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BEFORE THE BOARD OF ZONING APPEALS

CITY OF POWELL, OHIO

- - - - -

IN RE: :

Special Meeting :

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- - - - -

Proceedings before Chairman Ed Cooper  
and Board Member Joseph Jester taken at  
the Powell, Ohio, Board of Zoning Appeals,  
47 Hall Street, Powell, Ohio, on Monday,  
April 14, 2008, at 5:30 o'clock p.m.

- - - - -

1 APPEARANCES:

2 Downes, Hurst & Fishel  
3 400 S. Fifth Street  
4 Suite 200  
5 Columbus, Ohio 43215  
6 By Mr. Benjamin S. Albrecht  
7  
8 On behalf of the Board.

9 Chester, Willcox & Saxbe, LLP  
10 65 E. State Street  
11 Suite 1000  
12 Columbus, Ohio 43215  
13 By Mr. Craig B. Paynter

14 On behalf of Liberty  
15 Township.

16 Wiles, Boyle, Burkholder &  
17 Bringardner  
18 300 Spruce Street, Floor One  
19 Columbus, Ohio 43215  
20 By Mr. Brian M. Zets

21 On behalf of the City  
22 of Powell.

23 ALSO PRESENT:

24 Mr. Jon Bennehoof, Appellant  
Mr. David Betz, Director of Development  
Ms. Susie Ross, City Clerk

1                                   - - - - -

2                                   P R O C E E D I N G S

3                                   - - - - -

4                   CHAIRMAN COOPER:  I call to order  
5 the special meeting of the Board of Zoning  
6 Appeals for the City of Powell, Ohio, on  
7 April 14, 2008.

8                   Roll call, please?

9                   (Roll call conducted by Secretary  
10 Ross.)

11                  CHAIRMAN COOPER:  Mr. Chairman, I  
12 move that we go into Executive Session  
13 according to the Ohio Revised Code, Section  
14 121.22(G)(3) pending the litigation.

15                  MR. JESTER:  Seconded.

16                  MS. ROSS:  Ed Cooper?

17                  MR. COOPER:  Yes.

18                  MS. ROSS:  Joseph Jester?

19                  MR. JESTER:  Yes.

20                  (The motion is carried.)

21                                   - - - - -

22                  Thereupon, Executive Session was  
23 held off the record.

24                                   - - - - -

1                   MR. ALBRECHT: Good evening  
2 everyone. We are here to resume the special  
3 meeting of the Board of Zoning Appeals of the  
4 City of Powell, Ohio, on April 14, 2008. The  
5 roll has already been taken.

6                   We are here to deliberate the  
7 procedures for the hearing on the merits of  
8 this case and to set a date to begin those  
9 hearings.

10                  MR. ALBRECHT: Mr. Cooper, I just  
11 want to follow back with you and Mr. Jester.  
12 I believe when we met back in December, on  
13 December 5, one of the last things you  
14 charged Rufus and I to do was to try to get  
15 the parties together to come up with some  
16 kind of rules or procedure for the hearing on  
17 the merits when we get there.

18                  Rufus and I put together a draft of  
19 the hearing procedure and sent them out to  
20 the representatives of all the parties, asked  
21 for comment or whether it would work or not.

22                  Almost universally everyone had a  
23 bit of an issue with respect to the procedure  
24 in that it didn't seem to set the times

1 appropriately or too much time, not enough  
2 time, or whatever. There were some concerns  
3 put forth by the representatives of the  
4 parties with respect to the procedures we set  
5 forth.

6 So tonight, before moving on to the  
7 next hearing on the merits, I think we should  
8 offer the opportunity to represent the  
9 parties to address those directly and to give  
10 their thoughts and input as to the  
11 procedures, so that hopefully we can come up  
12 with some working protocol for this, for the  
13 hearings.

14 CHAIRMAN COOPER: That is what we are  
15 here for. Mr. Paynter, would you like to start?

16 MR. PAYNTER: Sure.

17 CHAIRMAN COOPER: Would you please  
18 step up here so we can record you?

19 MR. PAYNTER: Thank you,  
20 Mr. Chairman. As you know, as I believe you  
21 know, Chris Hogan could not be here, he is  
22 out of state as is my co-counsel Mr. Loveman,  
23 who has assisted me in representing Liberty  
24 Township's Board of Trustees.

1           A PARTICIPANT: We can't hear back  
2 here. Can we have a little volume?

3           MS. ROSS: I'm sorry, I can't  
4 adjust it any higher than it is.

5           MR. PAYNTER: Is that better?

6           A PARTICIPANT: Yes.

7           MR. PAYNTER: I'll start over. Thank  
8 you, Mr. Chairman. I'm here on behalf of the  
9 Liberty Township Trustees. My co-counsel Bill  
10 Loveland could not be here. He is out of  
11 state. As I believe you know, Mr. Hogan is  
12 also out of state and could not be here.

13           In terms of input, I'm not sure  
14 what the Board has in mind, but I have three  
15 things I would like to bring up with the  
16 Board. First, as the Board is no doubt  
17 aware, we have been engaged in over a  
18 year-long process with the Liberty Township  
19 Board of Zoning Appeals on what has been  
20 called the Wal-Mart hearings.

21           What we know from going up to the  
22 Court of Common Pleas in that case at least  
23 once is that our Common Pleas Court does not  
24 want to have an incomplete record presented

1 to it on any appeal that might be forthcoming  
2 out of whatever decision this Board makes.

