

1 SYCAMORE TOWNSHIP BOARD OF ZONING APPEALS

2 TOWNSHIP ADMINISTRATION BUILDING

3 8540 Kenwood Road

4 Monday, October 21, 2019

5 6:30 p.m.

6

7 BOARD MEMBERS

8 Jim Eichmann, Chairman

9 Tom Scheve

10 Ted Leugers

11 Jeff Heidel

12 Steve Scholtz

13 Julie Glassmeyer

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1           CHAIRMAN EICHMANN: The Sycamore Board of  
2 Zoning Appeal is called to order. Secretary  
3 Scholtz, will you please call the roll for the  
4 members?

5           MR. SCHOLTZ: Mr. Scheve?

6           MR. SCHEVE: Here.

7           MR. SCHOLTZ: Mr. Leugers?

8           MR. LEUGERS: Here.

9           MR. SCHOLTZ: Mr. Eichmann?

10          CHAIRMAN EICHMANN: Here.

11          MR. SCHOLTZ: Mr. Heidel?

12          MR. HEIDEL: Here.

13          MR. SCHOLTZ: Mr. Scholtz? Here.

14                         (Items 3 and 4 on the  
15                         agenda were addressed.)

16          CHAIRMAN EICHMANN: And as you heard me  
17 say before, ladies and gentlemen, this is a  
18 public hearing and all testimony given in cases  
19 pending before this board is to be made part of  
20 a public record. And all testimony and  
21 discussion relative to each variance or  
22 conditional use is recorded and it is from this  
23 recording that our minutes are taken. We  
24 welcome comments and questions at this meeting  
25 relating to the facts of the case being heard

1 and public participants may be anyone who would  
2 like to voice their opinion. There will be  
3 time when members of the public may direct  
4 their concerns, questions, and comments to the  
5 board when recognized by myself the chair.  
6 Citizens testifying before this board are  
7 directed to voluntarily sign in at the  
8 clipboard at the entrance of the meeting room  
9 which I saw many of you doing. And after  
10 having been sworn in by the board's chairperso  
11 myself, they will take their place at the stand  
12 right here in front of us with the microphone,  
13 and we'll ask at that point that you speak  
14 clearly, state your name and address for the  
15 record, and mention anything you feel is  
16 relevant to the specific case being heard. And  
17 please note that those testifying will take  
18 their place there one at a time, please.

19 And note the normal process at our board  
20 member is to swear in staff and members of the  
21 public if you're thinking of providing any  
22 testimony or providing any evidence in the  
23 cases to be held this evening. And we ask you  
24 to limit your testimony to only that which is  
25 relevant to the case being presented and the

1 standards that need to be met. And note that  
2 the board of zoning appeals is an evidenced  
3 based body and that is we make decisions based  
4 on facts and hardships. Facts must address the  
5 standards which I'll mention in a bit. And  
6 we're not a committee of compassion and the  
7 burden of proof is upon the applicant.

8 As this is a public hearing being sworn in  
9 prior to giving testimony is required as I  
10 mentioned. So if you intend to testify this  
11 evening, at this time I'll ask you to please  
12 stand and raise your right hand and the staff  
13 as well, please.

14 (A sworn oath was administered.)

15 CHAIRMAN EICHMANN: Thank you very much.  
16 Be advised anyone who is not standing cannot  
17 testify without being sworn in.

18 Also ask tonight, I know we've had --  
19 we've continued this case and others before,  
20 and if speakers have already made a point and  
21 we all know that there's been many points made  
22 throughout the hearings, let the BZA members up  
23 here know that you agree with the previous  
24 remarks and avoid repeating issues so we're not  
25 here the entire evening here again. When you

1 finish remain at the microphone in case the BZA  
2 or counsel has questions for you. Respectful  
3 conduct is expected. Outbursts are not  
4 appropriate. And all persons are entitled to  
5 express their opinions. So BZA strives to  
6 conduct a fair and impartial hearing and we do  
7 appreciate your cooperation.

8 As I mentioned we're going to be hearing a  
9 case -- well, we're also, I guess this is a  
10 case on variance as well as conditional use.  
11 And we have -- we often have questions about  
12 what a variance is and what a conditional use  
13 is. I think we've covered that pretty  
14 extensively in our past meetings, so I'll  
15 refrain from repeating that tonight. If there  
16 are questions about that for later cases, we  
17 can address those at that time.

18 The old business is next on our agenda.

19 (Case SYCB170014 on the agenda  
20 was addressed.)

21 CHAIRMAN EICHMANN: We'll get onto the  
22 SYCB190010. This is the case continued from  
23 our last meeting 9/16. And this is regarding  
24 Archbishop Moeller High School at the Kennedy  
25 Lane address. This is for conditional use and

1 a variance if we get to that point.

2 I know at the last meeting we had two or  
3 three remaining people that wanted to speak and  
4 one of them was an attorney, if I recall; is  
5 that correct? Identified as an attorney. So  
6 if those people are here, can I see you raise  
7 your hand if you're here so we can get -- you  
8 and that's it; two.

9 MR. MILLER: Before we get there, Mr.  
10 Chairman.

11 CHAIRMAN EICHMANN: Yes.

12 MR. MILLER: As a procedural matter I know  
13 we had at the last meeting we were missing a  
14 few members and I don't know if they've had a  
15 chance to review that transcript.

16 CHAIRMAN EICHMANN: Good question.

17 MR. SCHOLTZ: I have.

18 MS. GLASSMEYER: I have.

19 MR. MILLER: You both have reviewed the  
20 transcripts of the meetings that you were not  
21 at --

22 MR. SCHOLTZ: Yes --

23 MS. GLASSMEYER: Yes.

24 MR. MILLER: -- and the exhibits that were  
25 given?

1 MR. SCHOLTZ: Yes.

2 CHAIRMAN EICHMANN: So Steve will be  
3 involved in the decision and our alternate will  
4 not at this point, correct?

5 MR. MILLER: At this point. If we get to  
6 it tonight.

7 CHAIRMAN EICHMANN: Looks like we might.

8 MR. MILLER: That's fine. I just wanted  
9 to get that on the record.

10 CHAIRMAN EICHMANN: Yeah, I forgot about  
11 that.

12 MR. MILLER: That they have reviewed the  
13 transcript from any meeting which they were not  
14 here --

15 CHAIRMAN EICHMANN: -- quite an extensive  
16 detail to read every word that was said so  
17 that's great.

18 MR. MILLER: -- and the exhibits.

19 CHAIRMAN EICHMANN: Correct. Very good.  
20 So public comment is still open as of this  
21 point and all the way in the back I think I saw  
22 you raise your hand first if you want to make a  
23 comment come up to the microphone. And have  
24 you been sworn in?

25 MS. KOSEL: Yes.

1           CHAIRMAN EICHMANN: Thank you.

2           MS. KOSEL: My name is Sara Kosel. I live  
3 at 7451 Kennedy Lane. I also own 7447 Kennedy  
4 Lane. And I will be brief. I know we've  
5 talked about a lot of this at nauseam.

6           CHAIRMAN EICHMANN: You're welcome to just  
7 say the comments you agree with whatever the  
8 issue is that's been addressed already just  
9 mention that you agree with it and we'll move  
10 on from there. Thanks, Sara.

11          MS. KOSEL: So I just wanted to review the  
12 eight changes that Moeller has made in their  
13 plan from the 2018 to the 2019 plan and just  
14 talk about them briefly.

15                 Number one. They changed from 130 to 117  
16 parking spaces. That's still adding greater  
17 than a hundred cars to our neighborhood, closer  
18 to 120.

19                 The second change that they've made is  
20 they've changed the foot height -- height of  
21 the fence from six foot to eight foot. A fence  
22 that meets zoning does not hide a parking lot.  
23 The higher fence creates an industrial  
24 appearance for our neighborhood and there's a  
25 reason why you don't have 8-foot fences in

1 neighborhoods because they don't look  
2 appropriate.

3 Number three. They've increased the  
4 buffer from 10 feet to 20 feet, that's still  
5 less than 7 yards between the fence and the  
6 closest residents and that's unacceptable.  
7 Would any of you want to have a parking lot  
8 7 yards from your bedroom window; doubtful.

9 Number four, the enhanced landscaping. We  
10 had the same concerns over the first plan and  
11 the second plan you showed last time that they  
12 have not been good neighbors in taking care of  
13 their landscape.

14 Number five, the staggered fence line.  
15 There's no real benefit to the neighbors either  
16 way whether it's staggered or not.

17 Number six. They were going to add  
18 mounding around the fence which makes it look  
19 industrial. I drove around town looking for  
20 any kind of fences that were up on mounds. The  
21 only one I saw was industry. Nothing in  
22 neighborhoods.

23 Number seven. They were going to reduce  
24 the light level from 25 feet to low level. We  
25 discussed that last time at length. The low

1 level light plan is not viable for a safe  
2 environment. The higher lights were  
3 unacceptable in the previous plan.

4 And number eight. They claimed that they  
5 had that improved drainage. The neighbors  
6 would expect to have good drainage in either  
7 plan that they have. They discussed a french  
8 drain in an area that's already wet and is  
9 likely to fail. So some of the details have  
10 changed in the plan, but the negative impact to  
11 the neighbors are essentially the same. The  
12 previous plan was denied and the current plan  
13 should be denied as well.

14 Next slide, please. There's been a big  
15 exaggeration on safety throughout both years of  
16 this discussion. Safety's been discussed at  
17 length and neither Moeller, the parents, the  
18 students, have shown any action to address it  
19 other than to ask for more parking. Multiple  
20 suggestions have been made. Shuttling the  
21 students, shuttling the staff. Riding the  
22 buses. Adding crossing guards to crosswalks,  
23 et cetera, et cetera, and Moeller hasn't made  
24 any attempt to utilize any of these  
25 suggestions. Coaches continue to direct their

1 athletes to run up and down Montgomery Road the  
2 area that's in question when it's even busier  
3 when it is during hours when they're going to  
4 school and leaving school.

5 Last time the head football coach said  
6 that it was a safety issue of his players  
7 walking up to the Montgomery parking after  
8 football games. My husband and I monitored two  
9 games and there were zero students that crossed  
10 Kennedy Lane heading up to the Montgomery  
11 parking. This was also videotaped and a third  
12 game as well till midnight. Zero students  
13 walked up to town. So, his information that he  
14 presented is just not valid. Safety's being  
15 used as a way to try and sway you all to vote  
16 for the parking lot and it's not a true  
17 problem. Adding a hundred plus cars to this  
18 already area that has had no car accidents is a  
19 safety concern.

20 Next slide, please. The majority of our  
21 neighborhood do not have students that attend  
22 Moeller. Moeller's poor planning should not be  
23 the neighborhood or the township's problem.  
24 Both plans, 2018 and 2019 have an adverse  
25 effect on adjacent and surrounding property.

1 The zoning board's code clearly states that is  
2 their job to conserve and protect property  
3 values. The neighborhood chemistry and  
4 property values should not be compromised just  
5 to make it convenient for students and parents.

6 Next slide, please. Moeller has had  
7 options and they need to pursue them. The  
8 taxpayers of this neighborhood like to thank  
9 you for voting against the current plan and any  
10 future plans for Moeller to encroach into our  
11 established residential area.

12 And if you could go to the other -- one of  
13 our neighbors dropped a letter off this morning  
14 and I don't know if you all had a chance to  
15 read it, but I wanted to read it so that it was  
16 on public record. It is from --

17 CHAIRMAN EICHMANN: We received that. So  
18 we know we're going to be the ones deciding.

19 MR. SCHEVE: Did Mr. Barrett receive that?

20 MR. BARRETT: No.

21 MR. SCHEVE: We have a couple of letters  
22 from neighbors that were submitted who couldn't  
23 attend, so I wanted to make sure Mr. Barrett  
24 gets to see those letters, too.

25 MS. GLASSMEYER: May I read the one that I

1 have in front of me and it's going to be up on  
2 the screen? This is by AnnSara Gallant from  
3 Shadetree. Okay if I read it?

4 MR. SCHEVE: Just so Mr. Barrett has all  
5 the same letters that we all have.

6 CHAIRMAN EICHMANN: I've allowed your  
7 other slides which were all repeats of  
8 everything we've heard already as well as a  
9 letter we received from the neighbors that all  
10 people signed and reiterated all these same  
11 points so I've allowed that. We've all gotten  
12 this letter and we've all read it before we got  
13 prepared for the meeting, so there's no need to  
14 go through all that.

15 MS. KOSEL: Okay. Any questions?

16 MR. BARRETT: Mrs. Kosel, were you at the  
17 September BZA hearing?

18 MS. KOSEL: Yes, I've been to every one.  
19 Last year and this year.

20 MR. BARRETT: And your husband testified,  
21 you heard him testify?

22 MS. KOSEL: Yes, I did.

23 MR. BARRETT: And I understand you live on  
24 the south side of Kennedy Lane?

25 MS. KOSEL: Correct.

1           MR. BARRETT: Approximately 10 houses west  
2 of Kennedy Cove?

3           MS. KOSEL: Correct.

4           MR. BARRETT: And to the south of you is  
5 Timberknoll?

6           MS. KOSEL: Correct.

7           MR. BARRETT: Thank you.

8           MS. KOSEL: Uh-huh.

9           MR. BARRETT: Thank you.

10          CHAIRMAN EICHMANN: Any other questions?  
11 Thank you very much. And I think there was one  
12 other person in the back there who wanted to  
13 speak as well.

14          MS. PUNDZAK: My name is Lynn Pundzak and  
15 I'm a lawyer. My address is 119 East Court  
16 Street and I'm here representing the owners of  
17 9125 Montgomery Road. They are here but since  
18 most of the points have been made at this  
19 juncture they just asked me to address you in  
20 argument rather than put on repetitive  
21 testimony at this time. So hopefully I can do  
22 that and hopefully I can add something to the  
23 conversation.

24          But first I do need to make a record here  
25 just as Mr. Barrett made a record at the very

1 beginning of the first hearing when he  
2 intimated that there might be some potential  
3 bias on the BZA and I think he actually pointed  
4 out Mr. Scheve's relationship with him. I  
5 would like to address two points of potential  
6 bias. The first one is Mr. Holbert who was the  
7 BZA or the zoning administrator here for  
8 Sycamore Township. My understanding --

9 CHAIRMAN EICHMANN: Harry Holbert is that  
10 who you're talking about?

11 MS. PUNDZAK: Yes, I beg your pardon;  
12 Holbert. I understand Mr. Holbert's sons were  
13 attendees at Moeller. I think that that gives  
14 him an interest in Moeller and I think rather  
15 than accept Mr. Holbert's recommendation with  
16 respect to what this board should do regarding  
17 this application from Moeller, that this board  
18 should seek an independent recommendation.

19 MR. SCHEVE: I don't think he really made  
20 a recommendation.

21 MS. PUNDZAK: Yeah, I believe he did. He  
22 made a recommendation that the conditional use  
23 application be granted.

24 MR. SCHEVE: I think he put on --

25 CHAIRMAN EICHMANN: Conditions.

1           MR. SCHEVE: -- the condition and what was  
2 there, but I don't think he said yay or nay. I  
3 maybe wrong, but I don't recall him actually  
4 making an actual recommendation.

5           CHAIRMAN EICHMANN: I don't think so  
6 either.

7           MS. GLASSMEYER: He does not typically do  
8 that.

9           MR. SCHEVE: Not typically. Maybe the  
10 record will speak for itself.

11          MS. PUNDZAK: Secondly, I would suggest  
12 that anyone who is on this BZA should recuse  
13 themselves if they have children who are  
14 students at Moeller. If they have businesses  
15 that cater to Moeller. Alumni or Moeller  
16 parents. And that if they have, for example, a  
17 Facebook favorite for Archbishop Moeller High  
18 School that they should recuse themselves.  
19 Because even if it doesn't indicate actual  
20 bias, it certainly gives the appearance to the  
21 community of potential bias and I think that's  
22 a concern here. So I ask the BZA members  
23 consider recusing themselves from this decision  
24 that that have that coming --

25          CHAIRMAN EICHMANN: We spoke to that in

1 the very first meeting, I think. Did you read  
2 the testimony on that?

3 MS. PUNDZAK: I was here.

4 CHAIRMAN EICHMANN: Please.

5 MS. PUNDZAK: I was here.

6 CHAIRMAN EICHMANN: So you disagree with  
7 the commentary?

8 MS. PUNDZAK: I think the commentary at  
9 the time was that Mr. Scheve was alleged to  
10 have some kind of potential bias here not  
11 because of his relationship with Moeller, but  
12 because of his adversarial relationship in the  
13 past with Mr. Barrett.

14 CHAIRMAN EICHMANN: And there was further  
15 comment after that, that anybody associated  
16 with Moeller that we addressed. There was an  
17 outburst at the time, but we did get the person  
18 to identify themselves.

19 MS. PUNDZAK: Oh, I don't recall an  
20 outburst.

21 CHAIRMAN EICHMANN: Yes.

22 MS. PUNDZAK: I do disagree with and ask  
23 the board to consider whether or not that the  
24 parent bias, that parent's of bias to the  
25 residents of Sycamore is something that should

1 be present in this matter and I would suggest  
2 it shouldn't be.

3 MR. SCHEVE: I don't have any children at  
4 Moeller and I've never been on Facebook and  
5 don't intend to be on Facebook.

6 MS. PUNDZAK: That's good. I don't think  
7 all of your colleagues there can say the same.

8 MR. SCHEVE: I don't know.

9 MS. PUNDZAK: But let me go beyond that  
10 since I assume no one is going to indicate that  
11 they're going to step down at this point.

12 On July 2nd of 2018, this BZA denied  
13 Moeller's initial request for a conditional use  
14 permit for a parking lot. And that parking lot  
15 was on the same two parcels as the current  
16 parking lot proposal is and both parcels were  
17 zoned residential then and are zoned  
18 residential now. Let me give you each a copy  
19 of that resolution denying the request of  
20 Moeller for a conditional use permit for the  
21 parking lot.

22 MR. BARRETT: Do you have an extra one?

23 MS. PUNDZAK: I beg your pardon, Mr.  
24 Barrett. So why is the former decision of this  
25 BZA important because of the issue that we

1 discussed on the first day, which is the issue  
2 of Res Judicata. The doctrine of Res Judicata  
3 as you heard prevents Moeller or any party,  
4 actually, from getting a second bite at the  
5 apple. And once a decision is made by this  
6 board or any quasi-judicial body, it's what's  
7 called Res Judicata unless there is a  
8 substantial -- substantial change to the plan.  
9 Now, I think according to what Mr. Barrett said  
10 in the beginning of the hearing regarding that,  
11 he believes that the standard is material  
12 change but actually the standard is a  
13 substantial change.

14 So we have to look at that initial  
15 decision of the Sycamore Township BZA to see  
16 what the findings were that were made at that  
17 time and then to see if there were substantial  
18 changes that make each BZA holding or finding  
19 invalid or no longer sound. So I'd like you,  
20 if you would please, to look at the second page  
21 of the handout that I gave you. Section 1 of  
22 this resolution lists the board's findings of  
23 facts and conclusions of law and they are  
24 numbered from A through P. And I'd like to  
25 start with Subsection H because Subsection H is

1 the first substantive finding by the board.  
2 It's on Page 2, as I said. And it essentially  
3 states that the board finds through the  
4 testimony and the exhibits that there is no  
5 public benefit to the proposed parking lot; no  
6 public benefit. So we now have to ask has  
7 there been a substantial change that indicates  
8 that all of a sudden there is a public benefit  
9 to this parking lot. What is the only public  
10 benefit that Moeller has argued with respect to  
11 the parking lot. The only submission from  
12 Moeller with respect to a public benefit is  
13 safety. We've heard from parents who elect to  
14 allow their children to walk because there's  
15 not enough parking. We've heard from Coach who  
16 said that students walking to their cars after  
17 a game are in danger of some sort. Student's  
18 safety, however, is the same exact argument  
19 that was made before the board issued this  
20 resolution. There's been no change of  
21 circumstance, much less a substantial change.

22 So with respect to finding H on Page 2  
23 which says that there's no public benefit to  
24 parking lot, that finding is Res Judicata. It  
25 is a thing that is previously or already

1 adjudged by this board. There's been no  
2 substantial change. It's Res Judicata. There  
3 is no public benefit. Just because, by the  
4 way, any board member now finds the safety  
5 argument to be persuasive that doesn't change  
6 the legal standard of Res Judicata. It doesn't  
7 change the fact that there is no substantive  
8 change, no substantial change to the evidence  
9 or the plan that addresses this safety issue.  
10 And, therefore, this is a thing that's already  
11 decided and Paragraph 8 is something this board  
12 must adopt.

13 Look at I. I says that the board finds  
14 through the testimony and exhibits that there  
15 will be a negative impact to the surrounding  
16 community do to the proximity of the parking  
17 lot to adjacent residential properties.  
18 Negative impact to surrounding property owners  
19 due to proximity. Proximity doesn't have  
20 anything to do with bushes and shrubs. It  
21 doesn't have anything to do with lights. It  
22 has to do with nearness. How near is this  
23 parking lot to the resident? We've heard that  
24 one end of the parking lot is going to be  
25 enlarged, one buffer space is going to be

1 enlarged by 10 feet. That's three steps that  
2 it's going to be enlarged by.

3 Proximity, as I said, is just nearness in  
4 space. Is three steps substantial? That's  
5 what you have to decide.

6 MR. SCHOLTZ: Excuse me.

7 MS. PUNDZAK: Yes.

8 MR. SCHOLTZ: In the very beginning of  
9 this it occurred to me to ask you you are  
10 defining as you go along here what you believe  
11 substantial to be, correct?

12 MS. PUNDZAK: I'm asking you --

13 MR. SCHOLTZ: I'm trying to figure out --  
14 because substantial seems like a fairly  
15 open-ended kind of a definition.

16 MS. PUNDZAK: Substantial means more than  
17 some, right?

18 MR. SCHOLTZ: Yes.

19 MS. PUNDZAK: Substantial means more --

20 MR. SCHOLTZ: The distance originally --  
21 on one hand I understand what you're saying.  
22 The distance on one hand, as I remember, was  
23 somewhere around 10 feet.

24 MS. PUNDZAK: Right.

25 MR. SCHOLTZ: Now, it's 20, 21 feet,

1           somewhere around there. That's more than a  
2           hundred percent.

3           MS. PUNDZAK: It's three steps.

4           MR. SCHOLTZ: It's more than a hundred  
5           percent. Sounds like a lot.

6           MS. PUNDZAK: It does.

7           MR. SCHOLTZ: But three steps doesn't  
8           sound so much.

9           MS. PUNDZAK: But 1 inch to 2 inches --

10          MR. SCHOLTZ: That's why I'm struggling  
11          with what substantial is.

12          MS. PUNDZAK: I understand that.

13          MR. SCHOLTZ: On one hand I'm sure  
14          Moeller's going to say it's a lot.

15          MS. PUNDZAK: One inch to two inches is a  
16          hundred percent. It doesn't mean that 2 inches  
17          is --

18          MR. SCHOLTZ: I agree.

19          MS. PUNDZAK: I understand your confusion  
20          and unfortunately there is no case out there  
21          that I've ever seen that says 10 feet isn't  
22          substantial. 20 feet is substantial or vice  
23          versa.

