

Economy Borough Council
Council Minutes
July 25, 2017

MEETING was called to order at 7:00 p.m. with Mr. R.J. Burns presiding and the following members of Council and officials of the Borough present: Mr. R.J. Burns, Mr. Gary Bucuren, Mr. Tom Fetkovich, Mr. Larry Googins, Mr. Frank Morrone, Mrs. Audrey Mutschler, Mrs. Pat Skonieczny, Mayor Jo Ann Borato, Borough Secretary Margie Nelko, representing the Borough Solicitor Mr. Joseph Askar.

ABSENT: Borough Manager Randy Kunkle (Excused)

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION OF VISITORS: Mr. Burns welcomed everyone to the meeting and requested the discussion(s) regarding Borough business be kept to 3 – 5 minutes in length.

The following visitors were present:

Roger Kowal of 479 Amsler Ridge Road, Sewickley
Mrs. JoAnn Smith of 2736 Ridge Road Ext., Baden
Ray McClellan of 196 Shaffer Road, Sewickley

HEAR THE PUBLIC:

Roger Kowal was present to express concerns regarding more tree work needing done on Compton Road, Amsler Road and Amsler Ridge Road. Mr. Kowal also inquired if these roads are to be paved and/or repaired. The Borough Secretary responded stating that the public works department needs to do some repairs prior to the milling being done.

JoAnn Smith, Senior Citizens President, was present to thank Council for their generous donation to the Senior Citizens of Economy Borough Group.

Roger Kowal asked if anyone was going to answer his question regarding the paving/repairs to Compton Road, Amsler Road and Amsler Ridge Road. Members of Council discussed that there is a formal paving schedule for 2017. The Borough Secretary explained again that there are repairs needed before milling can be completed and that the paving company has started work on Foxglove Drive, Shortcut Road and Lyndon Lane.

MINUTES of the Regular Meeting held on July 11, 2017, was postponed due to the minutes were not ready for review.

FINANCE COMMITTEE: Mr. Bucuren, Chairperson of the Finance Committee, reviewed the following:

1. Budget Report for the month of June 2017, was presented to Council. After some review and discussion this report was ordered received and filed.

2. Treasurer's Report for the month of June 2017 was presented to Council. After some review, this report was ordered received and filed.

ORDINANCE COMMITTEE: No Report.

PARKS and RECREATION COMMITTEE: Mr. Fetkovich, Chairperson of the Parks and Recreation Committee, presented Council with information and updates regarding the following issue(s):

1. Ambridge-Baden American Legion Baseball Team has won the Beaver County Tournament. The team has moved onto the Southwest Regionals where they qualified to play at the PA State Tournament making them 1 of 18 teams. The team has not been to the PA State Tournament since the 1960's. Mr. Fetkovich requested everyone to reach out and congratulate the team.
2. A Recreation Board Meeting has been scheduled for August 16, 2017. Mr. Fetkovich invited anyone from Council to attend this meeting and that there will possibly be three (3) vacancies to the Board which will need addressed.

PROPERTY and BUILDING COMMITTEE: No Report.

PUBLIC SAFETY COMMITTEE: No Report.

PUBLIC WORKS (PW) COMMITTEE: Mrs. Mutschler, Chairperson of the Public Works Committee, presented Council with updates regarding the following issue(s):

1. Public Works Bi-monthly Report – After some review and discussion, this report was ordered received and filed.
2. Public Works Contract – This matter will be discussed in executive session with a vote.

Mayor Borato reviewed information she received from Mr. Mark Huey of 109 Lyndon Lane regarding his interest in possibly having a curb put in while the paving is being done to keep the water run-off from his driveway. Mrs. Mutschler stated that this would need reviewed with the Borough Engineer and the Public Works Foreman due to it could cause other problems later.

Mayor Borato reviewed information she received from Mr. Bud Haney of 386 Golden Grove regarding seventy feet (70 ft.) of debris that he had measured from all the rain. The Borough Secretary stated that the Borough Engineer is already aware of this issue.

MAYOR'S REPORT: Mayor Borato presented Council with information regarding an attempted robbery at the Huntington Bank in Northern Lights Shopping Center.

SOLICITOR'S REPORT: The Borough Solicitor presented Council with updates regarding the following issue(s):

1. Skonieczny Lawsuit – An update will be given in executive session.
2. Sewage Enforcement Officer (SEO) Re-appointment – This matter has been postponed until the next regular scheduled meeting.
3. Public Works Contract – This matter will be discussed in executive session, as per requested.

4. Police Pension Ordinance (Amendment) – This matter has been postponed until the next regular scheduled meeting.
5. Police Officers Association Reprimand Grievance Arbitration – The hearing has been scheduled for the end of August 2017, and will most likely be held in the Pittsburgh area.

OLD BUSINESS:

1. McNamara/Beatty Subdivision – This subdivision, located on Cliff Road just before the Marshall Township line, is dividing a 7.876 acre parcel into two (2) parcels. Parcel No. 1 (241 Cliff Road) will now become a 1.876 acre parcel with a dwelling. Parcel No. 2 consisting of 6 acres of vacant land will be sold to the Beatty family. The Borough Secretary stated that both the Beaver County Planning Commission and the Borough Planning Commission have recommended approval. **After some review and discussion, the motion of Mrs. Mutschler, seconded by Mr. Fetkovich to approve the McNamara/Beatty Subdivision was unanimously carried.**
2. Northern Lights Subdivision – Mr. Burns was recused from this portion of the meeting due to having a business relationship with the owners of Northern Lights Shopping Center (NLSC). The Borough Secretary presented Council with an overview of the proposed three (3) lot subdivision. These three (3) lots will be sold to the current businesses. The Borough Secretary stated that the Zoning Hearing Board has approved the variance, the Economy Borough Planning Commission has recommended approval and that the Beaver County Planning Commission has no issues with the subdivision, as long as, all the items listed in their letter are met. The Borough Solicitor inquired if there was a motion to approve the Northern Lights Subdivision. Mrs. Mutschler expressed concerns regarding the unmet criteria (regarding development) that was presented by Borough Planning Commission Members to the Zoning Hearing Board during the hearing of June 19, 2017, and then asked a Zoning Board Member in the audience why did you approve/feel that it was ok to pass it. The Zoning Board Member in the audience explained that the hardship is that they could not meet the one (1) acre minimum requirement due to no place to enlarge the business/property to one (1) acre. There was discussion regarding whether an appeal was made, it was determined that there was not to anyone's knowledge, and if the lack of an appeal makes it a moot point, then why does it come before Council for approval and does Council have the authority to send it back. Mr. Googins explained that the Zoning Hearing Board makes independent decisions of the Planning Commission and Council based on their interpretation of six (6) criteria items. Mrs. Mutschler expressed her opinion that they voted wrong and it should not have been approved. There was discussion regarding the Werner Subdivision being sent back to the Planning Commission (not the Zoning Hearing Board) to comply with the Ordinance(s). The Borough Solicitor stated that Council is here to vote on the subdivision approval recommendations by the Borough Planning Commission, the Borough Planning Commission Consultant, the Beaver County Planning Commission (as long as, the criteria is met) and the transcript of the Zoning Hearing Board approval. After some disagreement, members of Council and the Borough Solicitor discussed the motion to approve the subdivision which was asked for but went directly into a discussion before anyone could respond. **After some discussion, the motion of Mr. Googins, seconded by Mr. Fetkovich to approve the Northern Lights Subdivision was made.** There was a lengthy discussion and disagreement regarding if members of Council read the transcripts and opinions regarding this subdivision. In following Roberts Rules, Mr. Googins stated that he is voting in favor because turning this motion down would be detrimental to this Borough and explained that subdividing these three (3) lots could possibly increase the assessment value(s). Mr. Bucuren and Mr. Googins agreed that there is no guarantee either way if the shopping center would be

redeveloped. Mr. Fetkovich explained that everyone makes their decision based on their assessment of the information, everybody does it differently but everybody does it in the best interest for the citizens of Economy Borough, so put it on the table to vote. Mrs. Skonieczny stated that the best interest of the Economy Borough residents is to be in compliance with our ordinance(s) to prevent selective enforcement(s). The Borough Solicitor recommended including the entire hearing transcript with the minutes to prevent any possibility of taking any portion of the transcript out of context. Mrs. Skonieczny read the following four (4) different reasons that were given that does not meet the criteria.

