from  
16      much of their trunks. There's some deciduous  
17      trees along there, but, again, those do not  
18      make a solid wall and they lose their leaves  
19      during the winter when the building shadow  
20      would have its greatest impact. The trees also  
21      don't last as long as concrete and steel, which  
22      means at some point the limited buffer that is  
23      there will be gone. Mr. Copfer of Hills  
24      Properties has already said that they will  
25      replace the trees with the trees that are the

1 minimum height required by code. This means  
2 that not only would there immediately be an  
3 unacceptable impairment of light and air if  
4 this building were allowed to be built, but  
5 over time the impact would be even worse.

6 1133.05(A) also includes "nor increase  
7 the congestion of public streets." During the  
8 DDRC hearing, Hills Properties referenced  
9 traffic numbers from a thriving grocery store  
10 to illustrate that their apartment building  
11 would create less traffic than that. Well, I  
12 don't think the businesses formerly at that  
13 site were doing as well as the average grocery  
14 store of that size or they would not have  
15 closed. I also found it interesting that they  
16 compared the traffic numbers to grocery stores,  
17 but when they showed their tax figures, they  
18 compared those to the vacant building. But  
19 this is just another example of misleading  
20 information provided by Hills Properties to the  
21 DDRC.

22 Also in the code it says "nor to  
23 materially diminish or impair established  
24 property values within the surrounding area."  
25 We've already heard from Charleston tonight

1       that they have some pretty serious concerns  
2       about their property value and its impact.  
3       There are a lot of studies out there that will  
4       say that apartment buildings don't generally  
5       diminish the property values in large enough  
6       communities. The problem is that none of those  
7       studies talk about the values of the properties  
8       right next to the building. Are we to expect  
9       that someone will pay more for a house that has  
10      a massive wall behind it with other families  
11      looking over their homes from their balconies  
12      than a home that does not have that? The  
13      majority of those studies were also done when  
14      home values were on the rise across the  
15      country. There's little causal relationship  
16      between the home values rising and it being due  
17      to the apartment building.

18           On top of all the other negative impacts,  
19      the financial gain for the developer of the  
20      property cannot be at the expense of the  
21      existing established properties in the area.

22           The line of code also includes "nor in  
23      any other respect impair the public health,  
24      safety, comfort, morals, and welfare of the  
25      city." My neighbors and I are part of the

1 city. Our neighborhood has people that have  
2 recently moved to Blue Ash and we have people  
3 that have lived there for decades. For comfort  
4 I think having balconies overlooking people's  
5 backyards, being able to see into their  
6 kitchens and bathrooms and bedrooms would be  
7 pretty uncomfortable loss of privacy. Having  
8 to look at this massive structure and not see  
9 the sunset is without a doubt a discomfort to  
10 visual.

11 Another discomfort would be the added  
12 noise, not just the noise of the residents of  
13 the apartments while they're hanging out on  
14 their balconies or walking to or from their  
15 apartments, but also any pets that they may  
16 have and the sounds of their cars starting up  
17 and driving into and out of the parking garage  
18 at all hours of the day, echoing through the  
19 concrete garage, and the added traffic from all  
20 the daily trips of those residents.

21 Finally, that code includes "nor go  
22 against the intent of the Master Plan of the  
23 city." I've already addressed a number of  
24 areas where this proposal goes against the  
25 intent of the plan documents, so I won't repeat

1           them here.

2                   I think it is clear that the proposal  
3           approved by the DDRC did not meet the zoning  
4           code, did not meet the intent of the plan  
5           documents, does not satisfy Section 1133 of the  
6           code, and misleading supporting information was  
7           provided by Hills Properties that may have  
8           influenced the community members' decisions.  
9           For those reasons we ask that you approve our  
10          appeal and not allow this proposal to proceed.  
11          Thank you.

12                   MR. SIRKIN: Thank you.

13                               (Applause.)

14                   MR. SIRKIN: Mr. Trauth, or any other  
15          representative of Hills, do you choose to  
16          cross-examine Mr. Lomison or do you want to  
17          handle that when you --

18                   MR. TRAUTH: I would like to  
19          cross-examine.

20                   MR. SIRKIN: Okay.

21                   MR. TRAUTH: Mr. Lomison, how long have  
22          you lived in the neighborhood?

23                   MR. LOMISON: I believe approximately two  
24          and a half years.

25                   MR. TRAUTH: And you're aware what the



1 D-1 code allows in terms of uses, are you not?

2 MR. LOMISON: Yes.

3 MR. TRAUTH: And it allows hotel use,  
4 correct?

5 MR. LOMISON: I don't believe I could  
6 cite all of the uses.

7 MR. TRAUTH: But it does allow  
8 commercial?

9 MR. LOMISON: Correct.

10 MR. TRAUTH: And you're not a zoning  
11 expert, are you?

12 MR. LOMISON: I'm quickly becoming one  
13 over the last six months.

14 (Applause.)

15 MR. TRAUTH: You have no training in land  
16 use and zoning?

17 MR. LOMISON: No. I have a criminal  
18 justice degree, so I'm familiar with studying  
19 code pretty well in-depth.

20 MR. TRAUTH: Are you familiar with the  
21 Blue Ash Zoning Code in terms of preliminary  
22 plans, final plans?

23 MR. LOMISON: Yes, I am.

24 MR. TRAUTH: And the plan that was  
25 originally before the Design Review Committee,

1 the Downtown Design Review Committee was a  
2 preliminary plan, was it not?

3 MR. LOMISON: I believe the title on the  
4 attachment said final plan.

5 MR. TRAUTH: When was the last time that  
6 you reviewed this plan, the Hills plan?

7 MR. LOMISON: When it was submitted to  
8 the DDRC.

9 MR. TRAUTH: So you haven't reviewed any  
10 upgrades with the staff or anything like that?

11 MR. LOMISON: No. We're appealing the  
12 proposal that was submitted and approved by the  
13 DDRC, so any supplement documentation would be  
14 separate.

15 MR. TRAUTH: And you're familiar that  
16 plans are updated or implemented from the  
17 beginning to the end, are you not, especially  
18 with details like landscaping and lighting?

19 MR. LOMISON: I didn't believe that  
20 generally occurred during an appeal process. I  
21 believe you had to follow what was approved and  
22 then went through final approval.

23 MR. TRAUTH: Thank you. No further  
24 questions.

25 MR. SIRKIN: Do the representatives,

1 Mr. Griffith or Mr. Foreman, have anything they  
2 would like to cross-examine Mr. Lomison?

3 MR. GRIFFITH: No, thank you.

4 MR. SIRKIN: Thank you, Mr. Lomison.

5 MR. PACHECO: I have a couple,  
6 Mr. Sirkin.

7 MR. SIRKIN: Oh, I'm sorry.

8 MR. PACHECO: Mr. Lomison, you received  
9 notice of the August 22nd meeting at least on  
10 August 16th, did you not?

11 MR. LOMISON: I believe I received a  
12 personal e-mail from Dan Johnson, but nothing  
13 in the mail that I'm aware of that was  
14 generally sent out.

15 MR. PACHECO: But you were aware at least  
16 as of August 16th because you received that  
17 e-mail, right?

18 MR. LOMISON: Correct.

19 MR. PACHECO: And you also received a  
20 copy of the staff report on Friday, didn't you?

21 MR. LOMISON: Yes, I did.

22 MR. PACHECO: And you had notice of the  
23 meeting and you chose to keep whatever other  
24 commitment that you had, correct?

25 MR. LOMISON: Correct.

1 MR. PACHECO: I have nothing further.

2 MR. SIRKIN: Anybody else? Okay.

3 Hills, you have an opportunity now to  
4 support your proposed development and rebut the  
5 appeals.

6 MR. COPFER: Gentlemen, thank you for  
7 having this meeting for us here tonight. My  
8 name is Michael Copfer, and I'm the Land  
9 Acquisition and Development Manager for Hills  
10 Communities. Also here for Hills Communities  
11 tonight is Vice President of Land Planning,  
12 Mr. Glenn Brehm. Also in attendance are some  
13 principals of the company, including Murray  
14 Guttman, Ian Guttman, Seth Guttman, and Brandon  
15 Guttman. And also here this evening is  
16 Mr. Greg Dale. He's with McBride, Dale,  
17 Clarion, and he's the zoning and planning  
18 expert that will be testifying later tonight.

19 Now, as we know, the subject property is  
20 located on the former Thriftway site, and it's  
21 clearly within the D-1 zoning. What does D-1  
22 mean? D-1 stands for downtown. Now, when I  
23 say downtown, what do you think of? Most  
24 people think of lots of people, you think of  
25 bigger than normal buildings, you think of a

1 thriving and vibrant place, a great place for  
2 lots of people to work, live, and play, and  
3 that's exactly what was intended when this  
4 concept plan was approved, and it was further  
5 implemented through the D-1 code, which stands  
6 for downtown.

7 Now, all the properties to the north,  
8 south, and west of this subject property are  
9 all within the D-1. However, there is property  
10 that is in the R-3. So what we'll see as we go  
11 forward here is that the code specifically  
12 addresses how do we deal with issues where  
13 we've got a D-1 property next to another use,  
14 particularly an R-3 type of use.

15 Now, if you remember, we were last here  
16 on June 11th and you saw Plan 1, and you didn't  
17 like Plan 1. So we went back to the drawing  
18 board. And we also had several meetings with  
19 the residents. We met with them on July 3rd,  
20 on August 1st, and on August 14th. We took the  
21 feedback from that meeting as well as the  
22 feedback from you as well as the two times we  
23 were in front of DDRC, and we put that into  
24 making this plan, Plan 3. So first I would  
25 like to tell how Plan 3 is similar to the

1 original plan that you saw.

2 Plan 3, this is a new updated rendering,  
3 you can see how the buildings are on the road,  
4 how we met that setback requirement. You also  
5 see how we're using the same quality materials  
6 on the exterior that we're using on the  
7 original plan that you saw. Here's the new  
8 updated western elevation that includes all of  
9 those high-quality materials that we talked  
10 about with Plan 1 originally.

11 Also what is not changed is the purpose  
12 for the property. We are proposing a high-end  
13 luxury rental community, and what that's going  
14 to include, it's going to include a resort  
15 style swimming pool, a residential clubhouse, a  
16 fitness center, a private parking garage, and  
17 elevators. A key point here is elevators  
18 because we're after a mix of demographic from  
19 empty nesters all the way down to young  
20 professionals. There aren't a lot of places  
21 right now that have three and four-story  
22 buildings that offer elevators. So this will  
23 be a unique item in the marketplace and will be  
24 highly desired.

25 Also the interiors of the units are still

1       going to be the same. We're going to have  
2       crown molding, we're going to have 9-foot  
3       ceilings, we're going to have 42-inch kitchen  
4       cabinets, we're going to have granite  
5       countertops, granite vanities, and stainless  
6       steel appliances. These are some pictures of  
7       actually how we expect interiors to look.  
8       These are from the most recent project that  
9       we've done.