24          MR. SCHOLTZ: Exactly. So it's open to  
25          interpretation.

1 MS. PUNDZAK: Nonetheless, it's three  
2 steps.

3 MR. LEUGERS: What kind of steps do you  
4 take?

5 MS. PUNDZAK: With these heels on they're  
6 not --

7 MR. LEUGERS: 36 inches is a very long  
8 step. So it's not three steps.

9 MS. PUNDZAK: Three and a half steps.

10 MR. LEUGERS: Four.

11 MS. PUNDZAK: Four steps, okay. Four  
12 steps.

13 MR. LEUGERS: Let's keep the thing --  
14 don't exaggerate. We don't need any of that.

15 MS. PUNDZAK: I don't think I was, but I  
16 beg your pardon.

17 CHAIRMAN EICHMANN: Let me ask our  
18 representative here. You're not really giving  
19 facts in this case, you're making an argument.

20 MS. PUNDZAK: I'm making an argument.

21 CHAIRMAN EICHMANN: You haven't been sworn  
22 in. You're an attorney. You're giving facts  
23 to support your folks case.

24 MS. PUNDZAK: Right.

25 CHAIRMAN EICHMANN: So these aren't --

1           this isn't testimony for us. This is an  
2           argument.

3           MS. PUNDZAK: You're right.

4           CHAIRMAN EICHMANN: As I understand it.

5           MS. PUNDZAK: You're right, yes.

6           CHAIRMAN EICHMANN: So your opinion is --

7           MS. PUNDZAK: You're right.

8           CHAIRMAN EICHMANN: -- your opinion. I  
9           don't think we need to argue per exactness.

10          MR. SCHOLTZ: Okay. I'm just -- anyway.

11          MS. PUNDZAK: Thank you for clarifying  
12          that and if I wasn't clear I apologize.

13          CHAIRMAN EICHMANN: That's okay.

14          MR. SCHOLTZ: That's part of my  
15          engineering background. Everything has to have  
16          a measure.

17          CHAIRMAN EICHMANN: Some guys are  
18          technical some guys are --

19          MR. SCHOLTZ: Substantial doesn't mean  
20          much.

21          MS. PUNDZAK: I understand. So in any  
22          event, what we're talking about is three to  
23          four steps on one side of this proposed parking  
24          lot. The other buffer zones are the same.  
25          Otherwise, the footprint is the same.

1           So with respect to proximity which is your  
2 finding I on the previous resolution, denying  
3 the approval of the parking lot, I would  
4 suggest to you that three and a half steps is  
5 not substantial. Three and a half steps on one  
6 side in a residential neighborhood is not  
7 substantial. And, therefore, I would tell you  
8 that I believe that finding I is a thing that  
9 has already been adjudged. It is Res Judicata.  
10 It is not something that this board should  
11 revisit.

12           Look at Finding J. Finding J says that if  
13 the board finds that 17-6 of the zoning  
14 resolution is not satisfied because the  
15 proposed conditional use is not appropriate in  
16 the proposed location and as a result, the  
17 health, safety, and general welfare of the  
18 township will be negatively affected by this  
19 proposal. So what the board did then in K, L,  
20 M, and N is to go through the subsections  
21 underneath Section 17-6 of the zoning  
22 resolution to determine whether or not those  
23 subsections were satisfied. And the board  
24 said, no, they were not.

25           So if you look at the next subsection here

1 or the next letter in the board's resolution  
2 denying the application for the parking lot  
3 permission, it says, "The board finds that  
4 Section 17-6(a) of the zoning resolution is not  
5 satisfied as the proposed parking lot will not  
6 comply with the spirit and intent of the zoning  
7 resolution that is K."

8           Didn't we hear anything at all much less  
9 anything regarding a substantial change of  
10 circumstances concerning how a parking lot in a  
11 residential neighborhood is, and this is the  
12 language from that section of the zoning  
13 resolution for Sycamore Township. Quote, In  
14 harmony with the general and specific purposes  
15 for which this resolution is enacted and for  
16 which the regulations in this district in  
17 question, which as I've said is residential,  
18 were established. And the answer to that is  
19 no.

20           Moeller has only made one argument with  
21 respect to this element of your findings and  
22 that is the same one that they made last time  
23 they were in front of you and that is the  
24 parking lot is just an accessory use to the  
25 conditionally permitted use of a school, that's

1           it. It hasn't changed. There has been no  
2           substantial change. There's been no change at  
3           all to their argument or their position with  
4           respect to Item K on the board's previous  
5           findings.

6           L, it addressed Section 17-6(b) of the  
7           zoning resolution and found that it was not  
8           satisfied as the proposed parking lot will have  
9           an adverse effect on the surrounding  
10          properties, in that it will reduce property  
11          values in the area of the proposed use.

12          We heard a lot from the school's witnesses  
13          about how it retained the landscape architect  
14          to make this more palatable for the surrounding  
15          property owners. But for purposes of this  
16          discussion on Res Judicata, I only want to talk  
17          about the board's specific finding. This board  
18          said that property values will be reduced.  
19          Property values will be reduced. Remember,  
20          unless there's a substantial change that's  
21          pertinent to that finding, enter the law it's a  
22          thing that's already been adjudged. It's a  
23          thing that is Res Judicata.

24          So I would have expected Moeller to put on  
25          some evidence on this point. This is a huge,

1 huge issue for this board and a huge issue for  
2 the surrounding property owners. I would have  
3 expected Moeller to put on some testimony from  
4 an expert witness to the effect that the new  
5 plan would not diminish the surrounding  
6 property owner's home values. We saw nothing.  
7 I would have expected Moeller at the very least  
8 put on some sort of study, provide the board  
9 with some sort of study that said let's compare  
10 the value of properties that abut a school  
11 parking lot versus those that are away from the  
12 school parking lot outside of earshot, for  
13 example, we saw nothing. We saw nothing to  
14 address the issue of whether there was going to  
15 be a reduction in property value for the people  
16 who live here.

17 Now, what does that mean. Well, that  
18 means that, again, there's been no substantial  
19 change that addressed -- that is pertinent to  
20 that point. And in that respect then this  
21 Section L is Res Judicata. It is a thing  
22 that's already been decided. You have decided  
23 that the property value is going to be  
24 adversely affected. They haven't put on any  
25 evidence to contradict that. It is a thing to

1           decide.

2           M says the board finds that Section 17-C  
3           of the zoning resolution is not satisfied as  
4           the proposed use development does not respect  
5           the natural features of significant public  
6           interest. The section of the resolution  
7           actually uses the terminology, Natural Historic  
8           and Scenic Features. Currently it's a wooded  
9           area. It's going to be a slab of asphalt with  
10          some surrounding shrubs and trees and mounding  
11          and an 8-foot high fence. I don't think that  
12          there's really any legitimate way that Moeller  
13          could have addressed that point because,  
14          frankly, a wooded area is more natural, it's  
15          more scenic than a parking lot. You heard that  
16          Moeller is putting in some landscaping. You  
17          heard the negative comments from the  
18          surrounding property owners about their  
19          choices. I guess, the question then becomes,  
20          Mr. Scholtz, are changes in shrubbery a  
21          significant change, a substantial change that  
22          would defeat the concept that you've already  
23          decided this issue and that they shouldn't get  
24          a second bite of the apple. I would say no.

25          N. The board finds that the proposed

1 parking lot is not compatible with Section  
2 17-6(d) of the zoning resolution and as it is  
3 not consistent with objectives, policies, and  
4 plans related to land use adopted by the board  
5 of zoning trustees. The Sycamore Township land  
6 use plan is what's being referred to there and  
7 it provides first and foremost that this is a  
8 parking lot being plucked into the middle of a  
9 residential area. And the land use plan, of  
10 course, doesn't provide for that. But the land  
11 use plan also provides in multiple locations  
12 for what they call buffer zones. Buffer zones  
13 between residential and nonresidential areas.

14 Is the additional three to four steps  
15 between the west side, the west boundary of  
16 this, this proposed parking lot, is that a  
17 sufficient buffer zone? Is it a substantial  
18 change to the last buffer zone? If it isn't,  
19 if the land use plan is still being violated,  
20 this is a thing that has previously been  
21 adjudged and it is Res Judicata and this board  
22 should not and may not revisit it. It's not  
23 enough that the board may view things  
24 differently now. It is only allowed to even  
25 revisit these issues if the board finds that

1 with respect to each of these items that it  
2 previously decided that there's been a  
3 substantial change of circumstances and I  
4 suggest to you there is not.

5 So first and foremost, as the court  
6 apparently indicated to this board that it  
7 should do, I would suggest that this court  
8 address the issue of Res Judicata and I believe  
9 that a review of the evidence that we just  
10 undertaken shows that there's been no  
11 substantial change that warrants any sort of  
12 departure from the resolution that this board  
13 entered back in July of last year.

14 MR. SCHEVE: How is this board that's made  
15 up of five nonlawyers and me, and I assume the  
16 other five members probably never even heard of  
17 the term Res Judicata before last month, maybe  
18 that have I don't know. But how do we decide  
19 as a panel of nonlawyers, a legal principal of  
20 Res Judicata implies?

21 MS. PUNDZAK: Fortunately, you have very  
22 competent township counsel.

23 MR. SCHEVE: And you heard Mr. Miller and  
24 Mr. Barrett go on at some length at the last  
25 meeting about what Res Judicata even meant.

1 MS. PUNDZAK: I understand.

2 MR. SCHEVE: You're asking us to decide  
3 Res Judicata, but neither of the two of them  
4 could do it, what it means what it is. How do  
5 we get past -- your argument is that we should  
6 deny the case because we already heard it.

7 MS. PUNDZAK: Exactly.

8 MR. SCHEVE: And that's what legally  
9 you're calling Res Judicata, but I'm not sure  
10 that this board can say this is Res Judicata.  
11 I think we could say we already heard a case  
12 and whether that's Res Judicata or not, that  
13 would be an issue for the lawyers to argue  
14 about. Am I wrong, Mr. Miller, or do you have  
15 any other thoughts?

16 MR. MILLER: Well, I think there's two  
17 issues. One, you're talking about as she's  
18 been saying is the new plan a substantial  
19 change from the old plan and whether you  
20 consider that. But the other issue that you  
21 have in all of this is the Res Judicata applies  
22 when the first issue has been resolved through  
23 the courts and that has not happened. So it  
24 makes it more difficult. On this level I would  
25 say, you decided once. You decide whether the

1 second application is a substantial change or  
2 not, but the court could in the first case,  
3 could come back and say, we don't know how they  
4 rule and how that affects whether this case  
5 would be considered Res Judicata by a second  
6 court if it's taken up on appeal to the common  
7 please court.

8 MR. SCHEVE: And Moeller might win in  
9 court as well and make the whole second  
10 proceeding mute here.

11 MR. MILLER: I'm not sure what happens in  
12 that case, I guess. Because if there's a -- if  
13 this board votes in favor of the project and  
14 there's an appeal from the neighbors now the  
15 township's arguing both sides of the coin.

16 MR. SCHEVE: Yeah, I know I'm familiar.  
17 At the outset, I mentioned, we have a  
18 procedural mess here.

19 MR. MILLER: Yes, particularly for your  
20 law director.

21 MR. SCHEVE: I'm sorry, to interrupt. Go  
22 ahead.

23 MS. PUNDZAK: No. No, I think you have  
24 kind of narrowed this down better than I did.  
25 And what I mean by that is I've been spouting



1 bite of the apple issue. You have heard many  
2 times now through the course of this hearing  
3 the facts that I think we could go over and  
4 over and over again.

5 But I wanted to indicate one more thing  
6 and that is the resolution, the board -- the  
7 zoning resolution at -- talked about -- let me  
8 see if I can find it real quick. At 17-6(b)  
9 talks about no adverse impact. Doesn't say  
10 minimal impact. Doesn't say an impact that's  
11 less than the first time they tried to get this  
12 past. It talks about no adverse impact. You  
13 heard the property owners talk about what  
14 they're already hearing from the existing  
15 parking lot. And I'd like you to imagine  
16 hearing from 6:00 something in the morning to  
17 after 11:00 p.m. that kind of noise from a  
18 secondary parking lot that's going to be  
19 within, let's say, 20 feet from one of the  
20 property owner's homes. Noise, heat, water  
21 runoff, smog, pollution, honking. I'm not  
22 going to repeat the rather unsavory things that  
23 one of the property owners said he found on  
24 Facebook or some posting as to what the kids  
25 were doing in the existing parking lot. But I

1 will say that these property owners are relying  
2 on you to protect essentially their enjoyment  
3 of their own property now. Property value is  
4 huge to all of us because our homes are our  
5 biggest asset. But even more than the money  
6 that we're talking about here, even more than  
7 the lack or loss of value to that asset, the  
8 loss of enjoyment of that asset because of  
9 noise and pollution and what a parking lot  
10 brings to the neighborhood is even more  
11 significant to these people.

12 We're asking that you tell Moeller that a  
13 parking lot is not appropriate here and the way  
14 I think for you to do that in a final manner is  
15 for you to say to Moeller, we've already  
16 decided this. It's a parking lot in a  
17 residential neighborhood. You've got a  
18 court -- you've already filed with the court.  
19 You got a court that will listen to you. You  
20 got a court that will tell us if we've been  
21 wrong, leave it at that. Thank you for your  
22 time.

23 CHAIRMAN EICHMANN: Any questions? Thank  
24 you.

25 MR. SCHOLTZ: It's me again. The court

1 sent this back to us, correct?

2 MR. SCHEVE: No, not yet.

3 MR. SCHOLTZ: Not yet. Never mind. I'll  
4 forget the question.

5 MR. SCHEVE: No, I think it's pending and  
6 I think Mr. Miller or Mr. Barrett indicated  
7 they had -- what's called a pretrial conference  
8 with the judge and the judge suggested that we  
9 might want to look at it as Res Judicata which  
10 she never ordered us to do that and I don't  
11 think she even has the authority to do that.  
12 Am I on the right track there?

13 MR. MILLER: I'm not real sure even where  
14 we are on it with this case because there were  
15 a number of judges that have recused themselves  
16 on the case. I think we finally now have one  
17 that has accepted it -- Judge Beridon, Fran?  
18 So we have had no conference in front of them.  
19 We do have, I think, something coming up with  
20 the magistrate.

21 MR. SCHEVE: Who's the assigned judge now?

22 MR. MILLER: Pardon.

23 MR. SCHEVE: Who's the assigned judge now?

24 MR. BARRETT: Thomas O. Beridon.

25 MR. MILLER: Yeah.

1           MR. SCHEVE:  And he sent it to the  
2 magistrate?

3           MR. BARRETT:  No.

4           MR. MILLER:  We don't know.  The  
5 magistrate still has the case, but we don't  
6 know if he might just take it up and skip the  
7 magistrate.

8           MR. SCHEVE:  He assumes that another loss  
9 is going to appeal anyway so why should the  
10 judge waste their time.

11          MR. MILLER:  Correct.  Yeah.  For those  
12 who may be don't know what we're talking about,  
13 any administrative appeal from any BZA goes to  
14 a magistrate is assigned to a magistrate first.  
15 The magistrate makes a decision and then any of  
16 the aggrieved parties can basically appeal that  
17 to the common please judge.  That's the  
18 procedure and that's what we're talking about  
19 is in front of the magistrate now.  But there  
20 is a new judge assigned to the case.

21          MS. PUNDZAK:  Are there any other  
22 questions for me?

23          CHAIRMAN EICHMANN:  Thank you.

24          MS. PUNDZAK:  Thank you.

25          CHAIRMAN EICHMANN:  If that wraps up our

1           comments from the public. Any other comments?

2           Yes, did you testify before?

3           MR. DONNELLON: No, I have not. I have  
4           not been to any of the meetings.

5           MS. MYERS: I will object though because I  
6           believe your letter was read into evidence at  
7           the last hearing at Page 205 to 206 of the  
8           transcript.

9           MR. MILLER: I think he submitted --  
10          someone submitted a letter on his behalf.

11          MR. SCHEVE: Can you state your name for  
12          the objection, please?

13          MS. MYERS: Sorry. I'm attorney Kristin  
14          Myers. Mr. Naumann, I believe, read Mr.  
15          Donnellon's letter into the record at the last  
16          hearing.

17          MR. SCHEVE: Well, is your testimony going  
18          to be different from the letter or just to  
19          repeat it?

20          MR. DONNELLON: Well, I'm not on Facebook  
21          so I'm not sure -- or if I am, I'd probably be  
22          ostracized. I don't believe it has anything  
23          different.

24          MR. SCHEVE: Leave it up to the chairman  
25          here, if you're not going to say anything

1 different.

2 MR. DONNELLON: I would like to add to the  
3 safety issue.

4 MR. SCHEVE: Mr. Chairman, how do you  
5 feel?

6 CHAIRMAN EICHMANN: I have no problem with  
7 that. If that was not addressed in your letter  
8 I don't think it's a problem.

9 UNIDENTIFIED SPEAKER: We heard about the  
10 safety issue.

11 CHAIRMAN EICHMANN: Were you sworn in  
12 before?

13 MR. SCHEVE: We're better off hearing this

14 MR. DONNELLON: Just here this evening.

15 CHAIRMAN EICHMANN: Very good. State your  
16 name and address.

17 MR. DONNELLON: Yes. My name is Jim  
18 Donnellon and I live at 7735 Kennedy Lane which  
19 is part of Kennedy Cove.

20 I guess if you read my letter and I stated  
21 my opinion, the one thing I want to add about  
22 the safety issue. It seemed to be a focus on  
23 evening, but I think really my experience is  
24 for about six years I worked out early in the  
25 morning at 5:30 down in downtown Montgomery.

1           Wrapped up around 6:30 and I would watch young  
2           men have to traverse up Montgomery Road in all  
3           kinds of weather and most importantly during  
4           this time of year when it's dark. And I don't  
5           really care that they had to walk or I don't  
6           care that they had to deal with the elements.  
7           But what I did care was that they had to cross  
8           Reagan. They had to walk up through Cooper.  
9           And I just, sometimes I just thought, something  
10          bad is going to happen one of these times to  
11          one of these kids when some driver doesn't see  
12          them. And so that's to me the big safety issue  
13          is the morning crowd that parks down in  
14          downtown Montgomery that has to work their way  
15          up Montgomery Road. Go right now at 6:30 in  
16          the morning, it is pitch black. And I think  
17          that's the issue not -- I don't know if I see  
18          any kids walking in the evening or so forth,  
19          but I see it.

20                 Many times I've offered those kids a ride  
21                 and they wouldn't, well, heck I was a stranger,  
22                 so they didn't take a ride from me. I felt for  
23                 their safety walking up there in the mornings.  
24                 Like I said, I don't care they had to walk a  
25                 half mile or whatever. I don't care they had

1 to walk in snow. But I did care was that cars  
2 coming on from Montgomery 35, 40 miles an hour  
3 onto that entrance ramp or cars coming off  
4 Reagan Highway onto Montgomery Road, even  
5 crossing Kennedy. If you pull out, if the  
6 kid's not paying attention or whatever or it's  
7 just dark out and you're looking one way, and  
8 you don't see it. You don't see the kid coming  
9 across the street and that's in the crosswalk.  
10 So I thought I would add to the safety issue  
11 what I thought the safety issue was, not after  
12 walking home after practice or something like  
13 that.

14 MR. SCHEVE: We've had testimony from  
15 other people that there's never been an  
16 accident and I'm assuming these students have  
17 been doing this for several years and there's  
18 never been an accident. That's not to say  
19 there won't be. Some people would say I don't  
20 need life insurance, because I haven't died  
21 yet.

22 I did take the occasion on Friday  
23 afternoon somebody invited me to make that  
24 walk, so I did make that walk. It took me  
25 about 15 or 20 minutes back and forth. And

1           it's not a walk I'd want to make everyday.

2           MR. DONNELLON: Go walk it at 6:30 in the  
3 morning, quarter to 7:00 in the morning.

4           MR. SCHEVE: I understand. I walked it at  
5 about 3:00. It's not the ideal situation, I'll  
6 give you that. And I'll give you I was a  
7 little apprehensive crossing near Cross County.

8           MR. DONNELLON: And that was during the  
9 day, right?

10          MR. SCHEVE: Right.

11          MR. DONNELLON: I take it you had sunshine  
12 that day.

13          MR. SCHEVE: It was a very nice day. It  
14 took me 20 minutes. One of the students said  
15 it took him 15 minutes.

16          MR. DONNELLON: Like I said, you know, the  
17 kid walks a mile to school in the weather, it's  
18 the safety issue in the morning. It's when  
19 it's this time of year from probably  
20 mid-October to February.

21          MR. SCHEVE: I get that, as I said. It  
22 wasn't the most comfortable walk. And I'm sure  
23 it's worse when it's dark and when it's raining  
24 or snowing. But on the other hand, to say  
25 nobody's ever been hurt that's not to say

1 nobody ever will be. Anyway we have two  
2 different view points. I appreciate that.

3 MS. GLASSMEYER: And I think it was  
4 probably in the letter, but I read the  
5 transcript of it so it probably didn't quite  
6 get in. You said you live on Kennedy Lane.  
7 Are you very near where this is going to  
8 happen?

9 MR. DONNELLON: Yes, I am in Kennedy Cove.

10 MS. GLASSMEYER: Is that kind of the point  
11 of the letter, I'm guessing?

12 MR. DONNELLON: Yes.

13 MS. GLASSMEYER: Oh, you did say that at  
14 the beginning. And then are you also  
15 associated with Moeller in some way?

16 MR. DONNELLON: Yes, I have the -- I'm  
17 still involved. I have the good fortune of  
18 being the public address announcer for the  
19 basketball team. I have the misfortune of  
20 being the public address announcer for the  
21 football team this year.

22 MS. GLASSMEYER: Thank you.

23 MR. DONNELLON: And I'm trying to think of  
24 another, I guess it's in the letter.

25 MS. GLASSMEYER: I was just going to say,

1 so you got a foot in both sides of it?

2 MR. DONNELLON: Yeah. I mean, I moved  
3 there because of the proximity to Moeller High  
4 School. My opinion of strong Moeller High  
5 School is great for property values. It's one  
6 of those preemptive private schools in the  
7 state if not the country and I do want it to  
8 stay that way. I do think the safety issue. I  
9 invite all of you -- I'll meet you at 6:30.  
10 Let's go downtown.

11 MR. SCHOLTZ: I'll take your word for it.

12 MR. DONNELLON: No, seriously. Glad to  
13 walk with me. I just don't want you to be the  
14 first one to have the accident.

15 MR. SCHEVE: Just because there's never  
16 been an accident doesn't mean there's never  
17 will be one.

18 MS. GLASSMEYER: Which is something you  
19 can say about anything.

20 CHAIRMAN EICHMANN: Thank you, sir.

21 MR. MILLER: Wait a minute. Now, you're  
22 subject to cross-examination.

23 CHAIRMAN EICHMANN: Thank you.

24 MS. MYERS: I'm sorry to ask a question.

25 MR. DONNELLON: Sure.

1           MS. MYERS:  And I'll be brief.  Are you  
2 aware --

3           MR. SCHEVE:  Identify yourself.

4           MS. MYERS:  Attorney Kristin Myers.

5           Are you aware of the plans for the  
6 roundabout that's going in between here and the  
7 place where we're talking about?

8           MR. DONNELLON:  Yes.

9           MS. MYERS:  Are you -- do you have any  
10 impression as to whether that might improve or  
11 not improve the safety situation?

12          MR. DONNELLON:  My intuition it will not  
13 be good.  There will be plenty of cars going  
14 around it.

15          MR. MILLER:  Speak up, Jim, so she can  
16 hear you.

17          MR. DONNELLON:  I'm not a traffic  
18 engineer.  My perception though is that it  
19 would not improve the safety issue.

20          MS. MYERS:  Are you familiar with the  
21 plans to create additional crosswalks and a  
22 plan for pedestrian traffic to come across?