3 We were subject to a remand from  
4 the Common Pleas Court because the court  
5 found that record to be insufficient, and in  
6 taking guidance from that procedure, and  
7 recognizing that all of the parties are  
8 interested in the most expeditious way of  
9 resolving this and perhaps forwarding an  
10 appeal on by any of the parties, I would  
11 suggest to the Board that imposing any  
12 limitations on the presentation by the  
13 parties or the witnesses that might be  
14 called, other than some gross repetitive  
15 testimony that might come up, would be not  
16 only a mistake but a reversible mistake and  
17 might well elongate proceedings in the long  
18 run if the case is taken up on appeal.

19 I know that there were some  
20 discussions about limiting time for  
21 presentation, numbers of witnesses and time  
22 for questioning witnesses when we discussed  
23 this with your counsel and able opposing  
24 counsel previously.

1           I just think we ought to all take  
2 note of what our Common Pleas Court here in  
3 Delaware County has already ruled in a very  
4 similar situation and not take a case up that  
5 might have an incomplete record because of  
6 some kind of artificial limitations that were  
7 put on the presentations.

8           Beyond that, we can envision a  
9 couple of issues. The parties are going to  
10 need some time to update their investigation  
11 of the issues and public record requests.

12           Mr. Hogan has indicated he would  
13 like to seek some information from the Target  
14 Corporation in the course of this proceeding  
15 and has asked me to ask you to allow  
16 sufficient time to have that take place.

17           I suppose the third thing that we  
18 have anticipated is that there may be issues  
19 that come up as we sort through the  
20 information we all are going to have to sort  
21 through.

22           We would ask that the Board give  
23 some consideration to some kind of a dispute  
24 resolution mechanism in the event that we

1 reach impasse with opposing counsel or one of  
2 the interested parties in the proceeding as  
3 to what we can and cannot have access to.

4           So, having said those three things,  
5 lawyers that are associated with our team  
6 have some scheduling problems through the  
7 course of April, I'm going to be gone  
8 April 23rd, 24th, and 25th, allowing for some  
9 of these issues to be explored, we would  
10 request that the hearing be set no sooner than  
11 mid- to late May so that we can get through  
12 this process, and that there be no artificial  
13 limitations placed upon any of the parties as  
14 to what the presentation and evidence might  
15 consist of.

16           CHAIRMAN COOPER: Mr. Paynter,  
17 I think we have very similar goals in mind.  
18 We as a Board want to make sure that every-  
19 body gets to say what is relevant to this  
20 case. I'm talking about the facts of the  
21 zoning and whether or not this zoning permit  
22 is allowed under the zoning code.

23           What we are trying to do is conduct  
24 these meetings as necessary in an orderly

1 fashion to avoid redundancy, to avoid  
2 emotions, and just speak to the facts of the  
3 matter.

4 We want to make sure that everybody  
5 has adequate time to do that. We are just  
6 trying to lay out, our attorney laid out some  
7 ground work that they thought was a start.

8 We were looking for your input. I  
9 believe we discussed that in November or  
10 December also. We were looking for your  
11 input to see how we could structure this  
12 hearing so that it has some structure rather  
13 than just turning it loose. You've had a  
14 chance to review this document, the hearing  
15 procedures, that Rufus and Ben put together I  
16 assume?

17 MR. PAYNTER: I have some months  
18 ago. I haven't looked at it recently because  
19 I was under the impression that it was no  
20 longer being considered due to, as  
21 Mr. Albrecht has said, virtually unanimous  
22 criticism of the document.

23 The biggest criticism I had with  
24 the proposed procedure was limiting

1 presentation before anybody said anything,  
2 ahead of time, and limiting the scope of what  
3 they might present.

4 I think this Board and its counsel  
5 can determine when the time comes if  
6 testimony is getting redundant. However, I  
7 think this issue was a matter of sufficient  
8 concern in this community that to put  
9 artificial limitations on presentations would  
10 be a huge mistake.

11 In light of the experiences we have  
12 had at Liberty Township going up to the  
13 Common Pleas Court, I think it would prolong  
14 the proceedings rather than shorten them  
15 because we may have another record that the  
16 court will view as being incomplete, and the  
17 court may well send that record down again  
18 for further hearings.

19 CHAIRMAN COOPER: We definitely  
20 want to avoid that.

21 MR. PAYNTER: Yes.

22 CHAIRMAN COOPER: We definitely  
23 want to avoid that. Can you enlighten me  
24 just a little bit more as to what dispute

1 resolution process you might be talking about?

2 MR. PAYNTER: Well, depending upon  
3 when the Board may want to entertain the  
4 hearing on the merits, if there comes a time  
5 when the parties reach impasse on production  
6 of documents or their investigations,  
7 I supposed the best thing I can encourage the  
8 Board to do is think about a way for us to  
9 get word to the Board so that the Board might  
10 convene a special meeting to bridge that  
11 impasse or allow us to be present at an  
12 intervening board meeting to adjudicate what  
13 outside of the administrative process we call  
14 these discovery disputes.

15 MR. JESTER: You said there were  
16 three issues. I tried to follow you, but I  
17 was having trouble. What was number one,  
18 number two, and number three because I think  
19 they are important to you, and I want to  
20 understand.

21 MR. PAYNTER: Thank you,  
22 Mr. Jester. The first issue and most  
23 important to the Liberty Township Trustees is  
24 the imposition of artificial limitations on

1 what we can present to you, time limitations  
2 of those presentations, or official time  
3 limits.

