



City of Powell, Ohio

Powell Board of Zoning Appeals

Ed Cooper, Chairman

Robert Hiles

Joseph Jester

**MEETING MINUTES
NOVEMBER 19, 2007**

A meeting of the Powell Board of Zoning Appeals was called to order by Chairman Ed Cooper on November 19, 2007 at 5:30 p.m. Commissioner Joseph Jester was present. Also present were David Betz, Director of Development; Eric Fischer, Development Planner; Susie Ross, City Clerk; Ben Albrecht and Rufus Hurst, Special Counsel to the Commission; interested parties and members of the Press.

CALL TO ORDER/ROLL CALL

MOTION: Commissioner Jester moved at 5:31 p.m. to adjourn to Executive Session under ORC Section 121.22 (G) (3), pending litigation: conferring with outside Special Legal Counsel on pending and/or imminent legal proceedings. Chairman Cooper seconded the motion.

VOTE: Y 2 N 0

MOTION: Commissioner Jester moved at 6:29 p.m. to adjourn from Executive Session. Chairman Cooper seconded the motion.

VOTE: Y 2 N 0

Commissioner Robert Hiles arrived at 6:15 p.m. and waited for the meeting to convene in Regular Session.

MOTION: Commissioner Jester moved at 6:29 p.m. to reconvene in Regular Session. Commissioner Hiles seconded the motion.

VOTE: Y 3 N 0

APPROVAL OF MINUTES

The minutes of August 22, 2007 were approved as submitted.
The minutes of November 13, 2007 were approved as submitted.

Chairman Cooper asked that the record reflect that Commissioner Hiles left the building at 6:32 p.m.

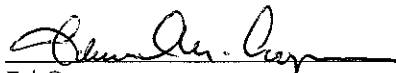
PROCEEDINGS

Please see the written transcript of the proceedings as recorded by Runfola Reporters, attached and incorporated into the record hereto as "Exhibit 1".

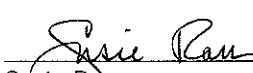
MOTION: Commissioner Jester moved at 7:22 p.m. to recess the meeting of the Board of Zoning Appeals. Chairman Cooper seconded the motion.

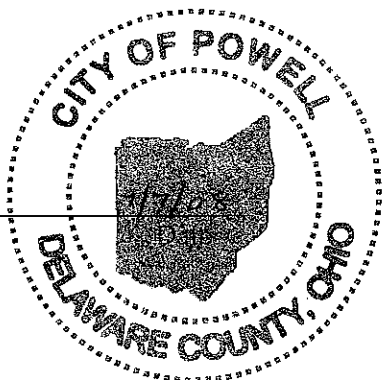
VOTE: Y 2 N 0

DATE MINUTES APPROVED: December 20, 2007


Ed Cooper
Chairman

7/7/2008
Date


Susie Ross
City Clerk



1 BEFORE THE CITY OF POWELL
2 BOARD OF ZONING APPEALS
3 - - - - -
4 IN RE: :
5 Board Meeting :
6 :
7 - - - - -
8 Proceedings before Chairman Cooper,
9 Board Members Joseph Jester, Robert Hiles, and
10 City Clerk Susie Ross, taken at the Powell
11 Township Hall, 47 Hall Street, Powell, Ohio, on
12 Monday, November 19, 2007, at 3:13 o'clock p.m.
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2 P R O C E E D I N G S
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4 CHAIRMAN COOPER: I will now call to
5 order the Powell Board of Zoning and Appeals
6 meeting for November 19th, 2007. Anyone do the
7 introduction here?

8 MR. ALBRECHT: Go through -- go through
9 the regular --

10 CHAIRMAN COOPER: Okay. I'll do that.

11 MR. ALBRECHT: -- business first.

12 CHAIRMAN COOPER: We do have some
13 business to take care of from previous meetings.
14 We have minutes to approve for the August 22nd
15 meeting. I assume you gentlemen have had time to
16 review those?

17 MR. JESTER: I move they be approved.

18 MR. HILES: Second.

19 MS. ROSS: Ed Cooper.

20 CHAIRMAN COOPER: Yes.

21 MS. ROSS: Robert Hiles.

22 MR. HILES: Yes.

23 MS. ROSS: Joseph Jester.

24 MR. JESTER: Yes.

1 CHAIRMAN COOPER: And the meetings for
2 the November 13th, 2007.

3 MR. JESTER: I move they be approved.

4 MR. HILES: Second.

5 MS. ROSS: Ed Cooper.

6 CHAIRMAN COOPER: Yes.

7 MS. ROSS: Robert Hiles.

8 MR. HILES: Yes.

9 MS. ROSS: Joseph Jester.

10 MR. JESTER: Yes.

11 MR. HILES: Mr. Chairman, I'd like to
12 make a statement at this time.

13 CHAIRMAN COOPER: Mr. Hiles.

14 MR. HILES: My engineering firm has
15 been involved with some of the geotechnical
16 studies on this site prior to this, and we
17 believe there may be some more potential
18 involvement in the future. With that, to me I
19 believe it's necessary for me to recuse myself at
20 this time, because I believe that would be a
21 conflict.

22 CHAIRMAN COOPER: So noted.

23 MR. HILES: State that for the record
24 and then I'm just going to adjourn from the

1 meeting. Thank you.

2 MS. ROSS: Mr. Chairman.

3 CHAIRMAN COOPER: Yes.

4 MS. ROSS: If I could just make an
5 announcement.

6 CHAIRMAN COOPER: Yes.

7 MS. ROSS: Excuse me, if you are
8 standing in the room, we have plenty of seats up
9 here, I'll need you to come up and please find an
10 available seat. Thank you.

