

CONCORD TOWNSHIP BOARD OF ZONING APPEALS
LAKE COUNTY, OHIO
REGULAR MEETING

Concord Town Hall
7229 Ravenna Road
Concord, Ohio 44077

Decmeber 11, 2019
7:00 p.m.

TRANSCRIPT OF PROCEEDINGS

Board of Zoning Appeals members present:

Ivan Valentic, Chairman
Francis Sweeney, Member
Chris Jarrell, Member
James Rowe, Alternate Member
Todd Golling, Alternate Member

Also Present:

Heather Freeman, Planning & Zoning Director/Zoning
Inspector
Marty Pitkin, Assistant Zoning Inspector

Melton Reporting
11668 Girdled Road
Concord, Ohio 44077
(440) 946-1350

1 7:05 p.m.

2 CHAIRMAN VALENTIC: Good evening. The Concord
3 Township Board of Zoning Appeals meeting for December 11,
4 2019, is now in session. I would like to introduce the Board.
5 To my far left is Skip Sweeney and Jim Rowe. I am Ivan
6 Valentic. To my right is Chris Jarrell and Todd Golling, and
7 to our far right is Heather Freeman, our Zoning Inspector.

8 Under the advice of counsel, we ask that everybody
9 please stand to be sworn in tonight. Please raise your right
10 hand.

11 (Whereupon, the speakers were sworn en masse.)

12 CHAIRMAN VALENTIC: Thank you. Please be seated.
13 This evening when presenting or speaking to any case or
14 commenting, come forward to the microphone and be sure to
15 state your name, your address and that you've been sworn in
16 for the record.

17 Heather, were the legal notices published in a
18 timely manner?

19 MS. FREEMAN: Yes, they were.

20 CHAIRMAN VALENTIC: Okay. We have one Old Business
21 and one -- Old Business item appeal and one New Business item
22 appeal tonight. A three-vote majority is required to either
23 approve or deny the appeal. If the request is denied, you
24 have the right to file an appeal.

25 All right. So first is Old Business. Appeal
26 Number 2018-41, Mr. Randy Viviani, of 7757 Concord LLC, has
27 requested that we postpone his hearing once again this month,
28 so that will stay on the docket, correct?

29 MS. FREEMAN: Correct. It will be back in January.

30 CHAIRMAN VALENTIC: Okay. It will be back in

1 January. All right.

2 Then on to New Business. We have Variance
3 Number 2019-55, Mr. George Davis, of ProBuilt Homes, is
4 requesting a variance on behalf of the property owners, Karl
5 and Patricia Rollner, from Sections 17.04(D)(4)(b) and
6 17.07(A) to allow for soil disturbing activities related to
7 the construction of a single-family dwelling with a zero feet
8 riparian setback from a Category 2 wetland, in lieu of the
9 30 feet required, for the property located at 10165 Karaboo
10 Trail.

11 Mr. Davis, please come forward and present your
12 case.

13 MR. DAVIS: I have Larry Nadler here. This is the
14 developer for the community as well.

15 CHAIRMAN VALENTIC: Name, your name and your address
16 and confirm that you've both been sworn in.

17 MR. NADLER: Larry Nadler, 3659 Green Road,
18 Beachwood, Ohio. I've been sworn in.

19 MR. DAVIS: George Davis, 7962 Butler Hill Drive,
20 Concord, Ohio, and I've been sworn in.

21 CHAIRMAN VALENTIC: Okay, great.

22 MR. DAVIS: So to give you a little bit of
23 background, first, our client is not here. They're in
24 California. So they're moving here to the new residence
25 but -- So the client was interested in the lot and the lot was
26 in the subdivision. It had a block of wetland on the lot.
27 That block of wetlands had no riparian on it, right? We
28 explained that to our client, said, "Hey, you know, there is
29 this area you can't go in."

30 And our initial site plan, we were grading outside

1 of what the wetlands were, right? We were issued a zoning
2 permit. Once we got the zoning permit, we instructed our
3 client, "Hey, there doesn't seem to be any disagreement,"
4 because, you know, there's been some disagreement as to
5 whether there should be riparians or not based on watercourse
6 or not. So I instructed the client, "Hey, let's make sure we
7 get the zoning permit and then you can go ahead and close."
8 So the zoning permit was issued based on what the wetland was
9 identified on the subdivision plat and we instructed our
10 client to close, so they then bought the lot off Larry.

11 Then a few days later, the zoning permit was revoked
12 and that started sort of a back and forth of a few months
13 which the ultimate result is that the wetland was redefined
14 being much larger. And then we still feel strongly that even
15 though the wetland is larger, by your ordinance, it should not
16 have a riparian on it. However, it was told to us that, you
17 know, basically, it needs to have the riparian. So we drew it
18 up with the riparian and it was going to be a small, what we
19 thought would be a small retaining wall. The client was okay
20 with this. They had already bought the lot. They're moving
21 here. They sold their house in California and we started
22 construction.

23 If you guys haven't been out there, I brought some
24 pictures. But the issue we have is that, with the larger
25 wetland and this riparian -- and I brought a couple pictures
26 that I can share with you guys and there is one with the
27 trademen's car happened to be there and, I mean, you can't
28 even hardly pull into that driveway, right? So, like, we
29 haven't installed the retaining wall yet. We got estimates
30 for the retaining wall. It's somewhere between 23 and 30 some

1 thousand dollars to do a retaining wall. And then you would
2 have an approximately 8 foot wall right off the edge of the
3 driveway. And, you know, if someone were to hit the gas
4 instead of the brake, they could actually flip the car over on
5 top of themselves.

6 So what we are asking for is for the Board of Zoning
7 Appeals to sort of agree with us that there is no riparian on
8 that wetland. We are not disputing the new shape of the
9 wetland but just to say that, hey, there shouldn't be a
10 riparian on that because the way that the code is written is
11 that a riparian is extended off the wetland when it's within a
12 watercourse.

13 The letters from HZW say that the bank ceases to
14 exist as it enters the wetland, so there is no defined bank,
15 which is the definition of a watercourse within the wetland.
16 So, thus, there should not be a riparian on it. So that's why
17 we are asking for a zero riparian. I am not asking for a
18 variance. I am trying to say that I don't think there should
19 be a riparian on it, but rather than argue that, just say that
20 we would like to be able to do that.

21 If you look at our revised site plan, we can then
22 have a nice 3 to 1 grade coming off of that driveway so that,
23 you know, the client doesn't have to spend 25 or 30 thousand
24 dollars on a retaining wall to have a virtual cliff at the
25 edge of their really small turnaround.

26 So that's sort of where we're at and, you know,
27 there is a lot of techno -- technical stuff that I am sure
28 Chad and Heather can probably better explain than me regarding
29 that but -- So all I am asking is that we be fair to the
30 client here, you know. We, you know, there was never an

1 intention on our part to damage any wetland. Through an
2 unfortunate course of events, the wetland changed from what
3 everyone thought it was. And now this riparian is just making
4 it, you know, I think, a safety hazard but also a pretty big
5 financial hardship to try to install.

6 CHAIRMAN VALENTIC: But the variance, again, is for,
7 the variance is for not interpretation of our code, correct?
8 The variance is technically for a zero, you know, setback in
9 that area. So I just want, I just want you to be clear what
10 we're supposed to be assessing here.

11 MR. DAVIS: Yeah, so it depends. So, like, you
12 know, like, it's a gray area, right? I mean, like, I mean,
13 you're the one that's interpreted it that it should, there
14 should be a riparian on that?

15 MS. FREEMAN: Correct.

16 MR. DAVIS: Okay. So if we're going -- Heather is
17 interpreting that there should be a riparian. So then, yes, I
18 guess we are asking to grade the entire riparian in that, only
19 in that area where we have it on the plan. But I would just
20 say out of, you know, common sense here, right, you know, like
21 out of common sense, we're asking for, you know, what might be
22 just a normal bank off the side of someone's driveway.

23 And it's a gray area, I feel, as to whether or not
24 there should be a riparian on that. The wetland as it was
25 defined before, there would not have been a riparian. And
26 then the new wetland, there was this whole back and forth as
27 to whether there should be one because the watercourse does
28 not go through the wetland.

29 CHAIRMAN VALENTIC: Well, there is a couple
30 questions. I mean, you're a home builder. You're a

1 developer.

2 MR. DAVIS: Yes.

3 CHAIRMAN VALENTIC: You both know that those
4 wetlands change over time. You've done enough projects that
5 you know the wetland that was delineated whenever that was
6 done is going to change over time. I mean, that's not
7 anything that you might have done. That's just nature.
8 That's what happens with wetlands. Those boundaries grow.
9 You know we have seasonal weather. One year that wetland, if
10 you delineate it, might be bigger than the following year. So
11 I mean, in all due respect, I think you kind of figured that
12 that old delineation probably still wasn't valid at this
13 point.

14 MR. DAVIS: Actually, no. As a builder we always
15 feel that what's on the development plan is what the wetland
16 is. We do.

17 MR. NADLER: Right.

18 CHAIRMAN VALENTIC: I don't really agree. Okay,
19 that's your approach. I think you guys know better though.

20 So we're here to talk about you get -- providing you
21 access to grade within the riparian.

22 MR. DAVIS: Yeah, in the area, like, if you look --
23 I guess, yeah.

24 MR. NADLER: He is not going to build in the
25 wetland. It's just right to it.

26 MR. DAVIS: We are not going into the wetland at
27 all, even the newer wetland.

28 MR. NADLER: Right up to it, that's all.

29 MR. DAVIS: Yeah, we're just asking -- You guys, I
30 think you have the plan, right, where we're --

1 CHAIRMAN VALENTIC: Grading right up to the wetland.

2 MR. DAVIS: Yeah, in that one area, not in the

3 entire area, just in the area where the driveway is.

4 MS. FREEMAN: Can we, for the record, clarify. This

5 is the revised grading done on November 22, 2019, that is the

6 plan that was provided.

7 CHAIRMAN VALENTIC: Make sure we're looking at the

8 right one.

9 MR. DAVIS: Correct, yeah. And the date is --

10 CHAIRMAN VALENTIC: It's stamped with the -- It's

11 got the blue stamp with the November 25, 2019, on there.