- a. The Ordinance requires for there to be a hardship. Their “hardship is that we are not fully able to develop the property because we can not -- to fully – you want to see this property changed and you want to see it beautified and you want to see tenants come in and to be a thriving center correct?” (Transcript page 21, Lines 16-21)
- b. And it’s already developed, as the Mayor already admitted to last week. There is development on those properties, there is businesses on those properties so they are able to be developed. They are developed so there is no hardship there. “This makes the entire center more marketable. That’s what it comes down to.” (Transcript page 28 Lines 17-18)
- c. “Your frustrations are well founded; and, trust me, I hear them. The hardship is the physical reality of the property that they’re bounded on one side by a – they’re bounded on either side by a road and by parcels that we don’t own. That’s the hardship.” (Transcript page 30 Lines 17-22)
- d. “They’re not part of the main shopping center. The hardship is that they can’t function as they exist, which is silly, and, you know, not fair in the grand – when you compare them to their neighbors. That’s what we’re applying for, and that’s what we’re focused on right now.” (Transcript page 33 Lines 6-12). That to me does not meet the criteria of the Ordinance, there is no hardship there, the businesses are there and stated yes, please attach the entire transcript to the minutes and place on the website.

A roll call vote was requested. **A roll call vote was taken of the members of Council present. The motion tied after receiving three (3) affirmative votes and three (3) negative votes. The motion passed after Mayor Borato voted for the motion, breaking the tie vote.**

Mr. Bucuren – No	Mr. Fetkovich – Yes	Mr. Googins – Yes	Mr. Burns - Abstained
Mr. Morrone – Yes	Mrs. Mutschler – No	Mrs. Skonieczny – No	

Mrs. Mutschler, at the time she voted, stated that she felt they didn’t meet the criteria. Mrs. Skonieczny also stated the same reason.

Mr. Burns re-entered the meeting at this time.

There was some discussion regarding abstaining forms being completed/required and if this is a policy of Council. Mrs. Skonieczny requested the minutes to reflect that this Council appointed Mayor Borato as the temporary Mayor until election time and it’s her understanding that one of the purposes of the Mayor is for her to task the police department to enforce our ordinances. Mrs. Skonieczny is very disappointed particularly that Mrs. Borato admitted at the last meeting

that the property was already developed so it clearly doesn't meet the criteria of it's not developable. Mrs. Skonieczny requested that it be noted that Mayor Borato voted for a project/subdivision that she admitted was already developed.

3. Fee Resolution – This matter is still on hold while waiting for input from the Planning Commission.
4. New F350 Pickup Truck – The Public Works Forman is researching information for this matter.
5. Ambridge Water Authority Agreements (AWA) – This matter is pending.
6. Petty Cash Policy – This was forwarded to the Finance Committee for review, no update at this time.
7. Bonding for Borough/Employee Dishonesty Rider – The paperwork has been sent to PIRMA for processing.
8. Refuse (Garbage) Contract Bids – A draft will be ready for the next regular scheduled meeting.

Mr. Bucuren requested a public apology from Mr. Burns regarding the way he referred to “family financial gain” by voting on the public works contract at the last meeting. Mr. Bucuren stated that if you go back to those minutes, there is nothing stated that there was a vote taken on the contract. There was discussion regarding the lack of a motion in the minutes, the signing of the contract on February 10, 2015. This contract was worked on by the Borough Solicitor to acquire a mutual agreement with the union and it was voted on by all of Council at that time.

There were disagreements regarding discussions pertaining to agenda and non-agenda items. These disagreements included questions regarding when it is ok to ask questions/discuss topics not on the agenda and/or how to get topics on the agenda.

The Borough Solicitor stated that if personal attacks continue during this meeting, then it is his recommendation to adjourn the meeting.

Mrs. Mutschler expressed concerns regarding the demolition of the building behind the old Hills store, about a year ago. Members of Council discussed that there could be issues regarding the lack of payment for a demolition permit, asbestos and who is responsible.

Mrs. Skonieczny expressed concerns regarding the enforcement of ordinance for violations against Northern Lights Shopping Center (NLSC). Mr. Burns was recused from this portion of the meeting due to having a business relationship with the owners of NLSC. Mrs. Skonieczny explained that she had noticed that the Code Enforcement Officer's (CEO) reports didn't show citations to NLSC and she inquired as to why. The CEO informed her that Mr. Burns instructed him not to enforce the ordinance(s), after the majority of Council voted to enforce our ordinance(s) for public safety. The CEO informed her that after Mr. Burns got the demolition project he was instructed to forget what was said. **A motion by Mrs. Skonieczny, seconded by Mr. Bucuren to investigate the allegations (by Mrs. Skonieczny and the Code Enforcement Officer) that the Code Enforcement Officer was instructed not to cite Northern Lights Shopping Center by President Burns, after the majority of Council voted to enforce our ordinance(s) was made.** Mrs. Skonieczny requested an

email, dated May 4, 2017, from the Borough Manger to all members of Council and the Borough Solicitors regarding a meeting with the owners of NLSC, a demolition application and citations be attached to the minutes. Mr. Googins inquired if anyone had the minutes of the vote to enforce our ordinance(s) because of the language of the motion and explained that he voted to enforce our ordinance(s) not to cite NLSC. There was some disagreement regarding the meaning and intent of the motion. A roll call vote was requested. **A roll call vote was taken of the members of Council present. The motion tied after receiving three (3) affirmative votes and three (3) negative votes. The motion failed after Mayor Borato voted against the motion, breaking the tie vote.**

Mr. Bucuren – Yes	Mr. Fetkovich – No	Mr. Googins – No	Mr. Burns - Abstained
Mr. Morrone – No	Mrs. Mutschler – Yes	Mrs. Skonieczny – Yes	

Mr. Burns re-entered the meeting at this time.

NEW BUSINESS:

1. Assistant Code Enforcement Officer (ACEO) Wage – Mrs. Mutschler explained to Council that an error has occurred regarding the hourly wage for the ACEO. A motion was made and approved at an hourly rate of \$12.00 per hour but the position was advertised at a rate of \$13.50 per hour. **After some review and discussion, the motion of Mrs. Mutschler, seconded by Mr. Fetkovich to correct and setting the Assistant Code Enforcement Officer rate at \$13.50 per hour was unanimously carried.**
2. Sonic Wall Upgrade – The Borough Secretary presented Council with an overview regarding the recommendation for upgrading the firewall protection. The purpose of an upgrade is to help prevent the Borough from cyber-attacks. Members of Council discussed and reviewed the differences between a back-up and a firewall. **After some review and discussion, the motion of Mrs. Skonieczny, seconded by Mr. Fetkovich to table this matter until the Borough Manager is present was unanimously carried.**
3. Pension Payments via Direct Deposit – The Borough Secretary presented Council with an overview regarding the recommendation of direct deposits for the pension payments. The Borough Auditors have on several occasions expressed that pension checks should be produced outside of the office. Fidelity Investments refuse to produce the pension checks for the Borough, but First National Bank has a direct deposit option for our pension funds. The payments would be set up at the beginning of each year thus eliminating extra work by the office monthly. Members of Council discussed mandatory direct deposits and an opt-out option for individuals who do not have bank accounts. The Borough Secretary stated that the bank would be contacted to inquire if a check can be submitted to these individuals in place of direct deposit and that the individuals would be asked if there is any interest in direct deposit. **After some review and discussion, the motion of Mrs. Skonieczny, seconded by Mrs. Mutschler to table this matter until further information is received from the pensioners and First National Bank was unanimously carried.**
4. Positive Pay Services and Resolution No. 464 - The Borough Secretary presented Council with an overview regarding the request of authorization to use the Positive Pay service from First National Bank. The service provides added fraud prevention for the Borough in the event that someone attempts to modify and cash a check that has been written. The monthly cost of this service is normally \$40.00; however, the bank is willing to waive the monthly fee for the Borough. The Borough Secretary explained that Resolution No. 464 is to authorize Randy

