

BOARD OF ZONING APPEALS
MEETING MINUTES
August 11, 2020

Kris Schwickrath: Good evening, everyone. The August, 2020 meeting of the Shelbyville Board of Zoning Appeals is now called to order. We'll begin with a roll call. Excuse me. Mr. Lisher - James Lisher; I'm present, Mr. Lewis - here, Mr. Clark - here and Mr. Cassidy - here and myself. Obviously, I'm here. Okay I'm gonna take just a drink of water. Prior to this evening's meeting, we actually do not have the minutes from the last two months. That will be forthcoming. We have no items under Old Business, so I'll move on to our one item under New Business and it's a continued Administrative Appeal from last month. This is BZA 2020-10 and I've asked, sorry, the city attorney to highlight some of the points from last month first and then we'll take questions from the board and Mr. & Mrs. Bowers, you can then come forward and make a statement and we'll also have a period of public commentary. When you're at the podium, feel free to take off your mask as I just did, just so we can hear each other better. And we can start then with Mrs. Meltzer. Thank you.

Jenny Meltzer: Would you like me to go to the podium or stay here?

Schwickrath: I think we could hear you better at the podium. Thank you.

Meltzer: The issue before the board at last month's hearing is still remains the issue before the board tonight. It's a question of whether or not Shelbyville ordinances prohibit a swine or a pig to reside in an R1 zoning district where the neighbors are less than 200' away. The ordinances that are relevant for this review are 1.08 of the UDO. It provides your minimum requirements. It can also provides if there's a conflict or an inconsistency and additionally it provides that under federal, state or local law, if another city ordinance or regulation is more strict than the provisions of the UDO, then that city ordinance or regulation applies. So if there's a state regulation or a city ordinance, for example 90.01 that's more strict or a federal law that's more strict, that restriction applies and then is to be read in conjunction with the UDO so that the UDO is also more strict. Additionally in the UDO, petitioner has pointed the board to the definition of a domestic animal and a domestic animal includes the words of potbelly pig. Additionally, the definitions include an animal farm which also identifies a pig as being a farm animal. I'm sorry, it's domestic pets. And then for farm animals, it says see animal farm so those two terms are interchangeable. Pets household explicitly says that pigs are not household pets and then also outdoor pets is in the definitions as well and is applicable here. Finally 90.01 is keeping animals, fowl or bees and it provides that a swine is not to be kept within 200' of the dwelling house of any person other than the keeper or owner of these animals. When all of these ordinances are read together, you come to the conclusion, and the city has come to the conclusion that the pig that is currently, the pigs that are currently residing at 523 Fifth Street is a violation of ordinances and the city's asking that the Board of Zoning Appeals uphold that decision. Would you like me to go through statutory interpretation now or would you like me to address that later?

Schwickrath: I think we can address it later.

Meltzer: Okay.

Schwickrath: Thank you for the overview. I think then board members can ask specific questions if they would like on each piece, statutory portion of this if you would like and then Mrs. Meltzer then can address that. So Mr. Lisher, can I start with you? Do you have anything that you'd like to comment on or that you would like to ask?

Jim Lisher: Well yes I first on behalf of the(inaudible).....

Schwickrath: Can anyone, can we hear him?

(?): No.

Lisher: Oh okay. I'll try to speak up louder. Maybe just....

Schwickrath: Or just put your shield up maybe.

Lisher: I think on behalf of the city and the board that it was helpful to allow both parties to submit some additional information for us to be able to make our review. I wanna commend both sides in their presentations here and in particularly the city's attorney's response. So that's my comment I suppose. I really don't have any questions.

Schwickrath: Sure, that's fine.

Lisher: It seems much clearer to me now. So....

Schwickrath: Did it, did you hear him or no?

No audible reply.

Schwickrath: Oh you did? Okay. Just making sure. Thank you. Mr. Lewis, anything? Again you're free to make a comment or ask a question.

Wade Lewis: I really have nothing at this time. No questions.

Schwickrath: Okay. Mr. Clark?

