

Minutes of the Zoning Board of Appeals
Sheffield Lake, Ohio
May 15, 2013

The regular meeting of the Zoning Board of Appeals was held Wednesday, May 15, 2013. Chairperson Jancura called the meeting to order at 7 PM.

ROLL CALL OF MEMBERS:

Present: Jancura, Tatter, Pavkovich, Rinderknecht, Kovach, Mayor Bring, Law
Director Graves, Building Inspector Wiblin

Attending: Applicants, Concerned Citizens

Minutes: *Motion by Pavkovich/Second by Rinderknecht to approve the minutes of the Zoning Board of Appeals meeting of April 17, 2013 as presented. Yeas All.

CORRESPONDENCE: None.

PRESENTATIONS: *Building Inspector Wiblin to present:*

OLD BUSINESS:

- a.) ***Dollar General; Zaremba Group*** – Member Rinderknecht advised I would like to excuse myself from sitting on the board during this matter and will continue to attend the balance of this meeting as a landowner and citizen. Chairperson Jancura recalled past meeting of November 2011 an application made by Dearborn Land Investment on behalf of Dollar General was made to this Board solely for the purpose of complying with Sheffield Lake section#1139.06 and the last paragraph of that ordinance which states on a corner lot which borders a residential district the application for a permit to build on a lot shall be submitted to the Zoning Board of Appeals and Building Appeals for its approval of the size and location of the proposed building. At that meeting we considered not only the size and location of the proposal but other factors. In conclusion we denied or we did not approve of the application. It was not a request for a variance, it was merely to approve the application and we did not approve it. So Dearborn Land Investment appealed to the common pleas court which is our appeals court and in their opinion which was just issued on January 11, 2013 they have found and this is a direct quote from the court “in conclusion this matter is hereby remanded to the Board of Zoning Appeals for a full hearing as to the size and location of the proposed building.” So the matter before us tonight is in essence the same application, Dearborn Investment is only before the Board

to have us approve the size and location of the building and we are confined and constrained to those parameters only. Before we start for matters of convenience and ease, any person before the Board that would like to make a statement or testify to this Board I ask you to please stand at this time and raise your right hand. Chairperson Jancura swore en-mass those who stood to be able to testify.

Dearborn Attorney Todd Hunt stated I have with me this evening again Mr. John Wojtila who is an employee of Zaremba Group and Dearborn as an affiliate of the Zaremba Group. So I will have him testify in a minute. I just want to do a little bit of an opening here. I appreciate Madame Chair the restitution of the scope of this hearing. The opinion of the common pleas court however went even further with respect to the issues of location and size of the proposed building. It stated in the opinion and I will read it verbatim, referring to the testimony of Mr. Wojtila to set out the setbacks of the proposed building, the court said “as this testimony and evidence was clear and undisputed, this court finds that appellants application satisfied the location provisions as set forth in the pzc section 1141.05 a, b and c. The court went further to say that an inquiry into the size which is the second issue of a B2 building is governed by the provisions of pzc section 1141.03 and then the court said these are the 2 size requirements in the code, the building height requirement shall be the same as in a B1 business district and therefore not exceed 4 stories or 45 feet in height. The site there is pzc (planning and zoning code) section 1143.03 a and 1139.04 a. Further a building or structure shall have a building foundation area of not less than 800 square feet and 1141.03 b is cited there. We submit that we did present an application with a plan showing the size of the building but rather than appeal this through the court system we decided to take the remand and come back to you because of the constraints that the court put on with respect to location and size. As you know we have satisfied the locational requirements that are in the code and our application as will be testified to by Mr. Wojtila again – we meet the size requirements. I would ask that due to the fact that this is a remand from the court of common pleas that I would request that the transcript of proceedings from the court; both the original transcript that was filed by the city and the supplement that was filed be made a part of the record of this proceeding. Law Director Graves stated no objections. Mr. Hunt continued I would like to remind you that you are instructed by the City’s Law Director Mr. Graves with respect to section 1141.05 which refers to 1139.06 and with respect to that last paragraph Mr. Graves and all of us I think can agree that that last paragraph is somewhat ambiguous in that it does not set forth any standards or guidance in and of itself. So you are really confined to what those standards are in the zoning

code. I just want to read to you what was in the minutes of the February 15, 2012 meeting of this Board with respect to what Mr. Graves has said regarding that provision. He read “as I said before this is an ambiguous statute” and I think he meant ordinance “we have to look at the most reasonable way of interpreting this, the Ohio Supreme Court case of Sanders versus Clark County Zoning Department from 1981 – all zoning decisions whether on an administrative or judicial level should be based on the following elementary principals which underline real property law. Zoning resolutions are in derogation of common law and necessarily deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled. Therefore such resolutions are ordinarily construed in favor of the property owner.” He goes on to say that this was a court of appeals opinion, a 9th District Court of Appeals opinion citing the Ohio Supreme Court and of course the 9th District is where Lorain County sits so this is finding precedence upon the City of Sheffield Lake and this Board. In that case they went on to say restrictions on the use of real property by ordinance, resolution or statute must be strictly construed in the scope of the restrictions cannot be extended to include limitations not clearly prescribed which of course are prescribed in your zoning code with respect to size and location. Location of course is governed by the yard set-back provisions, the size is governed foot-print size – has to be greater than 800 square feet which is of course our proposal is and it can be up to 100% coverage of the property under your code to the extent that it complies with the other provisions which of course are those set-back provisions. So at this point I would like to and Mr. Graves then cited a lot of other cases of course from the Ohio Supreme Court and other courts to support that proposition and it was his opinion that you should not deny the permit – that is what he says, you should not deny the permit if it finds it meets all the requirements of our zoning code. At this point I am asking Mr. Wojtila to come forward and I want to elicit some testimony from him for the record.

Attorney Todd Hunt under direct examination of Mr. John Wojtila as follows:

Attorney Todd Hunt requested “John would you state your full name?”