10               Now, there have been questions, why do  
11       you guys want to build apartments here in this  
12       submarket? Well, it just so happens that if we  
13       go to an independent third-party source, we  
14       went to CB Richard Ellis, and they are the  
15       premier multi-family advisory team in this part  
16       of the Midwest. They sell a lot of apartments,  
17       give advice, do all kinds of good things. And  
18       they track the statistics for apartments in the  
19       Greater Cincinnati area. We see here that the  
20       location of 4900 is within this northeast  
21       quadrant of the apartment market. It also just  
22       so happens that we recently completed  
23       construction of a 360-unit, new, luxury,  
24       high-end apartment community called Palmera  
25       that's located at the northern end of this

1       submarket. And what did we experience there?  
2       Well, if you notice, you see the same  
3       luxury-style swimming pool, the same clubhouse,  
4       and high-quality buildings. We are going to do  
5       that same thing here.

6               Now, people say what is the occupancy in  
7       the marketplace? I can tell you for a fact  
8       that as we stand here today, Palmera is just  
9       now, the final buildings are being punched out.  
10      It's a hundred percent leased. Not only is it  
11      a hundred percent leased, it has a waiting list  
12      of 150 people waiting to move in when other  
13      people move out. So these high-end amenities  
14      that we've got here, these high-end finishes,  
15      including the granite and the high ceilings and  
16      the crown molding are highly desired in the  
17      current marketplace.

18             Now, let's look at the overall -- CB  
19      Richard Ellis, what did they say about the  
20      occupancy in the marketplace. Overall this  
21      tracks the occupancy rate over the last several  
22      years, and we've got recent updated numbers.  
23      So as we sit here at the end of July,  
24      94.7 percent was the occupancy of the entire  
25      marketplace. It just so happens that the most



1       occupied area was the northeast quadrant where  
2       Palmera is and where 4900 is, and that's at  
3       96.6 percent. So what that tells me is this  
4       northeast quadrant is a very high desirable  
5       area that's doing very well.

6               Another way to look at the quality and  
7       strength of an area is what is the rent that  
8       it's achieving. So we look at rent per square  
9       foot. The overall market is 81 cents per  
10      square foot. Again we see the highest rental  
11      rate per market is in this northeast quadrant  
12      that we're talking about at 91 cents per foot.  
13      This shows us that not only is it highly  
14      occupied, it's also bringing in higher rent.  
15      Therefore, there's a high demand in this  
16      marketplace.

17             Normally you see about average occupancy  
18      rate of 95 percent because you've always got  
19      people moving and coming, but when we see  
20      occupancy rates that are higher than that and  
21      in 2011 the highest rental growth occurred in  
22      this northeast market compared to the other  
23      markets. So not only do we have a high-growing  
24      area, which tells us that there's more demand  
25      than the market can supply because not only is

1 the occupancy higher than what is traditionally  
2 at 95 percent, but the rental rate is also  
3 going up.

4 As we showed at Palmera, if you offer the  
5 true state-of-the-art, high technology,  
6 high-end finishes, you will be well accepted,  
7 as we have 150 people on our waiting list  
8 there.

9 Also, Hills Communities, we take great  
10 pride in our ownership and in our management of  
11 communities. All these communities in  
12 Cincinnati that we manage we also own as well.  
13 Therefore, we own them as a long-term strategy.  
14 As such, we are active members, active and in  
15 good standing with the Greater Cincinnati/  
16 Northern Kentucky Apartment Association, the  
17 National Apartment Association, and the  
18 National Multi-Family Housing Council.

19 What does that mean? What it means is  
20 these organizations have codes of ethics you  
21 have to go by to belong to them, and we  
22 actively seek and meet those code of ethics.  
23 And it's our goal to be the top apartment  
24 management company in the marketplace. Well,  
25 those are high expectations, but what can you

1 show us about that, Michael. Well, right here  
2 in 2005, the Apartment Association of Greater  
3 Cincinnati named us the best, the best property  
4 management company in all of Greater Cincinnati  
5 and Northern Kentucky. Also there's a national  
6 organization called REL, and what they do is  
7 they track customer satisfaction of excellence,  
8 and they track all across the country, and in  
9 2006 they said for property management  
10 companies of Hills' size, Hills is the number  
11 one, the best customer service in the whole  
12 country for property management.

13 So that's one reason we want to bring  
14 that same property management quality that we  
15 bring to projects to 4900, and it is our  
16 opinion that there's nothing else, not even  
17 next to us or even close to us, that is as high  
18 a standard. There are other apartment  
19 communities, but not at the high level of  
20 management that we offer and the high level of  
21 amenities and high levels of finish that we  
22 offer. I've been through Charleston, I've  
23 looked inside their units, even their upgraded  
24 units. They're nice, but they're not the top  
25 echelon that we're going after. Therefore, I

1        don't see our people -- people that would want  
2        to rent at 4900 that would want to choose  
3        Charleston. Now, when we get on a waiting list  
4        similar to what we are at Palmera, people may  
5        come here, they may see 4900 and really fall in  
6        love with Blue Ash and then decide to rent  
7        there, so they may gain some of our excess, but  
8        I don't see them as a natural competitor  
9        one-on-one because they're not offering the  
10       same product that we are, particularly when it  
11       comes to elevators. There's a lot of stairs in  
12       their development.

13                So we've talked about what's been the  
14       same. So what's different from the last plan  
15       that you saw? One thing that is different is  
16       in Plan 1 the buildings were set back and there  
17       was parking in the front. With this Plan 3  
18       we've moved the buildings up and then we've put  
19       in and actually expanded the hardscape of the  
20       walking sidewalk area and eliminated the  
21       parking. So we complied with the front setback  
22       requirement now.

23                Now, also what we've changed, there have  
24       been changes on the east property line. The  
25       original Plan 1 had the buildings going all the

1 way along there, and what we've done is we've  
2 shortened this up, as you can see from the new  
3 Plan 3 below. We've also moved the setback  
4 back. What that's allowed us to do is we're  
5 able to maintain the existing brick wall that's  
6 there and also maintain the existing trees that  
7 are there.

8 Now, as a result of one of our meetings,  
9 our last meeting with the residents, they  
10 suggested can we turn the buildings. So we  
11 looked at that, and this plan implements that  
12 where we've taken these buildings and turned  
13 them sideways. So there's fewer units along  
14 this bottom part of the property line. Also  
15 we've taken the end units and we've reduced  
16 those to three stories, and then the reminder  
17 of the building will be four stories. The  
18 parking garage also remains four stories. So  
19 as a result of feedback from you as well we've  
20 made these changes. The rear of the garage  
21 used to have open window areas. We are now  
22 putting louvers on them to abate any noise or  
23 any light issues that come from the garages.  
24 This also shows how we've got three-story  
25 buildings here compared to the four stories

1           that we had before. These are the buildings  
2           that are higher than the ones that are further  
3           back in the background. They're not the ones  
4           that are right on the property line.

5           So in summary of these changes, the front  
6           setback moved from building A and B up to Hunt  
7           Road, we removed the parking in the front yard,  
8           the existing brick wall and mature trees will  
9           remain on the east property line, we've turned  
10          buildings A and B so the courtyard is open to  
11          the east, we've lowered the building facade on  
12          the east line to three stories, we reduced the  
13          number of balconies on the east property line  
14          from 48 to 12, and we've added louvers to the  
15          garage that I talked about.

16          Now, we weren't required to turn the  
17          buildings and do that, but we're just trying to  
18          be good neighbors and good citizens, and that's  
19          as far as we can go. We went as far as we can  
20          go. We would rather have Plan 1 because Plan 1  
21          had more rental homes along here facing the  
22          tree line. Now if you notice, we have more of  
23          our building faces the parking here and faces  
24          the parking here. So we're giving something up  
25          by doing that, but we wanted to do a good will

1 gesture, and so that is what we did.

2 Now, when we get to this part of the  
3 code, a clear thing to remember is in  
4 1159.02(A) it says "unless otherwise permitted  
5 herein," and then there's a comma, so what that  
6 means is unless otherwise permitted herein, so  
7 if it's not permitted herein -- for example,  
8 your two cases earlier tonight, those were  
9 people that wanted variances. We are not  
10 asking for any variances. We believe that our  
11 plan meets the code a hundred percent, and if  
12 it doesn't, show us where it doesn't and we'll  
13 make the changes because that's our goal, is to  
14 meet it a hundred percent. Therefore, you  
15 don't continue forward in the rest of the  
16 reading because when you've done everything  
17 that's permitted, you don't go to all  
18 development and bringing in the Downtown Design  
19 Review Committee. They get brought in and the  
20 plans get brought in if it's outside of the  
21 code, but if the code specifically permits  
22 something, the code rules in that case.

23 On the August 22nd DDRC meeting, these  
24 are the minutes from page 7. To this point, in  
25 an answer to a request by Ray Schafer for

1 clarification on a point to ensure  
2 compatibility with surrounding neighborhoods,  
3 the Deputy Solicitor said that, in talking  
4 about what the purpose is, the 1159.02 states,  
5 unless otherwise permitted herein, which means  
6 if it fits the code, by meeting the code it is  
7 a recognition that it does ensure neighborhood  
8 compatibility. So in the question of  
9 neighborhood compatibility, it's already in the  
10 code and unless otherwise permitted herein. So  
11 he was agreeing to our point unless otherwise  
12 permitted herein.

13 Now, the history of how all this happens  
14 is there was a plan that was put together. The  
15 plan first goes to the Planning Commission and  
16 the Planning Commission adopts it. Then they  
17 send it to City Council, and the City Council  
18 then adopts the plan if they choose to. Then  
19 as a result of having this new plan, the  
20 Planning Commission looks at the zoning code  
21 and makes the zoning code reference and  
22 implement actually the new plan. Then if the  
23 Planning Commission adopts the plan, then it  
24 goes to City Council and City Council will --  
25 if the Planning Commission adopts the new



1 zoning amendments, then those amendments go to  
2 City Council and City Council adopts those.  
3 Then those become the new code and the new  
4 implementation of the plan.

5 These are some notes that are key and  
6 show how this process actually happened with  
7 the plan that we're talking about here today.  
8 Back on March 2nd, 2006, the Blue Ash Planning  
9 Commission approved an updated Master Plan.  
10 Mr. Thompson, Assistant City Manager, explained  
11 that after the plan is adopted, the city will  
12 review and propose changes to the D-1 district  
13 regulations to implement the plan. So the plan  
14 is implemented per the City Manager. When  
15 they're actively or approving the plan, hey,  
16 this is not implementation until we update the  
17 District 1 regulation. Then that's how we  
18 implement this plan. Those proposals will go  
19 through the zoning amendment process, which is  
20 what happens. Mr. Thompson emphasized that  
21 this is a concept and that the legislation will  
22 clarify the plan does not adopt specific  
23 building concepts or zoning regulations. Ray  
24 Schafer, Chairman of the Planning Commission,  
25 mentioned the 1981 plan also provides only

1 guidance. So here we see that these plans are  
2 great, they're guidance, but they're not the  
3 legislation, they're not the implementation  
4 strategy per the people that voted and passed  
5 it on to Council.

