

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

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4900 Hunt Road - Timothy Lomison

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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 remainder
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.

14 * * *

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