12 MR. DAVIS: Yeah.

13 CHAIRMAN VALENTIC: Because we have multiple copies.

14 Make sure you get the right copy.

15 MR. DAVIS: Yeah. So we're asking to grade up to

16 the wetland in this one little area here where this part is so

17 that this can be, you know, so just like a hill instead of a

18 cliff. This is where we have the issue.

19 CHAIRMAN VALENTIC: But reading Chad's letter, my

20 understanding is that a wetland delineation wasn't done. You

21 guys did a --

22 MR. DAVIS: We did a PARE.

23 CHAIRMAN VALENTIC: PARE. So that might not be the

24 actual limit of the wetland. So I think that was the concern

25 that Soil and Water raised was that, if that is not the limit

26 of the wetland, say it's two feet, then you grade to, right up

27 to the wetland, then you're disturbing an existing wetland.

28 That's not us. That's a federal issue at that point if that's

29 not the actual limit of the wetland. That's how I interpreted

30 the letter.

1 MR. DAVIS: Well, we would be -- so then --

2 CHAIRMAN VALENTIC: Because you never -- A wetland
3 delineation wasn't done and it wasn't confirmed.

4 MR. DAVIS: Yeah.

5 CHAIRMAN VALENTIC: So what's shown on there, we
6 will call it an approximate wetland limit. So no one knows if
7 that's the actual limit and you guys are grading right up to
8 it. I think that's the other concern, is that if the wetland
9 is greater than that, you will be impacting that existing
10 wetland.

11 MR. DAVIS: So if we were to do a delineation on
12 that, would the Board be willing to do a zero, a zero, a
13 grading up to the wetland? Because we would do that.

14 CHAIRMAN VALENTIC: I think that's something we can
15 discuss. I don't think that -- We need to talk about that if
16 that's something you want to propose.

17 MR. DAVIS: Well, what I want to do is just have a
18 client that doesn't have a cliff off the side of their
19 driveway, you know. I mean, it's an unfortunate -- I mean, I
20 always ask everybody to put yourself in the client's shoes.
21 You're coming from another state, right? They look at a lot.
22 We have a plan that says what the wetland is. We show them
23 that. We say, "Hey, this is an area you can't go into,"
24 right?

25 And, at that point, I thought maybe Heather was
26 going to argue we had to have a riparian on that and I
27 said, "So don't close until we make sure that Heather is not
28 going to want a riparian on this, that it's an isolated
29 wetland." And so we get that zoning permit and then we tell
30 our client to close. They spend \$100,000. And then we have

1 to go back to them and say, "Hey, wait a second. Now that's
2 not where the wetland is. Now we've got to try to figure out
3 where the wetland actually is," and then we did. And then we
4 were trying to say, "Hey, okay, the wetland is bigger but
5 there still should be no riparian." Everybody else is saying
6 there should be. And then -- So we tell the client, "Hey,
7 what do you want to do?" They're like, "Well, what do we do?
8 We sold our house. We have closed on this lot. Let's try to
9 do it," right?

10 And so we came up with a new plan where we were
11 going to do this retaining wall. But now that the client's
12 seen it, you know, they were here for the electrical
13 walk-through and they're like, "Oh, my gosh, how are we even
14 going to pull in this driveway?"

15 And I'm like, "Yeah, I know, and this wall is going
16 to be 8 feet tall."

17 You know, and so, you know, that's why we're asking
18 for reasonableness to say, hey, you know, this is an
19 unfortunate situation. We don't want to go into the wetland
20 but we just want to be able to grade close, you know, like, I
21 mean, as close to it as possible so that they have a walkable,
22 mowable area instead of a cliff off the side of their driveway
23 turn-around.

24 And, like, right now, we would only be able to have
25 a 23 foot deep side load concrete, and when we build side load
26 garages we do 28 feet. So, like, I mean, right now, even if
27 we did the retaining wall, they would not be able to turn into
28 their driveway. They would have to go back and forth to get
29 straight, you know, to turn in.

30 So that's why, you know, these riparians can become

1 troublesome when it's on a lot that was created before the
2 riparians existed.

3 MR. NADLER: Well, that's the issue. There was no
4 riparian and George had a site plan and got the zoning permit,
5 no riparian, and all of a sudden, oh, there is a riparian.
6 And the buyer bought the lot based on not having a riparian,
7 spending \$600,000 or \$700,000 for a house and lot and now the
8 rules have changed.

9 MS. JARRELL: Heather, can you explain what
10 happened?

11 MS. FREEMAN: I would love to.

12 MS. JARRELL: Great.

13 MS. FREEMAN: So an application was submitted to
14 Concord Township Zoning Department for a permit in July --
15 sorry -- on July 11, 2019. The site plan showed a wetland and
16 a line through the wetland that was not labeled as anything.
17 So in our zoning text it does require that, if there are
18 riparian areas, that it is up to the applicant to provide that
19 on the site plan. It was not identified on the plan, so
20 unfortunately it was missed.

21 Then, subsequently, we spoke with Chad at Soil and
22 Water who brought it to our attention that there was a
23 riparian issue on the lot. So we had to tell ProBuilt that
24 we're going to have to -- you need additional information on
25 the plans. So, at the time, we are going to revoke the permit
26 to get updated information on the site plan so we can confirm
27 whether or not it's going to meet the setback requirements.

28 MS. JARRELL: And it wasn't on the site plan because
29 you had an old map or something?

30 MR. DAVIS: So the best thing for me is to show you

1 what our original -- and this is going to get confusing
2 because there's a bunch of different site plans.

3 MS. FREEMAN: They have it. They have the denied
4 permit. They have the --

5 MR. DAVIS: Okay. So the denied permit, if you look
6 at the shape of the wetland, it's behind the house. The
7 wetland is back here behind the house. All right?

8 MS. FREEMAN: Which one?

9 MR. SWEENEY: Is this on the one that says "Denied
10 Permit"?

11 MR. DAVIS: The one that says "Denied." So this is,
12 this is where the wetland was defined, you know, on the
13 subdivision. There is -- we don't -- I mean, these are grade
14 lines here. We have the grade lines. This is the wetland
15 without a riparian, right, and we were going to grade along
16 it, you know, so the customer had a --

17 MS. JARRELL: A hill instead of --

18 MR. DAVIS: Right. And then what happened then is,
19 once we went through this whole process, then the wetland
20 became -- the wetland, the shape of the wetland changed from
21 this in the side back yard to -- let me find the right picture
22 here -- to this, right, where it's all of the between -- Well,
23 the wetland is here and then the riparian now is like a third
24 of the lot, right, and so that's right up to the edge of the
25 driveway. So, you know, we had to make this narrower and put
26 a retaining wall there.

27 CHAIRMAN VALENTIC: Yes.

28 MR. DAVIS: So that's what happened.

29 CHAIRMAN VALENTIC: And that's what went in to
30 zoning for approval is that site plan?

1 MR. DAVIS: No, this one went in to zoning for
2 approval because the plat, on the plat, this is how the
3 wetlands were.

4 MS. JARRELL: When you --

5 MR. SWEENEY: So what --

6 MS. JARRELL: I'm sorry.

7 MR. SWEENEY: I can't see what you're pointing at.
8 I understand what the wetlands were before but what is it
9 after?

10 MR. DAVIS: What is it after is, well, the wetland
11 shape is this, right? But then you had this riparian on it
12 which makes it much, much larger. So the --

13 MR. SWEENEY: Forget the riparian.

14 MR. DAVIS: Yeah.

15 MR. SWEENEY: So you would have been -- So this plan
16 has a wall, a retaining wall. It doesn't have grade. It
17 doesn't have the gradual grade.

18 MR. DAVIS: This is, yeah, this is -- Honoring the
19 riparian, there is no way to grade it because it's basically,
20 I mean, it's really close to the house, it's only 12 feet and
21 the driveway is right there. So the only thing we could do is
22 a retaining wall.

23 MR. SWEENEY: Well, I am trying to figure out, what
24 did your plans call for before you realized that the wetland
25 changed and there was a riparian?

26 MR. DAVIS: Yeah, it was just grading off the
27 driveway.

28 MS. JARRELL: So there was no stream shown on the
29 original plat, right?

30 MR. DAVIS: So there is -- And, Chad, you're better

1 off at this. I don't know if it would be defined as a stream
2 or a ditch or whatever but there was, there was a watercourse,
3 right, that comes underneath the road and then -- A
4 watercourse, as you guys defined it, is something that has a
5 defined bank. So that defined bank dissipates on this lot.
6 It does not continue to the pond.

7 MR. SWEENEY: Again, I can't -- I am sorry but I
8 just can't see where -- Can you point out on mine? What were
9 you going to do before you found this all out?

10 MR. DAVIS: Okay. Before we found this, this is
11 what we were going to do.

12 MR. SWEENEY: Well, then where -- why is --

13 MR. DAVIS: Because this is the old wetland. This
14 is our permit. This is our zoning permit.

15 MR. SWEENEY: That was denied, right?

16 MR. DAVIS: No, it was originally granted, then
17 revoked.

18 MR. SWEENEY: Okay. So this is what -- So this was
19 your understanding from your due diligence --

20 MR. DAVIS: Of the wetland.

21 MR. SWEENEY: You knew that wetland was there.

22 MR. DAVIS: Yes.

23 MR. SWEENEY: Okay.

24 MR. DAVIS: And the stream thing is up here and it
25 dissipates. Somewhere around here, it ceases to become a
26 watercourse.

27 MR. SWEENEY: All right. Okay.

28 MR. DAVIS: Then we go to this one, which is the one
29 that Heather issued the second zoning permit on, which is now
30 it's all -- The wetland is right here. It goes from this

1 shape to this shape.

2 MR. SWEENEY: All right. Where is -- So where is
3 this shape within this shape?

4 MR. DAVIS: So, well, this is much bigger. This is
5 all the way -- This is like right here, right? So this is all
6 wetland but then the riparian goes all the way up to here.

7 MR. SWEENEY: I understand.

8 MR. DAVIS: This is riparian. This is wetland.

9 MR. SWEENEY: Yeah, the wetland throws the riparian
10 up into the whole mess, yeah.

11 MR. DAVIS: Well, the argument is -- Again, it
12 doesn't matter but the argument is whether or not there is a
13 riparian, should be a riparian on it or not. The way your
14 ordinance is written, riparians are off of wetlands that are
15 within a watercourse. So what is the definition of "within a
16 watercourse"? The watercourse ceases to exist as it enters
17 the wetland.