23          MR. DONNELLON:  Enlighten me.  Do you got  
24 the drawings?

25          MS. MYERS:  I don't and that's not my

1 place to do it. I apologize.

2 MR. DONNELLON: Go ahead. I'd like to be  
3 informed. I reserve the right to be informed.

4 MS. MYERS: Right. The Department of  
5 Transportation and Engineering --

6 MR. DONNELLON: There's crosswalks now,  
7 right?

8 MS. MYERS: Yeah, I believe so. But they  
9 took into account that there's pedestrian  
10 traffic that has to come across and flow of  
11 that coming across. I'm not a traffic  
12 engineer, so I can't explain it real  
13 specifically, but my understanding is that it  
14 will be improved. But my understanding from  
15 you is that you're not familiar; is that  
16 correct, with those details?

17 MR. DONNELLON: With those details. I'm  
18 not a traffic engineer. I would hope our  
19 traffic engineer would provide something safe.  
20 But I would still think at the end of the day  
21 at 6:30 in the morning, people get hit in the  
22 crosswalks. In fact, there's crosswalks now,  
23 right?

24 MS. MYERS: Right. Are you aware, and I  
25 only ask this because you weren't here last

1 time. But are you aware that the various  
2 sports team run across this area as part of  
3 their training?

4 MR. DONNELLON: Yeah, I do see in the  
5 summer the cross country out. It's light out  
6 at 5:30 in the morning, correct?

7 MS. MYERS: In the summer?

8 MR. DONNELLON: In the summer.

9 MS. MYERS: It could be 5:30, 6:30.

10 MR. DONNELLON: I'll take that point in  
11 July. It's light out at 5:30. But they're  
12 probably running about 6:30. It's light out.  
13 I don't ever see them running in the morning in  
14 the winter.

15 MS. MYERS: So your concern is only when  
16 it's dark?

17 MR. DONNELLON: Yes, probably four or five  
18 months, five months a year.

19 MS. MYERS: Are there lights in this area?

20 MR. DONNELLON: I don't know.

21 MS. MYERS: Traffic lights?

22 MR. DONNELLON: There's a traffic light.  
23 You're familiar with the property, right?

24 MS. MYERS: Yeah.

25 MR. DONNELLON: You answer me, is there?

1 MS. MYERS: I don't know and I can't give  
2 testimony. I'm just asking you if you're aware  
3 there are overhead lights in the area?

4 MR. DONNELLON: I would assume so. I can  
5 go walk it and see. I don't know if it's  
6 enough to overcome a safety issue. You must  
7 think that it is. You're just stating --  
8 there's lights, so, therefore, it must be safe.

9 MS. MYERS: Well, the basis for my  
10 question is that you were saying that you're  
11 concerned when it's dark and my question is:  
12 Is there artificial lighting when it's dark?

13 MR. DONNELLON: I would say not sufficient  
14 enough to overcome the safety issues.

15 MS. MYERS: Nothing further. Thank you.

16 CHAIRMAN EICHMANN: Anything else?

17 MS. PUNDZAK: Lynn Pundzak, attorney for  
18 9125 property owners.

19 Sir, quick question. The safety issue  
20 you're describing now is the same one you  
21 noticed six years ago jogging every morning?

22 MR. DONNELLON: No, I wasn't jogging. I  
23 have a bad hip. I can't jog. I would leave  
24 the work out facility at 6:30 in the morning.

25 MS. PUNDZAK: So the safety issue you're

1           expressing is the same one that you noticed six  
2           years ago, right?

3           MR. DONNELLON: Yes, six or five or three.  
4           I brought it up to people. I think it's an  
5           issue, yeah.

6           MS. PUNDZAK: So it's the same safety  
7           issue, in other words, that's been there for at  
8           least as long as you've been out exercising at  
9           5:30 in the morning, right?

10          MR. DONNELLON: Right.

11          MS. PUNDZAK: That's all. Thank you.

12          MR. DONNELLON: Your point?

13          CHAIRMAN EICHMANN: Thank you. If there  
14          are no further comments from the community,  
15          I'll, at this point, close the discussion to  
16          any public comment.

17          MR. BARRETT: Mr. Chairman?

18          MR. MILLER: Well, wait a minute. They  
19          get a chance to present any rebuttal they want  
20          to.

21          MS. PUNDZAK: I thought that was after you  
22          close the public comment, but that's fine.

23          MR. MILLER: Well, it's all part of the  
24          same.

25          CHAIRMAN EICHMANN: -- public comment.

1 And then after that are others allowed to come?

2 MR. MILLER: Once you close that public  
3 hearing, you've got to make a decision in 21  
4 days.

5 CHAIRMAN EICHMANN: Right. I'm saying  
6 after he makes his comments, can others then  
7 make comments about his comments?

8 MR. MILLER: No, we're done. They get a  
9 chance at rebuttal and that's it.

10 CHAIRMAN EICHMANN: Mr. Barrett?

11 MR. BARRETT: Thank you. For rebuttal,  
12 I'd like to call Jerry Beitman, please.

13 MR. MILLER: Now, I will -- if he's going  
14 to present more evidence they can be  
15 cross-examined.

16 CHAIRMAN EICHMANN: Yes, sir. Thank you.

17 MR. BARRETT: Mr. Beitman, while I pass  
18 these out, will you state your name, again?

19 MR. BEITMAN: Yeah, my name is Jerry  
20 Beitman. It's B-E-I-T-M-A-N. I live at 8336  
21 Country Oak Station. That's in West Chester.

22 MR. BARRETT: You testified at the prior  
23 hearing?

24 MR. BEITMAN: I did, sir.

25 MR. BARRETT: And the document that I've

1 handed out, can you identify that for the  
2 board?

3 MR. BEITMAN: This is a rendering of  
4 the -- what will be the new Montgomery Cross  
5 County Ronald Reagan roundabout?

6 MR. SCHEVE: What was your capacity again  
7 in regards to -- did you prepare this plan?

8 MR. BEITMAN: No, sir. I work for Moeller  
9 High School.

10 MR. BARRETT: Previously, tell Mr. Scheve  
11 your prior experience?

12 MR. BEITMAN: Prior experience. I worked  
13 30 plus years for the City Of Montgomery Police  
14 Department. Retired as the assistant chief.

15 MR. SCHEVE: I remember you now. It's  
16 been a while.

17 MR. BEITMAN: A lot of people try to  
18 forget me.

19 MR. SCHEVE: There's been a lot of people  
20 come and go.

21 MR. BARRETT: Mr. Beitman, can you  
22 explain, you may have already explained it, can  
23 you explain the document in front of you?

24 MR. BEITMAN: Correct. This is the --  
25 this is going to be what will be the roundabout

1 at Montgomery and Ronald Reagan Highway, the  
2 completion is what you're looking at.

3 MR. BARRETT: What's the second page?

4 MR. BEITMAN: The second page is also, if  
5 I'm looking at this correctly, this is what it  
6 will look like when it's created.

7 MR. BARRETT: Does that show the  
8 pedestrian routes?

9 MR. BEITMAN: Yes, it does.

10 MR. BARRETT: Explain the pedestrian  
11 routes that will be along Montgomery Road in  
12 this vicinity?

13 MR. BEITMAN: In talking to the city and  
14 looking at this, what will happen is  
15 pedestrians will walk on the west side of  
16 Montgomery Road. I'm sorry, I don't have my  
17 cheaters with me. There will be a crossing,  
18 actually, it looks like it has moved from the  
19 last time I saw this proposal. So there is a  
20 crossing down by the Main Street extension,  
21 where they will cross over to the east side,  
22 walk south on the eastbound side of Montgomery  
23 Road, go behind the roundabout, cross over  
24 again, then go walk up to Kennedy Lane, and  
25 cross back over to Montgomery, back over to the

1 west side of Montgomery Road.

2 MR. BARRETT: To get to the bottom line,  
3 is it correct that persons were walking from  
4 the public parking lot to the City of  
5 Montgomery to Moeller High School back and  
6 forth and would have to cross Montgomery Road  
7 twice along the east side of the street?

8 MR. BEITMAN: That's correct. And  
9 actually it will cross, yes, Montgomery Road  
10 twice and then it will cross behind the  
11 roundabout, which my understanding is that area  
12 behind the roundabout will be egress in and out  
13 for the new development that's also going to go  
14 in along Montgomery Road.

15 MR. BARRETT: So there's at least three  
16 major crossings that have to be made?

17 MR. BEITMAN: That's correct.

18 MR. BARRETT: And you heard some of the  
19 testimony at some of the prior hearings from  
20 some of the residents that expressed the  
21 opinion they thought it would be safer for the  
22 students to be walking along Montgomery Road as  
23 opposed to driving to the school parking lot?

24 MR. BEITMAN: Correct.

25 MR. BARRETT: Do you agree with that

1 assessment?

2 MR. BEITMAN: Will it be safer?

3 MR. BARRETT: To have students walking  
4 opposed to parking in the new parking lot?

5 MR. BEITMAN: I absolutely disagree with  
6 that.

7 MR. BARRETT: Explain why.

8 MR. BEITMAN: Well, looking at this,  
9 they're going to be crossing three times. To  
10 me, again, I'm not a traffic engineer, I was a  
11 police officer. My experience says at some  
12 point something's going to happen. We've been  
13 lucky so forth that's nothing happened with the  
14 current situation, which kind of surprises me.  
15 But I think we're going to increase our chances  
16 of someone eventually getting hit particularly  
17 crossing Montgomery Road in that area, down by  
18 Main Street. I believe they're going to be  
19 crossing four lanes of traffic.

20 MR. BARRETT: Thank you. That's all I  
21 have for rebuttal for Mr. Beitman.

22 MR. SCHOLTZ: Maybe I'm asking the wrong  
23 person. I've heard not at nauseam how much  
24 safer roundabouts are, do you know why people  
25 say that?

1           MR. BEITMAN: My understanding is because  
2 it keeps traffic flowing. I worked for the  
3 City of Montgomery. I'm concerned about this  
4 roundabout to be very honest with you.

5           MR. BARRETT: Mr. Scholtz, let me tell you  
6 what's been explained to me. They're safer for  
7 cars, not for pedestrians. The reason they're  
8 safer for cars is it avoids the so-called  
9 t-bone crashes. There are actually more  
10 crashes at roundabouts they're usually side  
11 swipes. It eliminates the conflict you have at  
12 intersections, t-intersections where you have  
13 t-bone crashes. So in terms of fatalities,  
14 they're safer than regular intersections.

15          MR. SCHOLTZ: I was going to say I've been  
16 to Washington D.C., I've been to Boston,  
17 roundabouts I've been to Europe, roundabouts  
18 everywhere. They scare the hell out of me.  
19 People are flying around those things.

20          MR. BARRETT: They are more difficult for  
21 pedestrians.

22          MR. SCHOLTZ: And you can't figure out  
23 where you need to go, you know, if you're not  
24 familiar with the area. I was just wondering.

25          MR. BARRETT: The so-called theory is that

1           you eliminate the fatalities. You have  
2           actually more crashes, but you don't have the  
3           serious t-bone crashes. That's what I'm told.

4           MS. GLASSMEYER: But they're also not  
5           crossing the roundabout itself in this?

6           MR. SCHOLTZ: No.

7           MR. LEUGERS: They're not crossing the  
8           roundabout --

9           MS. GLASSMEYER: They're not crossing the  
10          roundabout anywhere. So the roundabout is not  
11          --

12          MR. SCHOLTZ: You'd have to put like  
13          numbers and targets.

14          MS. GLASSMEYER: Right. Exactly.

15          MS. MYERS: Are we allowed to  
16          cross-examine?

17          CHAIRMAN EICHMANN: You can.

18          MR. MILLER: Can I just ask: At the point  
19          where Montgomery Road is supposed to be crossed  
20          on here, those are at stoplights?

21          MR. BARRETT: Are you looking at the first  
22          page or the second page?

23          MR. MILLER: Second page. One's Kennedy  
24          Lane.

25          MR. BEITMAN: The one I'm looking at is

1 down my Main Street, Montgomery Road Crossings.  
2 This does not indicate a traffic light that I  
3 can see.

4 MR. MILLER: Isn't there one there now?

5 MR. BEITMAN: Not at Main Street. The  
6 Main Street where Montgomery Road splits and  
7 goes to Main, there's no traffic light there.

8 MS. GLASSMEYER: Isn't there a crosswalk  
9 at Cooper and cross there?

10 MR. MILLER: Well, they could.

11 MS. MYERS: Do you know if Moeller has  
12 spoken to the Department of Transportation and  
13 Engineering about the roundabout plans?

14 MR. BEITMAN: I have talked to the City of  
15 Montgomery personally.

16 MS. MYERS: And so Moeller has had a seat  
17 at the table in discussing how this is going to  
18 affect traffic and affect students and those  
19 sorts of things?

20 MR. BEITMAN: Well, I don't know if you'd  
21 say seat at the table, that may be a misnomer.  
22 But they actually came down and met with us and  
23 basically explained how this is going to work.  
24 We don't have a say.

25 MS. MYERS: Did you talk about the fact

1           that you have this safety concern about the  
2           students walking from the business district  
3           down?

4           MR. BEITMAN: Absolutely.

5           MS. MYERS: And did they do anything in  
6           response to those concerns?

7           MR. BEITMAN: Not really. This is the  
8           plan.

9           MS. MYERS: Is the -- after it came out,  
10          did you express that you don't believe that  
11          this is a safe solution?

12          MR. BEITMAN: They know our position,  
13          correct.

14          MS. MYERS: Do you -- maybe you said this  
15          before and I missed it so if that's the case I  
16          apologize. But do you believe that the new  
17          roundabout will be less safe than the current  
18          situation?

19          MR. BEITMAN: I don't know. I'm sceptical  
20          of the roundabout. Let me just put it that  
21          way. I'm skeptical.

22          MS. MYERS: I understand it sounds like  
23          students will have to travel longer perhaps  
24          because of having to move over. But is that a  
25          matter of inconvenience or is that a matter of

1 safety in your mind?

2 MR. BEITMAN: I think crossing four lanes  
3 of traffic on Montgomery Road scares me for our  
4 kids to be very honest with you. It also  
5 concerns me where the Gateway Drive is, my  
6 understanding is that's going to be the in and  
7 out for that development back there. So  
8 there's going to be traffic coming in and out  
9 of there and they will cross.

10 MS. MYERS: And are there lights at those  
11 points?

12 MR. BEITMAN: Not that I'm seeing on here.  
13 They have talked about somebody, but it's not  
14 shown on here. Unless I'm missing something.

15 MS. MYERS: I agree. I can't tell whether  
16 there are lights on there. Do you know  
17 independent of this whether there are traffic  
18 lights or signals at those points where they  
19 would be crossing?

20 MR. BEITMAN: I don't know at this point.

21 MS. MYERS: I would think that with four  
22 lanes of traffic to cross, that would  
23 necessitate a light; wouldn't you agree?

24 MR. BEITMAN: I would think. Again, I'm  
25 not a traffic engineer. I was a cop.

1 MS. MYERS: Nothing further.

2 MR. SCHOLTZ: Do you know who is  
3 responsible for this? Is it the state or is it  
4 Montgomery or is it Sycamore Township?  
5 Somebody deemed this to be necessary.

6 MR. BEITMAN: My understanding is it's  
7 basically a joint venture between the state and  
8 the city.

9 MR. SCHOLTZ: Of Montgomery?

10 MR. BEITMAN: City of Montgomery.

11 MR. MILLER: It is not located in Sycamore  
12 Township. Kennedy Lane is the --

13 MR. SCHOLTZ: Is the boundary?

14 MR. BARRETT: Thank you. I'd like to ask  
15 Pete Kimener to come up, please. Would you  
16 state your name again for the record?

17 MR. KIMENER: Pete Kimener.

18 MR. BARRETT: And you testified at the  
19 August hearing?

20 MR. KIMENER: I did.

21 MR. BARRETT: And you were at the  
22 September hearing?

23 MR. KIMENER: Yes, I was.

24 MR. BARRETT: And you heard the testimony  
25 in opposition by David Broxterman?

1 MR. KIMENER: I did.

2 MR. BARRETT: And also by Margee Clarke?

3 MR. KIMENER: I did.

4 MR. BARRETT: Could you clarify the  
5 circumstances surrounding your sale of the  
6 property with Mr. Broxterman?

7 MR. KIMENER: He was a tenant. I owned  
8 the property and he expressed a desire to buy  
9 it. So he could not afford the asking price.  
10 So to make the sale doable for him, I sectioned  
11 off the back third to make it more affordable  
12 for him to buy the home.

13 MR. BARRETT: And that's 7755?

14 MR. KIMENER: Correct.

15 MR. BARRETT: Kennedy Lane?

16 MR. KIMENER: Correct. And I donated that  
17 to Moeller.

18 MR. BARRETT: Did you explain to him as a  
19 part of that transaction that the rear area  
20 would be donated to Moeller High School?

21 MR. KIMENER: I did.

22 MR. BARRETT: And did you explain to him  
23 it could be used as a parking lot?

24 MR. KIMENER: I did.

25 MR. BARRETT: And that's before the deal

1 was consummated?

2 MR. KIMENER: That's correct.

3 MR. BARRETT: And then with respect to  
4 Margee Clarke you indicated that she approached  
5 you about selling off her property?

6 MR. KIMENER: Moeller. She approached  
7 Moeller, Blane Collison, and I happened to be  
8 in his office when she called and offered her  
9 home for sale to Blane.

10 MR. BARRETT: Did she initiate that whole  
11 transaction?

12 MR. KIMENER: She did.

13 MR. BARRETT: And what property was she  
14 offering to Moeller?

15 MR. KIMENER: That would be 7765.

16 MR. BARRETT: It was all of her property?

17 MR. KIMENER: Yes.

18 MR. BARRETT: All the way up to Kennedy  
19 Lane?

20 MR. KIMENER: Yes.

21 MR. BARRETT: And she offered that to  
22 Moeller?

23 MR. KIMENER: Offered it to Moeller to  
24 buy.

25 MR. BARRETT: All right. And -- thank

1           you.

2           MR. SCHEVE:   What was Moeller's response  
3           to her offer?

4           MR. KIMENER:   I was and still am a  
5           chairman of the facilities committee at  
6           Moeller, so I just happened to be in Blane's  
7           office at the time.  So Blane turned to me and  
8           said, "What do you think?"  I said, "It's  
9           adjacent property which we should talk to her  
10          about it."  So I represented --

11          MR. SCHEVE:   So what was the end result?  
12          She offered to sell it to you for more than it  
13          was worth, I guess, or more than you thought it  
14          was worth and you turned it down?

15          MR. KIMENER:   No, in fact, I have the  
16          purchase contract -- we agreed to a price to  
17          buy her home.  And within 10 days of the  
18          closing that was set, she changed her mind.

19          MR. SCHEVE:   She backed out?

20          MR. KIMENER:   Correct.

21          MR. SCHOLTZ:   Why she did back out?  I  
22          know she testified to this before, but my  
23          memory is --

24          MR. KIMENER:   I say it politely she  
25          changed her mind and that had nothing to do on

1 our side. We had an agreed upon price.

2 MR. BARRETT: Mr. Scheve, the school could  
3 have sued, more specifically, but neglected not  
4 to do it.

5 MR. SCHEVE: I didn't ask if you had a  
6 contract, but you decided not to?

7 MR. KIMENER: That's correct.

8 MR. SCHEVE: Thank you.

9 MR. HEIDEL: The two properties that we're  
10 talking about, is there any accessibility in  
11 the future to exit or enter off of Kennedy  
12 Road?

13 MR. BARRETT: No. In fact, that was one  
14 of the issues that came up and we sort of  
15 accepted the condition that we not access  
16 Kennedy Lane as a condition of approval. We  
17 would accept that condition.

18 MR. MILLER: I'm sorry, what was that?

19 MR. BARRETT: There was a question about  
20 whether we would access Kennedy Lane or not and  
21 this plan does not provide for access to  
22 Kennedy Lane whatsoever and we would accept a  
23 condition of approval that we would not have  
24 access to Kennedy Lane.

25 MR. SCHEVE: Now, that you say that, I

1 think I asked you some questions and asked Mr.  
2 Miller whether we could theoretically grant the  
3 request, but take it this far and no further  
4 and he said we couldn't do that because you'd  
5 be free to come back in the future. Are you  
6 saying that if we granted -- if the board  
7 granted your request here that you would enter  
8 into some binding agreement that you would not  
9 go any further than the present request?

10 MR. BARRETT: If it progressed along those  
11 lines and that was something necessary, that's  
12 something we would certainly be willing to do.

13 MR. SCHEVE: I know the concern of the  
14 residents seems to me that you actually want to  
15 buy those two houses and get an access on  
16 Kennedy Lane if you keep creeping that way.  
17 Their concern is, as I understand it, that  
18 eventually you want to have an entrance off of  
19 Kennedy Lane, but you're saying that you would  
20 agree to go this far and no further if we agree  
21 to this plan?

22 MR. BARRETT: That's something that we're  
23 prepared to do, yes.

24 MR. MILLER: Forever?

25 MR. BARRETT: Not forever.

1 MR. MILLER: I don't want to get into --

2 MR. SCHEVE: There is a sticking point if  
3 you agree not to do it. But if you say not  
4 forever means you can come back next month.

5 MR. BARRETT: No, it could be a reasonable  
6 period of time.

7 MR. SCHEVE: I guess what I was asking is  
8 would you be prepared to do that forever and  
9 you said no.

10 MR. BARRETT: The reason I'm saying that  
11 is because no one knows what the future is  
12 going to hold. 20 years from now these people  
13 could all decide to move out and they want to  
14 sell their property to Moeller. That could  
15 happen.

16 MR. SCHEVE: Or you could offer them twice  
17 what it's worth and they could decide to take  
18 the opportunity.

19 MR. BARRETT: That could happen, too.

20 MR. SCHEVE: Thank you.

21 MS. MYERS: Again, I'm attorney Kristin  
22 Myers.

23 Mr. Kimener, to that end you donated the  
24 part of what we're talking about here the kind  
25 of eastern section of the parking lot area,

1 correct? You donated that portion to Moeller?

2 MR. KIMENER: 7755.

3 MS. MYERS: Yes. And then the other one  
4 you actually owned the whole residential --

5 MR. KIMENER: That's correct.

6 MS. MYERS: -- parcel currently?

7 MR. KIMENER: That's correct.

8 MS. MYERS: And if this plan gets  
9 approved, then you would donate the portion  
10 that's needed for the parking lot or would you  
11 donate the entire parcel?

12 MR. KIMENER: That's undecided. We have  
13 the opportunity to do almost anything  
14 provided -- if the parking lot were allowed, we  
15 can do anything we want at that point being the  
16 owner of that property. We could do all sorts  
17 things.

18 MS. MYERS: And my understanding is the  
19 parking lot would only be on the back half of  
20 that residential parcel, correct?

21 MR. KIMENER: Approximately.

22 MS. MYERS: And there's still a home that  
23 faces on Kennedy Lane?

24 MR. KIMENER: Correct.

25 MS. MYERS: And so it's possible you would

1 continue to own that. It's possible that you  
2 would donate that or perhaps you would do  
3 something else, sell it to somebody else, or  
4 whatever; is that accurate?

