

**The Board of Zoning Appeals of the City of North Royalton
met on January 28, 2016 to hold a Public Hearing in
the Council Chambers at 14600 State Road.**

The meeting was called to order by Chair Dan Kasaris at 7:00 p.m.

Present: Board Members: Chair Dan Kasaris, Tony Rohloff, Victor Bull, Christine Ragone, Janice Sadowski, Secretary Diane Veverka. Administration: Building Commissioner Dan Kulchytsky, Law Director Tom Kelly, Assistant Law Director Donna Vozar.

Moved and seconded to **approve the November 19, 2015 and December 17, 2015 meeting minutes as submitted. Minutes approved.**

PUBLIC HEARING/ OPEN MEETING

OLD BUSINESS:

- A. **BZA15-28 – Paul & Pam Voigt.** The applicant is requesting a variance to Chapter 1270 “Residential Districts”, of the City of North Royalton Zoning Code for **3776 Royalton Road**, also known as PPN: 488-21-006, in a R1-A district. The variance being requested is as follows:

Variance: Codified Ordinance **Section 1270.03 (e) (2)** “Minimum lot size for one horse is two acres and one additional acre for each horse.” The Applicant is requesting to vary by 1.12 acres from the required 3 acres to have 1 miniature horse and 1 pony.

(Note: The Applicant owns three contiguous parcels 3776 Royalton Road, 3806 Royalton Road and 4231 Sir Richard Avenue which total 82,202 square feet (1.887 acres). The issuance of a horse permit by the Building Commissioner allows for the use of contiguously owned or leased land to count when securing such a permit.)

Pam and Paul Voigt were present. The Chair asked the Building Commissioner if the code differentiates between a horse, pony, or miniature horse with regards to the acreage requirement. Mr. Kulchytsky responded, no it does not; a horse is a horse. Ms. Voigt stated they are here because they have a 150 pound miniature horse which is being trained for therapy at hospitals or for fundraisers. They wanted to also get a pony to train for riding therapy; her daughter works at Camp Cheerful. She said she has letters from every neighbor surrounding their property, including the neighbor, George, who had a concern at last month’s meeting. Mr. Kasaris referenced George’s recently received letter stating that he was withdrawing his objection. Mr. Kasaris spoke to the applicant regarding their parcels of 1.887 acres and the code which currently permits zero horses because it is less than 2 acres. Mr. Kasaris asked the Building Commissioner how was she able to get a permit for the first horse. Mr. Kulchytsky corrected the applicant stating they do not have an actual permit issued for the horse. An application was made, discussions followed as to the requirements of the square footage. Ms. Voigt stated that she previously received permission from a former employee of the city; he stated that at that time they were not giving permits out. She said she has had the miniature horse for two years. After speaking with the Building Commissioner, the Applicant came in to complete the necessary paperwork for an official permit. Mr. Kasaris asked the Applicant what type of procedure will be enacted to guarantee that the horse isn’t causing any issues with the neighbors, such as odors. She responded that if there did become a problem, that was realistic, or if at some point she would get rid of the mini or the other one, she would not expect to replace it with another. Mr. Bull asked can you get a permit for a therapy horse like you can for a therapy dog. The Applicant responded she is not sure. She does not want to keep a therapy pony in the house. The Chair asked if there are other horses in the neighborhood. The Applicant responded yes on both sides down Rt. 82, mostly on the south side. Mr. Kulchytsky stated that if there are such horses they have not made application for a permit with the Building Division and we are not aware of such. The Applicant responded that they may be on the Akins side. Mr. Kasaris said he is aware of a horse on Akins Road. Mr. Kulchytsky responded that he does not have an active permit for any horses on Akins Road. He said he would simply renew the permit if there is adequate acreage as necessary. The Chair asked for the Building Commissioner’s position with regard to this Applicant. Mr. Kulchytsky responded that the Applicant owns three contiguous parcels. He said previously approvals have been issued for horses on contiguous or leased acreage. He added that his recommendations, should the Board choose to approve this variance, that the permit would be void and the variance would be void should a parcel be sold off. The Applicant agreed. Ms. Vozar agreed that conditions would need to be placed on this because the goal and requirement is that they have the acreage to be able to avoid the odor and other issues from owning a horse. In the past when we had required there to be contiguous leased or owned property, the Applicant had to have the horse present on their property and complete access to all of that 2 or 3 acres of property. She asked the Board to consider whether or not these horses will actually have the ability to traverse the entire three parcels. If not, you can’t link them together for purposes of whether or not there is sufficient acreage. Ms. Vozar stated that the intent of the code is to allow the horses to have sufficient acreage so as to spread the effects of the animals throughout the property. The variance granted to Mrs. King (a previous variance request applicant) was because the animals had access to all the property; a fence was installed so the horses could meander about; therefore, allowing the animals to disperse throughout the acreage rather than keeping them on one small parcel even though you own the other parcels. The Chair asked the Applicant if the horses will be able to

traverse or move freely amongst the three parcels. The Applicant responded yes other than the 50 feet behind the houses, the three parcels are completely fenced in with both sides all open so they have complete access to walk on all three parcels other than 50 feet back from behind the houses. She said the pictures shows it is all fenced in where the horses would be. She added that the horse manure is picked up three times a day and she removes the manure on a weekly basis; she does not keep the manure on her property. She said there is no smell and they keeps up their properties; they are not crummy. Ms. Vozar stated that the Applicant indicated in her testimony that they do not have complete access to all of it, so the acreage is actually less than is reflected here that the animals have so the variance is actually greater. Mr. Rohloff asked what the actual amount of variance being requested is. Mr. Kulchytsky stated that the ordinance is written in such a way that it doesn't specify how it all has to be configured. He reference an earlier variance granted regarding Mrs. King's property and that each horse had an acre to graze or run around. Mr. Kulchytsky asked the Applicant to define how much space the animals have access to, realizing one horse is the size of a dog. The Applicant responded that anybody that has a house with horses, they will not be able to have the horse in their front yard that is part of the acreage. She said the space that they can run is 240 ft. back by 160 feet wide which is a big area. A mini only needs a 50x50 ft. area. Most corals for a horse are approximately 80 x 80 ft. She added that their free space is pretty adequate. Mr. Rohloff said 240 x 160 equals 38,400 sq ft. which is less than an acre of area to roam. Mr. Kulchytsky said according to the application, the height of a half linger pony, the one she is proposing to purchase, is 14 hands which is 4 ft. 6 in. to the shoulder area of the horse or where you sit, the withers. He asked how that compares to the miniature horse. The Applicant responded it is 30 in. to the withers and weighs 150 pounds. A typical size horse is approximately 16 hands or approximately 6 ½ or 7 feet to the shoulders.

Cindy Long, 3916 Royalton Road, spoke in favor of the variance request. She said they keep their property up impeccably and it is very well maintained. Notarized letters in support of the variance were received from Kelly Archdeacon, 3776 Royalton Road; Clarissa D'Onofrio, 3806 Royalton Road; Tony and Cyndee Long, 3916 Royalton Road; and Frank Gwiazdowski, 3926 Royalton Road. Letters were received from Carrie Reichenback, 4251 Sir Richard Ave., and Malka Vakil, 13881 Monica Drive, stating they were not opposed to the variance request. George Felton, 3746 Royalton Road, submitted a letter stating they now have no objections, however, if a variance is granted for a second pony, they would insist on the right to discuss any future problems concerning ponies with the Committee. Scott Shantery, 3746 Royalton Road, states he is not in favor of the variance request, noting the rodent issue at his house has increased substantially due to the farm next door.

Ms. Vozar asked for clarification on which parcel the variance is going to be granted on and which parcel the Applicant resides on. The Chair asked if the variance would go on all three parcels. A condition should be added that they maintain ownership and use of the other acreage to allow for the horses to have access. The Chair asked the Applicant what is their residence? The Applicant responded that the actual property where the stall is located and where the horses will reside is 3776 Royalton Road. The Applicant stated that she resides at 4231 Sir Richard Avenue and she rents out the house at 3776 Royalton Road. Ms. Vozar stated that this is an unusual circumstance because the horse is on another property; it is an accessory use on a main use and it is not actually your accessory use, it's your renters. That renter submitted a letter in support of the variance. Ms. Vozar said the Board may impose a condition that the variance will lapse if at any time the acreage decreases from what is currently there. The Application stating 3776 Royalton Road is the correct address for the variance. Ms. Vozar said it is an issue but the fact that they own the property and it is adjoining, they have to work it out with their tenants. She stated if there were a complaint about the odor, a citation would be issued to both the owner and the tenant. Since the tenant has indicated they have no objection, Ms. Vozar said she doesn't have an objection to it. Mr. Kulchytsky said that his understanding is that a horse permit is an annual renewal. Should there be an olfactory issue such as smell or noise complaints, the Building Commissioner can choose to not reissue the permit. Ms. Vozar stated that the variance runs with the land and is not the same thing. They will have to keep on applying for the permit, but this is a unique situation, it is not the normal. It is on a tenant's property; a tenant may not complain as easily as perhaps if it were an adjoining property owner. Whatever conditions are imposed; the Board could impose conditions that could make the variance a conditional variance where it is renewable yearly. So when the permit comes up, it is limited in time to see if there are any issues. Ms. Vozar said it is pursuant to C.O. Section 1264.08(g) that permits the Board to put safeguards and limitations on the duration of the variance. The Chair stated it is two horses in a city and the room isn't there. He added that he is willing to give it a chance to see how it goes. Once a variance is granted and the horses are in and the neighbors start complaining about the horses, then we have another issue; one we would like to avoid.