18 CHAIRMAN VALENTIC: But the watercourse doesn't
19 exist there because the Morley Road is a dam. So there is a
20 watercourse as it goes into that wetland and that pond, then
21 there is a watercourse after. And the reason there isn't a
22 watercourse is because it's in line, by your definition of a
23 watercourse isn't shown because it's in line with the pond
24 already. I think that's part of the issue. So --

25 MR. DAVIS: Well, your definition, Concord's
26 definition of a watercourse.

27 MR. SWEENEY: And this is what you want to do,
28 right?

29 MR. DAVIS: Yeah. What we want to do is get sort of
30 similar to what we had initially. We're not impacting the

1 wetland but we're going --

2 CHAIRMAN VALENTIC: Well, we don't know. I guess we
3 don't know.

4 MR. SWEENEY: I have a lot of questions of the
5 expert.

6 MR. DAVIS: Yeah. In general, the hardship is it's
7 a --

8 MR. SWEENEY: So what are you telling your client?
9 You're a builder, as Ivan mentioned. I mean, you guys know
10 that there is riparian setbacks.

11 MR. DAVIS: Yes.

12 MR. SWEENEY: Did you assume, "Oh, this is a
13 wetland. I am not even going to consider riparian setbacks"?

14 MR. DAVIS: The stream, the wetland as defined on
15 the plat was not -- the stream did not go into that wetland.
16 So per your ordinance, there would be no riparian. So we
17 can't touch the wetland but we can go up to it. So that's --

18 MR. SWEENEY: If I am a builder, I'm not -- If I am
19 a builder and I look at this thing and I see this is a wetland
20 there, eh, there is a riparian setback on top of it, too.

21 MR. DAVIS: No, because that's not what your
22 ordinance says. Your ordinance says there's riparians on a
23 watercourse.

24 CHAIRMAN VALENTIC: Can you just step back to the
25 mike?

26 MR. SWEENEY: I just assume there would be on any
27 sort of water influence on land but, I mean, I can be wrong.

28 CHAIRMAN VALENTIC: But we're not debating that. It
29 sounds like --

30 MR. SWEENEY: I am just asking questions, that's

1 all.

2 MS. JARRELL: Did our riparian map change?

3 MS. FREEMAN: The riparian setback guide map is a
4 guide map. It was purely a guide map. On-site field
5 investigation trumps that.

6 MS. JARRELL: So I just want to understand. So the
7 first map when the permit was approved, it did not or it did
8 show a stream?

9 MR. DAVIS: It shows a stream and a wetland that
10 aren't together.

11 MS. JARRELL: That are together?

12 MR. DAVIS: Are not.

13 MS. JARRELL: Are not together.

14 MS. FREEMAN: No, that's not right.

15 MS. JARRELL: So when was it determined that --

16 MS. FREEMAN: If you are looking at the denied
17 permit, there is a line that goes through the wetland that's
18 not labeled. So it's really not clear what that line is.

19 MR. DAVIS: That's a grade.

20 MS. FREEMAN: That is not a grade line.

21 MR. DAVIS: I don't know what that is either.

22 MS. FREEMAN: Exactly. So Barrington did not label
23 that line. If you look at the line now, they're labeling it
24 as a watercourse.

25 MS. JARRELL: What are they talking about?

26 MR. DAVIS: Well, we labeled it as a watercourse to
27 here.

28 MR. SWEENEY: All right. So your assumption is that
29 you had a wetland, as you originally learned of it, without
30 any sort of riparian because you didn't think it applied,

1 correct, and then you were going to build with those
2 parameters?

3 MR. DAVIS: With the parameters, yeah, that were on
4 the plat.

5 MR. SWEENEY: Okay. So with the parameters that
6 you're assuming, were you going to use a retaining wall or a
7 graded --

8 MR. DAVIS: We wouldn't have needed to.

9 MR. SWEENEY: You were going to grade it?

10 MR. DAVIS: Grade.

11 MR. SWEENEY: Okay. All right.

12 CHAIRMAN VALENTIC: But then when did the wall come
13 into play? That's what I wanted to know. When you did -- The
14 site plan that we have with the wall, when did that come into
15 play? And was that -- When was that submitted or that was
16 never submitted?

17 MR. DAVIS: That was so -- And, you know, I have
18 staff. I don't, I don't do permitting. So if I get out of
19 line here, Chad, you may -- you can correct me if I get the
20 chain of events wrong. But, basically, we submitted that
21 first site plan with the, what we thought was the wetland to
22 Heather. Zoning permit was granted. Then a few days later,
23 it was rescinded. Okay?

24 MS. JARRELL: Stop right there.

25 CHAIRMAN VALENTIC: Yeah.

26 MR. DAVIS: Yeah.

27 MS. JARRELL: Why was it rescinded? What
28 precipitated --

29 MR. DAVIS: Because of the --

30 MS. JARRELL: -- the revocation?

1 MR. DAVIS: -- my arguing about whether there was a
2 riparian or not.

3 MS. JARRELL: Who was arguing? Please explain what
4 transpired.

5 MS. FREEMAN: Well, maybe this would be an
6 opportunity for Chad to come up and testify.

7 MS. JARRELL: Yes, please.

8 MR. SWEENEY: Well, no. I want to get the facts
9 straight before we get the expert.

10 MS. FREEMAN: Well, no, because then a soil and
11 erosion control plan was submitted to Lake County Storm -- or
12 Soil and Water where it became apparent that there was --

13 MR. SWEENEY: I want to know what kind of
14 commitments were made.

15 CHAIRMAN VALENTIC: Yeah, that's where I was going
16 to go. So you get the zoning approved. Then you find out a
17 few days later that it was rescinded.

18 MR. DAVIS: Like, I don't know. I don't know
19 exactly how many days later, a week later, a week later or so.
20 It wasn't a few days, a week later.

21 CHAIRMAN VALENTIC: Okay.

22 MR. DAVIS: I don't know exactly.

23 MS. JARRELL: But it was precipitated by Chad's --

24 CHAIRMAN VALENTIC: Chad's review.

25 MR. DAVIS: Yeah. Because after we get the zoning
26 permit, then we go to Stormwater, Soil and Water, and
27 Building.

28 CHAIRMAN VALENTIC: Okay. Again, you're the
29 developer but wouldn't the homeowner who is signing the deal
30 still be able to get out of their contract with you because it

1 still had a lot of levels of -- I would assume they had a way
2 to get out of it or --

3 MS. JARRELL: You have contingencies but they
4 thought that they were beyond the contingencies, so they
5 closed the deal. Is that correct?

6 MR. DAVIS: Right. We got the zoning permit.

7 CHAIRMAN VALENTIC: But you didn't get all the other
8 approvals, just -- okay.

9 MR. SWEENEY: This is what I am not sure of. I
10 don't mean to interrupt. Okay. So you submitted the thing
11 that you thought was appropriate. Okay. At that point, did
12 you call your owner and say, "We just submitted it. It got
13 approved. Close your deal today"?

14 MR. DAVIS: I said, "You can go ahead and close,"
15 yes.

16 MR. SWEENEY: Okay. So between the time that you
17 said, "You can go ahead and close," and time that it closed,
18 did you learn anything new?

19 MR. DAVIS: No.

20 MR. SWEENEY: All right.

21 MR. DAVIS: And then after that --

22 MR. SWEENEY: That's the problem.

23 MR. DAVIS: Then after that, then they say, "Hey,
24 you can't," because, I mean, let's be honest --

25 MR. SWEENEY: Heather, is that true?

26 MS. FREEMAN: That's not the problem here, no.

27 MR. SWEENEY: Well, no.

28 MS. JARRELL: Well, it is a problem.

29 MR. SWEENEY: It is a problem. The problem is that
30 they're violating the ordinances, right?

1 MS. FREEMAN: They're requesting for a variance from
2 the regulations.

3 MR. SWEENEY: Right.

4 CHAIRMAN VALENTIC: But they can still meet the
5 variance by building the wall.

6 MR. SWEENEY: Correct.

7 MS. JARRELL: But the wall presents a hardship.

8 MR. SWEENEY: Correct.

9 CHAIRMAN VALENTIC: The cost.

10 MS. JARRELL: No, not just the cost.

11 MR. DAVIS: The thing is safety, too, because it's
12 got to be 8 feet tall.

13 MR. NADLER: It's sketchy. It's still tough to get
14 in and out of the garage with the wall there.

15 CHAIRMAN VALENTIC: Did you guys look at --

16 MR. SWEENEY: It is scary even with the grade.

17 CHAIRMAN VALENTIC: Did you guys look at an
18 alternative where it was a four foot wall and grading down but
19 didn't get into the wetlands?

20 MR. DAVIS: So if we're looking for a compromise,
21 yes. Okay? So I had my guy create this, which is, you know,
22 it's not ideal for the client because it's still steep but
23 it's not nearly as bad. So if you guys want to look at this
24 one, this is where we're like 13 feet off where we're not
25 fully encroaching. It's not ideal but the client can live
26 with it.

27 MR. SWEENEY: So instead of a car flipping over, it
28 just --

29 MS. JARRELL: Goes on its side.

30 MR. SWEENEY: -- goes on its side.

1 MR. DAVIS: It's just going to be real difficult to
2 mow, you know, and stuff but, you know, a car would roll down
3 it.

4 MS. FREEMAN: Do you have any more?

5 MR. DAVIS: Yeah, I've got nine copies.

6 MS. FREEMAN: Well, maybe one for Chad and one for
7 you.

8 MR. DAVIS: Oh, yeah.

9 CHAIRMAN VALENTIC: So, Heather, we are going to
10 just put this into the meeting today. We just -- Mr. Davis
11 submitted a revised drawing, dated October 21, 2019, a
12 complete set of drawings that shows revised grading and
13 approach to --

14 MR. SWEENEY: Yeah, I see what he's getting at here.

15 CHAIRMAN VALENTIC: So there is no wall in this
16 version here?

17 MR. DAVIS: No, we can make this work without a
18 wall. It's just where the lines are real close together where
19 we're encroaching, that's going to have to be like --

20 MR. GOLLING: Super steep.

21 MR. DAVIS: It's going to be real steep. It won't
22 be mowable but, you know, they'll put some sort of ground
23 cover there to retain it but at least, that way, then the rest
24 of it, we can grade out.