John Wojtila answered John N Wojtila.

Attorney Todd Hunt asked you were placed under an oath of truthfulness, is that correct?

John Wojtila answered correct.

Attorney Todd Hunt asked who is your employer?

John Wojtila answered I work for the Zarembo Group located at 14600 Detroit Avenue, Lakewood, Ohio.

Attorney Todd Hunt asked how long have you been at Zarembo?

John Wojtila answered I have been employed with Zaremba in just over 15 years.

Attorney Todd Hunt asked what is your position there?

John Wojtila answered my title is senior development director.

Attorney Todd Hunt asked what is your educational background, just so the Board knows?

John Wojtila answered I have a Bachelors of Science and Civil Engineering at the Cleveland State University.

Attorney Todd Hunt asked what professional licenses do you have?

John Wojtila answered I am a licensed professional engineer in the State of Ohio.

Attorney Todd Hunt stated you have said what your position is with Zaremba, what do you do in that position?

John Wojtila answered specifically I can fill the middle role of the development process when we have property that is tied up or under contract, as engineer I do the land evaluation and do all the due diligence associated with that specific property. I work on all the items related to the acquisition, work on all the designs, entitlements, approvals leading up to a building permit and then once it gets under construction I pass it to Tom. I kind of fill that middle role of the development process.

Attorney Todd Hunt asked that would include appearing before the Planning Commissions and Zoning Boards?

John Wojtila answered that is correct.

Attorney Todd Hunt asked how often have you done that over your career?

John Wojtila answered I have done that numerous times, probably 1 per month.

Attorney Todd Hunt asked whom are you representing here tonight?

John Wojtila answered my work for Zaremba Group, we are an affiliate company of ours is Dearborn Land Investment and Dearborn Land Investment has property under contract with the property owner. We specifically represent Dollar General located out of Memphis, Tennessee.

Attorney Todd Hunt stated I assume that at some point and time Dollar General will have control and/or ownership?

John Wojtila answered yes what happens is as we move through the process we assign a purchase agreement to Dollar General and Dollar General as the process moves forward would actually be the property owner and we would build the store for them. That is what we have done with all the properties that we have built for them so far.

Attorney Todd Hunt asked how long have you been performing the functions with respect to the development, I know you have been with Zaremba 15 years.

John Wojtila answered I graduated in 1985, so 28 years initially more in industrial development but more recently retail development with Zaremba it has been exclusively retail development.

Attorney Todd Hunt asked would you name for the Board a few of the specific types of retail developments that you have been responsible for?

John Wojtila answered the development that I have done is in primarily in CVS pharmacy, I have done a lot of Dollar General recently. We are working actively with McDonald's and trying to work with retail like Staple's. Previously I have worked with PNC Bank, National City Bank prior to that. The shopping center; working with more of the larger like Best Buy, Kohl's.

Attorney Todd Hunt asked tell the Board what are some of the current development square footages of foot-prints of retail stores, such as; CVS?

John Wojtila answered like I said we do a lot of work with CVS pharmacy and their current prototype is 13,225 square foot building. We know if we go up against Walgreen's – quite a bit there, slightly larger at 14,500 and so is Rite Aid, Marc's or Drug Mart – certainly larger than that. Marc's I am guessing probably about 18,000 square feet and Discount Drug Mart has an average store of about 25,000 square feet.

Attorney Todd Hunt asked the particular application that is before the Board this evening and has been since the last meeting, what is the size of that proposed store?

John Wojtila answered we proposed, our application is for a 10,640 square foot building.

Attorney Todd Hunt asked so that would be smaller than these other retail stores that you mentioned, is that correct?

John Wojtila answered that is correct.

Attorney Todd Hunt asked what is the maximum building coverage requirement in the city zoning code for this property?

John Wojtila answered maximum building coverage and this is right out of their code 1141.04 is 100%, so the code allows up to 100%. The acreage of the property that we presented is 1.09 acres which is 47,667 square feet. So in essence you could build a 47,667 square foot building following the letter of the law.

Attorney Todd Hunt stated that provision also says except as otherwise specified in the code, is that correct?

John Wojtila answered that is correct.

Attorney Todd Hunt stated there are also minimum setbacks requirements in the code with retail in B2, is that correct?

John Wojtila answered that is correct.

Attorney Todd Hunt asked those minimum setbacks, what are the required minimum setbacks in the B2?

John Wojtila answered in the B2, the minimum building setbacks are 1141.05, the front yard is 25 feet/the side yard has a confined 15 foot distance with a 6 foot minimum.

Attorney Todd Hunt so what does that mean?

John Wojtila answered if you were to add up both side yards they would have to be more than 15 feet more or equal to 15 feet but the smallest size yard for building can't be less than 6 feet.

Attorney Todd Hunt asked what is the rear-yard setback requirement?

John Wojtila answered the rear-yard setback requirement is 15 feet.

Attorney Todd Hunt stated I would like you to go over the plan currently before the Board. I have marked these smaller copies but I believe that is the copy that is up there; exhibit 1.

John Wojtila stated the setbacks for the building, again what is required for the front yard is 25 feet and what we are proposing is 71 feet; so from the building to the right of way line we are proposing 71 feet. That is a difference of 46 feet, so in essence what we are providing is 284% greater than what code requires. For the side yards again the minimum side yard combined distance proposed side yard added up is 15 feet with no less than 6 feet for one of the side yards. What we are proposing is 60 feet for the Harris Road side and 19 feet for the Robinwood side so a combined total of 79 feet, so the difference between what we are providing and what is required is 64 feet that we are providing is 526% more of what code requires. In respect to the rear yard, again the requirement is 15 feet and our proposed building setback in the rear yard is 47 feet so the difference there being 32 feet and again being 313% greater than what code requires.

Attorney Todd Hunt stated as the Board will recall in November of 2011 we had a different plan than this particular plan and we listened to some of the residents at that time and could you tell the Board Mr. Wojtila what changes may have been made in response to those issues they had?