Kunkle, Borough Manager and Margie Nelko, Borough Secretary to approve or deny payment of a check that has been flagged for possible fraudulent changes. **After some review and discussion, the motion of Mrs. Mutschler, seconded by Mr. Bucuren to authorize the execution of Resolution No. 464 and to approve the Positive Pay Service as long as it is free was unanimously carried.**

OTHER BUSINESS:

1. **Non-Uniform and Police Pension Fund Direct Deposits** – The Borough Secretary presented Council with an overview regarding the request of authorization to use the Fidelity Investments Direct Deposit services to replenish our pension fund bank accounts thus eliminating the need to process a live check. **After some review and discussion, the motion of Mr. Bucuren, seconded by Mrs. Mutschler to approve using the Fidelity Investments Direct Deposit services was unanimously carried.**
2. **Code Enforcement Officer (CEO) Wage** – Mrs. Mutschler explained that apparently a raise in pay has been overlooked for the CEO for the last twelve (12) years and that there has been an increase in activity for this position. The CEO is currently paid \$15.00 per hour for approximately 30-36 hours bi-weekly. Mrs. Mutschler stated that she became aware of this when she went to the office to see how the office was running with the new employee. There was discussion of this being new and if it should go to the Finance Committee. **After some review and discussion, the motion of Mrs. Mutschler, seconded by Mr. Bucuren to authorize a \$2.00 per hour pay raise to the Code Enforcement Officer was unanimously carried.**
3. **Code Enforcement Apparel** – Mrs. Mutschler presented Council with the suggestions that were made by the Code Enforcement Office for photo ID's and polo shirts with Economy Borough Code Enforcement Department on them. Mrs. Mutschler recommended each employee receiving two (2) polo shirts that would be mandated that they wear and clean. There was some discussion regarding colors of the shirts and where to purchase. **After some review and discussion, the motion of Mrs. Mutschler, seconded by Mr. Bucuren to proceed in getting two (2) polo shirts (each) for the Code Enforcement Office Department was unanimously carried.**

EXECUTIVE SESSION: Mr. Burns requested Council go into Executive Session regarding a litigation matter and a contractual matter at 8:29 p.m., as per the motion of Mrs. Mutschler, seconded by Mr. Morrone.

There being no further business, the motion of Mrs. Mutschler, seconded by Mr. Googins to adjourn the meeting at 8:47 p.m. was unanimously carried.

Margie L. Nelko
Borough Secretary

Motion(s) made and/or Council consensus decision(s):

1. Approve the McNamara/Beatty Subdivision.
2. Approve the Northern Lights Subdivision, included a roll call vote.
3. Failed motion to investigate allegations of the Code Enforcement Officer being instructed to not cite Northern Lights Shopping Center, included a roll call vote.
4. Approve the correction and setting of the Assistant Code Enforcement Officer pay rate.
5. Table the matter of the Sonic Wall Upgrade.
6. Table the matter of Pension Payment Direct Deposits.
7. Adoption of Resolution No. 464 and Approve Positive Pay Services.
8. Approve Fidelity Investments Direct Deposit Service.
9. Authorize the Code Enforcement Officer pay raise.
10. Authorize the Code Enforcement Department polo shirts.

Randy Kunkle

From: Randy Kunkle
Sent: Thursday, May 04, 2017 4:35 PM
To: 'Patricia Skonieczy'
Cc: ironcityx@gmail.com; Larry Googins; 'gary bucuren'; t.fetkovich@comcast.net; Frank Morrone; Audrey Mutschler; J. Askar, Borough Solicitor; 'Josh Kail'
Subject: RE:

Last Thursday I didn't get a chance to speak with Ray about it and on Friday I found out there would be a meeting with the owners yesterday. I was hopeful the meeting would produce some positive results and it did. They turned in their demolition plan and Bryan Templin is working on the demo application. The owners were meeting with their bank yesterday or today and told us they're moving ahead with the project whether they get the grant or not. To cite them at this point for buildings they will be tearing down would make us look foolish.

I also spoke with RJ, Larry, Frank and the Mayor and they were in agreement with holding off on the citations.

From: Patricia Skonieczy [mailto:psko@verizon.net]
Sent: Thursday, May 04, 2017 1:10 PM
To: Randy Kunkle <randy@economyborough.org>
Subject:

Hi Randy,

I understand a preliminary drawing of the demolition plan for Northern Lights was given to the code enforcement officer, Ray Tomaszewski today. It was also indicated that there was no application for demolition accompanying the drawing and that you instructed and directed Mr. Tomaszewski not to cite Northern Lights for violations. Who gave you the authority to interfere with Council's instructions to enforce the Borough Ordinances regarding Northern Lights multiple violations? Thank you,

Pat

ECONOMY BOROUGH ZONING HEARING

Page 1

BEFORE THE ECONOMY BOROUGH ZONING HEARING BOARD
BEAVER COUNTY, PA

IN RE:

Zoning Application of
PZ Northern Limited Partnership
Case No. Z17-1

TRANSCRIPT OF PROCEEDINGS

taken before the Economy Borough Zoning Board on
Monday, June 19, 2017, at 7:00 p.m. at the
Economy Borough Municipal Building, 2856 Conway
Wallrose Road, Baden, PA 15005-2306.

Court Reporter: Marianne Marsilio, RPR

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ORIGINAL

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A P P E A R A N C E S

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Economy Borough Zoning Board Members:

- Karla Travis, Chairman
- George Stewart, Vice-Chairman
- Carol Schomaker

On behalf of the Economy Borough Zoning Board:

- Robert Alsko, Esquire
- Taylor & Alsko

On behalf of PZ Northern Limited Partnership:

- Adam B. Diaz, Esquire
- Buchanan Ingersoll & Rooney, PC

Also Present:

- Randy Kunkle, Borough Manager
- Audrey Mutschler, Planning Commission
- Roger Kowal, Planning Commission

EXHIBITS	PAGE
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1 P R O C E E D I N G S

2 (7:13 o'clock p.m.).

3 **MS. TRAVIS:** The zoning board will now
4 come to order. The bathrooms are located out this
5 door to your left. The exit's this way, and I
6 guess you could use this in an emergency?

7 **MR. KUNKLE:** Sure.

8 **MS. TRAVIS:** I'm not exactly sure what
9 number this is, because it's not on the
10 application. This is zoning application...

11 **MR. ALSKO:** We have to have a chairman
12 appointed.

13 **MS. TRAVIS:** Okay. I was going to get
14 into that. We should do that first?

15 **MR. ALSKO:** Yes.

16 **MS. TRAVIS:** This will be our
17 reorganization meeting. One of our members, the
18 chairman, resigned, so we need a chairman.
19 Anybody have any nominations?

20 **MR. STEWART:** I nominate you.

21 **MS. TRAVIS:** Thank you.

22 **MR. ALSKO:** Do you want to vote on
23 the -- or second the --

24 **MS. SCHOMAKER:** I guess, sure.

