



**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

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***TOM ARISS
PAT ARNOLD SOUTH
DAVID G. YOUNG***

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

MINUTES: Regular Session – December 5, 2013

The Board met in regular session pursuant to adjournment of the December 3, 2013, meeting.

Tom Ariss - present

David G. Young - absent

Pat Arnold South - present

Tina Osborne, Clerk - present

- 13-1810 A resolution was adopted to approve end of 180-day Probationary Period and approve a Pay Increase for Jeffery B. Cazzell, HVAC Tech I, within the Warren County Facilities Management Department. Vote: Unanimous
- 13-1811 A resolution was adopted to approve Jared Clifton for the Co-Op position within the Warren County Facilities Management Department. Vote: Unanimous
- 13-1812 A resolution was adopted to approve Volunteer to assist with projects and assignments within the Emergency Services Department. Vote: Unanimous
- 13-1813 A resolution was adopted to Advertise for Bids for the Roachester Osceola Road Bridge Rehabilitation Project (WAR-CR200-0.96). Vote: Unanimous
- 13-1814 A resolution was adopted to declare an Emergency and Waive Competitive Bidding Process for Emergency Replacement of the Fire Alarm Panel at 416 S. East Street. Vote: Unanimous
- 13-1815 A resolution was adopted to approve and enter into Agreement with Hylant Group. Vote: Unanimous

- 13-1816 A resolution was adopted to approve and authorize the President and/or Vice President of this Board to sign a Grant Agreement by and between the Ohio Department of Transportation Office of Aviation and the Warren County Board of Commissioners relative to the Lebanon-Warren County Airport. Vote: Unanimous
- 13-1817 A resolution was adopted to enter into an Executive and Permanent Drainage Easements and a Temporary Entrance and Work Agreement with Bruce and Patti Barricklow's Family Bypass Trust for the Vandervoort Road Bridge Replacement Project (Bridge No. 195-0.11). Vote: Unanimous
- 13-1818 A resolution was adopted to authorize Amendment No. 4 to the Engineering Agreement with Burgess & Niple Inc., increasing Purchase Order No. 88482 for the North Water System – Water Booster Pump Station Improvements Project, Fund No. 3225. Vote: Unanimous
- 13-1819 A resolution was adopted to acknowledge receipt of November 2013 Financial Statement. Vote: Unanimous
- 13-1820 A resolution was adopted to affirm “Then and Now” requests pursuant to Ohio Revised Code 5705.41 (D) (1). Vote: Unanimous
- 13-1821 A resolution was adopted to approve various Refunds. Vote: Unanimous
- 13-1822 A resolution was adopted to approve a Supplemental Appropriation into Commissioners Fund #101-1112 and an Operational Transfer from Commissioners Fund #101-1112 into Children Services Fund #273. Vote: Unanimous
- 13-1823 A resolution was adopted to approve Supplemental Appropriation into Wireless 911 Fund #219. Vote: Unanimous
- 13-1824 A resolution was adopted to approve Supplemental Appropriation into Data Processing Fund #101-1400. Vote: Unanimous
- 13-1825 A resolution was adopted to approve an Appropriation Adjustment within Prosecutor Fund #101-1150. Vote: Unanimous
- 13-1826 A resolution was adopted to approve Appropriation Adjustment within Common Pleas Court / Probation Improvement and Incentive Grant Fund #289-(2400)-1225. Vote: Unanimous
- 13-1827 A resolution was adopted to approve Appropriation Adjustment within the Clerk of Courts Certificate of Title Administration Fund #250. Vote: Unanimous

- 13-1828 A resolution was adopted to approve an Appropriation Adjustment within the Solid Waste Management District Fund No. 256. Vote: Unanimous
- 13-1829 A resolution was adopted to approve an Appropriation Adjustment within the Water Fund No. 510. Vote: Unanimous
- 13-1830 A resolution was adopted to approve Appropriation Adjustments within Juvenile Court Fund #101-1240 and Juvenile Detention Fund #101-2600.
Vote: Unanimous
- 13-1831 A resolution was adopted to approve Appropriation Adjustment within Facilities Management Fund #101-1600. Vote: Unanimous
- 13-1832 A resolution was adopted to approve Appropriation from Juvenile Probation Fund #101-2500 into Juvenile Court Fund #101-1240. Vote: Unanimous
- 13-1833 A resolution was adopted to authorize payment of Bills. Vote: Unanimous
- 13-1834 A resolution was adopted to close Public hearing for the Site Plan Review Application of Marvin and Ann Durin, 3268 SR 42 in Union Township and render a decision on December 19, 2013, at 5:15 p.m. Vote: Unanimous


DISCUSSIONS

On motion, upon unanimous call of the roll, the Board accepted and approved the consent agenda.

PUBLIC HEARING
SITE PLAN REVIEW APPLICATION OF MARVIN AND ANN DUREN
(CASE #102-2013)
3268 SR 42 IN UNION TOWNSHIP

The transcript of the public hearing is attached hereto and made a part hereof.

Upon motion the meeting was adjourned.




Tom Ariss, President

Pat Arnold South



David G. Young

I hereby certify that the foregoing is a true and correct copy of the minutes of the meeting of the Board of County Commissioners held on December 5, 2013, in compliance with Section 121.22 O.R.C.



Tina Osborne, Clerk
Board of County Commissioners
Warren County, Ohio

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BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO
December 5, 2013

1 (Pledge of Allegiance)

2 ...

3 MRS. SOUTH: Motion to recess until 5:30 Public
4 Hearing. MR. ARISS: I'd second that.(Short break). . .

5 MR. ARISS: I'd like to welcome
6 everybody back and have a motion to resume our agenda.

7 MRS. SOUTH: We are so convened.

8 MR. ARISS: And, a second on that.

9 (Inaudible)

10 MR. ARISS: Okay, we are in a hearing for a
11 public Site Plan Review application for Marvin and Ann Duren at
12 3268 State Route 42, in Union Township. To start off here, I have a
13 few things that I need to read to everybody so that you'll understand.
14 The case number is called Case No. 102-2013.

15 For the record, would the Zoning Inspector identify:

16 Item No. 1, the Applicants, and their Agent, if any.

17 Item No. 2, the Township Property location and Parcel number
18 of the Site.

19 Item No. 3, the size of the Site.

20 Item No. 4, the Site's current zoning designation on the official
21 zoning map.

22 Item No. 5, the existing land uses.

23 Item No. 6, what is the future Land Use Map designation of the
24 Site?

1 Item No. 7, each document that has been filed by the
2 Applicants or their Agent.

3 Item No. 8, whether the Applicant has complied with the
4 Application requirements in Article 1, Section 1.303.3 and the
5 applicable provisions of the review process in Article 1, Section
6 303.5.

7 Item No. 9, any comments, deficiencies, problems, concerns or
8 recommendations you have based on your communications with
9 applicable authorities and departments.

10 And, that would be up to Mr. Yetter please.

11 MR. MCGARY: Why don't you swear him in
12 please?

13 (Sworn in by Mr. Ariss.)

14 MR. ARISS: It's all yours, sir.

15 MR. YETTER: Good evening Commissioners.

16 I bring forward the 102-2013 case for Marvin and Ann Duren, the
17 Agent representing the Durens in this Site Plan is Ruth Campbell
18 from Wyco Engineering. The address of the property that we're
19 speaking of is 3268 State Route 42, Lebanon, Ohio. The parcel
20 identification number is 12-14-100-008-0. The property size is 10.07
21 acres. The future Land Use Map designation is agricultural-vacant
22 rural residential. The current zoning district is I-2 general industrial
23 manufacturing zone. And, the existing land use before 2009 was a
24 class 4 composting operation and after 2009 it has become a class 2
25 composting operation.

1 The summary of the Application is the ten acre Site had been
2 used as a Class 4 composting facility taking in yard waste until 2009.
3 In January 2009, the Applicant applied with the EPA to change the
4 use of the property to a Class 2 composting, allowing for yard waste,
5 manure and food waste.

6 The analysis of zoning is to the north of the property. This is
7 the Site of the Durens, where the composting facility is. To the north
8 of the property you see I-1 and I-2 uses. The I-1 is on this side, the I-2
9 is on this side, which is a light industrial manufacturing use and then
10 further north, the green that is an agricultural with a residential use.

11 To the east going this direction, we have the City of Lebanon's
12 property zoned light industrial and then we have the Rapp Farm
13 which is zoned I-1, which is light industrial.

14 To the south, again we have portions of the City of Lebanon's
15 property, which is zoned light industrial and the proposed future use
16 of this Site, has been brought forward as being residential. I'll get
17 into that here in just a second.

18 To the west of the property, you'll see there's an I-2 portion
19 here which is heavy industrial and then you have the light and general
20 industrial out surrounding that.

21 The one thing to keep in mind is that Terra Firma has approval
22 from the Commissioners about releasing this property to be served for
23 residential use and this residential property here. In that agreement,
24 the City of Lebanon has offered to supply sewer to this property, this
25 property, and part of this property, somewhere around 465 acres to

1 485 acres. The City of Lebanon has agreed to furnish the sewer and
2 has passed a resolution stating that is possible and the Commissioners
3 in November released that sewer to go to OKI for approval.

4 The reviewing departments that we sent out for comments to,
5 the Site Plan, were circulated to the Warren County Engineer, the
6 Warren County Water and Sewer Department, the Warren County
7 Soil and Water Conservation District, the Warren County Regional
8 Planning Commission, the Union Township Trustees and Fire
9 Department, the Warren County Combined Health District, the
10 Warren County Building Department, the Warren County Sheriff, the
11 City of Lebanon, the Ohio Department of EPA and the Ohio
12 Department of Transportation.

13 My review based on the Warren County Code standards, is as
14 follows: Compliance with the Zoning Code and Adequacy of
15 Information Section 1.303.6 (A) has been met. That was - there was
16 additional things the department had asked to clarify on the Site Plan
17 Review Process and the Agent for the Applicant gave us permission
18 along with the property owner.

19 The use shall be located at least one thousand feet from any
20 existing residential use per Section 3.209.2. And, the closest
21 residence on the Site Plan - the closest residential structure, I'm sorry,
22 from the property line to a dwelling is 174 feet. That would be from
23 this property line to the closest dwelling at this point here, which is
24 the O'Sullivan's dwelling.

1 MR. ARISS: What was the distance on that again,
2 please?

3 MR. YETTER: 1,017 feet.

4 MRS. SOUTH: I thought you said 174?

5 MR. YETTER: Oh, I'm sorry, 1,017 feet. I am
6 not 100% sure if there is a residence located at the old farm house at
7 the Rapp's. I think there is a residential structure here, but you would
8 have to confirm that. These to the south which are vacant land, so
9 there's no residence there. So, the only two residences that are
10 playing into this particular distance are the O'Sullivans and if there's
11 a house here at the Rapp farm. Everything else is outside of range for
12 residential dwellings.

13 The use shall be surrounded by a solid fence that is at least
14 eight feet high, located no less than 100 feet from any public right-of-
15 way and located no less than 50 feet from any adjacent property. If -
16 You'll notice on the Site Plan this is 42 here in this direction, the 100
17 foot setback would apply to this area here, which they're showing that
18 distance. Everything else around this perimeter is shown at 50 feet.
19 The property owner is responsible for maintaining the areas between
20 the fence and the property line, per Section 3.209.2 (B), which would
21 be anything outside of that fenced area.

22 Approximately 67,032 square feet or roughly 1 ½ acres of the
23 10.07 acre Site is covered with compost and mulch piles. These
24 would be three compost piles, this is a new material pile, and these

1 are bulking agents or mulch piles and trees and twigs that would be
2 ground up into mulch.