Chris Clark: I have no questions.

Schwickrath:; Mr. Cassidy?

Doug Cassidy: So having the definition (?) city seemed like the potbelly pig that, we might as well take that out of the ordinance 'cause it doesn't apply? Or not apply but it doesn't.....

Meltzer: So when looking at interpreting an ordinance, the Indiana Court of Appeals, as well as other court other on numerous occasions has stated that interpreting an ordinance is the same as interpreting a statute. And so when you're interpreting an ordinance, you apply the rules of statutory interpretation. And under statutory interpretation, you are to look for the legislative intent. And using specific words that are defined shows you legislative intent. And so here, yes domestic pet includes the word potbelly pig but domestic pet was not the word that was chosen by the legislature, in this case City Council, for the ordinance of 5.26 which regulates what pets are able to be kept in an R1 zoned area and so it's not that it doesn't apply. That definition is then used in kennels. And so if you were running a kennel and you fell under the kennel UDO ordinances, then a potbelly pig and domestic pets, because the legislative intent shows that they chose that word, which they defined, there it applies. So it's not meaningless. Another rule of statutory interpretation is that you need to read the ordinances as a whole. And you shouldn't read any ordinance to then make another ordinance meaningless or arbitrary. And so for example, if you were to read 5.26 to be using the word domestic pets even though it clearly didn't use that defined term, you're then rendering the definition from animal farm somewhat meaningless and you're also completely ignoring 90.01 that specifically states that no pets able allowed to be kept within 200' of another residence which would then read that ordinance to be meaningless and would go against statutory interpretation or in this case ordinance interpretation. So it's not that that's not needed. It's needed for kennels. It's not needed here.

Cassidy: Alright, thank you.

Schwickrath: As the city attorney, would you like to add anything further? Just beyond what the question that was just asked?

Meltzer: No, I think....

Schwickrath: Okay I didn't know if you wanted.....Right.

Meltzer:(inaudible)....I'd be happy to answer any questions on that or go into more depth on it (?) if you'd like.

Schwickrath: Okay, thank you. It's appreciated. And I want to echo what Mr. Lisher said that I agree in the preparation of from both sides. It has been really helpful in making me, helping me think through this entire process or the case itself. I have spent a month on this just letting it come in and out of my mind and it was pretty emotional last month and I appreciate everyone's willingness to continue this to this month as well. So I found that helpful. I know it was just time consuming but I think worth it so we all understand what's in front of us. I have nothing further to add and no questions and when the Bowers are ready, we'll have them come to the podium.

Inaudible comment.

Schwickrath: Yes you're welcome to come when you're ready.

Inaudible comment.

Stephanie Bowers: I would like to point out that the city attorney's definition of domestic pets in reference to kennels is not cross referenced and also the definition that she is asking us to use is household pets and outdoor pets. If you look at the first two words in those definitions, it is domestic pet. You cannot reference domestic pets in the information that you are trying to hold us accountable for. Also, I have a whole, I've got a whole thing prepared.

Schwickrath: No, that's fine. Just not too fast and let's, we'll follow you.

S. Bowers: Also Article 1.08, Section F, it reads that shall is a mandatory term. In domestic, the definition of domestic pets, potbelly pigs shall be considered. That is in the city's information. And in the city's rebuttal that they provided, it says generally. That potbelly pigs are generally not considered pets. So tell me which is the more strict provision if a potbelly pig shall be considered a domestic pet versus generally are not considered pets? To me, that is a more restrictive.

Jerry Bowers: And generally saying that they're not allowed is

S. Bowers: It's discriminatory.

J. Bowers: Yeah it is.

S. Bowers: Our

J. Bowers: It implies that some people may have them, some people may not. So I think the city would be hard pressed to find a valid and non discriminatory reason why my family would not fall into the allowed category of that general population.