11 CHAIRMAN COOPER: Please for the
12 record, let it be noted that Mr. Hiles has
13 recused himself from these proceedings and has
14 left the building.

15 We're here this evening to hear an
16 appeal on the determination of the City of Powell
17 regarding a Zoning Certificate 2007-0424, which
18 is, as we all know, Target. We'll convene
19 additional consideration of matters regarding the
20 standings; thereafter, our hearing will be in
21 recess and is subject to additional scheduling
22 for hearing dates on the variance.

23 The Board has independent counsel. You
24 want to introduce yourself?

1 MR. ALBRECHT: Sure. My name is Ben
2 Albrecht, outside special counsel for the Powell
3 Board of Zoning Appeals in this matter. And it's
4 Rufus Hurst also (inaudible) official serving as
5 outside special counsel. And I guess before we
6 get started in this matter and convene the
7 hearing regarding the Target development, I just
8 wanted to address the parties. I think all the
9 parties and all their representatives have been
10 kept abreast of the process. But tonight we're
11 convening the hearing to determine which parties
12 have standing to pursue the appeals in this
13 matter.

14 All the representatives were offered
15 and all requested copies of the memorandum used
16 by the Board on this standing issue. But
17 tonight's hearing is solely to determine who is
18 an appropriate party to present appeal on this
19 matter. We're not here to discuss the merits of
20 the appeal or the merits of the zoning
21 certificate, but rather here exclusively to
22 address who has standing.

23 Although the hearing's open to the
24 public, tonight for purposes of the hearing we're

1 only going to hear from those parties who filed
 2 an appeal and/or their representatives. So we
 3 would appreciate it if everybody kept to that
 4 protocol to make sure everything moves smoothly.

5 At the outset, the appellants will be
 6 allowed the opportunity to present their case as
 7 to why they think they have standing. Upon
 8 conclusion of that presentation, those in support
 9 of the certificate or proponents of their
 10 certificate will have an opportunity to respond
 11 or present anything that they think's appropriate
 12 or necessary. So, that's kind of how we want to
 13 proceed tonight.

14 During the presentations the Board may
 15 ask questions of you. And don't hesitate to
 16 respond. And at the conclusion of the hearing,
 17 we'll discuss and decide where to proceed from
 18 there.

19 CHAIRMAN COOPER: The -- we will be --
 20 if there are any witnesses that will be speaking
 21 this evening, we will need you to identify
 22 yourself and you will be sworn in individually at
 23 that time. I don't think there's any need to
 24 swear in the attorneys; is that correct?

1 MR. ALBRECHT: That's correct.

2 CHAIRMAN COOPER: Okay. So, if the
 3 representative from Liberty Township is available
 4 and ready, we'll start there.

5 MR. PAINTER: Thank you, Mr. Cooper and
 6 Mr. Jester. And I would like to thank your
 7 counsel for making a legal memorandum available
 8 to us for our review. That was very helpful in
 9 understanding how we would proceed. And it's
 10 nice to see the extension of professional
 11 courtesies in today's world. So, I appreciate
 12 that.

13 CHAIRMAN COOPER: Let me interrupt for
 14 a moment. You are Craig Painter?

15 MR. PAINTER: Oh, I'm sorry, yes.
 16 Craig Painter, legal advisor for Liberty
 17 Township.

18 CHAIRMAN COOPER: Thank you, sir.

19 MR. PAINTER: I've been asked to appear
 20 here by my Board of Trustees.

21 Mr. Cooper, my presentation is based
 22 upon documents tonight. I will be calling no
 23 witnesses unless there's some reason somebody
 24 might object to these documents. I don't think

1 there should be any objection. I've also
 2 prepared a memorandum for you and Mr. Jester and
 3 your legal counsel. At this point I'd like to
 4 tender both of those pieces of information to
 5 you. And we can walk through them together if
 6 that would be all right.

7 CHAIRMAN COOPER: Just can you hand
 8 those marked to us?

9 MR. PAINTER: I certainly would like
 10 them to become part of the record. That's the
 11 purpose of presenting them.

12 I also have a disk of the CEDA
 13 Agreement and Attachment C. I'd like for that to
 14 become part of the record as well. We can
 15 substitute the written copy if you'd like. But I
 16 thought this would be more convenient. I think
 17 everybody in the room knows what the CEDA
 18 document consists of. I just want to make sure
 19 it's part of the record. At this point I'll have
 20 these marked.

21 CHAIRMAN COOPER: Thank you.

22 MR. PAINTER: Mr. Cooper, what I'd like
 23 to do is walk through these documents for the
 24 record and make sure we've got them all

1 identified properly. Document I've marked as
 2 Exhibit A is the CEDA Agreement itself together
 3 with Attachment C. It is a disk and we'd be
 4 happy to substitute it at a later date a hard
 5 copy of that agreement, if that's the Board's
 6 choosing.

7 The document labeled Exhibit B is a
 8 letter from me dated September 5th, 2007 to the
 9 City of Powell, city manager and city attorney.

10 Document marked Exhibit C is Resolution
 11 07349 enacted by the Liberty Township Trustees on
 12 October 29th, 2007.

13 Exhibit D is the application to appeal,
 14 signed by David Anderson, Township Administrator.

15 Exhibit E is Resolution 07269, enacted
 16 by the Board of Trustees on August 20th, 2007.

17 And Exhibit F is what I believe to be
 18 the full decision of Mr. Betz on the application.

19 Having identified those documents, what
 20 I would like to do is also summarize for the
 21 record what is -- the general nature of what is
 22 contained in those documents. And the contents
 23 of the documents will fit in with my presentation
 24 tonight.