3 Suggestions of the Comprehensive Plan 1.303.1 (E), the Site
4 has a future land use designation on the Land Use Map of
5 agricultural-rural residential. Surrounding sites are designated for
6 industrial development. And, the proposed use is not in compliance
7 with this Future Land Use Map designation. However, I want you to
8 remember that the land use is just one component of the
9 Comprehensive Plan. The Comprehensive Plan has components
10 such as capital improvements, which includes roads, sewers, and
11 storm water, and others. This is not a complete list. Transportation
12 is another component, which is our Thoroughfare Plan. Another
13 component would be parks and open space. Housing is another
14 component. And the economic development would be another
15 component of that land use or Comprehensive Plan. And, then land
16 use is the sixth component of that particular Plan.

17 The design layout 1.303.6 (B) - - I am sorry, I skipped that
18 slide. This is the future Land Use Map showing the Site on this
19 particular area. The purple around it are the industrial areas, so you
20 can see the Site is pretty much surrounded by industrial. This gray
21 section right here is the City of Lebanon and this is one of their
22 industrial parks here.

23 The design layout - - the more intense uses the visual and odor
24 uses are located to the center of the property, as you see the setbacks
25 here from the rear property line, everything is sort of in this middle of

1 the property. This is actually Mr. Duren's dwelling right here and
2 these are the mulch piles for the bulking agents up in this area.

3 The vehicle access and circulation 1.303.6 (F) and 1.303.1 (F),
4 a single access from State Route 42 coming in at this location here,
5 serves the residence - the residential use and the composting
6 facilities. The Applicant anticipates 50 tons of material daily.

7 There's a scale right here that they'll weigh everything that comes in.
8 They'll come in and dump and then turn around and go back the same
9 driveway, same access point.

10 Preservation of significant features 1.303.6 (D). The Site is not
11 located within any floodplains, streams, or wetlands, however
12 approximately 200 feet from the property boundary are wetlands.

13 Again, this is the property boundary. This is a wetland here and this
14 is a wetland here and they're within 200 feet. As you see, the wetland
15 encroaches into the area of the property boundary of Mr. Duren.

16 Approximately half of the property is located in an Aquifer Recharge
17 Protection Area and about a half a mile north is Little Muddy Creek.

18 We will discuss the Recharge Protection Area later in this
19 presentation.

20 Landscaping and screening 1.303.6 (H). Evaluate based on
21 effectiveness to: No. 1 screen and mitigate negative visual impacts;
22 and, No. 2, compliance with Article 3, Chapter 4 landscaping and
23 screening.

24 The Site Plan includes 111 trees along the northern, and
25 western, and eastern boundaries. So, you've got your northern

1 boundary, your eastern boundary and your western boundary and all
2 these little guys that you see are different types of trees. These are all
3 the descriptions of the existing trees and the proposed trees on the
4 Plan here and the items that are designated on the Plan.

5 Industrial uses adjacent to an industrial use or district are
6 required to install Buffer Type A, which is one deciduous tree per 40
7 linear feet. Now, that condition has been met in this Plan in the areas
8 where you see the landscaping in place.

9 Because of that Site's elevation, twenty five feet higher than
10 the roadway, if you've been by the Site out here on 42, you can that
11 there's a pretty good grade that runs up to the top of the Site right
12 here in this area. So, you've got roughly a 25 foot higher elevation
13 there along State Route 42. The use of 40 foot high compost piles
14 are noted to be 40 feet in height so the 25 foot elevation should be
15 taken into consideration and adjacent to surrounding uses, proper
16 landscaping and screening is essential to these other property lines
17 that are going to be lower elevation than this 25 foot elevation here.

18 The Site Plan shows 65 more trees than is required for Buffer
19 Type A. Nevertheless, the required fence height of 8 feet for
20 composting facilities is not being shown on the proposed Site Plan
21 per condition 3.209.2 (B) and it's only showing the eight foot fence -
22 most of the fences - there are fence heights on the Site Plan. You
23 can't see it on this particular one, but if you look at your Site Plan
24 that's included in your packet, you can identify those. However, the
25 Commissioners will need to draft a condition to approve the fence

1 height, if you choose to reduce that fence height on the property to
2 anything less than the eight feet. I do know the fences proposed or
3 the existing fences in this area are only four feet high and it's a farm
4 style fence and I don't recall what these were here. I think it was a
5 four foot fence too, on top of the barn possibly. You need to review
6 the Site Plan to get those specifics.

7 The proposed landscaping, when mature, will effectively screen
8 the Site on the western and northern boundaries. So, this area would
9 be screened, or I am sorry, this area would be screened from the
10 boundary of the detention pond on the berm and this side right here,
11 western and northern boundaries, at this point here.

12 Additional landscaping is recommended along the eastern and
13 southern boundaries and an increase in fence height along the western
14 and northern boundaries. So the western boundary and northern
15 boundary need to have the fences increased in height along with
16 increasing the landscaping. Additional landscaping is also
17 recommended immediately adjacent to the fence.

18 I'm going to start over with that particular bullet point.

19 Additional landscaping is recommended along the eastern and
20 southern boundaries. So, you've got the eastern boundary and the
21 southern boundary. So, we want to increase the landscaping on those
22 two boundaries, along with the height of the fence.

23 MR. ARISS: Let me ask you a question here,
24 in my own mind, you're saying the east side of Route 42, isn't that the
25 west side of the property though?

1 MR. YETTER: Well, we're talking about the
2 north side of the property boundary, the east side of the property
3 boundary, the south side and the west.

4 MR. ARISS: That's the east.

5 MR. YETTER: Oh, I'm sorry, the east.

6 MRS. SOUTH: 42 is the west.

7 MR. YETTER: I'm sorry, this is the north side.

8 MR. ARISS: Just wanted to make sure.

9 MR. YETTER: I'm being dyslexic.

10 The additional landscaping is proposed to mitigate the visual impacts
11 as well as to serve as a windbreak in mitigating odor. The Applicant
12 should ensure that in the short term, the operation will not be visible
13 from State Route 42 and adjacent properties.

14 The Storm Water Management and Ground Water Protection
15 1.303.6 (D) and (L) and 2.601 are as such - - the Applicant proposes
16 to minimize and control runoff. The berm and the pond along the
17 eastern and northern property lines will help control water runoff.
18 The Warren County Engineer and the Warren County Soil and Water
19 approval and monitoring is required. So, we've got the northern
20 boundary and the eastern boundary at the retention area is this berm
21 in here that we're talking about.

22 The Warren County Soil and Water Conservation District will
23 review the sediment and erosion control plans when submitted. The
24 standards for leachate containment are very stringent and storm water
25 runoff that comes in contact with compost products or solid wastes

1 including feed stocks, bulking agents or additives must be maintained
2 on Site unless otherwise approved by Ohio EPA. The attempt here is
3 to contain the water runoff on Site, however, the pond appears to be
4 designed for holding a 100 year storm event without discharging,
5 provided that the water level is maintained at or below a certain
6 elevation by irrigating the compost piles. The overflow for the pond
7 discharges towards the wetlands on the City of Lebanon property.
8 This is the – this is shown as the discharge area here. You can see the
9 water intact levels here, where the water is flowing into the pond.
10 The emergency overflow that comes out of this area here, I believe
11 this is it right here, which would, the way the topography is, it could
12 run back down in to Lebanon's property. Will the operator be able to
13 manage the leachate stored in the proposed pond in a manner which
14 will prevent overflows from the pond? That would be a question you
15 would have to think about.

16 Due to the location of the facility and the soil types, it is
17 determined that the Zoning Inspector has the ability to require the
18 installation of impermeable liners in storm water retention/detention
19 ponds and seek assurance that the sand and gravel subsoil is not
20 exposed in other places on the Site, subject to Section 2.607.3. That
21 was not - the pond has not proposed as having that type of a liner in
22 it.

23 MR. ARISS: What was the last part of that
24 please?

1 MR. YETTER: The pond, the
2 retention/detention pond has not been proposed to have an
3 impermeable liner in it.

4 MR. ARISS: A line or liner?

5 MR. YETTER: A liner.

6 MR. ARISS: Thank you.

7 MR. YETTER: Impact on neighboring
8 properties, per Section 1.303.1 (C). The use could potentially affect
9 the use and enjoyment of other property in the immediate vicinity.
10 Odors can be a problem for sites that operate composting facilities,
11 however, this issue may be mitigated if the Applicant follows all
12 conditions of approval: No. 1, best practices for composting; and No.
13 2, State of Ohio regulations; and No. 3, the Commissioners should
14 require conditions in order to mitigate odor per Section 3.208 (B) (E)
15 and (F).

16 Enforcement of these standards will require regular monitoring
17 by local and State agencies and departments. The establishment of the
18 composting facility could impact the nature of the development to the
19 south where large undeveloped tracks of land are zoned for the
20 residential uses. And, that's this site and this site. As we discussed
21 earlier, the City of Lebanon and the Todorov properties are planned to
22 be residential uses in the future in some form or fashion. This 220
23 acres right here is already zoned for a residential use.

24 This development could set the tone for the type of
25 development that follows. Significant buffer is required to mitigate

1 visual impacts and physiological associations with surrounding
2 properties.

3 County, State and Federal Standards per Section 1.303.1 (H).
4 The Ohio EPA is the regulating authority for composting facilities.
5 The agencies have specific regulations for the design, management
6 and operation of composting facilities. Meaning we have regulations,
7 the State also has regulations and there are federal regulations.

8 The current facility is being redesigned with new
9 configurations for storm water runoff and compost piles. The Ohio
10 Administrative Code includes closure procedures and includes
11 methods of removing solid waste, leachate, and other organic
12 materials from the facility. And, that's all I have in my outline.

13 MR. ARISS: I just have one additional
14 question and I might have missed it on the opening, but I need you to
15 identify the Township.

16 MR. YETTER: The Township is Union
17 Township.

18 MR. ARISS: Thank you. Questions?

19 MRS. SOUTH: I don't have any questions at
20 this time. Will you be giving us a copy of your report?

21 MR. YETTER: Not at this time, no.

22 MR. ARISS: Do the Applicants or agents
23 have any cross-examination, any questions for this witness at this
24 time.

25 MR. BORCHELT: We do, Mr. President.

1 MR. ARISS: Would you identify yourself
2 please and give your address?

3 MR. BORCHELT: My name is Joe Borchelt, I am
4 with the Reminger law firm, the address is 525 Vine Street,
5 Cincinnati, Ohio, Suite 1700.

6 MR. ARISS: Thank you.

7 MR. BORCHELT: Any preference, would you like
8 me to stand or sit?

9 MR. ARISS: If you'll stand right there, by
10 the microphone - -

11 MR. BORCHELT: Thank you.

12 CROSS EXAMINATION

13 BY MR. BORCHELT:

14 Q Thank you, sir. I am just going to go through a few
15 questions, I just want to go through a few issues in your outline. The
16 EPA is the State agency that licenses Mr. Duren, is that correct?

17 A That's correct.

18 Q And, just so I understand your presentation and
19 obviously Commissioners, please bear with me. This is sort of new to
20 me. I am just trying to figure out what the lay of the land is as well.
21 You're not suggesting a denial of Mr. Duren's Site Plan, is that
22 correct?

23 A No, sir.

24 Q If I understand your presentation correctly, you're
25 recommending approval with certain conditions, is that correct?

1 A I am presenting it to the Commissioners, they will
2 recommend approval or denial.

3 Q Okay. Let me, sort of start in reverse. You talked about
4 the fact that Mr. Duren's proposed use might be incompatible with
5 future development in this particular area, is that correct?

6 A Yes.

7 Q But it's currently zoned in an industrial zone, is that
8 correct?

9 A That's correct.

10 Q So, another permitted use in this zone would be a
11 junkyard, for example?

12 A That's incorrect. We have a junkyard zone.

13 Q Okay, but there would be other industrial uses if for
14 example Mr. Duren was to move from this property, that would be
15 permitted, right?

16 A Yes, and they would go through the same Site Plan
17 Review.

18 Q I understand. Let me ask you about that just for a
19 second. The Site Plan Review is premised upon a change of use, is
20 that correct?