John Wojtila answered at the November meeting – traffic concerns which we previously had our driveway located off of Harris Road, there was some concern about that. So we did shift the driveway to the Robinwood Avenue side, we also were able to preserve some of the existing trees or the mature existing trees along Lake Road. We are also proposing that we install a nice board on board fence from the dumpster enclosure which is located here and that would be a fully enclosed dumpster with a board on board fence there.

(inaudible – several voices talking) Chairperson Jancura brought order to chambers.

John Wojtila continued this exhibit 2 is the engineer's site plan for the 10,640 square foot building, so as I mentioned earlier it shifted the driveway to the location off of Robinwood Avenue. But in essence it is the same plan as the other covered up version but it has more the dimensions and it is to scale where the covered up version is based on aerial photos but not to scale. So it is an engineered site plan for the project.

Attorney Todd Hunt stated alright John is showing you what is being marked as exhibit 3. If you could tell the Board what exhibit 3 is and I will say that that was received from Mr. Graves at one point about 3 months ago.

John Wojtila stated these were brought into us as photos that were taken of existing Dollar General in another state as an example of something of better quality than what we had originally proposed or we really hadn't gotten into building design so it is something that perhaps maybe more palatable for this location. So what we have is a picture of a ground plan along the length of the building, photos of particularly a board on board fence around the majority of the property.

Attorney Todd Hunt asked what type of building sign is that in that photo?

John Wojtila answered the building sign is a (inaudible) versus a box sign, some people consider it a nicer sign because it shows individual letters versus an entire box that may be eliminated.

Attorney Todd Hunt stated I would like to say to the Board that we have this pending application for the Board with this plan and at this point what I would like to say is that in the event that the Board of Zoning Appeals is inclined to approve our application that we would actually represent to the Board and commit to the Board that we would do something smaller in footprint than the 10,640 square foot building that has been proposed and is currently before the city. Also to do some of the amenities and even maybe more amenities than has been shown in exhibit 3 which is not within your preview and we understand that, it is size and location/it is size and location and we say pretty much size and not location because that has been established but the Board is so inclined to at least approve an application my client is prepared to do a smaller footprint and Mr. Wojtila is going to show what those are at this point.

John Wojtila explained in essence this is a very similar plan and we have talked to Dollar General of course and they are willing to give us the leeway to move forward with a 9100 square foot building so it is a 14-1/2% reduction of the size of the building. It is very similar and instead of being 140 X 76 the footprint of the building would actually be reduced 130 X 70 so in essence it just shrinks 10 feet in 1 direction and 6 feet in another direction. So if I could briefly run through the setbacks of the 9100 square foot building; front setback would be 76 which is an increase/our side yard

setback would be combined total of 93 again compared to the 15 foot requirement with the rear yard setback still being 47.

Attorney Todd Hunt asked would you give the setbacks on the east side and the west side?

John Wojtila answered on the east side which is the Harris Road side the proposed building setback would be 66 feet and then the west side setback off Robinwood would be 25 feet.

Attorney Todd Hunt stated that is opposed to the 19 feet on Robinwood which was previously there, is that correct?

John Wojtila answered that is correct.

Attorney Todd Hunt stated and that is opposed to the 60 foot that was there on the Harris Road side, is that correct?

John Wojtila answered yes. Again I wanted to go back to the size of the building, the height of the building is unchanged. The height that we are proposing we have an 18.6 foot high maximum point of the building. The rest of the building is all lowered and 18.6 is the maximum height which again compares to the 45 feet that is allowed by code. Again it is still a one-story building regardless. As far as the size, the area of the building in the requirement that Todd stated earlier code requires for 800 square foot minimum and certainly we still comply with that requirement we have a 9100 square foot building.

Attorney Todd Hunt stated John I am going to show you exhibit 4, if you would let the Board know what 4 is. Just because I marked it and it has the dimensions on it.

John Wojtila stated this is similar to before this is an engineered site plan for a 9100 square foot building. It is to scale and in addition with a 9100 square foot building, the parking requirement is less. So you were able to eliminate some parking spaces.

Attorney Todd Hunt stated just for the Board's information even though it is not within their preview this evening, we are meeting all parking requirements of the code.

John Wojtila concurred yes we are meeting all parking requirements and any other code requirements that we need and that has been verified through city staff – that we need no variances for the project.

Attorney Todd Hunt stated if you go back to exhibit 5 and maybe show on that exhibit 5 some of the landscaping amenities that are in that.

John Wojtila stated again we are still proposing that we would maintaining the drive along Lake and Harris along with Robinwood. We have planted things along the entire west side of the property and the forefront of the building. We had some trees along the east side of the building and we have

plantings along the sign and then the dumpster enclosures are a board on board fence similar to the photos.

Attorney Todd Hunt asked how tall would that fence be?

John Wojtila answered a 6 foot fence.

Attorney Todd Hunt stated the Board was has been marked as exhibit 6, could you explain to them what exhibit 6 is?

John Wojtila explained exhibit 6 is the rendering that we ask our architect to provide for us. It shows the building, it is taken from the opposite side of Lake Avenue across the street at street level looking at the proposed building with drive entry in the fore-ground. From an architectural standpoint we do show upgrades compared to our prototype, we are showing an all masonry front along with masonry on both sides. We are showing a sign similar to the photo that was provided, we would call it ground signage with a decorative base. The landscaping that we are proposing together with computer generated drawings that we are able to show existing trees that are going to be maintained. So it is an upgraded building, again we have spoken with Dollar General on this. They have also allowed us to show the individual channel letter versus the box sign that we typically would use.

Chairperson Jancura stated on the proposed rendering, I don't see any lighting for the parking lot – could you please explain what was the proposed lighting would be?

John Wojtila advised I don't think we generated a lighting plan but what we provide is some light poles on a direct; like a show box fixture. The fixture itself is concealed, it is 100% down direct lighting, there is no spill-over. Same thing with the building mounted fixtures, that is 100% cut-off meaning it doesn't broadcast out – it shoots down.