4 MR. JESTER: Okay.

5 MR. PAYNTER: The second was, I am  
6 the emissary of Mr. Hogan on this one, which  
7 is he envisions seeking some information from  
8 the Target Corporation.

9 In my own light, I would envision  
10 reviewing and renewing my public record  
11 request from the City of Powell. So we will  
12 have some time where we need to gather  
13 additional information that may have come to  
14 pass since last November. So that's number  
15 two. We will call that a discovery issue.

16 Then, Mr. Jester, the third issue I  
17 would like the Board's consideration of is  
18 this dispute resolution procedure. I think  
19 we should start thinking about it sooner  
20 rather than later, so that we don't get to  
21 the record hearing and have a lot of issues  
22 that are unresolved and the parties are not  
23 prepared to go forward.

24 CHAIRMAN COOPER: I'm not certain

1 in the brief conversation I had with counsel,  
2 that we have subpoena power over documents:  
3 people, yes; documents, I don't believe so.  
4 I don't know what kind of authority you would  
5 have to apply a resolution to a dispute of  
6 you not being able to find a document or get  
7 a document produced from opposing parties.

8 MR. PAYNTER: The only mechanism  
9 I'm aware of to bridge that impasse is for us  
10 to go to the Common Pleas Court and seek  
11 enforcement of a notary subpoena that might  
12 be issued. I suggest that because, as you  
13 know, that takes time.

14 If that is the dispute resolution  
15 mechanism that the Board is telling us we  
16 need to explore, I'm simply suggesting we  
17 might need to do that and to set the hearing  
18 more remotely rather than less remotely so  
19 that we can do that, if need be.

20 CHAIRMAN COOPER: When you say  
21 "more remotely," are you still talking about  
22 the middle of May?

23 MR. PAYNTER: I think if you're  
24 telling us we need to go to the Common Pleas

1 Court in the event of a dispute, if a dispute  
2 arises the middle of May is not realistic and  
3 we might be looking more toward the middle of  
4 June to give us time to do that.

5 MR. JESTER: From your standpoint,  
6 you're representing the Township and the  
7 Township only?

8 MR. PAYNTER: Yes, sir, that's  
9 correct.

10 MR. JESTER: And your opposition  
11 to the certificate as it was issued by  
12 the City, there is nothing else  
13 sitting out there?

14 MR. PAYNTER: I represent the Board  
15 of Trustees and Liberty Township and the  
16 Trustees. Our opposition is to the issuance  
17 of the certificate on a number of different  
18 fronts, but that's right. We don't --

19 MR. JESTER: Keep it -- narrow it  
20 down as to what it is.

21 MR. PAYNTER: Well, it is a  
22 complicated issue we believe. But, yes --

23 MR. JESTER: Yes, it is.

24 MR. PAYNTER: Well, I don't envy

1 your task, Mr. Jester.

2 MR. JESTER: I just want to be sure  
3 all the way through it is the zoning  
4 certificate that was issued by the city is  
5 what you are--?

6 MR. PAYNTER: By a zoning  
7 administrator, yes.

8 MR. JESTER: Yes, right.

9 MR. PAYNTER: I think that's what  
10 the hearing is about. The whole circle -- Keep  
11 everything in that. I'm sorry, I'm kind of --

12 MR. PAYNTER: That's okay.

13 MR. JESTER: I just wanted to be  
14 sure that we've got everything very clear on  
15 the basis.

16 MR. PAYNTER: I welcome your input.  
17 I think that's why we're here.

18 MR. JESTER: Yes.

19 MR. ALBRECHT: Well, I guess I just  
20 have one question probably because Rufus and  
21 I will be in the middle of any discovery  
22 dispute and not knowing where we would stand  
23 on any kind of alternate dispute resolution  
24 mechanism or whether we would even have the

1 authority to do anything short of going to  
2 court.

3 I know you do not want to speak for  
4 Mr. Hogan, since he is not here. But  
5 realistically when would the parties envision  
6 them being able to make requests for records?  
7 Is that something that could happen in the  
8 relatively near future or to be determined?

9 Without Mr. Hogan being here, it's  
10 difficult to opine. But I don't want to get  
11 in a situation where if we set a date in the  
12 middle of May three days before the hearing a  
13 request comes out and for whatever reason the  
14 parties can't fill it and we're in court just  
15 to get that resolved. I know Rufus and I  
16 will be right in the middle of that, and I  
17 would like to try to avoid it, if possible.  
18 But just your thoughts?

19 MR. PAYNTER: Well, I understand  
20 your concern, and I would think it would be  
21 prudent therefore to maybe have the Board  
22 structure a deadline when requests should go  
23 out.

24 Certainly the Board is aware that

1 the Common Pleas Court is going to hold a  
2 hearing on the 28th of this month on the  
3 motion for stay.

4 This all might become moot for a  
5 while the appeal is pending. I don't know.  
6 We're not specifically involved in that  
7 aspect of the proceeding, but you make a good  
8 point, Ben, there.

9 It might be prudent for the Board  
10 to appoint a period of time, maybe ten days  
11 or two weeks, for the parties to get their  
12 requests out and then give enough time for  
13 the responses and enough time for an impasse  
14 resolution if there is going to be such a  
15 problem.