Mr. Bull asked the Assistant Law Director can we put a condition on it that if they get rid of the second horse, they cannot get another horse? Ms. Vozar said you are actually granting a variance for two horses; they don't have authority to even have the one that they have. You can put whatever conditions on it if that is your intention. Mr. Kulchytsky stated that the language be very clear that it is a miniature horse and a pony that this variance is granting. The Applicant stated that she has no problem that if something happened to one of the horses, they would not be looking to replace it with another one. She stated that she does not have a problem if she needs to come before the BZA every year. She just wants to be sure that the Board cannot just change their mind if no problems exist. She said if there is a problem she will do whatever she needs to do or get rid of them if there is a problem and someone is unhappy. Mr. Rohloff asked if there is a boarding option. The Applicant responded no, not for her daughter to be able to do what she wants to do.

The Chair stated that with the three conditions that have been placed upon this variance, and the reasons cited by the property owners who surround you, that we are not creating any adverse effects

of governmental services, the variance is very restricted, it makes reasonable use of the land, there are horses in the area and they having these horses will not substantially alter the character of the neighborhood. He stated that he would support the variance request with the three conditions. Mr. Rohloff stated that the actual usage of the property is less than one acre; however, since our city code doesn't completely qualify the definition of a horse, he also plans on supporting the variance with the three stipulations. The Chair stated that he adopts his findings and the findings of Mr. Rohloff as the findings for the Board.

Moved by Mr. Kasaris, seconded by Mr. Bull to **approve BZA15-28, which would be a variance to C.O. Section 1270.03 (e) (2) "Minimum lot size for one horse is two acres and one additional acre for each horse." Variance is to vary by 1.12 acres from the required 3 acres to have one (1) miniature horse and one (1) pony with the following conditions: 1.) The variance will lapse within one year from date of issuance if not reinstated by the Board; it will need to be renewed annually by February 1st of each year. 2.) All three parcels which are currently addressed as 3776 Royalton Road, 3806 Royalton Road and 4231 Sir Richard Avenue remain under the ownership of Pam and Paul Voigt or however the properties are currently title. 3.) This variance would only apply to the current miniature horse and pony and no other types of horse or no other specific horse.** Roll call: Yeas: Five. (Rohloff, Ragone, Bull, Sadowski, Kasaris). Nays: None. **Variance granted.**

NEW BUSINESS:

Public hearing notices were sent to property owners within 500 feet of the property in question and posted for the required period of time.

- A. **BZA16-04 – United Homes Inc. on behalf of Ken Koehler** is requesting a variance to Chapter 1270 "Residential Districts" of the City of North Royalton Zoning Code for a proposed attached garage addition at **10344 York Road**, also known as PPN: 481-24-003 in a R1-A district. The variance being requested is as follows:

Variance: **C.O. Section 1270.05** "Schedule of area, yard and height regulations". Request is to allow for relief from the minimum 10 ft. side yard setback for a variance of 1 ft. in order to construct an attached garage addition.

Sean Kramp with United Homes Inc. spoke on behalf of the property owner, Ken Koehler. He said the homeowner has done some additional research regarding accessibility for a wheelchair lift. He will be increasing the variance request by two feet. The Chair asked the Applicant if he would consent to continuing the presentation until the meeting in February. The Applicant said he would. The Clerk stated that a notarized paper was received from the property owner indicating that he authorizes Mr. Kramp to speak on his behalf.

Moved by Mr. Bull, seconded by Mr. Rohloff to **continue BZA16-04** until the February meeting with the consent of the Applicant's representative. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Continuance granted.**

- B. **BZA16-02 – T.S. Macosko Architects Inc. on behalf of SW Unitarian Universalist Church** is requesting three variances to Chapter 1274 "Public Facilities Districts" of the City of North Royalton Zoning Code for a proposed parking lot expansion at **6320 Royalton Road**, also known as PPN: 488-06-032, in a Public Facilities district. The variances being requested are as follows:

Variance #1: Codified Ordinance Section 1274.04 (b) (2) "Accessory Uses". Request is for a variance of 18 ft. from the required 20 ft. setback from Royalton Road.

Variance #2: Codified Ordinance Section 1274.04 (b) (2) "Accessory Uses". Request is for a variance of 20 ft. from the required 20 ft. side yard setback.

Variance #3: Codified Ordinance Section 1274.04 (b) (2) "Accessory Uses". Request is for a variance of 17 ft. 11 in. from the required 20 ft. rear yard setback.

Ted Macosko, architect for SW Unitarian Universalist Church, spoke on their behalf. He stated they have an existing parking lot to the east of their property that is currently gravel, they would like to pave that parking area. He stated that the church is surrounded on three sides by the cemetery and a memorial to the west. The Chair questioned the Applicant regarding easements. He stated that the parking lot on the west extends onto city property. Mr. Kulchytsky said there is nothing on the east side that travels over on city property; it is all on private property. This pavement will allow them to be more efficient and increase the number of spaces for cars because the lot will be striped. He said he is working with the City Engineering Department regarding drainage into the ground and back on to the earth.

The Building Commissioner informed Mr. Macosko that we do have an ordinance to have a dumpster enclosure and asked him if he would be handling that as part of this phase. He responded that he doesn't have an answer for that and is surprised that they have a dumpster because they have very little trash. He said he can ask to have it eliminated. Mr. Kulchytsky said that issue will be handled with the Building Division. The Applicant responded that he will cooperate fully.

The Chair stated the character of the neighborhood will not be altered, in fact you are helping the area by putting in a hard surface vs. what is there now. He said it will help governmental services by eliminating the gravel parking and special conditions exists which are peculiar to your area by being surrounded by a cemetery. He supports all three variances and adopts his findings for the findings of the Board for all three variances.

Moved by Mr. Bull, seconded by Ms. Ragone to **approve Variance #1 to C.O. Section 1274.04 (b) (2) "Accessory Uses" for a variance of 18 ft. from the required 20 ft. setback from Royalton Road for a parking lot expansion.** Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Bull, seconded by Ms. Ragone to **approve Variance #2 to C.O. Section 1274.04 (b) (2) "Accessory Uses" for a variance of 20 ft. from the required 20 ft. side yard setback for a parking lot expansion.** Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Bull, seconded by Ms. Ragone to **approve Variance #3 to C.O. Section 1274.04 (b) (2) "Accessory Uses" for a variance of 17 ft. 11 in. from the required 20 ft. rear yard setback for a parking lot expansion.** Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

- C. **BZA16-01** – **Lud & Tawny Zajc / Zajc Enterprises, LLC / Line-X of Greater Cleveland.** Request is for five (5) variances to Chapter 1278 "Industrial Districts", Section 1278.06 "Schedule of Yard Regulations for Research-Office, Commercial Service and General Industrial Districts and three (3) variances to Chapter 1284 "Signs", Section 1284.04 (f) (1) & (2) of the North Royalton Zoning Code for a proposed commercial building at **PPN: 483-13-008 located on Royalton Road**, in a General Industrial District.

Variance #1: a variance of 40 feet from the minimum 100-ft front building setback from the street right-of-way.

Variance #2: a variance of 30 feet from the minimum 40-ft side building setback from lot line.

Variance #3: a variance of 30 feet from the minimum 40-ft rear building setback from lot line.

Variance #4: a variance of 41 feet from the minimum 50-ft front parking setback from the street right-of-way.

Variance #5: a variance of 41 feet from the minimum 50-ft wide landscaped area.

Variance #6: to allow for a sign on a side wall that does not face a public street.

Variance #7: to allow for a sign on a side wall with no customer entrance.

Variance #8: to allow for a sign on a side wall equal in size to the signage on the front wall.