6 The April 27, 2006 City Council meeting,  
7 so what we had is we had that the Planning  
8 Commission passed the plan and then it went to  
9 the City Council. The Assistant City Manager,  
10 David Waltz, commented that the purpose of this  
11 updated plan is to ensure that downtown remains  
12 economically viable in the future. He stressed  
13 that the plan recommended is conceptual in  
14 nature and not meant to be a blueprint of  
15 specific change. He stressed that rather than  
16 focusing on the pictures included in the plan,  
17 it is important to recognize the real component  
18 that future marketing commissions may encourage  
19 mixed use development and increased density for  
20 downtown. So what we see here is City Council  
21 is having the first reading on this development  
22 plan, they're talking about increasing the  
23 density and they're talking about economic  
24 viability.

25 What do we know about economic viability?

1 Last Friday I walked this downtown area of Blue  
2 Ash, and what I saw is the subject property is  
3 vacant and available, Towne Square Station has  
4 space available, the Cactus Pear is now closed  
5 down and that space is available, 9463 Kenwood  
6 Road across from UDF where the Subway is has  
7 two available spaces in that, The Crossings of  
8 Blue Ash has two available spaces, Blue Ash  
9 Town Square on the other side of UDF has vacant  
10 space, the former Montags building is vacant  
11 and available, and next to Walgreens, 4932  
12 Cooper Road has vacant space. Here is the  
13 subject property here and you can see all this  
14 vacant space all right here in the heart of the  
15 D-1. That is why when they approved this plan,  
16 they wanted more people, and that's what we're  
17 trying to do is bring more people to support  
18 retail to bring these spaces back alive.

19 Now that we had the plan approved, then  
20 it has to be adopted into the new D-1 code.  
21 This is where City Council, where they actually  
22 adopted the plan. Now before Council adopted  
23 the plan, they only did it under one  
24 circumstance, and they required it to be read  
25 into the record, and the circumstance was they

1 added an addendum to the very front of the  
2 plan, and the addendum said, "Council addendum  
3 to the City of Blue Ash Town Concept  
4 Redevelopment Plan, first and foremost, the  
5 attached plan is intended to be a conceptual  
6 document. It provides a framework for  
7 discussion for a potential future for downtown  
8 Blue Ash. The attached plan is not an  
9 implementation strategy or a document." The  
10 City Manager stressed the conceptual nature of  
11 the plan and the desire for more residential  
12 density and more pedestrian friendly features,  
13 including additional streetscaping features.  
14 So not only when the Planning Commission passed  
15 it, but also when the City Council was passing  
16 it, we're seeing an emphasis for more  
17 residential density in the plan and the fact  
18 that the plan is only a conceptual document.

19 To further the process, on August 3rd,  
20 the Planning Commission then approved the D-1  
21 zoning amendments that implemented the plan,  
22 and then on November 6 of -- November 9th of  
23 2006, the Blue Ash City Council had the first  
24 reading of the D-1 amendments, and then the  
25 next month on December 14th the City Council

1           passed and adopted D-1 code amendments.

2           Now, regarding the code, what do you do  
3           with a property if you've got a D-1 that's  
4           right next to another use, such as an R-3.  
5           Well, it just so happens that 1159.05(C)  
6           directly deals with this. Buildings shall be  
7           set back a minimum of 10 feet from all other  
8           lot lines when abutting uses in a different  
9           zoning district. This isn't a requirement in  
10          the D-1. It's a requirement stated right here  
11          that, hey, if you're against a different  
12          district, you need to have a minimum of  
13          10 feet. Our plan more than exceeds that by  
14          four times. Building A is 46.7, building B is  
15          54.9 feet, and the garage is 46.7 feet. This  
16          diagram here shows where the 10-foot setback is  
17          required and how building A, building B, the  
18          garage all exceed that requirement by more than  
19          four times. Again the code tells us what we  
20          need to do if we're next to another use, and  
21          we're more than exceeding that here.

22          Also, how do you screen -- what  
23          landscaping is required to screen if your  
24          property abuts a different property? So if you  
25          have a D-1 and it's abutting to an R-3, what is

1 required? A minimum yard of 10 feet, which  
2 we've got, and then these are the plant  
3 material lists that are required. You have  
4 several options. Some include double hedgerow,  
5 some include having a brick wall. We plan, and  
6 our plan meets this a hundred percent with the  
7 plant material that's required and with meeting  
8 these different spaces. Some of the areas we  
9 used the top and some of the areas we used  
10 this. The wall is required to be 6 feet.  
11 There are some places where the wall is not  
12 6 feet, and we've said that we will raise the  
13 wall to be 6 feet. Therefore, we meet the  
14 landscaping code.

15 Typically we go through, and these are  
16 not construction plans, these are our initial,  
17 our development plans. When you get to down in  
18 the construction details, that's when somebody  
19 at the city goes through and they say, all  
20 right, this plant needs to be moved here, this  
21 needs to be here, you need one more bush here,  
22 and that's when those details are done.

23 However, we understand the magnification of  
24 this, and so what we've done is we've submitted  
25 to Dan Johnson a revised landscape plan that

1       meets this. This is above and beyond what's  
2       typically required of the state.

3               We've also submitted a signing plan and  
4       we also submitted a revised lighting plan.  
5       Were we missing a light here and there? Is  
6       there one or two feet over? Those are little  
7       details. We're happy to change those little  
8       details, and we've done so in the plans that  
9       we've given Dan.

10              Also there are existing trees, and the  
11       important thing is let's see what these trees  
12       are. We can't ignore these because this site  
13       was already developed under the other code. So  
14       we see what was required under that one, and  
15       we've got the benefit of using these trees.

16              This is in the front of the current  
17       Thriftway structure. You see the brick wall as  
18       well as the conifer trees that are there.  
19       Here's the back. There's someone standing  
20       there giving an idea of scale. So the building  
21       is right there and these are the trees that are  
22       on the east property line in the back of the  
23       building.

24              This is taken in the winter of 2011, and  
25       you can see how there's a nice stand of green

1       conifer trees even in the winter. Notice the  
2       deciduous trees don't have the leaves on them.

3               This is the summer, you can see the  
4       amount of deciduous trees that come into play.

5               This is another angle, and we're looking  
6       at a bird's-eye view. You can see the stand of  
7       trees there. And this is the same bird's-eye  
8       view swung around looking towards the south.

9               Now, am I saying that this stand of trees  
10       is perfect? No. But what I am saying is that  
11       it is there and it is substantial and it  
12       shouldn't be ignored as we're putting this into  
13       place. If a tree dies, we will replace that  
14       tree, and not only will we do that per the  
15       landscaping plans submitted to the city, we  
16       will infill any holes where there's gaps in the  
17       trees as required by the zoning code.

18               This is an example. We went onto the  
19       property, this is in front of the property  
20       where we went up in a lift about 40 feet to get  
21       an idea what the four-story balconies would  
22       look like. And this is looking back towards  
23       the building, same type of area. So, again,  
24       we're not saying the trees are perfect, but as  
25       you can see from these pictures, there are a



1 lot of trees there and they are substantial.

2 So as a result of that, we asked our  
3 architects to do a shading study, taking into  
4 account different times of the year. So in  
5 March and December we used a winter tree stand  
6 of just conifers, and then in June and  
7 September we used, we added deciduous trees as  
8 well. And what we see here is that the  
9 existing -- the tree canopy shadow is a purple  
10 color and this lighter blue color is the effect  
11 that 4900 will have. And this is the new  
12 current 4900 footplate Plan 3 that we're  
13 looking at tonight. The only area where we see  
14 any of this purple color going over into any of  
15 these yards or houses is right here out on the  
16 outer edge, and this is almost at dusk when the  
17 sun is very low on September 20th, and the  
18 reality of it is we didn't include any of the  
19 trees in these parts of the yard, so those  
20 trees would probably cover that up and negate  
21 that effect. But it doesn't have any effect on  
22 those backyards directly behind it.

23 In past meetings we've seen other slides  
24 from Mr. Lomison. One is he did a before and  
25 an after. In his before he shows the trees and

1       the after he's shot not showing the trees. You  
2       can see the trees in here and you don't see a  
3       lot through there, but he's not showing the  
4       trees, including the shading studies. They  
5       ignore the trees. You've seen all these  
6       pictures. We can't say that there are no trees  
7       there.

8               So we've talked about setback. What  
9       about height? 1159.05(A)(1) states within the  
10      code the maximum height of a principal building  
11      shall be 50 feet. Principal buildings located  
12      at the corner of -- So what we deal with is  
13      50 feet in height. So how high are the  
14      buildings at 4900? Our three-story buildings  
15      on the east property line are 38.4 feet, the  
16      four-story building is 45.2, and the garage is  
17      42.5. So looking at that from a plan  
18      perspective, you can see our three-story areas  
19      are 38.4 feet and the four-story areas are  
20      45.2, and we stepped it back.

21              And then the question becomes as further  
22      answered as far as what about light and what  
23      about air. The code already takes that into  
24      account. What it says is if you're next to a  
25      different use, you need to have, per the code,

1 a 10-foot setback from the property line and  
2 you can only go up to 50 feet. What we've done  
3 is we've built a setback at 46.7 feet, more  
4 than four times what's required, and our  
5 three-story unit residential buildings only go  
6 to 38.4 feet and our four-story residential  
7 buildings go to 45.2 feet. So when you get to  
8 our four-story, our highest building, our  
9 four-story building, the 35 plus 46.7, we're  
10 over 80 feet from the property line before we  
11 hit the top part of our tallest buildings. So  
12 the code allows for 50 feet. We more than meet  
13 that. The code allows a setback of 10, we more  
14 than meet that. Why does the code have these  
15 setbacks and these heights? Because it's  
16 concerned about air and light, and it's taken  
17 into account within the code.

18 Also 1159.05(B)(1) has been brought up.  
19 This says all buildings with frontage on  
20 Kenwood Road, Cooper Road, or Hunt Road between  
21 Kenwood and Cooper Road shall be built up to  
22 the back of the public sidewalk. Again we  
23 showed you how we pulled these buildings up to  
24 the public sidewalk and made all this  
25 pedestrian friendly walking space in and out of

1       our buildings.

2               Next we go to 1159.05(D)(4). There is no  
3       maximum residential density in this district  
4       provided that the residential uses meet the  
5       setback heights and other design requirements.  
6       This should be no shock after we saw what the  
7       Planning Commission and City Council is  
8       discussing as they're implementing this plan.  
9       They're looking to increase the residential  
10      density so that they can increase the viability  
11      of downtown by having more people in downtown.  
12      Therefore, they looked at the plan and in the  
13      code they said there's no maximum residential  
14      density.