21 A That's correct.

22 Q And, when did the change in use of Mr. Duren's property
23 occur?

24 A The change of use actually occurred in 2009 when he
25 went from Class 4 compost operation, that was actually permitted on

1 a residential property at that time, to a Class 2 operation that was not
2 permitted at that time, without a Site Plan Review, but because it was
3 residential, it wasn't permitted at all. At that time, the Zoning Code
4 allowed any change of use required a site plan review.

5 Q So, starting in 2009 it was not legal to operate there
6 without a Site Plan Review?

7 A That is correct.

8 Q And, the change in use, as you stated was going from a
9 Class 4 to a Class 2, correct?

10 A Correct.

11 Q And, is it also your understanding that going to a Class 4
12 to a Class 2, is essentially acceptance of food waste products?

13 A I would have to look at EPA's requirement for that. Our
14 code definitions would indicate that, yes.

15 Q When was Mr. Duren first notified that his change in use
16 would require a Site Plan?

17 A I don't have that at my disposal. I sent a violation letter
18 in October of 2012, if I am not mistaken.

19 Q Mr. President may I utilize a document to refresh the
20 witness's recollection - - would the Commission like a copy?

21 MR. ARISS: We'll need that at the
22 end of the hearing, just give us the documents at that time.

23 Q Mr. Yetter, I am going to hand you a document, do you
24 recognize this document, sir?

25 A Yes, sir.

1 Q Can you identify this document for the Commission?

2 A This is a zoning letter I sent to Mr. Duren.

3 Q And, what is the date on this letter?

4 A August 9, 2012.

5 Q On the first page, you indicate there is a possible zoning
6 violation, do you see that?

7 A Yes, that is correct.

8 Q And, then if you'll flip to the second page please. On the
9 second page this is where you notified Mr. Duren that you did not
10 receive a Site Plan Review Application for his change in use, do you
11 see that?

12 A Yes.

13 Q And, that change of use is in reference to the change that
14 occurred in January of 2009?

15 A That's correct.

16 Q So, my understanding and correct me if this is
17 inconsistent with your recollection, this is the first notice that Mr.
18 Duren received regarding the necessity for a Site Plan, is that
19 consistent with your understanding?

20 A Yes.

21 Q So, for a period of a little over two years, Mr. Duren was
22 never informed by the County or anyone else that he was not in
23 compliance with the zoning code?

24 A That's correct.

25 Q Who is C. Michael Kilburn?

1 A One of our Commissioners.

2 Q And, what is the Warren County Solid Waste
3 Management District?

4 A It's the Warren County Solid Waste Management
5 District. I don't know their function exactly.

6 Q Would their opinion with regard to Mr. Duren's compost
7 operation have any weight in these proceedings?

8 A No, I don't believe so.

9 Q What is their role, do you know?

10 A They take care of the grants?

11 Q Are you familiar with the 2009 Market Development
12 Grant Agreement?

13 A Yes, I am.

14 Q And, why don't you tell the Commission what that
15 entails?

16 A The grant is a matching grant that allows Mr. Duren to
17 buy compost machinery for a compost operation.

18 Q Do you recall the approximate amount of that grant?

19 A Just off hand, I think it was \$200,000 - - \$225,000.

20 Q Mr. Yetter, I'd like to hand you a copy of that agreement.
21 Have you seen this agreement sir?

22 A I believe so, yes.

23 Q And, if you flip to the final page, sir - - do you see the
24 signatures on that page?

25 A Yes, I do.

1 Q Do you see the grantee listed as the Warren County Solid
2 Waste Management District?

3 A Yes.

4 Q And, the cooperating enterprise is Sheraton Foods,
5 correct?

6 A Yes.

7 Q The award of the grant is \$250,000, correct?

8 A Okay.

9 Q And, do you see that it's signed by C. Michael Kilburn as
10 County Commissioner?

11 A Yes, I do.

12 Q And, it's also then signed by the Ohio Department of
13 Natural Resources, correct?

14 A Yes.

15 Q Sir, would you mind taking a look at the second page of
16 this agreement? I would presume that there's no surprise to you that
17 there were various additions to this grant on behalf of Mr. Duren, are
18 you aware of that?

19 A Yes, I understand.

20 Q Okay. And, under Roman Number X, which I believe is
21 10, it indicates that the grantee, that's the County, shall carry out and
22 administer the 2009 MGD according to all applicable, Federal, State
23 and local laws and regulations, did I read that correctly?

24 A Yes.

1 Q Okay, and State and local laws and regulations would
2 include the zoning code, would it not?

3 A I would assume that, yes.

4 Q Okay. So, in this document, signed by one of the County
5 Commissioners, which by the way is dated May of 2009, do you see
6 that?

7 A Yes.

8 Q The County is informing or at least putting in writing,
9 that this grant, this proposed operation is consistent with local laws
10 and regulations, correct?

11 A I would assume that.

12 Q So, it's a little inconsistent then to say Marvin, in that
13 two and a half year period where the County didn't inform him that in
14 that hearing he was operating illegally, right?

15 A Yes.

16 Q Why is it that the County decided in 2012 to require Mr.
17 Duren to go through the Site Plan Review process?

18 A In my research and findings, the addresses were
19 inconsistent with the Site location, I could not find any permit issued
20 for Mr. Duren to operate a Class 2 composting facility, or did I ever
21 see anything that he was approved to operate in a Class 2 composting
22 operation.

23 Q But, yet in May of 2009, when one of the County
24 Commissioners signed off on this grant agreement, there was no
25 issue, right?

1 A There was no issue because it was suspected that he was
2 operating at a different Site than he had approval for a Class 2
3 composting operation.

4 Q Was it also in relation to complaints that you had
5 received?

6 A Yes.

7 Q Now, the Ohio EPA has consistently licensed Marvin
8 throughout the course of his operations, is that your understanding?

9 A Yes, but, I'd need to verify that.

10 Q And, his license as we speak today is still valid, is that
11 correct?

12 A Yes.

13 Q And, are you aware that the EPA performs quarterly
14 inspections with regard with Mr. Duren's facility?

15 A Yes.

16 Q And, those are unannounced inspections?

17 A I'm not aware of that.

18 Q Okay. Do you have any reason to disagree that they're
19 unannounced?

20 A No.

21 Q I'm going to hand you a document sir, and this is a letter
22 from the Ohio EPA, do you see that?

23 A Yes, I do.

24 Q And, this is in relation to, the date of November 20,
25 2013, correct?

1 A Yes.

2 Q Now, you had testified that one of the potential issues,
3 with regard to Mr. Duren's facility would be the control of odors, is
4 that a fair statement?

5 A That's a fair statement.

6 Q And, in this document, it references a November 8, 2013
7 quarterly inspection by the EPA, do you see that?

8 A Yes, I do.

9 Q This was also accompanied by Paul Mussenden, at the
10 Central Office of the Ohio EPA, do you see that? It's on the first
11 page, I apologize?

12 A Yes, I see that.

13 Q And, then the EPA indicates that there were no
14 violations observed, but that's not what I'm concerned about. Take a
15 look at the third bullet point there, do you see that?

16 A Yes, sir.

17 Q And, that indicates that at the time the EPA visited
18 Marvin's facility, there were no noticeable odors anywhere on Site,
19 correct?

20 A Yes, that's correct.

21 Q And, this was even before we have a Site Plan developed
22 and implemented, correct?

23 A Yes.

1 Q And, the purpose of the Site Plan, at least in some
2 degree, is to again minimize such issues as the odors and things of
3 that nature, correct?

4 A Yes.

5 Q All right. It also indicates that the aeration system and
6 the leachate collection pond is operational, do you see that in Section
7 4?

8 A Yes.

9 Q And, it also indicates that he had adequate bio filter
10 stockpiles, it is my understanding the bio filter is the mulch that's
11 used to mask the odor, if in fact the odor is present, correct?

12 A Yes, that's correct.

13 Q Then the EPA, says please continue to manage your
14 existing compost piles, to help prevent odors in leachate generation.
15 So, as of November 2013, when the EPA visited, there was no odor at
16 that facility, is that consistent with this letter?

17 A Consistent with this letter, yes.

18 Q I'm going to hand you another letter, sir. This is also a
19 letter from the Ohio EPA, and do you see the date on this letter of
20 March 22, 2013?

21 A Yes, sir.

22 Q And, this is also from the Ohio EPA?

23 A Yes, sir.

1 Q And, this is in relation to a March 19th visit by Pat
2 Willoughby, an environmental specialist with the materials and waste
3 management, do you see that?

4 A Yes, I do.

5 Q And, you see the second paragraph, starts during my visit

6 --

7 A Yes.

8 Q It indicates that during his visit it was determined that
9 there were no odors at the time of the investigation, but it appears
10 there were violations of Ohio Solid Waste Management, do you see
11 that?

12 A Yes, I do.

13 Q All right. So, even before, again, implementation of the
14 Site Plan, we've got at least two instances when the EPA went out
15 and did not notice a detectable odor on Site of Marvin's property,
16 correct?

17 A Yes, that's correct.

18 Q Okay. I'm going to quickly jump to the Site Plan
19 Review comments of the Warren County Regional Planning
20 Commission. Are you familiar with this document?

21 A I'm familiar with it, but I do not have it in my --

22 Q But, it appears to me that part of your comments are at
23 least based in part on some of the findings of this document. Is that
24 an accurate statement?

25 A Possibly yes, they intermingle.

1 Q If you take a look at page 3, there's a heading for
2 landscaping and screening (1.303.6 H), do you see that?

3 A Yes.

4 Q And, this discusses, as you discuss in your presentation
5 a necessity of landscaping and fencing correct?

6 A Yes, that's correct.

7 Q There is a provision for additional landscaping. I'm
8 going to show you where I am - it says additional landscaping is
9 recommended along the eastern and southern boundaries, at an
10 increased fence height along the western and northern boundaries. I
11 just want to make sure I'm clear, when we're talking about the
12 recommendation of the increased fence height, we're talking about
13 the eastern which - or the western which runs along 42 and the
14 northern which runs along the property owner to the north, I believe
15 it's a farm of some kind, correct?

16 A Property to the north would be a business.

17 Q Okay, so where the green barn is?

18 A Yes.

19 Q Now, there is in the proposed Plan, there is a proposed
20 fence height of four feet, correct?

21 A Yes.

22 Q And, even though the requirements call for a fence
23 height of eight feet that can be varied by the commission, can it not?

24 A Yes, it can.

1 Q Now, you had indicated in your presentation that there's
2 proposed landscaping all throughout that western and northern
3 border, right?

4 A Yes, I believe so.

5 Q And, in fact, I believe you testified that Marvin's Plan
6 goes above and beyond the required number of trees, is that right?

7 A Yes, I did.

8 Q And, I believe you said once mature, that those trees will
9 effectively screen those borders, is that correct?

10 A Yes.

11 Q Now, an eight foot fence and I realized this is a little bit
12 subjective, is a little bit of an eyesore, is it not?

13 A It depends on how its done.

14 Q But certainly in terms of blocking the view, it would be
15 preferable to have landscaping block the view, as opposed to a big
16 gaudy eight foot fence that's going to get blown down by the wind,
17 right?

18 A That may be the case. We don't know until we see the
19 Plan.

20 Q Now, also on the northern end, that fence is proposed to
21 be constructed on berm, isn't that correct?

22 A Yes, I believe it was.

23 Q And, that berm would in essence add some additional
24 footage in terms of the screening that we're discussing, correct?

25 A Yes, it would.

1 Q Now, let's talk about the landscaping, just to make sure I
2 understand. The additional landscaping is being discussed with
3 regard to the southern boundaries and the eastern boundary, correct?

4 A Yes.

5 Q And, at present, those tracks are vacant land, correct?

6 A Yes.

7 Q All right. Now, are you also aware that on the southern
8 boundary, there is already an existing thick tree line, is that not
9 accurate?