1 Exhibit B, the letter dated
2 September 5th, is a letter from the township
3 trustees, authored by me at their request,
4 identifying that the procedures and the granting
5 of the permit violated the CEDA Agreement.

6 Resolution 07349 authorized the filing
7 of the appeal by the administrator and authorized
8 the expenditure of funds for the appeal.

9 The application to appeal speaks for
10 itself, I believe. There wasn't a reference in
11 the legal memorandum of your counsel that
12 indicates that, in his opinion -- I believe, and
13 I don't want to misstate his opinion -- but I
14 believe he opined that Liberty Township would be
15 limited to the specific reasons for the appeal
16 set forth in the application. I just want to
17 preserve for the record that we do not feel that
18 that is a correct statement of law. We think we
19 can raise any issue on appeal that represents a
20 defect in the decision, if and when we get to the
21 substantive portions of the case.

22 Resolution E suggests that, in the
23 opinion of the trustees, the application and
24 development plan for the Target store is, in

1 fact, a major modification under the Liberty
2 Township Zoning Code in effect at the time the
3 CEDA Agreement was authored. And it indicates
4 notice that the trustees do not consent to such
5 major modification without review by township
6 authorities.

7 And F, again, is Mr. Betz'
8 determination.

9 At the outset I would also like to say
10 that many of the cases relied upon by your
11 counsel, understandably so, relied upon
12 interpretations of Ohio Revised Code Chapter
13 2506. I'm not sure that law is directly
14 applicable to these proceedings. I would suggest
15 to the Board that we recognize that more than
16 general welfare considerations need to be
17 demonstrated by Liberty Township in order for us
18 to have standing in this case.

19 And I will summarize my full
20 presentation by simply reciting that, in our
21 opinion, the CEDA Agreement itself grants us that
22 particularized interest and direct damage
23 resulting from the issue, and so the zoning
24 certificate. The CEDA Agreement in turn

1 contains, as you may be aware, development plan
 2 in a Preannexation Agreement, each of which come
 3 to bear on the issue of standing, as well as the
 4 substantive issues.

5 I conclude my introductory comments by
 6 simply saying that, as far as we know, this is a
 7 matter of first impression. We find no case law
 8 where an adjoining political subdivision is
 9 relying upon a cooperative economic development
 10 agreement enacted under Ohio law, in order to
 11 challenge a decision of a zoning official in an
 12 adjoining political subdivision. I think, if
 13 this gets appealed, we'll be making Ohio law on
 14 this issue.

15 Clearly we feel that we do have
 16 standing, both as an aggrieved party, under your
 17 Codified Ordinance 112703; but curiously enough
 18 also as a bureau of the legislative authority
 19 affected by the decision of the zoning
 20 administrator. I'll detail for you why I think
 21 both of those things are true. But our position
 22 is we qualify under either alternatives to
 23 persons withstanding deferred appeal under your
 24 code.

1 As you may be aware, the CEDA Provision
 2 talks specifically about annexation, talks about
 3 what will happen upon annexation of that
 4 territory from Liberty Township to the City of
 5 Powell. As you may also be aware, that
 6 annexation did happen. This territory is located
 7 in the City of Powell, as well as Liberty
 8 Township, due to the nonconforming boundaries
 9 components of this CEDA Agreement.

10 The CEDA itself at Section 4 and
 11 Section 5 contains provisions regarding what I've
 12 identified as major and minor modifications.
 13 Nowhere in the CEDA Agreement is there an
 14 appointment by either the City of Powell or
 15 Liberty Township as to who can make the
 16 declarations for major/minor modifications.

17 I would suggest to you that the minor
 18 modification recited in Section 4 indicates that
 19 a minor modification shall not include any change
 20 or revision, which represents a significant
 21 departure from the Township Zoning Plan for all
 22 or any portion of the real estate located within
 23 Subarea 2, including, without limitation, a
 24 change in the use or character or for such area.

1 Remember, Members, that Subarea 2 is a
2 designation in the CEDA Agreement. Subarea F is
3 a designation in the development plan, both of
4 which apply to this territory.

5 I think we can agree that Liberty
6 Township has not consented to any of the changes
7 in the Development Plan. The resolutions that we
8 just walked through would indicate that they did
9 not approve this as a major modification. They
10 determined this was a major modification through
11 act of the Board of Trustees, which is also
12 incorporated.

13 Let's turn our attention now to the
14 Preannexation Agreement. I'm not going to go
15 word-for-word through my memorandum. I assume
16 the Board will read that. And I don't want to
17 belabor these points. But like the CEDA
18 Agreement, the Preannexation Agreement contains
19 provisions about development standards. They're
20 set forth in the memorandum, in the requirements
21 for modification of the Development Plan. The
22 Preannexation Agreement was incorporated into the
23 CEDA Agreement in Attachment C, the larger
24 volume. And it is, therefore, a part of our

1 consideration. The Preannexation Agreement also
2 recites that all of the representations,
3 warranties and covenants contained therein shall
4 survive the execution.

5 So then we turn to the Golf Village
6 Development Plan set forth and incorporated into
7 the CEDA Agreement. Section 1406 of that plan
8 talks about general development character of the
9 tract, including the specific limitations or
10 controls to be placed on commercial uses,
11 operations, locations or types of tenants,
12 numbered lots and sizes, approximate location of
13 roads, entry features, retaining ponds, and
14 utility lines and description of other
15 development features, including landscaping.

