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BUTLER COUNTY, OHIO
BOARD OF ZONING APPEALS

JANUARY 13, 2009

7:00 P. M.

RECONSIDERATION FOR

CASE NO. BZA06-26C

SHAMROCK MATERIALS, INC.

2		
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1 MR. FOX: Mr. President, go ahead.
2 MR. BEVINGTON: I would like to call the
3 BZA meeting to order. Call the roll, please.
4 MR. FOX: Alan Daniel?

bza011309

5 MR. DANIEL: Yes.
6 MR. FOX: Walt Philpot?
7 MR. PHILPOT: Yes.
8 MR. FOX: Tom Bevington?
9 MR. BEVINGTON: Yes.
10 MR. FOX: Gary Salmon?
11 MR. SALMON: Yes.
12 MR. FOX: Lee Steenken?
13 MS. STEENKEN: Yes.
14 MR. FOX: All Board members present.
15 MR. BEVINGTON: Tonight we've had a
16 special meeting called, everything is still the same, there
17 are five Board members here, you need three positive votes to
18 either pass or to deny.
19 Mr. Fox, will you give us the basic
20 reasoning why this is a special meeting?
21 MR. FOX: Basically the applicant has
22 requested to the BZA for a, what they call a reconsideration.
23 I will be the first one to say that this is my first
24 reconsideration in front of the BZA within my eleven years
25 working with the County, so if I mess something up, I'm sure

4

1 Jack will add it, but this is how I understand for this to
2 work.

3 We would need a motion from one of the
4 four Board members who recommended denial, and the motion
5 will need to be seconded by one of the Board members that
6 denied the case. If we get that motion to rehear the hearing
7 or reconsider the hearing, we will call the roll and if

8 it's -- if it goes, then we will go ahead and we will hear
9 the hearing.

10 Mr. Grove will then present, he presented
11 me like an Affidavit or a statement with three -- three
12 bullet points that he is going to ask for reconsideration to
13 the Board, and we will stick to those three or so points that
14 Mr. Grove wants to talk about here tonight.

15 We're not -- if it's not part of his
16 Affidavit or his application to me, we're not going to hear
17 it, we're not going to hear noise issues, we heard that last
18 time, we're not going to be here all night again.

19 So we're going to just really concentrate
20 on the three, three bullet points that Mr. Grove wants to
21 have back for reconsideration. After we hear Mr. Grove, and
22 he brings all of his people up to talk, we will have just
23 like a regular hearing, we will let the audience come up, in
24 favor, against it, all that kind of stuff. From there, then
25 there is a motion to approve the reconsideration or deny the

5

1 reconsideration.

2 So if there is any questions on that or,
3 Jack, if I missed anything, I will refer to you, hopefully I
4 kind of covered everything to the best of my ability, and if
5 there is any questions by the Board on the reconsideration, I
6 will be more than happy to try to answer before we start.

7 MR. PHILPOT: I have a question. On the
8 reconsideration, are we going to vote on whether to
9 reconsider it first or not?

10 MR. FOX: Well, one of the things that

11 you can do, from talking to our Prosecutor's office, if we
12 don't have a motion and we don't have a second, the meeting
13 is over, because we're not going to hear it. Because Lee
14 voted to approve it, she can't make a motion and she can't
15 second it, it has to come from one of the four Board members
16 that actually denied it.

17 All right. So if there is never a motion
18 and we sit here for five minutes for lack of a motion, Mr.
19 President then can recommend that since there is no motion,
20 that we don't -- that it's basically over at that point in
21 time, and then we're done with this specific hearing.

22 So that would be how we would start off
23 first and we go from there.

24 MR. DANIEL: I got a question. What --
25 we sat through the pros and cons at the last meeting, what is

6

1 the idea of listening to the same, probably, voices again?

2 MR. FOX: Alan, I'm not sure if I follow
3 your question.

4 MR. DANIEL: We had public comment the
5 last time, pros and cons and neutrals, what is the reason for
6 listening to the same, probably the same stories and
7 situation again, what is the advantage of that?

8 MR. FOX: Well, there are some points
9 that the Board is allowed to reconsider during a
10 reconsideration. Maybe something was brought up at the
11 meeting, after the meeting that maybe we didn't really hit on
12 very much, things of that nature.

13 And there is other issues that, I think

14 maybe Jack, Mr. Grove can answer a little bit better than I
15 can, what those things are, but I think you can consider a
16 lot of different things. Some testimony that wasn't heard
17 initially, you know, there is some -- a little bit of a
18 different type of laundry list. But I don't know if that
19 really answers your question. I'm -- now, I didn't answer
20 your question?

21 MR. DANIEL: That's okay.

22 MR. BEVINGTON: Mr. Grove, would you like
23 to make an opening statement to tell us if there is --

24 MR. GROVE: Certainly.

25 MR. BEVINGTON: -- kind of tweak Mr.

7

1 Fox's comments?

2 MR. GROVE: Right. Just for the record,
3 I'm Jack Grove, and I'm the attorney for the applicant,
4 Shamrock Materials. In my years of doing work before this
5 Board, which is close to 30 now, it's getting up there, I've
6 had one reconsideration in the past, and that had to do with
7 signage in West Chester Township, called Union Township at
8 the time, when Dick Grace and Shearie Metz and your
9 predecessors were on the Board.

10 The issue tonight has to do with
11 informing the discussion, having to do with fencing. I
12 listened very carefully to the comments after the close of
13 the meeting last time, and I heard comments having to do with
14 Zoning Board preferences.

15 And it was apparent to me that there is
16 miscommunication or a misunderstanding having to do with the

17 company's willingness to put up fence, and it's something
18 that the company is absolutely willing to do.

19 MR. EDGAR: I object, I don't see a --

20 MR. BEVINGTON: Sir, can you please be
21 quiet when he is talking, he wouldn't interrupt you.

22 MR. GROVE: The -- just having to do with
23 the overall fencing issue. Many years ago on one of the
24 prior applications, we were told by the Zoning Board that we
25 did not want at all to have chain link fence in the vicinity

8

1 of the flood waters because of impeding flood flows, and we
2 have acted upon that guidance having to do with our
3 subsequent handling of those issues.

4 As a result of the Board's discussion, I
5 inquired of the experts, Stan Johnson, having to do with
6 flood water, and then Mr. Beam, having to do with design of
7 fencing, maintenance programs and that sort of thing, how to
8 accommodate the Board's concerns on the safety issue without
9 creating an additional flooding problem.

10 I listened to the Board's concerns, but I
11 think that the science also needs to guide us according to
12 what is appropriate and what is safe.

13 This all happened after the public
14 hearing was closed, so we really didn't have an opportunity
15 to put evidence on in response to those particular concerns.

16 The other thing that's happened since
17 that hearing so many years ago, we now have regulations for
18 the flood plain that were not in existence at the time. And
19 the flood plain regulations differ for what is in the

20 floodway versus the flood plain fringe, and I want to make
21 clear, we had testimony the last time to the effect that all
22 of this land is in the flood plain fringe, and it doesn't
23 present as much of a risk to have fixtures, improvements in
24 that area as it would the flood -- the floodway.

25 So Mr. Johnson was able to look at this,

9

1 talked with me on the phone. I informed Mr. Fox of my
2 research and my inquiry. I promptly filed the motion and I
3 thank the Board for coming out on this cold winter night and
4 agreeing to have this special hearing, just to inform the
5 process.

6 My objective would be to first present
7 evidence, to show pictures of the existing fence to the west
8 of the properties and some of the maintenance issues that
9 we've encountered.

10 The purpose of the discussion is, it's
11 not Shamrock versus the neighbors, it's this is the situation
12 that we experienced with the fence, and my approach to it is,
13 we need to maintain the fence in much the same way as we
14 would maintain a piece of equipment, it's going to require
15 regular periodic maintenance.

16 And so what I did was turn to the experts
17 and ask for their guidance on how to manage that issue. I
18 know from past dealings with Mr. Fox, that one of the
19 conditions that he prefers not to have in a zoning resolution
20 that grants a permit is a requirement that he conduct an
21 annual inspection.

22 The staffing, the situation isn't good

23 for the Zoning Board on that kind of an issue, but we have a
24 comparative situation that we've managed quite well in the
25 past, and that has to do with water monitoring.

10

1 We produce regular reports having to do
2 with water monitoring that's been required, and his feedback
3 on the company's management and handling of that has been
4 very good. It's regular, it's dependable, there is not an
5 interruption, this is something that we can do.

6 So what I want to do is share that
7 information, what is our situation, share the testimony of
8 Mr. Johnson on what he feels is appropriate for the area and
9 then Mr. Beam's recommendations with some visuals that would
10 guide the Board and inform the process.

11 And it has to do with how to accommodate
12 safety concerns in relation to the lake and in relation to
13 the flood hazard, which is periodic. And I think that the
14 Board would benefit and I think the neighbors would benefit
15 from this added understanding of this issue.

16 My experience a lot of times, no is an
17 easy way out, it takes a lot more work to say yes with
18 appropriate management conditions, balance economic needs,
19 needs for employment, for a stable community, against the
20 legitimate concerns of the neighbors having to do with safety
21 for their children, from the flood.

22 We know that the lake will actually
23 diminish the flood risk with the berm that is proposed.
24 That's already before the Board. So the question would be,
25 how can we fence in the vicinity of this area to balance

1 those concerns.

2 I think we would all benefit very greatly
3 from that process. So, I would ask the Board at this time to
4 grant the motion for reconsideration and it would be limited
5 to those issues as I've indicated. Thank you.

6 MR. BEVINGTON: Thank you. Does that
7 help with the thought process of how the meeting will be
8 conducted? If so, I would entertain a motion.

9 MR. SALMON: I've got a question. The
10 only thing would be, Mr. Grove, is the fact that the fence
11 wouldn't be a reason why I didn't -- I voted to deny it.
12 That wasn't the issue.

13 MR. GROVE: Well, I understand that, the
14 Board members stated various reasons.

15 MR. SALMON: Yeah.

16 MR. GROVE: And this is one area of focus
17 based upon our feedback, I don't know that we can address all
18 reasons and all concerns, but it's our best effort, we
19 indicated that the company has committed to the best
20 management practices, that's why we've invited these people
21 that have the know-how to guide us along in that process.

22 MR. SALMON: I guess the other thing was,
23 I had some, you know, in my thought process, had some other
24 questions on some stuff that's not really contained in this,
25 which was part of my concern. So then evidently we cannot

1 address that tonight, then, correct?

2 MR. GROVE: I think that the Board in its
3 motion can state the areas that it wants to address. Once
4 you have a reconsideration, the Board can open the whole
5 thing wide open again, that wasn't my request or my proposal,
6 but you can state in the motion the areas that you would like
7 to consider.

8 MR. DANIEL: Can we go to executive
9 session for five minutes, maybe get this cleared up, among
10 the Board itself, if that's a possibility?

11 MR. BEVINGTON: Take five minutes.

12 MR. FOX: Do we want to have a motion on
13 this or --

14 MR. DANIEL: I have a motion that we go
15 to executive session for discussion.

16 MR. BEVINGTON: Is there a second?

17 MR. PHILPOT: Second.

18 MR. BEVINGTON: Motion and second. Call
19 the roll.

20 MR. FOX: Alan Daniel?

21 MR. DANIEL: Yes.

22 MR. FOX: Tom Bevington?

23 MR. BEVINGTON: Yes.

24 MR. FOX: Gary Salmon?

25 MR. SALMON: Yes.

1 MR. FOX: Walt Philpot?

2 MR. PHILPOT: Yes.

3 MR. FOX: Lee Steenken?

4 MS. STEENKEN: Yes.

5 MR. FOX: Come on, Lee, you can come if
6 you want, come listen if you want.

7 MR. GROVE: Just for the record, note our
8 objection to the recess for executive session.

9 (Whereupon, the Board meeting was recessed at 7:15 p.m.)

10 (Whereupon, the Board meeting was reconvened at 7:20 p.m.)

11 MR. FOX: We're ready.

12 MR. BEVINGTON: We call our meeting back
13 to order. I would entertain a motion.

14 MR. DANIEL: I make a motion to
15 reconsider.

16 MR. BEVINGTON: Is there a second?

17 MR. PHILPOT: Second.

18 MR. BEVINGTON: Call the roll.

19 MR. FOX: Alan Daniel?

20 MR. DANIEL: Yes.

21 MR. FOX: Tom Bevington?

22 MR. BEVINGTON: Yes.

23 MR. FOX: Gary Salmon?

24 MR. SALMON: Yes.

25 MR. FOX: Walt Philpot?

14

1 MR. PHILPOT: No.

2 MR. FOX: Lee Steenken?

3 MS. STEENKEN: Yes.

4 MR. FOX: Motion to reconsider approved,
5 four to one. You can move forward with it.

6 MR. GROVE: Thank you. I will call Andy
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7 Haumesser. If you will swear the witness in each time.

8 MR. BEVINGTON: Do you promise to tell
9 the truth, the whole truth and nothing but the truth, so help
10 you God?

11 MR. HAUMESSER: I do.

12 MR. BEVINGTON: State your name, address,
13 and spell your last name, please.

14 MR. HAUMESSER: Andrew Haumesser,
15 H-A-U-M-E-S-S-E-R, 11641 Mosteller Road, Cincinnati, 45241.

16 EXAMINATION OF ANDREW HAUMESSER

17 BY MR. GROVE:

18 Q Just to refresh the Board, Andy, can you
19 tell them what your position is with the company?

20 A I'm Operations Manager for Shamrock
21 Materials.

22 Q And for purposes of the motion for
23 reconsideration, did you have an opportunity to prepare
24 photographs of the existing fence, representative
25 photographs, and this is situated to the west of the

15

1 properties that are located on Radabaugh Road?

2 A That is correct.

3 Q And do you have that Exhibit and can you
4 show the Board? And we have to mark the Exhibit first. So,
5 the next consecutive exhibit is?

6 MR. EDGAR: Objection.

7 Q 24? I have large ones so he can use as
8 an illustration and then smaller ones for the Board.

9 Taking that one by one, Andy, I'm going

10 to step out of the way. Can you show the Board what these
11 photographs depict?

12 A This is a series of photos that I took on
13 November the 11th, prior to making the repairs in the fence.
14 It was indicated at the hearing that we had not repaired the
15 fence and we did have documentation, we just weren't prepared
16 to present it when we were at the hearing.

17 These are just various examples of the
18 problems that we encountered when we surveyed the fence,
19 Kevin Brayshaw and myself went out. As I recall, we noted 14
20 breaks in the fence at that point in time.

21 One section was, the tops was -- were
22 kind of broken down, and it's where somebody in years past
23 had had some horses and the horses were scratching their
24 backs and whatever horses do.

25 Of the 14 breaks in the fence, I think 11

16

1 of them were actually cut with wire cutters, so they weren't
2 -- these weren't due to natural causes or natural problems
3 with the fence, and these are some of the examples that I
4 have here.

5 This is one spot, this is one of the
6 posts where you pull tight on the fence, this is the blow-up
7 of it, but they were cut in a straight line here just like
8 this. Here is another example.

9 Q Just so -- when you point out the cut, is
10 that the fence stable --

11 A That's correct.

12 Q -- each location on the horizontal wires,
Page 14

13 correct?