10 A Yes.

11 Q And, does that existing tree line, also block the view
12 essentially from the vacant property?

13 A It could. I have not looked at it.

14 Q In terms of the proposed landscaping, I know you don't
15 have this up, but the proposed landscaping on the eastern boundary,
16 that is also in compliance with the number of trees that are required
17 under the code correct?

18 A Can we go to it?

19 Q Yeah, we can.

20 A I don't think it was in its entirety. So, there are a portion
21 of the trees that are missing here and down here.

22 Q Okay, but I presume if Marvin were to agree, as you can
23 see, there's several trees up on the northern boundary for example. I
24 assume there would be no objection from the County's standpoint to

1 Marvin perhaps redistributing some of those trees to that boundary, if
2 that's the requirement?

3 A Possible, sure.

4 Q Now, there is a statement in this Application, same page
5 that says impact on neighboring properties, do you see where I am?
6 It's at the very bottom of the page?

7 A Yes.

8 Q And, this indicates, about half way down, no evidence
9 has been submitted illustrating that the property values within the
10 area will be substantially diminished or impaired, do you see that?

11 A Yes, I do.

12 Q And do you believe that's an accurate statement?

13 A I don't know if that's accurate or not. It says no evidence
14 has been submitted. I think we have complaints on record that have
15 indicated it is.

16 Q But, certainly, the reviewer, the executive director of the
17 Warren County Regional Planning Commission has stated in an
18 official business record, "no evidence has been submitted illustrating
19 that the property values within the area will be substantially impaired
20 or diminished".

21 A That's his opinion, yes.

22 Q Okay. What is it that the Regional Planning Commission
23 does?

24 A The Regional Planning Commission reviews any cases -
25 rezoning cases, site plan reviews, and any conditional uses.

1 Q I also presume that's the body that's responsible for say
2 insuring that a proposed business is consistent with a zoning and/or
3 development plan, something of that nature?

4 A That's one of the responsibilities.

5 Q So, this gentleman is likely the most qualified to make
6 that opinion?

7 A Yes.

8 Q I wanted to talk briefly about the pond. From my
9 understanding, and I don't know if you've had that discussion – was
10 that, Marvin or I should say the Applicant, has agreed to implement a
11 clay liner at that - with regard to the pond. Were you familiar with
12 that?

13 A I don't think that was actually presented in the Site Plan
14 and the Drainage Plan anywhere where they showed that.

15 Q In the event Mr. Duren agreed to utilize a clay liner,
16 would that satisfy the concerns with regard to the leachate of the run
17 off on the compost pile?

18 A I think with the opinion of the Warren County Engineer
19 and the Warren County Soil and Conservation District that possibly
20 would be the case.

21 Q Just in general, and I don't mean to take up too much
22 time, are you familiar with Mr. Duren's operation, what it is that he's
23 doing?

24 A Yes, I am.

25 Q And, what is it, that he's doing?

1 A He's composting organic materials.

2 Q Do you know where he gets his materials from?

3 A I know at the time of the violation, he was getting food
4 waste from the prison farm, and a local business, landscapers were
5 bringing in the hard goods, and the trees and the shrubs and the stuff
6 that he was using to cover with as bulking agent. At the time he was
7 getting food waste from Chipotles which I think has discontinued at
8 this point.

9 Q Were you aware that he gets material from Wal-mart?

10 A Yes. At that time, yes.

11 Q And, what about Loxotica?

12 A Yes, he told us Loxotica.

13 Q And, the Lebanon Raceway?

14 A And; the Lebanon Raceway.

15 Q What would happen to this waste, if Marvin weren't
16 accepting it, assuming there's no other competition to get it?

17 A I assume it would go to the dump.

18 Q It would go to a landfill, correct?

19 A Yes.

20 Q And, Marvin's operation is designed to recycle that
21 material?

22 A Yes.

23 Q And, it's fully licensed by the EPA?

24 A That's correct.

1 Q So, you would agree with me, sir, that what Mr. Marvin
2 is doing, has a benefit to this community and the residents of Warren
3 County?

4 A I suppose.

5 MR. BORCHELT: Mr. President, if you don't
6 mind, I'd like to consult with my client for a brief second.

7 MR. ARISS: Yes.

8 MR. BORCHELT: Thank you, sir, I'll be right
9 back.

10 (Short break.)

11 MR. BORCHELT: Sir, thank you for your time. I
12 apologize if I took more than I am entitled to. I just wanted to be able
13 to ask you some questions.

14 MR. ARISS: Are there any additional
15 questions for Mr. Yetter?

16 MR. BORCHELT: No, sir, thank you for your
17 time.

18 MR. ARISS: Next on our agenda will the
19 Board's Clerk please read into the record, first of all when the Site
20 was posted with signage stating the Site would be subject to a public
21 process and where to get additional information.

22 MS. OSBORNE: The Site was posted by the
23 zoning supervisor with signage on November 5th, 2013.

24 MR. ARISS: Second item is how and when a
25 written notice of this hearing was sent to the Applicant, the

1 Applicant's agent and all owners of property within 500 feet from the
2 parcel lines of the Site subject to the hearing.

3 MS. OSBORNE: The adjacent property owners
4 were notified on November 8, via regular U.S. mail. The Applicant
5 was notified by a letter sent certified mail on November 8th and the
6 Agent was also notified on November 8th with a letter sent certified
7 mail.

8 MR. ARISS: Thank you. This is a hearing
9 for the Site Plan Review which must be conducted as a quasi-judicial
10 administrative hearing. The hearing will be conducted based on the
11 following order and rules:

12 The first rule is, the Applicant will be heard first. The
13 Applicant will be given a reasonable opportunity to appear and testify
14 in person under oath and may be represented by an attorney and have
15 a court reporter present at the Applicant's sole cost if the Applicant
16 schedules the court reporter. The Applicant is also entitled to call and
17 examine witnesses who testify under oath and to present documentary
18 evidence into the record.

19 The Proponents will be heard second. Any person who wishes
20 to testify under oath in favor of the Site Plan will be heard.

21 Item No. 3, the Opponents will be heard third. Any person who
22 wishes to testify under oath in opposition to the Site Plan, will be
23 heard. If an opponent elects to testify in opposition of the Site Plan,
24 the Opponent will be subject to cross-examination by the Applicant or
25 the Applicant's attorney.

1 Item No. 4, the Applicant may speak last. The Applicant will
2 be afforded the opportunity to testify under oath again, present any
3 evidence the Applicant desires to refute evidence or testimony offered
4 by any Opponents.

5 Rules, B, B (1) the President or Vice President of the County
6 Commissioners shall administer an oath to each person who elects to
7 testify and the Clerk of the County Commissioners shall keep
8 minutes. All proceedings shall be recorded and be made a part of the
9 record.

10 Item No. 2, the Applicant shall be given a reasonable
11 opportunity to present the Applicant's case, as the Applicant bears the
12 burden of proof.

13 Item No. 3, Proponents or Opponents shall limit their
14 testimony to five minutes. The County Commissioners may allow
15 more time if a Commissioner deems more time is justified.
16 Responses to questions asked to a witness by the County
17 Commissioners or in response to cross-examination by the Applicant
18 or the Applicant's attorney shall not count against the witness'
19 allocated time.

20 Item 4, the witnesses not called to testify at the request of the
21 Applicant shall be limited to speaking only once.

22 Item No. 5, the witnesses shall direct all testimony to the
23 County Commissioners. No witness shall direct his or her comments
24 to the Applicant or the Applicant's attorney, unless in response to
25 cross-examination.

1 Item No. 6, witnesses shall not direct any comments or
2 questions to County staff members or direct any comments or
3 questions to the audience. It is not the purpose of the Site Plan
4 Review hearing for witnesses to ask questions about interpretation or
5 meaning of the Zoning Code. However, if a County Commissioner
6 deems the question relevant then a County Commissioner may choose
7 to answer or ask a County staff member to answer any question for
8 the County Commissioners.

9 Item No. 7, the County Commissioners may ask questions to
10 the Applicant, Proponents or Opponents at any time during the
11 hearing.

12 Item No. 8. To be considered, documentary evidence must be
13 accepted and admitted into evidence by the County Commisisoners.
14 The County Commissioners will not accept documentary evidence
15 unless the Applicant, Proponent or Opponent submits a complete
16 copy of the documents to be made a part of the record.

17 Item 9. Letters, emails, petitions or other documents shall not
18 be admitted into evidence or considered by the County
19 Commissioners as such items are not subject to cross-examination.
20 Nor shall the County Commissioners discuss with any person via
21 telephone or in person any matters relating to the Site Plan Review
22 Application. The Commissioners decision to approve, approve with
23 conditions or deny the Site Plan will be based only upon the
24 Application, testimony and documentary evidence in the whole
25 record.

1 Item No. 5, the Commission will consider the filings by the
2 Applicant and their agent as well as the testimony and evidence from
3 this hearing and apply the applicable review criteria from Article I,
4 Section 1.303.6 as well as other zoning code provisions including but
5 not limited to:

6 Item No. 1, the Site Plan Review in Article I, Section 1.303.1;

7 Item No. 2, Ground Water Protection Overlay criteria from
8 Article 2, Section 2.601 and other Groundwater Protection Standards
9 from Article 2, Section 2.607.3;

10 Item No. 3, industrial uses, standards and requirements from
11 Article 3, Section 3.208;

12 Item No. 4, Waste Composting standards from Article 3,
13 Section 3.209.2;and,

14 Item No. 5, Landscaping and Screening requirements from
15 Article 3, Chapter 4.

16 At this time, I would ask that any person who thinks they might
17 testify this evening, to stand if you're able and raise your right hand
18 and I will administer an oath to each and every one of you.

19 (Sworn in by Mr. Ariss.)

20 At this time, the Board would ask the Applicants or their Agent
21 or their attorneys to come forward and present their case. I would
22 reiterate that the Applicants and any witnesses called on the
23 Applicant's behalf must state his or her name, mailing address and
24 affirm they have been sworn or affirmed the oath before testifying.

1 At this time is there anyone who wants to testify as a Proponent
2 in support of the Site Plan? If so, you must come forward to the
3 microphone and please start by stating your name, mailing address
4 and whether you have already been sworn or affirmed the oath.

5 MR. BORCHELT: Mr. President, we had
6 intended to have Ms. Ruth Campbell testify first briefly, if that's
7 acceptable to the Commission?

8 MR. ARISS: Yes, sir.

9 MR. BORCHELT: And, I was going to ask
10 her a few questions and walk her through it, if that's also acceptable.

11 MR. ARISS: Yes, sir.

12 RUTH CAMPBELL

13 HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AND
14 TESTIFIED AS FOLLOWS:

15 EXAMINATION

16 BY MR. BORCHELT:

17 A My name is Ruth Campbell, I'm the Engineer of Record
18 for the Site Plan, and I'm with Wyco Consulting and my address is 10
19 Stadia Drive, Franklin, Ohio.

20 MR. ARISS: And, have you been sworn?

21 A Yes, sir.

22 Q Ms. Campbell, did you prepare the Site Plan?

23 A I did.

24 Q Why don't you just briefly tell us about this tract of land.

1 A It's a 10 acre Site, and it is the personal home of Marvin
2 and Ann Duren and they've lived there since 1985 and they began
3 their composting operation not long after moving in. It's been a
4 passion of Marvin's for a long time.

5 The Site Plan reflects the changes that we would like to make,
6 to make the Site work best. Trucks would enter the Site in the existing
7 drive during the hours of 8 to 6. They are controlled by a gate.

8 MR. ARISS: Would you show us the
9 access point please?

10 A Yes, sir. Okay, I've not done this so - there we go.
11 There's the access driveway and there's a gate right in this area that
12 would control access during hours when it's not in operation.