25 MR. SWEENEY: Are they okay with this, the owner?

26 MR. DAVIS: Yeah, they're okay with this compromise.
27 I feel horrible, too. I mean, they would have been here
28 tonight. It's just they've got to fly all the way from
29 California.

30 So, yeah, if we're looking for a compromise, this

1 would satisfy that as well. We're encroaching a maximum of 13
2 feet but only in a little spot.

3 MS. JARRELL: Should we hear from Chad?

4 MR. SWEENEY: Yes.

5 CHAIRMAN VALENTIC: Yeah, I think we're ready for
6 Chad.

7 MR. SWEENEY: Thank you.

8 CHAIRMAN VALENTIC: Thanks, guys.

9 MR. DAVIS: Yep. Thank you.

10 MR. EDGAR: My name is Chad Edgar. My address is
11 125 East Erie Street, Painesville, and I have been sworn in.

12 You've had my written comments; but I know that I'm
13 not the strongest writer, so I am going to try and summarize
14 what I've got there, along with some other information. The
15 first of which is the original delineation done for the
16 subdivision, 2001, expired in 2006. If you look at the map,
17 you will see the wetland in question from HZW with the stream
18 flowing into the wetland. The field sheet for data point 3 in
19 that wetland says that there is drainage patterns existing
20 within the wetland. Drainage pattern is defined as erosional
21 features, like a defined bed and bank.

22 So at the time that wetland delineation was done in
23 2001, I believe it -- they're not here to answer but there was
24 a stream inside that wetland.

25 CHAIRMAN VALENTIC: And the pond was much bigger
26 because I went back and looked at Google Earth.

27 MR. EDGAR: Yeah.

28 CHAIRMAN VALENTIC: And looked between 2012 and '14.
29 Something changed in that.

30 MR. EDGAR: Yeah, I will touch on that in a little

1 bit.

2 The next is a PARE prepared by HZW for ProBuilt that
3 shows a stream flowing into the wetland, stopping at the
4 boundary of the wetland but meeting the boundary of the
5 wetland. A PARE is not the same as a delineation.

6 This is the 2017 orthophoto, 2016 2-foot contours,
7 and the 2000 hydrology map. The stream stops short of the
8 pond because of that change in water levels. That shows the
9 defined channel through the wetland area. It shows a change
10 in vegetation indicative of wetlands. It shows a stream.

11 The next is the original application, which you've
12 seen. It shows a stream flowing through the wetland that was
13 done in 2001.

14 The next is Barrington's map from their compliance
15 site plan that, again, it's the same as the PARE, shows a
16 stream flowing into the --

17 MS. JARRELL: Where is the stream here, Chad?

18 MR. EDGAR: It's this pink line.

19 MS. JARRELL: Oh, it is the pink line, okay.

20 MR. EDGAR: All the way through.

21 And then, in the variance request, another map
22 provided by Barrington showed a stream flowing into the
23 wetland. So six maps all showing the stream flowing into the
24 wetland or through the wetland.

25 In addition, in July, myself and another staff member
26 conducted a site visit, observed defined bed and bank above
27 the wetland and below the wetland, not necessarily in the
28 wetland but above and below.

29 The township's Zoning Resolution does not talk about
30 stream and wetland complexes. It does not talk about a stream

1 flowing through a wetland. It does not talk about a stream
2 flowing around a wetland. Your zoning language talks about
3 riparian setbacks on a stream, setbacks on a stream that
4 capture the boundary of a wetland. When that occurs, whether
5 the stream flows through it or not, flows around it, stops,
6 whatever, stops short of it, if it captures the boundary of
7 the wetland, the appropriate wetland setback is applied.

8 So when I got the site plan showing a stream through a
9 wetland without the required setback information shown on it,
10 I contacted Wes. Wes is an engineering tech at Barrington.
11 "Wes, please put the zoning setbacks on there per code so that
12 we can evaluate if your plan is in compliance."

13 "Well, what are they?"

14 "You will have to do an ORAM to figure that out." That
15 was when I contacted Heather. Heather realized that the
16 applicant did not put that information on their site plan.
17 She revoked their plan.

18 Then we get this series of letters back and forth from
19 HZW. The wetland flows into it and the stream flows into it,
20 dissipates. So then the next one was it flows up to it, then
21 it dissipates. It flows towards it and then dissipates. So
22 all these different iterations but at no time has HZW or
23 Barrington or ProBuilt ever provided any information to the
24 township or to us that states the setback does not capture the
25 boundary of the wetland.

26 So what we have now is a PARE, not quite to the level
27 of detail as a delineation, showing a boundary of a wetland.
28 They're using that. They're requesting to grade up to that.
29 I believe you brought it up. This was discussed in a meeting
30 right here at this desk back in August, September, early

1 September, and we said, you know, we'd like you to do a
2 delineation and show where these waters of the U.S. are so we
3 can stake it in the field and see where it is. If you do
4 that, we will accept that. And if we're wrong, we're wrong.

5 They did not want to wait. They wanted to do a PARE.
6 It was a concession on our end if we were going to accept
7 that. A PARE is not in your text, a delineation is. But I
8 felt that it was appropriate at the time because that 30 feet
9 setback that would be applied gives you a margin of safety if
10 the PARE is incorrect.

11 Now, if the PARE is going to be used and there is no
12 margin of safety and you're grading right up to it, then
13 you're at risk of putting fill in a wetland. Just today, I
14 received a JD, which is the Corps' approval of a wetland
15 delineation, from HZW for a site in Concord Township that was
16 substantially different than the PARE.

17 So this isn't just, we just want to do it. There is
18 precedent that it's important that we do this process. And
19 had we not gone through this, if you look at the initial site
20 plan that was supplied and you look at the new boundary from
21 the PARE, there would have been fill placed in this wetland in
22 violation of federal law, probably by accident. I don't think
23 George or Barrington or their homeowners were doing anything
24 nefarious but it would have occurred. So this process is in
25 place for a reason and we go through these steps for a reason.

26 The second thing I would like to talk about, a couple
27 things in that letter that George wrote that I think need to
28 be addressed. In that letter, it kind of opens with a fact
29 that or statement that the wetland work boundaries and ORAM
30 categories were established in 2017. If that's the case, why

1 wasn't that information put on that initial site plan? Why
2 are we getting a site plan with 2001 information that expired
3 in 2006 and then we're getting ORAM information from 2019? It
4 doesn't make any sense to me.

5 Later in the letter, it goes on to state that the
6 boundaries were accepted by Zoning and later denied after Soil
7 and Water claimed the watercourse was present. Well, the
8 boundaries weren't put on the map. The riparian setback
9 boundaries were not put on the map. Per the requirements of
10 your own zoning code, they're supposed to give that to you and
11 it was not. Plus, it was old information that they put on
12 there with the old boundaries of the wetland.

13 So this isn't a matter of, you know, somebody not doing
14 what they are supposed to be doing other than the information
15 wasn't put on when it was supposed to be, okay, and it was
16 caught through the process that we have in place with the
17 checks.

18 And it wasn't denied because I stated there was a
19 watercourse. It was denied because they showed on their site
20 plan a stream through a wetland and I asked them to put that
21 appropriate setback on there.

22 It says that HZW stated to the contrary. I don't
23 believe that's the case. They have never stated that a stream
24 does not exist on the property. They're, again, talking about
25 a watercourse that may or may not enter the wetland but that's
26 not how your code reads. The code reads whether the setback
27 captures a wetland.

28 Later it says they were required to get a PARE. We
29 talked about the requirement. That was their choice to get a
30 PARE, not a requirement.

1 And then, lastly, it talks about the quote for that
2 work. The PARE was done on the 9th, submitted to us two days
3 later. And then that quote that they included, or estimate, I
4 think, that they included in the variance application was just
5 a few days after that, not weeks later that they couldn't
6 wait, just a few days. I think you could wait on that
7 information to make sure that your application is complete and
8 you have a budget.

9 I couldn't imagine building my house and telling my
10 builder, "Oh, yeah, just put something on the site plan and
11 I'll figure out if I have the money for it later." It doesn't
12 work that way. Why would you go forward with a plan submitted
13 to multiple agencies if you are not certain you have the
14 budget to build it, and then start it, under construction now
15 as we speak, when you might have to change that site plan due
16 to the new engineering or get delays for new funding to cover
17 a wall if this goes through? It didn't make any sense to me.

18 The dam issue, so when that subdivision was first
19 developed, the dam was under the jurisdiction of ODNR as a
20 Class III dam, their Division of Dam Safety. The earthen
21 embankment and the outlet structure did not meet their code,
22 needed substantial work done on it. So rather than upgrading
23 the dam to meet the current requirements, they lowered the
24 water level, which in effect removed it from the jurisdiction
25 of ODNR.

26 The Trustees had written letters. We've got some
27 information, preliminary information in our old files that I
28 dug up that the Trustees, back in 2007, were very interested
29 in making sure that that dam was taken care of because all the
30 stormwater from the subdivision goes through that, that dam.

1 So there is precedent of interest in that dam and the
2 amount of water that's going into that dam, which is why you
3 have riparian setbacks, so you're not taxing your
4 infrastructure any further. So it's very poignant in this
5 case that we're talking about, right next to this setback,
6 we've got a dam that's got known issues and what we're talking
7 about here is lessening your own riparian setbacks which were
8 put in place to prevent additional water from impacting those.

9 So, my opinion, you've got a conforming plan. It's
10 under construction. It's -- I don't know why that there is
11 any discussion on whether or not setbacks should or shouldn't
12 be in place because I think we're all in agreement that they
13 are valid in this case.

14 MS. JARRELL: So the stream was or was not on the
15 plan, original plan submitted?

16 MR. EDGAR: Yes.

17 MS. JARRELL: It was on there?

18 MR. EDGAR: It was.

19 MS. JARRELL: But there were no setbacks.

20 MR. EDGAR: There were no setbacks on the drawings.

21 MS. JARRELL: And so we approved a permit without
22 the setbacks that should have been there, right?

23 MS. FREEMAN: Correct.

24 MR. ROWE: It was a lapse of six days when it was
25 caught.

26 CHAIRMAN VALENTIC: Yeah. It wasn't months later.
27 And it was the responsibility of the engineer and the
28 consulting firm to put the setbacks on there.