14 A Uh-huh, correct. This is another example
15 and I know it's difficult to tell, we've got a brown
16 background, it's kind of a brown rusty fence, but this
17 section of fence was cut out right in here, and it's a
18 perfectly straight line where the horizontal members of the
19 fence were taken out.

20 This is an area that sometime in the past
21 somebody had actually cut out a whole section of fence and
22 tried to put in a wooden gate in order to access our
23 property.

24 This is another section of fence that was
25 cut out, somebody in the area had access to our property with

17

1 a bobcat to get some fill dirt. And here is another one, and
2 it's very hard to see on this, but this is cut out in a
3 U-shape, it's cut straight up and down here, the bottom two
4 wires are still intact, and then it was cut straight up and
5 down like that, so you could walk to the fence and one step
6 over.

7 Q I see in each of the photographs, there
8 is a considerable amount of vegetation in the vicinity of the
9 fence?

10 A Yes, this is the inside fence, there is
11 actually two fences there. The original property line fence
12 is in there and it's about eight feet the other direction.
13 This is an inside fence that was put in sometime after that,
14 because they didn't want to clear -- whoever was doing this,
15 didn't want to clear the original fence line out, because it

16 was so overgrown, and this is the inside fence, which is the
17 closest to our side of the property.

18 Q Entirely on your property?

19 A Entirely on our property, that's correct.
20 This series of photographs was taken on November the 17th, I
21 had Kevin and his people at the plant do fence repairs, and I
22 told -- asked them when they had done the fence repairs to
23 please call me and I would come back over.

24 Well, this is several sections of the
25 fence that were obviously repaired. This is the longest

18

1 stretch in here, and I think they put 80 or 90 feet in, in
2 the area where the horses had, we had a problem with the
3 fence. This is the picture, really, that corresponds to this
4 cut in the fence, you can see this angled post, but there
5 were new posts put in and new fence stretched and this is
6 another example up in this area there.

7 Q All the photographs are true and accurate
8 representations with no enhancements or editing?

9 A That's correct, taken with a digital
10 instamatic.

11 MR. GROVE: Thank you, Andy.

12 MR. HAUMESSER: You're welcome.

13 MR. GROVE: Now I will have Dennis come
14 forward, please, briefly.

15 MR. BEVINGTON: Do you promise to tell
16 the truth, the whole truth and nothing but the truth, so help
17 you God?

18 MR. GARRISON: I do.
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19 MR. BEVINGTON: State your name, address
20 and spell your last name, please.

21 MR. GARRISON: Dennis Garrison, 11641
22 Mosteller Road, Cincinnati, Ohio, 45241, G-A-R-R-I-S-O-N.

23 EXAMINATION OF DENNIS GARRISON
24 BY MR. GROVE:

25 Q And, Dennis, your position?

19

1 A I'm the President of Shamrock Materials.

2 Q And your comment to me was, we need to do
3 a better job of managing the fence?

4 A Absolutely. We've had discussions at the
5 meeting about fence management and we obviously have started
6 some of that process. Some of the process we've been waiting
7 for direction from this hearing, I guess, as part of that
8 process.

9 This fence was established in accordance
10 with one of the conditions that was imposed by this Board in
11 the past through the conditional use process. And this type
12 of fence is a reflection of what this Board imposed through a
13 condition at that time.

14 Q And this is all along a reclaimed area
15 now, right?

16 A This is all reclaimed, everything that's
17 on this side of this fence has been mined out. There would
18 be no future mining activity there, this is all reclaimed
19 area.

20 The one thing that Andy mentioned, I
21 guess, that I would just like to reinforce, one of the

25 A Yes, we took that away from being a

21

1 company level decision and let the experts come up with their
2 recommendation, which is what you will hear later this
3 evening.

4 MR. GROVE: Okay. Thank you.

5 MR. BEVINGTON: Mr. Garrison, I have one
6 question.

7 MR. GARRISON: Yes, sir.

8 MR. BEVINGTON: Do you think that maybe
9 the company might have been a little neglectful in making
10 sure that the fence stayed up properly?

11 MR. GARRISON: I would be the first one
12 to say that the company could have done a better job at
13 maintaining the fence, yes. If you went out to the property
14 and tried to visually look at this fence line, because of how
15 the trees have grown over the years and various things, you
16 might not notice some of that, but that's not an excuse.

17 Yes, the company should have done a
18 better job with fence maintenance.

19 MR. RICK SMITH: I have a question for
20 Mr. Garrison.

21 MR. GARRISON: Yes, sir.

22 MR. RICK SMITH: For the past couple of
23 years --

24 MR. GROVE: State your name.

25 MR. RICK SMITH: My name is Rick Smith, I

1 I live at 3125 Radabaugh --

2 MR. BEVINGTON: You'll have to stand up.

3 MR. RICK SMITH: Isn't it true that you
4 promised to get a fence replaced there for the past couple of
5 years?

6 MR. GROVE: Objection.

7 MR. BEVINGTON: Mr. Smith, you have to be
8 sworn in. Do you promise to tell the truth, the whole truth
9 and nothing but the truth, so help you God?

10 MR. RICK SMITH: I do.

11 MR. BEVINGTON: State your name, address,
12 and spell your last name.

13 MR. RICK SMITH: My name is Rick Smith,
14 S-M-I-T-H, I live at 3125 Radabaugh Road, Trenton, Ohio.

15 MR. FOX: Mr. Smith, before you continue,
16 I just want to make sure, Mr. Grove, are you finished with
17 Mr. Garrison at this point in time?

18 MR. GROVE: Yes, I was.

19 MR. FOX: Okay. So you were finished,
20 now, Mr. Smith, correct, wants to cross-examine this
21 gentleman?

22 MR. RICK SMITH: Just ask a question.

23 MR. FOX: Okay. I just wanted to make
24 sure that we got that cleared up. Continue, Mr. Smith,
25 sorry.

1 MR. RICK SMITH: My question was, haven't

2 you promised to put a fence up there for the past couple of
3 years and it hasn't been done yet?

4 MR. GROVE: Objection. Wait, just a
5 second. Mischaracterization of prior testimony. Go ahead
6 and answer the question to the best of your ability.

7 MR. GARRISON: Okay. Yes, we have had
8 neighbor meetings and we talked about fence, and I've made
9 the representation that we were willing to put fence up, but
10 the one reason that this hasn't changed yet is, is this fence
11 was put up as part of a conditional use that was imposed by
12 this Board, and until I got direction from this Board with
13 regard to what type of fencing they wanted put up as part of
14 this conditional use process, this process has been going
15 over -- we've been going on now for over 14 months.

16 So if you go back to that point in time,
17 I've been trying to get through that process.

18 MR. RICK SMITH: Well, my understanding
19 was --

20 MR. GROVE: Objection to his -- his
21 testimony and it's argument now instead of asking a question.

22 MR. FOX: You have to ask him a question
23 and then you can argue when it's your turn to come and argue
24 when we ask for your comments.

25 MR. RICK SMITH: Okay. That's fine, I'm

24

1 done, he answered my questions.

2 MR. BEVINGTON: One of the things, Mr.
3 Smith, that's why I asked him and he said that the company
4 probably was a little bit neglectful in doing things, but he

5 didn't have the direction that he wanted from the Board of
6 the proper things to put up and what type of fence to put up,
7 so I mean --

8 MR. RICK SMITH: I understand. As I
9 recall from the last meeting that I was at, that it had been
10 said that they had been willing to put up a fence for the
11 past two years and haven't done it yet.

12 MR. BEVINGTON: Maybe we never -- maybe
13 we never gave the guidance of the type that they needed.

14 MR. RICK SMITH: Right, I understand.
15 But that's what -- that's what came up at the last meeting.

16 MR. BEVINGTON: And the one thing, for
17 the record, that Ricky Smith at that address, did testify at
18 the last hearing also, he is here again. Mr. Grove?

19 MR. GROVE: Thank you. Mr. Johnson,
20 please.

21 MR. RICK SMITH: Thank you, Mr. Garrison.

22 MR. BEVINGTON: Do you promise to tell
23 the truth, the whole truth and nothing but the truth, so help
24 you God?

25 MR. JOHNSON: Yes, sir.

25

1 MR. BEVINGTON: State your name, address
2 and spell your last name, please.

3 MR. JOHNSON: Stanley Johnson,
4 J-O-H-N-S-O-N, 5085 Reed Road, Columbus, Ohio.

5 EXAMINATION OF STANLEY JOHNSON

6 BY MR. GROVE:

7 Q You're with Burgess & Niple?

8 A Yes, I'm employed with Burgess & Niple,
9 testified the last time, the last two times. I'm a water
10 resources engineer working the flood plain area for the past
11 38 years.

12 Q And we concentrated on the management of
13 surface water in relation to this operation, am I correct?

14 A Yes.

15 Q Now, based upon my inquiry, did you have
16 an opportunity to perform a subsequent study and to generate
17 a report?

18 A Yes.

19 Q Okay. And do you have that report with
20 you tonight?

21 A Yes.

22 MR. GROVE: We will mark that as the next
23 Exhibit. What is the number on this one, please?

24 THE COURT REPORTER: 25.

25 A I was asked to look at fencing in the

26

1 flood plain, and what I did was go back and review the
2 regulations that is appropriate here, there is two
3 regulations. In 1981, you joined the flood insurance
4 program, at that time you passed flood regulations. Since
5 then, the regulations have been updated and are in the
6 process of being updated now.

7 And if you look at the regulations, there
8 is four items or four purposes that are stated in the
9 regulations that, I think, are appropriate to let you know a
10 little bit regarding the fence.

11 One item is the regulations are to
12 protect the health and welfare of the individuals there.
13 Second one is to minimize any impact as far as rescuing
14 people from there in the flood plain. The third one is to
15 minimize the impact on the adjacent property. And the fourth
16 one is to prevent any hazardous or incompatible use of the
17 flood plain.

18 Those are the purposes that you had, and
19 then you have specific regulations in both the current one
20 and the one that is being proposed, and that is that you,
21 anything that's -- any new construction will not impact --
22 will try to minimize the impact to the flood elevations.

23 So you have the regulations in place, the
24 regulations do not identify or state that you cannot put a
25 fence in the flood plain.

27

1 If you look at fences and if you look at
2 fences in rural settings, which this would be, there are two
3 basic types of fences, there is what is called a farm fence,
4 which is a woven wire fence. That type of fence is pretty
5 much what's out there now or even on the adjacent property.
6 And the wire woven fence varies greatly, it varies from three
7 feet in height to approximately eight foot in height.

8 And one of the key items with the woven
9 wire fence is the opening area, or the mesh area. The mesh
10 area can vary considerably, too, depending on what the fence
11 is used for. The vertical strands can be spaced up to 12
12 inches apart, usually between six and 12 inches.

13 The horizontal spacing of the openings

14 can go from three inches up to 13 inches. So you can really
15 pick a lot of different openings on things, but in general
16 the openings are quite large.

17 If you look at a chain link fence and
18 that's what you have around the more residential, residential
19 area, those fences can vary from like three foot up to 12
20 foot tall, and those fences usually have a mesh or the
21 opening areas like two inches by two inches, it's set,
22 instead of horizontal and vertical, it's more at an angle, so
23 it's a diagonal, but the opening, itself, is two inches by
24 two inches or two inches and a quarter by two inches and a
25 quarter.

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1 The typical chain link fence is probably
2 five or six foot with a two-inch opening. The typical wire
3 woven fence is usually like four foot with a six-inch spacing
4 vertical and horizontal, or six-inch mesh. If you look at
5 the fences and you sit there and say, well, if I put a fence
6 out there, what problems am I going to have when the flood
7 plain comes.

8 I would like the one Exhibit -- no, the
9 one right behind you, Jack. Again, what we're talking about
10 is, what's being proposed is an embankment, which we talked
11 about last time, Radabaugh Road is here, Sycamore Road is
12 here, existing quarry is here, Great Miami River is here.

13 This is the same exhibit as before, it
14 shows the flood plain or the 100-year flood boundary comes
15 out here and the floodway comes in here. Now, the
16 regulations do have specific requirements that you can or

23 effect that in floods, moderate floods, Radabaugh Road will
24 flood, but the berm will alter that, am I correct?

25 A The berm will assist in the flooding

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1 effort, because the water won't be able to come across it as
2 much, so it will lower the flood. The berm is not high
3 enough to protect the 100-year, because the 100-year can come
4 around and back water up in there. But the lower floods, the
5 water won't be able to come through the berm and be directed
6 south to the quarry area.

7 Again, so it's providing somewhat
8 protection to the people to the west or to the people along
9 Radabaugh Road.

10 Q Go ahead, and I wanted to have that flow
11 explanation then and --

12 A So, either fence will provide protection
13 for children. If you're looking for, say, what will provide
14 protection, again, the farm fence has been around, they're
15 easier to climb than a chain link fence, they're usually
16 lower than a chain link fence.

17 Q You say they're easier to climb than a
18 chain link fence?

19 A Right, yeah, but again, if you look at
20 the flood plain, you really like to have the opening in the
21 fence as large as you can, not to have anything collect on
22 the debris.

23 So, what we looked at here was to sit
24 here and say, either fence would do it, again, you can put
25 barbed wire on top of it, if you want added protection to

1 keep people out.

2 From the flood plain regulations, you
3 really sit there and say this is a better fence, it isn't
4 going to collect as much, it's going to allow the water to
5 flow through. But based on that --

6 Q Did you have a chance to listen to the
7 Board's concerns in their deliberations at the last meeting?

8 A Yes.

9 Q Okay. So you're aware of balancing flood
10 issues versus safety issues for residents, children and
11 visitors, right?

12 A Right. And that's the reason why I
13 recommended, or my recommendation, is to do a chain link
14 fence along the back of the property over here. Again, your
15 flow is coming through here and it's not really flowing
16 through there, so the collection won't be as much, but it
17 provides a lot more safety for the children.

18 Q This is the west side of the properties?

19 A The west end of the properties.

20 Q Where we've seen pictures of existing two
21 rows of fence, with a lot of vegetation?

22 A Right.

23 Q Okay. What happens to the vegetation?

24 A The vegetation can stay there, again, you
25 just have to clear a path to put, to install the fence. The

4 opening that is like six-by-eight, six-by-six. Again, it's
5 kind of the choice, part of the farm fence depends on what
6 kind of animals you're trying to keep out.

7 Again, this kind of is just to keep
8 little children and make sure some positive things, so I was
9 going with more wide, like six-by-six or six-by-eight.

10 Q So I understand your reasoning, why would
11 you deviate from chain link that you have on the long
12 stretches on either side and have the farm fence just down
13 there at the bottom?

14 A Again, it's because the water is going to
15 flow through this direction, as it comes through, it will
16 flow through this fence easier and you won't collect as much
17 debris or cause any increase in the water surface or cause
18 any harm.

19 A chain link fence, you don't have the
20 flow, because you have the embankment there to impede the
21 flow.

22 Q And you stated all of that in the report
23 that you submitted?

24 A Yes, sir.

25 Q Along with your visual representation

1 that you've been using?

2 A Yes.

3 MR. GROVE: Any questions of Mr. Johnson?

4 MR. PHILPOT: Typically, if you're
5 talking about a farm field fence, it's all tighter down at
6 the bottom anyway.

7 MR. JOHNSON: I'm sorry, sir?

8 MR. SALMON: Field fence is like the
9 numbers, 10/47, 12/11, 10/47, 12/9, all that kind of stuff,
10 in other words, as you go from the bottom, it's always
11 tighter anyway, your top, as you go up, if a regular field
12 fence, then it gets, you know, your big holes are at the top,
13 the bottom is always tighter.