16 MR. ABRECHT: Anything else,  
17 Mr. Paynter?

18 MR. PAYNTER: No, sir, not unless  
19 the Board doesn't have any other questions.

20 CHAIRMAN COOPER: I'm sure we will  
21 probably be back with more questions.

22 MR. PAYNTER: I'll hang around  
23 then. Thank you.

24 CHAIRMAN COOPER: Thank you.

1           Would counsel for the appellee please  
2 identify himself and come up here?

3           MR. ZETS: Sure. Brian Zets on  
4 behalf of Gene Hollins who was unable to make  
5 it today, this evening. A couple of thoughts  
6 about -- first I don't believe the appellee  
7 objected to the December 10, 2007, memo that  
8 was issued by Ben and Rufus.

9  
10           I don't think there was any objection  
11 to the memo. We reviewed the memo in its  
12 entirety and we believe it was reasonable and  
13 the time limits and the constraints placed  
14 upon the process in the December 10, 2007,  
15 memo were in fact reasonable.

16           Just a couple of points to follow  
17 up. Mr. Paynter had said this is not, really  
18 it is not a trial on the merits. So we are  
19 not here sitting, so the Board is not here  
20 sitting as a court with the notions of fair  
21 play and justice, reasonable limitations on  
22 your time. That any party who is here who  
23 can participate has I believe is something that  
24 the BZA can in fact structure.

1           When you're talking about  
2     structuring the hearing, whether that is an  
3     hour for each time that is set forth in the  
4     December 2007 memo or whether that is maybe  
5     some adjustment on that time. But I think it  
6     is absolutely reasonable.

7           Attorneys work under constraints day  
8     in and day out to say to the parties, "You're  
9     entitled to a certain amount of time.  
10    Prepare your case accordingly."

11           Now, granted there may be  
12    situations where that time may need to be  
13    adjusted while we are in the heart of the  
14    hearing because of circumstances that arise  
15    that are beyond our control or beyond what we  
16    believe could happen. That is  
17    understandable.

18           But I think there should be some  
19    structure placed about how this hearing comes  
20    about, I mean, no different than if you were  
21    in court. I know we're not, but time limits  
22    are given. Attorneys work under that, and  
23    they understand how to prepare their cases.

24           With respect to the dispute

1 resolution and document production, again, I  
2 would say that we are not under some -- this  
3 isn't a trial court situation. We are in a  
4 court of law.

5 I'm not sure if there is a public  
6 records request made upon the city, obviously  
7 that is a valid request. Pursuant to Ohio law,  
8 that will be answered in a fashion that it  
9 should under Ohio law.

10 With respect to a public records  
11 request, and I'm sure counsel for Triangle  
12 Properties may speak to this issue. But I  
13 don't think the Board of Zoning, as Ben  
14 had said before, has the power to issue  
15 subpoenas. But then that also turns on -- I  
16 don't believe the Board has the ability to  
17 determine public records disputes.

18 If for some reason a public records  
19 request is made and the city believes that  
20 certain documents should not be produced for  
21 whatever reason, that is not an issue for the  
22 BZA to decide.

23 Likewise, I don't think there is to  
24 be a mechanism created where the BZA decides

1 these other public -- not public records  
2 requests but other document disputes.

3           There is really no mechanism I can  
4 think of, and there are probably lots of  
5 other people here that are probably smarter  
6 than I am, but with respect to requesting  
7 documents of parties in a BZA hearing, I  
8 really don't see you finding an avenue to do  
9 that under the Ohio Revised Code.

10           So some of my thoughts with respect  
11 to the hearing, I think the hearing should be  
12 set sooner than later. Our suggestion is we  
13 find a date that is suitable for all parties.  
14 We begin this hearing. Pick your day on a  
15 Monday and hold it.

16           The December 2007 memo said, you  
17 know, we will start at 6:30 and go no later  
18 than 10:30. I believe that's reasonable  
19 because we're all going to get tired at the  
20 end of the day.

21           But you get started and you get  
22 through as many witnesses, as much testimony,  
23 as the Board can get through by 10:30 and you  
24 come back the very next day when everybody

1 has everything fresh, and it's fresh in the  
2 Board's mind and it's fresh in our minds.

3           You move forward Tuesday, and if  
4 for some strange reason we can't, you can go  
5 Wednesday. This thing could be done in three  
6 days. A record, a complete record, could be  
7 made and the parties can make their decision  
8 and then the parties can do with that  
9 decision as they please.

10           CHAIRMAN COOPER: Mr. Zets, do you  
11 have a problem with this Board setting a time  
12 limit for all counsel to request public  
13 records?

14           MR. ZETS: No. I think, as Ben says,  
15 that's a good idea. I mean, if the Board wants  
16 to set forth some sort of case schedule or  
17 hearing schedule, if you will, and that will  
18 include a certain date by which documents should  
19 be requested, however they are going to be  
20 requested. I think that is a very good idea.  
21 So then parties will know when they have to  
22 get those in.

23           I mean, we have been going at this  
24 since December. I think people should

1 understand what documents they really need or  
2 what documents they think have transpired  
3 since the last time we all met.

4 CHAIRMAN COOPER: I would note,  
5 though, that you people have been going at  
6 this since December. We haven't gotten to do  
7 anything.

8 MR. ZETS: I think most parties  
9 know what documents they have and they should  
10 be able to get those requests in. I think a  
11 deadline for that is a very good idea.