29 And then did you have a chance to look at this new
30 plan that was just provided tonight?

1 MR. EDGAR: Briefly.

2 CHAIRMAN VALENTIC: Briefly.

3 MR. EDGAR: I think, if you're going to entertain
4 encroachment in that setback area, I would encourage you to
5 get an affirmed delineation before you made any decision.
6 That way, you know what the boundary is.

7 CHAIRMAN VALENTIC: Because, yeah, because, like
8 George pointed out, it looks like there is one pinch point. I
9 think it's 13, about 13 feet away. The rest of it's -- I
10 don't know -- some dimension further. It gets almost back up
11 to 30. But, yeah, there is no way to know if that's still
12 within the wetland or not.

13 MR. EDGAR: You know, again, HZW provided us a PARE
14 for another property in Concord Township a few months back.
15 We asked for a JD. We got the JD and it was substantially
16 different. Some wetlands were missing, some were larger, some
17 were smaller. So it occurs more frequently than you would
18 think that there is a difference between an affirmed
19 delineation and a PARE.

20 MS. JARRELL: And you get a PARE just because it's
21 faster?

22 MR. EDGAR: They requested a PARE because it was
23 faster, yeah.

24 MS. JARRELL: And how long does a delineation take?

25 MR. EDGAR: Well, that's up to whatever consultant
26 they find and their schedule and then getting it affirmed by
27 the Corps and their workload.

28 MS. JARRELL: I mean, we've already been multiple
29 months at this point, so a delineation could have been done.

30 MR. EDGAR: So it would probably be, easily, similar

1 to multiple months. You're not in the field season right now
2 to do delineations. They don't like to do them right now
3 because they're not as accurate, so the Corps kind of gives
4 them heartburn about it.

5 CHAIRMAN VALENTIC: That's the thing now, you don't
6 want to do it now.

7 MR. DAVIS: Chad, are you saying a delineation or a
8 jurisdictional determination? Because they're two different
9 things.

10 MR. EDGAR: So the delineation affirms -- Excuse me.
11 The JD affirms the delineation. So anybody can go out and do
12 a delineation if they've had the training. The Corps
13 ultimately has the say of whether or not that delineation is
14 accurate.

15 CHAIRMAN VALENTIC: Yes, that's the affirmed part of
16 it.

17 MR. EDGAR: That is the affirmed part of it,
18 correct.

19 MR. DAVIS: But that's different. There's three
20 levels. A PARE is the preliminary. Then you go to a
21 delineation, which I believe it talks about delineation, not
22 JD, right? JD is the third one. So you would be asking us
23 for a delineation, not a JD.

24 MR. EDGAR: I don't believe the PARE is any
25 regulatory data. I believe that's just a service that results
26 off of --

27 MR. DAVIS: I'm just saying, yeah, you're -- What
28 you are saying you would want from us is a delineation, not a
29 JD.

30 MR. EDGAR: Well, I am giving technical advice to

1 the BZA that, if they're going to allow grading up to the
2 boundary, that if you're allowing that, you would want to be
3 sure that what you're approving is in compliance with
4 everybody's rules, that a JD is really the only way to do
5 that.

6 MR. DAVIS: But if we go with the modified one where
7 we're 13 feet off --

8 MR. EDGAR: Well, I guess that's up to them to
9 decide what level of comfort they have.

10 CHAIRMAN VALENTIC: Any questions for Chad?

11 MR. SWEENEY: Not for Chad but for the builder.

12 CHAIRMAN VALENTIC: Okay.

13 MS. JARRELL: So you're recommending that a JD be
14 obtained.

15 MR. EDGAR: I recommended that, if you are going to
16 entertain encroachment into your setback, that the boundary of
17 that wetland be known with certainty, which would be a JD,
18 which a delineation occurs first and then their consultant
19 sends that delineation to the Army Corps of Engineers and
20 says, "Is this accurate enough for your standards?" And they
21 say yes or no. And if they say yes, then you use that
22 boundary. They can change that boundary, shrink it, increase
23 it.

24 CHAIRMAN VALENTIC: Because that will, yeah, that
25 can change again once the Corps looks at it, possibly.

26 MR. DAVIS: But you guys have granted variances
27 before without doing JDs. You guys have granted them with
28 PAREs and delineations.

29 CHAIRMAN VALENTIC: I don't know if that's a fact or
30 not.

1 MR. SWEENEY: I want to talk about this pond and
2 dam. Okay. The level of the pond right now is at its lowest
3 and that was artificially created in order to comply with the
4 federal regulations?

5 MR. EDGAR: So we're going back long before I did
6 any of this stuff, so I am reading back through files trying
7 to piece together the information. But there are different
8 levels of classifications of dams based on the risk of failure
9 and what might occur if that dam failed. Okay? And ODNR has
10 different regulations for what they require based on those
11 classifications. So this one was the most dangerous because
12 of the proximity of the homes in the shadow of the dam. So if
13 it failed, there would be catastrophic loss of homes and --

14 MR. SWEENEY: Sure.

15 MR. EDGAR: So they said, "You have to do X, Y, Z."
16 And I still have yet to find that document in the file. But
17 ODNR said, "You have to do X, Y, Z to fix this." And rather
18 than fixing it, because it's very costly to do that, there was
19 no reason to keep the dam or to keep the pond as big as it
20 was. They didn't need it. So they lowered the level of the
21 dam, which then decreases the risk because you have less water
22 that could potentially go downstream.

23 MR. SWEENEY: Right.

24 MR. EDGAR: And took it out of their jurisdiction of
25 the Class III.

26 MR. SWEENEY: Well, and I really don't care why they
27 did it. The point is that I wanted to know because, in terms
28 of the life span of this pond, how is -- What's going to
29 happen? Do we know what's going to happen in 10, 20 years
30 from now in terms of runoff, further building creating more

1 runoff, somehow the pond retaining more water and encroaching
2 even further? I mean, what's going to happen because, right
3 now, we're at a low point, right?

4 MR. EDGAR: I guess I would have to look at the
5 outlet structure to determine how it functions to know exactly
6 how that water level is controlled in the outlet structure.
7 But to answer your question, that would require quite a bit of
8 hydraulic analysis by an engineer to do that.

9 MR. SWEENEY: Okay. Well, these areas change over
10 -- they change.

11 MR. EDGAR: What areas?

12 MR. SWEENEY: They change on a day-to-day or a
13 year-to-year basis. These wetlands, the water level of ponds,
14 they all change, don't they, from year to year?

15 MR. EDGAR: The water level of the pond is
16 relatively static. You get a rainfall, it might expand in
17 size by a little bit but then the outlet structure, the
18 elevation of that outlet structure will then control the
19 elevation of the surface water of the pond. So that really
20 doesn't change that much.

21 MR. SWEENEY: Okay. So then the owner is not going
22 to wake up one day after a 100-year rain and that driveway is
23 going to be almost starting to be under water?

24 MR. EDGAR: No, I wouldn't -- No. I would imagine
25 that the lowest elevation of the emergency spillway is
26 substantially below that pond.

27 MR. SWEENEY: Okay. All right. So we got that
28 going for us.

29 MR. GOLLING: What would happen if, let's say we
30 just -- they graded it off, they didn't put a wall and, just

1 out of pure ignorance, didn't know they were supposed to do
2 it, what would happen to the wetlands if they did that right
3 there?

4 MR. EDGAR: They graded into the wetland?

5 MR. GOLLING: Yeah.

6 MR. EDGAR: And somebody caught them?

7 MR. GOLLING: No, no, no. Just would the water,
8 would the water -- And somebody caught them, that's different.
9 Would the water, like, would the water go around it? Would it
10 -- How would it affect it?

11 MR. EDGAR: So wetlands are like natural stormwater
12 infrastructure. Okay? So they accept water and release it at
13 a slower rate just like the basins that we try and build for
14 stormwater capacity. All right? So if you are grading into
15 those areas, you are reducing that wetland's ability to do
16 that. So then runoff generated by this parcel bypasses that
17 wetland or -- so it's got a finite capacity to soak up X
18 amount of water. Now it's X minus some percentage based on
19 the amount of fill that's put in.

20 You know, obviously, we're not talking about
21 destroying the whole wetland if they were -- maybe they would.
22 We're talking hypothetical. But for minor things, you know,
23 maybe you don't see much of a change but it's this -- The
24 reason you've got these setbacks in place is to stop this
25 incremental cuts to your infrastructure which is causing
26 Mr. Kraska so many headaches replacing culverts and mucking
27 out ditches and basins and everything else.

28 MR. GOLLING: So is this a babbling brook, a creek,
29 or is it dry until it rains? I mean, is it a swale?

30 MR. EDGAR: The stream that enters this pond is

1 intermittent, so it will flow for good portions of the year.
2 Once you get into late summer, it's probably pretty dry until
3 you start getting some small rains and then it will probably
4 flow for a while and flow through winter, spring, during the
5 wet season. Then during the summer, it dries up again.

6 CHAIRMAN VALENTIC: So Category 2 wetland, can you
7 kind of walk us through what that means versus a different
8 category?

9 MR. EDGAR: Okay. So the Ohio EPA has a methodology
10 called the Ohio Rapid Assessment Method that categorizes
11 wetlands into one of three categories, Category 3, Category 2,
12 Category 1. Just for quick reference, your zoning code does
13 not require any setbacks on Category 1, 30 feet on Category 2,
14 and I believe it's 50 feet on Category 3.

15 Basically, they look at the wetland's function and
16 its natural features and they rank it subjectively based on
17 its size, how much of a buffer it has from other things, how
18 many invasive species are in there, how much stormwater is in
19 there, how many rare, endangered species there might be in a
20 wetland, and they come up with a numerical score that ranks it
21 into one of those three categories.

22 CHAIRMAN VALENTIC: Did you see the ORAM? Was this
23 a solid 2 or was this --

24 MR. EDGAR: They did, yeah.

25 MR. SWEENEY: All right. So we have a category --
26 I'm sorry. So we have a category that has no setback.

27 CHAIRMAN VALENTIC: No, Number 1 has no setback.

28 MR. EDGAR: Number 1 has no setback. This is
29 Category 2 that has 30.

30 MR. SWEENEY: You have a category named Number 1

1 that has no setback.