Lud & Tawny Zajc were before the BZA Board on 1/5/15 for similar setback variances, which were approved. This is a non-buildable lot without variances. There were a number of reasons for the delay of the structure being built. The plans needed to be changed slightly because a vehicle hit the utility pole that was located in front of their property. The pole was relocated in the area where the driveway was originally designed to be. Therefore, the plan of the parking configuration and entrance was redesigned. There is no other place for the driveway because the grade of the property. The size of the square footage of the structure is the same but it needed to be repositioned. The Chair asked the Applicant how the widening of Rt. 82 affects their property. The Applicant responded that the widening would occur on the South side of Rt. 82. She responded that the need for the sign variances is because what you see when you drive 82 east toward the center of town, we wanted our showroom window to be located there. The other is the side that will face 82 where the main entrance will be because of the visibility they want a sign to identify the shop. It is up on a hill. We currently are asking for two signs but we would like to ask for a third sign on the rear side of the building. She said that since the business abuts the turnpike, they would love to take advantage of the vehicles on the turnpike since we are in the automotive industry with car and truck accessories and protective coatings. Mr. Kasaris responded that even though he is an advocate of handling everything at once, we are legally obligated to send a legal notice out regarding the additional variance request. The Chair responded that you would again need to appear before the Board for the additional variance request. Mr. Kulchytsky said this project has gone before Planning Commission where the Engineering Department has taken a look at it. Even though all of the details of the Rt. 82 widening have not been hammered out, their proposal would comply with our variances and their right of ways. Most of the widening will occur primarily to the south because of the high voltage power lines on the north side. There is a question of the sidewalk which was handled at the PC; it is not going to be handled at this time since there are sidewalks planned for both sides of the street. Those issues will be dealt with at that time. The PC and the Engineering Department did find this as an acceptable proposal.

Mr. Langshaw, Ward #3 City Councilman, spoke in favor of the approval of the variances for the proposed commercial building.

The Chair stated that the first five variances pertaining to setbacks are the minimum necessary to make reasonable use of the land, the lot is not buildable without the variances, the essential character of the neighborhood is not going to be substantially altered, it will not adversely affect governmental services, and special conditions and circumstances do exist which are peculiar to the land; those are his specific findings for the first five variance requests. The Chair said that the owners have a right to develop this lot and this is one of the reasons we have a Board of Zoning Appeals, otherwise they would be unable to build. He added that Variance #2 and #3 are the exact same variances that were granted last year and there is no reason to deviate from them. The Chair adopted his findings for the findings for the Board

Moved by Mr. Bull, seconded by Ms. Ragone to **approve Variance #1 to C.O. Section 1278.06** for a variance of 40 feet from the minimum 100-ft front building setback from the street right-of-way **for a commercial building**. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Bull, seconded by Ms. Ragone to **approve Variance #2 to C.O. Section 1278.06** for a variance of 30 feet from the minimum 40-ft side building setback from the lot line **for a commercial building**. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Rohloff, seconded by Mr. Bull to **approve Variance #3 to C.O. Section 1278.06** for a variance of 30 feet from the minimum 40-ft rear building setback from the lot line **for a commercial building**. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Rohloff, seconded by Mr. Bull to **approve Variance #4 to C.O. Section 1278.06** for a variance of 41 feet from the minimum 50-ft front parking setback from the lot line. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Rohloff, seconded by Mr. Bull to **approve Variance #5 to C.O. Section 1278.06** for a variance of 41 feet from the minimum 50-ft wide landscaped area. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Regarding the sign variances, the Chair stated that the signs will not alter the character of the neighborhood, they will not adversely affect Governmental services, and this is a unique lot and a business that needs to have visibility for the company name. He said he supports Variances #6, #7 and #8 for those reasons. He said he adopts his stated findings with regards to the sign variance requests for that of the Board.

Moved by Mr. Rohloff, seconded by Mr. Bull to **approve Variance #6 to C.O. Section 1284.04** for a variance to allow for a sign on a side wall that does not face a public street. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Rohloff, seconded by Mr. Bull to **approve Variance #7 to C.O. Section 1284.04** for a variance to allow for a sign on a side wall with no customer entrance. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

Moved by Mr. Rohloff, seconded by Mr. Bull to **approve Variance #8 to C.O. Section 1284.04** for a variance to allow for a sign on a side wall that does not face a public street. Roll call: Yeas: Five. (Ragone, Bull, Kasaris, Rohloff, Sadowski). Nays: None. **Variance granted.**

- D. **BZA16-03 – Robert H. Myers, Jr. on behalf of the Marilyn D. Enos Revocable Living Trust** is appealing the Decision of the Building Commissioner as set forth in Codified Ordinance Sections 1264.01(b) and 1486.05 of the City of North Royalton Zoning Code in regards to the Condemnation Notice for the property located at **12778 Patricia Drive**, also known as PPN: 481-03-020, in a Planned Unit Development district.

Mr. Myers: Good evening Mr. Chairman. My name is Robert H. Myers, Jr. I am an Attorney at Law. My business address is 56 Liberty St., Suite 309, Painesville, OH 44077 and my phone number is 440-357-5134. The young lady at the end of the second row is my client, Marilyn Enos. I appear here tonight as an attorney, as an owner of some property, and as a party to kind of an adventure. Before I get started here I would like, Mr. Chairman, to make a public statement. Your secretary, Dan, and the records people at the Police Department have been most cooperative in letting me present tonight's presentation. I am here as an attorney for my client Marilyn Enos. I am an attorney for the estate of Catherine Enos. For the record, that is her mother. She died October 12, 1999. She is buried in Brookpark. Her death notice was in the Plain Dealer. In the Plain Dealer the death notice listed Marilyn Enos Folley as an heir. I bring all this up because as I work my way through this you're going to find a long story of mismailings.

Chair: I will give you five minutes for an opening statement. We have a few people here tonight so I will give you five minutes for an opening statement.

Mr. Myers: All right Your Honor, thank you very much. Also finishing up, I'm the title holder. I hold title as Robert H. Myers, Jr. trustee of the Marilyn Enos Trust. Now, Mr. Chairman, we object to the decision made by Dan because we believe it to be arbitrary inaccurate. For example we have a statement from Dan and one of my exhibits, and I brought you your own copy, it says nobody has been in this house. Then he sends me pictures of the house being standing open. The bazaar part about the police is that as a part of the estate of Mrs. Enos, I had a car that disappeared. Some of the material that Dan was kind enough to send me contains that information so now I have found the car. It was towed. Notices have been sent out to the strangest combination of addresses and names. So Mr. Chairman, I believe that the information contained in the statement that we received is inaccurate. I have subpoenaed four people tonight as witnesses. Dan is one of them. I got other members of the Building Department who have also been subpoenaed. Now what we are trying to do, Your Honor, very simply for whatever reasons, and she is here to tell you she wants to move back in this house. This woman has spent the last four years living in a homeless shelter so that she could pay the taxes on this house. And as a part of one of my other bits of representation, I filed a Board of Revision complaint and got this house's value reduced \$100,000. The taxes are paid. Thus, I've never seen anything like this. The sewer bills are paid. We can't get the sewer bills turned off. This house has been vacant for 15 years. The water bills are paid. She wants guidelines. We have asked Dan for guidelines and I don't believe he has given us an accurate set of guidelines in order to respond to the community. I thank you very much, but I see my light flashing (chuckle). As I said, I have two sets of exhibits, one for you and one for the witnesses.

Chair: Mr. Kelly you have five minutes as well.

Mr. Kelly: Thank you Mr. Chair. Mr. Chair and Members of the Board, I am here this evening as an advocate for the Administration. You have Mrs. Vozar's Council to rely upon in your deliberations. My position tonight, this is an adversarial experience, unlike maybe anything you've seen previously. Our code provides that in the event that a party is grieved by the decision of the Building Commissioner, that individual, or entity, has the right to present an appeal to you from that decision. As Ms. Vozar stated, I think at the onset of your meeting this evening, there are standards that are set by ordinance that must be met by the Appellant. Which is to say that the burden here is upon Mr. Myers and his client to meet the standard and to persuade you by clear and convincing evidence that Mr. Kulchytsky's decision is the result of a gross abuse of authority or fraud or collusion. I think you are going to find very plainly that there was no fraud, there was no collusion, and there is no gross abuse of authority. Quite the contrary. Mr. Kulchytsky and the City had been extremely patient in our efforts to secure the assistance of the owner, whether it be Mr. Myers or his client who is here tonight evidencing her desire to return to the property. It is my intention after Mr. Myers has presented his case, Mr. Chairman, to present witnesses as well. I have Mr. Kulchytsky who will testify, I have the Ward 1 Councilman, John Nickell, who has agreed to testify. I may call one other witness if I feel it appropriate. The bottom line is, we have a situation on Patricia Drive that has existed for many, many years. The house is dilapidated. The photographs don't look terrible but the interior of the premises is a disaster. It is a hoarding situation; it's been like this for years. The property is unsafe. The property is unsanitary. Mr. Kulchytsky will testify that the ingress and egress presents a serious risk to human conduct and it's a fire hazard. And then add to that, Mr. Chairman and Members of the Board, that Mr. Myers and his Client have had, I can't tell you how many years to fix this and they have done nothing. Our contact with Mr. Myers began sometime in January of 2014. And in all that time, until now, he has done nothing. He has written letters, he's asked for guidance, and from the point view of the Administration, we think it is all just a sham; they had no intention of fixing that place otherwise they would have fixed it. We need that property torn down. We expect that it should be torn down. The Building Commissioner has ordered it to be torn down and we hope that you will find the appropriate evidence to affirm his decision.