1 **MS. TRAVIS:** All right.

2 **MR. ALSKO:** And then have an official
3 vote with you two.

4 **MS. SCHOMAKER:** I vote yes.

5 **MR. STEWART:** Yes.

6 **MS. TRAVIS:** Okay. So I will act as the
7 chairman. We need a vice chairman in case of my
8 absence.

9 **MS. SCHOMAKER:** (Pointing).

10 **MR. STEWART:** I can do it. That's fine.

11 **MS. TRAVIS:** Okay. I vote George.

12 **MS. SCHOMAKER:** George.

13 **MS. TRAVIS:** George is vice.

14 **MR. ALSKO:** We do need a secretary, too.

15 **MS. TRAVIS:** Okay.

16 **MS. SCHOMAKER:** George.

17 **MS. TRAVIS:** We really don't have a
18 secretary, and we do need a secretary to take
19 notes and to do the paperwork.

20 Are we going to be advertising for
21 something like that or is there someone
22 interested?

23 **MS. SCHOMAKER:** I don't know enough yet.

24 **MR. KUNKLE:** If you authorize the

1 advertisement, I can do that.

2 **MS. TRAVIS:** Well, I think the
3 advertisement is a good idea, because we haven't
4 had one for about a year or more.

5 **MR. ALSKO:** You used to do that, right?

6 **MS. TRAVIS:** I used to do that.

7 **MR. ALSKO:** Okay.

8 **MS. TRAVIS:** Okay. In the meantime, is
9 there anybody that wants to volunteer to take the
10 notes?

11 **MR. ALSKO:** Could we go off the record.
12 (Discussion off the record.)

13 **MS. TRAVIS:** This is the zoning
14 application Z17 -- I need someone to tell me the
15 number. It's not on my application.

16 **MR. KUNKLE:** Z17-1.

17 **MS. TRAVIS:** We're not going to continue
18 with the numbers then?

19 **MR. KUNKLE:** You're asking me. That's
20 what I --

21 **MS. TRAVIS:** Okay. Well, that's all
22 right. We can --

23 **MR. KUNKLE:** Or I can number it later.

24 **MS. TRAVIS:** All right. Well, let's

1 number it later so that we're consistent with
2 everything that's in the file.

3 **MR. KUNKLE:** Okay. That's one detail
4 that I was not aware of.

5 **MS. TRAVIS:** Okay. All right.

6 **MR. ALSKO:** This is the first
7 application that --

8 **MS. TRAVIS:** This is our first
9 application for 2017, and we will get the exact
10 number of the application at a later date.

11 But this is Zoning Classification C-1, and
12 the applicant is Adam Diaz, Buchanan Ingersoll &
13 Rooney, P.C. He is applying for a variance,
14 minimum lot size requirement pertaining to Zoning
15 Ordinance 300, Article 8, Section 180-42(a).

16 Anyone that's going to be testifying in
17 this hearing today needs to be sworn in. Will you
18 please stand up.

19 (Witnesses sworn)

20 **MS. TRAVIS:** There will have to be a
21 paper signed, too, for you to testify. So, before
22 you leave, could you please sign the paper.

23 **MR. KUNKLE:** I'll get that.

24 **MS. TRAVIS:** Are you Mr. Diaz?

1 **MR. DIAZ:** Yes.

2 **MS. TRAVIS:** Would you like to take the
3 floor and explain your variance.

4 **MR. ALSKO:** You're actually counsel of
5 the record for the movement, correct?

6 **MR. DIAZ:** Yes.

7 **MR. ALSKO:** Okay. So, I mean,
8 technically, Mr. Diaz, you won't really be
9 presenting testimony tonight, I don't think, to
10 the extent that you're sworn under oath because
11 you are an officer of the court; is that right?

12 **MR. DIAZ:** Right. That's correct.

13 **MR. ALSKO:** I just wanted to clarify
14 that.

15 **MS. TRAVIS:** Okay.

16 **MR. DIAZ:** I prepared a map, if that
17 comes in handy. You can pass that around. I
18 don't have an easel or anything.

19 I think it should be pretty
20 straightforward. So, our client PZ Northern
21 Limited Partnership owns the Northern Lights
22 Shopping Center. What we're requesting is a
23 dimensional variance to permit the subdivision of
24 the parcels along Route 65 between Route 65 and

1 Beaver Road. There are three lots that are to be
2 subdivided: They are currently the Burger King,
3 the Wesbanco, and --

4 **MR. KUNKLE:** GoodYear.

5 **MR. ALSKO:** Arby's, right?

6 **MR. DIAZ:** No. That's in Conway.

7 **MR. ALSKO:** I thought I saw that.

8 **MR. DIAZ:** The GoodYear. Thank you.

9 **MS. TRAVIS:** Excuse me. Is Wesbanco now
10 First National?

11 **MR. DIAZ:** No. That's separate.
12 Wesbanco is on the other side of the road from
13 First National. Wesbanco is over here.

14 **MS. TRAVIS:** Okay.

15 **MR. DIAZ:** Then there's the Taco Bell,
16 the Burger King, the First National, and then the
17 GoodYear.

18 So it's important to know that the First
19 National and the Taco Bell, as well as this other
20 service site which is an auto repair store, are
21 all separately -- separate parcels, and they all
22 don't meet the 1-acre minimum lot size requirement
23 as well. Our client purchased this property seven
24 years ago or so, and when they purchased it this

1 was how the property was outlaid.

2 So, what we're requesting is a dimensional
3 variance for these three parcels so that they can
4 be subdivided, and then they would be in
5 compliance with the remainder of these parcels and
6 would fit the character of the neighborhood, which
7 is a shopping center.

8 They all essentially operate -- they all
9 operate as independent parcels anyway, and this
10 would facilitate the redevelopment of the overall
11 shopping center, as our client is currently in the
12 process of applying and meeting with state and
13 local representatives to secure an RCAP grant for
14 the overall redevelopment of the center, which
15 would be in the best interest of the community at
16 large. I believe that pretty much sums up what
17 we're attempting to accomplish here.

18 Obviously we did not create this hardship,
19 we came to it, and we're just looking to move
20 forward, and this is the least possible change
21 from the zoning code possible to allow this
22 redevelopment to move forward.

23 So, if anybody has any questions.

24 **MR. STEWART:** The three properties in

1 question, do they have two properties between all
2 three properties? You're split by the two other
3 properties?

4 **MR. DIAZ:** Yeah, or a road here. So,
5 this the Wesbanco, and that's --

6 **MR. STEWART:** That's you, that's you,
7 and that's you?

8 **MR. DIAZ:** Yes, sir.

9 **MR. STEWART:** Okay. And is it now part
10 of this property?

11 **MR. DIAZ:** Yes.

12 **MR. STEWART:** Okay.

13 **MR. DIAZ:** And I don't know when this
14 originally changed where these became separate
15 parcels, but stranger things have happened when --

16 **MR. STEWART:** Thank you.

17 **MR. DIAZ:** -- it comes to zoning law.
18 So you can see...

19 **MS. TRAVIS:** What are these parcels
20 going to be used for?

21 **MR. DIAZ:** They're going to continue to
22 be used the way they are. So, there's the Burger
23 King, there's the bank, and there's the GoodYear.

24 What this will enable our client to do is

1 to sell these out parcels as they have sold Taco
2 Bell, and that's going to help finance the
3 redevelopment of the overall center.

4 So there won't be no change in use to these
5 parcels; they're still going to be Commercial 1
6 parcels. It's just a matter of allowing us to
7 facilitate the redevelopment.

8 **MS. TRAVIS:** And when was this property
9 purchased?

10 **MR. DIAZ:** It was in the mid 2000s. I
11 don't have the exact date in front of me. I
12 apologize.