16 I need to point out that in Mr. Betz'
17 determination he detailed that there was language
18 like this in the next paragraph of 1406(B), which
19 is Paragraph 3, pertaining to architectural
20 design criteria, but did not point out that there
21 are also use criteria set forth in the
22 Development Plan as well.

23 And then we get to really the crux of
24 the matter and that is: In the development plan

1 there's a reference to the development character
2 of Golf Village commercial and office areas shall
3 emphasize community living, using architecture
4 and site planning to create a pedestrian-friendly
5 scale. Close attention shall be placed on
6 pedestrian circulation through the creation of a
7 paved multipurpose trail and pedestrian under and
8 overpasses at Sawmill.

9 Similar type language pertains to the
10 architectural design and exterior construction
11 material criteria. The Development Plan goes on
12 to say that the applicant agrees that any further
13 divergence from development standards and
14 existing county regulations are standard, shall
15 be specifically addressed by the appropriate
16 government authority. The administration of a
17 plan is reserved to the Township Trustees in
18 accordance with the procedures identified. Major
19 deviations and public hearings are identified as
20 follows: "An application shall specifically
21 detail changes requested and the reasons for
22 change. A major deviation shall include, but not
23 be limited to, changes in use and/or character of
24 the development and/or increase of density." In

1 the event of an application contains a major
2 deviation, the development plan dictates that, if
3 the plan is submitted in the city, the
4 development plan goes to the Township Trustees
5 for review and approval and vice versa.

6 So, having gone through all of those
7 key documents in the CEDA Agreement, we would
8 remind that the CEDA Agreement was a negotiated
9 contract. We think all of the terms in the CEDA
10 Agreement, and all of the conditions set forth
11 therein, are contractual rights that we
12 negotiated for. They contain rights, duties and
13 obligations of both of the parties.

14 And our position is that Liberty
15 Township retain the role and the approval of
16 major deviations or major modifications to the
17 development plan. We further contend that
18 Liberty Township is entitled to identify what is
19 or is not a major deviation. Liberty Township
20 has done that. Powell has not submitted this
21 plan to the township authorities for review and
22 approval as we feel they're contractually
23 obligated to do. And we feel that this
24 contractual right and contractual damage, if it

1 is a right, is that particular type of harm
 2 suffered upon Liberty Township that distinguishes
 3 our situation from a situation where the township
 4 might be arguing terms of general welfare
 5 considerations. We think it's clear we have
 6 standing under the CEDA Agreement as a negotiated
 7 right. And we think Liberty Township has been
 8 deprived of its contractually secured right to
 9 participate in the zoning process. Also in
 10 regards to a major modification or deviation --
 11 so, that's really our first and primary argument.

12 Our second argument is that Liberty
 13 Township submits that its inclusion in the
 14 ability to declare and review, when is Liberty
 15 Township a co-legislative authority with the City
 16 of Powell? That enables us to argue that we are
 17 a bureau or a sub body of the legislative
 18 authority to gain standing on the other branch of
 19 the entitlement to appeal. Essentially we feel
 20 that Powell has delegated some of its legislative
 21 authority to us through the CEDA Agreement,
 22 through the Preannexation Agreement, and through
 23 the Development Plan.

24 Third argument, both Powell and Liberty

1 Township have passed limitations on square
 2 footage of office building development. I think
 3 this community has spoken loudly and unanimously
 4 through those limitations about what is or is not
 5 acceptable square footage limitations for
 6 commercial uses. I think these square footage
 7 limitations passed by both bodies can be used as
 8 a line test for what is and is not a major
 9 deviation or modification from what is recited in
 10 the development plan as a residential scale
 11 development. Lowes (sic) can argue forever about
 12 whether those limitations specifically apply.

13 The point I want to make to you is, I
 14 think regardless of whether those standards apply
 15 and whether the development can be limited by the
 16 65,000 square-foot limitation. By enacting the
 17 square-footage limitation for commercial
 18 buildings, both the City of Powell and Liberty
 19 Township have indicated clearly what is and is
 20 not residential scale development. Buildings
 21 with square footage over that limitation, I think
 22 it is not gainsaid to say it would be ridiculous
 23 to qualify those as residential buildings.

24 We have a direct interest in the

1 application because we have contractual rights to
2 enforce major and minor modifications. And
3 pedestrian friendly applies to both use
4 requirements of the plan, as well as
5 architectural requirements.

6 I've told you my fourth argument, which
7 is that pedestrian friendly is not defined in the
8 Development Plan. The term is employed with
9 regard to commercial uses and operations, as well
10 as to architectural standards. We feel, because
11 the change in use kind of played by the plan,
12 triggers the trustee's right to review and
13 approve the proposed use. The impact on the
14 Board of Trustees is direct. Again, it's direct
15 and it serves to deprive us of our contractually
16 negotiated rights to participate in the process.

17 Finally, it occurs to me in addressing
18 this standing issue, that I'm not quite sure why
19 this is proceeding. I take at face value the
20 counsel's suggesting that it's designed to
21 streamline and lend efficiencies to the
22 procedure. In my mind, and in the minds of my
23 client, this matter is of sufficient community
24 concern, that this Board should take all evidence

1 on the case that's presented to us, all testimony
 2 that a citizen wants to offer and be responsive
 3 to the community. I would -- I think that's the
 4 only way to avoid a cynic from concluding that
 5 the standing issue is simply a way of silencing
 6 portions of your community.