Chair: Thank you. Okay Mr. Myers. It's your burden; you may call your witnesses.

Mr. Myers: Well why don't we start out with Ms. Enos. We will start out with the property owner. The person who wants to live in this house. Marilyn. For the record Marilyn, will you please state your name.

Ms. Enos: Marilyn Enos.

Mr. Myers: Are you also known as Marilyn Enos Fowler.

Ms. Enos: No longer.

Mr. Myers: Why are you no longer known as Marilyn Enos Fowler.

Ms. Enos: I am now a divorced woman.

Chair: If I may, can you raise your right hand please. Do you solemnly swear your testimony tonight will be the truth the whole truth and nothing but the truth.

Ms. Enos: Yes.

Clerk: Can I have you both talk into the microphone so I can hear both parts of the conversation.

Mr. Myers: Diane, we will do our best.

Clerk: Thank you.

Mr. Myers: The gentleman made a fine presentation, why have you not fixed the house up since I started working with you in 2015.

Ms. Enos: In regards to the funds available to me pursuant to the divorce I have been hamstrung and unable to proceed.

Mr. Myers: I brought up the issue about the Board of Revision and I brought up the issue about unpaid taxes. Why is that important to what we are trying to do this evening.

Ms. Enos: Because the monies as they have been trickled down to me over the past several years pursuant to this situation, have been wholly funneled into the payment of the taxes. First and foremost getting those real estate taxes current, which were abandoned by my husband approximately 2011 - 2012 to the best of my ability to recall the timeline. Based on the information that was given to me of what I knew to be happening versus the reality of what was going on have put me in a position of allocating all of my funds to the extent that I have lived out of my car, lived in a homeless shelter. Because the rude awakening of having returned home was that there was a condemnation letter attached to the door. And by advice of my attorney, I could not reside at the home or on the property without the risk of being arrested for criminal trespass. So I elected to invest my money in rehabbing that house starting with repayment of the taxes. And I want to thank you all for the consideration you have offered me in that regard because I couldn't have done it without you or without the support of everyone in this room.

Mr. Myers: Marilyn we have dealt with the issue of the house being a hotel to hoarding. Now what are you going to do with the stuff in the house?

Ms. Enos: Well the complaint as I understood it was that the taxes were unpaid. So pulling the house out of foreclosure was the first step in the process. Now I am at the point where I can turn my attention to the home. And turning my attention to the home means the contents need to be removed, the house needs to be fixed up. The house needs to meet the standards of all of you. And hopefully at the end of this process, I'm going to have the benefit of an occupancy permit so that I can return home.

Mr. Myers: Dan's office has given us the names of various churches so they thought the people might be willing to help you clean out the house. Did you contact any of the churches?

Ms. Enos: Well I welcomed the information. Frankly, living in a homeless shelter I have lost touch with that information. Those are not resources that I have at this point in time.

Mr. Myers: We still need to get together with Dan and his people to find those names of those churches to clean out the house.

Ms. Enos: In addition to my own research, yes. I welcome all resources and I am not discouraging any help whatsoever.

Mr. Myers: Your mother died in 1999 and your divorce was finalized last year. What happened in between?

Ms. Enos: My divorce was finalized in 2015. Just so we are clear, I have been divorced for less than a year. What happened in between in regards to?

Mr. Myers: The house. Why is it in the condition that it is in?

Ms. Enos: Being a part of an abusive and neglectful relationship, I was sequestered. I was without the means to drive. I was relying on a man who was assuring me that on a semi-weekly, semi-monthly basis, at least every two weeks of every month he was traveling to the house to maintain it. I had no information otherwise, and I took him at his word.

Mr. Myers: Again, we are working on time here. The gentleman is absolutely right you have sort of ignored things for a while. Please tell these people how long you believe you need to take care of all of this.

Ms. Enos: I can't ignore something that I am not aware of. I was not aware of mailings, being addressed to my mother, being addressed to the "residence" which hasn't received mail in a number of years. Being addressed to addresses at which I did not reside. I don't have a sense of what the city has done in terms of outreach other than I suspect that this outreach reached my husband's attention and whatever relationship exists was taking place between the city and my husband.

Mr. Myers: As a part of your divorce did you discover some problem with the mail?

Ms. Enos: Yes, my husband delivered 21 pounds of mail addressed to me and addressed to my mother to my Attorney's office. Ironically in going through that mail there wasn't an envelope with official City business in any of it; that I am aware of.

Mr. Myers: Now, we have covered all of that. These fine folks want to know when does the dumpster back up to the door?

Ms. Enos: As soon as possible.

Mr. Myers: How much time do you need to clean out the house?

Ms. Enos: To clean out the house, to execute the repairs, to receive an occupancy permit. May I please the panel for a year?

Mr. Myers: And what happens at the end of the year?

Ms. Enos: The end of the year we assess the situation. I present my progress; I listen to the needs of the Board to see what remains outstanding. If there are any circumstances and we agree to address the Board's and the City's and the neighborhood's considerations for what may be left over to take place.

Mr. Myers: You have a vehicle now so you can visit the property?

Ms. Enos: Correct.

Mr. Myers: Have you been to the property where you have found doors standing open?

Ms. Enos: No. Have you?

Mr. Myers: Yes. You have sufficient capital to do what you're talking about?

Ms. Enos: I have the money to begin, yes.

Mr. Myers: What is your long term plan to fix this house up? The gentleman has a number of valid points. It's gotta be painted. I don't mean to be silly here, but

Ms. Enos: My understanding from the city is that the garage door needs to be painted.

Mr. Myers: Well I think that's an exciting point but the house needs to be cleaned out.

Ms. Enos: The intention for this home is to return home for the rest of my natural life. And that includes opening up the foundation, waterproofing the basement, adding security lighting to the exterior in the overhang area, putting an addition on to the rear of the house, vinyl siding the home, updating the interior fixtures and features of the property, and bringing it in line with keeping of the neighborhood and the values of the property surrounding it.

Mr. Myers: And at the end of the year if you have not been able to accomplish this?

Ms. Enos: At the end of the year I will not have an addition on the back of the house. I'm looking at a long range plan beyond a year. My focus in a year is to bring this property in compliance with the City's intentions and then moving on with my own dreams beyond that.

Ms. Vozar: Mr. Chairman, I don't mean to interrupt their Case-in-Chief, but I just want to clarify for the record. This Board does not have the authority to grant a year extension for you to correct a building violation. This Board is merely hearing an appeal regarding the Building Commissioner's decision. So I think we might be moving off track. Again, if what Ms. Enos is requesting is an extension of time to correct the violations, those are directed toward the Building Commissioner, not to the Board. Thank you.

Chair: Thank you.

Mr. Myers: Thank you Mr. Chairman. I think we can move on. Ms. Enos, is there anything else you would like to say?

Ms. Enos: I would like to thank the Board for their consideration. Thank you for your time. Thank you to everyone who is in this room supporting my endeavor.

Chair: Thank you. Mr. Kelly.

Mr. Kelly: I have a few questions I'd like to ask Ms. Enos. Ms. Enos please go to the microphone.

Mr. Myers: This man is an Attorney for the City.

Mr. Kelly: Ms. Enos, would you be kind enough please to tell us where you currently reside?

Ms. Enos: I am living in a storage room in a basement of a rooming house.

Mr. Kelly: Does it have an address, Ma'am?

Ms. Enos: The location of the house is on Washington Street in Bedford, Ohio.

Mr. Kelly: Does it have an address?

Ms. Enos: I am not receiving mail there and I am frankly a little bit anxious so I am not going to give you an inaccurate house number. I am dyslexic and I don't know if I can relay that. I would be happy to give it to you after the meeting.

Mr. Kelly: Ms. Enos, you and your lawyer have both made the point that you believe that the City has failed to give you proper notice. By the way I am speaking loud because the microphone has to pick me up too. You have made the point and your lawyer made the point that you believe that we have failed as an Administration to properly give you notice in the past because it didn't come to you wherever you were. I need to know where you are. Somebody here needs to know where you are in order to be able to send you something.