13 **MR. STEWART:** Do you know if your
14 properties meet the other requirements for a C-1?

15 **MR. DIAZ:** Yes. What specifically are
16 you referring to?

17 **MR. STEWART:** There's is a list here,
18 minimum lot --

19 **MR. DIAZ:** Yeah, the township engineer
20 has reviewed our subdivision proposal, and this
21 was the one issue that they -- that we knew going
22 in that we were under the lot size, and they
23 didn't point out any additional issues when we
24 presented that.

1 **MR. STEWART:** Okay. So, you're not
2 really sure about --

3 **MR. DIAZ:** Um, I mean, I can tell you
4 that I've met with the township engineer, and they
5 haven't raised these issues. So, that's probably
6 the best I can give you, because I'm not an
7 engineer myself.

8 **MR. STEWART:** Okay.

9 **MR. DIAZ:** But obviously we worked with
10 an engineer to prepare this plan who's aware of
11 those requirements as well.

12 **MR. STEWART:** Okay. Thank you.

13 **MR. ALSKO:** Just to be clear, though,
14 you're asking about Section 180-42 concerning area
15 involved regulations.

16 **MR. STEWART:** Yes.

17 **MR. ALSKO:** And it appears in the answer
18 that the only factor in which you need a variance
19 is in regard to 180-42(a) with the minimum lot
20 area of 1 acre.

21 **MR. DIAZ:** That's correct.

22 **MS. TRAVIS:** Do you want to go over the
23 hardships and the physical circumstances?

24 **MR. DIAZ:** Sure. So, as I mentioned

1 before, our client -- and, actually, I have the
2 date. So, they purchased the property in 2005
3 just so you're aware.

4 **MS. TRAVIS:** Okay.

5 **MR. ALSKO:** And just so we're clear,
6 we're asking about Section 180-100, the general
7 conditions for variances, (A)(3).

8 **MS. TRAVIS:** Yes.

9 **MR. ALSKO:** Do you just want to go down
10 them one at time, and I'll make notations.

11 **MR. DIAZ:** Sure. So, the unique
12 physical circumstances or conditions, that's
13 obviously given the fact that we came to the
14 property and it was in this state or this is how
15 it was laid out. This doesn't make sense given
16 the roles or the functions that each parcel serves
17 as operating independently. It's in everyone's
18 best interest to have these separately assessed
19 for tax reasons. So **that's the first one.**

20 And so due to these physical circumstances,
21 which are, you know, that they're boxed in by the
22 road and other parcels that we don't own, it's
23 obviously out of our control, and this is the --
24 and it is preventing us from using it, you know,

1 from further redeveloping the overall center and
2 using the property to its best use as a result.

3 Because we purchased the property in 2005,
4 for Item Number C, we did not create this
5 hardship, we did not subdivide out these other
6 parcels and create this mess.

7 And for letter D, this will not alter the
8 essential character of the neighborhood given that
9 its part of the shopping center, this is how this
10 whole center operates.

11 And, finally, that the variance if
12 authorized will represent the minimum variance to
13 afford relief necessary. We're talking about lots
14 that are between, like, .5 acres and .8 acres in
15 size. So we're getting a slight variance just to
16 the lot size requirement and not changing the
17 zoning code in any substantial or detrimental way.

18 **MS. TRAVIS:** Do you have the exact
19 variance that you're requesting for each lot?

20 **MR. DIAZ:** The size?

21 **MS. TRAVIS:** Yes.

22 **MR. DIAZ:** Yes.

23 **MR. STEWART:** The list --

24 **MR. ALSKO:** Can I backup for a second,

1 just because under B, I don't think I got your
2 answer on the possibility that the property could
3 be developed in strict conformity, counsel.

4 **MR. DIAZ:** Sure. So the property can't
5 be developed in strict conformity because we
6 can't -- I mean, they don't exist as their own
7 individual parcels due to our inability to
8 subdivide them absent this variance.

9 **MR. ALSKO:** They were essentially -- in
10 today's code, they were non-conforming when your
11 client purchased them in 2005.

12 **MR. DIAZ:** Well, nonconforming in the
13 sense that they couldn't be subdivided out, yes.
14 And they're also -- of the eight parcels located
15 along Route 65, these three -- all eight are
16 underneath the 1-acre lot size requirement. So,
17 it would be imposing an unfair restriction on our
18 clients' ability to use their property.

19 And you had asked about the lot sizes, so
20 the Wesbanco --

21 **MR. STEWART:** You have it listed on your
22 Number 7.

23 **MR. DIAZ:** Thank you.

24 **MR. STEWART:** Page 2.

1 **MR. DIAZ:** Yep. So, the Wesbanco is lot
2 No. 3, and that is .52 acres. Lot 2, which is the
3 Burger King, is .92 acres. And lot 1, which is
4 the GoodYear, is .69 acres. And that's also due
5 to the fact that Beaver Road was formerly a
6 private road which we dedicated to -- well, the
7 prior owner dedicated to the borough. And so that
8 takes out, you know -- that actually rendered the
9 Burger King lot as needing a variance, because
10 that .8 acres would have been made up from that
11 right-of-way.

12 **MS. SCHOMAKER:** I have a letter from
13 Michael Baker to the Economy Borough Planning
14 Commission, and it says that after the subdivision
15 new parcels will be subdivided as follows: Lot 1,
16 which is GoodYear, would be .79 acres; Lot 2 would
17 be 1.02 acres, that's the Burker King; Lot 3,
18 Wesbanco, would be .61 acres; and the residual
19 parcel would be 48.88 acres.

20 **MR. DIAZ:** Right. And that's taking
21 into account measuring to the center line of
22 Beaver Road, which you don't do in terms of
23 measuring it for a lot size under this section of
24 the zoning code. But they do own to the center of

1 the lot line, so that's the true parcel size, and
2 that's the reason for the discrepancy, which is
3 confusing.

4 **MS. SCHOMAKER:** Okay.

5 **MS. TRAVIS:** Are there any other
6 questions? Any other testimony?

7 Randy, do you have anything to say?

8 **MR. KUNKLE:** Nothing specific.

9 **MR. ALSKO:** Randy, can I ask: Does the
10 Borough have a position on this?

11 **MR. KUNKLE:** It's my sense that this
12 step and the next step of the subdivision would be
13 viewed favorably in that it's all going towards
14 redeveloping the shopping center itself.

15 **MR. DIAZ:** They are expected to break
16 ground later this summer on the first wave of the
17 redevelopment of the overall shopping center, and
18 this is all moving forward finally. I know it's
19 been a long time.

20 **MS. TRAVIS:** What other plans do they
21 have with the shopping center?

22 **MR. DIAZ:** Well, we've applied for a
23 RCAP grant from the state, and so they're
24 basically going to be redoing a lot of site

1 infrastructure work and beautification of the
2 center to then make it more agreeable to future
3 tenants and to secure a new anchor tenant in there
4 and to really revitalize the whole center.

5 We have a whole economic study done up that
6 once this project is done it's going to create a
7 lot of jobs, it's going to, you know, put property
8 that isn't generating a lot of tax revenue back
9 onto the tax roll, and really be a benefit to the
10 community at large.

11 **MR. KUNKLE:** I can also add that they've
12 applied for demolition permits, and it should be
13 issued tomorrow.

14 **MR. DIAZ:** We've been working with the
15 Beaver County Commissioners on the RCAP grant, as
16 well as State Representative Matzie and State
17 Senator Vogel who are all in favor of this
18 project. And we have meetings tomorrow in
19 Harrisburg with state senators and state
20 representatives to further this project and really
21 bring it to fruition in the near future.

22 **MS. TRAVIS:** Okay. Any other questions?
23 Okay. At this time the testimony is closed. We
24 will take a vote. George?