7 With that, I'd like to submit my
 8 documents for your review. I hope you'll give
 9 them careful consideration. I think the
 10 difference between our situation, as being a
 11 signatory to the CEDA Agreement, and the normal
 12 situation where an adjoining political
 13 subdivision is attempting to intervening in
 14 zoning procedures is stark. And it's obvious
 15 that our being a signatory to the CEDA Agreement
 16 should give us standing for this appeal. Thank
 17 you for your time.

18 MR. ALBRECHT: I'd like to ask a
 19 question, if that's okay. I know you mentioned
 20 that this will probably be a case of first
 21 impression upon standing. Is there any case or
 22 anything you have out there that the Board of
 23 Zoning Appeals is the proper jurisdiction, venue
 24 or forum to determine whether a breach of an

1 agreement, a negotiated document -- a breach of a
 2 negotiated document, such as the CEDA Agreement,
 3 that's the appropriate forum to address that
 4 breach, or someone's rights and responsibilities
 5 per the agreement?

6 MR. PAINTER: I found no case law
 7 directly on point to this situation. I think so
 8 long as we establish standing, it is at least one
 9 appropriate forum to address administratively the
 10 rights and obligations, at least those aspects of
 11 the rights and obligations that would pertain
 12 directly to the zoning matters in this case. At
 13 the same time, I didn't find anything suggesting
 14 that the Board of Zoning Appeals was the right
 15 body. I found nothing suggesting it's the wrong
 16 body. I'd be happy to review any authority you
 17 might have found then, but I haven't found
 18 anything.

19 MR. ALBRECHT: Okay.

20 MR. PAINTER: Any other questions, sir?

21 CHAIRMAN COOPER: Does Liberty Township
 22 own any land that is contiguous or adjacent to
 23 this proposed Target?

24 MR. PAINTER: Not of which I am aware.

1 Nor, if I may, sir, anticipate the implication of
2 your question, nor does the universe of adjoining
3 or contiguous landowners define the universe of
4 people who have standing to afford an appeal in
5 my mind from a fair reading of your code.

6 CHAIRMAN COOPER: Thank you.

7 MR. PAINTER: Thank you.

8 MS. ROSS: Do you need a moment?

9 CHAIRMAN COOPER: Oh, yes. Yes, I need
10 a moment.

11 MS. ROSS: Okay.

12 CHAIRMAN COOPER: If you can swear the
13 witness.

14 - - - - -
15 PEGGY GUZZO,

16 being first duly sworn, testifies

17 and says as follows:
18 - - - - -

19 CHAIRMAN COOPER: Please state your
20 name for the record.

21 MS. GUZZO: Peggy Guzzo, Liberty
22 Township Trustee.

23 CHAIRMAN COOPER: Thank you.

24 MR. ALBRECHT: And I guess before we

1 begin, are you -- do you have anything different
2 to add with respect to standing other than what
3 Mr. Painter previously presented or articulated
4 to this Board?

5 MS. GUZZO: That's why I stepped
6 forward. Just three things I wanted to
7 highlight. But he -- otherwise I thought he did
8 a wonderful job.

9 I'd just like to enter into the record
10 701.07, which is the Cooperative Economic
11 Development Agreement that went into effect in
12 March 22, 1999. This is the statute that
13 provides us the opportunity to enter into an
14 Economic Development Agreement with a
15 municipality, which that's why we entered into
16 with the City of Powell. That agreement was
17 entered into on the basis of the health, safety,
18 morals and to the extent allowed by this
19 statutes, the welfare of our constituents.
20 Powell, while it is part of Liberty Township, we
21 do have different interest, but we are governed
22 by -- our decisions are based on the health,
23 safety, morals, and welfare of our constituents.
24 So, here's this.

1 And in that statute you want to take a
 2 look at 701.01. I think it's 15(E). It
 3 stipulates, as Mr. Painter pointed out, that we
 4 are a party. But it specifically provides us the
 5 opportunity to sue and to enforce that the CEDA
 6 Agreement is adhered to. And when Mr. Painter
 7 said that there was no case law that he saw --
 8 I'm not a lawyer, but I did do a search on the
 9 internet -- an exhaustive search -- and found
 10 none either. And it's probably because the first
 11 CEDA Agreement was not enacted until 1999 with
 12 Springfield, so there really hasn't been any
 13 challenge probably to that -- to an agreement.
 14 And I -- and that was it. Thank you.

15 CHAIRMAN COOPER: Is there anything
 16 else that you have, Mr. Painter?

17 MR. PAINTER: Not from Liberty
 18 Township, no, Mr. Chairman.

19 CHAIRMAN COOPER: Thank you.
 20 Mr. Hogan, are you prepared?

21 MR. ALBRECHT: I'm sure you are.

22 MR. HOGAN: Good evening, everybody.
 23 Thank you for the opportunity to be here. This
 24 Board has become the stewards of the Golf Village

1 Development Plan. We've already heard that the
 2 development plan was designed with commercial
 3 scale that was pedestrian friendly. This case
 4 involves this monstrosity. And when we think
 5 about standing in this case, I want everybody to
 6 have in their minds this monstrosity. This sends
 7 out concentric circles of damage to the
 8 community. And I represent some of the members
 9 of that community who are most directly affected.

10 With respect to the issue of standing,
 11 I represent Mr. John Bennehoof. John lives about
 12 a quarter of a mile away from the post-Target
 13 site, and will be directly impacted by this
 14 development. And we'll hear from John briefly
 15 after I summarize the presentation.