Ms. Enos: You may direct mail to me at P.O. Box 30664 Middleburg Hts., OH 44130.

Mr. Kelly: So you live in Bedford Heights?

Ms. Enos: Correct

Mr. Kelly: And you have a P.O. Box in Middleburg Hts.?

Ms. Enos: I can't say that I'm living in Bedford Heights. I'm currently staying there; I recently in the last several weeks arrived there.

Mr. Kelly: Ms. Enos, I understand you have had some problems in your life and we are very sorry about that. Everyone here can sympathize with some of those experiences. Believe me nobody here wants to make your life more difficult.

Ms. Enos: Thank you.

Mr. Kelly: On the other hand we have our duty to do as well. Let me ask you this. When was the last time, if you could remember, you spent one night at the Patricia house?

Ms. Enos: 2008.

Mr. Kelly: Okay. Since then you have not been there. Does anybody else live there since then?

Ms. Enos: No Sir. The house since then has been visited on an ongoing basis by my husband.

Mr. Kelly: And your husband, this gentlemen that you claim your divorced from just recently here, is Mr. Folley, correct?

Ms. Enos: The name is Folley.

Mr. Kelly: Mr. Folley was your husband until last year. The property however has never been titled in his name, has it?

Ms. Enos: No Sir.

Mr. Kelly: The property in fact is titled in your deceased mother's name until 2014. Right?

Ms. Enos: Until 2015.

Mr. Kelly: 2015. So when Mr. Kulchitsky testifies, as he likely will, that he sent the first notice to Catherine Enos. Granted Mr. Myers, I understand that she is deceased and there was something in the newspaper about that and so forth. He was sending it to the last known owner of the property, Catherine Enos. Correct?

Ms. Enos: Not at the last known address; because all that mail had been forwarded.

Mr. Kelly: Ma'am, if the property was titled in your mother's name until 2015, any notices that the City would have sent to her would never have been received by her. Would they?

Ms. Enos: Mail to my P.O. Box in regards to life insurance policies, in regards to automobile insurance, in regards to property improvements have been arriving in my mother's name since the mail was forwarded. As a matter of fact, I'm getting the same notices in my father's name to the same P.O. Box. So to say there wasn't a chain of being able to reach me through her is questionable.

Mr. Kelly: Okay. Ms. Enos, you mentioned all of the things that you would like to be able to do if you had time to improve the property.

Ms. Enos: In my mind I have the rest of my life.

Mr. Kelly: Yes Ma'am, I understand that you may have that in your mind but that is not what is here today. Okay. How would you describe the condition of the inside of that house?

Ms. Enos: It needs tender loving care.

Mr. Kelly: Okay, would you describe it as there being evidence of hoarding; for the lack of a better word?

Ms. Enos: I would describe it as having the appearance of a condition that is barely understood and barely able to be remedied with close minded, insensitive,

Mr. Kelly: Me?

Ms. Enos: I am not making a direct reflections to you Sir.

Mr. Kelly: Well I guess the question; there is nobody else asking you the question but me.

Ms. Enos: State of mind.

Chair: I have a question. Please describe the inside of the house.

Ms. Enos: This is a three bedroom ranch with a living room and kitchen, an eating area off the livingroom.

Chair: What is the condition of the inside of the house?

Ms. Enos: The condition of the inside of the house is woeful.

Chair: Woeful?

Ms. Enos: Woeful, it needs attention.

Chair: What is the condition of the structure?

Ms. Enos: The condition of the structure to my knowledge is substantial. It is a good house. It has good bones. It needs cosmetic attention on the exterior. It is a frame sided house. And now at this time it desperately needs to be painted.

Chair: Is there water inside of it?

Ms. Enos: There are no utilities on the inside that are on. There is no water.

Chair: Is there a basement to it?

Ms. Enos: There is a basement to it.

Chair: And what condition is the basement in?

Ms. Enos: The basement walls need to be waterproofed. It is my intention to open up the foundation of this house to waterproof the basement.

Chair: Does the basement leak?

Ms. Enos: The basement leaks.

Chair: And how much water was in the basement?

Ms. Enos: I am aware of ground cover. I am aware of puddles on the floor.

Chair: Okay.

Mr. Rohloff: Ma'am, I thank you for your testimony tonight.

Ms. Enos: Thank you for your time.

Mr. Rohloff: The question for me is are you able to move freely about the house or are their obstructions?

Ms. Enos: In order to complete the repairs to the house,

Mr. Rohloff: I'm talking about now; if I went to the house and opened the door, would I be able to walk in the house and move about freely.

Ms. Enos: Not at the moment Sir, not till I have an opportunity (inaudible) of this committee that I would not be arrested for trespassing.

Mr. Rohloff: I am just wondering what would impede my free movement? What would be in the way of me moving?

Ms. Enos: I have boxes packed and stacked.

Mr. Rohloff: From the floor to the ceiling?

Ms. Enos: No Sir. From the floor, probably one or two or three boxes high.

Mr. Rohloff: Okay. Is there a rodent issue there?

Ms. Enos: I haven't gotten into the house to be able to determine that at this point.

Mr. Rohloff: Okay, fair enough. If there is water do you know if there is mold there?

Ms. Enos: I suspect that there is rodent problem because that is the classic for this portion of the city.

Mr. Rohloff: Okay, and mold issue maybe with the

Ms. Enos: I am expecting to find mold. Yes.

Mr. Rohloff: Okay, thank you. Thank you Mr. Chairman.

Chair: Thank you.

Mr. Kelly: No further questions Mr. Chairman.

Mr. Myers: Mr. Chairman, I think we need to deal with, I've subpoena two inspectors and Dan. So I would like to start out with the inspectors that have been in the house and one of them should tell me something about the car.

Chair: Go ahead and call your next witness.

Mr. Myers: I talked to the Secretary before the meeting Mr. Chairman, where do I put my witness?

Chair: The witnesses can sit next to Mr. Kulchytsky and be questioned.

Mr. Myers: Okay.

Ms. Vozar: Mr. Chair. I would question, while I understand that the Appellant did issue Subpoenas to the Inspectors, what is germane and the only thing that is relevant to this hearing is the Building Commissioner's decision and unless his decision was based on the Inspector's reports, I do not believe that their testimony is relevant and I believe the court should quash the subpoenas.

Mr. Myers: Donna, I don't disagree with you. We are lawyers; if we don't face reality we're going to face reality. But if you look at the letter that we received, the first sentence talks about reports. There are no reports, I have asked for them. So I subpoenaed these men to talk about whatever they gave Dan. I asked Dan for them. So how does that impact what we are talking about.

Ms. Vozar: So are you talking about the letter, the order that Mr. Kulchytsky issued on November the 25th.

Mr. Myers: Yes Ma'am. The first sentence, "Based on a recent inspection, the property and structures are in significant disrepair." So I ask for the inspections.

Ms. Vozar: Okay, and those inspections that you are referring to. The order that was issued by the Building Commissioner is dated November 25, 2015.

Mr. Myers: Right.

Ms. Vozar: If you look at the inspection reports that were submitted to as part of your public records request, they are all dated in 2013 and earlier. Correct? I am looking at them right now; there is 11, 12, 10, 6, 6.

Mr. Myers: They go back to 2010 with some of this stuff.

Ms. Vozar: Actually they go back. I am looking at some '06 all the way to May of 2013.

Chair: The Building Commissioner issued the ruling. I don't have any problems with questioning the Building Commissioner as to the base of his ruling. I think we should do that first before we can find out if the Inspectors' testimony is of at all relevance. So my suggestion would be to question the Building Commissioner first as to the basis of his rulings and then we will go from there.

Mr. Myers: Mr. Chairman, I always defer to the judges (chuckle).

Chair: (swearing in Dan Kulchytsky) Do you solemnly swear that your testimony tonight will be the truth, the whole truth and nothing but the truth.

Mr. Kulchytsky: I do so help me God.

Mr. Myers: Do you have a copy of the November 25th letter?

Chair: Please state your name and spell it your last name for the record.

Mr. Kulchysky: My name is Dan Kulchysky, City of North Royalton Building Commissioner. Yes Sir I do have a copy of my letter.

Mr. Myers: I've tried to ask for this information. (inaudible) Your letter says, quote, "based on recent inspections the property and structure are in significant disrepair." Now, the question I have to ask of you is what do you mean by recent.

Mr. Kulchysky: I have been inspecting the property since my arrival in the City of North Royalton, so my most recent inspections were at or about the time of November. My inspections are visual.

Mr. Myers: Have you entered the house?

Mr. Kulchysky: No Sir, I have not.

Mr. Myers: Have any of your staff to your knowledge enter the house?

Mr. Kulchysky: Not that I am aware of.

Mr. Myers: (presenting Exhibits) They are marked as exhibits

Mr. Kulchysky: Mr. Myers, so you want a colored copy of that?