14 MR. JOHNSON: It's all specified --

15 MR. SALMON: As your fence stays
16 horizontal.

17 MR. JOHNSON: More for a horse fence, you
18 have that kind of fence, for a cattle fence, you have the
19 openings, the constant opening --

20 MR. SALMON: No, cattle fencing is the
21 same way, I've sold fencing for 30 years.

22 MR. JOHNSON: I can't argue with you, I
23 can show you catalog cuts, I can show you the name brands
24 that have cattle fence that show it six inches all the way
25 up. I can't argue that you don't sell something else. There

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1 is other types of fences available, but they are, I can
2 submit Web sites, I can submit brochures, whatever you want
3 on those.

4 MR. GROVE: They just may not be typical,
5 correct, the specialty products?

6 MR. JOHNSON: The typical is where you
7 buy it at. If you go to True Value, you aren't going to
8 get -- you're going to get just what you're talking about.

9 MR. DANIEL: I'm not going to True Value,
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10 I'm going to a guy that sells thousands and thousands of
11 rolls of fence a year. Okay.

12 MR. JOHNSON: I can't argue, I can get
13 you other fence if you want it. If you would like to start
14 selling some six-by-six or six-by-eight --

15 MR. DANIEL: No, the question was, is it
16 available, I'm not sure, see, that's what I'm saying. I
17 mean, we're sitting here and we're asking you if you're
18 available, you're saying, yeah, but you don't have anything
19 to show me that it's available.

20 MR. JOHNSON: I did not bring that, so
21 that --

22 MR. SALMON: That is what my question is.

23 MR. JOHNSON: I can submit it at a later
24 date, if that's acceptable.

25 BY MR. GROVE:

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1 Q What are typical resources that you would
2 look to to find out what type of fence is available, do you
3 look at the manufacturer, distributor, what are the resources
4 that you use?

5 A Well, you can go on the internet anymore
6 and Google it and do wire woven fence.

7 MR. SALMON: Who is the manufacturer of
8 that, does Redvan make some?

9 MR. JOHNSON: Redvan makes some, yes,
10 they're one, but like I said, you can go there, you can go
11 down and again, that's the reason I specified a farm fence, I
12 said a six-by-six mesh, if you specify something else, it's

13 not problem, you can go six-by-12 mesh or nine-by-six,
14 nine-by-12, you got a whole range.

15 The key is because the flow is flowing
16 through here, is to have a larger opening than a chain link,
17 which is a two-by-two.

18 MR. SALMON: I understand.

19 MR. JOHNSON: And height-wise, you can go
20 any height you want on those, you can go 47, 49, 60,
21 whatever, pick a number and they can make it for you.
22 Google, if you do Google on the internet, you have it, if you
23 go to True Value, you can go to Tractor Supply, you can go to
24 probably Home Depot has it, anybody sells farm fence.

25 MR. GROVE: What about Oxford Farm

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1 Service?

2 MR. JOHNSON: Probably, they sell a lot,
3 but they sell a little different kinds, a little different
4 mesh at the bottom, but it works, and that's fine, too. It's
5 a large, you like to have an open mesh, and I don't know,
6 what is the measurement at the bottom, three-by-six,
7 three-by-nine?

8 MR. SALMON: It depends on what your
9 horizontal stakes, horizontal stakes can be set up
10 differently, you can get 12 inch, you can get nine inch, you
11 can get six inch, you can get 10 inch and then your numbers,
12 actually your stable wire at the top and bottom can be
13 different lengths, strengths than your middles, too.

14 MR. JOHNSON: You're more of an expert
15 than I am, the only thing I can do is look at the catalogs

16 and see what we specify, we will a lot of times specify what
17 you had, going from three-inch to 12-inch as you go up with a
18 six-inch, but I did see some six-inch by six-inch, I'm not
19 into specifying fences that much, you're a little more expert
20 than I am, but I can show you when you get on the Web sites
21 and call some manufacturers, that you can get a six-by-six,
22 six-by-eight, six-by-nine, six-by-12 fence.

23 BY MR. GROVE:

24 Q Now, do you have any specific
25 recommendations as to gauge?

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1 A Just the normal wire fence, and I'm not
2 sure which gauge it is. You would --

3 Q You would defer to a standard product?

4 A Standard product. I'm not sure --

5 MR. SALMON: Most of the time, probably a
6 lot of times are all number nine.

7 A Yeah, I was going to say nine, I'm not
8 sure if they go up to -- how much they vary. I thought it
9 was the nine, that would have been my first guess.

10 Q So what I'm hearing from you, is the
11 critical comparison has to do with the larger opening?

12 A Right.

13 Q To allow for flow of water and debris?

14 A Right.

15 Q And it's also to allow the retreat of
16 flood waters?

17 A Right. The other thing which I was
18 recommending is after a major storm or major rainfall, where

19 you would get some water on the fences, is to go out and
20 inspect the fences and clean the debris off and also just to
21 do a monthly inspection of the fence to make sure it's in
22 good shape and if it needs repaired, repair it.

23 MR. PHILPOT: That's a question I would
24 like to ask. How often, Mr. Garrison, if I could ask, how
25 often do they inspect the fences, had they been, may I ask?

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1 MR. GARRISON: Probably has not been a
2 regular routine set up to inspect the fences on a monthly
3 basis or a weekly basis, but as part of this process, that
4 will happen in the future.

5 MR. PHILPOT: Was there a particular
6 reason why not?

7 MR. GARRISON: No, there was no
8 particular reason why not. I mean, the workers would go
9 around the perimeter of the property from time to time, we
10 have annual DNR inspections, things would be pointed out from
11 that, and that's when the problems would be caught.

12 MR. PHILPOT: Because I know that I was,
13 I was an electrician, head of about 12 substations and we had
14 to maintain those fences and they were cut every day, okay.
15 And it was a monthly, it was less than a monthly inspection,
16 and we couldn't allow a child to get in there and we've lost
17 people inside those substations, so it was very important.

18 That's the reason I ask that and we had
19 to have inspections and men were going in there, men or
20 whoever, were cutting the copper out of it. So I mean, I
21 know we're in a different situation, but I'm wanting to say

22 that an inspection is very, very important.

23 MR. GARRISON: And I agree, and I would
24 hope one of the things that would come out of this process,
25 if in fact we get to the point where we construct a chain

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1 link fence on the west side of the property, we will be doing
2 some clearing there, so the chain link fence is maintained in
3 such a way that it can be visibly inspected.

4 These two fences because of all the brush
5 and clearing that needs to be done there, it's hard to
6 visually inspect them, unless you actually walk the fence
7 line, which needs to be done.

8 MR. PHILPOT: And also the chain link
9 fence is hard to repair and just the other fence --

10 MR. GARRISON: Yes, it is --

11 MR. PHILPOT: So what you have, should be
12 easier to repair.

13 MR. GARRISON: Yes, it should be.

14 MR. PHILPOT: Okay. Thank you, I
15 appreciate it.

16 MR. GROVE: Okay. Thank you, Mr.
17 Johnson.

18 MR. DANIEL: I've got another question
19 for him.

20 MR. GROVE: Okay. I'm sorry.

21 MR. DANIEL: Back to the also, the fact
22 that this is just more of a question on the flood plain part,
23 where the proposed quarry is, it's in the 100-year flood
24 plain, correct?

25

MR. JOHNSON: Yes, sir.

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1 MR. SALMON: Then how many times would
2 that mean in 100 years would water flood over the open
3 aquifer once it was open, if it was -- say, if it comes into
4 the mine, I mean, in your --

5 MR. JOHNSON: How often would it flow
6 over the fence back here?

7 MR. DANIEL: No, flow over, come right
8 along, probably be the --

9 MR. JOHNSON: You mean down in through
10 here?

11 MR. SALMON: No, up where your levy is,
12 in that area where you got your proposed mining site, what
13 I'm saying is how many times would it flood over the top of
14 the mining site into the opening part of it?

15 MR. JOHNSON: As I recall the last time,
16 it was 25, I think it was 25 percent, the chance of flooding
17 over there is 25 percent.

18 MR. PHILPOT: Over 40 years?

19 MR. JOHNSON: Yeah.

20 UNIDENTIFIED SPEAKER: No way, that's
21 wrong.

22 MR. SALMON: Then, I guess my, the thing
23 is, with the open aquifer, are we not putting contamination
24 water in a water source?

25 MR. GROVE: Well, Mr. Eagon addressed

1 that completely the last time.

2 MR. SALMON: I don't remember that.

3 MR. GROVE: He had a report that is quite
4 comprehensive and he provided testimony on that, that of the
5 500 quarries in Ohio, there has never been an instance or a
6 problem, and he referred to it as a very, very minimal risk,
7 and that was the same testimony that he provided two years
8 ago, it was consistent with what had been stated before,
9 that's almost verbatim.

10 If you wanted to look at the transcript,
11 Mr. Fox has it, all of Mr. Eagon's testimony would go on for
12 many, many pages and there is also an accompanying exhibit.
13 But he negated that concern.

14 MR. FOX: Gary, from the standpoint of
15 staff, to answer your question, you have a one percent chance
16 in a given year that the property is going to flood, that's
17 100-year flood plain, you have a one percent chance in a
18 given year that the property or that area is going to flood.

19 MR. PHILPOT: No, not according to him.
20 That's 25 percent.

21 MR. GARRISON: You're talking about a
22 floodway or the 100-year flood plain, you're talking about
23 two different situations.

24 MR. JOHNSON: Right, the ground -- there
25 is a certain elevation with a 100-year event which floods it

1 out to here. Because the ground is lower in here and you're

2 coming over there, the water will get over there, it's not
3 just 100-year, you're going to have other flooding problems
4 in there.

5 When you get to 100-year, you're going to
6 have a boundary such as this, a lesser event will still have
7 a boundary, because there is some high ground in here, but
8 again, it would flood over there, the ground will flood more
9 often than once in 100 years, and I think everybody has seen
10 it's flooded more than that.

11 BY MR. GROVE:

12 Q Exhibit 9, we had the last time from
13 March 20th of 2008, depicts flooding conditions.

14 A Right.

15 Q Is that typical of one in four year risk?

16 A I didn't look at it, per se, for that,
17 but I'm going to say it is typical of what floods and then
18 you have the flooding, and again, this is -- this is looking
19 right where the, I think this is where the quarry is,
20 Radabaugh Road is over here and the quarry back there, and
21 this is the area where it floods or ponds in through there,
22 yes.

23 MR. DANIEL: Is that looking from the
24 farm south, is that looking from the farm south?

25 MR. GROVE: Right, there is the high

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1 tension wires right there.

2 MR. JOHNSON: Yeah.

3 MR. DANIEL: The berm is going to be,
4 what was the proposed height of the berm?

5 MR. JOHNSON: Ten foot above natural
6 ground, three to one slope.

7 MR. DANIEL: What would it take to
8 maximize water coming over that on a super flood,
9 height-wise?

10 MR. JOHNSON: Well, what happens is, and
11 again, deviating from the fence parts, but from the flood
12 part, because the Great Miami River continues on down, you
13 aren't really, you know, the one question is, can we protect
14 the homes in here, in other words, would the berm come all
15 the way around and provide protection, act as a levy to
16 protect these homes, because the levy edge just comes down
17 along Radabaugh Road, it provides some protection here, but
18 it doesn't come all the way around to protect water coming up
19 from below, in essence, back water up into the area there.

20 So the area is still going to flood,
21 that's the reason why the berm was not designed as a levy or
22 doesn't fall under ODNR, Ohio Department of Natural Resources
23 dam or levy requirements.

24 MR. DANIEL: If you will, if it was
25 suggested that you could do that, would that be a reasonable

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1 request, that way no water could get to those people, if you
2 did put it at the bottom as you're saying?

3 MR. JOHNSON: Again, there is --

4 MR. GROVE: The question is, your
5 question is, is it a reasonable request?

6 MR. DANIEL: I'm asking him if it was
7 requested, if it was asked by the Board, can you put a dam

8 all the way around, in other words, in the back, you've
9 already got the back part, which is already a reservoir,
10 you're through with it, and so I'm saying, you're saying that
11 water comes down, goes back, I understand that.

12 My question is, do you put a berm at the
13 bottom there, would that eliminate the possibility of those
14 people getting flooded?

15 MR. JOHNSON: Yeah, can we protect these
16 people so the 100-year will not come, in essence, from the
17 east or come from the south or the west and flood these
18 people, by putting high ground completely around here in a
19 fashion?

20 MR. DANIEL: Yes, sir.

21 MR. JOHNSON: That can be done, there is
22 -- it's not an easy process to do. You have a couple of
23 requirements if you're going to -- that is, falls under the
24 levy and falls under the levy requirements by the Ohio
25 Department of Natural Resources, which has levy requirements,

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1 as far as what you have to do to design it.

2 You have to make sure that the levy would
3 be structurally sound, you have to do seepage analysis and
4 you have to do testing and you also have to, it would fall
5 under their annual inspections.

6 MR. DANIEL: Do you have that capability?

7 MR. JOHNSON: Yes, sir. The other thing
8 and again, just to carry on one other thing, now you're under
9 the flood plain regulations also, and if you get in the flood
10 plain regulations, FEMA, or the Federal Emergency Management

11 Agency, also has requirements if you want to designate it a
12 levy, to be able to provide home, for these protections, what
13 that does is then allow these people to get different
14 insurance rates.

15 FEMA has a whole other set of criteria
16 that you have to do which is more stringent than the Ohio
17 Department of Natural Resources.

18 MR. DANIEL: You're telling me that if
19 you put a berm all the way around, their insurance rates
20 would go up?

21 MR. JOHNSON: The insurance would go
22 down.

23 MR. DANIEL: It would be a lesser expense
24 for those people if the berm was there?

25 MR. JOHNSON: As long as you get approval

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1 from FEMA that the levy is acceptable. Again, when you're
2 talking about that, you have to realize that if you put
3 something around this, there is still some drainage that
4 comes here, so you have some interior drainage and that's one
5 of the concerns that people forget about when they do levies.
6 You have to see where that water goes to or minimize or put a
7 pump station to pump it out to make sure --

8 MR. GROVE: It requires a study, right?

9 MR. JOHNSON: It requires a study. It's
10 more involved, is what I'm trying to say. We can do it, it
11 can be done, it's not something that you just go out there
12 and somebody says, okay, just put a mound of dirt over there
13 and it's there.

14 If you wanted to get it sanctioned by
15 everybody, it takes some detailed studies to go through and
16 do it, and you have to do a study to look at it, but it can
17 be done and we do that kind of work, yes, sir.

18 MR. DANIEL: Thank you.

19 MR. RICK SMITH: I have a question. You
20 say if you put up a fence, you would put barbed wire on top
21 of it, correct?

22 MR. JOHNSON: I would put it on the toe,
23 along the toe of the embankment.

24 MR. RICK SMITH: But you would put barbed
25 wire at the top?

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1 MR. JOHNSON: At the top.