16 Mr. Bennehoof signed this application
 17 for appeal on behalf of himself and on behalf of
 18 the Golf Village Resident's Association. The
 19 association speaks on behalf of about 1,100
 20 homeowners. If there's just two people per home,
 21 you have 2,200 people there. Twenty-one members
 22 of the Golf Village Association are members of
 23 the Villas at the Woodcutters Condominium
 24 Complex. Many members will be able to see the

1 Target from their patios or from their yards.
 2 Many members will be directly impacted by the
 3 negative and adverse impact of this Target
 4 development.

5 Golf Village Resident's Association is
 6 also a member of the Community Oversight
 7 Foundation, another signatory to the appeal.
 8 It's a well-organized citizens group consisting
 9 of about 30 homeowners associations and about
 10 6,000 households. Again, just two members per
 11 household and you have 12,000 individuals in this
 12 area. All these individuals are going to suffer
 13 decreased property values as a result of this
 14 development. They are going to suffer increased
 15 traffic. They're going to lose their -- the
 16 benefit of their bargain to live in a
 17 pedestrian-scale community with walking paths.
 18 They are all harmed in unique ways by this.

19 They also have questions. How did this
 20 standing issue arise? When was that meeting
 21 noticed? Was it noticed with ten days? Did the
 22 person who just recused himself vote at those
 23 meetings? They all have questions about the
 24 process. And they hope going forward the process

1 will be transparent and open to everyone.

2 I would first like to introduce into
 3 evidence -- or into the record an affidavit from
 4 Edwin Merrill. It was given in the Liberty
 5 Township Board of Zoning Appeals matter regarding
 6 the impact of a Wal-mart on the neighboring area.
 7 It's directly analogist to the impact of Target
 8 on this neighboring area. And, so, I would mark
 9 that as Appellant's Exhibit A.

10 I would also like to briefly read into
 11 the record a section from the Powell Zoning Code
 12 1147.15, which represents a legislative finding
 13 by the City of Powell, the damage that big box
 14 developments cause. It says in part: "It's the
 15 intent of this section to regulate large
 16 nonresidential establishments so as to prohibit
 17 the erosion of the residential character of this
 18 City of Powell and to promote the small greenbelt
 19 community character of the city and its
 20 surroundings as described in the comprehensive
 21 plan. Large nonresidential establishments have
 22 been commonly accepted as having the potential
 23 for creating negative impacts upon the city's
 24 existing economy, surrounding residential areas,

1 traffic, public safety and the efforts of this
2 city to maintain a small greenbelt character of
3 the face of the development and the community.
4 Because of the substantial adverse affects that
5 large, nonresidential establishments can have
6 based upon their size, bulk, scale, use, noise
7 and traffic generation, among other things,
8 there's no presumption that an application for
9 such a use is valid." I respectfully submit that
10 that's a legislative finding, that there is
11 damage in this case.

12 I would first like to call forward
13 Mr. John Bennehoof to discuss his personal damage
14 in this case and his standing, and also the
15 standing of the Golf Village Resident's
16 Association and the Community Oversight
17 Foundation.

18 - - - - -
19 JOHN BENNEHOOF,

20 being first duly sworn, testifies
21 and says as follows:

22 - - - - -
23 CHAIRMAN COOPER: Please state your
24 name again for the record.

1 MR. BENNEHOOF: My name is John
2 Bennehoof. I'm the president of the Golf Village
3 Resident's Association. I'm a four-year,
4 four-month resident at 3974 Village Club Drive,
5 which is, as a stone throw, a little more than a
6 quarter mile to the proposed Target site. I'm an
7 Ohio native and a Vietnam veteran.

8 As Mr. Hogan stated, the Woodcutters
9 Development directly abuts the property of the
10 proposed Target. There are 68 units there.
11 There are 21 people that I met with last night.
12 There are 68 units there that represent roughly
13 120 people that will suffer the damage of
14 pollution, drainage, noise, and all the issues
15 that Mr. Hogan brought up. Those people are
16 members of the Bluff Village Residents
17 Association, of which I am the founding president
18 of. There are 1,420 -- 1,419 homes in the Bluff
19 Village Resident's Association. We formed that
20 association to bring a public voice to a group
21 that did not have a homeowner's association that
22 we have any control over. That's controlled by
23 the developer and we have no say in that. Our
24 ability -- as far as I know, we have no ability

1 to influence that homeowner's association.

2 Those 1,419 homes represent roughly
3 \$500 million worth of investment by people that
4 are directly affected by this proposed Target.
5 That 500 million homes, if they suffer a
6 depreciation of their property values of 15
7 percent -- and that's a conservative estimate --
8 and the -- I should state that the -- the density
9 heat map that Target proposes, encompasses all of
10 the Golf Villages. So certainly all of those
11 homes will be affected. But there are at least
12 twice as many that would be -- suffer negative
13 property value impacts. But just looking at
14 the Golf Village resident's homes investments of
15 \$500 million, that represents a \$75 million
16 depreciation in property values. And that
17 represents a \$2 million take away from the tax
18 revenues from the tax auditor's office.

19 We were promised a pedestrian-scale
20 community when we moved here. We believe that
21 that is something that's important. That's why
22 we made the choice to move here and that's why we
23 remain here. This violation of that covenant, if
24 you will, is just one of many errors in judgment,

1 in our opinion.