2 MR. EDGAR: You do, the township.

3 MR. SWEENEY: Yes.

4 CHAIRMAN VALENTIC: The township does.

5 MR. SWEENEY: Oh, we do.

6 MR. EDGAR: Yes.

7 MR. SWEENEY: But it applies to you, too, in your
8 evaluations.

9 MR. EDGAR: No, we don't apply setbacks. We just
10 review, when we get a site plan in, we review to make sure
11 that everybody is in compliance with everybody's rules before
12 we approve.

13 CHAIRMAN VALENTIC: That's why I was asking.

14 MR. SWEENEY: And our setbacks are more or less
15 arbitrary.

16 CHAIRMAN VALENTIC: I wouldn't call them arbitrary.

17 MR. EDGAR: They're what?

18 MR. SWEENEY: I mean, I shouldn't use that word.

19 CHAIRMAN VALENTIC: A Category 1 is a lower quality
20 wetland, so there is --

21 MR. SWEENEY: It depends on the location and the
22 plot and the time of year and lot of different things.

23 MR. EDGAR: So not time of year. But your setbacks
24 are increased based on the quality and function of the
25 wetland. So higher functioning wetlands get larger setbacks
26 because we realize that encroachment into those setbacks can
27 impact the wetland.

28 MR. SWEENEY: So not necessarily because of the
29 water flow or amount of water flow.

30 CHAIRMAN VALENTIC: It's the quality of the wetland.

1 MR. SWEENEY: It's a quality of the wetland.

2 MR. EDGAR: That is one of the functions of the ORAM
3 is how much water is in the wetland but it is not the only.

4 MR. SWEENEY: I gotcha. All right. Now I
5 understand.

6 CHAIRMAN VALENTIC: Okay. You guys got anything
7 else for Chad?

8 MS. JARRELL: I just want to, I want to talk about,
9 again, what could possibly happen if they did grade into the
10 wetland. Let's just say they did this 13 feet thing here. Do
11 you think, I mean, hypothetically -- I know you don't have a
12 crystal ball -- but do you think the water is going to affect
13 the neighbor? I mean, what's really the ultimate outcome that
14 we're trying to avoid?

15 CHAIRMAN VALENTIC: I think part of it is that they
16 can't, federally, right? Chad, could you just walk us again
17 quickly through that? There's federal requirements that we
18 can't -- that they cannot grade into the wetland unless they
19 mitigate or do other procedures. I mean, that's part of this
20 issue.

21 MR. SWEENEY: It's just a bright line.

22 MS. FREEMAN: Mr. Chairman, if you don't mind,
23 Ms. Jarrell, your question, you said 13 feet into the wetland
24 or do you mean 13 feet into the setback?

25 MS. JARRELL: Into the setback.

26 CHAIRMAN VALENTIC: Into the setback, the setback.

27 MS. FREEMAN: So looking at the compromise plan, now
28 you're asking, what would be the impact if we allowed them to
29 come 13 feet into the wetland setback?

30 MS. JARRELL: Yes.

1 MR. EDGAR: There really is no way to answer that
2 question.

3 MS. JARRELL: Okay.

4 CHAIRMAN VALENTIC: Yeah, that's going to be on us
5 if that's --

6 MR. ROWE: Plus, you don't know if that's exact
7 because without the further --

8 MS. JARRELL: I was just asking.

9 MR. ROWE: -- delineation and the procedures.

10 MS. JARRELL: Well, I mean, I know there is no
11 crystal ball but I just wondered what your thoughts were.
12 That's all.

13 MR. EDGAR: There is really no way to answer that
14 question.

15 MS. JARRELL: Okay.

16 MR. EDGAR: I am going to grab a quick drink.

17 CHAIRMAN VALENTIC: All right.

18 MR. NADLER: Can I just address the --

19 CHAIRMAN VALENTIC: Yeah, we're still open to the
20 public. Come on up.

21 MR. NADLER: All right. A little history on the
22 pond.

23 CHAIRMAN VALENTIC: What's your name again?

24 MR. NADLER: Larry Nadler.

25 MR. SWEENEY: And you are?

26 MR. EDGAR: The property developer. I am the
27 developer.

28 MR. SWEENEY: Thank you.

29 MR. NADLER: We bought the property from Lake Erie
30 College in 2001. At the time we bought it, that was a dam.

1 Unbeknownst to us, they had gotten letters dating back 30
2 years from ODNR regarding maintenance. Morley Road is the
3 actual dam. Okay?

4 CHAIRMAN VALENTIC: Yeah.

5 MR. NADLER: They had gotten letters going back 30
6 years about maintenance on the dam. We finally took it over
7 and decided, after dealing with our engineer and other people,
8 that was going to cost us probably \$150,000 to upgrade that
9 and then it would have been a constant maintenance issue for
10 the homeowners' association which they couldn't afford to do.
11 So we spent about \$100,000 and did what had to be done clean
12 up the bank, pulled trees, get stumps out, put an overflow in,
13 lowered the dam to the level it is now, and then it became a
14 much less of a maintenance issue. And the water from that
15 pond is partially water that flows down from other
16 developments in Concord.

17 And it's my understanding -- and I have to go back
18 and look at my notes -- it's the county's responsibility for
19 the major maintenance like dredging. It's the homeowners'
20 association's responsibility for the day to-day maintenance
21 like cleaning out the overflow and that kind of thing.

22 But this, again, it goes back to Lake Erie College,
23 which we were a big supporter of them, so we didn't go back to
24 them. We just took it upon ourselves to do it and do it right
25 and that's where we are now.

26 CHAIRMAN VALENTIC: Okay.

27 MR. SWEENEY: When was -- When did building begin on
28 this house?

29 MR. NADLER: On this house, when did they start?

30 MR. DAVIS: I don't know the exact date. Sometime

1 in September or October probably.

2 MR. SWEENEY: Okay.

3 CHAIRMAN VALENTIC: Any questions for Mr. Davis as
4 well?

5 MS. JARRELL: Chad, could you come back, please?

6 MR. EDGAR: Sure.

7 MS. JARRELL: Why is that dam there? What's the
8 purpose of the dam?

9 MR. EDGAR: I don't know. Probably wanted -- Maybe
10 it was for irrigating their pastures or watering the horses or
11 recreation. I really don't know why the dam was there.

12 MR. GOLLING: So if they removed it, then the
13 riparian goes way down, right?

14 MR. EDGAR: No.

15 MR. GOLLING: No?

16 MR. EDGAR: It does not affect the riparian setback.
17 It has no bearing on the setback.

18 MS. JARRELL: The dam and that wetland have no
19 bearing on each other?

20 MR. EDGAR: In terms of a setback, no. I would
21 think that if the dam went away, theoretically, you could
22 lower the water table in the vicinity and then you might not
23 have the hydrology to support a wetland in there and
24 eventually that wetland might go away, but that's supposition
25 that that's a ground water wetland because there is different
26 types of wetlands, and I don't know what type of wetland that
27 is. So that's just a guess.

28 And I believe that that pond serves as the
29 stormwater basin for Mountainside; is that correct?

30 MR. NADLER: Mountainside and up toward Pinecrest.

1 MR. EDGAR: So it couldn't go away. It had to be
2 maintained in some function. It could be modified to just be
3 a dry basin, I suppose, but that hole back there will remain
4 in some form.

5 MS. JARRELL: Okay. Thank you.

6 MR. SWEENEY: Here you go, Chad.

7 CHAIRMAN VALENTIC: Yeah, give him his stuff.

8 Any other questions for anyone else?

9 MR. SWEENEY: No.

10 MS. JARRELL: Mr. Davis, do you know why that --

11 CHAIRMAN VALENTIC: Can you come up, Mr. Davis,
12 please?

13 MS. JARRELL: Do you know why the setbacks weren't
14 put on the original map?

15 MR. DAVIS: So, no, honestly, I don't. But I
16 believe it's because when -- Okay. So now we're going to get
17 the whole Concord Township riparian thing. So when these
18 riparians were first put on, right, nobody asked for any
19 builder community input, right?

20 CHAIRMAN VALENTIC: We heard you tell us that.

21 MR. DAVIS: So what happened is we went and we had
22 HZW -- Because I am building in there, right, and I don't want
23 to lie to our clients, right? So we had HZW look at all the
24 wetlands that were in Mountainside and the streams and all
25 that stuff and say, "Hey, where do we have riparians? Where
26 do we not have riparians," right? And that's how we came up
27 with, like, we were in here before where we got those
28 riparians on that stream on Burgundy.

29 CHAIRMAN VALENTIC: Yeah.

30 MR. DAVIS: And then like Lot 103, 104 had some

1 wetland on it that had the riparian. And this one was not --
2 did not have a riparian because the stream lost its defined
3 bank. The water, I should say the watercourse, the stream,
4 whatever, the watercourse lost its defined bank. So if the
5 defined bank doesn't go in, doesn't -- I should use Chad's
6 language correctly. If the riparian around the defined bank
7 of the stream does not touch the wetland, then the wetland
8 doesn't have a riparian. So that's why we didn't have a
9 riparian on that.

10 MS. JARRELL: But the stream was on the map.

11 CHAIRMAN VALENTIC: On the map Chad showed us, the
12 stream is shown on there.

13 MS. JARRELL: The stream is on there.

14 CHAIRMAN VALENTIC: It is not labeled.

15 MR. DAVIS: But it wasn't labeled a stream. I don't
16 know what the line is. When Barrington -- I don't know. What
17 does that line mean? Is it a stream or is it grade line? I
18 don't even know.

19 MR. EDGAR: It runs directly down the middle of the
20 V-shopped contours, which anybody that knows how to interpret
21 contour lines knows that that's a drainageway, stream,
22 watercourse.

23 MR. DAVIS: Well, drainage way but not necessarily a
24 watercourse, a drainage way but not necessarily a watercourse
25 because a watercourse has to have defined banks and it didn't
26 have defined banks.

27 MR. SWEENEY: You were in here. I remember the
28 Burgundy variance, that and there was another one or, at
29 least, the one that we heard. And that stream -- And I
30 believe we granted a variance on that.

1 MR. DAVIS: Correct.

2 MR. SWEENEY: Is that stream on Burgundy -- And I
3 don't know where the streets run but is this stream downstream
4 from that?