Mr. Myers: No. I want to work with what I have. Mr. Chairman I am using the U.S. Attorney's chart for these Exhibits. So I have 100 point something and 200 and so on. I am going to hand him what I have marked as Exhibit 300.19 through 25. Do you recognize these photographs?

Mr. Kulchysky: Yes I do Sir.

Mr. Myers: Do they look like the inside of the house?

Mr. Kulchysky: Yes they do.

Mr. Myers: Who took the pictures?

Mr. Kulchysky: I did Sir.

Mr. Myers: So you were inside the house?

Mr. Kulchysky: No Sir. The door opened. I never stepped into the house.

Mr. Myers: Oh that's interesting.

Clerk: Can you go by the microphone.

Mr. Myers: I'm not use to technology (chuckle). This is Exhibit 300.19 folks. This is simply a picture of the outside of the house. This is Exhibit 300.20, in case you want to know what the house looked like in the winter. Same house just in winter I am assuming because this one does not have a date on it. Now this one is dated February 26, 2015. I believe Ms. Enos.

Ms. Enos: Yes.

Mr. Myers: Can you come here for a moment please?

Chair: No, no, no. She is not on the witness stand. Dan is.

Mr. Myers: Are you able to identify where this picture was taken?

Mr. Kulchysky: Yes Sir, I am.

Mr. Myers: Where was it taken?

Mr. Kulchysky: From the front door.

Mr. Myers: Okay, so you opened the front door?

Mr. Kulchysky: No sir I did not.

Mr. Myers: How did you get the pictures taken?

Mr. Kulchysky: I was posting the first condemnation notice of February. And I was stapling the condemnation notice to insure it did not come off. And as I stapled it, the door opened. I did not step into the house.

Mr. Myers: The door opens outward or inward?

Mr. Kulchytsky: Inward Sir.

Mr. Myers: Did you notice my business card on the door?

Mr. Kulchytsky: No Sir. There was no business card on the door.

Mr. Myers: You didn't see a sticker from a Glenn Folley on the door?

Mr. Kulchytsky: No Sir I did not at the time. I was posting my notice. Perhaps my notice was over the notices. But I saw nothing on the door. I saw a wooden door.

Mr. Myers: Okay. Here is another picture. This was again dated the 15th. Is this a picture you also took Sir?

Mr. Kulchytsky: Yes Sir it is.

Mr. Myers: Was it taken when door had come open?

Mr. Kulchytsky: Yes it was.

Mr. Myers: Okay, and you did not enter the house?

Mr. Kulchytsky: I did not.

Mr. Myers: What does this photo show?

Mr. Kulchytsky: This is the corridor. It shows clothing, accumulated material piled high down the corridor.

Mr. Myers: I'm going to put up Exhibit 23. Which is also dated February 26th. Do you recognize this picture?

Mr. Kulchytsky: Yes I do; I took that photo.

Mr. Myers: And what does it represent?

Mr. Kulchytsky: It represents another view from the front door.

Mr. Myers: Did you have a telescopic lens on your camera.

Mr. Kulchytsky: I do have a zoom lens on my camera.

Mr. Myers: Here is another picture I have labeled .24. Do you recognize this Sir?

Mr. Kulchytsky: Sir, I provided you these photos; I recognize all of them.

Mr. Myers: And last but not least is (Exhibit) 25. Also dated February 26th.

Mr. Kulchytsky: I provided you them in the order that I took them.

Mr. Myers: Does this represent one of your photographs?

Mr. Kulchytsky: Yes

Mr. Myers: What area is this?

Mr. Kulchytsky: There appears to be a hallway. On the left side there are bookshelves. On the floor there is debris. Various materials, both wet and dry in the middle. And then on the right side there is a coat rack. You can view down the corridor to the kitchen.

Mr. Myers: And it is your testimony that the door popped open when you were stapling the notice?

Mr. Kulchytsky: Yes Sir.

Mr. Myers: Was there anybody with you when you were popping the door?

Mr. Kulchytsky: I was not popping the door Sir. I was stapling a notice to the door.

Mr. Myers: And the door popped open?

Mr. Kulchytsky: The door opened. Yes.

Mr. Myers: Here are more photographs for you. This is Exhibit 11 (attempting to center picture on the document reader.

Ms. Vozar: Mr. Chair, if I could? The notice that is before this Board is again regarding the structure.

Chair: Sustained.

Mr. Myers: Madam, again you are absolutely right. This is an asset that is missing on the estate.

Ms. Vozar: Which is not relevant

Chair: Time out, time out. I sustained the objection. We are here on the Building Commissioner's decision to condemn the property. We are not here to find out what happened to the car. The Police Department would be able to tell you what happened to the car. I think it was probably towed because it was a junk vehicle.

Mr. Myers: Now, Mr. Kulchytsky, it is your testimony

Mr. Kulchytsky: I'm sorry, I can't hear you. Please use the microphone.

Mr. Myers: I humbly apologize. I'm not trying to do this on purpose. You sent me an email dated June 3rd that I inquired about the issue of entering the house. Would you mind reading your response?

Mr. Kulchytsky: My response?

Mr. Myers: Yes Sir.

Mr. Kulchytsky: As to the entry. I said number 2, no City personnel has entered into the building. You shall be contacted in writing regarding access to the building associated with the pending demolition. Okay, any question?

Mr. Myers: Have you contacted myself or Mrs. Enos about entering the building?

Mr. Kulchytsky: No I have not because we have not yet done any access for any pending demolition. Though it is pending, we have not requested access to the house.

Mr. Myers: On the record, I want you to know that you can contact me and I will get you in that house.

Mr. Kulchytsky: Sir, I have all your contact information from January 13, 2014.

Mr. Myers: The worse thing I can do under these circumstances Sir is to leave you floundering. Now you have not formally been in the house except for this door?

Mr. Kulchytsky: Correct.

Mr. Myers: So you don't know the conditions within that house are?

Mr. Kulchytsky: I do know the conditions.

Mr. Myers: How?

Mr. Kulchytsky: You told me.

Mr. Myers: I understand that. But have you physically visited the inside of the house?

Mr. Kulchytsky: No Sir.

Mr. Myers: Okay. My Client tells me she contacted you for some assistance on trying to get things done. Do you remember that conversation?

Mr. Kulchytsky: Your Client contacted me?

Mr. Myers: Yes Sir.

Mr. Kulchytsky: No Sir I do not have any recollection of any contact with your Client.

Mr. Myers: She has asked tonight and I am sitting here abstaining working on trying to keep this house afloat. What do you need from her and myself as the title holder in order to do that? Would you like access to the house?

Mr. Kelly: Objection.

Mr. Myers: What's the objection?

Mr. Kelly: I will state it for the record. May I have the mic? Mr. Chairman, on behalf of the Administration, we reject this line of questioning. The fact is that we are not here for any effort at rehabilitation. The order of the Building Commissioner is for demolition.

Chair: Sustained. The issue is whether or not the Building Commissioner acted to grossly abuse his authority, acted with fraud, or acted with collusion. If we could please stick to those issues as to Dan's particular conduct and his decision. Thank you.

Mr. Myers: Based on what you, you have not been in the house so your second sentence in your letter said the building is structurally unsafe, unsanitary and does not provided adequate safe egress. Other than the front door, you don't know that that's the case.

Mr. Kulchytsky: That is correct.

Mr. Myers: Do you believe it constitutes a fire hazard, otherwise dangerous to human life. In relation to the existing use of the building constitutes a hazard for safe health by reason of inadequate maintenance dilapidation, obsolescent or abandonment. You have now heard it's not been abandoned. We have been there. And I have been in contact with you for some years now trying to get this problem solved. Does that not constitute good faith attempts to give you the information that you require in order to make these determinations.

Mr. Kulchytsky: I disagree.

Mr. Myers: Thank you.

Mr. Myers: You site 715.26 second paragraph, the municipality may provide for the removal and repair of insecure, unsafe or structurally defective buildings other structures pursuant to (see Section 715.26) . Have you provided any information to me or to Ms. Enos or to her dead mother on what we can do to fix the house up or whether the City would be willing to help us?

Mr. Kelly: Objection. Mr. Chairman. He is asking the witness for a legal conclusion or a legal interpretation of that statute. While understand that it is part of his duties, Mr. Kulchytsky does have some interpretive authority. The fact of the matter is this is an effort of avoidance of the issue at hand.

Chair: Overruled. Answer the question.

Mr. Kulchytsky: The City does not provide repairs for dilapidated and abandoned structures. If a structure is abandoned, as with previous abandoned structures, structures that sit idle, unkempt, dilapidated, at risk of fire hazard, an active nuisance in the neighborhood, an attractive nuisance to individuals, the City steps in with one action which is the request that this be deemed an unsafe structure and be taken down. We are not contractors.