2 I claim standing as an individual. I
3 claim standing as the president of the Golf
4 Village Resident's Association, representing
5 those 1,421 -- 1,419 homes. And we are a group
6 that is -- I am the trustee to the Community
7 Oversight Foundation which Mr. Hogan represented.
8 And that alliance between the Woodcutter
9 residents, 68 individual units, the 1,419 homes
10 in the Golf Villages and the COF, is a direct
11 relationship. And I don't believe that standing
12 for any of those groups should be in question.

13 I have arguments that will present --
14 presume that we have standing at the following --
15 at the follow-on meetings. I would like to ask a
16 question, if I may.

17 CHAIRMAN COOPER: Yes, sir.

18 MR. BENNEHOOF: What organization is
19 standing in question?

20 CHAIRMAN COOPER: Excuse me?

21 MR. BENNEHOOF: Which group standing is
22 in question?

23 CHAIRMAN COOPER: Everyone is in
24 question until we've been able to hear all the

1 facts.

2 MR. BENNEHOOF: I thank you for your
3 time.

4 CHAIRMAN COOPER: Thank you.

5 MR. HOGAN: Next we'll hear from Pierre
6 Mullier regarding the adverse impacts of the
7 proposed village.

8 - - - - -

9 PIERRE MULLIER,
10 being first duly sworn, testifies
11 and says as follows:

12 - - - - -

13 CHAIRMAN COOPER: Please state your
14 name for the record.

15 MR. MULLIER: Pierre Mullier, 4470
16 Timberside Drive, Powell, Ohio. I live in
17 Woodcutter, just to let you know. A stone's
18 throw away from where the proposed Target that's
19 going to be going in. I'm in standing with my
20 community and Woodcutter residents as opposed to
21 the Target going in, due to the adverse -- what's
22 going to happen to our homes, in terms of the
23 depreciation of our homes, as well as the
24 increased traffic with the trucks, increased

1 traffic per se, standing there five different
2 schools within a quarter mile of those schools.
3 I have two students which go to those schools. I
4 have one in high school, a 15-year-old boy. And
5 then I have a 14-year-old girl in the 7th
6 grade at Hyatts Middle School. I also stand with
7 the GVRA. And I'm standing with the appeals as
8 well, too. That's it. Thank you very much.

9 MR. HOGAN: I'd like to introduce the
10 testimony of Mr. John Crowder, president of the
11 Woodcutter Association. He'll be talking about
12 the ownership interest of the condominium unit,
13 owners have -- who are signatories to the appeal,
14 as well as evidence of a recent sale of a
15 condominium showing the diminished value already
16 with the shadow of the Target falling over the
17 condominium. Thank you.

18 MR. CROWDER: Hello. I'm John Crowder.

19 - - - - -

20 JOHN CROWDER,
21 being first duly sworn, testifies
22 and says as follows:

23 - - - - -

24 CHAIRMAN COOPER: Would you state your

1 name for the record, please.

2 MR. CROWDER: John Crowder. My address
3 is 3326 Timberside Drive. I also am in the
4 Villas of Woodcutter. I'm a stone toss away from
5 the buildings. I stand with the rest of the
6 Villa -- Association of the Villas of Woodcutter
7 against this. And I'm in standing with the
8 appeal.

9 The one thing that we have is our
10 devaluation of our property. Before the
11 announcement of Target came in, the unit sold at
12 74 -- 7654 Thistlewood, sold for \$235,000. This
13 last month at 3342 Timberside, the unit sold for
14 for 175,000 and the owner had to pay a year's
15 condo fees to get it sold. It's already
16 devaluated just from the announcement that
17 Target's coming in.

18 We have a lot of retired, older people
19 there. They put their whole life's savings in
20 there. And I hope you take this into
21 consideration before you look at it. Thank you.

22 CHAIRMAN COOPER: Thank you, sir.

23 MR. HOGAN: I'd just move for the
24 admission of my exhibit into the record and have

1 nothing further unless there are questions.

2 CHAIRMAN COOPER: I have no questions
3 at this time, do you?

4 MR. ALBRECHT: No questions.

5 MR. HOGAN: Thank you, very much.

6 CHAIRMAN COOPER: Does the applicant
7 have anything that they would like to address?

8 MR. INGRAM: Yes. Thank you, Chairman
9 Cooper and Mr. Jester. I'm Bruce L. Ingram.

10 CHAIRMAN COOPER: Put your hand up
11 again.

12 MR. INGRAM: I'm an attorney.

13 CHAIRMAN COOPER: Oh, okay. Sorry.

14 MR. INGRAM: I'm an attorney with
15 Vorys, Sater, Seymour and Pease. And along with
16 my partner, Joseph R. Miller, we are here this
17 evening to represent Triangle Properties, Inc.,
18 the applicant in this case for the zoning
19 certificate.

20 I want to say at the outset that we
21 agree completely with the comprehensive and
22 thorough decision and analysis of Mr. Betz and we
23 fully support that. And we will ask the Board,
24 when it rules on the merits, to confirm and

1 affirm the issuance of the zoning certificate,
2 based upon that excellent analysis.

3 We are not here this evening to take a
4 position on the standing of any of the parties
5 that have appeared at this hearing. We're also
6 not waiving any objection to the participation or
7 the evidence to be taken from these parties.

8 At this point we would like to urge the
9 BZA, as I think the BZA is prepared to do, to
10 expeditiously resolve this appeal. We are
11 anxious for December 5th so that the appeal can
12 be resolved at that time. I would like to ask,
13 if I could, that the Board communicate with us,
14 with respect to the length of that hearing that's
15 anticipated, any time limits that are to be
16 imposed upon the participants at that hearing,
17 and the procedure to be followed at the hearing,
18 including who is to open the hearing and who is
19 to close the hearing, primarily procedural
20 issues.