Chairperson Jancura stated and will the downward lights will even be storm lights, be constantly lit even though the store is not under operating hours.

John Wojtila answered no, when the store is closed the lights will be turned off.

Chairperson Jancura asked including the street sign?

John Wojtila answered yes including the sign.

Attorney Todd Hunt stated showing the Board what is exhibit 7 is and could you explain what exhibit 7 is?

John Wojtila explained similar to the site plan, a site plan versus the rendering which is to scale and calls out the material of the building – the components that were proposed. So this is the exterior elevation that we are proposing on all 4 sides of the building. Again it depicts the same materials that we have shown on the rendering but it would be more of an architectural drawing commonly known as the building exterior elevations.

Attorney Todd Hunt asked now why does Dollar General need at least a 9100 square foot store?

John Wojtila answered they generally tell us the size store that they would like to use, they know their customers and they have an idea of what the effects are. At this location they requested less than 10,640 square foot building. The site was certainly big enough for 10,640 square feet. So based on their needs, based on what they expect for the new store they requested the 10,640 and with that size they know they can adequately merchandize the store. They have built numerous of these stores they know they meet all fire codes with regard to space and requirement. They appear to have ample room for storage of material but also have ample room for display of their material in a very orderly and systematic fashion. They like other retails require.

Attorney Todd Hunt asked does that size of the store have anything to do with the economic liability of a retail store?

John Wojtila answered yes I would say it does.

Attorney Todd Hunt asked why?

John Wojtila answered well it is certainly an investment to build a new store with new parking lot, site improvements, the new building. So there is certainly a threshold that they need to build to get a return on their investment but it is certainly a factor in the liability of the store.

Attorney Todd Hunt asked would the land costs also be a factor?

John Wojtila answered sure, the entire development costs.

Attorney Todd Hunt asked in your experience in development, retail development over the past 15 years would a smaller specialty retail store be economically viable on this project. In the other words your standard mom & pop specialty store.

John Wojtila answered generally a mom & pop so to speak would take over existing space versus new space. We have all seen it and it is not unlike the community where I live in where typically the newer developments from more of the national chains come in.

Chairperson Jancura asked Mr. Wojtila in your opinion the building of a smaller store from a 10,640 square feet requested to the actual 9100 proposed, will that to the best of your knowledge effect the successfulness of the store because it is going to be smaller?

John Wojtila answered Dollar General evaluated that and they made the determination that it would be a viable store even at the 9100 square feet.

Chairperson Jancura asked do you know if there are any other Dollar Generals that are this small?

John Wojtila answered there are very, very many of those. Zaremba turns over to them about 35 a year and the majority of them are the 9100 square foot stores.

Chairperson Jancura asked so this is pretty much an average Dollar General?

John Wojtila answered the 9100 would be the average.

Attorney Todd Hunt stated we are asking for more than a recommendation. He continued at this point I guess I am done with the testimony of my witness. I would like to say that base upon what we presented and the 9100 square foot store, we would ask for your approval. If you are not going to approve it, we have got to pursue the larger store. But we really can do the 9100 square feet, Dollar General has agreed to that and the beyond prototype amenities that Mr. Wojtila has explained this evening. So again we would ask that according to the court opinion that we have met the locational requirements with not only our existing plans but our new plan which of course we meet those locational requirements even more with larger setbacks, smaller store and that we certainly meet the size requirements that the court set out being the only size requirements of greater than 800 square feet and a height of less than 45 feet. But as we said we are willing to do a smaller store than originally proposed if you will approve that this evening. At this point, I know that the property owner's attorney is here; Mr. James Kolleda who is the trusty for the Kolleda Family Trust and who owns the property. I know that he has a presentation that he wishes to make.

Attorney Bemer advised I am a partner in the law firm of Sealy, Savage, Ebert and Garash of Westlake Ohio. My firm is represented Mr. Kolleda in the past as well as today. We are here as an advocate for the application of Dearborn and Zaremba. Mr. Hunt had eluded to Mr. Kolleda have owned this property since 1972 so we are going on 41 years. The property in question has been zoned commercial since 1969. This is the first viable opportunity that Mr. Kolleda has had to develop this property, nobody has come forward in 41 years. Not for a commercial, retail building nor anyone has come forward to ask to rezone it for residential purposes. In that regard certainly as a resident and property owner I am asking the Board to consider Mr. Kolleda's property rights as being paramount in this process. I have the utmost respect for what this Board does once a month. I also go to the Board of Zoning Appeals meetings, I understand the dynamics of listening to applications, you are a quasi-judicial body and you have certain obligations of following your local zoning laws, the common law and certainly the directives of your Law Director Mr. Graves. You have to balance with the public rights to be heard. I know that very clearly because I am also a Law Director in the community on the west side of Cuyahoga County and so with

that in mind I understand that it is very difficult to separate the issues of following the law which is your responsibility with understanding the emotions and sentiment that go with change. Change is very, very hard for people and outside of your first amendment rights and the right to vote, the rights of property owners is probably next in line. This is not a variance request, there is very, very simple and it is cut and dry. You have already identified through the courts where the location of the building is and now we are looking at the size – that is it. As far as anyone objecting on the basis of and it is going to be sentiment or emotion or opinion that we don't want this community/it is not good for the property or for us. That is not an issue for this body and don't take my opinion, I am advocating on behalf of the applicant. Please take Mr. Graves opinion and follow the law in Ohio and I understand what your responsibilities are and I thank you for that. Member Tatter asked since this has been on-going since November of 2011 or before, can you as the attorney for the owner of the property swear that the option to purchase is still viable? Attorney Bemer answered yes it is.

Law Director Graves stated in the course of your presentation you made a number of assertions, things that Dearborn was willing to do contingent upon this Board approval tonight. I don't how accurate everyone's notes were but at this point I would like to maybe go through those and maybe enumerate those just so everyone is clear of what modifications they are proposing tonight. I think I have listed them and I am incorrect feel free to say something.