1 **MR. STEWART:** I'm in favor of the
2 variance.

3 **MS. SCHOMAKER:** I'm in favor of the
4 variance.

5 **MS. TRAVIS:** Okay. And I also am in
6 favor of the variance. I think it would be a good
7 move for the Borough.

8 Okay. The variance, therefore, is granted.
9 And you should be receiving a letter within the
10 next two weeks or so. And the neighbors or other
11 businesses have 30 days to appeal it.

12 **MR. DIAZ:** Or course. Thank you.

13 **MS. TRAVIS:** The meeting is adjourned,
14 unless we have any other business.

15 (Off the record discussion.)

16 **MS. TRAVIS:** I make a motion to reopen
17 the hearing despite having closed it and asking
18 several times if anyone wanted to testify. You
19 will have to stand up and be sworn in.

20 **MR. STEWART:** I'll second that motion.

21 (Witnesses sworn)

22 **MR. ALSKO:** Can somebody make a motion
23 to rescind the vote that was taken just so that
24 you can have the benefit of the testimony for --

1 **MS. TRAVIS:** Okay. We will rescind the
2 vote that was taken in order to hear the testimony
3 from the neighbors.

4 **MR. STEWART:** I second it.

5 **MR. ALSKO:** Is that unanimous?

6 **MR. STEWART:** Yes.

7 **MS. SCHOMAKER:** Yes.

8 **MR. ALSKO:** It is a unanimous decision
9 by the board to rescind that vote and to hear
10 further testimony from the public. Okay.

11 **MS. TRAVIS:** Who wants to testify?
12 Anybody? Stand up and state your name.

13 **MR. KOWAL:** Roger Kowal, Economy
14 Borough. My questions are simple: No. 1, what is
15 the hardship here? Why is it so that we have to
16 make this decision for that? And what guarantees
17 that the shopping center's going to be renovated?
18 All he stated was they're going to come down and
19 beautify it so it will be more appealing for
20 somebody to come in. That's not doing anything
21 for us, period.

22 So, I want to know what guarantees we have
23 that they're going to bring in business, not just
24 go down and tear down some buildings that were

1 already in shambles.

2 And you're granting this piece of property
3 to be separated from the shopping center. He
4 bought this seven years ago knowing what he
5 bought. So, I don't understand the hardship.
6 Show me a hardship.

7 **MR. STEWART:** There was testimony given
8 about the hardships. It's in the paperwork if you
9 would like to look at it.

10 **MR. KOWAL:** What is it?

11 **MR. STEWART:** That it's bound by the --

12 **MR. DIAZ:** Do you want to see the
13 narrative?

14 **MR. KOWAL:** Explain it to me. What is
15 your hardship?

16 **MR. DIAZ:** Our hardship is that we're
17 not able to fully develop the property because we
18 cannot -- to fully -- you want to see this
19 property changed and you want to see it beautified
20 and you want to see tenants come in and it be a
21 thriving center, correct?

22 **MR. KOWAL:** Yes.

23 **MR. DIAZ:** So do we. So, the best way
24 to do that is, well, it's going to cost money to

1 fix up the rest of the center. And these parcels
2 don't need to be connected to the main shopping
3 center. It has no bearing on anything, really.

4 So, our idea is we can subdivide these
5 parcels out, which we've already developed a good
6 relationship with the tenants. We can then sell
7 those properties and use that money, which is
8 going to go into the redevelopment of the overall
9 shopping center, which is in dire need, as
10 everyone knows, of redevelopment. That's the goal
11 here.

12 This is step one of getting -- I mean, the
13 financing is already under way, and we're going
14 find a way to redevelop the center, whether or not
15 we do this or not, but --

16 **MS. TRAVIS:** Maybe you should explain
17 what an RCAP is to them.

18 **MR. DIAZ:** Sure. So, an RCAP is a state
19 program that is designed -- it's a grant program
20 where you get state money to do civic projects
21 that impact the community. They come in various
22 ranges. There's a serious application process
23 that goes on. You have to get the governor's
24 support.

1 So, we've been working with State
2 Representative Matzie and State Senator Vogel to
3 get that funded, which will also go towards the --
4 I mean, completely redoing the parking lot.
5 Because you have to start there, right? Because a
6 tenant wants to occupy a building, he has to know
7 that his customers are going to feel safe parking
8 outside, that they're going to be able to walk
9 into the store.

10 So, that's kind of where we're starting
11 from. And then once we start getting tenants
12 involved and they see that this is a good
13 opportunity, then we work with them to beautify
14 each individual -- not beautify, but to totally
15 renovate each individual unit. But until we know
16 what each tenant wants, it's kind of hard to start
17 there from the tenant perspective.

18 So, if we can create infrastructure --
19 infrastructure is the ground floor, and then we go
20 from there because it's going to become more
21 desirable.

22 We've had a lot of experience renovating
23 shopping centers like this. Miracle Mile. Great
24 Southern. Miracle Mile is Monroeville, and it's

1 thriving. And this was a similar process that we
2 went through there, same owners. The same with
3 Great Southern in Collier Township.

4 So we're working at getting this to a place
5 where the community needs it to be. And we
6 understand that it's taken too long, and I
7 understand your frustration, because I've been
8 part of it on the other side. I get it.

9 **MR. KOWAL:** My problem is this: What is
10 the hardship? Those three properties -- or four
11 properties are part of the shopping center as a
12 whole, right?

13 **MR. DIAZ:** In the sense that --

14 **MR. KOWAL:** But there's a road that
15 separates them, and I understand that.

16 **MR. DIAZ:** Right.

17 **MR. KOWAL:** So what is the hardship of
18 just leaving it where it is? Leave it like it is.
19 Why do you need to separate this, so you can sell
20 it and get revenue?

21 **MR. DIAZ:** Revenue to redevelop the rest
22 of the center.

23 **MR. KOWAL:** But that's not a hardship.
24 That's -- you're showing a profit. You're trying

1 to make a profit. You're trying to separate that
2 so you can make a profit off of that.

3 **MR. DIAZ:** No. That's not --

4 **MR. KOWAL:** You're not showing me a
5 hardship. A hardship is you're losing money
6 somewhere. You're not losing any money. You're
7 still getting money out of these properties.

8 **MR. DIAZ:** You're changing the
9 definition of hardship. The problem is that we're
10 faced -- we're in an unequal situation with the
11 other parcels on that road that are already less
12 than the minimum lot size. Right?

13 So there's no reason why -- there are eight
14 parcels on that road, and they all function as
15 independent parcels. To hold us to a -- to hold
16 these parcels to a different standard doesn't make
17 any sense. That's the hardship. It's just not
18 equal. It's not fair. And your frustration is
19 about the center.

20 **MR. KOWAL:** Absolutely. Because I know
21 you're going to take the money and run. That's
22 just my opinion. You're going to take the money
23 and run. And you're just going, yeah, yeah,
24 because you know that's what's going to happen.

1 **MR. DIAZ:** That's not what's going to
2 happen. I can't --

3 (Inaudible)

4 **MR. ALSKO:** Wait. Wait. Wait. Stop.
5 She can only take down one person at a time. If
6 you ask a question to somebody, you have to give
7 them the courtesy to answer that question. There
8 won't be any talking on top of each other. It
9 wastes everybody's time.

10 **MR. DIAZ:** You're right, there's nothing
11 I can do that -- I'm just their lawyer, right?
12 But I can tell you that I spend several hours a
13 day working on this project, that it's not just
14 words. And they've already applied for permits,
15 and those permits cost money, and they've worked
16 with engineers to get drawings done and things
17 like that. The RCAP application was not a cheap
18 process. Right?