5 MR. KIMENER: It's likely that we would  
6 continue to own the property and rent it.

7 MS. MYERS: Is it currently rented?

8 MR. KIMENER: It is.

9 MS. MYERS: How long has it been rented  
10 for?

11 MR. KIMENER: This renter has been in  
12 there since September.

13 MS. MYERS: So recent then?

14 MR. KIMENER: So we've had it continually  
15 rented.

16 MS. MYERS: And do you do one-year leases,  
17 longer leases?

18 MR. KIMENER: The previous tenant was in  
19 for about two years. This one's in for one.

20 MS. MYERS: You talked earlier about your  
21 conversation with Dave whose last name I can't  
22 remember.

23 MR. KIMENER: Broxterman.

24 MS. MYERS: Broxterman, thank you. And  
25 you said that you told him that there was a

1 possibility of a parking lot?

2 MR. KIMENER: I did.

3 MS. MYERS: How robust was that  
4 conversation?

5 MR. KIMENER: I don't understand the  
6 question.

7 MS. MYERS: Did you say, listen I think,  
8 you were sitting on the facilities committee or  
9 something along those lines at that time?

10 MR. KIMENER: Um-hmm.

11 MS. MYERS: Were you aware that there was  
12 discussion about needed more parking at that  
13 time?

14 MR. KIMENER: I don't recall.

15 MS. MYERS: Is this parking need a new  
16 issue?

17 MR. KIMENER: For me or for the school?

18 MS. MYERS: For the school?

19 MR. KIMENER: Not really.

20 MS. MYERS: So it's conceivable that you  
21 had some idea that there was some needed  
22 parking for Moeller at that time?

23 MR. KIMENER: Sure.

24 MS. MYERS: Did you know of any plans to  
25 put parking in this area?

1 MR. KIMENER: No.

2 MS. MYERS: What motivated you to donate  
3 that parcel to the school?

4 MR. KIMENER: We have a plan to acquire  
5 adjacent property if it becomes available like  
6 any institution that's cramped on its site. So  
7 if we had possession of it, we could attempt to  
8 use it for all sorts of things.

9 MS. MYERS: And when you saw "we" you mean  
10 Moeller?

11 MR. KIMENER: I do.

12 MS. MYERS: As part of your facilities  
13 planning's activities with Moeller, had you had  
14 any discussions about putting parking on there  
15 before you donated it?

16 MR. KIMENER: No.

17 MS. MYERS: So the discussions about using  
18 for parking only came up later?

19 MR. KIMENER: Correct.

20 MS. MYERS: But when you spoke with  
21 Mr. Broxterman, you mentioned it as a  
22 possibility?

23 MR. KIMENER: I did.

24 MS. MYERS: Did you mention it as the only  
25 possibility?

1 MR. KIMENER: No.

2 MS. MYERS: What other possibilities did  
3 you mention?

4 MR. KIMENER: It could be a tennis court  
5 conceivably if it would fit on it. It could be  
6 a garden. It could be all sorts of things and  
7 it could be parking because I had no knowledge  
8 of what Moeller's plans were at the time.

9 MS. MYERS: Do you specifically recall  
10 that conversation?

11 MR. KIMENER: I do. Very clearly.

12 MS. MYERS: Did Mr. Broxterman ask  
13 questions about it at that time?

14 MR. KIMENER: Not much. He was more  
15 interested to getting the price to where he  
16 could buy the home.

17 MS. MYERS: Sure. Did you float the idea  
18 of using the other parcel for parking --

19 MR. KIMENER: No, didn't own it.

20 MS. MYERS: -- or did Moeller come to you?

21 MR. KIMENER: Didn't own it at the time.

22 MS. MYERS: Did you purchase it so that  
23 you could help Moeller acquire it?

24 MR. KIMENER: No, I didn't purchase it for  
25 investment property.

1 MS. MYERS: Did you propose to Moeller  
2 that a parking lot go here or did Moeller  
3 propose that to you?

4 MR. KIMENER: I think we probably arrived  
5 at that decision jointly.

6 MS. MYERS: Are you still on the  
7 facilities committee?

8 MR. KIMENER: I am.

9 MS. MYERS: Nothing further. Thank you.

10 CHAIRMAN EICHMANN: Nothing else? Thank  
11 you very much.

12 MR. BARRETT: Ask David Beiersdorfer to  
13 come up here, please.

14 Will you state your name again for the  
15 record?

16 MR. BEIERSDORFER: Dave Beiersdorfer. I'm  
17 a facility director at Moeller.

18 MR. BARRETT: You testified at the August  
19 BZA hearing?

20 MR. BEIERSDORFER: I did.

21 MR. BARRETT: And you were present at the  
22 September BZA hearing?

23 MR. BEIERSDORFER: No, I was not.

24 MR. MILLER: You were sworn in tonight?

25 MR. BEIERSDORFER: I was.

1           MR. BARRETT: And I'll represent to you  
2 that a number of issues were raised residents  
3 have recommended it would be more sufficient,  
4 safer and better and cheaper to use a shuttle  
5 bus?

6           MR. BEIERSDORFER: I remember.

7           MR. BARRETT: Did you take that into  
8 consideration in your position?

9           MR. BEIERSDORFER: Yes.

10          MR. BARRETT: And what conclusion or  
11 resolution did you reach with respect to that?

12          MR. BEIERSDORFER: I've been a part of  
13 several conversations at Moeller High School  
14 internally talking about that option, but we  
15 just can't find that it's practical. We have a  
16 unique schedule. Some schools maybe on  
17 something similar, but we actually have A and B  
18 days where it's a different schedule every  
19 other day depending on A days, it's a full  
20 schedule. We do block schedules so they're 90  
21 minute classes on B days. There's one less  
22 class for all juniors and seniors. So every  
23 other day juniors and seniors are dismissed  
24 early from school. They'll get out about 1:00.  
25 Sophomores and freshman will stay on those B

1 days up until our 2:40 standard release time.  
2 And then with no many different extracurricular  
3 activities, we felt like we would have to run  
4 shuttles up and down Montgomery Road from  
5 anywhere between 1:00 and -- we couldn't really  
6 tell how late in the evening we would have to  
7 run those shuttles. And certainly in the  
8 morning when everyone's trying to get to school  
9 at the same time, we felt like it was a big  
10 enough need to have multiple shuttles going at  
11 the same time.

12 Considering weather and other factors,  
13 most times when you see shuttle services like  
14 that, when you see them at major colleges and  
15 things of that nature, there's at least some  
16 place, a shelter source for people to be in  
17 while they're waiting for that bus service.  
18 And we certainly don't have anything like that  
19 up in public parking. So we just felt it  
20 wasn't practical.

21 MR. BARRETT: Is it fair to say you found  
22 out it was possibly not workable?

23 MR. BEIERSDORFER: Right.

24 MR. BARRETT: Also there was testimony  
25 about neighborly relations whether or not

1           Moeller permitted the neighbors, for example,  
2           to walk or jog on the track, so forth and so  
3           on. What has been your experience with policy  
4           with regard to neighborly relations in terms of  
5           opening your facilities up to the neighbors?

6           MR. BEIERSDORFER: I don't know of a  
7           single instance when we've ever not allowed  
8           anyone to come on that wanted to. I think -- I  
9           see folks up there all the time. I don't know  
10          if they are neighbors or if they are parents.  
11          Certainly during the school day, I see folks  
12          back there walking on the track from time to  
13          time. We have a good relationship with our  
14          next door neighbor at All Saints where they'll  
15          bring their kids over and use our back fields  
16          and our track for field days and other  
17          activities. I think that we've been a good  
18          neighbor to anyone that's asked to use our  
19          facility.

20          MR. BARRETT: Do you have a security  
21          fence?

22          MR. BEIERSDORFER: We have a fence, a  
23          perimeter fence. I wouldn't call it a security  
24          fence.

25          MR. BARRETT: How is that located in

1 relationship to the fields and the access for  
2 the neighbors?

3 MR. BEIERSDORFER: It just runs the  
4 perimeter of the fence. There's a gate in the  
5 back to one neighbor that does pass through.  
6 He's an alumni that will come through and so  
7 will his kids and they'll use the fields. But  
8 it's a standard fence that I've seen building  
9 on multiple projects like this. In fact, I've  
10 built several schools and their athletic  
11 facilities. Fenwick up in Middletown. I  
12 worked for a general contractor for them that  
13 built it, same as Winton Woods. Fencing is  
14 very standard for projects like those.

15 MR. BARRETT: And with your experience  
16 with regard to other schools and your knowledge  
17 of schools in greater Cincinnati, how would you  
18 describe the relations that Moeller has with  
19 its neighbors and its openness and extending  
20 the possibility of its facilities to its  
21 residential area and property owners?

22 MR. BEIERSDORFER: I really can't speak to  
23 other schools. But I handle all the scheduling  
24 requests for any of our facilities. And we  
25 open up our facilities for numerous reasons.

1 We have youth activities playing on our fields  
2 on the weekends. We have youth activities in  
3 our gym during the winter time. We have all  
4 kind of opportunities -- we haven't turned  
5 someone down that wants to use our facility.

6 MR. BARRETT: That's all I have.

7 MR. SCHEVE: Let me ask you a question.  
8 Has Moeller ever considered using off campus  
9 facilities for their athletic -- the baseball  
10 team practices occur off campus, right?

11 MR. BEIERSDORFER: Yes, they do.

12 MR. BARRETT: And I look at, for example,  
13 Christian Hills Academy, they bought some land  
14 off down on Snider Road for LaCrosse or soccer,  
15 whatever they play down there. Has Moeller  
16 ever looked into the possibility of buying some  
17 land to have off campus athletic facilities  
18 which would free up the current athletic fields  
19 for parking?

20 MR. BEIERSDORFER: Yes, we have.

21 MR. SCHEVE: What was the result of that?

22 MR. BEIERSDORFER: We currently for  
23 baseball, for example, the baseball team uses  
24 Schuler Park in Blue Ash because we don't have  
25 enough space for that. The football team plays

1 at Princeton because we don't have enough  
2 parking or enough facility to handle the amount  
3 of fans that would come. We've looked at  
4 several instances like that. We're currently  
5 still looking for additional opportunities to  
6 do offsite athletic fields. Several of our  
7 competitors do something very similar just like  
8 Elder High School that we're trying to do  
9 something similar to acquire additional space.

10 MR. SCHEVE: Have there been any joint  
11 efforts where you share the cost with another  
12 school to say we're going to buy property now  
13 at Snider Road and Moeller and Princeton or  
14 whatever, something like we share the cost in  
15 buying the facility and then we share the  
16 facility?

17 MR. BEIERSDORFER: I've never heard of  
18 anything like that, but I think it would be a  
19 great idea, yeah.

20 MR. SCHEVE: You haven't looked into --

21 MR. BEIERSDORFER: We've been sharing  
22 facilities with other high schools for a long  
23 time whether it's over in Lockland or  
24 Princeton. We've worked around all of their  
25 own schedules and scheduled our games when

1 they're not using theirs.

2 MR. SCHEVE: I recognize that Moeller has  
3 a problem a lot of schools do. They're  
4 landlocked and population has increased and  
5 athletics have increased and you're not the  
6 only school struggling with this at this point.  
7 Just wanted to explore what options you've  
8 looked in to.

9 MR. BARRETT: Mr. Beiersdorfer, just for  
10 clarification, I understand you have a practice  
11 football field here at the school?

12 MR. BEIERSDORFER: Yes, on campus.

13 MR. BARRETT: There's a running track  
14 around that?

15 MR. BEIERSDORFER: Yes.

16 MR. BARRETT: And you need that?

17 MR. BEIERSDORFER: Yes, we do.

18 MR. BARRETT: You couldn't convert that to  
19 parking?

20 MR. BEIERSDORFER: No. No, we couldn't.

21 MR. BARRETT: And the other is a soccer  
22 field?

23 MR. BEIERSDORFER: Correct.

24 MR. BARRETT: You need that as well?

25 MR. BEIERSDORFER: We do. We have a lot

1 of sports that use that facility both in the  
2 fall and in the spring. Soccer, rugby,  
3 LaCrosse, ultimate frisbee, football and it's  
4 all levels from freshman, JV and varsity.  
5 Those fields are used pretty frequently.

6 MR. BARRETT: And you need that?

7 MR. BEIERSDORFER: We do need it. I know  
8 a comment came up previously about when those  
9 were built and why we didn't do parking back  
10 there at the time. I would think that that  
11 would be just as intrusive. We are surrounded  
12 by neighborhoods. That's where Moeller is.  
13 The neighborhoods, I think, were built up  
14 around the high school. So no matter where we  
15 would want to do some additional parking, in  
16 other words, in the football field space or  
17 soccer field space, I think that they would be  
18 an issue from whichever neighbor it was  
19 adjacent to.

20 MR. BARRETT: You also own the ball  
21 diamond back there, correct?

22 MR. BEIERSDORFER: We do not own a ball  
23 diamond.

24 MR. BARRETT: You do not.

25 MR. BEIERSDORFER: No. Our nextdoor

1 neighbor, All Saints, does have a ball diamond.

2 MR. BARRETT: So everything you have is  
3 absolutely needed and cannot be used for  
4 parking?

5 MR. BEIERSDORFER: Correct.

6 MR. BARRETT: Thank you.

7 CHAIRMAN EICHMANN: Any other questions?

8 MR. MILLER: While she's coming up I will  
9 ask one. You're aware that Schuler Park is in  
10 Sycamore Township, but not in the City of Blue  
11 Ash; are you not?

12 MR. BEIERSDORFER: I'm not aware.

13 MR. MILLER: You thought it was in Blue  
14 Ash?

15 MR. BEIERSDORFER: Yeah, I thought it was  
16 in Blue Ash. Am I wrong? I'm sorry. We used  
17 to practice in Blue Ash.

18 MR. MILLER: The township is very proud of  
19 that park. That's why I point that out.

20 MS. PUNDZAK: Sir, my name is Lynn  
21 Pundzak. I'm a lawyer. I'm going to ask you a  
22 couple of questions.

23 Were you here when a young man who was a  
24 student at Moeller testified? I think his last  
25 name was Shaw.

1 MR. BEIERSDORFER: I don't recall.

2 MS. PUNDZAK: Slender, tall,  
3 African-American gentleman?

4 MR. BEIERSDORFER: Was that last meeting  
5 in September; do you know?

6 MS. PUNDZAK: Yes.

7 MR. BEIERSDORFER: I was not here in the  
8 September hearing.

9 MS. PUNDZAK: He testified that all the  
10 classes started 7:50 at Moeller. Is that  
11 incorrect?

12 MR. BEIERSDORFER: No, that's correct.

13 MS. PUNDZAK: So everyday that start at  
14 7:50.

15 MR. BEIERSDORFER: That's correct.

16 MS. PUNDZAK: So the shuttle bus that ran  
17 from some offsite and got the kids to Moeller  
18 by 7:50 would take care of the gentleman in the  
19 pink sweater's concerns about, whatever color  
20 that is, the concerns about the kids coming in  
21 across Montgomery Road in the dark, right?

22 MR. BEIERSDORFER: It would probably have  
23 to run a little later. I don't know everyone  
24 that parks down there and what their schedules  
25 are. I do know some kids have study hall early

1 and don't come until that second bell at 9:30.  
2 I know some are late and so if they miss that  
3 last shuttle, we might have to run it longer  
4 than that time. But, yes, everyday school does  
5 start around 7:50 mark.

6 MS. PUNDZAK: And you told us that the  
7 juniors and seniors are sometimes released at  
8 different times --

9 MR. BEIERSDORFER: Correct.

10 MS. PUNDZAK: -- than the sophomores and  
11 freshman?

12 MR. BEIERSDORFER: Correct.

13 MS. PUNDZAK: Do they have a parking  
14 preference for the juniors and seniors?

15 MR. BEIERSDORFER: Does who have a  
16 preference?

17 MS. PUNDZAK: Does Moeller have a parking  
18 preference for the juniors and seniors?

19 MR. BEIERSDORFER: I don't think there's a  
20 preference where they park. I do know that  
21 our -- the priority for parking starts at  
22 seniors and juniors and works its way down.  
23 And those that carpool get a greater priority  
24 and are more than likely to get a parking pass  
25 if they carpool and take additional people with

1           them.

2           MS. PUNDZAK:   And you were describing how  
3           youth activities take place all the time on  
4           weekends at Moeller; is that correct?

5           MR. BEIERSDORFER:   Correct.

6           MS. PUNDZAK:   And so the parents and the  
7           kids and the referees and all those folks, they  
8           park at Moeller and use the facilities?

9           MR. BEIERSDORFER:   They do.

10          UNIDENTIFIED SPEAKER:   No, they don't.  
11          They park at All Saints.

12          MS. PUNDZAK:   So they're allowed to park  
13          at All Saints?

14          MR. MILLER:   Wait a minute.   Let's keep  
15          the record straight here and, I know, it's  
16          difficult, Lynn.   But she's -- you're not being  
17          questioned, sir.   If he knows he can answer.  
18          If he doesn't he can't.

19          MS. PUNDZAK:   So to your knowledge when  
20          these kids are using Moeller High School  
21          facilities on the weekends for non-Moeller High  
22          School Athletics, let's say, where do they  
23          park?

24          MR. BEIERSDORFER:   They park at Moeller.  
25          I'm sure they also park at All Saints, but they

1 do park at Moeller.

2 MS. PUNDZAK: Have you been involved in  
3 any attempts to obtain parking rights or  
4 parking access for Moeller students at All  
5 Saints?

6 MR. BEIERSDORFER: I have not been part of  
7 those conversations.

8 MS. PUNDZAK: Thank you. No further  
9 questions.

10 MS. MYERS: Attorney Kristin Myers. I  
11 think I just have one brief follow-up.

12 In the afternoon if you're talking about a  
13 shuttle possibility would it be conceivable  
14 that there could be, I don't know, 20 or 30  
15 minutes built in between the end of school and  
16 the beginning of extracurriculars where anyone  
17 who's parked up there which I understand is  
18 maybe a hundred people on a good day it sounds  
19 like, and maybe 15 on some other days. That  
20 those folks would know that if they're parked  
21 up there, they've got to catch the shuttle up  
22 in that small window, one or two shuttles goes  
23 up, drops the kids off, and they move their  
24 cars down into the spaces that are being  
25 vacated by people who are leaving school.

1           Would that be a possibility?

2           MR. BEIERSDORFER:  It's conceivable.  I  
3           just don't think it's practical.  Most any high  
4           school starts their extracurricular activities  
5           as quickly or as near to the time that they  
6           release them out of school to avoid the kids  
7           milling around and just having a lot of down  
8           time in between the end of class and when they  
9           merge back to be back in adult leadership with  
10          coaches.

11          MS. MYERS:  Is it better though to have  
12          that 30 minutes of down time then to have kids  
13          who are walking across the highway?  Would that  
14          be a reasonable tradeoff?

15          MR. BEIERSDORFER:  I couldn't say.

16          MS. MYERS:  Thank you.

17          MR. BARRETT:  I'd like to ask Mr. Tom  
18          Fritz to come forward.

19          MR. FITZ:  It's Fitz, not Fritz.

20          MR. BARRETT:  Sorry.  Sir, would you  
21          please state your full name?

22          MR. FITZ:  My name is Thomas Fitz.

23          MR. BARRETT:  Spell your last name.

24          MR. FITZ:  F-I-T-Z.

25          MR. BARRETT:  What is your address?

1 MR. FITZ: 14044 Bob White Court, 45242.

2 MR. BARRETT: And what is your affiliation  
3 with All Saints parish and --

4 MR. MILLER: Wait a minute. You've been  
5 worn in, Mr. Fitz?

6 MR. FITZ: Yes, I have. I'm on our  
7 buildings and grounds committee. I'm on our  
8 booster committee. I work with the pastor  
9 quite a bit on different items and I've been a  
10 coach for 41 years there.

11 MR. BARRETT: And what is your affiliation  
12 if any with Moeller High School?

13 MR. FITZ: I had four boys that went to  
14 Moeller High School and I was on the board of  
15 directors for years at Moeller High School  
16 also.

17 MR. BARRETT: Mr. Fitz, one of the issues  
18 that came up is that the residents have asked  
19 there be more coordination between All Saints  
20 Church and Moeller High School and Moeller  
21 should attempt to procure parking at All Saints  
22 to solve their parking needs. Can you address  
23 that issue?

24 MR. FITZ: Yes. Moeller came to us, asked  
25 if they could use half of our athletic field

1 for a parking lot and off the top we said no.  
2 Father Dennis and I talked about it and told  
3 them like we didn't want to do it.

4 Moeller came back then a second time and  
5 we did a much deeper look this time. One of  
6 the things that we have on that field is  
7 Moeller freshman football team practices there  
8 because there's not enough space up on top.  
9 Moeller uses it for camps. We use both of the  
10 baseball fields for baseball. We have football  
11 teams, four of them that practice on there  
12 after Moeller. We have now which we didn't  
13 have before. In the last three years we've  
14 added girls field hockey, boys soccer, and  
15 girls soccer, and we just don't have enough  
16 space on that field even to do all the things  
17 we want to do. We had to move some off our  
18 activities to other places. And then that is  
19 our playground for our kids. That area is used  
20 for a playground. So we really, when we  
21 examined it in detail, could not see how we  
22 could give up any of that field space.

23 The next thing we did was look at our  
24 existing parking because we wanted to make sure  
25 when we answered Moeller we answered them

1           correctly. Dave may not be aware of it, but  
2           Moeller and All Saints have a contract. They  
3           rent parking spaces from us. So the whole  
4           north parking lot at All Saints is used by  
5           Moeller students already.

6                     We looked at the other lots. The one down  
7           by Glenover in front of the school is used  
8           mostly by teachers. And the few spots that are  
9           not used, we try to save for funerals because  
10          there's no other place to park cars for  
11          funerals. The back parking lot on Glenover is  
12          the playground for the kids so that couldn't be  
13          used.

14                    So we just couldn't see anyway we could  
15          help out with the situation the way it is, and  
16          we share the concern. We have kids who ride  
17          the bike to school. I know a couple of them  
18          ride down Montgomery Road across that area. We  
19          looked at the roundabout and I have some  
20          concerns. I am an engineer, but not a traffic  
21          engineer.

22                    MR. SCHEVE: Do you share facilities with  
23          Moeller? You said Moeller let's -- you let  
24          Moeller use your facilities as well as All  
25          Saints?

1           MR. FITZ: Yes. We use their football  
2 field on the top for our -- we use it at  
3 practice when Moeller's finished with it at  
4 night. We play our games there. We play four  
5 or five games a year up there on Sundays.

6           MR. SCHEVE: And I assume the vast  
7 majority of people that graduate from All  
8 Saints probably go to Moeller; would that be  
9 accurate?

10          MR. FITZ: I would say 50/50 between  
11 Moeller and X.

12          MR. SCHEVE: So if you would let Moeller  
13 have more parking spaces, that would eventually  
14 benefit the children at All Saints as well  
15 wouldn't it, because they're going to go to  
16 Moeller so in a sense you would be solving  
17 their parking and a future problem?

18          MR. FITZ: But there's no space available  
19 unless you build a multi-story parking lot and  
20 I don't think the neighbors would like that  
21 either.

22          MR. SCHEVE: Thank you.

23          CHAIRMAN EICHMANN: Any questions?

24          MS. MYERS: Attorney Kristin Myers. Did  
25 you say that you've already had to move some of

1 your games or practices off to a different  
2 site?

3 MR. FITZ: Yes. Girls field hockey. We  
4 just couldn't fit them in, so we don't have  
5 enough space for our existing teams let alone  
6 giving up half of that athletic field for a  
7 parking lot and that was the decision we came  
8 to. There was just no way we could do that.

9 MS. MYERS: How far away is the offsite  
10 location where the girls field hockey plays?

11 MR. FITZ: Well, they go to Mt. Notre  
12 Dame. They don't go after school. They go  
13 later just like we do. We practice from 6:00  
14 to 8:00 at night.