Mr. Myers: Dan, by the way I think you've done a nice job. If anything I have said offends you, I apologize. What I am looking for here as I have told my Client, if she runs up there with a spray paint and started painting the garage door, I've indicated that probably won't make Dan happy. So I said to her what do you want to do with the house? First thing I'm going to clean it out. How would I obtain from you guidance as to what we are working on to what you want.

Mr. Kulchytsky: Sir can I answer that question for you. On June 11, 2014, you came into my office.

Mr. Myers: I did Sir.

Mr. Kulchytsky: And we spoke. In our conversation, you asked me that very question and I stated: I need it to be rehabilitated to be a habitable home. Painting the front garage door does not make a home habitable. Making sure that the foundations aren't leaking water, that there is no mold, that the quarters are free and clear to exit and egress, that the utilities are turned on, that an individual or family or anyone can reside within that home. That is rehabilitation of a home. That the roof structure is not at risk of collapse due to deteriorating shingles. We had this discussion. I recommended you find a qualified contractor to go through a list of items that should be handled in a reasonable order. My recommendation to you was start by cleaning up and seeing what the condition is. And you stated at that point that your real estate agent said it is an expensive endeavor.

Mr. Myers: Mr. Chairman, what he stated is absolutely correct. We have been trying to work on that. Thank you very much Mr. Kulchytsky. I have no further questions.

Mr. Kelly: When was the first time, Mr. Kulchytsky, that you determined to condemn this property?

Mr. Kulchytsky: May I look into my records? (pause) Approximately two months after starting working at this office. So that would be about 2013, beginning of January.

Mr. Kelly: Did there come a time, give or take January 13, 2014, when you had some opportunity to communicate with Mr. Myers?

Mr. Kulchytsky: No Sir. All I was aware of that there were abandoned properties or properties that were dilapidated and in need of attention within the city.

Mr. Kelly: When was the first time that you presented any notice of non-conformance to that property?

Mr. Kulchytsky: I personally?

Mr. Kelly: You or anybody at your direction.

Mr. Kulchytsky: I would have to verify. (pause) Under my direction, there were grass letters which were basically yard maintenance work that occurred upon my entering into the Building Department. The first notice came out from me on February 23, 2015 with the first notice of an unsafe structure.

Mr. Kelly: As early as February 23, 2015, almost a year ago now, you have made a determination to say that this structure is unsafe.

Mr. Kulchytsky: Correct.

Mr. Kelly: What went into your determination on that subject?

Mr. Kulchytsky: Having been aware of the property since the beginning of January of 2013, I was watching these properties diligently and I realized that we seem to have a problem and that the house was indeed abandoned.

Mr. Kelly: How many times would you say, Mr. Kulchytsky, that you actually been to that property?

Mr. Kulchytsky: I would say at least a half dozen if not more times.

Mr. Kelly: Do you believe it to be structurally unsafe?

Mr. Kulchytsky: Yes.

Mr. Kelly: You are a Building Commissioner which is a position of authority called for a state statute. Correct?

Mr. Kulchytsky: Correct.

Mr. Kelly: You have to have a license from the State of Ohio to be a Building Commissioner, right?

Mr. Kulchytsky: Yes Sir.

Mr. Kelly: Do you have such a license?

Mr. Kulchytsky: Yes I do.

Mr. Kelly: How long have you had it?

Mr. Kulchytsky: As a Building Commissioner, I have had it six, seven years.

Mr. Kelly: What is the nature of your personal background in terms of your education?

Mr. Kulchytsky: I am a graduate of Kent State University with a Bachelor of Architecture. I completed a Master of Architecture at the same university while teaching the Theory of Architecture. Furthermore, I have had an architectural firm that has had 20 years of experience in serving Government communities.

Mr. Kelly: Are you a licensed Architect?

Mr. Kulchytsky: Eight years, Yes I am Sir.

Mr. Kelly: So you are a licensed Building Commissioner. You're a licensed Architect. You're a practicing Architect.

Mr. Kulchytsky: Correct.

Mr. Kelly: Prior to your coming to work for the city of North Royalton, where did you work?

Mr. Kulchytsky: I worked at the City of Parma. I worked also as a consultant for the City of Seven Hills, also as a consultant for the City of Euclid. I also worked as Building Commissioner and Plans Examiner and Inspector in the City of Euclid as well as Plumbing Inspector. I also have worked with the City of Brecksville as a consultant.

Mr. Kelly: Are you satisfied in your opinion Sir that the property on 12778 Patricia Drive is structurally unsafe.

Mr. Kulchytsky: (pause)

Mr. Kelly: You hesitated.

Mr. Kulchytsky: I would like the opportunity to review it further as to the damage that has occurred from the water damage within the building.

Mr. Kelly: Alright. Leaving that aside, do you believe the property to be unsanitary?

Mr. Kulchytsky: Yes.

Mr. Kelly: And that is based on what? Personal observation?

Mr. Kulchytsky: Personal observation.

Mr. Kelly: Do you believe the property has adequate egress and ingress?

Mr. Kulchytsky: I do not believe it has adequate ingress or egress.

Mr. Kelly: Do you believe it to constitute a fire hazard?

Mr. Kulchytsky: Yes Sir.

Mr. Kelly: Do you believe it to be otherwise a danger to human beings?

Mr. Kulchytsky: Yes Sir.

Mr. Kelly: Is it your determination then that the property should be destroyed?

Mr. Kulchytsky: Yes Sir.

Mr. Kelly: If I understand correctly you're conversations, you're communications with Mr. Myers as the title owner of the property and or as the Attorney for Ms. Enos, one or the other or both, have been going on for over a year. Is that correct?

Mr. Kulchytsky: Yes Sir, that is correct.

Mr. Kelly: In that time, Sir, has he presented to you any plans for rehabilitation?

Mr. Kulchytsky: No Sir.

Mr. Kelly: Has he submitted any drawings?

Mr. Kulchytsky: No Sir.

Mr. Kelly: Has he, to your knowledge, engaged a contractor?

Mr. Kulchytsky: I am not aware of any contractor being engaged.

Mr. Kelly: Has any contractor contacted you?

Mr. Kulchytsky: No. No contractor has contacted me.

Mr. Kelly: Okay, thank you very much.

Chair: Mr. Kulchytsky, you mentioned water damage. Please elaborate on that.

Mr. Kulchytsky: The reason why I hesitated as to expounding on the structural damage, I'm not fully aware of the extent of the structural damage. The property I am aware has had flooding issues within the basement.

Chair: And how are you aware of that?

Mr. Kulchytsky: I am aware of that from Mr. Myers himself.

Chair: Do you know the extent of the flooding in the basement?

Mr. Kulchytsky: I have not had the opportunity to observe it directly.

Chair: Thank you. You may call your next witness.

Mr. Myers: Your Honor, Given my worthy opponent, I have elected not to call the last two witnesses. I do reserve the right for closing arguments.

Chair: Sure. The two witnesses that were subpoenaed can be excused. Do you rest your presentation?

Mr. Myers: Other than closing arguments, yes.

Chair: Do you want the pictures admitted into evidence?

Mr. Myers: Yes Sir.

Chair: We will admit the pictures into evidence.

Mr. Kulchytsky: As well as the, do you want that? That is the e-mail that I read?

Chair: Do you want the email entered into evidence?

Mr. Myers: I would like to be copied but I would like that entered into evidence.

Chair: All your exhibits will be admitted into evidence. Mr. Kelly, do you have a presentation?

Mr. Kelly: I do Mr. Chairman.

Mr. Kelly: Have you got the exhibits?

Mr. Kulchytsky: Yes I do Sir.

Mr. Kelly: Mr. Kulchytsky you will remember Sir that you are under oath. You have in your possession February 23, 2015 notice that was issued to one Catherine Enos. It is marked Exhibit #1.

Mr. Kulchytsky: I will momentarily. (pause) Did you say the November 25th or the?

Mr. Kelly: I said the February 23rd; that was the first one.

Mr. Kulchytsky: I have it. No I did not mark it because I did not know what order you would be requesting.

Ms. Vozar: I have the stamp if you want an exhibit stamp. No. Okay

Mr. Kelly: Appellees #1 Your Honor. Mr. Kulchytsky, I have handed you what I have marked for identification purposes as Appellees Exhibit #1. Do you have that in your hand?

Mr. Kulchytsky: Yes I do.

Mr. Kelly: Can you identify it Sir?

Mr. Kulchytsky: Yes I can.

Mr. Kelly: What is it?

Mr. Kulchytsky: It is the first notice that I sent out for an unsafe structure for 12778 Patricia Drive.

Mr. Kelly: Is it a letter under your hands?