19 And that money, the state, if we receive
20 funding under that, the state audits how that
21 money is used. You can't just pocket that. You
22 have to submit invoices. You have to document
23 every step along the way. And our client is
24 committed to doing that.

1 It's taken a long time. I get that. I
2 appreciate your frustration. I get where you're
3 coming from, but --

4 **MS. TRAVIS:** If they don't meet the
5 requirements to that RCAP, they will have to pay
6 that money back to the state.

7 **MS. MUTSCHLER:** Should I state my name?

8 **MR. ALSKO:** Yes, state your name.

9 **MS. MUTSCHLER:** Audrey Mutschler, 2820
10 Ridge Road Extension.

11 So, what you're saying is you're putting
12 the cart before the horse. Don't you think you
13 should apply for the grant first?

14 **MR. DIAZ:** We already have.

15 **MS. MUTSCHLER:** You got the grant, you
16 got the money?

17 **MR. DIAZ:** No. The grant takes -- we're
18 in the process now of --

19 **MS. MUTSCHLER:** So we're going to do
20 this -- do you realize when you give this variance
21 to break these people up, you are opening up a can
22 of worms for anybody else that possibly wants to
23 sell a piece of property that doesn't meet the
24 requirements if you do it.

1 You are already receiving income. I'm with
2 Mr. Kowal here that you're not showing me a
3 hardship here. You bought this property knowing
4 that these were all connected, and you're saying
5 now to gain -- to sell off to gain revenue?

6 Well, then I want to ask a question, too.
7 What happened to the 1.9 million that they got
8 for the road going up to Moon? You just got 1
9 million for Taco Bell they did. They did get a
10 loan. What did they take a loan for, 6 million?
11 What have you invested into that property?

12 So now it's only on the presentences that
13 we're going to sell off these properties or we're
14 going to sell them to the owners, possibly.
15 Possibly. It's all a big if, and, or what to have
16 it done.

17 **MR. DIAZ:** This makes the entire center
18 more marketable. That's what it comes down to.

19 **MS. MUTSCHLER:** To sell it. To sell it.

20 **MR. DIAZ:** No.

21 **MS. MUTSCHLER:** To make money into
22 your --

23 **MR. DIAZ:** No. To acquire tenants.
24 Tenants want to see something marketable. You

1 can't have an empty building and say, hey, come
2 sign up.

3 **MS. MUTSCHLER:** I don't think your
4 properties are going to make it dividing off. I
5 just don't agree, and I know there's other ones on
6 the planning commission that we don't agree that
7 you met the requirements of a hardship to break it
8 off. You bought it the way it was.

9 We have other properties in the borough
10 that are looking, that can't sell their properties
11 because they bought them as residential. They
12 would make more money as commercial --

13 **MR. DIAZ:** We're not changing the use of
14 the property. We're not changing the fundamental
15 character of these properties.

16 **MS. MUTSCHLER:** You're still gaining an
17 income off of these properties.

18 **MR. DIAZ:** That's not really -- I don't
19 see how that's -- okay.

20 **MS. MUTSCHLER:** So, I don't think, in
21 essence, when you look at it that they met the
22 requirements as a hardship. You can't bank on,
23 oh, it's going to beautify it and we need the
24 money and it's going to make it and bring more

1 people in. It's been like that for too long to
2 think that this is going to happen.

3 **MS. SCHOMAKER:** I think we're talking
4 about apples and oranges here. If you want
5 to sell off -- the hardship is that they can't
6 make those parcels to be the minimum that the
7 Borough requires because of their constrictions
8 with other properties. But it has nothing to do
9 with --

10 **MS. MUTSCHLER:** But they're there.
11 They're making --

12 **MS. TRAVIS:** But it has nothing to do
13 with the rest of the shopping center and what
14 they're going to do with it and making it more
15 beautiful and -- it's just like selling off a
16 piece of your property.

17 **MR. DIAZ:** Your frustrations are well
18 founded; and, trust me, I hear them. The hardship
19 is the physical reality of the property that
20 they're bounded on one side by a -- they're
21 bounded on either side by a road and by parcels
22 that we don't own. That's the hardship.

23 **MR. KOWAL:** You're not losing any money
24 off of those properties right now. Those

1 properties are already --

2 **MR. DIAZ:** That's not how a hardship is
3 defined.

4 **MR. KOWAL:** You're trying to make a
5 profit.

6 **MR. DIAZ:** No, I'm not.

7 **MR. KOWAL:** What you're trying to do is
8 you're trying to sell those pieces of property,
9 make a profit, and then take that money, so you
10 say, and put it into the shopping center. That's
11 not going to happen, because you've already had
12 monies that you got and you didn't invest anything
13 in the shopping center at this point. Nothing.
14 Zero.

15 And you're agreeing with me saying you
16 understand my hardship or my -- or what we're
17 going through, our frustration, because we see it,
18 we see it deteriorating, and nothing has gone into
19 it.

20 **MR. DIAZ:** And the process is starting.
21 That's what I'm trying to tell you.

22 **MR. KOWAL:** That has nothing -- in my
23 mind, that has -- that doesn't have a bearing on
24 it.

1 **MR. DIAZ:** Okay. But that also doesn't
2 have bearing then on whether or not we met the
3 definition of a hardship. We're kind of going in
4 circles here a little bit.

5 **MS. TRAVIS:** When are you submitting
6 your proposal for the RCAP?

7 **MR. DIAZ:** The RCAP was submitted in
8 February. So, it usually takes up until -- we
9 expect -- and, again, it's hard to tell with the
10 state and their own budgetary issues; but
11 generally awards are issued between September and
12 November of each year. And our commitment to
13 redevelop this site isn't contingent on getting
14 the RCAP. The RCAP obviously just helps.

15 **MS. TRAVIS:** How much is the RCAP that
16 you requested?

17 **MR. DIAZ:** I believe we requested 3
18 million, but -- um, because it's a \$22-million
19 redevelopment project and we had to submit budgets
20 and invoices and things like that to demonstrate
21 the overall cost of the redevelopment project.

22 So we asked the state for help with a
23 fraction of that. And, again, it goes towards the
24 infrastructure work and any environmental

1 remediation which may need to happen and things of
2 that nature.

3 But, again, like maybe we got off topic
4 from the beginning here. I mean, the focus of
5 this application is obviously on these out
6 parcels, which is what they are. They're not part
7 of the main shopping center. The hardship is that
8 they can't function as they exist, which is silly,
9 and, you know, not fair in the grand -- when you
10 compare them to their neighbors. That's what
11 we're applying for, and that's what we're focused
12 on right now.

13 We hear the township, you know, the members
14 of the community's concern, and I will certainly
15 relay that to my client. And we're well aware of
16 it. Because, like I said, we've toured the
17 property a few weeks ago with the state
18 representative and state senator. We've been
19 meeting with the Beaver County Commissioners
20 frequently, all in an effort to really what is
21 long overdo and make this project happen.

22 **MS. MUTSCHLER:** Am I not mistaken,
23 Randy, this will then go, once they approve it
24 here, and come down to planning, if they approve

1 it, but the ultimate decision will be council?

2 **MR. KUNKLE:** For a subdivision, yes.

3 **MS. MUTSCHLER:** Okay.

4 **MR. ALSKO:** Just for purposes of the
5 record, because it seems that the public's inquiry
6 has been on the nature of the hardship and how
7 that is defined, I think, in the zoning code. So
8 I'd like to cover those issues.

9 And, council, you addressed it, and this
10 was, I think, before too we knew that there was
11 vocal opposition, too. I think that in light of
12 that, you prepared a zoning narrative, correct?

13 **MR. DIAZ:** Yes.

14 **MR. ALSKO:** And there's a number of
15 exhibits attached to that. That's not yet been
16 made part of this record formally. I think that's
17 probably something that should be done.