S. Bowers: The facts of the case are the city of Shelbyville recognizes potbelly pigs as pets according to their own definitions. And their own comments at the 7/14 meeting. That information is referenced in the documents that I provided with time stamps of who said what. So if the city attorney and the planning director recognize that potbelly pigs are indeed pets, how can they say we are still in violation of 5.26 when they, it specifically referenced farm animals? And if we wanna go down the more restrictive route, swine is a general term and the proper term is porcine, not swine. That is a general term for all pig breeds. There are many different pig breeds. Potbelly pig specifically is a more defined and more strict definition. That is directly quoted from the city's information.

J. Bowers: And as the attorney said, the city uses specific term for legislative intent, therefore the most, I believe it's shall and must are mandatory. So the definition, as we've stated over

and over again says shall include potbelly pigs. The definitions of household pets and outdoor pets that the city is now fighting, which is completely (?) of what we were originally cited for say do not include, do not and shall and must. Shall and must supercede.

S. Bowers: I would also like to add that in the original ordinance 5.26, it references exactly indoor pets. The city is asking you to reference household pets. There is no definition exactly of indoor pets. That is a contradiction. You cannot place an ordinance or a law on someone without properly defining that. Not only do the definitions of household pets and outdoor pets contradict the language of domestic pets in regard to potbelly pigs, but if you take the time to read both definitions very carefully, you will see according to the language provided, there are contradictions within those two definitions and the way that it reads, dogs and cats are not permitted as household or outdoor pets either. In order to avoid discriminating against potbelly pig owners within city limits, the city must also require all dogs and cats to be relinquished. I don't think the Shelbyville animal shelter is equipped to handle that influx of pets. Does the city really wanna travel down this road? No, it's abundantly clear that potbelly pigs are recognized as pets. In the original violation we were citing for is having farm animals within city limits. If the city recognizes potbelly pigs as pets, how can I be held accountable for having farm animals within city limits? The city has went out of their way to not only contradict themselves but make ambiguous legislature which renders it unenforceable. The city officials do not understand their own ordinances or definitions themselves. How can they be, they've not been able to present a valid legal argument that should require me to reduce or remove my number of allowable pets. If the city continues to move forward with this, we will file a suit. We will take the city to court for harassment, intimidation, failure to due process, abuse of power, emotional distress and an attempt to defame my character. I'm not playing with this today and I'm not trying to threaten you, but I know that I have the legal standing. I've consulted an attorney that is not within city limits because it seems from the attorneys that I have tried to contact within city limits are aware of my case and have been discouraged from taking it.

Schwickrath: So for us, as far as this board is concerned, I think in no way at all has there been a lack of listening to what you have to say and....(inaudible)....

S. Bowers: No, not at all. Not against the board, against the city.

J. Bowers: No, we feel attacked by the city.

Schwickrath: This is a citizen board.

J. Bowers: We feel harassed by the city. We feel intimidated by the city. It's nothing to do with BZA. It's the city.

S. Bowers: You have been very fair and very forthcoming with questions and willingness to listen and we appreciate that so much. But if for some reason the BZA decides that we should remove our pets or upholds the city's decision, we have legal standing to move forward with the courts.

Schwickrath: In thinking this through for myself, I've been sitting on this board for a long time and people, the citizenry in general, there's no blame to place anywhere. I just wanna, let me just give you a context in my thinking here because I think it's relevant. It's not the kind of thing that you just check the ordinances. Like that's not a reflex for any or most of us I would say. So my question, the question that emerged for me is three years ago was it when you I'm avoiding the word purchased but when you acquired.....

S. Bowers: Uh huh.

Schwickrath:your all three at the same time?

S. Bowers: No.

Schwickrath: I forget the all of the details.

S. Bowers: No we rescued two.

Schwickrath: Okay.

S. Bowers: And we did purchase the first from a breeder, yes.

Schwickrath: Okay, alright. Thank you.

S. Bowers: Uh huh.

Schwickrath: What, obviously it didn't cross your mind because you were thinking....

S. Bowers: They're pets.

Schwickrath:a pet. I'm (?) this too, am I correct?