2 MR. RICK SMITH: That would detour people
3 from climbing the fence, correct?

4 MR. JOHNSON: Right.

5 MR. RICK SMITH: What is going to stop my
6 kids from climbing it? That's barbed wire, my kids don't
7 know what barbed wire is, so if they chose to climb the fence
8 when I'm not there watching them, who is to say that the
9 barbed wire is not going to tear my kids up and cause a
10 problem that I have to take my child to the hospital?

11 MR. JOHNSON: Two things. One, it's not
12 on the property, behind your property, the one fence behind
13 your property wouldn't have barbed wire. This is the one
14 that's going to be from the road, you go 50 foot is where you
15 come up with the fence, again, it's just a deterrent to keep
16 it off somebody else's property.

17 Again, you have a 50 foot, again, it's up
18 to the Board, if the Board doesn't want to put barbed wire up
19 on there, it's no problem, they wouldn't have to. The only
20 suggestion was to just to try and have more of a positive
21 thing, if there is a concern, there is a concern, you know,
22 are children going to climb the fence, yes, you know, again,
23 it's just a suggestion, if somebody wants to change it,
24 that's fine.

25 MR. RICK SMITH: That's fine. I have a

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1 question for the Board. If I choose to put up a fence on my
2 property, do I have to come to the Board and go through this
3 to put a fence on my property?

4 MR. FOX: To answer that question, no.

5 MR. RICK SMITH: Thank you.

6 MR. FOX: But it may depend on our code
7 on what type of fence you want to put up, where you want to
8 put it, things of that nature. The Board would ultimately --
9 not the Board, but I would tell you where you can put the
10 fence, type of fence, all that.

11 MR. RICK SMITH: Because I was
12 considering putting a privacy fence around my yard just for
13 my kids.

14 MR. FOX: We would work with you.

15 MR. RICK SMITH: Right. Thank you.

16 MR. WELLS: I have a question myself.

17 MR. GROVE: Mr. Wells, just for the
18 record.

19 MR. WELLS: Thomas Wells, 3155 Radabaugh

20 Road, W-E-L-L-S.

21 MR. BEVINGTON: Do you promise to tell
22 the truth, the whole truth and nothing but the truth, so help
23 you God?

24 MR. WELLS: I do. Do you know when the
25 last time was when we flooded, yourself?

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1 MR. JOHNSON: The only time I know is in
2 March --

3 MR. WELLS: Do you know the last time we
4 flooded?

5 MR. GROVE: Are you asking me?

6 MR. WELLS: I'm asking anybody.

7 MR. GROVE: I'm not --

8 MR. WELLS: Any of your specialists, do
9 any of you know when the last time we flooded? I didn't
10 think so. I've lived there 20 some years, the people I
11 bought --

12 MR. GROVE: I'm going to object to his
13 testimony at this point, because it's not a question.

14 MR. WELLS: I asked you a question. I
15 asked anybody here.

16 MR. DANIEL: Mr. President, I would like
17 to hear his comments.

18 MR. BEVINGTON: Go ahead, Mr. Wells, tell
19 us why that you would like to know that, please.

20 MR. WELLS: Why I would like to know
21 that? Because I don't think anybody here knows when the last
22 time we did flood.

23 MR. BEVINGTON: I think everybody up
24 there said they didn't know.
25 MR. WELLS: Okay, I do, and they are

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1 talking about a one percent in 100 years, it's probably been,
2 and it's been quoted, quoted, quoted, 50 probably years, and
3 when we got flooded, Middletown got flooded, Trenton got
4 flooded, Madison Township, Hamilton, it was that high on the
5 telephone poles, probably prior to that was another 50 or 100
6 years.

7 The last time we got the water that
8 you're showing right here, you had a 20-foot levy in the back
9 of my home. It didn't flood from Rick Baker's field towards
10 me, it flooded from your levy towards Rick Baker's field.

11 I had -- I submitted pictures to
12 everybody on this panel here, everybody up there, I gave them
13 pictures and showed them how it flooded. Since then, you
14 guys have done a lot of repairs, you've done a lot of tearing
15 down of the levy, you repaired the fences, and I was the
16 first one last time that told you that on my property, I
17 bought an extra lot, an empty lot, some people would cut that
18 fence and going through there fishing. I had no trespassing
19 signs, there is nothing, no more I can do.

20 But if you put them old fence pictures
21 back up there, I would like to show you guys something that
22 you probably weren't aware of. If you put them back up
23 there, so I can show the panel. You had, I think you got
24 three pictures there.

25 MR. GROVE: May Mr. Johnson be seated

1 since he is taking over at this point?

2 MR. BEVINGTON: Yeah. Yes.

3 MR. WELLS: I've been there 20 some
4 years, you see these old fences here, they've never been
5 repaired in 20 some years. None of these. Back behind my
6 property, I repair my fences, I've got chicken wire up there,
7 I've got barbed wire up there, I've got old mattress springs,
8 I've got everything.

9 In between that there and this new fence
10 right here is probably 30 foot. My property has been
11 destroyed by the trees in between them fences, my fence has
12 been destroyed or your fence or whoever's it is, has been
13 destroyed, but I maintained that for 20 years.

14 That man right there, Rick, I know I'm
15 not supposed to -- supposed to look at, I'm not supposed to
16 look at him, he repeatedly told me, repeatedly told me that
17 that's a flood plain, it was flooded 50 years ago, he
18 probably knows right to the date.

19 When Kevin was putting that fence up, I'm
20 not looking at him either, when Kevin was putting that fence
21 up, I went up there and I asked his word, I said, who owns
22 this property from here to that new fence, he said we did.

23 I said, well, I said, if you do, why
24 don't you take all of this trash out right here and put a
25 fence up right here, so I can get my right footage, so I can

1 come off of your fence and go up to that road and see how
2 much footage I got, not from that road to that fence, because
3 I repeatedly heard, I own three foot of this road, I own
4 three foot of this road, if he owns three foot of that road,
5 then I own the other ten or fifteen feet.

6 MR. GROVE: Are you referring to Mr.
7 Baker?

8 MR. WELLS: If the shoe fits, wear it.

9 MR. GROVE: Huh?

10 MR. WELLS: If the shoe fits wear it.
11 But I'm just telling you, that fence has never been repaired
12 in 20 odd years.

13 MR. BEVINGTON: Mr. Wells, is that the
14 one at the property line?

15 MR. WELLS: Yes, sir, right here, this
16 old --

17 MR. BEVINGTON: You're talking about the
18 property line that you always take care of, not the one on
19 the inside?

20 MR. WELLS: No, no, we don't take care of
21 the one on the inside. They have spliced it together, wove a
22 little barbed wire around it, but they didn't put that up
23 until maybe, I want to say at the most five years ago.

24 And up on the, as you first come in
25 Radabaugh Road, which we will call him the mailman, his

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1 property is terrible, there was no fence at all that I know
2 of. But we have maintained that fence.

3 MR. GROVE: Okay. I got just a quick
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4 question, did you ever petition your township trustees in
5 Madison Township for a new partition fence?

6 MR. WELLS: No, because Shamrock was
7 supposed to own it, not Madison Township. Madison Township
8 don't own nothing.

9 MR. GROVE: Well, partitioned fence is
10 owned by both property owners or it's allocated by the
11 trustees.

12 MR. WELLS: I have no fence there,
13 mister, I have not put no fence up there.

14 MR. GROVE: Anyway, you did not go to the
15 trustees and ask for --

16 MR. WELLS: No, and you didn't maintain
17 it. You didn't maintain it. It is terrible, you come behind
18 my property, I've asked every specialist that you've had that
19 come up here for three years, I've asked every specialist
20 that you've had to come on my property.

21 They've hauled 100 tons of topsoil right
22 in my one area, I've asked them and asked them and asked them
23 to come on my property to look at my property, they won't do
24 it. Why won't they do it? Why won't they maintain our
25 fences?

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1 But now we're on, you know, we're basing
2 this little meeting here tonight on fence, it's not about
3 fence. A four-foot fence with barbed wire is not even going
4 to help children. This here, I've always been a team player,
5 now I'm not going to be a team player, now I'm going to be
6 for me.

7 I'm 62 years old, will be in three weeks,
8 I'm 62 years old, I worked hard all my life, that was my
9 dream house, you know, I made that house. And I cannot -- I
10 can't blame Rick Baker for wanting to retire, I don't blame
11 him, because I finally got my opportunity, but he jeopardizes
12 our families and where we got to go --

13 MR. GROVE: Note my objection --

14 MR. WELLS: -- I'm '62.

15 MR. GROVE: -- to comments to Rick Baker.

16 MR. WELLS: And I know they're going to
17 object to this, for the money they've spent for three years,
18 trying to get this stone out of their side, they could have
19 bought us out, gave us ample time to relocate --

20 MR. GROVE: Note my continuing objection
21 to buying out.

22 MR. WELLS: That's all we asked, give us
23 a fair shot. You talking about creating work --

24 MR. GROVE: Objection to fair shot.

25 MR. WELLS: I've got friends that works

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1 for that company. You're going to create eight, ten, twelve
2 years of work, buy that strip of land out, you're going to
3 create another five years of work and you're going to triple
4 the money.

5 MR. BEVINGTON: Okay. Thank you, Mr.
6 Wells.

7 MR. WELLS: That's all the -- that's all
8 the time I get?

9 MR. BEVINGTON: Yes, sir.
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10 MR. WELLS: Okay.
11 MR. BEVINGTON: Thank you.
12 MR. WELLS: Look at your pictures.
13 MR. GROVE: Mr. Beam, please.
14 MR. BEAM: My name is Patrick Beam,
15 B-E-A-M, I live at 1715 Sherry Lee Drive in Lima, Ohio, and
16 I'm a landscape architect -- oh, I'm sorry.
17 MR. BEVINGTON: Do you promise to tell
18 the truth, the whole truth and nothing but the truth, so help
19 you God?
20 MR. BEAM: I do.
21 MR. BEVINGTON: All right. Go ahead,
22 sir.
23 MR. BEAM: And what we've done is
24 prepared some illustrations as per the discussions from the
25 last meeting after Mr. Johnson's report, to show the type of

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1 fencing that are possible and where we would recommend that
2 they are placed.

3 EXAMINATION OF PATRICK BEAM

4 BY MR. GROVE:

5 Q Before you get into those
6 representations, you had an opportunity to look at Mr.
7 Johnson's report?

8 A Yes.

9 Q Having to do with water management,
10 surface water management, safety concerns?

11 A That's correct, I have.

12 Q And your charge from me was to come up
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13 with a fence design illustration that would accommodate
14 concerns expressed by the Board during deliberations that are
15 consistent with his report having to do with safe fencing
16 practices in flood prone areas, correct?

17 A That is correct.

18 Q Okay. Now, can you tell the Board,
19 first, what you came up with having to do with fence material
20 recommendations and the recommended areas of placement?

21 A Okay. Once the approval had come from
22 the flood plain management, from Mr. Johnson's report,
23 opening the opportunity to use chain link fence, we proposed
24 placing a chain link, six-foot chain link fence between
25 Radabaugh Road and the proposed quarry, but we would like to

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1 place it on the side of the mound towards the road as per the
2 report on the floodway showing that, you know, of course the
3 water movement from the river would be on the river side, the
4 buffer mound.

5 So, we proposed that it be placed just on
6 the toe of the slope, on the opposite side, so that those
7 active flood waters would not contact the fence.

8 Q Okay. And do you have a visual
9 representation of that, please?

10 A Yes, I do.

11 Q Let me just take care of this business.
12 Your report, I will share with the Board, and that's 26.

13 You mentioned a six-foot fence, am I
14 correct?

15 A Yes, a six-foot chain link fence, and
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16 again responding to the concerns regarding safety, we have
17 shown an illustration of a fence with a single barbed wire at
18 the top just to deter people climbing over.

19 One of the benefits of chain link fence
20 is in the two-foot diagonal -- or two-inch diamond grid, it's
21 very difficult to climb over. So again, it serves a little
22 bit more of a safety precaution as well versus the woven wire
23 fence.

24 Q Right. That barbed wire in your
25 experience, is that an effective deterrent in discouraging

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1 people from going over the fence?

2 A Yeah, knowing that they not only have the
3 difficulty of climbing the link, but once they get up there,
4 then they have that barbed wire that they have to carefully
5 maneuver over top of, so it visually is much more of a
6 deterrent that you have if you ever get up to that point.

7 Q It's common sense, it pokes and it hurts,
8 so I'm not going to go there, right?

9 A Right. Again, responding to Mr.
10 Johnson's report and one of the, you know, benefits of the
11 mound, of course, is the fact that it will help deflect the
12 flow of the flood waters through the Shamrock property versus
13 coming directly onto Radabaugh Lane.

14 And so what we have proposed is placing
15 the chain link fence at a point approximately 20 feet off of
16 the edge of Radabaugh Lane, that would begin up here at the
17 drainage way, that would actually allow Mr. Baker's property,
18 itself, to continue draining as it does, but blocks the flow

19 from the river.

20 Beginning at that point coming along
21 parallel to Radabaugh Lane to the south boundary where the --
22 the -- this property --

23 Q The Albright property?

24 A Albright property, that's right.

25 Q Former Albright property.

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1 A Former Albright property begins, and then
2 again for the safety purposes, we have proposed a chain link
3 fence then also begin on the west side of the properties and
4 extend to that same point.

5 Now, the illustrations that I've shown
6 show barbed wire fence on both locations, just so that we
7 were showing an illustration of the maximum security efforts.
8 Of course, the actual fence design would be a part of the
9 recommendations from the Zoning Board.

10 Then across the south then is where the
11 woven wire fence fabric would be placed, and we have been
12 recommending the four-foot height, which is a little bit more
13 typical woven wire fence fabric height, but again, with the
14 barbed wire fence as a deterrent, you know, for climbing over
15 the top.

16 And what we have then prepared here is a
17 couple additional cross-sections that just shows the
18 relationship of the two bodies of water that would be
19 resulting from the operations.

20 This is the existing lake that is on the
21 west side of the properties, and shows the condition of the

22 reclaimed shoreline between the existing body of water and
23 the rear of the properties on Radabaugh Lane.

24 Q So this would be west side?

25 A This is on the west side, and the

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1 distance -- and this fence, we have shown it just a short
2 distance off the property lines, but of course, that again,
3 the exact location would be a part of the recommendations
4 from the Board. But the distance from the back of the
5 property then is pretty well represented just by the spacing
6 between these two boards to the average front of the
7 properties as the houses, as they face on Radabaugh Lane.

8 And then this is the location of the
9 chain link fence, again, about 20 feet off of the edge of the
10 pavement at the toe of where the buffer mound then begins.

11 And, of course, once you come up the
12 ten-foot mound, then you come down to a general safety ledge
13 and then on down to the water where you have that safety
14 ledge below the water surface.

15 Q The height of the fence with the barbed
16 wire would actually be lower in the profile than the ten-foot
17 mound?

18 A That's correct, at the point where we're
19 suggesting the fence be located, the mound would actually go
20 up about another four or five feet higher than the fence,
21 itself, so --

22 Q Now, that's just the earth level of the
23 mound?

24 A Yes.

25 Q But we are also proposing intermittent

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1 vegetation, some evergreens and insidious trees to go on top
2 of the mound even beyond that?

3 A That's correct, and one of the reasons
4 why we wanted to recommend 20 feet back is just to give a
5 little bit more green space, a little more of a buffer back
6 in that fencing, so it can meld back in from the backside
7 with the vegetation.