18 **MR. DIAZ:** In terms of the deed and the
19 zoning map?

20 **MR. ALSKO:** Admitting the entire zoning
21 narrative.

22 **MR. DIAZ:** Yeah, I'd like to formally
23 submit the entire zoning narrative as an exhibit.

24 **MR. ALSKO:** And we'd probably need an

1 extra copy for the court stenographer.

2 **MR. DIAZ:** Sure, I got an extra copy.

3 **MS. TRAVIS:** So, is this going to be
4 Exhibit A?

5 **MR. ALSKO:** Yeah. I think that will
6 probably be the only exhibit, but who knows.

7 (Applicant Exhibit A was marked)

8 **MR. DIAZ:** Unless, do you want the map
9 as well? I mean, we submitted copies of those as
10 well, but --

11 **MR. ALSKO:** I think we have a smaller
12 version of that map attached.

13 **MR. STEWART:** We have a smaller version.

14 **MR. ALSKO:** And in regard -- if the
15 Board will just permit me to ask these two
16 questions, I think, on the record.

17 In order to grant a variance, the Board has
18 to find that Subsections A, B, C, D and E of the
19 zoning ordinance of Section 180-100 are satisfied.
20 And from what I'm hearing, the public's concerns
21 are with A and C of that subsection. So, can we
22 just go back to the subsections?

23 **MR. DIAZ:** Sure.

24 **MR. ALSKO:** And I'm going read them out

1 loud, actually.

2 Subsection A of 180-100 of the zoning
3 ordinance provides that, I'm quoting, "That there
4 are unique physical circumstances or conditions,
5 including irregularity, narrowness or shallowness
6 of lot size or shape or exceptional topographical
7 or other physical conditions peculiar to the
8 particular property and that the unnecessary
9 hardship is due to such conditions and not the
10 circumstances or conditions generally created by
11 the provisions of this chapter in the neighborhood
12 or district in which the property is located."

13 And it appears you addressed some of those,
14 at least from your --

15 **MR. DIAZ:** Sure. Let me --

16 **MR. ALSKO:** -- client's perspective
17 under Averment 16. So, can you put some of that
18 evidence on the record so that -- I don't know if
19 it will answer the questions that the public has
20 raised, but since those issues have been raised,
21 can you more specifically answer that?

22 **MR. DIAZ:** Sure. So, if we start with
23 the Wesbanco parcel, right, that one is .52 acres.

24 **MR. ALSKO:** You guys are welcome to come

1 up here and look at this map, too.

2 **MR. DIAZ:** Yeah. I don't know if this
3 is helpful for you guys as well.

4 So, if we start with the Wesbanco parcel,
5 which is right here, because of Beaver Road being
6 dedicated to the Borough, which I believe occurred
7 in 1992, you lose -- I don't know the math, but
8 it's .1 acres or so from that. And then because
9 of the Economy Way condemnation, they lose another
10 .3 acres or so from that. And obviously these are
11 conditions that we did not create.

12 And the same goes for the Burger King,
13 obviously we wouldn't even need a variance for the
14 Burger King parcel but for the Beaver Road having
15 been dedicated by the prior owner. So we're
16 talking about .08 acres here in this respect.

17 And then similarly for this lot here, we're
18 at .67 and we'd be at .75 at least with the right
19 of way. And, again, because we don't own the
20 bordering parcels, there's no other circumstance
21 in which we can effectuate this subdivision.

22 And insofar as item C, I'll just jump ahead
23 of you real quick.

24 **MR. ALSKO:** And that is that such

1 unnecessary hardship has not been created by the
2 appellant, or that would be your client.

3 **MR. DIAZ:** Not that we knew what it was
4 when we purchased it, but we did not create this
5 situation. That's what the requirement is asking.

6 **MS. MUTSCHLER:** Can I ask a question in
7 a whole: How many other variances have you
8 granted for people who are coming in for a
9 hardship to either add on an addition or to build
10 a home? And you're requesting a variance to break
11 a piece of property off to sell it.

12 **MR. DIAZ:** No, not to sell it. Because
13 that's how they function. They are independent
14 parcels, and they fit within the nature and the
15 character of the neighborhood.

16 **MS. MUTSCHLER:** So you want to subdivide
17 it off to do what with it, to sell it to the
18 people --

19 **MR. DIAZ:** That's not part of the test,
20 though. Again, it puts individual parcels back on
21 the tax roll, which is a benefit to the community,
22 especially, like, as we work towards redeveloping
23 the whole center, the whole center will become --
24 you know, have a greater assessed value. But

1 right now these parcels have better value. This
2 puts the parcels back on the tax roll immediately.

3 **MS. MUTSCHLER:** I don't think it's going
4 to make a difference.

5 **MR. ALSKO:** Okay. Those were my
6 concerns, just hearing what the public was saying.
7 Certainly, you know, it's not really my place
8 usually to ask questions, but I thought that could
9 clarify some things, but --

10 **MR. DIAZ:** And, again, I think it is
11 important to note, and I mentioned it earlier, but
12 I'll just restate it, that the other five parcels
13 here are all nonconforming as well, and it would
14 set a potentially dangerous precedent if we said,
15 well, no, we don't like how this property was used
16 far before my client purchased it, that we're
17 going to punish you for having this property been
18 in the state of disrepair for 20-odd years by not
19 allowing you to create lots that are in
20 conformance with the others that are in the
21 neighborhood.

22 I think that sets a dangerous precedent. I
23 understand the frustrations of the community, but
24 I don't think that that is something that would

1 benefit anyone moving forward. And that's...

2 I appreciate the time. And if you guys
3 have any additional questions, I'm happy to stick
4 around as well.

5 **MS. TRAVIS:** Okay. Are there any other
6 questions or testimony?

7 **MR. ALSKO:** I just have one of Randy.
8 Randy, can you testify as to the service of the
9 mailer list as to the neighbors so we have that on
10 the record.

11 **MR. KUNKLE:** Yes.

12 **MR. ALSKO:** There's an attachment that's
13 attached to the exhibit list here, it's attached
14 as Exhibit E. Can you take a look at it. It's a
15 list of various addresses; is that correct?

16 **MR. KUNKLE:** Right.

17 **MS. TRAVIS:** And all the neighbors
18 within 300 feet of the property have been
19 notified?

20 **MR. KUNKLE:** Right. I previously looked
21 at that. I personally sent those out.

22 **MR. ALSKO:** Okay. Thank you.

23 **MS. TRAVIS:** Okay. If there's no other
24 testimony or questions, I'm going to close the

1 hearing.

2 **MR. ALSKO:** Let me make sure. Are there
3 any other comments by anybody?

4 **MS. MUTSCHLER:** No. I'm done. Thank
5 you.

6 **MR. ALSKO:** Roger?

7 **MR. KOWAL:** No. I'm fine.

8 **MR. ALSKO:** Okay.

9 **MS. TRAVIS:** All right. We're going to
10 take a vote again. George?

11 **MR. STEWART:** I again vote to approve
12 the variance.

13 **MS. SCHOMAKER:** I again vote to approve
14 it.

15 **MS. TRAVIS:** I haven't changed my mind.
16 I also vote to approve it.

17 And, again, you'll be getting that copy of
18 the order in a few weeks, and the neighbors have
19 30 days to appeal.

20 **MS. DIAS:** Thank you very much.

21 **MS. TRAVIS:** Thank you all. The meeting
22 is adjourned.

23 (Hearing concluded at 7:55 p.m.)

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C E R T I F I C A T I O N

In Re: Zoning Application of
PZ Northern Limited Partnership
June 19, 2017

I hereby certify that the foregoing
transcript is a true record of the proceedings in
the above-referenced matter.

Marianne Marsilio RPR



Marianne Marsilio, RPR
Notary Public

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