13 The trucks enter and the raw material is off loaded into the new
14 materials pile. This area in here. They're inspected daily by the
15 operator and his staff and any unacceptable materials by EPA
16 regulations, are identified, removed and logged for review by EPA.
17 Once a week, those new materials are then moved to a static pile,
18 example of the static pile and there they are covered with six inches
19 of wood chips or what's considered bio containment and the purpose
20 of that is to prevent odors, to contain the material and also to set up
21 the conditions under which decomposition will occur.

22 After six months, the pile is made to shift, in other words, it's
23 rotated and agitated and the reason for that is so that the aeration
24 introduced so that the biologic processes can continue. There's a co-
25 mingling of the nutrients and organism within in and after that,

1 moving and shifting is again covered with six inches of bio
2 containment material.

3 After 18 to 24 months, that material is then deemed to be close
4 to ready to be used, so it is sampled and analyzed and if the article is
5 acceptable or the material has been screened, then it's ready to be
6 processed and to be used, taken off Site. One of the reasons for the
7 changes of the Site, is to better contain the water from the Site. This is
8 the detention area. The water - the Site itself is of a fairly nice little
9 hill in this area and it slopes away all of these directions, so the
10 grading would allow for any water that falls on the Site to be
11 collected into the swale that wraps around the northeast side of the
12 property and then to the retention pond. The pond itself is aerated
13 and the reason for aeration is to reduce any chance of odors and to
14 remediate the water. The leachate that we've been discussing is
15 strictly water that actually travels through any of the composting
16 materials itself, so the Site is also designed to reduce the amount of
17 water on Site that can actually travel through the Site. The water that
18 falls on top of the wood chips, is not considered leachate. It runs off
19 the top and into the swales around the property, so anything that
20 travels all the way through the material is the leachate. So, there's
21 very little leachate produced because of the grading. Now, that
22 aerated pond is tested yearly to make sure that there aren't any
23 chemicals being introduced to the Site that would be detrimental.
24 Everything that's coming to the Site should be organic. All the
25 processes are organic, there's no other chemicals introduced.

1 The existing and proposed landscaping should be designed to
2 control debris, which any debris should be separated, and materials
3 that are prone to be around should be separated and removed or
4 contained by the bio-containment area. That's done daily and also
5 every evening, the whole Site is policed or patrolled to make sure
6 there aren't any materials like that. Then, the landscaping also serves
7 the purpose providing a screen.

8 Q Let me ask you a quick question ma'am. With regard to
9 the pond, there was a discussion of the liner. Is it your understanding
10 that Marvin has agreed or that it would be incorporated to provide a
11 clay liner with regard to that pond?

12 A Yes, sir, another page of the Site Plan that's not visible,
13 there is a detail of the Site of how the pond, a cross section of the
14 pond and some notes regarding that. Part of the notes say that the
15 pond will be constructed to ODNR specifications and those ODNR
16 specifications have it designed with an impervious liner, which in
17 their review would be that clay liner, just the same as if you would
18 build a farm pond, or a backyard pond. That's the standard design so
19 to speak. We've already agreed to that impervious liner, so that's not
20 an issue anyway.

21 Q And, ma'am, in your opinion, would that clay liner, in
22 your professional opinion, would that work to effectively control the
23 leachate?

24 A Yes.

1 Q I'd like to ask you just very briefly about the landscaping
2 to be - make sure I get it right, to the west and to the north.

3 A Yes, sir.

4 Q In your professional opinion, does that landscaping as
5 designed, sufficient to comply with the code requirements with regard
6 to screening and control to a degree?

7 A I believe that it will.

8 Q Is it also your belief, that it will be affected in that
9 regard, notwithstanding a fence at a height of four feet?

10 A Yes, sir.

11 Q It is also your understanding that the Applicant, Mr.
12 Duren will agree to redistribute any landscaping toward the City of
13 Lebanon's property, at their desire?

14 A Yes, sir.

15 MR. BORCHELT: I believe that's all the
16 questions I have.

17 A Thank you.

18 MR. ARISS: Does the Applicant or
19 Agent or attorneys wish any cross examination of this witness?

20 UNIDENTIFIED MALE: (Inaudible).

21 MR. ARISS: That's what I thought, I just
22 wanted to make sure. Any other witnesses?

23 UNIDENTIFIED FEMALE: I don't have
24 anything right now.

1 MR. BORCHELT: We would like to present
2 Mr. Duren, if it please the Commission.

3 MR. ARISS: State your name and
4 address please.

5 MARVIN A. DUREN
6 HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AND
7 ANSWERED AS FOLLOWS:

8 EXAMINATION

9 BY MR. BORCHELT:

10 A It's Marvin A. Duren, 3268 U. S. 42 South, Lebanon,
11 Ohio. That's in Union Township.

12 Q Mr. Duren, I'm going to ask you some questions just
13 very briefly about your history here and I want you to just walk the
14 Commission, I don't want to go through the text book version, but
15 why don't you tell the Commission, when you purchased the property
16 and when you started composting and a little bit about your operation.

17 A Right. When I purchased the property, I was involved in
18 Waffle House Restaurants. I located myself here because it was
19 convenient to 75 and 71. I moved from Mason-Montgomery Road,
20 in the center of Mason by the cemetery to this location, so I would
21 have room to garden and do some composting. For years, I gathered
22 egg shells, coffee grounds and lettuce waste at a rate of about 400
23 pounds per restaurant and I brought it up to another Site across the
24 street in the City of Mason and I composted for years. I did this piece
25 of property because there's 2800 acres undeveloped all the way

1 around me, it was just a nice rural area for my wife and I to raise our
2 kids.

3 Q And, when approximately did you start composting - let
4 me ask you this, when did you become a Class 4?

5 A I can't remember when the first permit was issued, it was
6 back in the 80's, but I started composting literally the day I moved in
7 to this Site. The City of Mason and the City of Lebanon shares all
8 their leaves with me. The City of Mason, for more than a quarter
9 century - there, has brought their leaves from the very first and I took
10 those leaves, co-mingling with a little animal waste from the Rapp
11 farm over by me and that's how I got started.

12 Q So, essentially from its inception, the City of Mason has
13 been one of your clients?

14 A Yes, sir.

15 Q Why don't you tell me about when you became a Class
16 2, I am sorry, tell the Commission, when you became a Class 2.

17 A Yes. I did become a Class 2 in the end of '09, but about
18 '07/'08, my son took me to Columbus to a conference where I heard
19 Prince Charles' groundskeeper. He spent an hour talking about
20 composting and when he got done he said I am going to give an
21 answer to the next three questions, it's compost, compost and
22 compost. A lady screamed over all the audience and said what's the
23 best compost in the world, and he said based on analytical tests
24 results, food waste compost is the best compost in the world, so at
25 that point, I made a decision to gradually try to do this. By the way, I

1 am certified USDA organic. Every square inch of this farm, of this
2 ten acres and my 65 acres up at - in Lebanon, there is certified USDA
3 organic. That's the extra condition that I choose to follow.

4 Q Why don't you just tell the Commission just briefly who
5 some of your clients or customers are - in terms of providing
6 recycling materials and the end users of the recycling materials.

7 A My son back here operates our landscape division and
8 he's the largest user of the end-product, but we've had many, many
9 customers buy a yard or a ten yard truckload of compost over the
10 years. We have some giving gardens that are there on the property we
11 share with many yards.

12 Q What about the businesses whose material you recycle?

13 A Great. All right, almost every landscaper in the city here,
14 Creech and Cardinal and all of the big landscapers around the City of
15 Lebanon, the County here, everybody uses the property as a place for
16 organic recycling. I take limbs, logs, no stumps, I take anything
17 organic and I can convert it into a usable product called compost.

18 Q And, then local business also have you provide services
19 for them in recycling their materials?

20 A Absolutely, Wal-mart, Sam's, Wholefoods, Kroger. I
21 have been getting just simply raw food product from them that they
22 would otherwise can't go to a food buy, they'd throw away and I've
23 taken that kind of material from those kinds of companies and there's
24 other companies, you mentioned Loxotica. P & G has been a client.

25 Q What about the Zoo?

1 A Cincinnati Zoo is a wonderful partner and I had to - I
2 voluntarily stopped taking food back as soon as I realized I had an
3 issue and in order to cure this and to get a Site Plan ready, I've halted
4 the income, so I am hopeful to be able to add some of those firms
5 back.

6 Q Why don't you give the Commission, just a layman's
7 overview of what you do. I don't want you to get scientific, I just
8 want them to understand what the composting operation is.

9 A Great question. What I do is take organic matter that
10 otherwise would go to a landfill and I take that matter, sticks and
11 limbs, leaves, animal waste and food waste, I take that and co-mingle
12 it and I break it down into a finished product called compost. The
13 end result of which is called humus. Humus is the only stable part of
14 the soil, so every garden in the City and yard needs organic matter
15 and this is a way to add that back. It's kind of - my son came home
16 from Ohio State with a horticultural degree and he said compost is
17 kind of the eliczer that fixes all of our gardening problems. It cures
18 disease. The leachate that runs off is being sold now as an actively
19 aerated compost. Farmers are using it and homeowners are using it to
20 cure disease, and so it's a way to use that product too.

21 Q Now, sir, is it your intent to operate this facility in full
22 compliance with all local zoning codes, regulations, statutes and so
23 forth?

24 A I swear before God.

1 Q Now, you heard me ask this gentleman, Mr. Yetter, some
2 questions about the Plan, and whether you were operating lawfully
3 and that kind of thing. Notwithstanding any of that stuff, is it still
4 your intent to fully comply with the zoning Site Plan that we have
5 submitted?

6 A Absolutely, yes, sir.

7 Q And, if we make it to later, any conditions that the
8 Commission requests in terms of complaints about odors setting up
9 hot lines, sir, do you intend to fully comply with any of those
10 recommendations?

11 A I definitely do.

12 MR. BORCHELT: With that, I don't think I
13 have any further questions for you. I appreciate your time.

14 MR. ARISS: Is there any questions - -

15 MRS. SOUTH: I don't think I have any.

16 MR. ARISS: Okay, thank you. Any
17 other folks, please?

18 MR. BORCHELT: Yes, we have Ms. Linda
19 Crabtree with the Giving Garden.

20 MR. ARISS: State your name and
21 your address.

22 LINDA CRABTREE
23 HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AND
24 ANSWERED AS FOLLOWS:
25 EXAMINATION

1 BY MR. BORCHELT:

2 A I am Linda Crabtree, and I live at 5545 Greenwich Park
3 Drive in Mason.

4 Q Ms. Crabtree, why don't you first tell the Commission
5 what it is that you brought with you?

6 A I brought a small handout. Marvin has been generous
7 in giving. I am President of the (inaudible) Giving Garden and we are
8 located on the retail property up the hill, behind the center. And, our
9 sole purpose is to grow vegetables using the compost and mulch
10 system that he grows/creates to give organic vegetables to the local
11 food pantries.

12 Q And, this information that you brought to the
13 Commissioners - -

14 A Let me just read through this. We are a non-profit
15 organization and our purpose is to grow organic vegetables to donate
16 to the food pantries in Warren County and this year the Lebanon Food
17 Pantry was our recipient . Five years ago, Marvin donated a plot of
18 land in his retail center for our organization to grow these vegetables
19 and he continuously provides with all the compost, mulch and even
20 water that we need. We just tell him we need more compost and other
21 materials and he makes sure we receive it, and without his generosity,
22 we would not be able to continue to provide the vegetables.

23 Over the past years, we've seen an increase because we are
24 continually adding compost to our ground – to the earth. What I have
25 to provide to you is some photographs of our garden and some

1 information from our yields as well as notice from the Food Pantry
2 how the vegetables are really helping the people in Warren County.
3 And, our goal is to be able to grow and provide organic vegetables to
4 the local pantries and in order for us to do so we have to have the
5 compost that Marvin does provide us each season. As mentioned, we
6 are non-profit and that means we have limited funds to purchase, so
7 his generosity in giving us all the materials that we need to amend our
8 beds, to add to our - to provide our vegetable plants, makes it so we
9 can grow good healthy vegetables. We're small, but we do provide a
10 valuable service to the Warren County area and pantries and Marvin
11 makes it possible for us to do this. Thank you.