15 MS. MYERS: Have you explored the  
16 possibility of other teams doing similar things  
17 at other fields?

18 MR. FITZ: Our girls and boys soccer have  
19 tried to practice on our field, but there just  
20 isn't enough time. So they're currently using,  
21 sharing facilities with St. Vincent Ferrer. So  
22 we're trying everything we can and we still  
23 don't have room to do what we need to do with  
24 our and that's why we can't give up the  
25 athletic field for parking.

1 MS. MYERS: If you gave it up, could you  
2 displace those teams to other spots?

3 MR. FITZ: Why would you do that?

4 MS. MYERS: I'm just asking.

5 MR. FITZ: Our girls field hockey, for  
6 example, has to rent space because people  
7 charge if you don't have a facility.

8 MS. MYERS: I'm simply asking the question  
9 because Moeller has stood up here and said that  
10 boys are going to cross here and it's only a  
11 matter of time before an accident happens?

12 MR. FITZ: Well, I have the same concern  
13 because we have kids that ride bikes to school  
14 and I'm a volunteer. Very active at All Saints  
15 and at Moeller and I drive in the morning and  
16 I've seen a number of near accidents with kids  
17 in cars. So to say it's safe, I would never  
18 agree with that.

19 MS. MYERS: Do any kids ride bikes across  
20 the same path that we're talking about --

21 MR. FITZ: Yes. Yes.

22 MS. MYERS: -- down Montgomery to All  
23 Saints?

24 MR. FITZ: I can tell you the kid's name  
25 if you want to know any of them. One's on

1 Remington Road.

2 MS. MYERS: We'll spare him that. How  
3 many spaces -- you said you save some spaces  
4 for funeral parking?

5 MR. FITZ: Yes.

6 MS. MYERS: How many spaces is that?

7 MR. FITZ: I would guess we probably  
8 have -- this is a guess. Probably 15 in front  
9 of the church and probably another 30 or so on  
10 the side.

11 MS. MYERS: And is that the only time that  
12 those spaces would necessarily get used is for  
13 a funeral?

14 MR. FITZ: No. When we have grandparent's  
15 day, when we have all kinds of things. This  
16 year we had to schedule grandparent's day when  
17 Moeller was shut down because we needed all the  
18 existing parking plus more for the  
19 grandparents. We had 500 grandparents.

20 MS. MYERS: And how many spots currently  
21 does All Saints rent to Moeller?

22 MR. FITZ: I don't know the exact number.  
23 I've been involved in it in the past as part of  
24 the buildings and grounds committee, but it's  
25 that whole north parking lot except for there's

1           probably 10 spaces in front of the parish  
2           office that are not rented.

3           MS. MYERS:   Would those 10 spaces be  
4           available to rent if Moeller was interested?

5           MR. FITZ:   No, we need them for the parish  
6           office.  We conduct a lot of business out of  
7           that office.  I'm there five or six times a  
8           week and I have to have a place to park.

9           MS. MYERS:   Except for maybe grandparent's  
10          day, do you have on a regular week where all  
11          the spots in All Saints parking lot are filled?

12          MR. FITZ:   Yes.  There are some yes  
13          besides funerals.

14          MS. MYERS:   Nothing further.  Thank you.

15          MS. PUNDZAK:  I'm Lynn Pundzak.  I'm also  
16          an attorney.  I just have a quick follow-up  
17          question.

18                 How many parking spaces are there at All  
19          Saints; do you know?

20          MR. FITZ:   Well, I'm only going to guess,  
21          but I would guess probably 250 parking spaces.

22          MS. PUNDZAK:  250 total?

23          MR. FITZ:   That's what I guess.

24          MS. PUNDZAK:  That sounds fine.  And do  
25          you know how many Moeller rents from --

1           MR. FITZ: I would guess about a hundred  
2           in that north parking lot. The teachers in the  
3           north Glenover lot probably take 30 or 40 and  
4           other people, volunteers, we have a lot of  
5           volunteers in the school, they park out there.  
6           The back parking lot off of Glenover is used as  
7           our playground and we can't use those spots  
8           during the day. Then they're all, we have  
9           cones and stuff to separate the street.

10          MS. PUNDZAK: The 30 to 40 teachers that  
11          are taking in the Glenover lot, are those All  
12          Saints teachers you're talking about?

13          MR. FITZ: Yes. And the volunteers will  
14          park there also. We have a lot of volunteers.  
15          We have volunteers at lunchtime. We have  
16          volunteers doing a lot of different things.

17          MS. PUNDZAK: So you have a hundred that  
18          are around --

19          MR. FITZ: Don't quote my number, but  
20          that's roughly what it is.

21          MS. PUNDZAK: I'm just trying to get some  
22          idea of how many spaces are not earmarked for  
23          something that's at All Saints?

24          MR. FITZ: None. They're all earmarked  
25          for something.

1 MS. PUNDZAK: You got 250. You take off  
2 the hundred or so that Moeller has?

3 MR. FITZ: Right. Take off about 75 in  
4 the south that's where the playground is. You  
5 got spots for the teachers, then we need spots  
6 for volunteers. And we reroute even some of  
7 the kids at Moeller if we're have a really big  
8 funeral because they're just isn't any parking.

9 MS. PUNDZAK: And I think Kristin, the  
10 other attorney, was asking you this question.  
11 I'm not sure if she ever got an answer. So I'm  
12 going to ask it again.

13 She asked you about moving some of the  
14 kids or moving all of your kids off premises  
15 and using your athletic fields for nothing but  
16 parking and you said, why would we do that?

17 MR. FITZ: Yeah, because of the cost.

18 MS. PUNDZAK: Her question to you was: Is  
19 it more important to you to save those dollars  
20 and keep the kids onsite or is it more  
21 important for you to have safety for All Saints  
22 and the Moeller kids?

23 MR. FITZ: I think they're both important.

24 MS. PUNDZAK: And just for the record, All  
25 Saints is owned by the Archdiocese of

1 Cincinnati?

2 MR. FITZ: Yes.

3 MS. PUNDZAK: And Moeller is owned by the  
4 Archdiocese of Cincinnati?

5 MR. FITZ: Yes. Yes.

6 MR. BARRETT: I'd like to ask Gary Meisner  
7 to come up.

8 CHAIRMAN EICHMANN: I was going to take a  
9 break at 8:30. I'm not sure how long you're  
10 going to take with this witness. Should we do  
11 that break now?

12 MR. BARRETT: Let's take it now.

13 MR. SCHEVE: How many more witnesses do  
14 you have?

15 CHAIRMAN EICHMANN: We'll take a short  
16 break and come back at 8:35, 10-minute break.

17 (A short break was taken from  
18 8:25 to 8:35.)

19 CHAIRMAN EICHMANN: Your next witness.

20 MR. BARRETT: Mr. Gary Meisner. State  
21 your name for the record, please.

22 MR. MEISNER: Gary Meisner. 1118  
23 Pendleton Street, Cincinnati, 45202.

24 MR. BARRETT: What is your occupation?

25 MR. MEISNER: I'm a landscape architect.

1           MR. MILLER: You were sworn in, Gary?

2           MR. MEISNER: Yes, I was. Urban designer.

3           MR. BARRETT: What is your experience with  
4 planning and urban design?

5           MR. MEISNER: I served as a planner for  
6 the City of Akron, chief city design  
7 administrator, reviewer of all plans and  
8 development in the city during a seven-year  
9 period; hundreds of plans. Currently, well, in  
10 the last 47 years, I've been a city planner for  
11 the City of Cincinnati, Hamilton County,  
12 Clermont County, Amberley Village, Wyoming,  
13 Fairfax Village, Madison, and probably another  
14 20 or 30 that I can't remember at the moment.

15           MR. BARRETT: Did you design the parking  
16 lot plan which is subject to this case?

17           MR. MEISNER: Yes.

18           MR. BARRETT: And when you designed this  
19 plan, did you take into consideration the  
20 impact you may have had on the abutting  
21 residential properties?

22           MR. MEISNER: Yes.

23           MR. BARRETT: And did you address those  
24 issues?

25           MR. MEISNER: Yes.

1           MR. BARRETT: How did you address those?

2           MR. MEISNER: Well, there were eight  
3 conditions that we looked at which were part of  
4 the submission of plans that we've talked about  
5 several times. I could reiterate those if  
6 you'd like.

7           MR. BARRETT: You've already testified to  
8 those?

9           MR. MEISNER: Yes.

10          MR. BARRETT: And in your professional  
11 opinion, the plan as you designed it have any  
12 adverse impact on any neighboring property?

13          MR. MEISNER: I don't believe so. I think  
14 what happens with development and planning is  
15 eventually through back and forth compromises  
16 and adjustments create preservation of value  
17 for both the proponents and the surrounding  
18 areas. Whether they're institutions or  
19 development projects or city projects  
20 themselves.

21          MR. BARRETT: Mr. Meisner, you were at the  
22 August and September meetings of the board of  
23 zoning appeals?

24          MR. MEISNER: Yes, I was.

25          MR. BARRETT: And did you hear the

1 concerns expressed by some neighbors about some  
2 of the plant materials such as the Red Berry  
3 Trees?

4 MR. MEISNER: Yes.

5 MR. BARRETT: And the Gingko trees?

6 MR. MEISNER: Yes.

7 MR. MEISNER: And the Armaveta?

8 MR. MEISNER: Yes.

9 MR. BARRETT: Is there any validity to  
10 those concerns?

11 MR. MEISNER: Well, we selected those I  
12 think as I stated based upon durability.  
13 They're mostly native or adjusted regional  
14 native plants that little on time serve a  
15 purpose. Certainly open to other suggestions.  
16 None of them actually submitted to us, but it's  
17 based on 47 years of doing this.

18 MR. BARRETT: Did you say you had any  
19 problems with any of those plantings?

20 MR. MEISNER: No.

21 MR. BARRETT: Neighbors also raised  
22 questions about the maintenance of this  
23 landscaping over the years to come up. Is  
24 there an issue there?

25 MR. MEISNER: I don't believe so. I've

1 looked at the school's maintenance practices  
2 and the site and it looks fine to me. In fact,  
3 better than average for institutional sites.

4 MR. BARRETT: And the type of plantings  
5 that you select, are those high or low  
6 maintenance plans?

7 MR. MEISNER: Low to moderate.

8 MR. BARRETT: Was that intentional?

9 MR. MEISNER: Absolutely.

10 MR. BARRETT: Also one of the residents  
11 expressed concerns about the base of the  
12 Bollard light fixtures?

13 MR. MEISNER: Yes.

14 MR. BARRETT: Did you hear that concern?

15 MR. MEISNER: I think I responded to it by  
16 saying we're providing a 30 - or 36-inch  
17 concrete base to the Bollard light. So we're  
18 still looking at the details, but that would  
19 protect -- it would be bumper height so a car's  
20 bumper would be protected by the pedestal,  
21 concrete pedestal.

22 MR. BARRETT: Did you see the PowerPoint  
23 presentation by neighbor Cathy Willis?

24 MR. MEISNER: Yes.

25 MR. BARRETT: Was that accurate in terms

1 of her description of the parking lot?

2 MR. MEISNER: Well, my recollection of  
3 that was the asphalt parking lot was shown  
4 edge-to-edge with the property. Not really  
5 showing the footprint of the paved area. So  
6 essentially what I saw exaggerated the size of  
7 the asphalt pavement.

8 MR. BARRETT: Is there sufficient green  
9 space with regard to the parking lot you  
10 proposed?

11 MR. MEISNER: Yes.

12 MR. BARRETT: And what green space is  
13 proposed?

14 MR. MEISNER: Well, we have a buffered  
15 green space on a round, a fenced parking lot  
16 and it's 20 feet on the west side and 10 on the  
17 other side. There's also space inside of the  
18 fence between the curb and the fence.

19 MR. BARRETT: How many square feet of  
20 green space are we talking about here?

21 MR. MEISNER: That we reduced?

22 MR. BARRETT: Yes.

23 MR. MEISNER: 4,000 square feet. So  
24 that's devoted to landscaped areas.

25 MR. BARRETT: You heard the concerns

1           expressed by David Broxterman and Margee Clarke  
2           about stormwater runoff?

3           MR. MEISNER:    Yes.

4           MR. BARRETT:    What will the stormwater  
5           runoff conditions be with respect to those  
6           properties to the north of the parking lot?

7           MR. MEISNER:    Beginning, well, both of  
8           those, surface runoff -- the surface runoff  
9           from both of those properties will be captured  
10          in a french drain.  We have an image of that.  
11          I'm not sure everybody understands what a  
12          french drain looks like.  It's not just a pile  
13          of gravel.  It's an actual engineered slope  
14          pipe perforated with gravel, washed gravel that  
15          goes up to the surface.  So the surface water  
16          goes into that and then goes down by grade to  
17          the stormwater detention area.

18          So those two properties based upon the  
19          slope of the land, the French drain would  
20          capture any surface water and we intended to  
21          set it down pretty deep, three or so feet, just  
22          so that if there's subsurface water flowing in  
23          that area, it would also capture that  
24          subsurface water.  There is a high, kind of a  
25          perched water table a high moisture condition

1 even though there's slope on the land there.  
2 So the intent of the French drain is to both  
3 with surface water and deeper subsurface water,  
4 capture it, get it out of the way, and divert  
5 it around the parking lot. The parking lot, of  
6 course, has its own pipe drainage system that  
7 goes into the stormwater detention area, which  
8 is underneath. It's kind of like a cistern if  
9 you want to think about it.

10 MR. BARRETT: Would the property of either  
11 David Broxterman or Margee Clarke experience  
12 any stormwater runoff problems if the parking  
13 lot is implemented as you proposed?

14 MR. MEISNER: No.

15 MR. BARRETT: And does the property of  
16 Cathy Willis presently have a stormwater runoff  
17 problem?

18 MR. MEISNER: We held a meeting there. I  
19 think we mentioned that at the last  
20 presentation to talk about issues. She brought  
21 up that there was runoff issues. We certainly  
22 looked at those even though it was their  
23 property and their issue to resolve. We said,  
24 well, why don't we figure out how to improve  
25 the surface runoff with the existing inlets.

1           There's two inlets that exist. One on her  
2           property and one right at the -- inside of the  
3           Moeller site. And at that meeting there was  
4           some discussion about subsurface water exists  
5           in that whole development and people have sump  
6           pumps and issues like that to deal with  
7           subsurface water. So we added a french drain  
8           along the entire length of her property where  
9           the -- right at the property line with the new  
10          parking lot and ran that into the existing  
11          storm line so that's the intent. It will also  
12          be as deep as we can set it to capture the  
13          surface and subsurface water.

14                 MR. BARRETT: Would that address the  
15          stormwater runoff problems currently  
16          experienced by Cathy Willis?

17                 MR. MEISNER: It will help. If there's  
18          subsurface water in the whole neighborhood.  
19          You know, it's the last development perhaps  
20          that happened. And it may have been there's a  
21          perched water table and some subsurface things  
22          going on. And given that development from  
23          happening earlier, I don't really know. But if  
24          you have water coming in that basement level,  
25          you've got other kinds of issues other than

1 just surface water happening. I think it will  
2 help.

3 MR. BARRETT: Is the problem that has been  
4 experienced on the property of Cathy Willis  
5 anyway you believe it was caused by Moeller  
6 High School?

7 MR. MEISNER: No, absolutely not.

8 MR. BARRETT: You heard the issues raised  
9 about the quality of landscaping at Moeller  
10 High School and the maintenance of that  
11 landscaping?

12 MR. MEISNER: Yes.

13 MR. BARRETT: And are you familiar with  
14 the landscaping on the land?

15 MR. MEISNER: Yes.

16 MR. BARRETT: Are you familiar with the  
17 maintenance that has been undertaken?

18 MR. MEISNER: Yes.

19 MR. BARRETT: Are you familiar with the  
20 conditions on the adjacent property at All  
21 Saints Church and the parish school?

22 MR. MEISNER: Yes.

23 MR. BARRETT: Are you familiar with those  
24 landscaping conditions?

25 MR. MEISNER: Yes.

1           MR. BARRETT: And how would you  
2 characterize the landscaping that exists at  
3 Moeller High School and the maintenance of that  
4 landscaping?

5           MR. MEISNER: Well maintained.

6           MR. BARRETT: And how would you compare  
7 that of All Saints Church and parish school?

8           MR. MEISNER: Equally well maintained.  
9 There's probably more flowers at the church.

10          MR. BARRETT: You heard testimony of some  
11 of the witnesses that -- changes that you made  
12 in the plan that's currently before the board  
13 of zoning appeals from a prior plan are just  
14 mere cosmetic changes. Is that a correct  
15 statement?

16          MR. MEISNER: I absolutely disagree with  
17 that.

18          MR. BARRETT: Explain why they're not just  
19 mere cosmetic changes.

20          MR. MEISNER: Well, the eight things that  
21 were previously presented and discussed  
22 included a reduction of parking spaces 13, that  
23 freed up 4,000 square feet for landscaping and  
24 greenery.

25          The 8-foot high perimeter fence is also a

1 sound continuation device in addition to being  
2 a visual barrier. It could be covered in  
3 vines, too, and really green. Yes, it's a  
4 variance from a 6 foot high fence. You also  
5 have a little 18 inch or 2-foot high mound that  
6 we previously talked about that's part of the  
7 improvement. Maybe a 6-foot high fence would  
8 satisfy it. We just thought we'd be trying to  
9 do a little bit better with the 8-foot high  
10 perimeter fence.

11 The buffer area closest to the house,  
12 Cathy Willis' house was doubled. It's actually  
13 a distance between the house and the curb line  
14 of 40 feet 9 inches. Not 20 feet 11 inches.  
15 The enhanced landscapes plans, you know, we've  
16 got hundreds of plants there; trees, shrubs,  
17 evergreens. We felt that would be a better  
18 buffer than just a few trees and shrubs. The  
19 staggered fence line actually gives a little  
20 relaxation to the edge of the fence. In other  
21 words, it takes on a character of a more  
22 residential quality than just a straight fence  
23 like a wall. I know that some folks said it  
24 looks commercial. Well, we could reduce it  
25 down to 6 feet, too, I suppose, but the

1           staggered fence would give it more of that  
2           residential quality.

3           The mounding helps with two ways. It  
4           gives a little bit of earth for water to slope  
5           away from the fence. Longevity of the fence is  
6           good when you do that. It also directs surface  
7           water that might fall there right into the  
8           French drain or into the parking lot storm  
9           surface.

10          The lighting fixtures, you know, that's a  
11          big issue. We said let's -- we kind of looked  
12          at the occasions, too. You don't need to light  
13          this kind of a parking lot like a shopping  
14          mall. This is more occasional use. The light  
15          fixtures would be put on their own circuit and  
16          maybe not used that much and protecting them  
17          with a little concrete base would be the  
18          prudent thing to do. So the light level may  
19          not be like a shopping center, but we don't  
20          really want to do that. We want it to be a  
21          pedestrian kind of friendly but a light dose of  
22          light.

23          The drainage system that we talked about  
24          really, I think, benefits the adjoining  
25          property owners. There is a surface slope

1           there. I think part of the surface slope to  
2           the solicitor's drain in his parking lot and  
3           one along the north edge of Moeller's site that  
4           was built by them when the development  
5           happened.

6           MR. BARRETT: Any thing else you want to  
7           add?

8           MR. MEISNER: No.

9           MR. SCHEVE: Can I ask you just one more  
10          thing?

11          MR. MEISNER: Sure.

12          MR. SCHEVE: We some years ago had a full  
13          house and argued about the parking lot on  
14          Snider Road for Christian Hills Academy. Were  
15          you involved with that?

16          MR. MEISNER: No.

17          MR. SCHEVE: Is that parking lot is  
18          surrounded by rather large evergreens, forms  
19          like a total buffer. Did you give that any  
20          consideration instead of a variety of trees  
21          just in the wall of the evergreens that it  
22          could buffer?

23          MR. MEISNER: Sure. And our thought was  
24          that could make it look a little more  
25          commercial to just use one plant. Plus, it's

1 subject to what if that evergreen gets a  
2 disease or something. So when you mix the  
3 plants, it looks more residential even though  
4 it really is surrounding a parking lot with a  
5 fence. It looks a little more residential.  
6 It's just our opinion, but it's based on  
7 working on lots of different projects.

8 CHAIRMAN EICHMANN: My question, too,  
9 about your French drain and other drainage  
10 systems that could be used in here. This whole  
11 plan still has to be approved by the Hamilton  
12 County --

13 MR. MEISNER: Absolutely.

14 CHAIRMAN EICHMANN: Okay. We don't really  
15 have to approve --

16 MR. MEISNER: It's subject to do with some  
17 construction details submitting it to the  
18 county through the normal process and sometimes  
19 a little back and forth on the runoff  
20 calculations, but we're -- we're convinced.

21 CHAIRMAN EICHMANN: And that's the  
22 standard operation. They decided the french  
23 drain will do the sufficient job?

24 MR. MEISNER: Yeah, they're not as  
25 familiar with French drains as they are in --

1           CHAIRMAN EICHMANN:  -- normal storage --

2           MR. MEISNER:  -- we can educate them a  
3 little bit about that.

4           MR. SCHOLTZ:  I have a question.

5           MR. MEISNER:  Sure.

6           MR. SCHOLTZ:  You obviously have a lot of  
7 experience doing these different projects.  Do  
8 you feel comfortable making a statement as to  
9 whether this project would either increase or  
10 decrease home values?

11          MR. MEISNER:  I'm not an appraiser.  I've  
12 worked with marketing economic consultants for  
13 decades and appraisers as well.  We've tried to  
14 achieve a balance between perceptions and the  
15 perspective of the neighbors and the needs of  
16 the institution.  And based on our judgment of  
17 47 years of doing lots of projects, this would  
18 strike a reasonable balance for both.

19          CHAIRMAN EICHMANN:  Any questions back  
20 here?

21          MS. MYERS:  Mr. Meisner, I'm attorney  
22 Kristin Myers.  We've met before.

23          To follow up on the question that you were  
24 just asked.  You said that you believe that  
25 this creates a balance between Moeller's needs

1 and the neighborhood's needs.

2 MR. MEISNER: Yes.

3 MS. MYERS: Do you think that there's an  
4 adverse impact to Ms. Willis in particular?

5 MR. MEISNER: Yeah, that's from her  
6 perspective. I think looking at the landscape,  
7 yes, there's landscaping there. The plants,  
8 the trees, have this problem with subsurface  
9 water. Many of them are declining. My opinion  
10 as a landscape architect that this over time  
11 that those trees that are now showing crown  
12 Nivak (sic) and issues and some of them, most  
13 of the ones that are declining are Red Maples.  
14 Red Maples common name is a Swamp Maple. The  
15 Swamp Maple isn't going to do that well in a  
16 situation like that. The green space may  
17 cumulatively over time be lost, the trees would  
18 be lost.

19 It's just my opinion, but when you look at  
20 the long perspective on these things you kind  
21 of look at the big picture and issues like that  
22 first.

23 MS. MYERS: But you can understand that  
24 from Ms. Willis' perspective right now she  
25 looks out at a treed area, correct?

1           MR. MEISNER: Absolutely.

2           MS. MYERS: In the future she'll look out  
3 at a fence. And if she's on her second floor  
4 she's actually going to look down into a  
5 parking lot, correct?

6           MR. MEISNER: We have trees that will grow  
7 that will be taller than the fence and the  
8 fence is pretty tall and there's a mound that  
9 lifts it up a little bit higher. That's the  
10 solution that we're proposing.