5 MR. DAVIS: This is that same --

6 MR. SWEENEY: Right, it's the same stream.

7 MR. DAVIS: -- ditch, stream, whatever.

8 MR. SWEENEY: Almost nonexistent stream.

9 CHAIRMAN VALENTIC: But it's a stream.

10 MR. SWEENEY: Correct.

11 MR. DAVIS: Well, it has defined banks up on
12 Burgundy. It loses the defined bank as it comes south of
13 Karaboo. All right?

14 MR. SWEENEY: Okay.

15 MR. DAVIS: But it's the same stream that we've been
16 in, except the one. The one that was on Karaboo is a
17 different little thing that goes into that same pond.

18 MR. SWEENEY: Okay. But that was resolved.

19 MR. DAVIS: But we got variances on those.

20 MR. SWEENEY: All right.

21 MR. DAVIS: So I think maybe the mistake was I was
22 maybe asking -- and if I could apologize -- maybe asking for
23 the whole 30 feet has got this on a bad way and if I could
24 amend it to just ask for the compromise, which we're only
25 encroaching 13 feet in a little bit of the area, you know. My
26 client's okay with that. Maybe if we just ask for that
27 instead of the whole 30 feet, that eliminates some of this
28 pressure.

29 MR. SWEENEY: It sure goes a long way to help.

30 MR. DAVIS: Yeah. And my client's okay with that.

1 We modeled that in 3D form so they could see how steep it was
2 and they were okay with that.

3 MR. SWEENEY: A step in the right direction.

4 MR. DAVIS: And we're only encroaching at the -- At
5 one point are we 13 feet, most of it's much less than that.

6 MR. SWEENEY: So do you want to amend your --

7 MR. DAVIS: I would like to if I could.

8 CHAIRMAN VALENTIC: Go for it.

9 MR. DAVIS: I would like to amend my application for
10 a variance to ask for an encroachment of 13.05 feet into the
11 wetland.

12 MR. SWEENEY: At its widest point?

13 MR. DAVIS: At its widest point.

14 CHAIRMAN VALENTIC: And then are you going to amend
15 to include the delineation and the JD, or no?

16 MR. DAVIS: Well, I would ask for a delineation, not
17 a JD. I mean, I think a delineation is what would be normal.
18 But, yeah, we could provide that delineation so that, if it
19 changes, we still don't encroach more than 13 feet, if that
20 would be okay with Chad.

21 CHAIRMAN VALENTIC: It is not up to Chad, it's up to
22 us. I mean, Chad's recommendation was that we get a JD, so
23 that's up to us to decide.

24 MR. DAVIS: I think his recommendation was a JD if
25 we were encroaching all the way because we might be in the
26 wetland. I mean, if we're not encroaching all the way, is it
27 still necessary? That's what I am just asking.

28 CHAIRMAN VALENTIC: Okay.

29 MR. SWEENEY: Okay.

30 CHAIRMAN VALENTIC: You guys have any other

1 questions?

2 MR. SWEENEY: I think these are yours.

3 CHAIRMAN VALENTIC: I am going to keep the public
4 comment period open for a while but is there anyone else
5 speaking here for or against the appeal that would like to
6 come up? Come on up.

7 Thank you, George.

8 MS. KOTLARSIC: Yeah. Good evening, hello. I'm
9 Constance Kotlarsic. This is my husband, Gerald. We live at
10 10151 Karaboo Trail. And, yes, we've been sworn in.

11 CHAIRMAN VALENTIC: Okay.

12 MR. KOTLARSIC: We're the neighbors just west.

13 MS. KOTLARSIC: Yes.

14 MR. KOTLARSIC: The house right next to the --

15 MR. SWEENEY: The other side of the --

16 MS. KOTLARSIC: Yes. We have the wetlands on our
17 property as well. We bought up to that. Our only concern for
18 being here tonight is because we want to make sure that there
19 is not going to be a soil issue. Our property does come down
20 lower to the water stream and we want to make sure that that's
21 not going to be an issue because, right now, we have pond
22 issues with the drainage where it does get backed up from time
23 to time and it's all filling in. Where that house is going to
24 be at, their side of the property and part of ours, the pond
25 is filling in with a lot of mud. It really needs to be
26 dredged. And I am worried that, eventually, that's going to,
27 like, back up into that stream, and I want to make sure that
28 there is not going to be any soil drainage.

29 MS. JARRELL: Well, there is that crystal ball thing
30 again. I think you would probably be better to address the

1 possibility of that happening. I mean --

2 MS. KOTLARSIC: I even have video.

3 MS. JARRELL: This is really not the venue to --

4 CHAIRMAN VALENTIC: We can't, yeah, we can't tell
5 you what's going to happen.

6 MS. KOTLARSIC: I understand about the pond but,
7 like I said, I just want to make sure there is no drainage
8 issue with where they are building up. I mean, we don't want
9 to disturb the neighbors. We want them to be able to, you
10 know, have their driveway. It's just our concern is how is
11 that going to impact the wetlands, at least, on our property?
12 And --

13 MR. KOTLARSIC: Yeah, it's just to be sure that, in
14 the future, they don't create a further problem down the road.
15 I think with -- And I didn't see his last proposal but that
16 sounds a lot better to me than coming all the way over, you
17 know, the zero point what --

18 MS. KOTLARSIC: And the other issue -- I am sorry.
19 Go ahead. The other issue is just that, you know, we lived in
20 Mentor. We raised our kids for 20 years. We wanted to move
21 to a place where we had more serenity, more wildlife. That's
22 why we chose Mountainside Farms and we chose the lot we did,
23 because we have the wetlands and we have them on both sides of
24 us, and there is a lot of nature and there is a lot of
25 wildlife. I just don't want to see that get completely
26 disturbed either because we do enjoy that. That's a plus for
27 us where we live and part of why we decided to move there. I
28 know it's not relevant but that's our take on it.

29 MR. SWEENEY: Well, no.

30 MS. KOTLARSIC: We appreciate your time. Thank you.

1 CHAIRMAN VALENTIC: We appreciate it. Thank you.

2 MR. GOLLING: I have just one question -- two
3 questions. When did you move in? And did you fall off your
4 Harley?

5 MS. KOTLARSIC: No. We moved in, we moved in four
6 and a half years ago, 2015, we built our home there. And I
7 did not fall off a Harley. I had surgery. So, no, we're
8 good.

9 MR. SWEENEY: Good luck.

10 MS. KOTLARSIC: But thank you for listening.

11 MS. JARRELL: Thank you.

12 CHAIRMAN VALENTIC: Is there anyone else that's here
13 speaking for or against the appeal that would like to come up?
14 All right. I am going to keep the public portion of our
15 meeting open still and I will close that later in case we do
16 want to talk to anybody else.

17 MR. SWEENEY: Okay, sure.

18 CHAIRMAN VALENTIC: Because that seems to happen
19 with this group.

20 So I will entertain a motion to approve Variance
21 Number 2019-55.

22 MR. SWEENEY: So moved.

23 CHAIRMAN VALENTIC: A second?

24 MS. JARRELL: Second.

25 CHAIRMAN VALENTIC: Okay. Discussion for the Board,
26 who wants to start and go for it?

27 MR. GOLLING: I learned more than I thought I would.

28 MR. ROWE: It was a little difficult to -- Again, I
29 know Chad is an advisor or, you know, whatever and a very good
30 one. But to not get this thing nailed exactly, I mean, we're

1 accepting something that, you know --

2 CHAIRMAN VALENTIC: Could go down, yeah.

3 MR. ROWE: I find that to be an issue. I mean,
4 we've lived in the township and the water and the weather --

5 CHAIRMAN VALENTIC: Yeah, you've been through it, I
6 know you have.

7 MR. ROWE: It's a lot. So that's one view that I
8 have.

9 MR. SWEENEY: I just think this is a reasonable
10 compromise involving a very difficult situation with competing
11 interests that are -- that I can see the points of both. Let
12 me just put it to you that way.

13 MS. JARRELL: Are you done?

14 MR. SWEENEY: Yes.

15 MS. JARRELL: Okay. I guess that one of the
16 problems that I really have with all this is that the setbacks
17 weren't put on the original plat and that went to the township
18 for approval without the setbacks and they were given a
19 permit. And we're always telling folks, you know, "Do your
20 homework before you sign on your deed," and they did do their
21 homework. They closed on their deal and now we've got a
22 situation. And I think --

23 CHAIRMAN VALENTIC: Well, they kind of did and they
24 kind of didn't do their homework because they could have asked
25 Heather, "Hey, we have this stream. We have this wetland."
26 And everyone kind of seemed, everyone had this gray, it's
27 definitely gray because we hear a couple different kind of
28 determinations of what that was and that was never brought up.

29 MS. JARRELL: But it was incumbent on the
30 township -- no offense, Heather, really, no offense -- but it

1 was incumbent on the township. We had just instituted those
2 riparian setbacks a year before. They should have been on the
3 plat. That should have been Flag Number 1, should have seen
4 that, and the permit was approved.

5 CHAIRMAN VALENTIC: But we have -- That's why we
6 have the checks and Soil and Water also approves it and that's
7 where it was caught six days later. We're not talking about a
8 month later or two months later or the house is getting built
9 and the pad is in and then we're finding it. That, to me, is
10 a little different story. I am not trying to -- I'm just
11 devil's advocate kind of talking it through as we --

12 MS. JARRELL: No, I understand what you are saying.

13 CHAIRMAN VALENTIC: So this whole thing is kind of
14 gray. That's what I am struggling it.

15 MS. JARRELL: Right. So -- But that's why it's a
16 problem, it's an issue. And so then you've got those folks
17 that spent a great deal of money on this land and they want to
18 come in and build a home and everything has changed. And I
19 think that this is a good compromise. I agree with Skip
20 completely that this is a good compromise, given what has
21 transpired up to this point, that 13 feet is a good
22 compromise. I think a delineation should be required, not a
23 JD, because I also think that that is a compromise. Being in
24 real estate, I know what the Army Corps does to real estate
25 deals. And I think that we're really leaving these folks with
26 a severe hardship if they go and they get this JD and then all
27 of a sudden, you know, everything is worthless.

28 I just think that, given what we know, given our
29 setbacks, given a nominal 13 feet and having them do the
30 delineation to kind of cross our T's and dot our I's, I think

1 that that's the compromise that we need to be making here
2 because there were mistakes along the way on everybody's side.
3 And I don't think that we should be, you know, putting the
4 hammer down on these people and asking for a JD.