12 MR. ARISS: Thank you. Any
13 additional witnesses here?

14 MR. BORCHELT: I don't think so, sir.

15 MR. ARISS: Thank you. At this time,
16 does anyone wish to testify to the Site Plan. If so, come to the
17 microphone and state your name, mailing address and whether you've
18 already been sworn or affirmed to answer. Anybody wish to testify at
19 this time?

20 UNIDENTIFIED MALE: Opponents,
21 correct?

22 MR. ARISS: Opponents, yes, sir. Sir.
23 if you would please state your name and address and whether you've
24 been sworn in and affirm the oath.

1 MR. KEVIN O'SULLIVAN: I've been
2 sworn in, my name is Kevin O'Sullivan. I live at 3038 U.S. 42. I am
3 the closest residence to his facility.

4 We actually live in the house 1000 feet from the facility here. I
5 also own and operate the Southwest Golf Ranch, which is on the
6 other side of our property. This is what we took pictures of last year,
7 but this is the back part of his property. To the east side, the
8 southeast side, when they were looking for the mounds, there were
9 several times we witnessed the water overflowing and running into
10 the City of Lebanon's property, the wetlands, a lot of water and to the
11 other side, from my house and from Benson's property - so this is
12 looking at it from the north side, from my property. It doesn't look
13 like pretty trees or mounds, it looks like a dump. It's got several -
14 hundreds of tons. When you mix hundreds of tons of animal waste
15 and hundreds of tons of cafeteria food/cafeteria trays it reeks bad. It
16 doesn't kind of smell. We had people at our facility, at the driving
17 range, which is on the other side, hundreds of feet north of my
18 property, complain, quit hitting golf balls, quit the mini golf, to the
19 smell and the odor. We've called and complained. They did try to do
20 whatever they do to try to make the smell go away but the smell did
21 not go away, until he halted, not long ago, when he halted the
22 operation and the smell has not been bad sense. But, when they did
23 make the smell, exactly a year ago, my daughter had a birthday party
24 and they were going to have a swim party and all the kids came back
25 inside because it smelled so bad outside. Nobody wanted to be

1 around the pool. It does impact. There's also residents across the
2 street from me, Marty Bullock, he couldn't be here tonight, he's
3 working, but he would also testify as to how bad the odor is. We
4 could bring in customers from our driving range that could- regulars -
5 they know when that mulch stinks. It blows up 42, up to our place
6 and as far as having an impact on real estate values in that area,
7 there's definitely nobody that would want to move in next to that
8 dump. I mean, it smells that bad and it looks that bad. And to the
9 thing about the mound, whether a fence, an eight-foot fence or trees,
10 pretty much trees lose their leaves from October to the end of May,
11 so if I calculate right, that's eight - seven/eight - months that you
12 would be looking at that, versus a mound. And, I used to buy
13 compost from Marvin. I have no problem with compost, but what we
14 have there is not compost. When you're bringing in 50 tons, and if I
15 calculated right, over two years, she said that product is ready to sell,
16 that's over three hundred tons of trash, compost, animal feces, fruit,
17 not counting in the spring time, every time we go out to our cars,
18 they'd be covered with flies. Obviously, they must like to breed over
19 there.

20 There was slides, as this rolls through, there's some slides of
21 dead animals out there. All the turtles in the pond were dead. I think
22 the DNR they noted that, but that's pretty much, I mean, it does have
23 a big impact and if they're looking to do residential to the south, wait
24 until they get wind of that. You'll have so many people up here
25 complaining. And, even industry, if you had to work 9 to 5, and put

1 in a light industrial park anywhere around there, it'd have a huge
2 impact on that. I mean, nobody would want to move a business into
3 that area.

4 Also, the hours of operations, they go all night. They dump all
5 night, they flip all night. We've had semi trucks pulling in. You can
6 hear the bed, if you sleep with the windows open, you'll hear it slam
7 down when they're done dumping. They'll be out all night trying to
8 turn it. That's all I have.

9 MR.ARISS: Does the Applicant have any
10 cross-examination of the witness?

11 MR. BORCHELT: Yes, sir, I have a few
12 questions for this witness.

13 CROSS EXAMINATION

14 BY MR. BORCHELT:

15 Q Sir, when did you move into your residence?

16 A 1995.

17 Q And, 1995, you heard Marvin's testimony that he was
18 there since 1985?

19 A 85, 82 I thought he said.

20 Q So he was there composting ten years before you moved
21 in?

22 A Yes, he used to have a nice little operation, leaves, trees,
23 twigs, and it was fine and this is hundreds of tons of waste and trash.

24 Q Let me stop you there for a second. Because you're
25 showing all of these full photos, but you're aware that these are not - -

1 A No, these are - -

2 Q Let me ask the question and then you can speak. You're
3 aware that this Site Plan Review process is for the purpose of
4 redeveloping the compost operation, you're aware of that, right?

5 A I am aware that what he's applying for with the 50 tons a
6 day, he'd be taking in more than (inaudible) before this, it would be
7 extra masses.

8 Q Sir, what are your professional qualifications in terms of
9 engineering this type of - -

10 A I have common sense and I'm a neighbor and I can see
11 that right there behind me.

12 Q My question was, what are your professional
13 qualifications in terms of engineering and operation like this? Do you
14 have any?

15 A I don't need any.

16 Q Well, you heard me read from the professional, from the
17 Planning Commission, who said in a business record, that it would
18 not impact property values, were you here when I read that?

19 A You were incorrect.

20 Q Were you here when I read that? I wasn't incorrect.

21 A No, I was there. Do you want to move next to this?

22 Q That wasn't my question.

23 A Do you want to move your business from Vine Street up
24 here, next to this?

1 Q Do you believe that you're more qualified than the
2 professional, who is the President of the Regional Planning
3 Commission, is that your testimony?

4 A You're not right. I'd say I would be equally since I own
5 probably more property next to this than he does.

6 Q You're telling this Commission, that you're equally as
7 qualified as the President of the Regional Planning Commission to
8 talk about the impact of this operation with economic development
9 and residential property values?

10 A I'm going to tell you that common sense - -

11 Q Remember you're under oath.

12 A That's fine. I can tell you common sense tells me that no,
13 nobody would want to move into that.

14 Q Common sense doesn't equate to any PhD's or anything
15 that would give you the qualifications, right?

16 A No.

17 Q Now, you talked about that this reeks real bad, I think
18 that's what you said?

19 A Yes.

20 Q But you would agree with me that the two times the EPA
21 was out there unannounced, they said there was no smell, correct?

22 A There are times when they don't turn it or he's not
23 digging so much and there are times that he's quit or there's been a
24 lot of complaints. If they happen to show up during one of those
25 times, they got lucky and it didn't stink, then that would be fine.

1 Q Now, you're aware that the purpose of this Site Plan is to
2 implement additional controls and control smell, you're aware of that,
3 right?

4 A Well - -

5 Q Are you aware of that, it's a yes or no.

6 A I am going to say yes, but they tried to control those
7 smells over the last eighteen months and it didn't work.

8 Q Well, the EPA says it did, twice, right?

9 A I would say if you asked the EPA if they were there more
10 often, that they were there at times when it didn't stink. You can
11 smell it 2000 feet away, how can it not smell

12 Q Sir, do you have any testimony or records from the EPA
13 saying it smells?

14 A I can find some.

15 Q But, as we sit here today, you don't, right?

16 A No, I don't have anything from the EPA.

17 UNIDENTIFIED FEMALE: There are violations on file.

18 MR. BORCHELT One person at a time please.

19 Q You said there's residents across the street who say it
20 smells, they're not here, right?

21 A No. The Rapps have some complaints, but they live in
22 Florida, so - -

23 Q You talk about hours of operation, I presume you're
24 aware that as part of the Site Plan, the hours of operation will not go
25 past business hours, are you aware of that?

1 A Is he already in - what are his hours of operation now?

2 Q That wasn't the question. The question is whether
3 you're aware that with the proposed Site Plan, whether he's going to
4 operate within normal business hours, you're aware of that, right?

5 A Yes.

6 Q You said you used to buy compost from Marvin. I
7 presume then that you're not going to argue with the benefits of
8 composting to the local community?

9 A I have no problem with composting but the trash and all
10 the food, hundreds of tons of food, hundreds of tons of fecal waste
11 from the Zoo, it's nasty, that's not what I call compost.

12 Q Do you think sir that Marvin operates fully in
13 compliance with the EPA regulations in his permit, fully in
14 compliance with the zoning and upon the recommendation of all of
15 these good professionals that they should still listen to you and shut
16 him down?

17 A Yes, I can tell you - they might want to listen to
18 professionals, but I live next to it, I work next to it, 24/7, so, I have
19 had to put up with it smelling for months.

20 Q But, then let me understand your testimony. So, you want
21 the Commission to accept your word and your hunches and your
22 suggestions versus the hard facts of the law? That's what you want
23 them to look at?

24 A I'm here to testify with some pictures of living next to
25 what it's like.

1 Q That wasn't my question. If he's in full compliance with
2 all the recommendations - -

3 A If he's been in full compliance, I would say I would
4 recommend against it, because if he's been in full compliance and it's
5 been this bad, then it - I don't believe this should happen.

6 Q Clearly, you're manifesting to the Commission by your
7 testimony that you don't understand the process of the Site Plan.

8 A I've seen the Site Plan. The Site Plan is one thing,
9 reality is another. I mean, you can have a nice little picture go back to
10 the Site Plan, but the pictures that I have shows what's already there
11 and what's been there.

12 Q And, again, the Site Plan, is going to be something
13 completely different than the pictures, you understand that right?

14 A No, I understand you're suggesting that, but I am just
15 stating what's already taken place.

16 Q If I can't convince you of that?

17 A You can't convince me of that.

18 MR. BORCHELT. Then your testimony is of no
19 value. And, with that, I have no more questions for you. Thank you.

20 MR. ARISS: We've been talking for
21 about an hour and a half, why don't we take a ten minute break, start
22 up again about 10 after. You can have the opportunity to stretch your
23 legs.

24 (Short recess.)

1 MR. ARISS: We will resume our session here now.
2 It about a quarter after, or ten after. Is there any other witnesses that
3 would like to testify as - sir?

4 MRS. SOUTH: Mr. Ariss, I'd like to
5 make a comment please. This is a group of friendly neighbors and
6 Mr. Attorney, what is your last name?

7 MR. BORCHELT: Borchelt.

8 MRS. SOUTH: Your behavior, your
9 intimidation and smart remarks to these residents, I think is totally
10 uncalled for and unnecessary. We're here on a very legitimate Site
11 Plan Review that is very important and trying to chastise and belittle
12 anyone here to speak, and prove a point and fact is one thing, but
13 trying to belittle somebody along the way is totally inappropriate here
14 in Warren County and in our Commissioners' Boardroom. It does not
15 take a PhD to know that there is an odor associated with this, so I just
16 want for the record to let you know that I don't appreciate your
17 approach. I appreciate the facts and details that you are trying to
18 bring out. I do not appreciate the approach.

19 MR. BORCHELT: I apologize. My intent is
20 certainly only to represent my client as zealously as I can. If I
21 offended anyone, I do apologize and I will most certainly do my best
22 not to offend, I didn't know it was coming off that way. I thought it
23 was a healthy banter with the gentleman and so I don't want to be
24 intimidating to anyone and in fact, I am a little taken aback by it,
25 because that's not my nature. I was just trying to ask questions.

1 MR. ARISS: Just know where we're coming
2 from. Thank you.

3 MR. BORCHELT: I do.

4 MR. ARISS: Sir, state your name and
5 address please.

6 MR. JEFF BENSON: Jeff Benson, 2249 Bone Road
7 and I'm the neighbor to the north of Marvin's property at 3262 St.
8 Rt. 42.