8 And again, on the back side here, you
9 know, we have shown it with the fairly clearer vegetation
10 from the fence down to the existing lake, so that Shamrock
11 can easily observe the fence from both Radabaugh Lane and
12 from the -- their side of the properties.

13 Q Utilizing Mr. Johnson's reports, what
14 were your recommendations for the typical farm fence to go
15 along the south side?

16 A Okay. We were recommending the four-foot
17 height woven wire fence fabric with a single barbed wire
18 across the top.

19 Q Redvan?

20 A That's one of the brands that we looked
21 at, yes. And as far as the posts go, we recommend a
22 five-inch diameter wood post at the outside corner and then
23 typically --

24 Q A braced section?

25 A One section of a brace and then every

1 two-hundred feet or so, another wood pole, but then in
2 between the typical T bar metal fence post, is what we were
3 recommending in between.

4 Q What about barbed wire placement in
5 relation to the farm fence?

6 A The barbed wire is typically about four
7 to six inches above the top of the woven wire fence fabric.
8 Again, that certainly is flexible and would be upon any
9 approval or recommendations of the Zoning Board.

10 Q You're calling out in each instance one
11 strand versus two strands of barbed wire?

12 A That's correct.

13 Q Okay. Now, having to do with fence
14 maintenance, did you consider problems associated with
15 vegetation being in proximity to the fence?

16 A Yes, we are recommending that from
17 whichever side of the fence that Shamrock Materials would be
18 observing it, that that vegetation be kept free, so that they
19 can have full visual, you know, access to the fence.

20 And we were recommending --

21 Q So we're talking about a clearing, right?

22 A Yeah, keeping a path clear adjacent to
23 the fence, so they can, you know, visualize it from the
24 ground up to the top.

25 Q That means keeping out the osage,

1 honeysuckle and hedge apple and all the stuff that you get in

2 a fence row, right?

3 A That's correct. The stuff that also in
4 the long run deteriorates the fence as well, by causing
5 distortion and separation of the wires?

6 MR. DANIEL: What is the method of doing
7 that on a regular basis?

8 MR. BEAM: It certainly on, as far as the
9 grass vegetation and the small woody material, just, you
10 know, mowing or stripping the front of the fence. We would
11 also recommend at least a couple of times a year utilizing
12 maybe even Round-Up to keep the grass from growing up right
13 up to the fence, itself, clear.

14 But, you know, that is certainly going to
15 depend on the type of grasses that you have and the
16 vegetation that you're dealing with.

17 Q And Round-Up is the same chemical
18 application that Mr. Baker is already using in his crop
19 field, right?

20 A That's correct.

21 MR. PHILPOT: You were mentioning the
22 osage, how are you going to keep that out, I mean, Round-Up
23 won't keep osage -- or hedge apple --

24 MR. BEAM: You know, certainly there
25 might be some physical cutting of the material that might be

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1 required, it is something that --

2 MR. PHILPOT: Mr. Grove mentioned that, I
3 was just wondering, because of the woods, those are some
4 pretty tough things around the fence and they're hard on

5 fences.

6 MR. BEAM: Right. Certainly Round-Up is
7 more effective on even, you know, woody plants if they're
8 still very young saplings. So the frequency of the
9 maintenance would certainly make the control of any of the
10 vegetation, invasive or native, make it a little bit easier
11 to maintain.

12 But there would certainly be, need to be
13 occasionally some cutting of, you know, hardwood material.

14 BY MR. GROVE:

15 Q Now, we talked about the, the need of
16 maintenance and the starting points, which was clearing?

17 A Yes.

18 Q What about an inspection cycle, what do
19 you recommend?

20 A Well, I think certainly during the months
21 of the growing of vegetation, anywhere from the end of March
22 through, through the end of September at least. I would
23 recommend at least a monthly visual inspection of the fence
24 and, you know, cutting of the grass, maybe even once or twice
25 a growing season would be effective.

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1 And one thing, with things like osage
2 orange and other hard woody material, a regular mowing of the
3 saplings reduces that problem tremendously as well, that's
4 how we maintain natural areas that are intended to be kept as
5 prairie, is to just mow them at least once a year to keep
6 those small saplings from ever getting a foothold and
7 Round-Up is far more effective on that very small material.

8 Q Because Mr. Garrison might not be there
9 the first of every month to be doing this himself, would a
10 management log be appropriate in terms of having specific
11 information, who did the inspection, the time of the
12 inspection and so forth, to assure that it's occurring?

13 A Yeah, we would actually recommend that
14 you put together an inspection report, that as you say, lists
15 the date and the personnel that did the inspection and any,
16 anything that they observed that needs to be maintained and
17 then also recording the actions that were taken.

18 And so that, have that put together on a
19 monthly basis, and at least once a year, have that report
20 submitted to the Township Zoning Administrator, so that he
21 would then have a log.

22 Q County Zoning Administrator?

23 A I'm sorry, County Zoning Administrator,
24 so that he would have the ongoing records of Shamrock
25 Materials, you know, fulfilling that aspect of it.

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1 Q So number one, inspected it and what
2 maintenance had been done?

3 A That's correct.

4 Q And for example, if there was an
5 automobile accident on Radabaugh Road, correct?

6 A Yeah.

7 Q That damages the fence?

8 A That is a possibility, yes.

9 Q And/or someone cutting the fence or if we
10 have a regular maintenance, we will be managing that problem,

11 right?

12 A That's correct, that would certainly, any
13 physical damage to the fence, not just looking at vegetation,
14 but any physical damage would be recorded and appropriately
15 repaired.

16 Q Now, we can't always plan for the rain
17 storm and the flood to happen at the end of the month, so how
18 are we going to manage that situation?

19 A What we're recommending is that anytime
20 there is a rain event, where there is any inundation of the
21 properties or backside of the mound or anywhere on the
22 properties --

23 Q Like last March?

24 A Like last March, that they, even if it's
25 certainly not on their monthly cycle, but right after the

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1 waters recede, I would recommend that they make a pass and
2 inspect the fence and remove any vegetation that might have
3 collected in the fence. So, you know, that would be
4 immediately after the waters recede from any event that
5 inundates the fencing.

6 Q As taking a truck or trailer or wagon and
7 picking up the debris, right?

8 A That's correct, yeah.

9 Q Could be leaves, branches?

10 A Leaves, grasses, some twigs, grocery
11 bags, you know, anything that might come in.

12 Q Junk, garbage that --

13 A Yeah. That's correct.

14 MR. DANIEL: Question. I guess I heard
15 you right, did you say that you would mow that area in front
16 of it with maybe, I don't know, six foot, seven foot bushhog,
17 something like that --

18 MR. BEAM: Yeah, I would think that --

19 MR. DANIEL: You're saying again along
20 the fence you're going to use Round-Up?

21 MR. BEAM: Yeah, you know, to keep the
22 vegetation from growing up through the fabric, itself, that's
23 what I would recommend.

24 MR. DANIEL: And the monthly walk would
25 be a walk directly by the fence?

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1 MR. BEAM: That's correct, you know,
2 circling the fence that goes around the properties.

3 MR. DANIEL: If you only mow it twice a
4 year, it will look like a hay field. We got inundated with
5 houses now and we've had homes, a lot of foreclosures and
6 everybody knows about it, and we've never mowed so many lawns
7 in our lives in Madison Township. I'm just thinking, if you
8 walk it, I'm just -- I can understand it, but if you do a
9 visual from 30, 40, 50, 60 feet away, you will never see it,
10 because it doesn't take long, we found out the hard way,
11 grass, we could have baled some yards this year.

12 MR. BEAM: Yeah, in a rural more natural
13 setting, we typically recommend, you know, mowing a couple of
14 times a year, but certainly where there is a particular case
15 for, you know, higher maintenance required, that certainly is
16 within the realm of possibilities to do it more frequently.

17 MR. GROVE: I'm not -- Mr. Smith has his
18 hand raised, I'm not finished with my questions yet that I --

19 MR. BEVINGTON: Go ahead.

20 Q Now, having to do with the type of fence
21 that you've recommended, has that been a successful
22 application in other such facilities around the State of
23 Ohio?

24 A Yeah, the chain link fence is a very
25 typical installation around any kind of industrial site, that

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1 is the typical method. When you're dealing with a higher
2 hazard situation like, such as, you know, a power substation,
3 they might go to more like three, three rows of barbed wire,
4 and even sometimes, you know, have it on the angle towards
5 the side of approach of the facility.

6 Q I've seen that, where it tips out?

7 A Yeah, but we certainly didn't see that
8 that was the type of hazard here or the type of risk of
9 penetration into the property.

10 Q Aesthetically it's not very pleasing?

11 A Aesthetically it certainly would not be
12 as desirable as having a single wire across the top.

13 Q Aesthetically, you made mention of this
14 in your report from a landscape architect's point of view,
15 which is preferable, chain link or farm fence?

16 A Well, you know, certainly in a rural
17 setting, we like to enhance the rural farm character as much
18 as possible, and the typical woven wire fence would just
19 visually be a more pleasant, to me --

20 Q Less intrusive?

21 A Less intrusive, but certainly is not as
22 much of a deterrent for trespassing as the chain link fence
23 would be.

24 Q So, in making your recommendation, you
25 balanced all of these factors?

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1 A That is correct.

2 Q Do you think that there is a need for
3 added deterrent, like razor wrap or something like that?

4 A I certainly wouldn't think so.

5 Q That would be uncalled for?

6 A I think that anything beyond, you know, I
7 think even the single strand of barbed wire is, I guess,
8 approaching being even more aggressive than what I think the
9 need is for, but I certainly would not see any need for
10 anything further than that.

11 Q In your experiences, a strand of barbed
12 wire is a more effective deterrent than no barbed wire?

13 A Yeah, I really do feel that it kind of
14 gets a mental image up there, even if I can get my toes in
15 the chain link, there is still that wire that I got to get
16 over the top, it's not just a matter of jumping over the
17 fabric.

18 I think there is some additional, you
19 know, mental deterrent, chain link, itself, is certainly a
20 difficult thing to mount.

21 Q For those folks that choose to ignore
22 fence as a deterrent, did you have any recommendations for

23 signage?

24 A Yes, we are recommending that they place
25 a no trespassing sign, a minimum of every 200 feet, and when

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1 I showed, kind of worked this out in the plan, that would put
2 a sign pretty squarely, at least in the middle of every other
3 property, so we would actually place them at a point between
4 two properties, so that each property owner, anyone in their
5 backyard would be able to clearly see a no trespassing sign.

6 And Shamrock Materials actually has, you
7 know, quite a few signs around their property already that
8 says, they're a white sign with red lettering that says, no
9 trespassing, Shamrock Materials, Inc.

10 Q So it's an indication that someone else
11 is operating on that site?

12 A That's correct.

13 Q And that people should not come on?

14 A That's correct.

15 Q And in your practice is that kind of
16 signage effective as a communication that people should not
17 enter, is that a general acceptance?

18 A Yes, it is, it certainly would show that
19 anybody who crosses it is a very deliberate intent to ignore
20 anyone else's rights or any of the conditions that are on the
21 other side of the fence.

22 Q I've been around some farms and I will
23 see signs that say, keep out, or violators will be shot, and
24 I think that it's fair to say that that would be
25 inappropriate for the residences?

1 A Yeah, I think that would be somewhat of a

2 --

3 Q We don't want it to be hostile?

4 A Yes, yes.

5 Q All right. Having to do with the height
6 of the signage, what was your recommendation?

7 A Well, on the chain link fence fabric, we
8 would recommend that it be placed about six inches below the
9 top of the six-foot fabric, and that way, you know, it keeps
10 it in --

11 Q Five and a half feet, eye level?

12 A Five and a half foot, so it is certainly
13 at eye level for most adults, but yet keeps it high enough
14 that it wouldn't get vandalized or removed as easily, but it
15 is certainly still within the realm of anyone being able to
16 see it clearly.

17 On the four-foot wire fence, we'd
18 recommend that it be placed at the top of the fabric,
19 typically at one of the posts, so it can be securely fastened
20 to the fencing.

21 Q And the signage would be part of the
22 overall inspection requirement?

23 A Yes, certainly to make sure --

24 Q So if a sign is removed, or it's
25 vandalized or whatever, then it would be replaced as needed?

1 A Certainly, that would be one of the
2 elements that they would have to record.

3 Q Having to do with the placement of chain
4 link fence along the west side versus farm fence, we had this
5 discussion about safety and aesthetics, do you see any
6 impediments to having chain link along the west side?

7 A You know, making sure that there was a
8 good access from Shamrock side to visually inspect it, you
9 know, is an important thing. You know, really the only
10 hazard I see to it is a potential back water, water coming
11 around from the backside and coming in the properties and
12 then as it recedes.

13 Q Flooding characteristics that we can't
14 control?

15 A Yeah, that would really be the only
16 potential negative to using chain link versus the woven wire
17 farm fence on that side.

18 Q And we've tried to accommodate that by
19 having the open farm fence at the south side where the flows
20 go?

21 A That's correct.

22 Q Where there was more turbulence?

23 A That's correct.

24 MR. GROVE: Any other questions of Mr.
25 Beam?

1 MR. BEVINGTON: He did, okay. Do you
2 promise to tell the truth, the whole truth and nothing but
3 the truth, so help you God?

4 MR. BOBBY SMITH: Yes, I do.

5 MR. BEVINGTON: State your name, address
6 and spell your last name, please.

7 MR. BOBBY SMITH: My name is Bobby Smith,
8 I live at 3161 Radabaugh Road, my last name is Smith,
9 S-M-I-T-H.

10 MR. BEVINGTON: Also make a note he
11 testified at the last hearing, please.

12 MR. BOBBY SMITH: Just over the fence, I
13 got a few quick questions. Why now, all of a sudden, over
14 the last month are you focusing on the fence, why not over
15 the last 20 years that you guys have been there? It seems
16 like --

17 MR. GROVE: Is this a question for Mr.
18 Beam?

19 MR. BOBBY SMITH: No, for you, sir.

20 MR. GROVE: I'm not a witness.

21 MR. BOBBY SMITH: I mean, first, just for
22 you guys are --

23 MR. GROVE: We're going to object to the
24 question because it's out of order in relation to the direct
25 testimony that is provided by Mr. Beam.

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1 MR. BOBBY SMITH: And you say replace the
2 signs, on an annual inspection as-needed basis, I mean, what
3 is that, what is that once every 20 years?

4 MR. GROVE: No, it was a monthly
5 inspection, at least monthly.

6 MR. BOBBY SMITH: Why haven't there been
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7 no monthly inspections so far?

8 MR. GROVE: Well, Mr. Garrison explained
9 that we're trying to improve our management practices, that
10 he realizes that this is an issue that is requiring more
11 attention, understands that this will occur at some
12 significant expense, and -- but it's an area that the company
13 is willing to devote more attention to.

14 And we've asked for the experts to give
15 us recommendations so that we can find a better way of
16 addressing this situation.

17 MR. BOBBY SMITH: I mean, now you're
18 focusing on it, when you -- when you want something and need
19 something. I mean, over the last, you can't tell me that you
20 haven't thought about checking it?

21 MR. GROVE: In particular having to do
22 with chain link, we were told in the past that the Board did
23 not want it.

24 MR. BOBBY SMITH: I'm not even
25 considering chain link.

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1 MR. GROVE: That was about 20 years ago.