S. Bowers: Yes.

J. Bowers: Even if we did consult the ordinance, we would've seen the definition saying that you know pot bellied pigs are domestic pigs and thought we were good.

Schwickrath: Well it would've helped to have done that and I'm not saying.....

S. Bowers: Yeah we're in the situation we are now.

Schwickrath: I'm just saying it doesn't occur to people.

S. Bowers: Correct.

Schwickrath: Right, okay. So I'm just trying to understand. And you purchased the first one for any particular reason? I'm really just curious. There's no I'm not putting you in a corner. I'm just really curious.

S. Bowers: I had I've always wanted a potbelly pig as a pet and I reconnected with my mother. We were separated for nineteen years just due to various situations and when I reconnected with her, she had a pig and I went down and saw the love that my mom had for that pig and the bond that they had together and I just decided I definitely wanted that and I came home and just a few weeks later I put a deposit on (?) and picked him up. That was my motivation.

Schwickrath: The hardest part for me to get past here is not so much the definition of swine, porcine, potbelly and so on and we're entangled here in a lot of the language.

S. Bowers: Uh huh.

Schwickrath: But the hardest part that I'm having, regardless of the fact that your neighbors, most of them didn't realize that you had three pigs, is the that one restriction that's really the most restrictive in that there's just not enough space technically in terms of acreage.

S. Bowers: Well I mean if you look at them as farm animals, no there's not. But I did provide information from an accredited vet that's a nationwide vet. Potbelly pigs are they primarily sleep most of the day. That's what they do.

Schwickrath: Like a dog or cat.

S. Bowers: Yeah. They kinda have the energy level of a English bulldog. They're lazy. They're food-motivated. They like to graze out in the back yard and eat grass. That is, that's what they do. They like to lay beside us and get scratched with forks and back scratchers.

J. Bowers: And I don't believe there's any kind of lot restrictions for any other kind of domestic pets. So I don't know what.....

S. Bowers: If a potbelly pig in the language is to be treated the same as a dog or a cat, if it's living in the home the same as a dog or a cat, what kind of restrictions do dog or cats have? Are they also required to be 200' away from a neighboring home?

Schwickrath: Well I think the reason why this is the case is because we're lumping all of pigs, porcines and swine into one category.

S. Bowers: Yes. And that's not it's not a fair representation. It's not. It's a lot different than having a 7-900 lb. farm hog running through my back yard in Shelbyville. There's I have no arguments that farm animals do not belong within city limits but my pets, potbelly pigs are not farm animals by the city's own definitions.

Schwickrath: Just one.....Any other comments from the board or questions that have emerged?

J. Bowers: I would like to (?) on that, outside pets and household pets, the contradiction that we were speaking of.

Schwickrath: I'm sorry, say that again please. I'm sorry.

J. Bowers: I would like to add that or elaborate on the contradiction between the household pets and outdoor pets.....

Schwickrath: Sure.

J. Bowers:that we are speaking of. Pets household in the definition it specifically excludes outdoor pets. It says examples of household pets include dogs and cats, okay? Pets outdoors, it specifically excludes household pets. So dogs and cats would not be allowed as outdoor pets, would you not agree? Examples of outdoor pets are dogs and cats. So there again, we have a contradiction and given the city attorney's and the city's interpretation of their 1.08B just saying that simply not allowing them is the more restrictive than allowing them is the equivalent of her saying that not allowing dogs and cats would be more restrictive than allowing them because it is the same contradiction, the same principle, the same mandate, everything applies. It is what it is.

Schwickrath: One of the fears that, excuse me, that has been expressed in the past from this board, I just wanna make you aware of where we're coming, what some of us might be coming from is the establishment of precedent. So what I'm saying is that if we if this board allows you to continue to dwell where you are with the pigs, my mind, I just want you to be aware of what I'm thinking is that and perhaps others of you have had the similar thought that this then opens up the floodgate for others to have potbelly pigs and I that's one thing that I wanna make sure....

S. Bowers: Uh huh....

Schwickrath:that we are clear here that this board can also add conditions to your to this administrative appeal.