9 MR. ARISS: You have been sworn?

10 MR. JEFF BENSON: Yes.

11 MR. ARISS: Proceed, sir.

12 MR. JEFF BENSON: Thank you. First, I'd like to
13 thank Mike as I appreciate the work he's done on this. I've contacted
14 him probably two years ago regarding this.

15 With that said, I sent a certified letter to Marvin back in March
16 of 2011, saying hey Marvin there's a problem with the smell here. I
17 said it smells like puke or crap. I said is there anything you can do
18 because I have a lot of tenants and complaints, like can you put lime
19 on it. At that time he said he was going to move his operation up to
20 the garden center, which he never did. He also said well, he was
21 going to put an aerator in and he never did. He said we need to get
22 electric, I offered electric from my well pump to aerate his pump if he
23 needed it, because I thought that would help the problem because you
24 can see where it's getting all stagnant in the pond. And, then, until
25 recently once the pressure was on from the County and the EPA, he

1 finally put the aerator in which it does help circulate that water
2 around.

3 That wasn't until recently. And, then there was a question also
4 with the gentlemen, the attorney saying that the EPA has been out
5 there just recently. Well, I think he had violations in the past where
6 he's not been in compliance with the EPA until just recently when the
7 pressure from the County and the EPA. But, before, the smell will
8 take your breath away. You come out there and it's like whew. You
9 know, I was waiting on sea gulls to show up because of the piles and
10 stuff over there. It's supposed to be all organic, well, there's plastics
11 that were in there from I think from the lunches that he was getting so
12 it was not all organic. There's actually a lawsuit at one point where
13 he didn't have organic stuff that he sold to somebody.

14 As I said, I have tenants there in my building and they
15 complain. Someone had said earlier, would it devalue the property?
16 Sure, if I can't lease the property, there's going to be devalues. I
17 can't lease it and the values go down. So, there is a problem with
18 devaluing the operation.

19 The other problem we had, that he's going to try to change it a
20 little bit with his pond, his pond did breach and came my way,
21 towards the City of Lebanon property and it was just nasty and black
22 and pretty gross.

23 With regard to the fence, they showed a Site Plan with a four
24 foot high fence on my property line. I'd like to see an eight foot. I
25 think he had his piles up to 20 feet high, so you'd still be able to see

1 them with an eight foot fence. With regard to the landscaping, when
2 the leaves fall off in the fall you can still see through it.

3 Signage, I'd like to make sure there's good proper signage.
4 I've had a problem in the past, people coming on my property and
5 literally dumping debris on the back of my property and I'd stop and
6 say what are you doing, and they'd say well, Marvin said to go dump
7 down there by the red barn. That's not Marvin's, he's next door. So, I
8 put up my signs so they knew where to go, that says Marvin's dump
9 next on left, so I'd like to make sure there's decent signage at his
10 driveway so they know where to go.

11 A side note, I didn't see anything for a hog pen on there. I
12 guess he has hogs, because my one tenant swore that wild hogs
13 invaded Warren County. I didn't know what she was talking about
14 and sure enough I saw these hogs going down along 42 and someone
15 stopped and said they were Marvin's and they took them back up to
16 his farm. So, I don't know if he's going to continue having hogs but
17 hopefully keep them penned so their not running lose, so people
18 won't think we have wild hogs running loose in the County.

19 One of my biggest concerns, if you can show the aerial picture
20 - we can see the part - right here is a well house and that is well water
21 that supplies the bathroom into the building here and the tenants use
22 that. I have some concerns. I know in the past it never, pretty sure it's
23 never been lined, so if there's any health issues, I am trying to get an
24 answer from the EPA how far he needs to be away from that, and I

1 really have never gotten an answer, but there is a health concern with
2 those ponds.

3 MR. ARISS: Away from the
4 (inaudible)?

5 MR. JEFF BENSON: Yes, how far he
6 has to be away from there. Now, he is moving, because this is where
7 he was now, that breached this way and that's one of my bigger
8 concerns is with the well, along with the fence. Now, giving credit to
9 Marvin, he has taken care of the stink, he's not taking in all the
10 materials that he has in the past but it came only from pressure from
11 the County and the EPA to make him do this, so hopefully he
12 continues to follow the rules and it won't be a problem. But I can see
13 if he doesn't the smell will be right back. It will - I think you guys
14 have been out there- it will take your breath away.

15 MR. ARISS: Any questions?

16 MR. BORCHELT: Sir, I am going to ask
17 you some questions, but with all due respect, I was born and raised
18 and grew up and still live in Warren County, so I am not intending to
19 intimidate you. But, you testified, so I am going to ask you some
20 questions.

21 MR. JEFF BENSON: Sure.

22 CROSS EXAMINATION

23 BY MR. BORCHELT:

1 Q You had indicated that you saw some plastics in the pile,
2 right? Were you aware that there are organic bags, plates, trays and
3 things of that nature that could be composted?

4 A Yes, the EPA told me there were non-organics in there,
5 that's why he had to sift it out and sort that out.

6 Q But, some of that material that you're speaking of, the
7 plastics, may be organic?

8 A Yes, sure.

9 Q Okay. You talked about odor, I am going to ask you the
10 same question I asked the other gentleman. That is whether you're
11 aware the purpose of the Site Plan, at least in some part, is too
12 remediate that odor?

13 A Sure, but it wasn't in the past two plus years. It's always
14 been a problem until the County or the EPA or neighbors got down
15 on Marvin and we're finally to this point.

16 Q But each time something happened, would it be fair to
17 say that Marvin did take efforts to control it?

18 A No. Back in 2011, I sent a certified letter and said
19 there's a problem and he said he was going to move the operation and
20 he never did.

21 Q Okay. But since 2011, he's - you know, from the point
22 that you made the complaint up until the present, are you aware that
23 he does things on that property to control that odor?

24 A Well, no. He started to control the odor because of the
25 County Commissioners, the EPA and myself and the other neighbors

1 being in the paper, the news being out there, they've been aware, so
2 we're just in the last probably six months to a year, he's finally started
3 to do something.

4 Q I think my question is you're aware that Marvin doesn't
5 want it to smell on that property, right? He's not trying to be a bad
6 neighbor, right?

7 A I don't think so. If I told him there's a problem with the
8 smell, I told him what it smelled like to me and he told me, well that's
9 compost.

10 Q I don't doubt there is some smell associated with
11 compost - -

12 A It's beyond compost.

13 Q And, again, the purpose of this Site Plan, it's your
14 understanding is to address some of those issues. I just want to make
15 sure you're aware of that?

16 A Sure to make him comply with the rules and regulations
17 of the County and the EPA.

18 Q Right. Now, you talked about wanting an eight foot high
19 fence. I presume you heard at least some of the individuals,
20 professionals and residents of Warren County testify that the
21 landscaping would serve the same purpose and in fact perhaps be
22 more aesthetic, correct?

23 A I heard that. I am not really worried with the aesthetics,
24 because we're zoned industrial where I'm at. I just don't want to see
25 it and leaves fall off the trees in the winter, so you've got six months

1 where you can see it and I don't know, I think there's a limitation on
2 how high he can take the piles, but I think it's 20 foot if I recall right,
3 so if he's got a 20 foot high pile and four foot fencing is not going to
4 hide that.

5 Q But, I would presume if he does sufficient landscaping
6 that would sufficiently screen it, then you'd have no problem with
7 that. In other words, it doesn't matter whether it's a fence or
8 landscaping, as long as it's - -

9 A I would prefer to see a fence, because I think the
10 landscaping like I said, the foliage falls off, you get six months a year
11 and then by the time it grows in, so I'd prefer to see the eight foot
12 fence according to what the code requires.

13 Q You had talked about a well house, I don't recall seeing
14 any comment by the Commissioners with regard to that.

15 A It's right there.

16 Q Do you have any evidence to present to the Commission
17 today that that is going to present some type of problem or hindrance
18 with regard to the Site Plan or review of it?

19 A Well, I'm not an expert, but I know that water will leach
20 if it's not done properly in the ponds and I had a tenant tell me before
21 that been brown water that's come out not all the time, but on
22 occasion, so my concern is it's leaching down into that aquifer as we
23 sit over and a big aquifer area and that was my concern is that it's not
24 done properly and it could contaminate my well.

1 Q Well, there was a report, I don't know if you read it,
2 from I believe the water and sewer district, saying that with the
3 organic operation, being from the aquifer, that it would not
4 contaminate that water, did you see that report?

5 A No, but I just thought there should - there was a setback I
6 thought, the operation has to be - I don't know what that is.

7 MR. BORCHELT: I appreciate your time
8 and again, I apologize if I was in any way harsh with you. Thank you
9 sir.

10 A Thank you.

11 MR. ARISS: Anyone else who wishes to
12 speak at this time?

13 At this time, we're going to give the Applicants the opportunity
14 to respond to testimony and evidence that was presented by the
15 opponents. Again, come to the microphone, please start by stating
16 your name. Sir?

17 MR. BORCHELT: Yes, we're going to have
18 Marvin Duren offer a few brief comments.

19 MR. MARVIN DUREN: Thank you.

20 MR. ARISS: State your name again
21 please.

22 MR. MARVIN DUREN: Oh, Marvin Duren. I
23 appreciate my neighbors coming up and I want to be a good one.

24 Jeff did send me a letter and I hired a company to come in and
25 double my pond size and I started sucking the water out and I thought

1 I had that cured. I was gone out of the country, came back. I got into
2 New York City and my daughter told me that we had a newspaper
3 article and that you have an odor and that was the first I had heard
4 this year and Ms. O'Sullivan called me and I told her to her face that I
5 would make each day better for her and the neighbors and that is my
6 goal. And, if you'll approve this Site Plan, I will do everything. I let
7 that pond go anaerobic. I did not know about the problem, the odor
8 that it was going to create. I had no idea. He got that anaerobic
9 without the presence of oxygen. If it's oxygenated, the oxygen helps
10 kill the odor and its bacteria eats the bad organism. So I've had the
11 ponds tested in the last few weeks. I have had the county health
12 department - I had two of their members out there. I asked them, after
13 they walked around the ponds, did you smell anything and they both
14 said no. I had my own well water tested, I'm very close there too and
15 I had zero bacteria in my well. They did standard protocol on that too
16 and the ponds are at a level now that a standard pond would be a farm
17 pond, where you have animals, so and I am seriously apologizing. I
18 didn't mean to stir up a stink in this wonderful County, I own sixteen
19 - -

20 MRS. SOUTH: No pun intended.

21 MR. MARVIN DUREN: No pun intended, but my
22 father and I bought sixteen parcels of land in this great County and
23 we've been developing and working here since the early 70's and I
24 have never had a neighbor complain in the first forty plus years and I
25 am going to fix this and I'm going to do it right and I'm going to

1 follow all guidelines. I have a wonderful team that is administering
2 and operating this facility. We have a gate. We only - the only lights
3 that should be seen at night time should be mine. I drive through that
4 compost pile a time or two at night, just to check it. Any time I'm
5 coming or going I go through the compost operations, so standard
6 procedure. And, I'm always up there after dark and I question that, I
7 do have the right to be there for security sake on my own property, so
8 that should be the only person there. We have had one night time
9 delivery and I will tell you I was - I got a call at 4:00 a.m. in the
10 morning and a guy was broken down in Portsmouth and headed this
11 way and did I make him wait? I let him, I went and unlocked and let
12 him in and he unloaded a truckload that came from Wal-mart. And,
13 that is the only time that I've let anybody operate at night time and in
14 the previous, many years ago, I am a farmer, gardener, and if I could
15 turn that compost at night I was doing that, if that's 20 years ago.
16 And, we don't do that now, we're following - we're trying to follow
17 every possible guideline there, so thank ya'll.