12 CHAIRMAN COOPER: Okay. Anything  
13 else you would like to ask?

14 MR. ZETS: Not at this time.

15 CHAIRMAN COOPER: All right. Thank  
16 you, sir.

17 MR. ZETS: Sure.

18 MR. ALBRECHT: Would the counsel for  
19 Target/Triangle?

20 MR. INGRAM: Yes, thank you.  
21 Mr. Chairman, Bruce Ingram representing  
22 Triangle. The suggestion that we have this  
23 hearing in late May or sometime in June  
24 really should inform you that what the

1 Appellants are about here is simply delay.

2           The Liberty Township hearings that  
3 are going on have absolutely no relevance to  
4 the procedural or the timing of what the  
5 Powell City BZA should be concerned about.

6 There are rooms full of documents, there are  
7 tapes, there is this, there is that.

8           There is 14 years of history  
9 relating to what is going on with respect to  
10 the Walmart project over in the Liberty  
11 Township that has absolutely no bearing on  
12 what I believe I heard Mr. Jester say, which  
13 there is only one issue here, and that is,  
14 does the application for this Target conform  
15 to the development standards and zoning,  
16 that's it. It is no more complicated than  
17 that.

18           We are in complete agreement with  
19 your December 8 memorandum, Ben's memorandum,  
20 setting forth the time frame. We are in complete  
21 agreement with that. I don't believe we  
22 registered an objection as Mr. Zets just said.  
23 I don't believe either of us registered any  
24 objection to that.

1           We think it is completely fair and  
2 completely within your power as a BZA to set  
3 reasonable time limit. An hour for Powell,  
4 and an hour for the applicant, an hour for  
5 Liberty township, and an hour for the  
6 appellants is completely reasonable. In  
7 fact, it is exactly the sort of time frame  
8 that most BZA's would follow.

9           To turn this into multiple hearings  
10 on multiple issues that really don't have any  
11 relevance really turns this into nothing more  
12 than a circus, and it's not. It is a  
13 quasi-judicial hearing.

14           We do not believe that there should  
15 be any further involvement by the BZA in the  
16 supposed document's dispute. I'm not aware  
17 that there's any document's dispute.

18           There was in fact a public records  
19 request made of Powell that was responded to  
20 and there are statutory procedures that  
21 Mr. Paynter and his client or Mr. Hogan and  
22 his client can follow if they do not believe  
23 that that public records request was  
24 appropriately filed.

1           That is something the Board of  
2 Zoning Appeals should have nothing to do  
3 with. It has no jurisdiction over a public  
4 records request. So our view is there  
5 shouldn't be any delay whatsoever in setting  
6 this hearing and holding the hearing on the  
7 basis of a supposed conflict between Powell  
8 and Mr. Paynter with respect to a public  
9 records request.

10           Months have gone by here. Months  
11 have gone by since the public records request  
12 was made. The documents were produced. If  
13 there is a dispute over that, they can pursue  
14 the statutory procedures to do that.

15           I don't believe that there should  
16 be any dispute resolution here. The Board  
17 shouldn't involve itself in that dispute.  
18 There is just no jurisdiction by this Board  
19 over any such dispute.

20           I agree with Mr. Zets that if we  
21 get into the hearing and there is some reason  
22 to lengthen the time frame of an hour each  
23 because of cross-examination, I think  
24 Mr. Albrecht's memo pointed out the fact the

1 Board could take that into consideration and  
2 grant some limited additional time. But  
3 let's wait until we get into the hearing to  
4 see if there is really a necessity to  
5 extend any of the timeframes that the Board  
6 set out in its memorandum.

7 We are vitally interested in having  
8 this hearing set as soon as possible. We  
9 would suggest next Monday be the first date  
10 for this hearing, and proceed immediately to  
11 get to the merits of this case.

12 What Judge Whitney does with  
13 respect to the pending stay, again, it is not  
14 a matter over which this Board should attempt  
15 to anticipate or do anything other than  
16 follow what the judge has already indicated,  
17 that is, he has remanded this to you for a  
18 hearing on the merits.

19 Until the judge in his wisdom  
20 decides to change that, this Board is  
21 enjoined by the court to hold the hearing on  
22 the merits. We would ask that you do that as  
23 early as next Monday.

24 CHAIRMAN COOPER: I would agree

1 with you as far as public records go. I  
2 certainly think the counsel ought to have all  
3 the records they need at this point in time  
4 to proceed with this hearing.

5 I will tell you that I believe that  
6 the earliest that we would start this hearing  
7 would be the middle of May. We are just  
8 trying to be fair to all people involved so  
9 that we don't have to start over again.

10 Once we get into the merits of this  
11 case, we want to hear Judge Duncan's decision.  
12 He has indicated that he will be having all  
13 of his memoranda contra must be submitted  
14 to him by next Monday, which is the 21st and  
15 he will hold a hearing the Monday after that.

16 We are expecting that he would rule  
17 one way or the other on the stay. Regardless  
18 I believe that we are going to wait  
19 until we hear from him, just so we don't have  
20 to do this all over again.

21 MR. INGRAM: Might I address that,  
22 Mr. Cooper?

23 CHAIRMAN COOPER: You certainly  
24 may.

1           MR. INGRAM: Let me say that all  
2 Judge Whitney has done is set a nominal  
3 hearing I believe on the 28th. A nominal  
4 hearing is nothing more than a notation on  
5 the judge's calendar that all of the papers  
6 are ready for a decision.