15             I've shown you how we've met the height  
16      and I've shown you how we met the setback, and  
17      we believe we've also met all other design  
18      requirements. Therefore, this property has no  
19      maximum residential density per the D-1 code.

20             Now, given that, some people have asked  
21      in the past, well, Michael, is this plan  
22      setting a new precedent for downtown Blue Ash?  
23      We're a little concerned with that. So what we  
24      looked at is we looked -- one way to look at  
25      density and look at mass is the floor area

1 ratio, which Mr. Lomison brought up. The floor  
2 area ratio for 4900 is 1.3. Does that include  
3 parking garages? No, because typically parking  
4 garages are excluded from those calculations.  
5 Town Square Lofts has a 1.9 floor area ratio.  
6 This is the most recent -- and calculating  
7 that, that doesn't include the parking garage.  
8 It just includes the residential space. That's  
9 what's included in all of these. When  
10 Charleston was calculated here, we didn't use  
11 their parking garage either because you're  
12 looking for occupiable finished type of space.

13 So 4900 has a floor area ratio of 1.3,  
14 less than the most recently approved and built  
15 multi-family structure, which is Town Square  
16 Lofts at 1.9. It just so happens that our  
17 floor area ratio is very similar to Charleston,  
18 which is 1.3. It shouldn't be a surprise  
19 because as we heard earlier tonight, the  
20 densities of Charleston and of 4900 are very  
21 close to each another, I think both 37 point  
22 something, and so we would expect a similar  
23 floor area ratio.

24 Now, parking garage issues have come up.  
25 1159.07(J)(4), "Vehicle entries to off-street

1 parking structures shall be integrated into the  
2 placement and design of adjacent buildings or  
3 oriented from the primary street frontage." We  
4 went for the integrated. Here's the current  
5 elevation of the garage entry. Can you tell me  
6 where the garage starts and stops? This down  
7 here in the yellow represents up here, and the  
8 actual parking garage goes from here to here.  
9 I think we've done a pretty good job of  
10 integrating the parking garage into the  
11 building as the code requires.

12 Also the question of compatibility came  
13 up. We already heard one opinion on that, but  
14 what we have here is Charleston is D-1 next to  
15 the R-3, and we are D-1 next to the R-3.  
16 Notice the similarity in uses just from this  
17 aerial photograph here. And this kind of  
18 makes, as we'll see from the plan here in a few  
19 minutes, a residential multi-family area as the  
20 concept plan had envisioned and as the D-1 code  
21 allows.

22 So, again, unless otherwise permitted  
23 herein, we have to really focus on what the  
24 code is. But we're not going outside the D-1  
25 code. We believe we meet the D-1 code a

1           hundred percent.

2                       With that said, we have looked at these  
3           plans, including the Blue Ash Town Center plan,  
4           which was done by Menelaos. And what we have  
5           to remember here is that first and foremost  
6           again this says it's a conceptual document only  
7           and it's not an implementation strategy. What  
8           we've heard here tonight is other people are  
9           trying to make this an implementation strategy  
10          when clearly the code and before the code was  
11          passed it was said that that would be the  
12          implementation strategy, not this planning  
13          document.

14                      This is the actual land use from the  
15          planning code. Here is the Thriftway building  
16          site right here. Notice that it says R. R is  
17          residential. There is also commercial area and  
18          mixed use. However, the plan itself called for  
19          this site to be residential, not to be a mixed  
20          use site.

21                      Also the plan in Section II-7 says  
22          housing and high density is key to the success  
23          and needs to be given a priority. Section II-7  
24          also states that projects will require public  
25          subsidy. I'm happy to say that we don't

1       require public subsidy. Not only do we not  
2       require public subsidy, we're also going to  
3       increase the real estate taxes that this  
4       property is currently generating. There's also  
5       going to be an increase in income taxes both  
6       from the short-term construction of this  
7       project as well as from the people that are  
8       going to move into this project. It's our  
9       experience that the people who will be moving  
10      in are people who currently don't live in Blue  
11      Ash. So when you make 218 homes here, there's  
12      likely to be a nice percentage of them that  
13      don't live in Blue Ash currently and don't pay  
14      earnings tax that will in the future.

15               We're also going to increase population  
16      to support the local retail, as the plan  
17      envisioned, and we are going to be a catalyst  
18      for other downtown development. When people  
19      see the success of our community, they will  
20      want to build other things in this downtown  
21      area.

22               Now, as far as the taxes go, what we did  
23      is took the current taxes that the property is  
24      generating. The property as valued as is by  
25      the auditor of Hamilton County, the taxes paid



1 as a result of that are \$84,762. The result of  
2 us developing this, on a conservative estimate,  
3 the projected taxes will be \$488,410. That's  
4 an increase of over \$400,000 per year. So if  
5 we look at this on ten years, that's  
6 \$4 million. So for every year that this  
7 property sits there vacant, that's \$400,000 in  
8 additional tax revenue that could be going to  
9 Blue Ash, the county, the schools, the  
10 different areas. I show what they are right  
11 here.

12 Now, the Thriftway site is also mentioned  
13 in the code, and it says right here the  
14 development plan envisions residential  
15 development. It also recommends high-quality  
16 infill housing. That's what we're talking  
17 about. That's only a recommendation. It  
18 doesn't say it has to be this, it's a  
19 guideline, but we are doing high-quality infill  
20 housing. It also says that the design and  
21 layout should strive for a compact building  
22 form combining open space amenities and project  
23 identity. Clearly from our side you can see  
24 the high quality, the impact we're going to  
25 have on improving the streetscape in this area.

1       Also the open space amenity, including our  
2       lifestyle pool area, will be greatly utilized.

3             It also says several types of housing can  
4       be considered, such as townhomes and flats, and  
5       that's what we're doing, we're building flats,  
6       building heights at three to four floors.

7       Again, that same three to four floors. That's  
8       what we're doing, three to four floors. It  
9       says parking will be provided in garages  
10      integrated with the units or in a single-garage  
11      structure. You can see we've got a  
12      single-garage structure at the center of the  
13      plan. We've also done our best to integrate  
14      that to the building as well.

15            Now, the plan also has a route plan in  
16      it, and this is what the plan shows. Notice  
17      this is the subject site we're talking about  
18      right here. If we zoom in on it, we'll see the  
19      plan calls for a street to come through here.  
20      I would hate to go in and take all those trees  
21      out that are existing there and have a street  
22      running through the backyards of these  
23      neighbors. Also we see the buildings, notice  
24      that the closest house is here, but their  
25      closest building is right across from it. So

1 clearly when they were putting the plan  
2 together, they didn't have a problem putting  
3 buildings right up by the property line,  
4 especially close to the other houses.

5 But what do we know about these  
6 structures? We also know that this plan, they  
7 didn't take into account the existing storm  
8 vault. There's a big storm vault that sits  
9 under this and they never would have put a  
10 building across it if they knew that there was  
11 a storm vault there. That's why we have our  
12 parking over that and our residential units are  
13 on both sides of it. So if we have to make a  
14 repair to the garage, we don't have to get in  
15 anybody's unit to do so. We'd lose a couple of  
16 parking spots briefly, but that would be it.  
17 That's much more easy to deal with than having  
18 people move out of their homes.

19 Here again you see the street coming down  
20 through here, and we see these building  
21 structures, including this one right up close  
22 to that property line. What do we know about  
23 these structures? We have one, two, three,  
24 four stories, one, two, three, four stories.  
25 So these are four-story structures that we are

1        talking about next to this property line, as it  
2        said three to four stories.

3                Again I want to stress that first and  
4        foremost that the plan we're talking about is a  
5        conceptual document, but I thought it was  
6        important to go through and show it to you  
7        because there's a lot of different things in it  
8        and it had had a lot of different ideas and it  
9        was just that, ideas and guidelines, and then  
10       it was put into place once the plan was done.

11               At this point I would like to ask  
12       Mr. Greg Dale to make a few comments.

13               MR. DALE: Thank you, Mr. Chairman,  
14       members of the Board. My name is Greg Dale.  
15       I'm a principal with the planning, zoning and  
16       consulting firm known as McBride, Dale,  
17       Clarion.

18               In the interest of time, I know you've  
19       heard a lot, what I would like to do is try to  
20       stay pretty focused on a couple of things  
21       specifically from a planning and zoning  
22       perspective. That's my training, I'm trained  
23       as a planner. I have my master's in community  
24       planning. I've practiced planning for about 30  
25       years. I'm certified by the American Institute

1 of Certified Planners. So I would really like  
2 to focus on that perspective.

3 Let me just kind of emphasize a couple of  
4 things that you've heard, but again kind of for  
5 the record from the planner's perspective.  
6 What I would like to address are a couple of  
7 things in particular. I would like to go back  
8 and talk about this purpose clause of the D-1  
9 that you've heard about. I would like to talk  
10 about this issue of the Town Center plan  
11 conformity, and then I would like to talk about  
12 specifically the issue of compliance with the  
13 D-1 because, frankly, the sequencing, and  
14 Mr. Copfer hit on some of this, the sequencing  
15 of how this occurred and what City Council did  
16 is very important.

17 I think the Board is aware, and you've  
18 heard a lot about this idea, that the plan, in  
19 this case the Town Center plan, is a statement  
20 of policy, it's a statement of intent as an  
21 aspiration, and that zoning regulations are the  
22 laws that help implement those policies. And  
23 I'm certainly not going to downplay the  
24 importance of plans. I prepare plans. I've  
25 written plans, I've written codes, but at this

1 point I think it's important to understand how  
2 that happened here. Let me get to that issue,  
3 but that distinction between policy and law I  
4 think is very important.

5 I would like to start, if I could, with  
6 this purpose clause, 1159.01. You've heard a  
7 lot about that already, and I just want to  
8 emphasize that when you look at the first  
9 sentence, as the appellant acknowledged  
10 earlier, the purpose of the D-1 downtown  
11 commercial district is to, and then it sets out  
12 those things, such as furthering compliance  
13 with the Town Center plan, ensuring  
14 neighborhood compatibility with surrounding  
15 areas. Again, let's be clear what that says,  
16 the purpose of the district. So what City  
17 Council is saying when they adopted this  
18 district is that purpose clause answers the  
19 question why are we adopting this district, and  
20 what they're saying is this district is being  
21 adopted to further the plan and to ensure  
22 neighborhood compatibility. And by definition  
23 then, if one complies with that district, one  
24 is promoting the plan and promoting  
25 neighborhood compatibility. And that's

1 standard planning and zoning operating  
2 procedure, and that is the purpose.

3 Essentially makes the link between the plan and  
4 the regulation, it frames it up, it answers the  
5 question why are we adopting this.