11          MS. MYERS: And you haven't yourself done  
12 any sort of consideration of property values,  
13 that's not your place; am I right?

14          MR. MEISNER: That is correct.

15          MS. MYERS: You mentioned before -- at one  
16 point you said that Moeller's current  
17 landscaping is well maintained. You also  
18 mentioned at some point that it's better than  
19 average for institutional sites, correct?

20          MR. MEISNER: Yes, especially schools.

21          MS. MYERS: Is that because schools are  
22 notoriously not very good at maintaining their  
23 landscaping?

24          MR. MEISNER: Some.

25          MS. MYERS: Relative to residential

1 homeowners, does that -- do you intend to see  
2 that?

3 MR. MEISNER: Yeah, but there's a  
4 particular amount of care that they're giving  
5 that gives it a little bit more of a  
6 residential quality. So I look at it and go,  
7 hey, they're doing better than the average --  
8 much better than the average for an institution  
9 and especially a school.

10 MS. MYERS: Were you here when someone,  
11 and I don't remember who honestly, showed some  
12 slides that they had taken of various  
13 landscaped areas around Moeller?

14 MR. MEISNER: Yeah.

15 MS. MYERS: And did you feel like those  
16 were examples?

17 MR. MEISNER: I don't think they were  
18 representative of the overall condition. They  
19 were taken out of context in my opinion.

20 MS. MYERS: So those were one on pictures  
21 in your opinion?

22 MR. MEISNER: Yeah.

23 MS. MYERS: I want to follow up on  
24 something else that you said because I'm not  
25 sure I understood it. You said it's 40 feet 9

1 inches to the curb line?

2 MR. MEISNER: Yeah, it's from the house.

3 MS. MYERS: So you're measuring from Ms.  
4 Willis' house to the curb line?

5 MR. MEISNER: There was a comment made  
6 about the cars are going to be right on top of  
7 the adjacent property 20 feet or so away, and  
8 that's not what the plans have shown in the  
9 beginning, but the new plans that we've done.  
10 It shows the curb line 40 feet 9 inches or  
11 whatever away from the house.

12 MS. MYERS: Which curb line are you  
13 talking about?

14 MR. MEISNER: Of the new proposed parking  
15 lot.

16 MS. MYERS: Parking lot?

17 MR. MEISNER: Right.

18 MS. MYERS: So from -- and I'm looking. I  
19 think it's the only one that I see up in here  
20 now.

21 MR. MEISNER: Can we have the set of  
22 drawings?

23 MS. MYERS: All right.

24 MR. MEISNER: There's a layout plan and a  
25 landscape plan that shows that.

1           MS. MYERS: Can you identify where you're  
2 measuring from?

3           MR. MEISNER: If you look at the southeast  
4 corner of Cathy Willis' house there's the  
5 dimension line. It goes to the curb and it's  
6 40 feet 9 inches.

7           MS. MYERS: That's 40 feet 9 inches. So  
8 by, I'm just guesstimating. Does that mean then  
9 her house is about 120 feet wide?

10          MR. MEISNER: I've have to go there with a  
11 measuring stick and do it, but, you know, you  
12 probably know that better than I do.

13          MS. MYERS: I don't believe that it is  
14 which is why I'm wondering if that makes sense.  
15 You would agree with me though that currently  
16 Moeller's developed land only orders her on the  
17 very southern edge of her property line which  
18 is about 15 percent of her --

19          MR. MEISNER: That is correct.

20          MS. MYERS: And after this addition, she  
21 will be bordered, about 50 percent of her  
22 border line will be developed -- developed  
23 sites by Moeller?

24          MR. MEISNER: That appears to be correct,  
25 sure.

1 MS. MYERS: And you mentioned that there's  
2 4,000 square feet of landscaping here. Do you  
3 know how many square feet --

4 MR. MEISNER: No, what I said was --

5 MS. MYERS: Or landscaped area?

6 MR. MEISNER: When we reduce the parking  
7 area by 13 spaces that added 4,000 additional  
8 square foot to greenery both inside and outside  
9 of the fence.

10 MS. MYERS: And do you know what the total  
11 square footage is of the whole area?

12 MR. MEISNER: You mean of the green area?

13 MS. MYERS: Of, well, I was going to say  
14 of the whole -- I was wondering if you know the  
15 whole parcel square footage?

16 MR. MEISNER: It's probably on the drawing  
17 with one of these drawings somewhere. I didn't  
18 memorize that.

19 MS. MYERS: Do you know how much is paved  
20 area, parking area?

21 MR. MEISNER: Well, I think there's about  
22 10,000 square feet of greenery; if that helps  
23 you.

24 MS. MYERS: And we don't know the total  
25 square footage?

1           MR. MEISNER:  It's probably in the  
2 drawings.  I just can't -- I didn't memorize  
3 every single thing.  Greg may know it.  It's on  
4 the drawing.

5           MS. MYERS:  When you at -- you weren't the  
6 original -- you didn't prepare the original  
7 plans --

8           MR. MEISNER:  No.

9           MS. MYERS:  -- that were determined a year  
10 ago?  What were the instructions best you can  
11 recall that you were given --

12          MR. MEISNER:  When we started on that?

13          MS. MYERS:  -- when you started, yeah?

14          MR. MEISNER:  Talk with the neighbors and  
15 get their perspective.  We talked with Cathy.  
16 We attempted to talk with the other adjoining  
17 property owners, but never did individually,  
18 but eventually did a little group meeting with  
19 not all but most of the adjoining property  
20 owners to try to work through compromised ideas  
21 and recommendations about issues.

22          MS. MYERS:  What changes if any were made  
23 after those conversations?

24          MR. MEISNER:  We didn't do a plan until we  
25 had the discussions, at least the discussions

1 with Cathy. And the other property owners  
2 didn't actually want to meet, I guess, because  
3 they never returned phone calls to me. We did  
4 refine it after the meeting with Cathy. We had  
5 ideas which, you know, we didn't really want to  
6 jump in until we at least had some neighbor  
7 input.

8 MS. MYERS: Isn't it correct that you came  
9 with this plan, though, because I believe I was  
10 at that meeting that you were referring to?

11 MR. MEISNER: You were at the meeting. It  
12 was full of attorneys. I was the only one.

13 MS. MYERS: Sorry about that.

14 MR. MEISNER: We had a little sketch plan.  
15 It was not this plan.

16 MS. MYERS: It was not this plan?

17 MR. MEISNER: No. No.

18 MS. MYERS: Was there -- were there more  
19 parking spaces in that plan than you had in  
20 this plan?

21 MR. MEISNER: I can't actually remember.  
22 We did reduce the number of parking spaces to  
23 start the dialogue.

24 MS. MYERS: Would there be opportunities  
25 to create more of a green buffer if there were

1 fewer parking spaces or lanes were smaller, or  
2 other changes that could be made?

3 MR. MEISNER: We wouldn't reduce the size  
4 of the parking spaces or the lands anymore,  
5 just from a safety standpoint.

6 MS. MYERS: But if you reduced the number  
7 of spaces, there could be more green space?

8 MR. MEISNER: I've not been directed to  
9 reduce the number of spaces.

10 MS. MYERS: You have not been?

11 MR. MEISNER: No.

12 MS. MYERS: Nothing further. Thank you.

13 MS. PUNDZAK: Mr. Meisner, I'm attorney  
14 Lynn Pundzak.

15 Sir, Mr. Barrett asked you is there any  
16 adverse impact on the surrounding areas and you  
17 said, "No, I don't think so." The noise will  
18 increase though; won't it?

19 MR. MEISNER: We're providing a sound  
20 attenuation fence.

21 MS. PUNDZAK: I understand that, sir. But  
22 my question is: The noise will increase over  
23 what it is now --

24 MR. MEISNER: That's your statement. I  
25 don't believe it will.

1 MS. PUNDZAK: You don't believe there will  
2 be any additional noise when those kids drive  
3 their cars in and out of that parking space; is  
4 that your testimony here?

5 MR. MEISNER: Kids are kids. You can't  
6 predict that.

7 MS. PUNDZAK: Cars are cars; aren't they?  
8 They make noise; don't they?

9 MR. MEISNER: Sure. Some make more than  
10 others.

11 MS. PUNDZAK: That's for sure. But when  
12 those cars drive in and out of that parking  
13 space, it's going to make noise.

14 MR. MEISNER: Okay. I will agree that  
15 there maybe additional noise. How much it's  
16 subject to.

17 MS. PUNDZAK: So that's an adverse impact;  
18 isn't it?

19 MR. MEISNER: It could be.

20 MS. PUNDZAK: Auto exhaust fumes, smog,  
21 that's going to increase in that little area;  
22 isn't it?

23 MR. MEISNER: Could be.

24 MS. PUNDZAK: Yes. Yes, it will.

25 MR. MEISNER: Not smog. Smog is a

1 condition.

2 MS. PUNDZAK: Auto exhaust then. Will it?

3 MR. MEISNER: It could contribute to.

4 MS. PUNDZAK: How about litter, will that  
5 increase?

6 MR. MEISNER: I have no idea. They have  
7 litter pickup that they do on the site and it's  
8 contained by a fence. It's contained by a  
9 fence, so I'm not sure and the prevailing winds  
10 are from the southwest. So any litter would be  
11 on the inside in my opinion.

12 MS. PUNDZAK: But you've seen litter in  
13 the parking lots at Moeller before; haven't  
14 you?

15 MR. MEISNER: I haven't been there that  
16 many times to really scope out all the litter.  
17 I know they told me they pick up litter.

18 MS. PUNDZAK: So there's litter there.  
19 How about heat, will heat increase from that  
20 big slab of asphalt that's going to be laid  
21 there?

22 MR. MEISNER: The asphalt does absorb  
23 sunlight and radiate heat. The trees as they  
24 grow will shade it out.

25 MS. PUNDZAK: Will help, correct?

1 MR. MEISNER: They will shade out.

2 MS. PUNDZAK: 100 percent?

3 MR. MEISNER: No.

4 MS. PUNDZAK: So there will be a heat  
5 increase. How about you were talking about if  
6 there's subsurface water in the whole  
7 neighborhood and you didn't say that there was,  
8 but you said if there's subsurface water in the  
9 whole neighborhood. Adding additional water  
10 runoff that will have a negative impact; won't  
11 it?

12 MR. MEISNER: Actually, all the water is  
13 either going to be contained surface water by  
14 the French drains. All of the parking lot  
15 water goes into a stormwater detention area  
16 under the parking lot and the runoff is  
17 95 percent or so. It's not going to be adding  
18 to stormwater to the area.

19 MS. PUNDZAK: It will be adding some water  
20 to the area; won't it?

21 MR. MEISNER: It will be contained and  
22 dribbled out as per the Hamilton County  
23 stormwater regulations which means it's going  
24 to be up to 24 hours the water that runs off  
25 into the detention area is trickled out. So

1 the overall impact on the stormwater drainage  
2 system in the area is minimal. That's why  
3 those regulations exist.

4 MS. PUNDZAK: So now that you told us,  
5 yes, the noise is most likely going to  
6 increase. Yes, the auto exhaust is going to  
7 increase. You said if the litter increases it  
8 will be contained within the involved area.  
9 The heat will increase and you've explained  
10 about the water, do you agree now that, yes,  
11 there will be an adverse impact for these  
12 properties?

13 MR. MEISNER: Minimal. Minimal in my  
14 opinion.

15 MS. PUNDZAK: But an adverse impact  
16 nonetheless?

17 MR. MEISNER: There could be an adverse  
18 impact in my opinion, but it would minimal.

19 MS. PUNDZAK: Okay. Thank you, sir.

20 MR. BARRETT: Let me just ask a couple of  
21 questions to clarify.

22 Are you familiar with the other parking  
23 lots in the neighborhood?

24 MR. MEISNER: Yes.

25 MR. BARRETT: Are you familiar with the

1 parking lot on the north side of Kennedy Lane  
2 just west of Montgomery Road?

3 MR. MEISNER: Yes.

4 MR. BARRETT: And how does that parking  
5 lot compare to the subject parking lot?

6 MR. MEISNER: Very similar.

7 MR. BARRETT: Are you aware of any adverse  
8 impacts from that?

9 MR. MEISNER: We would have more  
10 landscaping.

11 MR. BARRETT: Better buffer?

12 MR. MEISNER: Yes.

13 MR. BARRETT: Are you aware of any adverse  
14 impact from that parking lot?

15 MR. MEISNER: I'm not aware.

16 MR. BARRETT: You understand that  
17 approximately 124 houses that are on the  
18 streets use Kennedy Lane including Kennedy Lane  
19 itself?

20 MR. MEISNER: I have driven back there,  
21 yes.

22 MR. BARRETT: And you understand the  
23 average daily trip from a house is like 10  
24 trips per day?

25 MR. MEISNER: I've heard that.

1           MR. BARRETT: So we're talking like 1,240  
2           trips per day along Kennedy Lane?

3           MR. MEISNER: Yes, there's quite a few I'm  
4           sure.

5           MR. BARRETT: And is that an adverse  
6           impact on Kennedy Lane?

7           MR. MEISNER: Probably, yes.

8           MR. BARRETT: More so than this parking  
9           lot?

10          MR. MEISNER: Yes.

11          MR. BARRETT: That's all I have. Thank  
12          you.

13          CHAIRMAN EICHMANN: Anything else?

14          MR. BARRETT: Marshall Hyzdu. State your  
15          name again, please.

16          MR. HYZDU: Marshall Hyzdu. President of  
17          Moeller High School and I've been sworn.

18          MR. BARRETT: You've heard some of the  
19          testimony from some of the residents about the  
20          cross-country team and whether or not the  
21          school adequately addresses their safety  
22          concerns and whether that is any different from  
23          the students walking to and from the parking  
24          lot. Would you just comment on that, please?

25          MR. HYZDU: Yes. So with the

1 cross-country team they practice primarily in  
2 the summer time. And as Mr. Donnellon had  
3 mentioned in the summer time when they were run  
4 at 6:00, 6:30 a.m. it's always light at that  
5 time. And then in the fall, they run before  
6 rush hour, but always during the light time.  
7 So the things that are super important for the  
8 cross-country team and the difference between  
9 students walking from public parking up to  
10 Moeller High School and back, is one, it's  
11 always during the light team. And, two, it's a  
12 mass of students versus a single student or  
13 two. So from a safety standpoint it's  
14 significantly different.

15 MR. BARRETT: And you heard the comments  
16 and a lot of questions and statements about  
17 that there's never been an accident yet?

18 MR. HYZDU: Yes. Correct.

19 MR. BARRETT: Does that in any way  
20 validate the position that this is not a safety  
21 hazard?

22 MR. HYZDU: Absolutely not.

23 MR. BARRETT: And have you ever taken to  
24 actually have the students interviewed as to  
25 whether there are safety conditions?

1           MR. HYZDU:  Yes.  So one of the things  
2           that we did recently is we asked the students,  
3           hey, have you ever yourself or someone that you  
4           know been in an accident or almost an accident.  
5           In three days we had over 30 responses to that  
6           and a lot of passion behind it.

7           MR. BARRETT:  And what was the typical  
8           response?

9           MR. HYZDU:  So the vast majority of them  
10          talked about almost being hit.  There's two  
11          students that talked about actually being hit.  
12          Students talked about the weather conditions  
13          and dealing with that.  They also talked about  
14          the dangers of crossing the street and almost  
15          being hit crossing the street.  So when we talk  
16          about the roundabout and the changes there, the  
17          addition walking across Montgomery Road  
18          multiple times is certainly a dangerous  
19          situation.

20          MR. BARRETT:  Do you have documentation on  
21          that?

22          MR. HYZDU:  I do.

23          MR. BARRETT:  Would you give it to the  
24          board, please?  Tell the board what you're  
25          handing out.

1           MR. HYZDU:  So this is testimonials of  
2 students regarding concerns and issues that  
3 they had from a dangerous standpoint from  
4 walking from the public parking.

5           MS. GLASSMEYER:  Does this include your  
6 initial request for their testimonials?

7           MR. HYZDU:  Initial requests?

8           MS. GLASSMEYER:  Like, did you tell them  
9 it was so they could get a parking lot when you  
10 asked for the testimonials?

11          MR. HYZDU:  So I mentioned to them that  
12 this was related to the Sycamore Township  
13 hearing, yes.

14          MR. BARRETT:  Just express in your own  
15 terms and concerns you had about the safety of  
16 the students that you're responsible for?

17          MR. HYZDU:  It's incredibly important.  We  
18 wouldn't be here if it wasn't important.  This  
19 is the most important thing that we have and  
20 there's -- we've tried several things.  You've  
21 heard from Mr. Fitz.  We looked at All Saints.  
22 We've tried several different options.  We've  
23 look at shuttles.  We looked at all these  
24 different options.  This is the most practical  
25 one and the safest one combination.

1           MR. BARRETT: You heard some testimony  
2 from some of your neighbors about the relations  
3 between Moeller High School and the  
4 neighborhood. As the president of the school  
5 would you comment on that?

6           MR. HYZDU: This is one of the things  
7 that's the hardest for me personally, because a  
8 lot of the issues started and predated both  
9 myself and Dave Beiersdorfer. And the  
10 relationship with the neighbors has been  
11 strained before we both walked in the door.  
12 It's really important to us when this project  
13 started over a year ago, I took the plans.  
14 Walked around to the neighbors, shared the  
15 plans with them. Since then we've had several  
16 meetings. Again, trying to understand what the  
17 needs are, what the challenges are so that we  
18 can find a solution that works for everybody  
19 and we even did the mediation, just again,  
20 trying to find something that works.

21           MR. BARRETT: As president of Moeller High  
22 School, are you committed to having good  
23 neighborly relations?

24           MR. HYZDU: Absolutely. It's incredibly  
25 important to me. I always want to keep the

1 lines of communication open and would encourage  
2 the feedback and the continued conversation.

3 MR. BARRETT: Thank you. That's all I  
4 have for Mr. Hyzdu.

5 CHAIRMAN EICHMANN: Any questions back  
6 there, either of you?

7 MS. MYERS: Mr. Hyzdu, Kristin Myers, as  
8 you know.

9 MR. HYZDU: Hi, Kristin.

10 MS. MYERS: So you talked about the  
11 difference between the students that are  
12 parking in the business district and the  
13 cross-country team, for instance. And you  
14 talked about the fact that the cross-country  
15 team are running in a group and they're only  
16 running during the times of day when it's  
17 light.

18 Do you, from your perspective, is it more  
19 of a safety issue when it is darker than when  
20 it is light?

21 MR. HYZDU: I would assume the answer is  
22 yes.

23 MS. MYERS: And you talked about these  
24 other options that you looked at including  
25 shuttles. I believe it's my understanding that

1           you have at least three kind of large vans that  
2           can maybe drive the golf team or other teams  
3           wherever they need to go; is that correct?

4           MR. HYZDU: I don't know the number, but,  
5           yes, we have team vans.

6           UNIDENTIFIED SPEAKER: You have two of  
7           them.

8           UNIDENTIFIED SPEAKER: There's three.

9           MS. MYERS: Well, in any case two or  
10          three. Have you considered at least in the  
11          morning time having those vans act as a  
12          shuttle?

13          MR. HYZDU: Yes. And Mr. Beiersdorfer  
14          talked about us looking at that and, again, we  
15          don't find it to be a practical solution  
16          because students are coming at multiple times.  
17          We know that students come at 6:00 a.m. We  
18          know that they come at 6:15, 6:30, all the way.  
19          School starts at 7:50. But some students,  
20          again, as Mr. Beiersdorfer said don't have a  
21          first period. So the practicality of running  
22          three, four, five vans at the same time, not  
23          to mention the fact that where the UC shuttles  
24          where airports or maybe university, there are  
25          shuttle stations where people can actually wait

1 for shuttles under protection because if it's  
2 raining or snowing, that creates another safety  
3 hazard.

4 MS. MYERS: I believe we've heard from  
5 other folks and maybe from you, that there are  
6 certainly instances of students will go and  
7 they'll park up there and sit and wait in their  
8 car until a friend comes and gets them,  
9 correct?

10 MR. HYZDU: I've not witnessed that.

11 MS. MYERS: But you've heard other people  
12 talk about that?

13 MR. HYZDU: I've heard other people talk  
14 about that.

15 MS. MYERS: Could the students -- the  
16 parking lot that we're talking about is not  
17 huge, correct?

18 MR. HYZDU: Which one? The one we're  
19 talking about?

20 MS. MYERS: I'm sorry.

21 MR. HYZDU: The proposed parking lot --

22 MS. MYERS: Nice catch. The parking lot  
23 in downtown Montgomery is not huge, correct?  
24 If a student parked their car, they could in  
25 their car and watch for a shuttle to show up,

1 correct?

2 MR. HYZDU: Potentially. I'm not sure.  
3 But all I know is that every place that's ever  
4 had a shuttle, has places also for people to be  
5 stationed there. And so I don't know the  
6 safety of sitting in a car. I don't understand  
7 that, but I do understand that we don't own  
8 that public parking. And so for them to create  
9 a safe haven for us to have a shuttle program,  
10 again, I don't see that as that practical.

11 MS. MYERS: So have you talked to whoever  
12 does own that lot, I assume the city owns that  
13 lot, about putting, improving their property  
14 with some sort of bench with a little cover  
15 over it, a glass cover?

16 MR. HYZDU: So what we have talked to  
17 Montgomery about with this roundabout when we  
18 talked to them is the safety of -- the addition  
19 of the roundabout and the safety of our  
20 students on a daily basis. And when they found  
21 out or they understand that what we're doing  
22 here, they're fully supportive of us having a  
23 parking lot for the improved safety of our  
24 students because they understand the dangers  
25 that face us.

1           MS. MYERS: Did any of those conversations  
2 come after this board declined your application  
3 last year?

4           MR. HYZDU: Yes.

5           MS. MYERS: And did they make any  
6 improvements or did you ask them to make any  
7 improvements given the fact that the parking  
8 lot was denied by this board and so conceivably  
9 students would have to continue to walk down  
10 Montgomery Road?

11          MR. HYZDU: We talked to them about the  
12 roundabout and the difficulty and the safety  
13 concerns that we had.

14          MS. MYERS: Do you -- I think somebody  
15 else asked this, but I'll ask you. Do you  
16 think that the roundabout will improve the  
17 safety of students crossing?

18          MR. HYZDU: Kristin, I'm not an expert in  
19 that. What I do know is when you read these  
20 testimonies, several of them talk about them  
21 crossing the street even when it's their  
22 right-of-way and almost being hit. Partially  
23 because it's dark. Partially because of the  
24 weather. And so the fact that student have to  
25 park in Montgomery, cross Montgomery Road, walk

1 down and then cross Montgomery Road again, to  
2 me that seems pretty dangerous. From a  
3 relative standpoint, I can't answer that  
4 intelligently.

5 MS. MYERS: Do you think it's unsafe for  
6 any student no matter which way they're coming  
7 from to walk to Moeller?

8 MR. HYZDU: Well, I think -- I have a hard  
9 time answering that, right, specifically. So  
10 walking to Moeller is dangerous. In of itself  
11 is dangerous. The situation that our students  
12 are facing right now from walking from public  
13 all the way down Montgomery Road cross Ronald  
14 Reagan twice, I find that very dangerous.

15 MS. MYERS: So you're not satisfied with  
16 what the department of transportation and  
17 engineering presumably came up with as a safe  
18 path for pedestrians?