J. Bowers: Uh h uh. And we've volunteered our time and money for education and for transport for rescues and those kind of things that would need for that to happen.

Schwickrath: Okay. I just wanted to add that.

S. Bowers: Uh huh, but (?) everyone's worried everyone's gonna wanna go out to get a pig, right? Are any of you itching to go get a pig as a pet?

Schwickrath: No.

S. Bowers: It's like having a very strong three or four year old child that is just as smart. It is....I do not recommend pigs as pets because they're very challenging for the average person. That's why most pigs, by the time they turn, a potbelly, by the time they turn one year old, they've already had a second or even a third home. It's not fair to them and it's not fair to the person either. And you know.....

J. Bowers: And with all due respect, I respect what your mindset, but right now we're here to determine whether we are in violation of having a farm animal.....

Schwickrath: Yes.

J. Bowers:not to discuss hypotheticals.

Schwickrath: Sure. No, no that's right. But I just I wanted to tell you where this board sometimes where, that's the corner we sometimes are put into.

J. Bowers: Right.

S. Bowers: Uh huh.

J. Bowers: And on that, I would like to add you know this all became because the began because there's a contradiction in the literature within the ordinances. My family didn't write these ordinances but here we stand being held accountable and dealing with consequences of somebody's inferior job.

Schwickrath: Thank you. If there are no other....

Lisher: Inaudible comment.

Schwickrath: Go ahead. Mr. Lisher, go ahead.

Lisher: With the additional information submitted and my review of it, Sir and Ma'am, I find it persuasive that farm animal and swine and so forth are (?). Because when I look at your definition of domestic pets, no other animal or bird, I can't remember (?).....

S. Bowers: Having a hard time hearing you, Mr. Lisher. I'm sorry.

Lisher: Well my review of this is basically swine and farm animals seems fairly common usage and in your and in the definition looking at domestic pets....(inaudible)...potbelly pigs and you look at all the others listed there, none qualify as a farm animal. So for that reason, I find that the farm animal definitions put forth are (?) and that so for that reason, I'm probably going to

vote to deny your appeal for that reason. Party as well as the other factors involved. I wanted you to know up front.

S. Bowers: Uh huh, that's fine but you know your opinion is valuable but you also have a duty to make this determination based on facts and the facts are in black and white that the city recognizes potbelly pigs as domestic pets.

Schwickrath: Anything further?

No audible reply.

Schwickrath: Okay thank you everyone and now I'll close commentary from both the board and from the petitioners and if we have any questions on Facebook, not uh comments, excuse me.

(?): Facebook comments.

Meltzer: For the record, I'm gonna take this off.

Schwickrath: Yes, please.

Meltzer: Tammy Martin states: They are not farm animals. Tammy Martin continues: Potbelly piggies are caring, compassionate creatures. They go through the same emotions as small children. They are the fourth smallest animals in the world. You need to buy what the FDA says. Potbelly pigs are not farm pigs. Ashley Quick: Prayers for this loving family and their sweet piggies. Luke William Campbell: Lawyers are getting involved and our concern in whether or not people can own potbelly pigs as pets?? You all shut these lawyers down. Tammy Martin: Read the definition of farm animals. They are not used for transportation or food. Luke William Campbell: I'm very thankful this couple knows what they're talking about and have done their due homework. Brooke Hatton: OMG...let them keep the pig. They live right by me and I've literally never seen or heard the pigs.... Andrea (?): Just for comparison, even though there is no comparison to a hog,.....I'm sorry, they keep popping up and the screen keeps moving. And a potbelly pig, the general recommendations were a sow and confinement operations is 14 square feet for gestational hogs and 7 ½ for non. Again, there's no comparison. And this is only a reference - the city attorney is manipulating the law to intimidate and harass the Bowers family. The city should be protecting and helping this family. Brooke Hatton: Why can't they keep the pig when it's caused zero issues? Tammy Martin: These are animals that go to a vet for regular checkup, have been vaccinated and spayed so are neutered just like any other domestic animals. Justus Bowers: This is my new quote - "1111!1". Brooke Hatton: These are my neighbors. I've never seen, heard or smelled the pig. Let them keep the pig. And that is all.