6 If you think about that, if you allow a  
7 purpose clause to essentially trump the  
8 regulations, the obvious question would then be  
9 why have regulations. Why go to the trouble of  
10 spelling out ten pages worth of quantifiable,  
11 objective, nondiscretionary regulations if one  
12 can only then turn back to the purpose and say,  
13 well, even if you meet those regulations, we  
14 can still deny this. Then why have the  
15 regulations. We would just have a purpose  
16 clause. And again, it's been pointed out, I  
17 think it's important to understand that is  
18 consistent with the opinion that was given by  
19 the legal counsel at the DDRC meeting.

20 The second issue, I'm going to come back  
21 to this plan conformity issue and again the  
22 idea that it's general planning practice that  
23 one adopts a plan as policy and that one adopts  
24 regulations in sequence with that. Now, you  
25 may understand that's not always the way

1 communities do it. Sometimes we find  
2 communities in a situation where you have a  
3 plan and you have old zoning regulations and  
4 you can have conflicts and questions. But here  
5 what happened is the city did this exactly the  
6 way they're supposed to, they adopted the plan  
7 as the aspiration and they adopted the zoning  
8 regulations as a legal tool to implement that.

9 So you heard the legislative history,  
10 what Mr. Copfer talked about in terms of the  
11 minutes of the various meetings, which are  
12 called the legislative history. That shows  
13 very clearly that the intent of City Council in  
14 adopting the D-1 district was specifically to  
15 implement the Town Center plan, and if there's  
16 any doubt about that, that language, which I  
17 think is about as clear as it can be,  
18 1159.02(A), the unless otherwise permitted  
19 herein language, which everyone is focusing on,  
20 I think very clearly says that the plan comes  
21 into play if a proposal is asking for a waiver  
22 or an exception or a variance, and that's fine.  
23 That's the way it should be. What it's saying  
24 is if an applicant meets the code, the plan  
25 doesn't come into play. The plan comes into



1       play when a variance or exception or some other  
2       exception is being requested. And I think what  
3       Mr. Copfer said is very important to keep in  
4       mind here, there is no variance being requested  
5       here. This is not before you as a variance. I  
6       know, probably like most Board of Zoning  
7       Appeals, most of the things you probably hear  
8       are variances or exceptions or waivers,  
9       whatever the appropriate language is here.  
10      Here what's before you is a very narrow  
11      question of did the DDRC properly find that  
12      this complies with the zoning regulations. So  
13      in this particular case this is exactly the way  
14      it's supposed to be done. And then, as has  
15      been pointed out, if there's any doubt about  
16      that, if you have the Town Center plan in front  
17      of you, this language, the addendum of City  
18      Council couldn't be more clear, not only does  
19      it say not an implementation tool, it  
20      capitalizes it and it underlines that topic.  
21      So what City Council is saying I think very  
22      clearly here is that this plan is not the  
23      implementation tool. This plan is  
24      aspirational. The implementation tool are the  
25      zoning regulations.

1           So in my interpretation from the plan  
2 perspective, if this plan meets the zoning  
3 requirements of the D-1, with all due respect,  
4 it's not appropriate to go back and revisit the  
5 purpose and revisit the plan because the  
6 purpose of the regulations is to do exactly  
7 what they say.

8           So then the question is, is it applicable  
9 with the underlying zoning. And I'm not going  
10 to go through all of the detail that Mr. Copfer  
11 just went through, I think it's all very  
12 clearly stated. It is clearly a permitted use,  
13 multi-family is clearly a permitted use. It is  
14 smaller than the height that is permitted. The  
15 heights range from about 38 to 45 feet versus  
16 50 feet that are permitted. The setback is  
17 exceeded, frankly dramatically, four and five  
18 times the minimum setback of 10 feet. And I  
19 think it's important to note, as Mr. Copfer  
20 pointed out, the 10 feet is specifically  
21 directed to when the D-1 abuts the non-D-1  
22 district. Exactly this circumstance. So the  
23 setback is exceeded.

24           I do want to take just a minute and talk  
25 about this density because it is true that in

1 the Town Center plan there is a density range  
2 guideline in there. But let's be clear what  
3 happened. So when Council got that plan in  
4 front of them, they said, capitalized and  
5 underlined, this is not an implementation tool.  
6 And then within a year the regulations to  
7 implement that plan came before them and they  
8 had the option at that point to put a density  
9 limit in there, and they specifically declined  
10 to do that.

11 And in particular it's important to point  
12 out that 1159.05(D) is not just silent on  
13 density, it's not that density is not addressed  
14 in the code, it specifically says no maximum  
15 density. So within a year of having a plan  
16 with a density guideline in it, adopting that  
17 plan saying not an implementation tool, they  
18 had the opportunity to address it very  
19 specifically in the zoning and they do. They  
20 say there is no maximum density as long as it  
21 complies with the other requirements, such as  
22 height and setback. We've already heard the  
23 height and setback were more than complied  
24 with.

25 The parking is in compliance, I don't

1 think there's any question about number of  
2 spaces. You will recall in the previous plan  
3 there was parking in the front yard, that's  
4 been removed.

5 Landscaping and lighting, I reviewed that  
6 with the applicant in some detail. I  
7 understand the applicant has reviewed that with  
8 the staff and that those issues were addressed.  
9 Let's be clear, when the DDRC approved this,  
10 they conditioned approval on working out the  
11 final details of the lighting and the  
12 landscaping, which is entirely appropriate.  
13 That's normally how it's done. Those details  
14 get worked out in the construction level. What  
15 the applicant has done here is they've gone  
16 beyond that and have gone ahead and addressed  
17 that now to put that to bed.

18 Signage is now addressed, the 6-foot  
19 signage requirement is met. The design was  
20 modified to meet the set-to line. You've heard  
21 earlier the concern about the set-to where the  
22 building goes up to the sidewalk and there's  
23 that area in the middle. One thing to  
24 understand about that is that area that's in  
25 the middle that you can see the yellow area in

1 the upper right-hand corner, that's where the  
2 city's stormwater pipes run through, and you've  
3 heard about the stormwater chamber. One can't  
4 build on top of those stormwater pipes, and  
5 that's why the garage is located where it is  
6 also because that places it over the chamber so  
7 that access can be gotten to that. That's why  
8 the building can't be all the way to the front  
9 all the way across because it's a city public  
10 works facility there.

11 So I think that addresses the D-1  
12 compliance issues, and again the applicant can  
13 add some more details about that if need be.

14 The other thing I want to address that we  
15 heard from one of the appellants tonight is  
16 this concern about the potential impact that  
17 this development might have on occupancy rates  
18 on a neighboring property owner. And I would  
19 simply say that from a planner's perspective,  
20 any planner who is trained in planning and  
21 zoning will tell you that regulating  
22 competition is not an appropriate purpose for  
23 zoning. I understand issues associated with  
24 property values, but those are associated with  
25 physical land use impacts and concerns of land

1 use impacts might have. Regulation of  
2 competition is not an appropriate land use  
3 approach in my opinion.

4 So with all due respect to the neighbors  
5 who are objecting to this, and I certainly  
6 respect and appreciate the right that people  
7 have to raise objections and raise concerns,  
8 what occurs to me as I listen to this is that  
9 the concerns that are being raised tonight, if  
10 you think about it, aren't necessarily directed  
11 at this application. They're directed at the  
12 city's policies and regulations because this  
13 application, when you think about a building  
14 being 50 feet high and 10 feet from the  
15 property line and this far exceeding those,  
16 with all due respect to the concerns that are  
17 being expressed, they're being expressed  
18 related to the regulations, but that is what  
19 has been adopted, those are the city laws. And  
20 again with all due respect, one can't punish a  
21 property owner for living within the city's  
22 regulations simply because they don't like  
23 what's being proposed.

24 So with that, I'll turn it back over to  
25 Mr. Copfer and be available for any questions.

1           MR. SIRKIN: Do you have anything more?  
2           I'm going to say this as eloquent as I can,  
3           we're starting to enter the repetitive zone,  
4           and I'm not picking on Mr. Dale. We're getting  
5           there, we got it.

6           MR. COPFER: I think I can finish my part  
7           in two minutes. But I want to share with you  
8           all of the information that the DDRC had to  
9           understand how they made their decision. Part  
10          of that, traffic has been brought up. It is a  
11          supermarket. As a supermarket, the average  
12          daily trips for a supermarket is 4,600. A 218  
13          rental home community is estimated to average  
14          1,445 trips. This is a 68 percent decrease in  
15          traffic. We took this right from the  
16          Institution of Transportation Engineers.

17          Also people talk about property values.  
18          What do we want for property values in Blue  
19          Ash? From a selfish perspective, Hills  
20          Communities wants property values to increase  
21          within the City of Blue Ash, particularly  
22          within the D-1. Why? Because these are all  
23          properties that we own within the City of Blue  
24          Ash, including three of them that are owned  
25          right around the site. So this is the

1 Thriftway site. Our corporate headquarters  
2 where all of our decisions are made and where  
3 all of our top executives are is right across  
4 the street. This property will be managed  
5 impeccably with them across the street. We  
6 also own this parking lot and we own two  
7 commercial buildings. We are one of the  
8 largest owners of property within this D-1  
9 district. We have a vested interest. Not only  
10 do we manage these buildings, we own them. We  
11 want to see property values here increase, and  
12 we think the best way to do that is by building  
13 4900.

14 This just shows that within the D-1 we  
15 have 139,000 square feet, our additional  
16 properties. We have a total of 651,000 square  
17 feet of commercial space within the City of  
18 Blue Ash itself.

19 So basically we meet the zoning code,  
20 we're consistent with the comp plans, we're  
21 compatible with the surrounding neighborhood,  
22 and we add economic development for Blue Ash.

23 I wanted to conclude what I was going to  
24 say by when we were -- this wasn't a quick and  
25 rash decision that was made by DDRC. This is



1 the third time we were in front of them. And  
2 who said yes to this that we meet the code and  
3 this project should go forward? Ray Schafer,  
4 who is chair of not only the DDRC, he's chair  
5 of the Planning Commission. He voted against  
6 Plan 1 and 2, and he said Plan 3, you meet it,  
7 go ahead. Mike LeVally, he's an architect. He  
8 voted against Plan 2. He said Plan 3 meets it,  
9 go ahead, I'm happy with what you guys have  
10 done. Both of those guys voted against us,  
11 then they voted for us. Stan Better, he's an  
12 architect. He also voted for the plan. Those  
13 are three experienced men that deal with  
14 architecture and planning that all voted for  
15 Plan 3. So what we're doing here tonight is  
16 are we going to say their decision was wrong  
17 and invalid and should be thrown out or should  
18 it be kept. Also who voted for the plan was  
19 John Eisenmann, the City Engineer, and also Dan  
20 Johnson, the Blue Ash Community Development  
21 Director. All five of them voted for the plan.

22 One additional thing I would like to  
23 bring up is also Menelaos, who prepared that  
24 downtown concept plan, he testified at DDRC,  
25 his testimony is on page 3 of the minutes from

1       that, and he states he feels the plan submitted  
2       by Hills is well thought out, a design plan  
3       that does meet the D-1 requirements and meets  
4       the purpose of the Town Center plan and vision.