- 1) *You are moving the access drive from Harris Road to Robinwood. Attorney Todd Hunt advised number one that is in the current proposal. We changed that plan back in January of 2012. Harris was eliminated back in June. Law Director Graves clarified alright so that is part of your current proposal? Attorney Todd Hunt answered it is still.*
- 2) *You are reducing the size of the building by approximately 15% down to a 9100 square foot building. Attorney Todd Hunt answered I think it is about 14.5%.*
- 3) *You are willing to install board on board fence buffering wherever it abuts the residential. Attorney Todd Hunt advised no, pursuant to the plan the fence would be on Harris Road coming from the back of the property up to where it shows. Law Director Graves asked was there along the rear as well or no? Chairperson Jancura advised yes according to my notes there was. Member Tatter advised it only looks to be about 8 foot across the rear. John Wojtila advised based on what is to the south of our property, we weren't proposing a board on board fence there. We were proposing where the dumpster enclosure in the*

lower right hand corner or the southeast corner, that board on board fence would pick up at that location and then run along Harris Road up to where parking starts. We weren't proposing fence in that area and there is certainly room for it because we have a 5 foot setback there but there is a Tennyson right of way which is an old right of way. There is basically a lot of trees and plantings that occupy that space so we didn't think a board on board fence made much sense at that location. Again we picked it up at the dumpster and then headed it north on Harris. If the Board would like us to extend it further north, I think we stopped it there just so we could put some trees in that area and not have the trees blocking. If the Board sees that the fence should be extended north we certainly don't have an objection to that. We were not proposing any fence along the western boundary which is Robinwood.

- 4) *It would be a fully enclosed dumpster? Mr. Wojtila answered yes.*
- 5) *You are willing to do some landscaping/preserve some existing trees and some landscaping around the perimeter? Attorney Todd Hunt answered that would be as shown on the exhibit 5.*
- 6) *You are willing to go with a smaller ground sign then what was originally proposed? John Wojtila answered the initial application did not include the ground sign but what we are proposing is a sign that is similar to what is depicted in the exhibit that had the decorative ground sign with the base. Chairperson Jancura advised exhibit 6. Attorney Todd Hunt advised the only thing we showed previously was the location of the ground sign and of course that would not be relative to the issue before.*
- 7) *You are also willing to include the brick facing on at least the 3 sides; the front and the 2 sides? John Wojtila answered yes that is correct, what we have shown in exhibit 6 and I think the other exhibit 7 of brick material on all 3 sides on the building – the 3 sides facing the streets. The back didn't feel necessary to do that because of the condition with Tennyson Avenue.*
- 8) *You also agreed that whatever lighting is installed would only be illuminated during the hours of operations? John Wojtila answered yes. Chairperson Jancura added the lighting would also be 100% downward lights? John Wojtila answered yes. Attorney Todd Hunt clarified this is corrected, there would be spillage of light off of the property. John Wojtila advised that is correct too.*

Member Tatter asked Mr. Wojtila does the lighting being turned off also include signage lighting? Mr. Wojtila answered that is correct, yes. Member Tatter asked secondly although it is not within the per vial of this Board but concessions have

been made and are being considered, from what I remember one of our original meetings residents had been very concerned about the noise of deliveries from semi-trucks and so on. I was just wondering and I know nothing about merchandizing but it looks like you have the delivery area on the east side of the building which is the residential area and it would just seem that if possible if that could be moved to the west side which is already zoned and has a retail building on it. That might also help appease some of the residents feelings regarding noise. Again I don't know how Dollar General stores are designed as far as merchandizing goes but you would still meet the setback requirements from what appeared to be the calculations especially with the smaller building. Chairperson Jancura asked do you know where they load to in the store? Mr. Wojtila answered with this design of the building the storage area is along the east wall so there is a double man door located at this location, so deliveries would come into that location. Member Tatter stated and that directly faces the residential district. Mr. Wojtila answered we do have the ability to move the doors to the southwest corner. Member Tatter stated which would then put it as existing commercial – facing existing commercial. Chairperson Jancura stated that would also go a long way to – Harris Road is also at direct access for EMS, Fire – it is kind of a thoroughfare for Sheffield Lake. So if the loading could be done off of Robinwood that would go a long way to just make sure that traffic isn't in any way backed up/impeded or in any other way intrusive upon the city services. Since Robinwood, that commercial lot next door to you is empty anyway. There is very little traffic down that little block of Robinwood other than just a cut through to get from Tennyson over to Lake. I think that would go a very long way if that could be done. Member Pavkovich asked could we move the dumpster location over to the Robinwood side as well? Chairperson Jancura asked can the dumpster be moved to the west side? Mr. Wojtila answered yes, we have no objection to that condition as well.

CITIZENS COMMENTARY:

Chairperson Jancura opened the floor for citizen's commentary for brevity purposes I ask that you keep your comments to no more than one minute and to comments that have not already been addressed to the Board. We have already talked location of the building, the size of the building. We discussed the dumpster, we discussed the fence, we have discussed lights, we have discussed the signage, we have discussed parking spaces. We have already just addressed EMS and government services will not impeded. We have addressed a lot of issues and while I want to give everyone there fair turn to address the Board and to address this matter, I do not want to have repeat comments over going over the same thing over and over again. I think we have been very clear. The prevue of this matter before the Board is to approve the size and location of the building and that is all. Law Director Graves advised as I discussed with Mr. Rinderknecht as a member of the