2 MR. BOBBY SMITH: Fence in general, I
3 mean, just now all of a sudden you decide, well, we need to
4 focus on the fence, it's because we want something.

5 MR. GROVE: You want to address it, Mr.
6 Garrison?

7 MR. GARRISON: Yes. Your question you
8 posed, I mean, we began this process or my involvement in
9 this process started probably four to five years ago with the

10 acquisition of the Baker property as part of this conditional
11 use.

12 The on-site management has been at
13 Shamrock over the last 15 to 20 years. I think that they
14 were in compliance with the conditions that came from this
15 Board in the past with regard to conditional uses for pieces
16 of property that were part of the mining process.

17 We have had at least two neighbor
18 meetings that I'm aware of over the last couple of years
19 where we've invited the neighbors to the office. I have sent
20 letters to all the neighbors asking for you to get back with
21 me about your concerns over the fence and brushing. I have
22 not received one response from those.

23 We want to correct the fence issues. I
24 can't go back 10, 15 years and correct what happened at that
25 point in time. I can't correct the conditions that the Board

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1 put on Shamrock Materials ten years ago. They thought that
2 they were in compliance with those conditions.

3 We're trying to correct the fence
4 situation. I'm not going to tell you that there haven't been
5 some mistakes made in the past, there has been, but we're
6 here to try to correct those problems.

7 MR. BOBBY SMITH: But the reason why
8 nobody has responded to them letters is because I've been at
9 both of them meetings up at your place and every one of our
10 concerns that we focused on, you guys brought in expert
11 testimony people to contradict what we said, to try to say
12 that's not true.

13 MR. GARRISON: No, I don't think we're
14 trying to contradict what you're saying, we brought in expert
15 testimony because there are certain proofs that we have to
16 provide to the Board that we're going to be in compliance
17 with regard to, that's why we had the expert testimony.

18 I don't feel like we have tried to
19 contradict your concerns. I'm not here to contradict your
20 concerns. I'm here to -- I'm here to resolve the fence
21 issue. We've had proposals with regard to different types of
22 fencing, we've heard a concern over here about barbed wire
23 fencing.

24 I don't personally care whether there is
25 barbed wire fence there or not, if I lived on Radabaugh Road,

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1 I would rather see a fence that didn't have barbed wire, but
2 that's not my decision, sitting here as part of the
3 management of Shamrock.

4 MR. RICK SMITH: Well, I would, too, I
5 mean, I would rather not have no fence, either, but how would
6 you like to look out your front door and look at a
7 construction site every day for the rest of your life, how
8 would you like that, but, no, you're in a \$300,000 home
9 probably and --

10 MR. GROVE: I object to the argument,
11 it's inappropriate.

12 MR. FOX: Hey, guys, let's -- I want to
13 speak from the staff. A lot of this conversation we've
14 already talked about to some extent at the last meeting. We
15 need to stay on target with the points, and I understand Mr.

16 Smith is talking about fencing, all right.

17 I think my opinion on it from the staff
18 standpoint is, I think we just, after they get done talking
19 about fences, we understand there is an issue with fences, we
20 always understood there has always been a question about
21 fences.

22 But in my opinion from the standpoint of
23 staff, the fencing behind the properties has absolutely
24 nothing to do with this variance.

25 MR. GROVE: Conditional use.

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1 MR. PHILPOT: Say that again.

2 MR. FOX: Excuse me, conditional use.

3 MR. PHILPOT: I didn't hear you.

4 MR. FOX: In the staff's opinion, the
5 fence behind their houses has absolutely nothing to do
6 with -- if we have a problem with fence and maintenance, I
7 think we should be talking to Shamrock about how are they
8 going to maintain this fence, if the Board decides to approve
9 it.

10 I can't -- we can't look at, from the
11 standpoint of behind their houses, it has nothing to do with
12 it, it's probably not even close, well, it's close, but it's
13 not affecting, this variance they're asking for has nothing
14 to do with that fence behind these people's houses, and
15 unfortunately it's an issue with these people, and we're
16 going to get this issue corrected, if you decide to approve
17 this variance, or reconsideration, I should say, because
18 we're going to make them put a fence behind there.

19 I think we need to stay focused on this
20 variance has to do with this property, and we need to look at
21 fencing potentially just for this property, if you guys
22 decide to approve it and stay away from that fence behind
23 you, because in my opinion, staff's opinion, it's irrelevant
24 to this zoning variance case. So I want to move off this
25 fence issue and let's go on to the next thing.

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1 MR. PHILPOT: But you don't -- I would
2 like to make one statement though, if there was a statement
3 made or previously that they would maintain that fence before
4 and it hasn't been done, then it's relevant to his statement
5 for the new fencing.

6 MR. FOX: I think it needs to be asked
7 directly, how are you going to maintain -- they haven't
8 really said how, they just did, how they're going to maintain
9 it.

10 I haven't seen a maintenance agreement
11 from Shamrock proposed yet or anything.

12 MR. PHILPOT: It's not part of this
13 conditional use, but it is relevant to --

14 MR. FOX: It may be part of this
15 conditional use, because you guys might make them wrap it
16 around them back houses, that's up to you guys. I just
17 wanted to make sure that you guys understand, we're talking
18 about a property on the north, south, on the east side of
19 Radabaugh Road and they're talking about a fence on the west
20 side that has nothing to do with this variance.

21 So let's try to keep it on track, I
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22 understand their concerns about a fence behind their
23 properties and who maintains it and who is not. But let's
24 figure out how we're going to get Shamrock, if you guys
25 decide to approve it, to maintain the fence on this -- on Mr.

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1 Baker's property. I think that's what we should be focusing
2 on. And if part of it is wrapping that fence around behind
3 those houses to protect, then that's fine.

4 I think we hit, I think we've been
5 beating this thing with the fence behind these people's
6 property long enough, and to be honest with you, I think it
7 has nothing to do with this variance.

8 MR. GROVE: I just want to make sure that
9 no one else has questions for Mr. Beam?

10 MR. FOX: Sorry, Jack.

11 MR. GROVE: Any other questions for Mr.
12 Beam? Thank you, Pat.

13 Now, Mr. Garrison, just to wrap all of
14 this up, are you willing to submit for the Zoning
15 Administrator's approval a maintenance agreement along the
16 lines of the expert's recommendations, monthly inspection and
17 as needed with storm events, calling for the vegetative
18 maintenance, the upkeep and replacement of damaged fence and
19 signage?

20 MR. GARRISON: Yes.

21 MR. GROVE: And that's all I have by way
22 of the motion for reconsideration in terms of direct
23 evidence.

24 MR. BEVINGTON: How much turnaround time
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25 would you need to set the maintenance agreement up?

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1 MR. GARRISON: The maintenance agreement
2 could be set up in a couple of days actually, because the
3 maintenance agreement basically would incorporate everything
4 that you've heard in Mr. Beam's testimony.

5 MR. GROVE: That is something that I
6 would gladly draft and --

7 MR. BEVINGTON: I was just wondering, a
8 week, month, two months?

9 MR. GROVE: No.

10 MR. BEVINGTON: So just very quickly?

11 MR. GROVE: It's a priority.

12 MR. GARRISON: Very, very quickly.

13 MR. GROVE: And in fact, just so you're
14 aware, our proposal, and the maintenance agreement would call
15 for the immediate clearing and construction of the fence
16 along the west side. Mr. Fox is correct, it's outside of the
17 proposal that we have for conditional use, but it's something
18 that the company is willing to do.

19 On the south side, the farm fence that is
20 proposed, it would also be immediate. On the east side, it
21 would follow the construction of the berm, because you can't
22 have a fence there when you're doing that, but it would be in
23 place and inspected prior to any mining activity. And that
24 is all stated in Mr. Beam's report.

25 MR. FOX: I don't want to cut off the

1 neighbors, they still get a chance to speak. I just wanted
2 to make sure that we were kind of clear on this fence issue
3 thing, we keep banging it over the heads of everybody.

4 MR. BEVINGTON: Do you have anything
5 else, Mr. Grove?

6 MR. GROVE: Not by way of direct
7 evidence. I would like the opportunity for rebuttal if the
8 need arise.

9 MR. BEVINGTON: Mr. Baker, I guess I
10 ought to swear you in, you might want to say something. Do
11 you promise to tell the truth, the whole truth and nothing
12 but the truth, so help you God?

13 MR. BAKER: I do.

14 MR. BEVINGTON: State your name, address
15 and spell your last name, please.

16 MR. BAKER: My name is Rick Baker, 3200
17 Radabaugh Road, Trenton, Ohio. What else did you want? Is
18 that all?

19 MR. BEVINGTON: Spell your last name.

20 MR. BAKER: B-A-K-E-R.

21 MR. BEVINGTON: Thank you, he also
22 testified at the last hearing.

23 MR. BAKER: I want to make a comment
24 about Shamrock and their mowing program. And Mr. Alan -- or
25 Alan was concerned about, you know, how frequently they mow

1 their property.

2 Well, I have farmed their ground, next to
3 their ground and all around their ground for probably 20
4 years, and believe me, Shamrock mows everything that you can
5 get a mower across and even down in the deep river bottoms, I
6 mean, it looks like a nice clean field. They mow all summer
7 long. And I don't think mowing is an issue.

8 I think if any of you drove by Shamrock
9 Material and looked at their property lines and their levies,
10 they're probably some of the nicest ones that you see in Ohio
11 and that's a comment that I wanted to make.

12 MR. BEVINGTON: Thank you.

13 MR. PHILPOT: I would like to ask a
14 question, if I could. You said -- not you, Mr. Baker, I
15 apologize. Mr. Beam, he said there will be no mining until
16 all of this is done, right, all the fencing and berm?

17 MR. GROVE: Right.

18 MR. PHILPOT: You said it's in here, and
19 I don't see it. All I see is, the west toe of earth barrier,
20 as soon as earth barrier is completed during over-burden
21 removal operation, but prior to gravel extraction, that's
22 only talking about, only talking about the barrier, itself,
23 and that's it.

24 I thought he was talking about the fence,
25 I may have misunderstood about the fencing and everything, I

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1 thought he was talking about.

2 MR. BEAM: No, that's the fencing would
3 be installed at the toe --

4 MR. PHILPOT: It says earth barrier, it

5 say here earth barrier.

6 MR. BEAM: Well, that is for the fencing
7 located at the toe of the earth barrier, it would be
8 installed as soon as the --

9 MR. PHILPOT: But that entails it all
10 then?

11 MR. BEAM: Yes, yes.

12 MR. PHILPOT: I just wanted to make sure.

13 MR. FOX: Hey, Walt, just so you know,
14 anything that -- if you guys decide to approve this, anything
15 that you put as a condition will have to be completed before
16 they put a shovel in the ground and start doing gravel, no
17 matter what it may be.

18 MR. BEVINGTON: Anything else from the
19 Board? Anyone like to speak in favor of? If you've
20 testified before, try just to give something new and
21 something that hasn't already been testified to. Anyone like
22 to speak in opposition of? Do you promise to tell the truth,
23 the whole truth and nothing but the truth, so help you God?

24 MR. EDGAR: I do.

25 MR. BEVINGTON: State your name, address

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1 and spell your last name, please.

2 MR. EDGAR: Martin Ray Edgar, Junior,
3 3187 Radabaugh Road, E-D-G-A-R. The only thing I have to
4 say is --

5 MR. BEVINGTON: He testified also at the
6 last hearing.

7 MR. EDGAR: -- just from history, from

8 past practice, I showed you pictures of the condition of the
9 fence from the time that I moved in until they repaired it a
10 week -- two weeks, two, probably two weeks before our last,
11 the last hearing, but prior to that, prior to even before all
12 of this started, there was no maintenance on the fence.
13 There have been -- and there have been promises made to some
14 of the individual residents that have not been followed
15 through on.

16 I could probably ask each one of them if
17 Shamrock or a representative of Shamrock has made a promise
18 to them. They haven't kept their word to the residents, why
19 would they keep the word anyhow?

20 MR. BEVINGTON: Thank you.

21 MR. FOX: Jack, do you have cross?

22 MR. GROVE: No.

23 MR. BEVINGTON: Anyone else like to speak
24 in opposition of?

25 MR. BOBBY SMITH: I would, sir.

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1 MR. BEVINGTON: Just restate your name,
2 you've already been sworn.

3 MR. BOBBY SMITH: My name is Bobby Smith.
4 I just got a few things I would like to sum up here. I won't
5 take too much of your guy's time.

6 Going back to the flood, what you guys
7 heard numerous times, they keep saying flood in 100 years,
8 flood in 50 years. I've personally only lived there nine
9 years, and in the nine years I've lived there, we've had
10 water that has risen up two times, on two occasions, and both

11 occasions was because of that berm, no water ever rose up
12 before the berm --

13 MR. GROVE: Objection.

14 MR. BOBBY SMITH: -- since I've lived
15 there and none has risen up --

16 MR. GROVE: Lack of qualification, he is
17 not qualified to testify.

18 MR. BOBBY SMITH: -- since the berm has
19 been gone. And everything that they say sounds good, but
20 they want it to sound good, because that's what they're here
21 for, but how much of it will they stick to.

22 And another thing, Mr. Grove said that
23 when Mr. Edgar said he got something off the internet, Mr.
24 Edgar said, I mean, Mr. Grove said --

25 MR. GROVE: Object to this, because this

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1 is in the course of the last hearing.

2 MR. BOBBY SMITH: -- are you going to
3 believe everything that you get off the internet, and earlier
4 he said, just google it, you can find whatever you need, and
5 sure you can get on the internet when it's something that he
6 is talking about, but when you pull something off the
7 internet, it ain't no good.

8 Is the fence going to stop all the geese
9 from flying in there and gathering a family up there? No.
10 Because I'm sure it will confine them more and we will just
11 get more geese.

12 The only other thing I got is, I would
13 like for any of you guys to come down and just sit on my

14 front porch and look, I mean, I got a pretty good view,
15 sometimes it's a cornfield and sometimes it's a bean field,
16 but if any of you guys can imagine looking out your front
17 door and looking at like a construction site forever, I mean,
18 if I knew there was going to be a pond in front of my house
19 with construction going on all the time, I would have never
20 bought my property.

21 And the only thing I can hope for is you
22 guys just keep them away from me, I mean, I don't know what
23 else to say. Thank you.

24 MR. PHILPOT: I would like to ask you a
25 question, Mr. Smith, if the berm did stop the flooding for

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1 your home and everything, would you welcome that? I'm
2 just -- just for that question.

3 MR. BOBBY SMITH: No, because I mean,
4 then there would be 50 foot off the front of my house and all
5 I see will be a berm, I mean, that would be like looking out
6 your window and looking at a brick wall all the time.

7 MR. DANIEL: You made two contradicting
8 statements here. A minute ago you said you would look out
9 and see a construction site, now you're telling me that
10 you're looking out and you're going to see a berm.

11 What you're actually going to be looking
12 out, is a picture like this, I'm not sure it's going to be
13 this colorful, but you can google this and make it any color
14 you want, google that, but anyway, what you're going to look
15 at, you're going to see a ten-foot berm or we might make it a
16 20-foot berm, who knows, with trees and supposedly

17 cosmetically looking pretty nice, on the other side of that
18 will be the --

19 MR. BOBBY SMITH: Construction site.

20 MR. DANIEL: Exactly, but you won't be
21 able to see that unless you grill a lot, so it ain't going to
22 happen, so you're going to see something like this, is what
23 you're going to see in comparison to a bean field or
24 cornfield, but it won't be a construction site.