5 And, Jim, you said, you know, we're never going to
6 know for sure. We could ask for a JD on every one of these
7 cases. That's ridiculous. That's ridiculous.

8 CHAIRMAN VALENTIC: Todd, do you have anything you
9 want to add?

10 MR. GOLLING: Yeah. As someone who, when you buy a
11 home, just signs, "Tell me what I need to do," I am totally
12 ignorant of this. You guys are the experts. And it just
13 seemed like the, when it was first -- It should have been on
14 there. The experts should have put it on there. However, we
15 should have caught it, too. And the people that are left
16 holding the bag are the folks that are trying to move into our
17 township here.

18 MS. JARRELL: Right.

19 MR. GOLLING: And they went to the builder on good
20 faith and said, "Can you build this house? Can we do it
21 here?"

22 He hears back and says, "Yeah, we're cool. We can
23 do it here." And then, you know, we got to put the brakes on
24 but at that point, you know, it's six days. So the house, you
25 know, we could have stopped the building or I don't know how
26 long it takes to break ground after we get the approval of the
27 permit but, you know, six days and then we're still building
28 here while this is in limbo, if I am understanding this right.

29 CHAIRMAN VALENTIC: That's what it sounded like.

30 MR. GOLLING: Yeah. So, you know, I am looking at

1 the picture of this minivan parked in front of the garage and
2 the garage is useless, the way it stands right here. I don't
3 know how you get a car in this garage. Someone is going to
4 whack that third garage door wall there.

5 But, you know, the compromise is, it seems, if we're
6 allowed to and it fits, you know, 13 feet -- I am worried
7 about the neighbors, you know. Obviously, I don't want to see
8 water going to their house because my question was, you know,
9 if we graded it out, would it scooch water towards the
10 neighbor's house and flood them?

11 CHAIRMAN VALENTIC: We don't know.

12 MR. GOLLING: Yeah, we don't know.

13 CHAIRMAN VALENTIC: But you're filling it. Remember
14 what a wetland does. I think, as Chad said, it's a place
15 where water sits.

16 MR. GOLLING: And gets absorbed.

17 CHAIRMAN VALENTIC: Right. So now when you fill it,
18 you're eliminating that opportunity.

19 MS. JARRELL: Do we know definitively how much 13
20 feet into the setback is going to affect?

21 CHAIRMAN VALENTIC: No.

22 MS. JARRELL: We do not.

23 CHAIRMAN VALENTIC: We can can't make that
24 determination.

25 MS. JARRELL: No.

26 MR. GOLLING: But, you know, this is a small amount
27 of square footage compare to what was proposed, so I feel
28 better about this compromise here. And, you know, the end
29 thing is the new occupants here, that they're waiting on us to
30 make this decision here and I think that's probably a good

1 compromise.

2 CHAIRMAN VALENTIC: So the Board wants to agree to
3 the compromise, which is a 13.05 foot setback.

4 MS. FREEMAN: The Board wouldn't agree but you are
5 going to vote on that.

6 CHAIRMAN VALENTIC: We're going to vote.

7 MR. SWEENEY: On the amended --

8 CHAIRMAN VALENTIC: The amended version, which is a
9 13.05 --

10 MS. FREEMAN: Encroachment.

11 CHAIRMAN VALENTIC: -- encroachment and a
12 delineation done by --

13 MS. FREEMAN: With the condition of a delineation.

14 CHAIRMAN VALENTIC: -- done by a professional
15 wetland scientist in the area to -- but not a JD done.

16 MS. JARRELL: That's my opinion.

17 CHAIRMAN VALENTIC: And that's, George, just to
18 confirm, that's what you, that's what you had put forward as
19 well?

20 MR. DAVIS: Yes, we will love to do that.

21 CHAIRMAN VALENTIC: Okay.

22 MS. FREEMAN: Mr. Chairman, can I just ask a
23 question?

24 CHAIRMAN VALENTIC: Sure.

25 MS. FREEMAN: So if the delineation is done and this
26 wetland location changes --

27 CHAIRMAN VALENTIC: Which it could, yes.

28 MS. FREEMAN: So then they're still only allowed to
29 encroach whatever that new setback is by 13.05 feet.

30 MR. DAVIS: Correct, yeah, our maximum encroachment

1 would have to be 13.05.

2 CHAIRMAN VALENTIC: Yes.

3 MR. DAVIS: So we might have --

4 MS. FREEMAN: So if it grew, the wetland grew --

5 CHAIRMAN VALENTIC: If it grew, then we would have
6 to make it steeper.

7 MS. FREEMAN: Or if it shrunk, then you would have a
8 little bit more room.

9 Also, I wanted to point out, I measured the proposed
10 driveways on the compromised plan versus the plan that we
11 approved that's currently under construction. It's the same
12 size driveway pad, 28 feet wide.

13 MR. GOLLING: So there is no change --

14 MS. FREEMAN: There is no change.

15 MR. GOLLING: -- getting in and out of their
16 driveway.

17 MS. FREEMAN: Yeah. The plan that's approved that
18 they are currently building is the same driveway plan that
19 they're proposing on the compromise, just without the
20 retaining wall.

21 MS. JARRELL: I think the wall is the issue.

22 MR. DAVIS: So if I can speak to that though.

23 CHAIRMAN VALENTIC: Come on. Go ahead, George.
24 Come on up.

25 MR. DAVIS: So the, you know, the plan is just a
26 representation, it's not reality. So the reality is, in order
27 to build that retaining wall, we have to be about 5 feet off
28 of the riparian because we can't go into the riparian when we
29 are building. And the retaining wall doesn't go straight up.
30 They go at an angle back. So the reality is, by the time we

1 get that retaining wall, then it's 8 foot tall and it's going
2 back at an angle, it's 23, maybe 24 feet, but realistically 23
3 because then we've got to put a guardrail on there to try to
4 keep cars from falling off it.

5 So with the retaining wall and the angle of the wall
6 and the space that we can't go in the riparian, the reality is
7 it would be about 23 feet of concrete.

8 CHAIRMAN VALENTIC: I just ask, in the future when
9 you come back in, show the actual conditions then. Because if
10 we're looking -- Heather made a great point. You know, that
11 kind of comes into play. If both versions show 28, we're
12 really not sure what the hardship on the plans are. Next
13 time, just be clear so we can see that hardship on the plans.

14 MR. DAVIS: Correct, yes, okay.

15 CHAIRMAN VALENTIC: Okay. Is there anything else
16 before we close this to the public?

17 MS. JARRELL: No, thank you.

18 CHAIRMAN VALENTIC: No, okay. So the public hearing
19 for, the public hearing for Variance Number 2019-55 is now
20 closed to the public. So the -- I want to make sure. Correct
21 me if I am wrong. So the question is on approval of the
22 Variance Number 2019-55, by Mr. George Davis, of ProBuilt
23 Homes, is requesting a variance on behalf of the property
24 owners, Karl and Patricia Rollner, from Section 27.04(D)(4)(b)
25 and 17.07(A) to allow for soil disturbing activities related
26 to construction of a single-family dwelling with a 13.05
27 foot --

28 MR. ROWE: Tie it to this.

29 MS. FREEMAN: Encroachment.

30 CHAIRMAN VALENTIC: -- encroachment, as shown in the

1 exhibit this evening, and they will provide -- with the
2 condition that they provide a delineation by a professional
3 wetland scientist or appropriate professional to determine the
4 wetland limits, which is in lieu of the 30 feet that is
5 required for the property located on 10165 Karaboo Trail. Did
6 I get that? Okay. That's what I will go with.

7 Heather, please call the vote.

8 MS. FREEMAN: Do we have a motion, please?

9 CHAIRMAN VALENTIC: Oh, sorry.

10 MS. FREEMAN: And a second?

11 CHAIRMAN VALENTIC: Can I please have a motion?

12 MS. JARRELL: So moved.

13 CHAIRMAN VALENTIC: Second, somebody?

14 MR. ROWE: Second.

15 CHAIRMAN VALENTIC: Okay. Now a vote, please,
16 Heather.

17 MS. FREEMAN: Mr. Sweeney?

18 MR. SWEENEY: Yes.

19 MS. FREEMAN: Ms. Jarrell?

20 MS. JARRELL: Yes.

21 MS. FREEMAN: Mr. Rowe?

22 MR. ROWE: No.

23 MS. FREEMAN: Mr. Golling?

24 MR. GOLLING: Yes.

25 MS. FREEMAN: And Mr. Valentic?

26 CHAIRMAN VALENTIC: No.

27 The ayes have it. Your variance is approved. Thank
28 you very much.

29 Next on the agenda is approval of minutes from
30 November 13, 2019. Do I have a motion to approve the minutes,

1 or are there any additions or deletions?

2 MS. JARRELL: So moved.

3 MR. SWEENEY: Second.

4 CHAIRMAN VALENTIC: Abstentions?

5 MR. SWEENEY: You weren't here.

6 CHAIRMAN VALENTIC: Jim is abstaining. I am
7 abstaining. So all in favor of the minutes as written say
8 "aye."

9 (Three aye votes, no nay votes, two abstentions.)

10 CHAIRMAN VALENTIC: Okay. The minutes have been
11 approved from November 13, 2019.

12 Our meeting of Concord Township Board of Zoning
13 Appeals for December 2019 is now closed.

14 (Whereupon, the meeting was adjourned at 8:24 p.m.)

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1 STATE OF OHIO)
2 COUNTY OF CUYAHOGA)

CERTIFICATE

3 I, Melinda A. Melton, Registered Professional
4 Reporter, a notary public within and for the State of Ohio,
5 duly commissioned and qualified, do hereby certify that, to
6 the best of my ability, the foregoing proceedings were
7 reduced by me to stenotype shorthand, subsequently
8 transcribed into typewritten manuscript; and that the
9 foregoing is a true and accurate transcript of said
10 proceedings so taken as aforesaid.

11 I do further certify that this proceeding took
12 place at the time and place as specified in the foregoing
13 caption and was completed without adjournment.

14 I do further certify that I am not a friend,
15 relative, or counsel for any party or otherwise interested
16 in the outcome of these proceedings.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and affixed my seal of office this 14th day of January
19 2020.

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Melinda A. Melton-----
Melinda A. Melton
Registered Professional Reporter

Notary Public within and for the
State of Ohio

My Commission Expires:
February 4, 2023