5               MR. TRAUTH: Just one final comment.  
6       Again, I'm Joe Trauth. You'll see the slide up  
7       here is 1133.05 of the Blue Ash code, and those  
8       are the powers and related to the orders of  
9       this particular body, Board of Zoning Appeals.  
10      There's been a lot of talk about light and air  
11      and things like that. What your own code says  
12      is that in exercising the above-mentioned  
13      powers, the Board of Appeals may, in conformity  
14      with the provisions of the zoning code,  
15      reverse, affirm wholly or partially, may modify  
16      the order requirement, et cetera. What that  
17      says is the same thing that the 1159.02 says,  
18      that you have to defer to the code, and the  
19      code already has a provision for light and air.  
20      They have a setback requirement that we exceed  
21      four and a half to five and a half times. They  
22      have a height requirement that we are well  
23      below. So the consideration for light and air  
24      is already taken into account in the zoning  
25      code, the implementing document. And with

1        regard to light and air, that was considered in  
2        the setback and the height that we greatly  
3        exceed.

4                So we would ask that you would deny both  
5        of these appeals so that we can move forward  
6        with the project. Thank you.

7                MR. SIRKIN: Thank you. That is not all  
8        of 1133.05 just for anybody that is interested.  
9        That's just the top portion.

10                Charleston, representative from  
11        Charleston, Mr. Griffith, if you would like to  
12        cross-examine anybody from Hills Development,  
13        you may.

14                MR. GRIFFITH: No thank you.

15                MR. SIRKIN: Mr. Lomison, do you want to  
16        cross-examine anyone from Hills Development?

17                MR. LOMISON: Yes, I do.

18                MR. SIRKIN: Who do you want to talk to?

19                MR. LOMISON: Mr. Copfer.

20                I just wanted to clarify a couple of  
21        points. Yes, we did meet several times,  
22        including on August 14th. I believe your  
23        statement was that you took all of our feedback  
24        and incorporated it into Plan 3. Just want to  
25        confirm that you didn't take the feedback from

1       us and incorporate it into that Plan 3 before  
2       it was submitted to the DDRC from our  
3       August 14th meeting.

4               UNIDENTIFIED SPEAKER: We can't hear.

5               MR. LOMISON: I'm sorry, I was just  
6       confirming that we did meet on August 14th with  
7       some of our residents and representatives from  
8       Hills Properties. Mr. Copfer mentioned that he  
9       took all of our feedback and it was  
10      incorporated into Plan 3. I just wanted to get  
11      some clarification or confirmation about the  
12      changes that were made to the plan that we saw  
13      when we were at their offices on August 14th  
14      compared to what was submitted I believe the  
15      following day or shortly thereafter.

16              MR. COPFER: We did consider all of the  
17      feedback they gave us and we did not implement  
18      a hundred percent of it. We implemented a lot  
19      of it, including, the big thing for us, which  
20      was turning the buildings. My sense is that  
21      additionally they would want us to take the  
22      three-story areas to two stories, which isn't  
23      even part of the plan, that says three to four  
24      stories, and take some more four-story area  
25      currently and make that three stories. They

1       also at this meeting insinuated that we'll just  
2       take that space and put it up in the front of  
3       the building and make that five stories. We  
4       said, wait a minute, that goes against the  
5       plan, it would take us over 50 feet. They said  
6       but that's what we want, we'll work with you  
7       and Blue Ash to get it approved. I said, no,  
8       I'm going to work within what's required by the  
9       D-1 code. So we did listen to all their  
10      feedback and we did take major parts into  
11      account, including turning the building because  
12      I would rather have them back the other way,  
13      but we're willing to do them this way.

14               MR. LOMISON: Thank you. For  
15      clarification on the five stories, we did bring  
16      that up, but it was not supported by the  
17      majority of the people there.

18               In your traffic report you said that that  
19      would be a 60 percent decrease in the current  
20      traffic?

21               MR. COPFER: I said that currently it's a  
22      vacant building. Does anybody here expect a  
23      vacant building to remain vacant in Blue Ash  
24      forever? I would hope not because this plan is  
25      supposed to have it occupied. Therefore, the

1       most recent use was as a supermarket. Until it  
2       gets redeveloped, we don't know what it will  
3       be, but as the structure sits here today, it  
4       could be a supermarket. And the important  
5       thing to realize is that's what it was for  
6       years, and it was a well-thriving supermarket.  
7       The corporate headquarters for Thriftway was  
8       right across the street. I would hazard a  
9       guess that that was probably a pretty well  
10      performing grocery store right across from the  
11      corporate headquarters and, therefore, would  
12      have pretty significant traffic as a  
13      supermarket typically does. So currently while  
14      it's vacant, yeah, the traffic is going to be  
15      low, there's almost no one there. But as it  
16      was occupied before, most recently as a  
17      supermarket, those would be the correct traffic  
18      and that would be what over the course of the  
19      last 10, 20 years the traffic flow that people  
20      would be used to that being when it was a  
21      supermarket. That's why I used that for the  
22      comparison sake.

23               MR. LOMISON: I believe there is a  
24      business currently operating out of there and  
25      obviously other uses could be there with

1 different traffic numbers, which would need to  
2 be evaluated independently.

3 I don't believe I have any other direct  
4 questions. I did just want to ask Mr. Johnson,  
5 generally when you have calculated the floor  
6 area ratio of buildings, do you incorporate the  
7 garage or not?

8 MR. JOHNSON: For purposes of zoning, we  
9 would definitely include the garages because it  
10 has the same type of mass that the rest of the  
11 structure does.

12 MR. LOMISON: I have some other general  
13 comments but no direct questions.

14 MR. SIRKIN: Thank you.

15 Mr. Pacheco, do you have anybody you need  
16 to cross-examine?

17 MR. PACHECO: I do not, thank you.

18 MR. SIRKIN: You do not, okay.

19 We're going to open the floor to public  
20 comment. Before we do, as I talked about  
21 earlier, anybody from the Barwyn Acres or any  
22 citizen of Blue Ash, if I have a show of hands  
23 of how many of you support Mr. Lomison's  
24 presentation and everything he presented is the  
25 way you feel about the situation, can we please

1           see a show of hands.

2                           (Show of hands.)

3           MR. SIRKIN: Thank you.

4                   Now, if anybody does want to come up and  
5           speak, we've talked about just repeating what  
6           Mr. Lomison said from the Barwyn Acres, we've  
7           got it, but if you have something else to add,  
8           please come up and state your name.

9                   MR. RAHE: My name is Tim Rahe. I live,  
10          the closest property abutting the proposed  
11          project. I'm going to try not to repeat, I  
12          know -- I get it.

13                   The one thing, the neighborhood and me  
14          included, we know something is going to go into  
15          that building, we know it's D-1. We agree with  
16          Hills that we want the downtown to be  
17          economically viable, but there's a couple of  
18          things that I have concerns on that I think  
19          really you got to address also as far as the  
20          zoning and what the code says.

21                   Kind of what my thought is or a couple of  
22          things, when he come up and said that capable  
23          people voted for it and they're architects,  
24          their quotes from John Eisenmann and from Dan  
25          Johnson, directly from Dan, he said, "We're



1 getting closer to the code," word for word,  
2 "We're getting closer to the code." That's not  
3 the code. Mr. Lomison pointed out very  
4 specifically where it doesn't.

5 But what concerns me a little bit is in  
6 their presentation to the DDRC and what they  
7 voted on, it's like this, the old shuffle thing  
8 and you don't know what's under the cup. They  
9 put a picture up there like they did tonight of  
10 a big pool and it's got big looks and they say  
11 we're going to have luxury apartments. They're  
12 doing some other project, if you've seen what  
13 their layout is, that pool is like there with  
14 no access for nobody else in the whole  
15 building. So Charleston's concerns and my  
16 concern being right next to it are very much to  
17 this code that says that you can't -- one, you  
18 can't impair the health and safety, which  
19 affects me the most and the neighborhood,  
20 that's why we're here, and you can't diminish  
21 property values.

22 Now, my property value is going to go way  
23 down because I've got a four-story building  
24 within very close proximity. Everybody just  
25 glosses over that. But financially I'm hit on

1       this, and my neighbors on my street, which is  
2       the cul-de-sac abutting this, we're hit hard on  
3       that.

4               On the one picture you seen in Tim  
5       Lomison's thing, when she brings that back up,  
6       I want to point out just -- what they're saying  
7       is, and just to get kind of a good perspective,  
8       where the house is today and where the building  
9       is and they're saying it's not going to be that  
10      much different, the air is not that changed, I  
11      want to just kind of give you a perspective  
12      from my yard being where it's at and my  
13      neighbor's yard, which we're like the two most  
14      hit on it, this one right here, this is my  
15      next-door neighbor's house, which is the  
16      closest one, I'm to the left of here, and you  
17      can see right now where that red line is is the  
18      Thriftway building. When they put their  
19      building in there, it's going to go over those  
20      trees. So my house -- and you can see his  
21      house, right there, his backyard is no further  
22      from me to you. And they're saying they're  
23      going to put a building that's taller than them  
24      trees and it's not going to affect my property  
25      values. And that's what the code says. The

1 code says it shall not diminish property  
2 values. I'm getting, taking a beating, and  
3 that's not fair to me, it's not fair to that  
4 house, it's not fair to the next-door neighbor  
5 on my left, which he's been there since 1960s,  
6 and one on the left, Mr. Borman, who has been  
7 there since 1970s.

8 So that's -- what's happening is they've  
9 presented a lot of things and they said -- if  
10 you listen to what he said, he said you can't  
11 go by the code, you have to do that first  
12 sentence and get rid of everything else. But  
13 then they go right after that, he spent the  
14 biggest part of his presentation saying the  
15 2005 Concept Plan. And that's what we're  
16 saying. He says it, but then he glosses over  
17 it, but you can't do none of that, just do the  
18 first sentence. Wait a minute, your whole  
19 presentation was on that. You can't have it  
20 both ways, you can't have it both ways. The  
21 plan says what it is and it is altogether for  
22 the code. And it is what the plan and the code  
23 says. They can't just arbitrarily say, well,  
24 we want to pick up bits and pieces of it and  
25 then say, oh, by the way, we're only going to

1       take that first sentence and he's crossed out  
2       all the rest of it. What? You can't do that.  
3       I mean, that is what it comes down to. They're  
4       trying to just ignore everything and just say  
5       we can do whatever we want. We don't care if  
6       it affects these guys and we don't have to  
7       listen, we don't have to do any more than the  
8       code, we don't have to do anything because we  
9       want to do it and the code says, it does say  
10      that you can't have a maximum zone. We want  
11      something there. We just don't want a  
12      monstrosity.