21 We are also not waiving this evening
22 any future objection to the discussion of the
23 CEDA Agreement or the Preannexation Agreement.
24 We do -- we would like to urge the Board that the

1 appeal in this case, it should be limited to the
2 question of the correctness of the zoning
3 administrator's decision to issue the zoning
4 permit. And in listening to the presentations by
5 those that purport to have standing here, it
6 appears that there may be some intention on their
7 part to turn this basically into a trial of the
8 CEDA, which we think is entirely inappropriate.

9 So with that, unless there are any
10 other questions, I want to thank the Board for
11 its attention. Thank the Board for this hearing
12 tonight. And we look forward to presenting our
13 evidence in response to the appellant's appeal on
14 December 5th.

15 CHAIRMAN COOPER: I do not know that we
16 have December 5th as a confirmed date yet.

17 MR. ALBRECHT: And just so counsel's
18 aware, after e-mailing everyone today, I received
19 an iris e-mail for the Board for a request for a
20 continuance that maybe representatives for all
21 the parties it may be best to handle amongst
22 ourselves the date. So --

23 MR. INGRAM: All right.

24 CHAIRMAN COOPER: We have some dates

1 available here that I can toss out to you where
2 we have available space, that we're not complete
3 with other meetings here. Those December dates
4 are 3, 5, 10, 11, 13, 19 and 20. And that's as
5 far as we've gone for that.

6 MR. INGRAM: Thank you, very much,
7 Mr. Cooper.

8 CHAIRMAN COOPER: Thank you.

9 MR. INGRAM: And we can discuss that
10 among counsel. Good.

11 CHAIRMAN COOPER: Right.

12 MR. INGRAM: Thank you, very much.

13 CHAIRMAN COOPER: Oh, excuse me.

14 MR. MANN: Sorry to take you by
15 surprise. I'll be brief.

16 CHAIRMAN COOPER: You did. You snuck
17 up on me here. Let me find the page here for
18 you.

19 - - - - -
20 ROBERT MANN,

21 being first duly sworn, testifies

22 and says as follows:

23 - - - - -

24 CHAIRMAN COOPER: Please state your

1 name for the record, please.

2 MR. ROBINSON: Robert Mann, 3614
3 Bainbridge Mills Drive. And I'm just here to ask
4 for a point of clarification on the number of
5 residents in the audience from Woodcutter who are
6 appellants. And I don't know if it's this
7 Board's position that everyone who's standing is
8 in question must actually get up and come and
9 testify before this microphone, or if the Board
10 will acknowledge that given that Woodcutter is
11 directly behind Target, that at least those
12 individual residents would have standing. And
13 I'd just like that clarified so that, if those
14 people do need to get up and approach the
15 microphone, they have the opportunity to do that.

16 CHAIRMAN COOPER: I don't think that is
17 necessary. I think it's obvious that that is an
18 adjacent or contiguous property. The only
19 question that we might have about the people who
20 signed the petition is, are they all homeowners?
21 If they are tenants, they -- a tenant may not
22 have standing. The homeowner in this -- because
23 of the proximity of the (inaudible).

24 MR. MANN: I would just ask, then, if

1 anyone from Woodcutter is not an actual owner, if
2 they come up and identify themselves for you.
3 Thank you.

4 MR. HOGAN: All -- all the signatories
5 are homeowners.

6 MR. ALBRECHT: Would -- just for the
7 record, if someone could state that into the
8 microphone so the court reporter can hear it.

9 MR. CROWDER: John Crowder again.
10 They're all homeowners.

11 MR. ALBRECHT: Thank you, sir.

12 CHAIRMAN COOPER: Does he need to be
13 under oath for that or --

14 MR. ALBRECHT: He's still under oath.

15 CHAIRMAN COOPER: Mr. Ingram, is there
16 anything else you'd like to add?

17 MR. INGRAM: No, there's nothing
18 further. Thank you.

19 CHAIRMAN COOPER: Okay. Thank you.

20 MR. JESTER: Mr. Chairman, I appreciate
21 the testimony from the counsel. There's a lot to
22 look at. Things I haven't seen yet. And I
23 appreciate all you have put before us.
24 Personally I just got -- I want to read this, I

1 want to study it. And I am going to move to the
2 Chairman that we recess on this matter and review
3 it further.

4 CHAIRMAN COOPER: Okay.

5 MR. JESTER: That's my motion.

6 CHAIRMAN COOPER: I would second that
7 motion.

8 MS. ROSS: Ed Cooper.

9 CHAIRMAN COOPER: Yes.

10 MS. ROSS: And Joseph Jester.

11 MR. JESTER: Yes.

12 MR. ALBRECHT: We are in recess.

13 - - - - -

14 Thereupon, the proceedings were
15 concluded at 7:26 o'clock p.m.

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CERTIFICATE

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I, Alicia J. Bodle, A Certified Digital Transcriber, do hereby certify that the foregoing proceedings were digitally recorded, electronically transmitted, and transcribed via video and audible playback, and that the foregoing transcript of such proceedings is a full, true and correct transcript of the proceedings as so recorded.

Alicia J. Bodle

ALICIA J. BODLE
Certified Digital Transcriber

1 ORIGINAL
2 HEARING IN RE: BOARD MEETING
3

4 DATE OF DELIVERY:

5 Powell City
6 Board of Zoning Appeals
7 47 Hall Street
8 Powell, Ohio 43065
9 By Ms. Susie Ross

Susie Ross CITY CLERK
Susie Ross

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