Schwickrath: Okay, thank you. We'll give at least a minute to as we did last time in case any other comments come in, come our way and then I have one more point I would make.

Meltzer: Mary (?) county: Why are you (?) thought? The comments that state that the city is attacking the family? Read them like every other comment. Tammy Martin states: They aren't reading all the comments. I believe I did.

Schwickrath: Okay, just check maybe. We have time.

Meltzer: I do not see a comment that was missed.

Schwickrath: Okay.

Meltzer: Tammy Martin states: Keep this family together.

Schwickrath: Thank you.

Meltzer: (?) Alexander: Why are we worried about someone's pet when there are people overdosing every day. Quit wasting our tax dollars on someone's animals that are clearly just pets and not farm animals. Brooke Hatton replying to Mary (?): They read that one I thought.

Schwickrath: Just a few more seconds.

Meltzer: April Hitchcock McKeand: Let them keep their potbelly pigs. If they are taking care of them and being seen by the vets, why take them away? Ashley Quick: I agree. There are way worse things to be worried about. These pets aren't causing any harm to anyone. Daniel Helton(?): Let them keep their pets. They clearly take care of them. Tammy Martin: The Bowers are not in violation. Stop harassing them.

Schwickrath: I think we can close public comment. Thank you, everyone on Facebook who has shared a thought, comment. One thing that I meant to bring up earlier is a reminder that we can in fact, add conditions if we think that.....I'm just throwing that out there as a procedural item that it's possible for this board. So we can modify the appeal. Just letting you know that that's what crossed my mind also. I did put a lot of thought into this over the last month is that in this case, if we were to allow for the I'm not speaking for the board. I'm just speaking in general. Just everyone to be clear. If this is allowed that we can in fact, add conditions. I'm just bringing it up. Anything further?

No reply.

Schwickrath: Does anyone feel.....It seems to me that we are ready then to move to a vote. So we are voting to affirm or deny. So it's Adam's or the city I mean or the Bowers. Which side are we.....?

Meltzer: You are either affirming the city's.....

Schwickrath: Yes.

Meltzer: Or amending the city's interpretation. Or denying the interpretation outright.

Schwickrath: Okay. So a vote yes means that we are affirming the city's stance?

Meltzer: Yes.

Schwickrath: And then a no would be.....Okay, just make sure everyone's clear on that what you're voting for.

J. Bowers: Okay just to add before you vote.....

Schwickrath: Yes?

J. Bowers: We've gone all around (?) to a whole bunch of different definitions and I just wanna bring attention that the citation in question here is a violation of owning farm animals, not just household pets the blah, blah, blah and the circles.

Schwickrath: Okay. Okay, that's....

J. Bowers: Inaudible interruption.

Schwickrath: Thank you. Okay that's it for questions well commentary and anything new. We're ready to move to a motion.

No reply.

Schwickrath: Okay someone has to do it.

No reply.

Schwickrath: Whether we like it or not.

Long moment of silence.

Lisher: Well I'd move to approve the city's response and a denial of (?) and to deny the appeal(inaudible)...

Schwickrath: Okay there's a motion on the floor.

No reply.

Schwickrath: Need a second? We have to move on this tonight so we can't just pretend otherwise.

Long moment of silence.

Lewis: I'll second.

Schwickrath: Okay. So now you're gonna cast your ballot for this is BZA 2020-10.

Meltzer: Doug Cassidy - no, Wade Lewis - yes, Mr. Lisher - yes, Mr. Clark - no and Miss Schwickrath - no. So that motion fails.

S. Bowers: Inaudible comment.

Schwickrath: The no is in your favor.

S. Bowers: Inaudible comment.

Schwickrath: Three.

S. Bowers: Inaudible comment.

Schwickrath: Yes.

J. Bowers: Thank you.

S. Bowers: Thank you so much.

Schwickrath: For now, right?...(inaudible)....