Board, it is not enough to abstain from voting – you cannot participate in any of the discussions or deliberations on this matter so as to avoid the appearance that you are trying to influence the Board and jeopardize the integrity of these proceedings. So my advice to you is do not participate in these proceedings, you have raised a conflict and you are a member of this Board. Mr. Rinderknecht stated I am appearing as a private citizen Law Director Graves and if this is a conflict of interest I will resign from the Board at this moment and proceed as a private citizen. I consider myself withdrawn from the Board, I have now resigned. Does that clear up the conflict? Law Director Graves answered no, no it does not and I think if you proceed you are jeopardizing the integrity of these proceedings but go ahead. Attorney Todd Hunt advised Madame Chair I object to the testimony from this witness. Chairperson Jancura asked Mr. Graves should I ask that his testimony be stricken from the record as it is a direct conflict. Law Director Graves advised his resignation has to be accepted by the Mayor and he was a member of the Board up until just 10 seconds ago. This could be perceived as a member of the Board who has already raised a conflict of interest trying to steer the direction of the Board. Mr. Rinderknecht stated Law Director Graves you must be psychic because you have no idea what I am about to say. Law Director Graves advised it doesn't matter – any participation and there are plenty of decisions on this. Unknown voice shouted he just participated in the last one? Law Director Graves answered no he did not. Unknown voice stated yes he did. Chairperson Jancura brought order to the floor and advised in November 2011 when Mr. Rinderknecht spoke he was not a member of this Board. Unknown voice stated he is not on this Board, he just resigned. Chairperson Jancura stated yes he is still on this Board. Unknown voice stated he just resigned. Chairperson Jancura recognized “unknown voice” as Attorney Michael Duff and stated you do not know the internal workings of this Board. He cannot just resign like that and automatically you are not on, there is a procedure that we have to not be on the Board anymore and Mr. Rinderknecht has not met that standard. He is still a member of this Board. Attorney Duff argued don't you think it is wiser to listen to him, let him have his say. He is a concerned property owner. Mayor Bring advised if this continues I will call the Police and have you removed. Attorney Duff stated call the police. Mayor Bring stated you are out of hand. Attorney Duff stated you are out of hand. Unknown voice stated can we reschedule this so we can have enough proper time, we were not aware that this was happening. Chairperson Jancura advised sir these people have already waited almost 3 months to have a proper quorum of the Board and I will not put it off any longer.

Karl Guenther, 4663 Edgewater Drive asked we come here tonight and I know I only have a minute to talk which is wrong. We asked about looking at this stuff and this presentation was for the members only. You send a letter so that we can be part of this and now we only have a minute to talk. The road is changed to

Robinwood now, can the trucks handle this and everything else. You are bullying us, you are not even allowing us to talk. I feel it is very wrong, this would not be happening in Bay Village, Westlake – no where. The old administration should have never allowed this to happen. I understand that Mr. Kolleda should have a right to sale his property, he has never been offered anything. It should have been zoned residential and what are we going to do with Shoreway, Dollar General is spot zoning. Chairperson Jancura stated sir I understand your concerns and I can completely appreciate them but we are not allowed to address that matter. Mr. Guenther stated this is just wrong, I mean we come here to talk and you only give me a minute to talk – it is like we don't have a chance. So I guess you guys already got your mind made up.

Mayor Bring advised Madame Chairman if you want I will have him removed otherwise. Chairperson Jancura advised Police Officer I would like Attorney Duff removed, he is being extremely disrespectful to this Board. Attorney Duff stated I am not, David just said that everybody should calm down which is true.

Mayor Bring advised Sergeant Mariner to remove Attorney Duff from chambers. Attorney Duff shouted wait a minute, I want to hear from David – I want to hear from the Law Director. Law Director Graves advised I have no authority over this. Unknown voice shouted this is insane, insane!

Chairperson Jancura stated sir in the blue shirt – do you have a statement to make before this Board? Subject answered yes I do. Chairperson Jancura asked do you have a question for Mr. Wojtila or Mr. Hunt – a question about the proposal?

Elie Moussa, 4674 Hawthorne came to podium. Chairperson Jancura advised with previous minutes before her, you have already spoke to the Board at the previous meeting. Where you spoke in detail about things that you bought, Dollar General right next to you, you own what not, etc. You have already addressed the Board about this so please be brief. Mr. Moussa stated you haven't addressed here what I have addressed. Chairperson Jancura stated what is your question to Mr. Wojtila. Mr. Moussa stated you say I addressed the Board, I would like to know what I addressed and have you addressed those questions. Chairperson Jancura answered yes I have, yes we have. Mr. Moussa argued no you have not, no you haven't. Chairperson Jancura stated part of it we cannot address the issues that you are bringing up. Mr. Moussa asked why? Chairperson Jancura answered it is not within or prevue, I have already stated the prevue of this meeting is the size and location of the building. Mr. Moussa stated what good is this meeting if you are not listening to concerned citizens. Chairperson Jancura answered because we cannot do anything about your concerns. Mr. Moussa stated really, I live in this city, I pay taxes in this city – my house value will drop because of this. This is my kids will suffer continuous cars and trucks. Chairperson Jancura stated then you can move from Sheffield Lake, if you don't like the Dollar General you can move. Mr. Moussa stated why don't you move from Sheffield Lake. Chairperson Jancura

stated it doesn't bother me that the Dollar General is locating there. Law Director Graves asked do you oppose any business on this lot or do you just oppose the Dollar General on this lot? Mr. Moussa stated I had certain questions for the Board the last time and they have not fulfilled any of them. I said is the street capable of handling traffic with semi's going through there, we have a bus that falls in the ditch every time he makes a corner. Have we addressed that – no. Have we addressed the stormwater that goes through and floods both sides of Hawthorne and Robinwood – we have heard it from the Board addressing that. Have we addressed the safety, have we addressed the traffic flow in and out of the system – we have not. The only thing I have heard is they changed the size of the lot, they put little plants, they saved a couple of trees – they haven't done anything, to me it makes no sense. Law Director Graves advised the only reason this application is even here, they are not seeking a rezoning, they are not seeking a lot split, they are not seeking a variance. It is zoned B2, the only reason this is even here tonight, the only reason that anyone is even getting an opportunity to even take a second look at this is because you are supposed to review the size and location of the building. That is all. Now it has already been to the common pleas court and arguably the Judge said the location is on, so the only issue here is the size of the building. Now I am sorry, I am so sorry but legally that is the only reason we are even here tonight. Otherwise this would already be approved and built under our current zoning, we can't do anything about this. This was zoned B2 in 1969, Mr. Kolleda bought this I thought it was 1977 but since then he has owned it with the expectation he could develop. So my question again is is the objection to any business going on this lot or do you object to Dollar General? Mr. Moussa stated my question is not just at Dollar General, it is to the Board and the City of Elyria is this building and the integrity of the whole lot – is the roads of handling this. I am asking the Board, I am asking the Building Inspector, I am asking the Mayor, I am asking the Law Director – are the roads sufficient enough? The semi going from that corner into, how does Dollar General deliver their goods via semi's.