25 So I just want to, I mean, I'm not trying

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1 to cause trouble between you and I, but that's just the way
2 it is.

3 MR. BOBBY SMITH: Yes, and one thing I
4 don't think the berm will stop all the dust from coming over
5 and it's, I mean, everything about this whole ideal, just to
6 me it don't seem good. I mean it seems good for Rick, I
7 don't blame the man at all for wanting to better hisself, but
8 to me this is an investment, and I personally feel that if
9 they dig over there, it would be a bad investment for myself
10 and the safety of my kids.

11 MR. GROVE: Objection to investment.

12 MR. BOBBY SMITH: I mean, I just don't
13 know what else to say, I mean, that's just something that I
14 -- I just don't want to look at it, and I would think that if
15 any of you guys would like to look at it either, but I can't
16 speak for anybody but myself, but it would be horrible.
17 Thank you.

18 MR. PHILPOT: Can I ask Mr. Smith and Mr.
19 Wells the same question?

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20 MR. BEVINGTON: Yes.
21 MR. PHILPOT: Mr. Smith?
22 MR. RICK SMITH: Yes, sir.
23 MR. PHILPOT: I mean, if that berm
24 protected your home from flooding and everything, would you
25 be against it?

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1 MR. RICK SMITH: Well, if the berm
2 protected my children from going across it and maybe
3 drowning, yes, I would be against it, if the berm protected
4 my children from not going over there, I would be fine with
5 it, but that's not going to protect my children from walking
6 across there.

7 MR. PHILPOT: Your home, how I
8 understand, everybody's children is more important than their
9 home, so the home is not as important to you as the children?

10 MR. RICK SMITH: No, sir, no, sir.

11 MR. PHILPOT: I understand that.

12 MR. RICK SMITH: My children mean more to
13 me than any home that anybody owns in this whole room.

14 MR. PHILPOT: But you would think then
15 that the children would still be in danger?

16 MR. RICK SMITH: Yes, I do, yes, I do.

17 MR. PHILPOT: Mr. Wells, would you answer
18 that question? Did you hear?

19 MR. WELLS: What was the question?

20 MR. PHILPOT: The question was if the
21 berm protected your home from the flood and kept it from
22 being flooded as often, would you be for or against it?

23 MR. WELLS: Keep it from protecting my
24 home from the water, I would be against it -- I would be for
25 it. If -- if -- but you got another issue, you're going to

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1 be surrounded completely by water, there is no way that you
2 can stop structural damage that's going to be on our homes,
3 there is no way.

4 MR. PHILPOT: Okay, thank you, I
5 appreciate it.

6 MR. PHILPOT: I can't remember your name.

7 MR. EDGAR: Martin Edgar.

8 MR. PHILPOT: What about you, I would ask
9 you the same question.

10 MR. EDGAR: I would still be opposed.

11 MR. PHILPOT: Thank you, I appreciate it.
12 Mr. Baker?

13 MR. BAKER: I would like to make a
14 comment about Mr. Edgar's property. The flood plain does not
15 affect his house, his house is not in a flood plain.

16 And I would like to make a comment about
17 Bobby Smith here, when I plant corn that is ten foot tall, if
18 that obstructs your view? When I have corn planted ten foot
19 tall in front of your house, does that restrict your view?

20 MR. BOBBY SMITH: My kids restrict my
21 view, because I'm short.

22 MR. BAKER: Well, if your view is
23 restricted, you have all of your buddies down there with
24 their trucks and stuff, they just kind of push my corn and
25 run over it, don't they, because if you want a little more

1 room in front of your house there, correct?

2 MR. BOBBY SMITH: No.

3 MR. BAKER: I think it is correct.

4 MR. BOBBY SMITH: No, sir.

5 MR. BAKER: Can I ask this guy a question
6 here? How long have you lived out on Radabaugh Road?

7 MR. RICK SMITH: I think I purchased my
8 house --

9 MR. FOX: Hold on for a second, hold on.
10 I'm going to have to -- somebody's parents are going to have
11 to take the kids out. I'm sorry, it's just a public meeting
12 and you can't really hear over here.

13 MR. RICK SMITH: I believe I purchased my
14 house in April.

15 MR. BAKER: In April?

16 MR. RICK SMITH: Yes.

17 MR. BAKER: And you're an expert on the
18 flooding and everything that goes on around here, correct?

19 MR. RICK SMITH: Well, no, sir, but my
20 nephew lives five doors up from where I purchased my home,
21 and I've been running around my nephew's home for the past
22 seven years. According to their script, their sketches and
23 stuff, half of my house is in the flood zone. When it
24 flooded the last time, it floods that house out.

25 MR. BAKER: Okay. I got another comment

1 to make, do you feel your children are safe when I come down
2 through that field where there is no fence and I'm shelling
3 my corn and you probably don't know where your children are,
4 don't you think it's a hazard that I could run them into my
5 machine when I'm shelling my corn?

6 MR. RICK SMITH: Yes, there is, I was
7 there this past summer when you done that.

8 MR. BAKER: It's very dangerous, isn't
9 it?

10 MR. RICK SMITH: Yes, it is, it is very
11 dangerous and I --

12 MR. BAKER: As a good father, I think you
13 should put a fence around your yard and keep your children on
14 your property.

15 MR. RICK SMITH: Didn't I just ask that
16 question here a few minutes ago, that I'm considering putting
17 a privacy fence around my property to protect my children.

18 MR. BAKER: I think you should.

19 MR. RICK SMITH: More than likely, I
20 think I probably will.

21 MR. BEVINGTON: Okay.

22 MR. FOX: All right, guys, do we need to
23 take a break, I think our reporter is getting tired fingers.

24 MR. BEVINGTON: Should we take a break?

25 MR. FOX: Do you want to take a break, or

1 are you okay? Let's go just for a little bit longer and see
2 where we go.

3 MR. BEVINGTON: Anyone like to speak in
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4 opposition of? Neutral testimony.

5 MR. FOX: Mr. Daniel, did you say you
6 want to take a break?

7 MR. DANIEL: In five minutes.

8 MR. GROVE: Just by way of rebuttal, I
9 just have a brief question of Mr. Fox.

10 Mr. Fox, I did a public document request
11 many months ago in anticipation of the remand hearing, and
12 you had occasion to watch me go through records that spanned
13 the last -- well, at this point almost 30 years, correct?

14 MR. FOX: Correct.

15 MR. GROVE: And in your review of the
16 records, did you observe any complaints that were initiated
17 to the Zoning Department having to do with Shamrock's
18 operations and compliance with zoning conditions?

19 MR. FOX: No, sir.

20 MR. GROVE: Thank you.

21 MR. BEVINGTON: Any other?

22 MR. DANIEL: Mr. Fox --

23 MR. FOX: I'm sorry, Mr. Daniel?

24 MR. DANIEL: Was there a complaint at one
25 time before this Board about dewatering?

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1 MR. FOX: I wasn't here at that time.

2 MR. DANIEL: I know you weren't here, I
3 realize that, there was a complaint.

4 MR. FOX: But I don't know if it was --

5 MR. GROVE: There was an investigation,
6 not a violation of the condition.

7 MR. DANIEL: But it did come before this
8 Board, though, didn't it?

9 MR. GROVE: The Board didn't take action,
10 the Board --

11 MR. DANIEL: It did come before this
12 Board, didn't it, it did come before the Board?

13 MR. GROVE: Shamrock was not invited to
14 the Board, I looked at the minutes, the Board looked into the
15 issue because there was a public meeting at the high school,
16 at Edgewood, and they obtained a transcript, and the decision
17 was made not to take any action. But Shamrock was never
18 given a notice of violation.

19 MR. DANIEL: I'm just saying, don't push
20 this issue, I'm just saying, don't push this issue, because I
21 will go back and, Rick, was you at the meeting when I made my
22 little conversation about dewatering and the people in
23 Madison and Samuel Lewis and Miller Brewing. All I'm saying,
24 there was a complaint at that time.

25 MR. BEVINGTON: Mr. Daniel, was that

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1 against Shamrock or the previous owner, do you remember?

2 MR. DANIEL: It was Shamrock, but I don't
3 believe Mr. Garrison was there.

4 MR. GARRISON: I was not, I mean, I've
5 read the minutes from the meeting and I know there were
6 concerns over dewatering, there was some dewatering done at
7 that time.

8 MR. DANIEL: I can quote verbatim what I
9 said at that time.

10 MR. GARRISON: I was not part of that,
11 the dewatering stopped and there has not been any dewatering
12 since then.

13 MR. BEVINGTON: That was before your
14 term?

15 MR. GARRISON: That was before my term,
16 yes.

17 MR. DANIEL: I would agree with that, but
18 there was a -- there was a complaint. That's what I said,
19 we can just let that go.

20 MR. GROVE: The records would speak for
21 themselves.

22 MR. WELLS: There was some action taken.

23 MR. DANIEL: Pardon?

24 MR. WELLS: There was more than a
25 complaint, there was some action taken. I know the whole, I

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1 know it all about the Miller Brewery and the wells, I know it
2 all.

3 MR. BEVINGTON: Okay. We're going to
4 talk about gravel. So, are there any other questions?
5 Questions? Mr. Fox, do you have --

6 MR. FOX: Before we do that, before we
7 get into that, since we're done with all the testimony, Mr.
8 Daniel would like to take a five-minute break, to get
9 everybody regenerized.

10 MR. BEVINGTON: Why don't we take ten.

11 MR. FOX: Okay. Quarter after.

12 (Whereupon, the meeting was recessed at 9:02 p.m.)

13 (Whereupon, the meeting was reconvened at 9:14 p.m.)

14 MR. BEVINGTON: I would like to call the
15 meeting back to order, please. We heard all the testimony,
16 for, against, neutral testimony. Did you do your closing
17 statement?

18 MR. GROVE: I don't have anything to add
19 beyond what has been provided. I think that we've
20 accomplished the purpose of informing the process and that's
21 what I had hoped to occur. Thank you.

22 MR. BEVINGTON: Thank you, Mr. Grove. I
23 would entertain a motion.

24 MS. STEENKEN: Mr. Chairman, I move that
25 we approve the request for conditional use by Shamrock

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1 Materials, subject to a number of conditions. And I would
2 like to ask Mr. Fox to read his recommended conditions and
3 comments.

4 MR. FOX: One of my first
5 recommendations, no power-driven or power-producing machinery
6 used in the operation of facility will be conducted within
7 400 feet of any R district or recorded residential
8 subdivision or any dwelling in an A-1 district.

9 No mineral extraction will be conducted
10 within 50 feet of any property line. In addition, all
11 stockpiles will be located a minimum of 50 feet off the
12 property line. Mining or coring of material will maintain a
13 minimum of 80 feet from the right-of-way.

14 Fencing shall be erected and maintained
15 wherein the opinion of the Board such fencing is necessary

16 for the protection of the public safety or for a visual or
17 sound barrier. The fencing shall be a type and height
18 specified by the Board.

19 All equipment and machinery will be
20 operated and maintained in such a manner to minimize dust,
21 noise and vibration. All roads will be maintained in
22 dust-free condition.

23 The use of petroleum-based product is
24 prohibited for the use of dust control. The crushing,
25 washing and refining of the gravel will not be able to occur

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1 on this site. Blasting and the use of explosive will not be
2 prohibited -- will be prohibited. Thank you.

3 Permits required. An Ohio Department of
4 Natural Resources Division of mine and reclamation surface
5 mining permit or amendment to permit IM200 shall be sought
6 upon approval of the conditional use permit.

7 The company will also obtain any
8 necessary air, water and NPDES permits or clearance required
9 from the Ohio EPA or governmental agencies.

10 To guarantee the restoration,
11 rehabilitation and reclamation, applicant granted -- excuse
12 me, start over. To guarantee the restoration, rehabilitation
13 and reclamation, applicant granted a permit as herein
14 provided shall furnish a reclamation bond running to Butler
15 County, Ohio in an amount of not less than 25,000 per acre of
16 area to be restored as a guarantee that such applicant in
17 restoring, reclaiming and rehabilitating such land.

18 Shall within a reasonable time and be to
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19 the satisfaction of the Board, meet the following minimum
20 requirement. For those instances where ODNR requires a
21 reclamation bond, it will suffice; however, evidence must be
22 provided to Butler County to assure that the bond had been
23 posted.

24 What that means, if ODNR requires a bond,
25 you need to submit me a copy of it in writing or you pay

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1 25,000 per acre to Butler County.

2 Where the Board finds it appropriate, all
3 excavation shall be made either to water producing depths of
4 not less than five feet below the water mark or shall be
5 graded or backfilled with non-obnoxious inflammable or
6 uncombustible solids to assure that the excavated area will
7 not collect and permit to remain herein stagnant water or
8 that the service of such area which is not permanently
9 submerged and graded or backfilled as necessary as to reduce
10 the peaks and depressions thereof, as to produce a generally
11 rolling surface that will minimize erosion due to rainfall
12 and which will be insubstantial conformed to the adjoining
13 land area.

14 Where the site is reclaimed by creating a
15 body of water, the current and subsequent property owner
16 shall be responsible for protecting the groundwater table
17 from contamination as much as possible.

18 Vegetation shall be restored by
19 appropriate seeds and grasses or plantings or shrubs or trees
20 in all parts of the area, which such areas is not to be
21 submerged under water as herein above provided.

22 The banks of all excavation not
23 backfilled shall be sloped to the waterline, a slope not to
24 be less than three feet horizontal to one-foot vertical and
25 said bank shall be seeded.

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1 In addition to the foregoing, the Board
2 may impose other such conditions, requirements, limitations
3 concerning the nature, extent of the use of the operation of
4 such mineral extractions as the Board may deem necessary for
5 protection or adjacent properties of public interest.

6 The next one, the said conditions and the
7 amount of reclamation bonds shall be determined by the Board
8 prior to the issuance of the permit. Where the Board finds
9 it appropriate, it may establish a minimum depth of mineral
10 extraction based on sound hydrologic practices and
11 principles.

12 A neutral hydrologist of the Board's
13 choosing may be hired to evaluate the applicant and assist
14 the Board in review the applicant. A 404 permit must be
15 obtained from the U.S. Corps of Army Engineers and a 401
16 permit must be obtained from the EPA if required.

17 The terms and conditions of the 401 and
18 404 and 401 permit shall be considered to be part of the
19 conditional use granted by the Board of Zoning Appeals. Thus
20 in the event of a violation of the state, federal permit, it
21 shall be a violation of these regulations of Butler County
22 Zoning Resolution.

23 Failure to secure a needed state and
24 federal permit is also a violation of the Butler County

25 Zoning Resolution. Mineral extraction which cannot be shown

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1 to be done pursuant to the requirements of state, federal
2 permits in the compliance with the permit shall be
3 rebuttably, I hope I said that right, presumed to be in
4 violation of Butler County Zoning Resolution and therefore
5 prohibited.

6 Hours of operation will be Monday through
7 Friday 8:00 a.m. to 6:00 p.m., no weekends whatsoever.
8 Shamrock Materials must install three monitoring wells at
9 appropriate location for water quality and water levels.
10 Based on water quality and water level, information will be
11 obtained at least two times spaced three months apart prior
12 to the mining operation, and Shamrock Materials will conduct
13 annual monitoring thereafter.