7           We don't know when Judge Whitney  
8 will make a decision on that. He may make a  
9 decision that afternoon, or he may not make a  
10 decision until August.

11           So for this Board to wait, to  
12 basically say "We're not going to do anything  
13 until we hear from Judge Whitney, that could  
14 very well wind up being a matter of months  
15 from now rather than this being as early as  
16 the 28th of April.

17           Frankly, if Judge Whitney had  
18 anticipated that this Board was going to --  
19 that this Board thought that his decision was  
20 a matter of import to the Board, I think he  
21 would have already set a hearing. He would  
22 have already issued a decision.

23           Because the Judge knew when he set it  
24 for the 28th that this hearing going to be held

1 tonight to set a date, I think it is entirely  
2 consistent with the judge's order of remand that  
3 this Board actually set a hearing tonight and  
4 not wait for some potential decision from  
5 Judge Whitney months down the road.

6 CHAIRMAN COOPER: So that is  
7 our intention and we will be setting a date  
8 this evening, but it will not be before the  
9 28th. Thank you.

10 MR. INGRAM: Is there anything else?

11 MR. ALBRECHT: If I misspoke as far  
12 as people's objections, I would like to  
13 clarify on the record that I may have  
14 misspoken as far as objections, so I  
15 apologize to --

16 MR. INGRAM: I just want to make it  
17 clear that we thought it was an excellent  
18 memo, it was well considered, and we fully  
19 agree with what was submitted to the Board.

20 CHAIRMAN COOPER: Let's think about the  
21 constraints.

22 MR. BENNEHOOF: May I address the Board?

23 CHAIRMAN COOPER: Yes, sir. Please don't  
24 forget to identify yourself.

1 MR. BENNEHOOF: I am Jon Bennehoof.  
2 I live at 3974 Village Club Drive. Can  
3 everybody hear me?

4 A PARTICIPANT: Not really.

5 CHAIRMAN COOPER: Speak into the  
6 microphone.

7 MR. BENNEHOOF: Is this better?

8 THE PARTICIPANTS: Yes.

9 MR. BENNEHOOF: I live at 3974  
10 Village Club Drive. I would like to  
11 acknowledge your good judgment, Mr. Cooper,  
12 when you state that you are going to wait  
13 until Judge Whitney makes a decision. I  
14 don't think anybody in this room knows what  
15 is in Mr. Whitney's head, Judge Whitney's  
16 head.

17 As you know, I am the president of  
18 the Golf Village Residents Association. I  
19 have some statements which some of them  
20 should be modified by what has transpired. I  
21 appreciate that you are going to allow  
22 Judge Whitney to come to a decision.

23 But I would first like to say that  
24 there are four issues, Mr. Jester: a

1 violation of the CEDA agreement.

2 CHAIRMAN COOPER: Okay.

3 MR. BENNEHOOF: These are issues of  
4 my concern and the people with whom I am in  
5 touch with daily. Violation of the CEDA  
6 agreement as it --

7 CHAIRMAN COOPER: Sir, if I may  
8 interrupt, we are here to talk about  
9 procedures.

10 MR. BENNEHOOF: I understand that  
11 and I'm getting to that, if I may.

12 CHAIRMAN COOPER: All right, please  
13 do.

14 MR. BENNEHOOF: Well, I would like  
15 to air the issues that have brought me to  
16 this table.

17 CHAIRMAN COOPER: Well, we are pretty  
18 well aware of the issues. We've got reams of  
19 paper of the issues and some of them we are  
20 authorized to address and some of them we  
21 aren't.

22 A contractual dispute between  
23 Liberty Township -- all right.

24 We are here to discuss the

1 procedures this evening. Do you have any  
2 input as to the procedures that we've  
3 laid out?

4 MR. BENNEHOOF: As far as the  
5 procedures, I don't have the benefit of the  
6 review of that document.

7 CHAIRMAN COOPER: Okay.

8 MR. BENNEHOOF: However, my  
9 counsel, who is absent, did take exception to  
10 that document and I stand by his objection to  
11 it.

12 I would like to state that we have  
13 a shared vision for the City of Powell that  
14 we hope we share with our duly elected  
15 officials.

16 We hope that we can come to an  
17 amicable resolution of this conflict in a  
18 timely manner that is in the best interest of  
19 both parties, including the investment  
20 interests of the developers.

21 But somebody saying, "Oh, no, you  
22 can just disregard what Judge Whitney is  
23 going to do" and pretend that somebody has a  
24 decision in mind for Judge Whitney to make is

1 inappropriate.

2 CHAIRMAN COOPER: Sir, we are  
3 waiting for that decision. We are here to  
4 talk this evening about the hearing.

5 MR. BENNEHOOF: I have nothing to  
6 say about procedure other than this point,  
7 which was one of my four points, and that of  
8 appropriate notice. Notice was  
9 inappropriately executed according to the  
10 Ohio sunshine laws in November and December.

11 We hope that the notice is followed  
12 appropriately, that people are noticed  
13 according to the Powell City Charter. I have  
14 prepared statements, which I will leave with  
15 the secretary.

16 CHAIRMAN COOPER: Thank you, sir.  
17 Okay, we're back to the time frame.

18 MR. JESTER: I feel very strongly  
19 we ought to have it more in the middle of  
20 May. I don't know what the days are you've  
21 got.