19 MR. HYZDU: For overall pedestrian -- I  
20 don't know how to answer that, Kristin. All I  
21 know is what we're talking about here. And I  
22 know that we have a hundred students that park  
23 in downtown Montgomery and walk up to school  
24 every single day. So I'm not satisfied with  
25 the safety for those students and that's what

1           this is about. Because trust me, what I don't  
2           want to do is spend money on a parking lot.  
3           What I don't want to do is sit in front of --  
4           like I like you all, but I don't really want to  
5           be here. I want to go educate our students so  
6           they can go out into the world and do great  
7           things. That's all we're trying to do is  
8           create a safe place. This is an obviously much  
9           safer opportunity for our students and for the  
10          community.

11                 MS. MYERS: So let's talk about that then.  
12           You understand that this standard for this  
13           board to approve this parking lot is no adverse  
14           impact?

15                 MR. BARRETT: I'm going to object to that.  
16           It calls for legal conclusion.

17                 MS. MYERS: We've talked about the fact  
18           and your attorney's talked about the fact or  
19           acknowledged the fact, I think, that the  
20           standard that -- where the burden is on you is  
21           to show that there's no adverse impact here.

22                 My question to you is: Do you understand  
23           that there's an adverse impact to all these  
24           folks sitting here while by you putting a  
25           parking lot in this currently residential green

1 buffer with all trees?

2 MR. HYZDU: Here's what I understand.  
3 That the four properties that actually touch  
4 this proposed parking lot all have a Moeller  
5 parking lot in their current back yard, all of  
6 them do. And so, do I see this as adverse to  
7 them? They purchased a house presumably  
8 because they like to be near a school that has  
9 a reputation that Moeller High School has and  
10 what we try to do. And so they purchased a  
11 house with a parking lot in their back yard.  
12 And so what we're trying to do because those  
13 current properties, if you walk by it, it may  
14 look better. I'm telling you it doesn't. You  
15 have trees that are -- it's a train wreck in  
16 there. And so what we're trying to do is make  
17 this a beautiful area for all of us, right.  
18 And so, it's going to be more beautiful after  
19 we're done with this than where we are today.

20 MS. MYERS: Looking up there at the  
21 drawings, you say that everybody has a parking  
22 lot in their backyard currently. My client,  
23 Cathy Willis, there on the left, you  
24 acknowledge though that her portion is like  
25 15 percent of her property balance and it was

1 all the way at the back of her property until  
2 what we're talking about today, correct?

3 MR. HYZDU: Sure.

4 MS. MYERS: And that she was bordered on  
5 the other side with a residential parcel which  
6 is still a residential parcel with a house on  
7 the front and a nice -- you say that you don't  
8 like it, but a treed area. It's not well  
9 curated. I mean, nobody's going in and cutting  
10 down shrubs, I don't think, but kind of an  
11 overgrown green area, correct?

12 MR. HYZDU: It is. But it's also a green  
13 area that we could cut down all those trees  
14 today.

15 MS. MYERS: Well, you don't currently own  
16 that property, correct?

17 MR. HYZDU: Correct. I don't currently  
18 own -- yes, Moeller does not currently own part  
19 of it. But the owner Mr. Kimener, as well as  
20 the other property we can go in and cut down  
21 those trees.

22 MS. MYERS: Correct. But currently today  
23 you're not allowed to build a parking lot on  
24 it, correct?

25 MR. HYZDU: That's why we're here.

1 MS. MYERS: At least for this meeting?

2 MR. HYZDU: That's why we're here.

3 MS. MYERS: But you understand that when  
4 my client built her house 25 years ago, in her  
5 mind she was building next to a residential  
6 parcel, and she could deal with the fact that  
7 there was 15 percent behind. Does that make  
8 sense to you? 15 percent of her property line  
9 was bordered by Moeller?

10 MR. HYZDU: Yes, logically that sounds  
11 right.

12 MS. MYERS: And so it would be your  
13 testimony that taking out all of that green  
14 space and putting in a fence and a big surface  
15 parking lot beyond it is improvement?

16 MR. HYZDU: Significant improvement to  
17 what it looks like today absolutely.

18 MS. MYERS: And you don't think that will  
19 diminish her property value?

20 MR. HYZDU: I'm not a real estate expert.

21 MS. MYERS: So you don't know if it will  
22 diminish her property value?

23 MR. HYZDU: That I don't know. What I  
24 would assume though is that if she would try to  
25 sell that property today or in 10 years that if

1 someone had a problem with having a parking lot  
2 in their back yard, that they wouldn't purchase  
3 that house today. But if they were okay with  
4 being next to a school and a parking lot in  
5 their back yard, that they would be okay with  
6 that house. That's just the logic that my mind  
7 goes through.

8 MS. MYERS: But you yourself don't know if  
9 this parking lot would diminish the property  
10 value of the neighbors?

11 MR. HYZDU: I'm not a real estate expert  
12 so I don't know.

13 MS. MYERS: Thank you.

14 MS. PUNDZAK: I'm attorney Lynn Pundzak.  
15 I don't believe we've met. I just have a  
16 couple of brief questions.

17 How long have students been parking in the  
18 public parking lot in Montgomery and walking to  
19 Moeller?

20 MS. MYERS: All I can speak about is how  
21 long I've been at Moeller which is a little  
22 over three and a half years.

23 MS. PUNDZAK: And they've been doing that  
24 the entire time you've been there?

25 MR. HYZDU: Yes.

1 MS. PUNDZAK: So the last time you were in  
2 front of this board and you asked for a permit  
3 to build the previous iteration or version of  
4 this parking lot, you had that same safety  
5 concern then; is that right?

6 MR. HYZDU: Yes.

7 MS. PUNDZAK: No further questions. Thank  
8 you.

9 MR. MILLER: I have a question. Marshall,  
10 you said you talked to Montgomery about this  
11 Gateway --

12 MR. HYZDU: Yes.

13 MR. MILLER: -- development? Did they say  
14 if there's going to be any public parking in  
15 that development?

16 MR. HYZDU: I don't remember specifically  
17 what they said from a parking standpoint. I  
18 believe there's going to be parking in part of  
19 where the old car dealerships would be just  
20 naturally. I think they're going to build a  
21 hotel there and some shops there.

22 MR. MILLER: That's what they're calling  
23 the Gateway Development. So they told you  
24 there would be public parking in there?

25 MR. HYZDU: I don't remember.

1           CHAIRMAN EICHMANN: Mr. Barrett?

2           MR. BARRETT: Thank you. We have no  
3 further rebuttal witnesses.

4           CHAIRMAN EICHMANN: At this point, I guess  
5 --

6           MR. MILLER: Excuse me, Fran, do you have  
7 any brief argument that you -- brief argument  
8 that you wanted to make or are you done?

9           MR. BARRETT: I'd like to make a brief  
10 argument, yes. Let me just back up one second  
11 and just a couple of points for clarification.

12           First of all, references made to the prior  
13 decision you made with prior finding of fact  
14 and attorney Lynn Pundzak argued that you're  
15 bound by those prior findings and, therefore,  
16 you can't approve this plan. I disagree 180  
17 degrees on that. I think it's completely  
18 inaccurate. The reason I say that is because  
19 all through those conditions in the resolution  
20 that she read which is her Exhibit A, it talks  
21 about the proposed parking plan, the proposed  
22 parking plan, the proposed parking lot, the  
23 application. In other words, that specific  
24 plan that specific application did not meet  
25 this criteria. This is a different plan. A

1 materially different plan, many substantive  
2 changes and, therefore, it does not apply at  
3 all.

4           Again, I don't like to belabor the point  
5 but the right to subjective changes. But Mr.  
6 Meisner explained in detail how the changes are  
7 quite substantial. The one point I think is  
8 the strongest point that I can make which is  
9 actually unrefuted is actually the testimony  
10 under oath of your own zoning administrator,  
11 Mr. Harry Holbert was under oath at the  
12 August 19th public hearing. And I copied Pages  
13 10 through 22 of that transcript. I'd like to  
14 just give these to you. I have copies, because  
15 he is an expert and is considered to be neutral  
16 and he stated unequivocally that the proposed  
17 parking lot plan meets all of the requirements  
18 for conditional use approval.

19           I'll also point out as I'm passing these  
20 out, counselor had the right to cross-examine  
21 him. They did not ask to cross-examine him,  
22 they, therefore, waived that right. So any  
23 issues which attorney Lynn Pundzak raised about  
24 Mr. Holbert's independence or partiality could  
25 have been questioned and she declined to do so.

1           So as a result, there's absolutely no issue  
2           with regard to that. In particular, this is  
3           Mr. Holbert's testimony under oath.

4           MS. MYERS: Fran, is that an extra copy?

5           MR. BARRETT: Yes. Here's an extra copy.  
6           One for you and one for Lynn, too. At the  
7           bottom, first of all, one point is: There's  
8           not a single negative statement that Mr.  
9           Holbert made under oath about this proposed  
10          parking plan, not a single negative comment.

11          On the bottom of Page 11, he talks about  
12          the requirements for conditional use approval.  
13          And he indicates that traditional use zoning  
14          certificate issued by the office of zoning  
15          inspector certifying the following items: "A,  
16          approval of the proposed conditional use by the  
17          board of zoning appeals. Pursuant to the  
18          standard and procedures set forth in Chapter  
19          17. And that the plat and plans for the  
20          proposed use comply with all other applicable  
21          provisions as of the Sycamore Township Zoning  
22          Resolution, including all conditions of  
23          approval."

24          And then at the bottom of Page 12, again,  
25          Line 19 says, in addition, "And the foot candle

1 chart that was provided at that point based on  
2 the fixtures that you see here, they were all  
3 still met the code requirements of zero foot  
4 candles at the property level."

5 And then over on Page 13, he states,  
6 beginning on Line 11, "Basically the previous  
7 one exceeded the zoning requirements for  
8 boundary buffer." As you go to the proposal in  
9 front of you now, there's an actually an  
10 excessive amount of landscaping --

11 And then over on Page 14 at the bottom, he  
12 says, on Line 19, "So the general consideration  
13 was for a conditional use under Chapter 17.  
14 You're referring to 17-6 A, B, C, and D. The  
15 spirit and intent. No adverse effect.  
16 Protection of private interest. Consistent  
17 with adopted plan." So the first one, spirit  
18 and intent is a proposed use within the spirit  
19 and intent of the zoning resolution in the  
20 district proposed. He said, "Yes, adverse  
21 effect proposed use of development shall not  
22 have an adverse effect on the adjoint property  
23 for the public health, safety morals, and  
24 general welfare. Based upon the applicant's  
25 submitted drawings, the applicant is proposing

1 to minimize any adverse effects on the  
2 proposal."

3 He goes on to say on Line 9, "Protection  
4 of public interests. The proposed use of  
5 development shall respect to the greatest  
6 extent practical by endangered scenic and  
7 historical features of a significant public  
8 interest. The applicant is proposing to  
9 outline their properties with tremendous amount  
10 of landscaping. An 8-foot tall privacy fence  
11 and Bollard type light fixtures and install a  
12 stormwater detention system. Consistent with  
13 the adopted plans, the proposed use of the  
14 development shall be applicable and consistent  
15 with objectives, policies and plans, land use  
16 adopted by the board of trustees. The proposed  
17 two lots in their use of approval be consistent  
18 with the existing 13.08 acres to the south,  
19 basically Moeller High School."

20 Then over on Page 16 at the bottom, on  
21 Line 17 says, quote, some measures shall be  
22 taken to minimize the impact of a potential  
23 nuisance such as noise, odor, vibration, and  
24 dust on adjacent properties. Applicant is  
25 provided a detailed plan addressing the water

1 shed, buffering and lighting. Landscaping  
2 shall be installed in accordance with one of  
3 the following buffers as described in detail in  
4 Chapter 14. In this case, A, boundary, Buffer  
5 A showed in Figure 14-A. And moving over to  
6 Page 17, the copy says and then also  
7 streetscape shown in Figure 14-C. "The  
8 applicant has met and exceeded the requirement  
9 of the township's boundary buffer requirements  
10 where applicable."

11 Then he talked about signage shall be  
12 regulated as follows: Then he says the  
13 applicant has requested no signage. Then he  
14 says the next line, Line 8, "All exterior  
15 lighting shall be directed away from adjacent  
16 residential property. The applicant has met  
17 these requirements."

18 At the bottom of the page, Line 21, he  
19 says, "Also in staff's opinion, there's no need  
20 to provide interior landscaping due to the site  
21 totally enclosed surrounding by a fence and  
22 landscaping materials." So the whole intent  
23 with interior landscaping at the top of Page  
24 18, "Is to break up, to break up the sea of  
25 landscaped areas for the public. In this case

1           this is a closed site, an 8-foot tall privacy  
2           fence with landscaping around it."

3           Then, if we look at the actual staff  
4           report, which is a part of the record. This is  
5           the independent staff report. Again, he  
6           testified under oath. He was not  
7           cross-examined. The other side had the right  
8           to cross-examine him. They waived that right  
9           by not cross-examining him. In the staff  
10          report, on the second page he references  
11          Section 17-6, General consideration for  
12          conditional uses. He references Paragraph A,  
13          spirit and intent. He asked the question: Is  
14          the proposed use for the spirit and intent of  
15          the zoning resolution in the district purpose?  
16          Answer, yes.

17          Then from 17-B, no adverse effect. Quote,  
18          the proposed use of development shall not have  
19          an adverse effect upon the adjacent property  
20          for the public health, safety, morals, and  
21          general welfare. Based on the applicant's  
22          submitted drawings, the applicants proposing to  
23          minimize any adverse effects for the proposal.

24          Next is Subparagraph C. Protection of  
25          public interest. The proposed use and

1 development shall respect to the greatest  
2 extent practicable a natural, scenic, and  
3 historic feature of significant public  
4 interest. The applicant is proposing to  
5 outline the property with tremendous amount of  
6 landscaping materials. An 8-foot tall privacy  
7 fence and Bollard type light fixtures to  
8 install a stormwater detention system.

9 Paragraph D, 17-6(d), "Consistent with  
10 adopted plans. The proposed use and  
11 development shall be applicable to be  
12 consistent with objectives, policies, and  
13 plans, related to landscape adoptive by the  
14 board of township trustees. The proposed two  
15 lots and the use approved will be consistent  
16 with the existing 13.08 acre site and sound."

17 And then he goes onto the next section,  
18 17-7, specific criteria. Section 17-12, it  
19 says Subparagraph 12. "Measures shall be taken  
20 to minimize the impact of potential nuisances  
21 such as noise, odor, vibration, and dust on  
22 adjacent properties." And he says, quote,  
23 applicants have provided a detailed plan to  
24 address watershed, buffering, and lighting, end  
25 quote.

1           And then he goes on to talk about  
2           Subparagraph 15. Landscaping shall be  
3           installed in accordance upon the following  
4           buffers as described in detail in Chapter 4.  
5           And he says below that, quote, applicant has  
6           met and exceeded the requirements of the  
7           township's boundary and buffer and requirements  
8           where applicable, end quote. Then he talks  
9           about the signage. He says one sign is  
10          permitted. The applicant has requested no  
11          signage. Then in Subparagraph 19, "all  
12          exterior lighting shall be directed away from  
13          adjacent properties." He says, quote,  
14          applicant has met these requirements, period,  
15          end quote. In other words, the independent  
16          expert is Mr. Harry Holbert and he stated  
17          without controversy, without challenge, without  
18          question, that this meets all of the criteria  
19          for conditional use approval.

20                 Again, just to brief to make a couple of  
21                 points. This is an accessory use. This zoning  
22                 district which is a Residence B district allows  
23                 conditionally, schools and institutions,  
24                 churches and other facilities. This is an  
25                 accessory which is even a minimal use a parking

1 lot and the parking lot is buffered as you  
2 heard the expert testimony probably greater  
3 than any other parking lot in greater  
4 Cincinnati and it will be absolutely adverse  
5 impact of any reasonable extent.

6 I would point out that the property is  
7 zoned B Residence under the Sycamore Township  
8 Zoning Resolution. Looking at Table 4-6 in the  
9 zoning resolution, the side yard setback in  
10 this district is 8 feet. In other words, you  
11 could actually build a house, a structure, a  
12 garage, 8 feet off the property line. Instead  
13 here we have just a surface parking lot which  
14 is 20 feet off the property line, which is  
15 separated by mounding. On top of the mounding  
16 there's a 8-foot fence. There's extensive  
17 landscaping in terms of all kinds of trees.  
18 And when these trees grow to maturity, it will  
19 be a virtual canopy of screens of shade and  
20 shield.

21 I'm a firm believer in the public hearing  
22 process. And I think one of the good things  
23 about public hearing is it brings out the  
24 concerns and we were able to hear all the  
25 concerns of the residents which you heard on

1           rebuttal. And every one of the concerns of the  
2           residents has really been fully addressed.

3           Mr. Jerry Beitman is a 30-year police  
4           officer for the City of Montgomery. He's the  
5           director of safety for Moeller High School. He  
6           explained in detail how it's really not safe to  
7           be walking -- for the students to be walking up  
8           and down Montgomery Road. And, secondly, he  
9           explained how it's not safer to have students  
10          driving or walking as opposed to driving and  
11          parking on campus. And he detailed without  
12          question looking at cross-examination  
13          challenged that in anyway and yet there's a  
14          bonafide safety question.

15          Peter Kimener explained how he explained  
16          to both Margee Clarke and to -- Margee Clarke  
17          approached the school and how David Broxterman  
18          informed what would be in the rear of his  
19          property when he bought it before he closed on  
20          it.

21          I looked at the transcript from June 18,  
22          2018 public hearing. And, again, the concerns  
23          that expressed were primarily with regard to  
24          Cathy Willis' home. And now the landscape  
25          architect has not only doubled the buffer,

1 hundred percent increase, he's increased the  
2 mounding, the height of the fencing, and  
3 screening of the landscaping. And in  
4 particular, lowered the light poles from  
5 25-foot high light poles that would be visible  
6 to 3 -- or 4-foot high Bollard lights. We  
7 believe are probably actually a better buffer  
8 than any residential property we're aware of in  
9 greater Cincinnati of any parking lot.

10 Dave Beiersdorfer explained, again, how  
11 shuttle buses are impractical. He also  
12 explained how the school is opened. They've  
13 never turned away any of the residents. The  
14 school is trying to have neighborly relations.  
15 Anybody that wants to walk on the track, et  
16 cetera, is free to do so.

17 The testimony of Tom Fitz, I think, is  
18 basically airtight. The residents repeatedly  
19 said that we can go to All Saints Church and  
20 require parking from them and he explained in  
21 detail how it's not possible. His testimony, I  
22 think, was what I would call the clincher.

23 Gary Meisner in rebuttal explained that  
24 all of the concerns that were raised were not  
25 valid and that this is probably as fine a

1 landscape parking lot as good as anywhere and  
2 there would be no adverse impact in terms of  
3 professional planning.

4 And lastly you heard from Marshall Hyzdu  
5 who confirmed the concerns of the students.  
6 This is an accident waiting to happen. You  
7 don't need an accident or fatality to address  
8 this. The resident's attorney tried to say  
9 that public safety is not really a valid  
10 concern. Well, we talk about general wholly  
11 health and safety and welfare. There's nothing  
12 more important than public safety.

13 Again, we're pleased to be before you. We  
14 understand from the prior hearing that it's a  
15 divided vote. We looked at the record very  
16 carefully. We tried to address all of the  
17 concerns that were raised. We tried to come  
18 back with a plan that was dramatically improved  
19 and would protect everybody, Cathy Willis in  
20 particular. And we're very confident and  
21 comfortable in what we've done is the best  
22 possible plan. And it's very important in  
23 summary, just to say, Moeller's a true asset of  
24 Sycamore Township. And in these -- the  
25 population of the township we have good

1 neighborly relations to try to do that. We  
2 think we've accomplished that. We respectfully  
3 request approval. Thank you very much. Happy  
4 to answer any questions anybody has. Try to be  
5 brief as possible. I apologize for talking  
6 fast.

7 MR. SCHOLTZ: That's brief for an  
8 attorney.

9 MR. MILLER: That's brief for him.

10 CHAIRMAN EICHMANN: So before I close the  
11 public comment now that everybody's had a  
12 chance to speak, I guess I'll ask my counsel  
13 here in terms of us closing -- I'll speak  
14 first. This is a very unusual case for us, for  
15 me in particular. I'm not sure about the other  
16 members. Some have been here longer than I  
17 have. Certainly a lot of detail information.  
18 Certainly heard very good arguments on both  
19 sides and we have a lot of material to kind of  
20 absorb and decide here what we're going to do.  
21 I think I need to have some advice from you on  
22 how do I close this to public commentary.

23 MR. MILLER: Once you close it for public  
24 comment, you got 21 days to pass your  
25 resolution and get it signed. There's an awful

1 lot of -- I mean, we've had now three nights  
2 of --

3 CHAIRMAN EICHMANN: Hundreds of pages.

4 MR. MILLER: -- not quite four hours this  
5 time, but the last two times we have  
6 transcripts of the first two meetings. This  
7 one will probably become available. I don't  
8 know if the board would want to keep the  
9 meeting open one more time to review the  
10 evidence and the testimony and the exhibits in  
11 case you have any further questions that might  
12 come up in that regard. That's an option. If  
13 not, you can close the public hearing and you  
14 need to make some kind of decision. You're  
15 going to have to have a special meeting one way  
16 or the other.

17 CHAIRMAN EICHMANN: To approve the  
18 resolution if we choose to have one tonight.

19 MR. MILLER: That's correct. You can give  
20 an indication as to how you want staff to  
21 prepare that resolution, yay or nay or  
22 whatever. But you're going to have to come  
23 back and vote on that as a final thing within  
24 the 21 days of closing the public hearing.

25 CHAIRMAN EICHMANN: And I guess we held in

1 advance the decision on whether this plan is a  
2 different plan than one we've already made a  
3 decision on --

4 MR. MILLER: That's a consideration.

5 CHAIRMAN EICHMANN: -- regarding the whole  
6 Res Judicata.

7 MR. MILLER: That you need to make, yes.

8 CHAIRMAN EICHMANN: That would be a  
9 decision we have to make first before we make a  
10 decision on the resolution.

11 MR. SCHEVE: No, I don't think so. My  
12 view is come back to where I was at the  
13 beginning is that where we are in a procedural  
14 quagmire. We have a case on appeal which we  
15 denied the request and that's currently on  
16 appeal before a judge and now we have what I  
17 call Plan B.

18 If the board approves Plan B and then one  
19 of the residents appeal that, we put the  
20 township in the untenable position, I think,  
21 that they have to argue in favor of two  
22 opposing viewpoints. They have to talk out of  
23 both sides of their mouths. I know attorneys  
24 are accused of doing that all the time, but  
25 it's a position that I don't think Mr. Miller

1           wants to be in. And even if we deny it tonight  
2           then, again, we have a similar type of  
3           procedural problem. To me the safest way to do  
4           it is to continue this case until we get a  
5           ruling on the first case and the judge in the  
6           first case can give us an indication of  
7           depending on how he or she rules, what if  
8           anything we should do with the second case. If  
9           we continue the case, it seems like we've  
10          wasted a lot of time on the second case, but I  
11          think if people wanted to do that.

12                 I think the safest way for us to proceed  
13          is to continue the case pending the outcome  
14          from the first case, assuming you're going to  
15          close the public meeting, I would make a motion  
16          to do that. If the motion doesn't pass, then  
17          we can address the merits of Plan B. At this  
18          point, I think we should -- should address the  
19          merits of Plan B while Plan A is pending in  
20          front of the court. We ought to let the  
21          court's do their job.