Chairperson Jancura advised Mr. Moussa – these matters would be under the purview of the Service Director and the City of Sheffield Lake and to be very frank with you – that is not your concern. The City will uphold its standards of whether the road can handle. Mr. Moussa over talked the Chair – obviously the city must not because they are not telling me, you are not telling me anything that I want to hear. Chairperson Jancura stated sir you don't need to know whether the road can sustain the delivery. Mr. Moussa argued of course I do. Chairperson Jancura stated no you don't we are here about the size and location of the building. Mr. Moussa stated as the taxpayer I do. Chairperson Jancura stated then go to the Service Department as a private citizen and ask. We do not know and we do not ask because it is not within our purview. Do you understand me, we have a very specific purview – we do not ask whether the roads can sustain the traffic that is not what

Zoning Board of Appeals does. That is not we do. Mr. Moussa stated so you are going to approve a building with a Board of Appeals not knowing what is? Chairperson Jancura answered yes. Mr. Moussa stated oh you are, very good that is how it works now? Law Director Graves explained there are other entities that have to review and approve the things you are talking about. We have a City Engineer, we have a Service Department, we have other codes that are applicable – that is not what this is. The concerns you are raising will have to be addressed. Drainage – these are all things that have to be addressed and they will be. That is not what this Board is here to review. Mr. Moussa stated why were we invited not to address our issues and concerns about where the building is going to be built? Law Director Graves advised as neighboring property owners you are entitled to notice. Mr. Moussa continued to over-talk Law Director Graves. Mr. Moussa stated we are making one wrong on top of another wrong in this city. It makes no sense. Chairperson Jancura stated then I encourage you to attend a city Council meeting to address the problems to the Council. We are bound by the ordinances that are written by and approved by the Council Members. We do not write the ordinances, I have nothing to do with this but we are bound as a Board to objectively apply them. If you don't like this code, you don't like what is going on in the city development I highly encourage you to go to a City Council meeting and there you can voice your concerns and get action. We cannot take action your City Council can take action. Mr. Moussa stated when is the next meeting for the city Board regarding this matter? Chairperson Jancura stated the City Council will not hear this matter. Mr. Moussa laughed because it is a done deal. Chairperson Jancura stated because they are not involved in the development of the city but if you want to have an ordinance changed, that is where you start. Mr. Moussa stated I want to know what the city is about to do with inadequate roads and sewer and stormwater. Law Director Graves advised those questions can be answered by our Chief Building Official who is Phil Lahetta, Mr. Wiblin is also qualified to answer those questions, our City Engineer which is Bramhall Engineering and Surveying. Mr. Moussa asked can I ask Mr. Wiblin now then? Chairperson Jancura stated no you are taking up the Board's time. This is not the reason for the meeting and you can please have a seat.

Melvin Doick, 526 Robinwood Avenue advised the first house from Lake Road on the west side. My question is what are the hours of operation and is the delivery within them hours of operation? When the store is closed is there no more deliveries? Attorney Hunt stated an objection but was inaudible to the tape. Mr. Wojtila answered the hours are Monday through Saturday 9 am to 9 pm and then Sunday 9 am to 6 pm. They only take deliveries when the store is open.

John Weinbrandt, 415 Harris Road stated I know you addressed lights but I want to know if there is anything in the landscaping plan for like traffic light that comes in from the cars and vehicles? Chairperson Jancura answered no that would not

something that would be before this Board. The only thing that they deal with is the lighting of their own property, so if a traffic light is eventually needed for the intersection. Mr. Weinbrandt stated you know like the house across from Convenient where the guy had to build the whole mound from keeping the lights from going into his house. Chairperson Jancura advised well the 100% downward lights that were already discussed means. Mr. Weinbrandt interjected right but he was getting all the traffic from the vehicle lights. Chairperson Jancura stated that is nothing that we can control. Mr. Weinbrandt answered okay I was just wondering if they could have the courtesy to maybe think of landscaping plan or something but thanks. Chairperson Jancura advised that is what keeping the large existing trees are there to help with.

Werner Wittman, 4675 Edgewater Drive stated I just have a question and comment about being open I believe you said from 9 to 9 and that is when deliveries would be accepted but could there be a truck parked there for 12 hours before that just idling and making noise. If the driver gets there and the store is not open, what is he going to do? Mr. Wojtila answered I am not aware of idling trucks or vehicles but deliveries on a free schedule time where the workers are there to unload so that the truck doesn't have to stay there. Sometimes city's have ordinances that you are not allowed to have trucks idling but I don't know if that is in Sheffield Lake but there is no intention to have trucks idling. Mr. Wittman stated I know there is no intention to have trucks idling because that is wasting fuel but is that a possibility? Mr. Wojtila answered extremely remote. Law Director Graves stated we do have ordinances against unreasonable noise, so that type of thing would probably be covered.