13               And what the Charleston people are saying  
14      is that the code -- they're going to be  
15      affected because what happens is you've got  
16      this massive building, and they've got people  
17      out there trying to, in suits out there trying  
18      to get their vacancy up. So now what happens  
19      is they're going to put this luxury thing in  
20      there, luxury pool and luxury workout center,  
21      which Charleston has, which we have right here  
22      next door, but they're going to do this and  
23      they're going to have crown molding that's  
24      going to magically bring all these people in  
25      and they're going to magically pay 1200 to

1           \$1800.

2                   For it to meet the code on the parking,  
3           it's going to meet the parking code but give  
4           them one spot and they're going to put  
5           elevators in there. Okay. So they're going to  
6           put elevators in there, and they have one  
7           entrance in there and they gloss over to  
8           everybody, and everybody don't even want to  
9           say, okay, now we're going to have everything  
10          comes in that one entrance, everything,  
11          garbage, mail, UPS, FedEx, all the people who  
12          come in to look at the property. What happens  
13          when somebody wants to move in? They are all  
14          going to go in that same place, they all are  
15          going to go in that same elevator. And we  
16          asked them before on the code, what is your  
17          elevator going to be. It's going to meet code,  
18          sir, it's going to meet code. Well, what is  
19          code? Code, they said, and what they're going  
20          to do, it's going to be an elevator big enough  
21          to put a cart in there in case somebody, a  
22          gurney has to go up there. Okay, let's do an  
23          \$1800 building, and I'm not going to want a  
24          king size bed up there? And I want to walk  
25          almost a half a football field to get to my

1 apartment? They're going to go there and go,  
2 boy, after about a year, the vacancy is going  
3 to go down.

4 Now Charleston, they're going to be hit  
5 because all the higher end guys, all their  
6 clientele, higher end guys, are going to go  
7 over here, so they are going to get hit. They  
8 got a viable -- that's true. Now is that code,  
9 no. But what it says is you got to have  
10 something that's substantial and it's going to  
11 be there.

12 And so -- that's enough, I mean, you got  
13 the point, what I'm getting at.

14 Just one last question. When they have  
15 their vacancies here in about a year because  
16 you tell me, did you ever walk out of your  
17 house and say, oh, I forgot keys or I forgot  
18 something, you go back in the house and get it.  
19 Well, these guys got to walk half a football  
20 field to get to their place, and they're going  
21 to get sick of that. And they're not going to  
22 re-up the next time. So what I want to know  
23 is, is their luxury thing going to include  
24 Disney suits for their guys out on Kenwood  
25 Road?

1                   That's all I've got. Thank you.

2                   (Applause.)

3                   MR. SIRKIN: Thank you. Will somebody  
4 check his blood pressure. I could hear you,  
5 that's for sure.

6                   Anybody else, public comment? Okay.  
7 We're going to close the public comments then.

8                   Charleston, if you would like to address  
9 any comments made by the public, cross-examine  
10 anyone, you may. Mr. Trauth, do you have any  
11 interest in that?

12                  MR. TRAUTH: No, that's --

13                  MR. SIRKIN: I'm sorry, Charleston,  
14 Mr. Griffith.

15                  MR. GRIFFITH: No.

16                  MR. SIRKIN: You're good, okay.  
17 Mr. Lomison, do you want to cross-examine  
18 Mr. Rahe?

19                  MR. LOMISON: Does it have to be  
20 cross-examine or can I just make a couple very  
21 brief statements?

22                  MR. SIRKIN: Very brief, sure.

23                  MR. LOMISON: I understand, I'll be short  
24 for everyone. Just a couple comments on the  
25 presentation that we saw earlier.

1           The plans do call for an increased  
2 density. That increased density was  
3 recommended to be about .50 and about 14 to 18  
4 units per acre in apartment density. So as  
5 Hills Properties suggested, the plans are  
6 guidelines. All we're asking is that you  
7 follow the guidelines or at least in the spirit  
8 of the guidelines where I think this proposal  
9 deviates quite a bit from them.

10           Their last representative there did  
11 acknowledge the relationship between land use  
12 and property values, and the 2003 Master Plan  
13 does reference the land use policy in there  
14 quite a bit, and obviously the property values  
15 are mentioned in the code as well. But also,  
16 as has been pointed out, 1133.05 is a much  
17 larger section than what was shown on the  
18 screen. So we do ask that you consider all of  
19 your orders in your decision here tonight.  
20 Thank you.

21           MR. SIRKIN: Hills, do you want to  
22 cross-examine? This is really supposed to be  
23 directed toward the public comments. We've  
24 already cross-examined each other.

25           MR. TRAUTH: I just have a couple



1        comments too. The review of the city records  
2        shows that no one from Barwyn Acres objected to  
3        the adoption of the D-1 code or any provision  
4        in the D-1 code. We went through all the  
5        minutes from the summertime 2006 all the way up  
6        to adoption of December 14, 2006, and no one  
7        from Barwyn Acres had any objection.

8                Mr. Lomison's comments were made without  
9        the benefit of seeing the revised landscape,  
10       lighting, and signage plans that did comply  
11       with the D-1 code and were to be approved by  
12       staff in the final development plans. So we're  
13       well ahead of the curve. The DDRC approved  
14       with conditions. We've now met those  
15       conditions. This appeal was filed well before  
16       the staff went through and approved and said  
17       we're all in compliance.

18               My point in showing the one slide that  
19       you, Mr. Sirkin, commented on, which was the  
20       first part of 1133.05, is merely to show that  
21       that provision says in conformity with the  
22       provisions of the zoning code. In other words,  
23       the zoning code takes into consideration those  
24       things such as property values. There has been  
25       no hard evidence by any appraisals this evening

1 about anybody's property value being denied or  
2 hurt. If Mr. Rahe complains about the  
3 proposal, our Plan Number 3, if we just  
4 complied with the minimum code, the 10-foot  
5 setback and the 150 feet in height, I think he  
6 would be complaining even louder.

7 So we've gone through three plan  
8 iterations, we've lowered the height, we've set  
9 it back four and a half, five and a half times  
10 what the code requires. So, again, I think for  
11 all those reasons the appeals must be denied.  
12 Thank you.

13 MR. SIRKIN: Okay. At this point I'm  
14 going to close the public hearing. The Board  
15 can discuss this in and amongst itself. If  
16 there's any questions, of course, we have to  
17 ask of any -- Bryan?

18 MR. PACHECO: I have nothing.

19 MR. SIRKIN: If there's any questions we  
20 have to ask of any of the appellants or Hills,  
21 we can go there. So have at it.

22 MR. DUNCAN: Questions for Dan and Bryan.  
23 First, Bryan, can you restate what the "unless  
24 otherwise permitted herein" means.

25 MR. PACHECO: So it's kind of a situation

1       where it does talk about the plan at 05 and  
2       (A)(2), and it says to be in conformity with  
3       those unless otherwise permitted herein.  
4       Meaning if it complies with the code, you don't  
5       look at (A)(2), you don't look at 05, you look  
6       at the code.

7               MR. DUNCAN:   And, Dan, Mr. Lomison had  
8       several areas of 1159 that he indicated he  
9       thought where the plan was in violation of  
10      these areas of the code.  I'm sure you've  
11      looked at each of them.  Are there any areas of  
12      the D-1 district in the code that you feel are  
13      violated?

14             MR. JOHNSON:   The plans that were  
15      submitted and reviewed by the Downtown Design  
16      Review Committee prior to the August 22nd  
17      meeting, there were some violations, but the  
18      approval that was granted was conditioned upon  
19      satisfying those at a staff level for the  
20      building permit.

21             MR. DUNCAN:   And what were those items?

22             MR. JOHNSON:   Those were landscaping --  
23      there's a list of criteria, but it includes  
24      specifically that final landscaping plans be  
25      approved by staff that meet the code because I

1       felt that they were slightly deficient; final  
2       lighting plans to meet the code as approved by  
3       staff because the pole lights were too high and  
4       it wasn't, the lighting analysis wasn't over  
5       every surface as would be required. And those  
6       were the only two that were mentioned in the  
7       conditioned approval.

8               Additionally, and it didn't say it in  
9       this decision, but also that the sign that was  
10      shown was too tall, and so they've submitted  
11      afterwards to me something that shows they  
12      could in fact meet the sign code.

13             So I don't see anything that doesn't meet  
14      the code.

15             MR. DUNCAN: And is it typical for the  
16      Downtown Review Committee, possibly even for  
17      this Board, possibly even for Planning  
18      Commission, that when there are things that do  
19      not meet the code, particularly lighting and  
20      landscaping, that they do defer to staff to  
21      ensure that a plan is submitted, such as the  
22      DDRC did, for staff approval prior to the  
23      project moving forward, is that what normally  
24      occurs or can occur?

25             MR. JOHNSON: That is very typical, yes.

1           MR. DUNCAN: Thank you. One of the items  
2           that was mentioned by Hills was that the zoning  
3           code and its setback requirements has addressed  
4           the requirement for air and light, and is that  
5           typically the case, does setback imply that the  
6           code itself has looked at and because of the  
7           setback has addressed air and light?

8           MR. JOHNSON: Yes.

9           MR. DUNCAN: That's all the questions I  
10          have for Dan and Bryan.

11          MR. COLLETT: Basically as I see this  
12          third proposal, it is unlike the first proposal  
13          in many regards which you brought to our  
14          attention. However, there were some concerns  
15          raised by the Downtown Review Council that I'm  
16          not sure have been totally addressed here. And  
17          again, these are probably for safety staff or  
18          the safety and fire department and people like  
19          that as far as access by emergency equipment.  
20          I think it was Engineer Eisenmann that  
21          recommended that the parking spots be increased  
22          to one unit per bedroom versus one per unit.  
23          And in some regards there's also a provision  
24          there for some auxiliary services to get the  
25          number to what it was, I guess the staff that

1 works there on a daily basis or whatever. So  
2 you're comfortable with the parking building or  
3 the parking spaces would meet the --

4 MR. JOHNSON: No. I have not seen a plan  
5 that details the number that are available yet,  
6 so I don't know yet whether or not they can  
7 meet that provision of the approval.

8 MR. COLLETT: Could I ask the applicant,  
9 what is your parking count and what is -- how  
10 did you arrive at it?

11 MR. COPFER: We will have at least the  
12 minimum if not more than the minimum that is  
13 required. We looked at the per bedroom number,  
14 and we will meet that as well as having  
15 additional parking for the retail as required.  
16 Dan will not approve the plan to be built if we  
17 don't meet the parking requirement, and we  
18 hereby say, as we did at DDRC, that we will  
19 meet that parking requirement before this is  
20 built. And before construction drawings are  
21 approved by the city, we will show that the  
22 parking count meets that requirement. We  
23 haven't done detailed construction drawings of  
24 the garage yet. First we want to make sure we  
25 have the building layout and the garage layout,

1           then we'll go to detailed construction  
2           drawings, and that will figure out where all  
3           the columns go and exactly the number of  
4           spaces, but we're more than comfortable that we  
5           will meet the parking requirement.