22 CHAIRMAN COOPER: We're not hearing  
23 procedures, I'm sorry, I misspoke, hearing  
24 procedures as far as time frame would allow

1 people to --

2 MR. JESTER: Okay, we'll do that first.

3 Yes, okay. I feel an hour should be pretty  
4 adequate, and I'm comfortable with that.

5 CHAIRMAN COOPER: You're talking  
6 about an hour for the appellant briefs, the  
7 appellee, and the applicant each?

8 MR. JESTER: Yes.

9 CHAIRMAN COOPER: Would that  
10 include cross-examination?

11 MR. JESTER: Yes. If we could  
12 give a little bit of margin.

13 CHAIRMAN COOPER: Do you have a  
14 problem, as Mr. Zets suggested, if we set a  
15 time limit and we get into the heart of this  
16 matter, do you have a problem with extending  
17 that time for it to be fair to all parties  
18 involved?

19 MR. JESTER: We should do that.

20 CHAIRMAN COOPER: You think we should  
21 do this, yes. Mr. Paynter, do you have any  
22 thoughts on that since you seem to be the  
23 lone wolf here this evening?

24 MR. PAYNTER: I'm not sure "wolf"

1 is appropriate.

2 (General laughter.)

3 MR. PAYNTER: I can tell you that  
4 my presentation was going to last more than  
5 an hour when we got ready for the last  
6 hearing. It's inadequate.

7 I can tell you that is not out of  
8 any inferred element or intent to delay the  
9 proceedings as Mr. Ingram has taken upon  
10 himself to suggest is my motive.

11 It is just not enough time for us  
12 to air the issues that we have tracked out.  
13 I think it's artificial, and I think it's  
14 inappropriate. I think it's going to cause  
15 this Board more trouble and elongate  
16 proceedings rather than shorten them.

17 CHAIRMAN COOPER: About how much  
18 time do you think you need?

19 MR. PAYNTER: My presentation was  
20 going to be between two and three hours as  
21 best I could estimate.

22 CHAIRMAN COOPER: Do you have a  
23 feeling from Mr. Hogan how long he has got in  
24 mind?

1           MR. PAYNTER: Mr. Cooper, I don't.  
2 I can tell you one of the things you need to  
3 consider is that there are enumerable  
4 residents of Woodcutter who have been named  
5 as individual appellants, if you will, in  
6 this proceeding I believe. So you will need  
7 to take that into account whenever you're  
8 going to award all those folks an hour.

9           CHAIRMAN COOPER: We certainly  
10 will. All of these 70 each appellants  
11 certainly will have an opportunity to talk,  
12 if they have something to add that is not  
13 redundant, that is applicable to what we're  
14 doing here and falls within the scope of what  
15 this Board is for.

16           MR. PAYNTER: I will suggest, too,  
17 Mr. Cooper that if you limit presentations to  
18 an hour, there is going to be cross-  
19 examination of witnesses. You know, the  
20 parties can lose control over their time  
21 allocation through whatever cross-examination  
22 might be forthcoming.

23           There is a gang of lawyers over  
24 here who are ready to cross-examine any

1 witnesses we call on. You can bet they are  
2 not going to be cheated out of doing that.  
3 To suggest that an hour is going to be enough  
4 time, that is probably enough time for the  
5 first witness before everybody gets tired of  
6 asking questions.

7 CHAIRMAN COOPER: Do you have an  
8 alternative procedure for me?

9 MR. PAYNTER: I do. You've got  
10 able counsel here assisting the Board. This  
11 Board has been through hearings. I think  
12 this Board will be able to detect if the  
13 purpose of ongoing presentations is solely to  
14 delay, or if the Board is getting information  
15 that will help it with its decision as the  
16 evidence unravels.

17 I think it is not unlike any other  
18 type of proceeding. You can call it a  
19 quasi-judicial proceeding or a judicial  
20 proceeding or just an administrative  
21 proceeding, but that's what folks in your  
22 situation do and that's what you do every  
23 time you hold a hearing.

24 You will have that opportunity.

1 You will have counsel there to assist you.  
2 There are several witnesses who need to  
3 testify in regards to this issue.

4 I think the citizens of this  
5 community have a right to have that evidence  
6 heard because of the import of the issues to  
7 the community.

8 CHAIRMAN COOPER: I agree, I agree,  
9 but we just don't need to hear it 70 times.

10 MR. PAYNTER: I don't disagree with  
11 that. Thank you, sir.

12 CHAIRMAN COOPER: Okay. Thank you.

13 (Chairman and Mr. Jester confer.)

14 CHAIRMAN COOPER: Mr. Paynter, let  
15 me toss this out at you. What if we come up  
16 with two nights, let's say, May 12th and  
17 13th, convene these hearings at 6:00 p.m. and  
18 go until 11:00 p.m.

19 We will give each group, the  
20 appellants, the appellees, and the  
21 applicants, two hours, if they need it, to  
22 present their case and we will not include  
23 cross-examination in that time.

24 I will request that all parties be

1 ready to talk in the same evening, should  
2 that happen, and I don't know that it is  
3 going to. But would that help you if we gave  
4 you two hours and still would be flexible if  
5 we needed to be?

6 MR. PAYNTER: Mr. Cooper, that  
7 would certainly help. That's better than one  
8 hour. I don't want to be seen as agreeing to  
9 a two-hour limitation.

10 I still think it's artificial, I  
11 still think it's designed to limit the  
12 testimony that is provided, but certainly two  
13 is better than one. We appreciate the  
14 Board's indulgence in that regard.