18 MRS. SOUTH: Thank you very much, Mr.
19 Duren.

20 MR. MARVIN DUREN: Any questions, Joe,
21 anyone else?

22 MR. ARISS: Thank you, sir. At this time, do
23 the Applicants have anything else to say? The evidence to present or
24 witnesses to present?

1 MR. BORCHELT: We don't, Mr. President, unless
2 you'd like us to move our documents into evidence at this time?

3 MR. ARISS: At the end we will get to that.
4 At this time, the Applicants wants to admit every document that he
5 desires for the Board of Commissioners to rely on to make its
6 decision and leave a copy of the documents for the record.

7 MRS. SOUTH: In your testimony, the
8 Applicant's testimony, you talked about quarterly inspections by the
9 EPA and I only heard reports on two of the four quarters, two of the
10 past four quarters of the EPA reports. Will you be submitting any
11 other EPA reports in your documents?

12 MR. BORCHELT: Ma'am, we're going to be
13 submitting two of them.

14 MRS. SOUTH: Just the two that were - -

15 MR. BORCHELT: That's correct. Those are the
16 only two that reference the odor. The others obviously don't say that
17 there was an odor, but they're being offered to show that at the time
18 of those random inspections, the odor was controlled.

19 MR. ARISS: The one with two documents?

20 MR. BORCHELT: That's right.

21 MS. SOUTH: The two documents that you
22 referenced said there was no odor and that's what you're presenting?

23 MR. BORCHELT: That's correct.

24 MRS. SOUTH: What did the other two EPA
25 documents show that you haven't discussed?

1 MR. BORCHELT: There would be quarterly
2 reports. I'm not submitting every quarterly report, we can get that.
3 I'm only submitting the two where there were complaints that there
4 was an odor and EPA found that there weren't. We can go back and
5 submit every quarterly report if necessary.

6 MR. DUREN: Joe and Ms. South, on one that
7 he's going to submit, it summarizes the last three inspections prior to
8 that and it summarizes to note a violation and it showed what was
9 done to correct it so he has given you a summary of all four quarterly
10 inspections.

11 MS. SOUTH: Please, I'm wanting to capture
12 the picture, I don't necessarily believe what I read in the newspaper
13 and so I just want to make sure that we've got all the facts before us.
14 We're not just hearing - -

15 MR. BORCHELT: We would be happy to
16 do that, because we think it supports us because in none of those is
17 there any reference to an odor so if the Commission obliges, we can
18 get that information and it would have to be submitted subsequent to
19 the hearing.

20 MR. ARISS: I'd like to see all four of
21 them.

22 MR. BORCHELT: Sure. I mean, we don't
23 have them now, but we can get them subsequently. Sure.

24 MR. ARISS: Is there a time element?

1 MR. BORCHELT: We can probably have
2 them - well, tomorrow with the weather, I would say Monday.

3 MR. ARISS: That sounds great.

4 MRS. SOUTH: I have another question.
5 The grant application that was made and maybe this is a question to
6 you, Mike or whoever - grant application through the solid waste for
7 \$250,000, was that on a specific geographic location. Was that on
8 what I called the retail center or was that on the railroad property?

9 MR. YETTER: I don't recall exactly, but
10 there was some confusion from the Application but I had researched
11 it prior to - -

12 MR. ARISS: Mr. Williams do you have an answer
13 for that?

14 STAN WILLIAMS: Stan Williams,
15 Warren County Regional Planning Commission. When we
16 researched that, there was no address on that grant application, at that
17 time Applicant was operating two different sites, so we weren't sure
18 whether that grant application was for either the Site on the west or
19 on the Site east of 42, so there was no address associated with the
20 Application.

21 MRS. SOUTH: I remember the
22 Board meeting where the grant was brought before our Board of
23 Commissioners. I am a little fuzzy on which site, what it was
24 appropriate for.

1 MR. DUREN: I remember it well and
2 Mr. Kilburn was talking about you can't put ten pounds of something
3 in a five pound bag and I remember that. That's what compost is all
4 about. We take ten yards, twelve yards, and make one yard of
5 finished products. So, it's recycling at its finest.

6 MR. ARISS: Mr. McGary, do we need
7 that, for Mr. Williams to be sworn to give that information – he just
8 gave us?

9 MR. MCGARY: Sure.

10 MR. ARISS: Okay. Stand and be sworn.

11 (Sworn in by Mr. Ariss.)

12 MRS. SOUTH: And, is it your testimony
13 that the information that you just provided to this Board is accurate
14 and true to the best of your knowledge?

15 MR. WILLIAMS: Correct.

16 MR. ARISS: Do you have any
17 questions?

18 MR. BORCHELT: No, sir, thank you.

19 MR. ARISS: Okay, you need to
20 submit your documents and leave a copy with us and you can submit
21 to us tonight.

22 MR. BORCHELT: Would you like me to go
23 through it, and Mr. McGary has copies, but I will give them to you
24 after the hearing.

1 MR. McGARY: That's fine, just as long
2 as you have copies for the Board.

3 MR. BORCHELT: The first document to the
4 Commission is a letter dated August 9, 2012 from the Warren County
5 Rural Zoning Inspection to Marvin and Ann Duren signed by Mr.
6 Yetter.

7 The second document is a letter from the Ohio EPA dated
8 March 22, 2013 to Marvin Duren signed by Pat Willoughby, Ohio
9 Environmental Specialist for the Ohio EPA.

10 MR. ARISS: We'll mark these as 1 and 2 as
11 you demonstrate - A (1) A (2), that will work.

12 MR. BORCHELT: So, then A (3) will be a letter
13 from the Ohio EPA dated November 20, 2013 to Marvin Duren and
14 also executed by Pat Willoughby with the Ohio EPA.

15 A (4) will be the 2009 Market Development grant with a file
16 stamp of May 28, 2009 and executed essentially between May and
17 June of 2009 consisting of approximately four pages.

18 A (5) will be the Site Plan Review comments of the Warren
19 County Regional Planning Commission that has a date of November
20 25, 2013. It is to Mr. Yetter, prepared by the the RPC reviewer, Stan
21 Williams.

22 A (6), the final document is just a submission by the Giving
23 Gardens and it consists of some information with regard to their
24 yields. It's got some photos of their vegetables and then it has a letter

1 from the Lebanon Food Pantry thanking the Giving Garden for what
2 they do for the less fortunate of the Lebanon City School District.

3 MR. ARISS: That's a two page
4 document?

5 MR. BORCHELT: No, I'm sorry, it's four pages
6 and I believe that is all - with obviously the addition of documents
7 we'll present by Monday.

8 MR. McGARY: Let me interject
9 something here. I know Mr. O'Sullivan has some photographs or
10 even a power point or whatever it was and he didn't have an attorney.
11 The Board should entertain whether to accept that into evidence as
12 well. Of course they would have an opportunity to examine those.

13 MRS. SOUTH: I would like to allow that
14 to be entered in, Mr. Sullivan's --.

15 MR. BORCHELT: We have no objection.

16 MR. ARISS: Okay, second that - -
17 thank you.

18 At this time, the Applicant must state on the record any
19 objection you might have.

20 Item No. 1, the Board of County Commissioners has denied
21 you the opportunity to permit your position, arguments or
22 contentions?

23 MR. BORCHELT: Would the Commission
24 be interested in a few final closing remarks?

1 MR. McGARY: I think what the
2 Commission is asking is for you to answer the question.

3 MR. BORCHELT: What is the question?
4 Repeat the question.

5 MR. ARISS: The question is has the
6 Commission, the Board here, denied you the opportunity to present
7 your position, arguments and contentions?

8 MR. BORCHELT: No, not at all.

9 MR. ARISS: Item No. 2, has the
10 Commission denied you the right to offer and examine witnesses and
11 present evidence in support for the record?

12 MR. BORCHELT: Yes.

13 MR. ARISS: We've denied you the
14 right?

15 MR. BORCHELT: No, no, I'm sorry – have not
16 denied. I apologize. I meant you have provided us the opportunity.

17 MR. ARISS: You scared me. Item
18 No. 3, has the Board of County Commissioners denied you the
19 opportunity to cross examine witnesses in opposition?

20 MR. BORCHELT: No, we have been provided that
21 opportunity.

22 MR. ARISS: Item No. 4, has the
23 Board of County Commissioners denied you the opportunity to offer
24 evidence, to refute evidence or testimony offered in opposition?

1 MR. BORCHELT: No, we have been
2 provided that opportunity.

3 MR. ARISS: Item No. 5, has the
4 Board of County Commissioners refused or failed or compelled you
5 to offer witnesses or evidence at your request?

6 MR. BORCHELT: No, sir.

7 MR. ARISS: Okay, did you wish to
8 present a closing now?

9 MR. BORCHELT: Just very briefly. Obviously,
10 let me start by apologizing again. I can assure all of the residents of
11 Warren County, I meant them no injustice and I apologize to the
12 Commission. I am actually taken aback that it was taken that way and
13 certainly I don't want that to reflect on Marvin. Talk to me
14 afterwards.

15 MR. ARISS: We're okay.

16 MR. BORCHELT: All right.

17 MRS. SOUTH: It's been said, it's over and we
18 appreciate - -

19 MR. BORCHELT: That being said,
20 obviously, you know Marvin has - as you can see he's a gardener -
21 he's a farmer. He's running this operation. He's not getting rich.
22 He's got a team of legal folks and engineers trying to comply with
23 this. Marvin doesn't want to be a bad neighbor. Marvin is a down to
24 earth guy. He's a member of this community that wants to comply
25 with the Site Plan. I brought up the issue of the Commission having

1 given approval at a time and then waiting two and a half years to say
2 Marvin needed that Site Plan Review. You know that's a legal issue.
3 Marvin is still going to comply with the Site Plan. He still wants to
4 be a good neighbor. He still thinks it's in his best interest. So he's
5 invested the money to go and do that.

6 There are really only as far as I can tell, two issues of
7 contention, possibly, that being the landscaping and the fence. It
8 sounds like everyone is in agreement that is a beneficial issue to the
9 community. There were some neighbor complaints but obviously the
10 purpose of this is to try and remedy those and create a situation where
11 he can be a good neighbor. He has agreed to do a complaint hotline,
12 set up by email or whatever system is most beneficial to the neighbors
13 and he just wants to run his operation, you know, he would ask the
14 Commission to consider the issue of the four foot high fence. I
15 believe the testimony was in relation to the landscaping being
16 sufficient in complying with the same objectives and he would be
17 willing to rearrange some of the landscape near the City of Lebanon's
18 property. That's not a problem for Mr. Duren.

19 So, again, he's here to comply. He wants to be a good
20 neighbor and most certainly he is here - and not withstanding any
21 litigation style to cross-examine, he is here and wants to work with
22 these folks and wants to be there in the long run with them.

23 So, I do appreciate your time. I know Marvin does as well and
24 with that, we respectfully ask for the approval of this Site Plan.
25 Thank you.

1 MR. ARISS: Thank you Sir. At this
2 time, I'll entertain a motion from my colleague to close the public
3 hearing.

4 MRS. SOUTH: I looked through my
5 notes, I don't have any additional questions. I'll move to close the
6 public hearing.

7 MR. ARISS: I'll second that. At this
8 time, I'll ask the Clerk to give us some dates as to when the Board is
9 available to give its decision.

10 MS. OSBORNE: How long?

11 MR. ARISS: Two weeks.

12 MS. OSBORNE: December 19th at 5:15.

13 MRS. SOUTH: 5:15 on December 19th,
14 and I can tell you this is not a very long meeting when we come back
15 to reconvene to render a decision --

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CERTIFICATE

I, Deborah Sue Kilgore, the undersigned, a duly qualified and commissioned notary public/court reporter in and for the State of Ohio, do hereby certify that the foregoing seventy-eight (78) pages is a true and accurate transcript of the tape recorded hearing taken at said time and place as stated herein.

Deborah Sue Kilgore



DEBORAH SUE KILGORE
Notary Public, State of Ohio
My Comm. Expires 10-06-2017