Meltzer: Do you have any other agenda items?

Schwickrath: I do not. Anything else? Discussion?

Clark: Inaudible comment.

Schwickrath: What's that?

Clark: I think we should move to clarify the languages and the definitions of those ordinances.

Lewis: I didn't hear that.

Schwickrath: Okay. So go ahead, Mr. Clark.

Clark: I think we should

Schwickrath: Have a discussion.....

Clark:have a discussion on clarifying the definitions and the in these ordinances to make it more streamlined and to

Schwickrath: Why don't you take your mask off so we....yeah.

Clark:and to make the ordinances correspond with each other.

S. Bowers: I would love to be a part of that if I could to help....

Lewis: I would second that.

S. Bowers:other pig owners.

Schwickrath: We've opened up something here that I didn't know how this was going to go but you made your point, that the city definitely made its point. The one condition that I, I'll say this now since we've already voted on it, is I think until we are we streamline our ordinance that no one else has potbelly pigs or pygmy goats in the city of Shelbyville. Right? I mean.....

S. Bowers: Inaudible interruption.

Schwickrath: It's obvious and it's not obvious.

S. Bowers: Inaudible interruption.

Schwickrath: No, no, no. I'm not....

S. Bowers: Inaudible interruption.

Schwickrath: No. But thank you for your offer to help us with working through this.

S. Bowers: Thank you for hearing us.

Schwickrath: Yes, okay.

Meltzer: You guys seem actually....(inaudible)....you understand that, right?

Clark: We overturned.

Schwickrath: We overturned.

Meltzer: No because the motion that failed was simply to affirm the city's decision.

Schwickrath: No then that's not what I wanted. I....

Meltzer: Right, but you need a motion....

Schwickrath: That's why I said, before, what I said before....

Meltzer:I'm saying you need....as your attorney.....

Schwickrath: Excuse me.

Meltzer:you need a motion denying the city then.

Schwickrath: Yes.

Meltzer: Okay. So someone needs to make that motion. Someone needs to second it and you need to vote.

Schwickrath: Okay, okay. Thank you.

Meltzer: Okay.

Schwickrath: I just need some clarification and I really don't appreciate being interrupted.

Meltzer: I'm sorry.

Schwickrath: That's alright. Because these, you have to understand that we don't get administrative appeals like this very often and that's why I wanted to clarify that ahead of time. So we need to make motion to deny the city's position.

Meltzer: Correct. If that's what the board wants to do.

Lisher: Well my motion said that I affirmed the city's position and I denied the appeal.

Schwickrath: So I thought that was a vote for yes. They voted to keep.....

Clark: Inaudible comment.

Schwickrath:to deny the appeal and to stand by your side. So a vote no.....

Meltzer: Right, so that motion failed. Now I need a motion to approve

Lisher: To approve the appeal.

Meltzer:the appeal, deny the city's.....

Schwickrath: Okay. Okay.

Meltzer: ...interpretation and then if that motion passes, then this issue will be properly queued up for an administrative appeal to the trial courts if either party desires.

Schwickrath: Okay.

Lewis: Do we need another ballot?

Schwickrath: Do we need another ballot or can we do this orally?

Adam Rude: Either way works....(inaudible)....

Clark: I make a motion to accept the appeal of the Bowers family.

Cassidy: Second.

Schwickrath: Okay. We'll do a person by person vote. Yes or no, Mr. Cassidy?

Cassidy: Yes.

Schwickrath: Yes, Mr. Cassidy votes yes. Mr. Clark?

Clark: Yes.

Schwickrath: Schwickrath, myself votes yes. Mr. Lewis?

Lewis: No.

Schwickrath: And Mr. Lisher?

Lisher: No.

Schwickrath: Okay.

Meltzer: And that motion passes.

Schwickrath: Yes. So....do we have a motion to adjourn?

Cassidy: Motion to adjourn.

Schwickrath: Okay, thank you. I'll second that.

Meeting adjourned.