15 We're going to get through the  
16 testimony as quickly as we can. We don't  
17 want to inconvenience witnesses or the Board.  
18 We don't want to bore you to tears, but we  
19 have evidence we need to present. So I  
20 appreciate the Board's indulgence in that  
21 regard.

22 MR. JESTER: I think we would  
23 appreciate if you would set it, like, at two  
24 hours and try for that goal, if you can. I

1 know that may be difficult, but really try  
2 for it.

3 CHAIRMAN COOPER: Mr. Paynter, we  
4 have also been studying this thing for a few  
5 months, and it is not the intention of this  
6 Board to circumvent any relevant testimony by  
7 anybody that's got it, as I said before, as  
8 long as it's relevant, as long as it is not  
9 redundant, and as long as it applies to the  
10 facts that we're here to look at, that is, is  
11 this zoning certificate appropriate.

12 So that being the case, I'm going  
13 to request that -- oh, I'm sorry, Mr. Zets or  
14 Mr. Ingram, do you have any problems with  
15 these hearing procedures or dates, looking at  
16 May 12th and 13th?

17 MR. INGRAM: On behalf of the  
18 applicants, we have no problems with the 12th  
19 and the 13th. While we would prefer that the  
20 Board stick with its original schedule. We can  
21 live with the two hours a piece. That's  
22 basically what you were giving the four  
23 parties here, is approximately a total of  
24 eight hours which, frankly, should be enough for

1 cross-examination as well as --

2 CHAIRMAN COOPER: I would hope so,  
3 too. But if we have to, we will have another  
4 date that we can go even after this. It will  
5 be soon after. The goal is to get this  
6 done in a couple of days.

7 MR. INGRAM: Thank you. We  
8 appreciate it.

9 CHAIRMAN COOPER: Mr. Zets?

10 MR. ZETS: I concur with  
11 Mr. Ingram.

12 CHAIRMAN COOPER: Thank you, sir.

13 I would like to make a motion that  
14 we amend the procedure. Now, I've got the  
15 December 10th date that I've been hearing.  
16 My memo says December 8th.

17 I would like to make a motion that  
18 Mr. Albrecht amend the hearing procedures as  
19 you originally presented to allow each group  
20 two hours to talk and we will not include  
21 cross-examination in that, and we will be  
22 flexible as far as those two-hour timings go,  
23 if need be.

24 That would include -- we will have

1 to put closings in there also, and that would  
2 be exclusive of closing statements. That  
3 would be my motion.

4 MR. JESTER: Second.

5 MS. ROSS: Ed Cooper?

6 CHAIRMAN COOPER: Yes.

7 MS. ROSS: Joseph Jester?

8 MR. JESTER: Yes.

9 CHAIRMAN COOPER: Is there anything  
10 anybody else would like to add that is  
11 relevant to the hearing procedure?

12 MR. ALBRECHT: I would just like to  
13 let the counsel of all parties know that my hope  
14 is to revise the draft of the memo that was  
15 previously forwarded to everyone, forwarded  
16 to Mr. Cooper and Mr. Jester, and to make sure  
17 it is consistent with what they have put  
18 forwarded. I should be sending that out to  
19 you guys by the end of the week. If anybody  
20 has any questions, let me know at that point.

21 CHAIRMAN COOPER: I would also like  
22 to request specifically to Mr. Paynter and Mr.  
23 Hogan, through Mr. Paynter, that if you have  
24 any additional requests for public documents,

1 can you get those made within the next 10  
2 days? That gives you plenty of times to get  
3 the documents and be in here without delay on  
4 the May 12th start date.

5 MR. PAYNTER: We can certainly do  
6 that.

7 MR. ALBRECHT: Thank you, sir.

8 I believe that concludes our  
9 business.

10 MR. JESTER: I move that we  
11 adjourn.

12 CHAIRMAN COOPER: I second.

13 A PARTICIPANT: I would like to be  
14 recognized before you adjourn, sir.

15 CHAIRMAN COOPER: Yes, sir? Does  
16 it relate to the dates or the procedure of  
17 these hearings?

18 A PARTICIPANT: It relates to the  
19 whole situation. I have something I need to  
20 tell you.

21 CHAIRMAN COOPER: It needs to be  
22 specific to our hearing procedures or the  
23 dates that we have established tonight,  
24 otherwise we will have to hear from you at a

1 later date.

2 A PARTICIPANT: It's too bad. It's  
3 a shame that you are tied up in red tape and  
4 if the Board of Zoning would have done their  
5 job in denying anybody to look at the property  
6 that is over 55,000 square feet, we wouldn't be  
7 here tonight.

8 CHAIRMAN COOPER: We are not the  
9 Board of Zoning. We are the Board of Zoning  
10 Appeals. You're telling the wrong people  
11 here.

12 MR. JESTER: I vote that we adjourn.

13 A PARTICIPANT: You're spending  
14 people's money out here, trying to fight the  
15 city, who we've elected to run our government  
16 according to the rules.

17 CHAIRMAN COOPER: Sir, this meeting  
18 is now adjourned.

19 - - - - -

20 Thereupon, the proceedings were  
21 concluded at 6:50 o'clock p.m.

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CERTIFICATE

I, Oveda V. Hancock, do hereby certify that the foregoing proceedings was transcribed via audible playback, and that the foregoing transcript of such proceedings is a full, true and correct transcript of the proceedings as so recorded.

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Oveda V. Hancock  
Certified Digital Transcriber