Patricia Markovic, 4681 Edgewater Drive stated I apologize if this falls outside of the whelm of what is discussed here but my concern is the size of the building. We have water in my basement, I have a problem with water in my house now. So if there is cement all in that lot that is directly across from my property. I mean it rains and that whole – that so-called strip mall that is there now floods. So that is my concern. Mayor Bring advised that is going to be addressed. Building Inspector Wiblin advised with it being over an acre of property the stormwater stuff has to go to the City Engineer and has to be met by the EPA guidelines and everything will come to the Building Department and Engineer to be approved. So it has to be taken care of. Mrs. Markovic advised because I walk my dogs in that neighborhood twice a day and today as I was walking down Edgewater I purposely looked in the sewers and they are just full of mud and gunk. The sewers are just full of mud so that is just my concern with any building going on that property. I myself put gravel, put brick I don't have any cement on my property whatsoever because of that reason. Chairperson Jancura stated again the building will obviously conform with all of the requirements of the EPA, State of Ohio, Sheffield Lake regarding drainage which having a building on the lot that will be properly drained and the

lot properly graded the way it is supposed to be will hopefully alleviate your problem. I think the fact that right now it is just vacant land that is not graded, that is not sloped in any particular way contributes to your problem. That having something on the lot that is properly sloped and graded will alleviate and draw the water away from the road down to that behind the building where it is supposed to go.

Board discussion of the matter;

Member Tatter stated I just want to reiterate we are here for only the size and location or size or location; one or both. I heard someone mention something about the Judge already establishing something. Chairperson Jancura advised he has already established location of the building. Law Director Graves advised I already gave you my copy of the decision but I believe there is a statement in there where the Judge in the decision that could be construed that the issue of location has already been decided. But generally speaking – yes, it is size and location of the building.

Member Pavkovich stated we are here to discuss the size and location and they meet the requirements is that correct? Chairperson Jancura answered correct, they do.

Chairperson Jancura stated I would also like to add that even prior to tonight's meeting the original application still conformed with all of the ordinances of Sheffield Lake. The size of the building as originally proposed was fine, the location of the building as originally proposed was acceptable but Dollar General has gone the extra step acknowledging that this is a unique neighborhood. That we are Lake Erie which is a natural resource and that this building is unique to the neighborhood, has gone through a serious amount of hoops to make an excellent presentation to accommodate us to make sure that while this formerly non-developed commercial property is going to be developed amidst a residential area – it will not stick out to the best extent possible. Mr. Kolleda is well within his right to develop this land, it was zoned this way back in 1969 which tells it was the city's intent to have Lake Road developed and he is well within his right to have it developed. I think the store while the immediate neighbors will not like it because they are going to be inconvenience the city as a whole will benefit from the store. Unrecognized voice yelled out while we got a shopping center totally empty down the street. Chairperson Jancura stated again as a whole I think the city will benefit but that again is not within the prevue of our scope. The size and location of the building fit within the prevue and I don't really see any reason why we should not approve the application. Especially with all the concessions that we have discussed this evening.

Member Tatter stated I would like to withdraw my request about moving anything since one of the citizens already has disagreed with it. We have people opposed to

it on the delivery on both sides so I would withdraw that as a concession at my request but recommend that you possibly discuss with the city engineer or whoever else maybe available to offer an educated opinion.

Law Director Graves advised the Board that any motion be clear that approval would be contingent on the modifications as offered tonight by Dearborn.

*Motion by Tatter/Second by Pavkovich to approve the application of Dearborn Development contingent upon the concessions discussed and put onto the record this evening as discussed by Law Director Graves and myself all the various square footages, the downward lights, the rear yard setbacks, the landscaping, the edifies of the building, the smaller signage, the fence that was going to extended not only along the west side but to be continued a little bit to the north and also the moving of the dumpster from the east side to the west corner. It is still up in the air whether they will load on Harris or Robinwood but that is not within our prevue. Also that we are taking guidance directly from the common pleas court remanding stating that the location of the building as proposed is acceptable and that really should not be one of our considerations. We are just to vote on the size of the building.

ROLL CALL FOR APPROVAL AS STATED ABOVE:

Law Director Graves stated I would clarify your vote to approving the size and location of the proposed building.

Yeas All – Tatter; to approve the size and location of the building, Pavkovich; to approve the size and location of the building, Jancura; to approve the size and location of the proposed building.

b) ***Revision of Building Department Application*** – Chairperson Jancura stated this was regarding the revision of the application for variances, lot splits, land sales and whatnot. I have put together a proposed new application but what I did I took the old application which works just fine but I also put in a section specifically for Jon to guide to what ordinances we are dealing and square footage requests of what they need to deviate from. So what I am going to do is I am going to have Kay email you; everybody, so I am going to have it to go to all of us. Obviously Mr. Wiblin since it is what he works with and I am also going to send it over to Planning Commission since this is a combined application. So we will have Planning Commission to have their part on it so that there will be just one application that you can say; we need this ordinance, this ordinance, this ordinance and they need a 15 foot variance, they need a side yard variance, they need a 10 foot variance on front yard. So we kind of just get things done much more quickly and the application itself will have what is being requested so there won't be any need for clarification of things. So again I am going to have Kay email you my proposed application and then at our next meeting, if you could have comments of what you would like to see then we can go from there.

NEW BUSINESS: None.

MEETING ADJOURNED: With no further business before this board, *Motion by Tatter/Second by Pavkovich to adjourn at 8:30 pm. Yeas All.

CLERK OF COMMITTEE AFFIRMATION: This Meeting Of The City Committee Of The City of Sheffield Lake, Ohio Was Held and Conducted Under All Rules and Regulations Governing The Sunshine Laws Of The State Of Ohio As They May Apply. All meetings are recorded and available in council's office.

CLERK OF COUNCIL

Kay Fantauzzi

I, Kay Fantauzzi, duly appointed Clerk of Committee Of Sheffield Lake DO HEREBY CERTIFY that this Is a true and exact copy of the Minutes of the Zoning Board of Appeals meeting of May 15, 2013.

CHAIRMAN OF COMMITTEE

Diana Jancura

PRESIDENT OF COUNCIL

Rick Rosso

and/or

COUNCIL PRO TEM

Eric S Elliott