14 A sampling point from approximate half
15 the depth of the mine pit area, below the surface of exposed
16 ground water will also be collected annually for analysis.
17 Shamrock Materials will follow the groundwater sampling
18 analysis work plan dated May 20th with modifications in
19 Section 2.2-3. These locations will compliment the current
20 monitoring wells around the existing pits south of the
21 proposed area.

22 Monitoring wells will be constructed per
23 the State technical guidance of well construction,
24 groundwater protection, and that was created in 2000. Wells
25 will be four-inch diameter, ten foot long screens with

1 appropriate slot sizes. The location and depth of the wells
2 will be determined by a certified hydrologist and a plan will
3 be required to be submitted to staff for review prior to the
4 mining operation.

5 Upon closure of the pit, Shamrock
6 Materials must agree to leave in place a berm of ample height
7 and slope to prevent unauthorized dumping or drainage from
8 entering the closed mining pit. The berms will remain
9 permanently.

10 Shamrock Materials must take measure to
11 minimize the possibility of contamination from the mining
12 operations, such as secondary containment storage tanks using
13 electric clamshells or dredges and use management best line
14 practice during operation. No access or transportation of
15 sand and gravel will be allowed to be hauled along Radabaugh
16 Road.

17 I have a condition on the berm, but I
18 will hold off on that, unless you guys want me to go through
19 that, but I think the -- what they're proposing would be
20 fine.

21 All Butler County flood damage prevention
22 regulations will have to be met. And I do have just one
23 question, is the five-acre tract owned by Mr. Baker part of
24 this variance?

25 MR. GROVE: Conditional use.

1 MR. FOX: Your conditional use, sorry,

2 Jack, the five acres where his house is?

3 MR. GROVE: His house and buildings, no.

4 MR. FOX: All structures must be removed
5 from the property. End of staff comments.

6 MR. GROVE: All structures of the mining
7 area or are you talking about the -- we bought other
8 property, the Albright property was not -- it's not part of
9 this application, but were you requiring that those --

10 MR. FOX: I'm requiring, I think if you
11 look at the very north of the property, I think you're
12 getting into the gravel mining up in there at some point in
13 time, if I remember correctly. There are structures up
14 there, I think.

15 MR. GROVE: On the north side?

16 MR. FOX: You got his five-acre tract and
17 then above it is a bunch, I thought were his barns and other
18 stuff for his farming equipment, all have to be removed as
19 well.

20 MR. GARRISON: If it's part of the
21 conditional use area?

22 MR. FOX: Right, that is, as far as I
23 know, it is. I don't have an aerial with me.

24 MR. GARRISON: We've got the aerial here
25 on the illustration, we can take a look at it.

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1 MR. FOX: As far as this five-acre tract
2 here and then all of this is part of the mining area, all
3 these got to go. Even though you're mining this, aren't you
4 going all the way up to here, too? Isn't that part of the --

5 take out this five-acre tract, which is right here, isn't
6 this part of your mining operation eventually?

7 MR. GROVE: The mining location --

8 MR. FOX: Were you going to subdivide it
9 out? I want to know if this is part of it, I guess is my
10 question.

11 MR. DANIEL: You're saying that's all the
12 way up to the north?

13 MR. FOX: This whole property their
14 variance is about, goes from here, here and here and here,
15 and there was a five-acre tract that comes out.

16 MR. GROVE: Mr. Haumesser explained, we
17 had a conference with Mr. Yendling, Mr. Fox, early at the
18 outset, and there are setback requirements that apply to
19 subdivisions, this is not a subdivision and this isn't a
20 flood plain, some of this is subdivided, so we would not be
21 going into this area.

22 MR. FOX: Then it's irrelevant then. I
23 just wanted to make sure that they got --

24 MR. DANIEL: Yeah, because I was under --
25 we're only talking about the blue area?

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1 MR. HAUMESSER: The rest of that proposal
2 was on the table once and we took it off the table, so we are
3 just looking for this (indicating).

4 MR. GROVE: So we're not going to the
5 structures at the far north end.

6 MR. RICK SMITH: Excuse me, I have a
7 question. I thought this was to put a fence up behind our

8 homes, not across the road.

9 MR. FOX: I think I made that plainly
10 clear, that we weren't dealing with fences behind people's
11 homes. Now, the Board can put it as a condition, I will
12 leave it at that. I made my conditions and that's what I
13 have so far.

14 MR. BEVINGTON: One of the things that I
15 think we might want to look at on some of the conditions is,
16 one of the things that the applicant submitted to us is a
17 Dine, the environmental impact study, I think anything in
18 there should also be included with our staff comments and
19 that you should follow the environmental impact study.

20 MR. GARRISON: We would have to do that
21 anyway.

22 MR. BEVINGTON: That -- well, I just want
23 to have that put in.

24 MS. STEENKEN: May I add to my motion?
25 As part of, as part of the conditions, Mr. Fox, refer to the

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1 earthen berm installed along Radabaugh Road, I would like to
2 put in the condition that that should be constructed as
3 presented and proposed by the applicant.

4 Also, point E, concerning fencing, shall
5 be erected and maintained as proposed in the Beam report, and
6 shall include a maintenance agreement to be submitted to Mr.
7 Fox. Right. And that is also referring to Mr. Beam's
8 report, the maintenance agreement.

9 MR. FOX: Just for the record, everything
10 that Mr. Beam proposed in his outline needs to be installed,

11 correct, along the fencing of the berm?

12 MR. BEVINGTON: Yes.

13 MR. FOX: And then in reference to the
14 berm construction, it is per the report submitted by, what,
15 what was the name of the company?

16 MR. GROVE: Burgess & Niple.

17 MR. FOX: No, that's the berm
18 construction of Mr. Beam, correct, you had the berm and the
19 fence requirement?

20 MR. GARRISON: Bassett & Associates.

21 MR. FOX: I just wanted to make sure. Is
22 that right?

23 MS. STEENKEN: Bassett & Associates, yes.

24 MR. BEVINGTON: Any other conditions?

25 MR. DANIEL: I have, Lee, can I make some

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1 instructions from my point of view. I would like the berm to
2 be instead of the one proposed in front of these people's
3 homes to be 15 feet tall instead of 10.

4 And we propose down at the lower part,
5 where the water would come in, for safety precautions, I
6 would like a chain link six-foot fence all the way around the
7 perimeter, in other words, the whole complete horseshoe.

8 MS. STEENKEN: I don't agree to the chain
9 link on the south, for the reasons of the flooding.

10 MR. DANIEL: How many times, if it
11 floods, they're going to do a monthly maintenance anyway,
12 after the flood goes down, and I walked through a couple of
13 them down through there, they can either put the chain link

14 fence back up or straighten it, it won't happen but in a
15 lifetime, maybe three at the most. And for the safety of
16 those children on the 24/724, most children won't climb chain
17 link six-foot tall fences with the barbed wire. We're saving
18 lives. They will only do it once, I'm not trying to be crass
19 or -- but that's a fact.

20 And also I would like neighbor friendly
21 to, at Shamrock, oh, maybe twice a year gravel their lane for
22 those people, it seems like they got gravel coming out of the
23 ground there on a pretty regular basis; twice a year, maybe
24 four or five dump loads of P-19 to just be neighbor friendly
25 for those people on that road there.

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1 MS. STEENKEN: I have a question for the
2 Board. Regarding a requirement for the fencing, along the
3 west side of the residential properties.

4 MR. PHILPOT: What is the question, Lee,
5 I'm sorry?

6 MS. STEENKEN: The question is, in our
7 condition, our conditions we have indicated that we would
8 like the fencing as proposed in the Beam report on the
9 property that's covered by this condition -- conditional use
10 application; the property that is behind the residences is
11 not part of this parcel, but if you want it as a condition --

12 MR. FOX: Lee --

13 MR. PHILPOT: Can we make it as a
14 condition?

15 MR. FOX: Let's do this, let's look at,
16 if you don't mind getting out your Bassett Associates report

17 on 1-A, how about we make -- you guys put it as a condition
18 that the fencing requirement will be as submitted and in the
19 Bassett Association report 1-A, that would cover the fence
20 behind the houses, in front of the houses and the berm, see,
21 it covers and then the height would be as submitted in the
22 Bassett report.

23 MS. STEENKEN: As submitted in the
24 Bassett report, that would be fine with me.

25 MR. FOX: Then I would also do the same

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1 thing for the berm, it would be 2-B of the Bassett
2 Association's report, that the typical through landscaping
3 buffer be designed that way.

4 MS. STEENKEN: Don't know --

5 MR. FOX: And include the typical, and
6 then the 2-C, typical sections through existing reclamation
7 buffer and reclamation lake. So I would refer the fence and
8 the berm to, strictly to the Bassett Association's report,
9 that they have to meet all of that requirement.

10 MS. STEENKEN: I modify that then. That
11 the fence and the berm conform to the Bassett Association
12 report.

13 MR. GROVE: We're comfortable with that,
14 we're proposing that.

15 MR. SALMON: The only thing, Alan
16 requested that the berm be 15 feet instead of 10.

17 MS. STEENKEN: Why 15, Alan?

18 MR. DANIEL: Well, I was on the task
19 force for two years for zoning and I wish I had brought it up

20 then. A lot of your subdivisions have a so-called, and the
21 reason is for privacy, and I'm thinking of the issues that
22 were brought up here, safety was one and the fence line, the
23 noise was another.

24 And I'm thinking that another five foot
25 and scotch pines or whatever that is decided upon, is, gives

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1 the residents along there a lot more barrier, as far as noise
2 from those conveyors and what have you. And dirt, dirt is a
3 premium, it's pretty easy to get there. Another five foot to
4 me would just be a little bit more of a security for
5 sound-wise.

6 MR. PHILPOT: Also if we go to the report
7 on 1-A, they've got eight to ten feet, are we going with the
8 ten feet? You know what I'm saying?

9 MR. FOX: You can just make an amendment
10 to the Bassett report that it be a 15-foot high buffer.

11 MR. DANIEL: That's what I'm asking, just
12 a suggestion, Lee.

13 MS. STEENKEN: May I ask for a
14 professional opinion regarding 15 feet.

15 MR. GARRISON: Well, the 15 feet
16 obviously adds to the amount of property that can be mined in
17 the future, because of the slopes, you're going to add to the
18 width of the base probably, how many feet, 30 feet, you will
19 add to the width of the base 30 feet.

20 MR. FOX: What is the width of the base
21 right now?

22 MR. HAUMESSER: Let's see, there was

23 three to one, 60, 70.

24 MS. STEENKEN: So it would be 100 feet.

25 MR. GARRISON: So it would be 100 feet.

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1 MR. DANIEL: Just a suggestion. I just
2 think it would make a difference, it also adds a little
3 privacy from the noise and what have you. What would 12 feet
4 do, what would 12 feet do, cut you back to 70, cut you back.

5 MR. BRAYSHAW: It would be 82 feet versus
6 100.

7 MR. GROVE: 12 foot is, I think, more in
8 keeping, it doesn't --

9 MR. DANIEL: Split the difference.

10 MR. GARRISON: We don't have a problem
11 with that.

12 MS. STEENKEN: I would be comfortable
13 with stating 12.

14 MR. SALMON: I would, too.

15 MR. FOX: I would like the Board to
16 decide what goes on top of the berm, not the applicant,
17 unless the Beam -- I didn't even see if the Bassett report --

18 MR. GROVE: Can I have a suggestion that
19 we submit a landscape plan to be approved by the Zoning
20 Administrator and put it in Mr. Beam's recommendations in
21 terms of the kinds of vegetation and placement and that sort
22 of thing?

23 MR. DANIEL: What do you think, Tom?

24 MR. BEAM: Well, one thing we like to do
25 when we're creating buffers is to, is to utilize the native

1 vegetation mix as much as possible, which would be, you know,
2 oaks, maples --

3 MR. DANIEL: What is the fastest growing
4 type of tree there is?

5 MR. BEAM: Red maple is probably the
6 fastest thing that --

7 MR. DANIEL: What about pine?

8 MR. BEAM: Well, scotch pine are going to
9 be the fastest growing, but they're really not the longest
10 living.

11 MR. BEVINGTON: What about poplar?

12 MR. BEAM: They grow very fast and fall
13 over very fast. That's basically a weed. So we recommend
14 sticking with the hardwood maples.

15 MR. DANIEL: Putting something that would
16 be foliage that would absorb, compared to a trunk?

17 MR. BEAM: Norway spruce would be
18 probably the best suggestion as the longest lived, even
19 Austrian pine has a couple of insect problems that could
20 denude it, so Norway spruce is the fastest, most reliable of
21 the evergreens that we could utilize.

22 MS. STEENKEN: I would like to add to the
23 segment referring to the vegetation on the berm, that the
24 berm must also be maintained by Shamrock Materials by
25 replacing any dying or dead tree for the entire time that the

1 mining operation is operational.

2 MR. GROVE: You have Millville on your
3 mind. I do, too.

4 MR. SALMON: No dewatering?

5 MS. STEENKEN: I think we stated that.

6 MR. FOX: Same thing. Same.

7 MS. STEENKEN: Okay. Another, there
8 shall be no dewatering used in the mining operation.

9 MR. FOX: I said that.

10 MS. STEENKEN: I thought it was in here
11 already.

12 MR. DANIEL: You won't give them out.

13 MS. STEENKEN: That's the end of my
14 motion.

15 MR. BEVINGTON: Is there a second?

16 MR. PHILPOT: I will second.

17 MR. BEVINGTON: Motion and second. Call
18 the roll, please.

19 MR. FOX: Let me see if I can find my
20 agenda, give me one second. Lee Steenken?

21 MS. STEENKEN: Because I feel the
22 overwhelming evidence based on scientific methods indicates
23 that there will be no added health risks, in fact, there may
24 be some benefits regarding intermittent flooding events, I
25 will vote yes.

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1 MR. FOX: Walt Philpot?

2 MR. PHILPOT: I voted no for

3 reconsideration, I voted no last time because of fencing. I

7 MR. FOX: Motion has been approved for
8 the reconsideration five to zero.
9 MR. BEVINGTON: Motion to adjourn?
10 MR. PHILPOT: So moved.
11 MR. BEVINGTON: Second?
12 MR. DANIEL: Second.
13 MR. FOX: Gary Salmon?
14 MR. SALMON: Yes.
15 MR. FOX: Walt Philpot?
16 MR. PHILPOT: Yes.
17 MR. FOX: Alan Daniel?
18 MR. DANIEL: Yes.
19 MR. FOX: Tom Bevington?
20 MR. BEVINGTON: Yes.
21 MR. FOX: Lee Steenken?
22 MS. STEENKEN: Yes.
23 MR. GROVE: Thank you.

24
25 (Whereupon, the meeting was adjourned at 9:43 p.m.)

1 C E R T I F I C A T E

2
3 I, Jane Anne Fitch, a free-lance court reporter and
4 Notary Public within and for the State of Ohio, do hereby
5 certify that the preceding pages were taken down by me
6 stenographically, and are a true and accurate transcription
7 to the best of my ability, education, training and
8 experience.

9 I further certify that I am not a relative or
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10 employee of any of the parties involved in this action, and
11 have no interest or bias in the outcome of these proceedings.

12

13

14

Jane Anne Fitch

15

My Commission Expires 4/30/11

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