6           MR. COLLETT: That being the one per  
7           bedroom plus?

8           MR. COPFER: Yes, sir.

9           MR. COLLETT: There was a comment by I  
10          think Mr. LeVally that he saw adding parking  
11          space on the south side as a positive. I  
12          personally disagree with that and I don't see  
13          it in any of your plans that you've made that  
14          revision. Do you intend to make that change?

15          MR. COPFER: We are going for Plan 3 as  
16          done, all of that parking has been taken out.  
17          There's a question whether or not that met  
18          code. So we wanted to eliminate the question  
19          whether it met code and that parking has been  
20          removed from the plan. So what you see in  
21          Plan 3 is what our intent is with no parking  
22          there.

23          MR. COLLETT: So our approval will be  
24          based on the plan that we have in front of us?

25          MR. COPFER: Yes, sir.

1           MR. COLLETT: They also made the comment  
2           about the single entry and how that might  
3           impact both the residents and traffic in the  
4           area. You have a count, but was that --  
5           Thriftway parking had more than one access and  
6           egress from it, and they were all coming out of  
7           one particular drive?

8           MR. COPFER: Right. The main ingress and  
9           egress was right there off of Hunt Road. And  
10          we do have -- the retail parking for the retail  
11          part of the property does still have the other  
12          exit and also it still has access over by the  
13          library, as well as that parking lot that's  
14          back there in the back has access to those  
15          other areas.

16          MR. COLLETT: But do the residents have  
17          access to that?

18          MR. COPFER: Well, the residents will  
19          have access to that overflow parking there as  
20          well.

21          MR. COLLETT: I'm talking about from the  
22          garage, they have to come out through the one  
23          entry?

24          MR. COPFER: It's typical for most  
25          apartment communities, most that we have have



1 typically one entranceway coming in and out of  
2 it. So it's not any different from that, and  
3 we believe being in this downtown area with  
4 lots of office buildings that we have and lots  
5 of retail, we're expecting more foot traffic  
6 coming in and out of here, not as many car  
7 trips as would normally be typical.

8 MR. COLLETT: Okay. The garage facade on  
9 the east elevation, do you have that?

10 If I can find this, there's a lot of  
11 papers here. The garage basically is supposed  
12 to conform with the rest of the design and  
13 architectural detail. Do you consider that to  
14 be that or is that just painted concrete?

15 MR. COPFER: Well, this is actually a  
16 little deceiving because it's flat, and what we  
17 have is these areas are in and out so to add  
18 character interest, especially where we've got  
19 these other common type of areas as well. So I  
20 believe that is representative of the building.  
21 And even more so than what's been done more  
22 recently.

23 If you look at the back of the Town  
24 Square Lofts, that's just a wide open garage  
25 with concrete pillars and a gray concrete wall

1 on both sides as well as in the back, and you  
2 and I both know that we're required to have  
3 four fronts. Therefore, we've way gone above  
4 the most recent standard that's been approved,  
5 and clearly I think that's a pretty good  
6 looking parking garage myself.

7 MR. COLLETT: My question is, is that tan  
8 area, is that paint or is that some sort of  
9 EIFS on there?

10 MR. COPFER: It's a combination of  
11 different materials. It's a painted  
12 sandblasted finish to have different textures  
13 and to make it look like it's an EIFS type of  
14 different stucco kinds of finishes. Similar to  
15 what we have in these other parts of the  
16 building. So it's the breaking up with the  
17 textured look, both the dimensional as well as  
18 the touch as well as the color.

19 MR. COLLETT: Well, again, I think based  
20 on what I saw in Plan 1 with the 500 foot,  
21 45-foot height wall, I think you've done a nice  
22 job in trying to work with softening up that  
23 elevation. I think there's -- a building is  
24 going to be built there, and what is the best  
25 possible use, that's your decision. If you're

1 the investor, the developer, you can make those  
2 decisions as long as you work within code.

3 I certainly sympathize with the residents  
4 that it's going to be different than it had  
5 been before should this plan be approved by the  
6 Board, but I think that the intent and the  
7 quality of the construction is excellent from  
8 my perspective.

9 I think that's all I have right now.

10 MR. SIRKIN: Mark?

11 MR. KIRBY: No, I don't have any  
12 questions or comments at this point.

13 MR. SIRKIN: I think the proposal  
14 approved by the DDRC is a significant  
15 improvement. I think Hills has made a sincere  
16 effort to fit into the neighborhood, but I'm  
17 going to return to the land use policies of the  
18 comprehensive plan, and it states -- and I  
19 didn't write this -- "the quality of the  
20 residential areas of the city should be  
21 maintained, protected, and improved as the  
22 primary policy of the city."

23 So purpose clause or not, our orders are  
24 that we can reverse or affirm a decision based  
25 on the welfare of the city. I don't think this

1 is a situation where a couple of residents are  
2 being difficult. I think they have legitimate  
3 concerns about their property values, among  
4 other things. And it's apparent that Hills has  
5 not satisfied that yet to me. I'm trying to  
6 put myself in Mr. Rahe's shoes and living in  
7 that house for, I don't know how long he's been  
8 there, and some of those other neighbors. I've  
9 driven down that street several times and I've  
10 walked the property of Thriftway several times.  
11 And I'm going to base my decision on what the  
12 overall welfare of the city is and I'm going to  
13 support the Barwyn residents and the  
14 Charleston/Conner Groups.

15 So does anybody have anything else?

16 MR. DUNCAN: I do have a couple comments.  
17 One is made abundantly clear that when the City  
18 Council approved the 2005 downtown plan, in  
19 much of the language they put in both the  
20 preamble to the plan and other documents that  
21 this was intended as a concept plan. I have  
22 worked on developing many plans and I've used  
23 many plans over my career, and they are concept  
24 plans and you try to comply with them as much  
25 as possible. Within the plan it's very

1 specific that it recommends multi-family  
2 residential for this specific site. It does  
3 recommend high density residential. It does  
4 recommend three to four floors. And also it  
5 states in there that the residential density  
6 should be 14 to 18 units.

7 Hills meets all of those requirements  
8 except for the 14 to 18 units. However, as was  
9 also mentioned and is very specific at least in  
10 my career is that a plan is a plan, it's there  
11 for guidance, but the implementing regulations  
12 are the zoning code. And the D-1 zoning code  
13 is very specific in that it does not create a  
14 maximum density. It does create a minimum  
15 density, but it does not create a maximum  
16 density. And, therefore, that specific item  
17 would trump in my opinion the 14 to 18 units  
18 that's actually identified within the plan.

19 I do sympathize also with the residents  
20 of the subdivision. However, they have lived  
21 with Charleston Apartments next to them, I  
22 think they said they were built in 1972 --

23 UNIDENTIFIED SPEAKER: No '92.

24 MR. DUNCAN: 1992. So they've been there  
25 for 20 years, and this is another similar,

1       although according to Hills it would be a more  
2       upscale apartment complex. And so the impact  
3       on the existing neighborhood, and I'm taking  
4       the neighborhood as a whole, not as individual  
5       streets or cul-de-sacs, would seem to be  
6       virtually the same as has been the case for the  
7       last 20 years. Admittedly, as residents have  
8       said, on individual units it may have a more  
9       negative impact, but as a neighborhood as a  
10      whole.

11               So getting to again 1133.05, and I'm  
12      fairly -- well, I'm going to read the first  
13      thing, "The Board of Zoning Appeals may in  
14      conformity with the provisions of the zoning  
15      code," and the provisions of the zoning code  
16      are there to implement the requirements that  
17      the developer or landowner can use to put forth  
18      a project, and if they meet those, City  
19      Council's intent typically is that the zoning  
20      code provides that guidance, and if you meet  
21      those, then you should be able to develop a  
22      project that also meets those. And with that,  
23      I will stop.

24               MR. SIRKIN: Anything else?

25               MR. COLLETT: No.

1 MR. SIRKIN: Well, then I'll entertain a  
2 motion.

3 MR. JOHNSON: Just to make sure, you've  
4 got two things you're voting on here.

5 MR. SIRKIN: Do we have to do them  
6 separately?

7 MR. JOHNSON: Do them separately, yes.

8 MR. SIRKIN: So we're going to vote on,  
9 the first one I need a motion for is on the  
10 appeal from the Charleston/Conner Group.

11 MR. DUNCAN: I'll make a motion, help me  
12 since I'm new to this. I would move that we  
13 deny the appeal from the Charleston/Conner  
14 Group, the appeal of the Downtown Design Review  
15 Committee decision to approve a proposed  
16 multi-family residential development and an  
17 existing commercial building at 4900 Hunt Road,  
18 and that all of the requirements as identified  
19 in the minutes from the August 22nd, 2012  
20 Downtown Design Review Committee stand in the  
21 approval for the Hills Development on this  
22 site.

23 MR. SIRKIN: Do I have a second?

24 MR. COLLETT: Second that.

25 MR. SIRKIN: Just to be clear, a yes vote

1           on this will deny the appeal for the Charleston  
2           Group.

3           MR. DUNCAN:   Correct.

4           MR. SIRKIN:   Traci, will you call the  
5           roll.

6           MS. SMITH:   Mike Duncan.

7           MR. DUNCAN:   Yes.

8           MS. SMITH:   Paul Collett.

9           MR. COLLETT:   Yes.

10          MS. SMITH:   Mark Kirby.

11          MR. KIRBY:   Yes.

12          MS. SMITH:   Marc Sirkin.

13          MR. SIRKIN:   No.

14                Okay.   On the second appeal from  
15          Mr. Lomison, I would entertain a motion on that  
16          appeal.

17                MR. DUNCAN:   I would make a motion that  
18          we deny the appeal for 4900 Hunt Road from  
19          Timothy Lomison with the same words that I used  
20          for the prior.

21                MR. SIRKIN:   Do we have a second?

22                MR. COLLETT:   I second that.

23                MR. SIRKIN:   Traci, will you call the  
24          roll.

25                MS. SMITH:   Paul Collett.



1 MR. COLLETT: Yes.

2 MS. SMITH: Mark Kirby.

3 MR. KIRBY: Yes.

4 MS. SMITH: Marc Sirkin.

5 MR. SIRKIN: No.

6 MS. SMITH: Mike Duncan.

7 MR. DUNCAN: Yes.

8 MR. SIRKIN: So your appeals have been

9 denied. You have the right to appeal the

10 denial to City Council, as you know.

11 Thank you, everybody, for being so

12 patient. That went about as well as it

13 possibly could in 2 hours and 45 minutes.

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15 MEETING CONCLUDED AT 9:43 P.M.

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## C E R T I F I C A T E

I, Lois A. Roell, a Registered Merit Reporter and Notary Public in and for the State of Ohio, do hereby certify that the foregoing is a true and correct transcript of the proceedings in the foregoing captioned matter, taken by me at the time and place so stated and transcribed from my stenographic notes.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 25th day of October 2012.

LOIS A. ROELL, RMR  
Notary Public-State of Ohio  
My Commission Expires: 2/18/13