22                 MR. BARRETT: If I can comment on that and  
23          I said before, we're perfectly willing to  
24          withdraw Plan A, but we can't do that because  
25          of fear it would be used against us. As soon

1 as Plan B is approved, we're commented to Plan  
2 B and not Plan A. It's going to be a long time  
3 before there's any ruling from the court on  
4 Plan A. You're going to lose a lot of time if  
5 you defer this vote waiting for an outcome on  
6 Plan A. You're going to be waiting for at  
7 least a year and that's untenable.

8 Again, I maintain it's materially  
9 different. I think you should vote it up or  
10 down based upon whether A you think is  
11 materially different, and B whether you think  
12 it's acceptable. I think that's proper action  
13 to take. Otherwise you're talking about -- as  
14 far as the township's position is concerned, if  
15 you approve Plan B, the township attorney  
16 should defend Plan B. He can remain opposed to  
17 Plan A. It doesn't put him in kind of conflict  
18 at all. If Plan B is approved by the board, he  
19 defends Plan B. We're not going to go to go  
20 ahead with Plan A but he can still oppose Plan  
21 A. There's nothing inconsistent with that at  
22 all.

23 CHAIRMAN EICHMANN: What is your feeling  
24 on the whole Res Judicata issue?

25 MR. MILLER: Well, I mean there's an easy

1 way --

2 CHAIRMAN EICHMANN: Should we do this  
3 first and this is the new case?

4 MR. MILLER: I think from what I'm hearing  
5 Mr. Scheve say, there's an easy way to get an  
6 answer on Plan B and that's to dismiss Plan A.  
7 Then what you're saying is you're going to  
8 continue it until there's a decision on Plan A.  
9 I understand they don't want to do that.

10 MR. SCHEVE: I understand.

11 MR. MILLER: And I understand why.

12 MR. SCHEVE: He doesn't want to dismiss  
13 Plan A because the attorneys for the residents  
14 are going to take the opposite view. As I  
15 said, I think I understand it will be a long  
16 delay. I understand this is a very costly  
17 procedure for both Moeller and the township.

18 UNIDENTIFIED SPEAKER: And the residents,  
19 too.

20 MR. SCHEVE: And the residents as well.  
21 They've hired attorneys and have shown up three  
22 or four nights.

23 MR. BARRETT: There's no justice if you  
24 defer this in waiting for a decision on Plan A  
25 because it could be a year or two years before

1           there's a resolution.

2           MR. SCHEVE: That's not our fault. That's  
3           the way the court system works. You appealed  
4           the case and we're waiting for a judge to  
5           decide it. And there's also -- I'm not going  
6           to argue with you.

7           MR. BARRETT: I had no choice but to  
8           appeal it.

9           MR. SCHEVE: Well, I understand that. But  
10          there's also the option that you and Mr. Miller  
11          and the trustees might arrive at some  
12          compromise on Plan A.

13          MR. BARRETT: I think this board has an  
14          obligation to vote Plan B.

15          MR. SCHEVE: I disagree. Is the public  
16          meeting closed?

17          MR. MILLER: No. If you close it, you've  
18          got to make a decision.

19          MR. SCHEVE: Can I make a motion before  
20          the public meeting gets closed?

21          MR. MILLER: Yeah.

22          MR. SCHEVE: I'm making a motion that we  
23          continue the current case until we have a  
24          resolution of the previous plan that we denied  
25          until that plan is decided by the court.

1           MR. BARRETT: As the applicant's attorney  
2 I would request that you close the public  
3 hearing and make a decision within 21 days.

4           MR. SCHEVE: There's a motion on the table  
5 right now if we can get a second on it we'll  
6 vote on it.

7           CHAIRMAN EICHMANN: Is there a second? If  
8 not, the motion fails.

9           MR. SCHEVE: Then we decide on Plan B.  
10 Our Plan B and your Plan B, right, we don't  
11 have a second so the motion fails.

12          MR. MILLER: Yeah, it dies for lack of a  
13 second.

14          CHAIRMAN EICHMANN: So I guess at that  
15 point I'll close the public comment. Now that  
16 everybody's had a chance to speak their peace  
17 and we'll discuss this amongst ourselves and  
18 come up with a resolution.

19          MR. LEUGERS: I got a question right off.  
20 Mr. Bickford, when was the parking lot  
21 approved, 2005?

22          MR. BICKFORD: What parking lot?

23          MR. LEUGERS: This parking lot we're  
24 talking about.

25          MR. BICKFORD: You mean, the All Saints?

1 MR. LEUGERS: No.

2 MR. MILLER: No. There was shortly after  
3 the athletic field happened, I think you might  
4 be right, Mr. Leugers.

5 MR. LEUGERS: I know I'm right I voted on  
6 it.

7 MR. MILLER: That I mean it was 2005  
8 around that time. There was an approval of a  
9 parking -- I'm not positive off the top of my  
10 head it was the same lots.

11 MR. LEUGERS: It's the same lots.

12 MR. MILLER: But there was an approval by  
13 this board of the parking lot. The neighbors  
14 filed an appeal and Moeller withdrew their  
15 plans for that with a stipulation that it would  
16 not be considered Res Judicata -- doing away  
17 with the case would not be considered Res  
18 Judicata for that.

19 MR. SCHEVE: That was before my time. So  
20 I don't remember it.

21 MR. LEUGERS: Well, the parking lot was  
22 approved in 2005.

23 MR. MILLER: I know, Mr. Navaro is in the  
24 audience and I know he was one of the  
25 appellants in the thing. To my recollection of

1 it; isn't that true, Tom?

2 MR. NAVARO: All I recall about that was  
3 the part about the construction of the  
4 townhomes that was turned down by board of  
5 zoning appeals. Personally, I don't recall the  
6 parking lot.

7 UNIDENTIFIED SPEAKER: There were two.  
8 There was a project Tom was talking about and  
9 there was a parking lot issue, too, which we  
10 won on appeal.

11 MR. MILLER: What's that, the parking lot?

12 UNIDENTIFIED SPEAKER: Yeah.

13 MR. MILLER: No. There was no -- my  
14 recollection is there was no decision made on  
15 appeal that Moeller withdrew the case with the  
16 stipulation that it would not be considered Res  
17 Judicata. That they could come back at any  
18 time on the parking lot. You can look it up  
19 online right now if we have to, but I'm pretty  
20 sure that's what it is.

21 MR. NAVARO: Doug, I don't see how that  
22 could have been the same thing because the  
23 property at 7745 --

24 MR. MILLER: Well, that's what I'm saying.  
25 I'm not sure it was the same lot. But there

1 was an approval of the parking lot back then.

2 MS. WILLIS: A paved parking lot.

3 MR. SCHEVE: Even if we did approve it  
4 then, that's not binding on us or them.

5 MR. MILLER: Right.

6 MR. SCHEVE: We're looking at a new matter  
7 today.

8 CHAIRMAN EICHMANN: Well, made a decision  
9 that we're going to go ahead and have a rule on  
10 this in some way. I'll ask the question again.  
11 Do we have to rule on Res Judicata before we  
12 rule --

13 MR. MILLER: Well, you probably should  
14 consider --

15 CHAIRMAN EICHMANN: -- getting together?

16 MR. MILLER: You probably should consider  
17 whether or not you consider this plan to be a  
18 substantial change from the last one. If you  
19 do not then it's probably -- I don't want to  
20 tell you how to vote. That's what it is.

21 CHAIRMAN EICHMANN: I understand. I got  
22 the impression --

23 MR. MILLER: The whole thing on the Res  
24 Judicata is whether there's a substantial  
25 change from what you considered the last time.

1           CHAIRMAN EICHMANN: And I didn't know if  
2 we had to make a decision on that first.

3           MR. MILLER: Well, you don't have to. You  
4 can ignore it, but it's probably something  
5 that's going to get raised in court. Assuming  
6 an approval and an appeal by someone.

7           MS. GLASSMEYER: Can I give my opinion on  
8 that from last time?

9           CHAIRMAN EICHMANN: Sure.

10          MS. GLASSMEYER: I would say for the  
11 things that made me vote against it  
12 specifically going down the line, they were  
13 mostly the bullet points that have been talked  
14 about here, and I do at least believe they went  
15 through and adjusted them, the lighting, the  
16 sound, the landscaping, all of those things are  
17 what I took into account when I considered it  
18 an adverse effect. And so I would at the very  
19 least say I think they've addressed them to the  
20 point where there is a change. There's a  
21 change on the way that I look at it, so I  
22 consider it a substantial change.

23          CHAIRMAN EICHMANN: When I reviewed the  
24 minutes from the meeting, the past two meetings  
25 and nothing I heard tonight changed my mind, I

1 thought this was definitely -- I feel it's a  
2 different plan. There's fewer parking spaces.  
3 The higher fence that we talked about. The  
4 increased buffer. All of those things that  
5 have been enumerated and we've heard a number  
6 of times. The concept of parking lot is the  
7 same, but the conditions around this parking  
8 lot changed dramatically in my opinion enough  
9 to say that I feel it's a different plan. And  
10 I guess I'm on record as not supporting -- not  
11 supporting the denial of the additional parking  
12 lot the last time I had made a statement about  
13 that.

14 Also, I didn't say I wouldn't have  
15 considered additional modifications if it had  
16 been approved. I just didn't approve the  
17 denial. So I voted against that denial. But I  
18 don't think I would have approved the parking  
19 lot based on how it was before particularly for  
20 the one resident that was so close to it and  
21 without the additional buffering spacing. The  
22 issues surrounding the buffer, particularly the  
23 homes adjacent to the new parking lot property.  
24 The lighting, the size of the lot issues would  
25 have been conditions I would have supported and

1           probably modified anything.    Would have  
2           modified it prior to any approvals for the  
3           additional parking, but, at last, we didn't get  
4           that far.

5                   MR. SCHOLTZ:   You're getting at the reason  
6           why I was asking the question about the term  
7           "substantial".   Because I looked at it and  
8           thought that they had made some big changes  
9           based on -- and I voted against Moeller the  
10          first time around.

11                   MS. GLASSMEYER:   As did I.

12                   MR. SCHOLTZ:   And I feel like that they've  
13          made substantial changes to what they proposed  
14          the first time.

15                   MR. SCHEVE:   I still think -- my  
16          fundamental problem here is with the numbers.  
17          I can't decide or understand -- we had  
18          conflicting testimony about what's needed.   We  
19          have Mr. Hyzdu saying at the last hearing that  
20          this is on Page 48 of the transcript.   He says,  
21          quote, there's a present demand.   And  
22          immediately for 150 to 200 more parking spots  
23          than we currently have.   So in Plan A they  
24          requested 130 which would have solved the  
25          problem they had in the first place.   I think

1 he said that. Plan A would not have solved  
2 their problem. So Plan B there's 117 spaces.  
3 And tonight Mr. Hyzdu said, we have a hundred  
4 students that park in Montgomery. And we have  
5 conflicting testimony from the residents.

6 One resident said she did a count over  
7 several days and she only counted 19 to 20  
8 people that walked back and forth. And another  
9 resident said there's only 40 cars in the lot.  
10 So as I said, I think Moeller has a problem,  
11 but it's a self-created problem. They  
12 eliminated their parking in favor of building  
13 athletic facilities. So it's a similar --

14 CHAIRMAN EICHMANN: Weren't some of those  
15 numbers created with -- which I called limited  
16 observations. Just as you're walking, no  
17 offense to your walk, or anybody else's one  
18 time occurrence, I think those aren't facts to  
19 be considered. I think they're observations  
20 from one particular time period.

21 MR. SCHEVE: Equally as observational as  
22 Moeller's are. What I'm getting to is I would  
23 have less of a problem with a parking lot that  
24 was significantly smaller than what they  
25 proposed in Plan B. Because I think they have

1 a problem, but what they're looking for is  
2 every student at Moeller should have a place to  
3 park and that's not the case at any school. I  
4 don't know how many students actually need to  
5 park there. Whether it's a hundred or 117 or  
6 200. So we've got all kinds of --

7 CHAIRMAN EICHMANN: Tom, is that the idea  
8 that we're looking at? Deciding on whether  
9 they all have a right to park or not?

10 MR. SCHEVE: No.

11 CHAIRMAN EICHMANN: Aren't we talking  
12 about the conditional use of Moeller High  
13 School that has to meet certain conditions for  
14 us? And in meeting those conditions, that's  
15 how we make a decision.

16 MR. SCHEVE: No. Well, in part, but we're  
17 weighing the public benefit against the local  
18 impact and whether or not there's any adverse  
19 effect. But then the code goes on to tell us  
20 that we have to minimize the adverse effect. I  
21 think the code that we deal with is in a sense  
22 contradictory. At one point it says no adverse  
23 effect. Which I think clearly there's an  
24 adverse effect when you go to a parking lot in  
25 someone's back yard. But the question is

1           whether the adverse effect has been  
2           significantly minimized.

3           But in any event, all the issues that  
4           Moeller has brought up as to why they need a  
5           parking lot, they're not going to be solved,  
6           because the proposed space is not going to be  
7           enough to satisfy the needs of 150. So you're  
8           still going to have a unknown number of  
9           students that are walking down that have unsafe  
10          conditions. So we're really putting a Band-Aid  
11          on a problem here. And to me, I just don't  
12          think that the -- I think the adverse impact  
13          here outweigh the public benefit. This is  
14          nothing against Moeller. It's a great school.  
15          I hold it in high regard and I appreciate the  
16          fact that they've come in with changes to the  
17          original plan. But if we approve the plan, we  
18          haven't solved the problem and they're going to  
19          be back again later to ask for more.

20          MS. GLASSMEYER: I would disagree a little  
21          bit with your logic. In that I think the  
22          continuous improvement of it if the 150 spaces  
23          are needed and it's the ideal and you get 117,  
24          you are leading down -- it's not like you  
25          haven't solved any part of the problem. You've



1 was mentioned and I remember the number as  
2 well.

3 CHAIRMAN EICHMANN: Just as Julie stated,  
4 I think an improvement to getting as close to  
5 there -- this is what they've now asked for.  
6 This is what they want. This is what -- they  
7 want knowing they can't get --

8 MR. SCHOLTZ: I'm with you on that.

9 MS. GLASSMEYER: And they gave up part of  
10 the improvements in order to --

11 MR. SCHOLTZ: I'm not -- I'm not stuck on  
12 the number. I'm just trying to help Tom feel  
13 better.

14 MR. SCHEVE: That may not be possible.  
15 I'm stuck on the numbers because if it's 20  
16 students that are affected or 50, they're  
17 asking for a parking lot asking for 117,  
18 they're asking for twice a big of a lot as they  
19 actually need. I don't know how much they  
20 need. I don't know if it's 20 or 50 or 100 or  
21 200. So we're talking about improving a  
22 parking lot that may, in fact, be larger than  
23 what they need or it maybe smaller than what  
24 they need.

25 CHAIRMAN EICHMANN: Other schools, I mean,

1 we just heard about All Saints. They added a  
2 parking on the side that they use for funerals,  
3 but they use it for parking, too. Whether it's  
4 daily church activities or whatever, they need  
5 additional parking space. Everybody needs  
6 additional parking spaces because we all try to  
7 do more with our schools and how they educate  
8 our children is an entire -- is an entire  
9 student in all their needs. Traditionally,  
10 mentally, physically, everything, so I think  
11 that whole concept is what we're talking about.  
12 So whether it's a 130 or a 117, it's irrelevant  
13 to me at this point other than it does mitigate  
14 the intrusion on the neighbor next door. And  
15 that's the one -- that's the one person that is  
16 totally affected by this more than anybody  
17 else.

18 MR. SCHEVE: But to mitigate the problem.  
19 So what prevents them from coming in next month  
20 and saying we still have the same problems we  
21 had last month. You just -- you put a Band-Aid  
22 on a problem we still have the problems that we  
23 talked about last month and now we want to  
24 expand the parking lot some more.

25 MR. SCHOLTZ: They can do that at any

1 time.

2 CHAIRMAN EICHMANN: Yeah, any school can  
3 do that.

4 MR. SCHOLTZ: They can do that a month, a  
5 year --

6 MS. GLASSMEYER: I would suggest that  
7 neither side is --

8 MR. SCHOLTZ: All we can do is respond to  
9 what they have.

10 MS. GLASSMEYER: -- they should both be  
11 working together as opposed to coming to us  
12 like this.

13 MR. SCHOLTZ: And if they think 118 is  
14 great than that's what we have to go with.

15 MR. SCHEVE: I give credit to the  
16 residents over there. We got a lot of  
17 residents who came in and they've done a really  
18 wonderful job of putting forth their position,  
19 too, and shouldn't discount their concerns  
20 likely just because Moeller needs some more  
21 parking spaces. They presented some compelling  
22 arguments, I think, as to why we should turn it  
23 down. I'm in the middle. A smaller lot, I  
24 could go for. But this one seems to be too  
25 intrusive in the neighborhood.

1           CHAIRMAN EICHMANN: I think it's also  
2 important to recognize that this board while  
3 some of our members have changed, some of us  
4 have been here longer than others, we  
5 previously set a precedent for a decision like  
6 this one.

7           MR. SCHEVE: What is that?

8           CHAIRMAN EICHMANN: With the parking lot  
9 just south of CHC High School in my  
10 neighborhood and your neighborhood. I mean,  
11 this is as close as it is to some of the  
12 neighbors that have been having testimony here.  
13 I've seen the exact issue that has come to bear  
14 over the years. This was approved, by the way,  
15 by our board after very similar arguments from  
16 residents in the area with similar concerns.  
17 In that case the school was located in a  
18 residential neighborhood. The parking lot  
19 property was acquired from residents, lots as  
20 well. As I said, interestingly enough the  
21 concerns of residents were regarding many of  
22 the same values: Diminishing home values, the  
23 noise level, health issues, water drainage,  
24 landscaping, garbage, all those things.

25           MR. MILLER: What parking lot are you

1 talking about.

2 CHAIRMAN EICHMANN: The CHC parking lot on  
3 Snider Road.

4 MR. MILLER: Down south of the school?

5 CHAIRMAN EICHMANN: South of the school.

6 MR. MILLER: That was in court. You guys  
7 denied it. They filed an appeal and it got  
8 settled in court. You guys didn't approve it.

9 MR. SCHEVE: I wasn't here then.

10 MR. SCHOLTZ: I wasn't here.

11 MR. MILLER: My recollection of it is it  
12 was denied by the BZA.

13 CHAIRMAN EICHMANN: I wasn't here.

14 MR. MILLER: CHC filed an appeal and it  
15 got settled in court.

16 CHAIRMAN EICHMANN: Well, interestingly  
17 enough all of the issues that we're talking  
18 about here have not been realized by the  
19 residents around there nor has it been the  
20 issues that we're talking about.

21 MR. MILLER: I'm not that familiar with  
22 the lot. I don't know that it's the same set  
23 of facts.

24 CHAIRMAN EICHMANN: Well, I'm not saying  
25 it's the same set of facts. I'm saying it's a

1 school that wanted additional parking lot on  
2 their property and they purchased the property  
3 to expand the parking lot.

4 MR. MILLER: Right.

5 MR. LEUGERS: Why don't we take a trial  
6 and take a vote and see where we are.

7 MR. HEIDEL: I still believe the scenario  
8 I have is the access to Kennedy Road. I know  
9 when I came here 10, 12, 15 years ago, the FBI  
10 building went into my neighborhood. And we  
11 totally denied it because it was an access of  
12 150 cars down our street. Now, the board came  
13 up and they said you got to put your fence and  
14 there will be no access to that neighborhood  
15 and it worked out fine. Our neighborhood has  
16 doubled in value in the last 15 years. And I  
17 think that is the only situation that I have a  
18 problem with.

19 MR. LEUGERS: Well, then we put that in as  
20 a condition.

21 MR. SCHEVE: Well, we can't because they  
22 can come back in the future and they could sell  
23 the two houses, one on Kennedy -- I think Mr.  
24 Miller told us, hey, that can't be a  
25 condition --

1           MR. MILLER: You can put in as a  
2 condition, but a future board can change it.

3           MR. SCHOLTZ: That's the same with any  
4 condition.

5           MR. LEUGERS: Let's just put that  
6 condition in.

7           MR. SCHEVE: I'm apparently losing. Go  
8 ahead.

9           MR. LEUGERS: On SYCB190010 I motion that  
10 we approve it with the additional stipulation  
11 that there's no access on Kennedy Lane.

12          MR. HEIDEL: I'll second that.

13          CHAIRMAN EICHMANN: Any further discussion  
14 on that? There's no further discussion,  
15 Mr. Secretary take a vote.

16          MR. SCHOLTZ: Can I call the role from my  
17 car?

18          Mr. Scheve?

19          MR. SCHEVE: No.

20          MR. SCHOLTZ: Mr. Leugers?

21          MR. LEUGERS: Yes.

22          MR. SCHOLTZ: Mr. Eichmann?

23          CHAIRMAN EICHMANN: Yes.

24          MR. SCHOLTZ: Mr. Heidel?

25          MR. HEIDEL: Yes.

1 MR. SCHOLTZ: Mr. Scholtz, yes.

2 MR. MILLER: You need to schedule a  
3 meeting to approve the actual resolution.

4 CHAIRMAN EICHMANN: We will have to  
5 schedule that based on the availability within  
6 21 days for that resolution.

7 MR. BICKFORD: Well, so the first thing we  
8 need is did you approve it as submitted with  
9 the condition there's no access to Kennedy  
10 Lane?

11 CHAIRMAN EICHMANN: Yes.

12 MR. BICKFORD: That was the only  
13 condition.

14 CHAIRMAN EICHMANN: Yes.

15 MR. BICKFORD: Was the plans as submitted  
16 that you took testimony on for the last however  
17 many hours or days, that's the plan we got to  
18 go with?

19 CHAIRMAN EICHMANN: Yes.

20 MR. BICKFORD: We can set the date now if  
21 you want.

22 MR. SCHOLTZ: Yes. Let us know when the  
23 place isn't being used.

24 CHAIRMAN EICHMANN: Do you want to  
25 establish that date and let us know and then

1 publish then?

2 MR. BICKFORD: Yeah, we can do that.

3 MR. MILLER: If you can set it now set it  
4 now so, a, everybody knows and, b, everybody  
5 agrees they're going to be here.

6 MR. BICKFORD: We could do the evening of  
7 the 6th. November 6th that's Wednesday.

8 CHAIRMAN EICHMANN: Afternoon.

9 MR. BICKFORD: Whatever time the board so  
10 chooses.

11 CHAIRMAN EICHMANN: 4:30.

12 MR. SCHEVE: Can we do our regular time at  
13 6:30 as we do all of our meetings.

14 MR. SCHOLTZ: We did the last time at  
15 4L30.

16 CHAIRMAN EICHMANN: We did it earlier and  
17 there was no problem as long as you're  
18 available. Doug, do you want to be here?

19 MR. MILLER: I don't know that I  
20 absolutely need to be here but I'm available.

21 MR. SCHEVE: But you have to prepare a  
22 resolution by that time. That gives you enough  
23 time to prepare the resolution.

24 MR. MILLER: It will have to.

25 CHAIRMAN EICHMANN: November 6th, you're

1           saying, at 4:30 p.m.  
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C E R T I F I C A T E

STATE OF OHIO :  
: SS.  
COUNTY OF HAMILTON :

I, La Cartha J. Pate, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that the above pages were transcribed by means of computer under my supervision; that I am neither a relative of any of the parties or any of their counsel and have no interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio, this 14th day of December, 2019.

\_\_\_\_\_  
La Cartha J. Pate-Notary Public  
State of Ohio

My Commission expires:  
June 18, 2022.