Mr. Kulchytsky: Yes it is.

Mr. Kelly: What is the date on it?

Mr. Kulchytsky: The date is February 23, 2015.

Mr. Kelly: To whom was it sent? What individual person?

Mr. Kulchytsky: It was sent to Enos, Catherine. P.O. Box 30664 Cleveland, OH 44130.

Mr. Kelly: 44130 is? Do you know that to be the Middleburg Hts. Post Office?

Mr. Kulchytsky: I did not know that.

Mr. Kelly: Your Honor, I would ask the Board to take judicial notice the fact that the Post Office identified as 44130 is the Middleburg Hts. Post Office.

Chair: So taken.

Mr. Kelly: Thank you Sir. And the P.O. Box again, read it again please.

Mr. Kulchytsky: 30664.

Mr. Kelly: We now know, Mr. Kulchytsky, and you now know what we did not know then. Which is that Catherine Enos is deceased. Correct?

Mr. Kulchytsky: That is correct.

Mr. Kelly: When did that come to your attention Sir, Roughly?

Mr. Kulchytsky: Boy I would say it was the first time Mr. Myers sent me a letter that he represents the estate which would be the first letter from January 13th of 2014.

Mr. Kelly: That particular item was identified as Appellees Exhibit #1 was the notice that was sent. Correct?

Mr. Kulchytsky: Correct.

Mr. Kelly: Did you then thereafter post a notice that the structure was in dangerous condition and had been condemned?

Mr. Kulchytsky: Yes I did.

Mr. Kelly: Do you have a copy of that?

Mr. Kulchytsky: Yes I do. It is attached to Exhibit #1. You can detach it.

Mr. Kelly: I just bifurcated Exhibit #1, Mr. Chairman. It is now Appellees Exhibit #2. Mr. Kulchytsky I have handed you what has been marked for identification purposes as Appellees Exhibit #2. Do you recognize that document?

Mr. Kulchytsky: Yes I do and I recognize my spelling error. That is the notice that is required to be written and posted on the site by the Building Commissioner upon notification of an unsafe structure. So this is actually an item that is actually attached affixed to the front door or that area.

Mr. Kelly: We need to update our forms because the word "condemned" is misspelled. Mr. Myers was generous enough to point that out. Did you post that notice to the door on Patricia Drive?

Mr. Kulchytsky: I post all condemnations personally, so yes I did.

Mr. Kelly: Have you in your discretion and then sometime thereafter you became aware of the fact that Ms. Enos had passed away, that a new notice had to be issued to the new owners, Correct?

Mr. Kulchytsky: That is correct.

Mr. Kelly: Do you have the notice of November 25, 2015?

Mr. Kulchytsky: Yes I do.

Mr. Kelly: I handed to Mr. Kulchytsky, I have marked for identification purposes as Appellees Exhibit #3. Can you tell the Chair and the Board what that is Sir?

Mr. Kulchytsky: This is the second notice after discovering that the original owner of the property had passed and that Mr. Myers was a trustee of the property. A second notice was sent to both Mr. Myers and to Marilyn Enos Folley at 2368 Trailard Drive, Willoughby Heights (Hills) Ohio, in addition to Mr. Myers. It is a very similar unsafe structure which states it is abandoned, dilapidated and unsafe.

Mr. Kelly: That notice was sent certified mail return receipt requested?

Mr. Kulchytsky: That is correct.

Mr. Kelly: Did we get back the thing from the post office identifying the fact that it was received?

Mr. Kulchytsky: Yes we did.

Mr. Kelly: Is that notice, Mr. Kulchytsky, under your hand as well?

Mr. Kulchytsky: That is correct.

Mr. Kelly: Subsequently then I hand you what has been marked for identification purposes as Appellees Exhibit #4. The notice that was actually posted, is that not correct? With the same misspelled word?

Mr. Kulchytsky: That is correct. Our template has not been fixed at that point.

Mr. Kelly: The fact of the matter is, who posted that?

Mr. Kulchytsky: I did by my own hand.

Mr. Kelly: And when you posted it Sir, is that when the door came open under the pressure of your stapler?

Mr. Kulchytsky: I'm sorry; I have to check that, if you can bear with me. I had made so many visits to the site that I need to double check the date stamps on my images. No Sir, when the door opened when I was posting the other notice was actually on the date of my posting of February 26, 2015.

Mr. Kelly: So when you went back in November and posted that notice on the door, the door did not swing open?

Mr. Kulchytsky: That is correct. It did not swing open at that opportunity.

Mr. Kelly: Mr. Kulchytsky, I've just handed you what I have marked as Appellees Exhibit #5. Is that a multi-page packet of colored photo reproductions?

Mr. Kulchytsky: That is correct.

Mr. Kelly: Do you know who took all those photos?

Mr. Kulchytsky: I don't know the exact photos which individuals took them. I know which ones, approximately, which I took. There are several photos from other inspectors here, but the majority are my photographs.

Mr. Kelly: Beginning with the first page, how many photos are on that first page?

Mr. Kulchytsky: Four photographs from May of 2013.

Mr. Kelly: To the best of your knowledge, are they photographs of the Patricia Drive property that we are talking about here at 12778?

Mr. Kulchytsky: Yes they are.

Mr. Kelly: Do they fairly and accurately represent the condition of the premises of that house as of the date they were taken?

Mr. Kulchytsky: Yes they do.

Mr. Kelly: As for all the other photographs that you studied,

Mr. Kulchytsky: Yes I have.

Mr. Kelly: Are you familiar with them?

Mr. Kulchytsky: Yes I have.

Mr. Kelly: Do you know them to be representative of the property at 12778 Patricia Drive?

Mr. Kulchytsky: Yes they are.

Mr. Kelly: Do they fairly and accurately represent what they purport to represent relative to that property?

Mr. Kulchytsky: Yes they do.

Mr. Kelly: As a result of all of your efforts, I'm sorry.

Mr. Kulchytsky: If I may.

Mr. Kelly: As a result of all of your efforts with regards to this matter, Mr. Kulchytsky, is it fair for me to say that your posting of the notice, your sending of the condemnation letter is in fact evidence of your opinion that the property needs to be condemned?

Mr. Kulchytsky: Yes Sir.

Mr. Kelly: That it needs to come down?

Mr. Kulchytsky: Yes it does.

Mr. Kelly: Thank you. No further questions.

Chair: Thank you. Any questions?

Mr. Myers: Just a redirect on the photographs. I'm going to keep this short. In looking at these photographs (inaudible due to cough) pictures. These are my exhibits 300.14 and .15.

Mr. Kulchytsky: Yes I do.

Mr. Myers: I actually magnified up your pictured. That is the date on your letter. So that's your testimony that when you put these letters on, this is now what pushed open the door?

Mr. Kulchytsky: There are staples here. These are the letters that are stapled to the door.

Mr. Myers: Do you know that one of these bolts is a dead bolt?

Mr. Kulchytsky: No Sir, I did not. It appears to be.

Mr. Myers: You are going to like this question. Remember you said you couldn't find my card. See that little square there?

Mr. Kulchytsky: Yes there is a square there.

Mr. Myers: Do you have any memory of what that square would be?

Mr. Kulchytsky: No, I do not.

Mr. Myers: Okay, and then behind the little square there is a shadow. Do you have any idea what that represents?

Mr. Kulchytsky: No Sir.

Mr. Myers: Okay. (inaudible)

Chair: He actually identified all the pictures and said they were true and accurate representations of the

Mr. Myers: That is not my question. I just want to make sure I am following the rules.

Chair: You can ask them about any

?(inaudible): May I ask a question?

Chair: No.

Chair: (speaking to Mr. Myers) You can ask them about any of the pictures.

Mr. Myers: This questions Sir has to do with the notices for landscaping and grass cutting and things like that that you have been sending out.

Mr. Kulchytsky: I did not send those out.

Mr. Myers: Well somebody sends them out. Again we will go back at what we just looked at. This is my Exhibit 15 and my Exhibit 1. See here, is this the porch?

Mr. Kulchytsky: That is correct that is the porch.

Mr. Myers: Where are all these bushes?

Mr. Kulchytsky: The overgrown and out of control vegetative growth, they were removed per City Ordinance.

Mr. Myers: By you?

Mr. Kulchytsky: No Sir, I did not personally remove them.

Mr. Myers: Did you charge the Estate for the cost to remove them?

Ms. Vozar: Mr. Chairman

Chair: Sustained.

Mr. Myers: Is there an objection?

Chair: She objected. The bushes have nothing to do with whether or not the house is an unsafe structure.

Mr. Myers: Again Sir, no further questions.

Chair: Thank you. Mr. Kelly, do you move to admit your exhibits?

Mr. Kelly: Yes but I would like one more witness Mr. Chairman. I know that it's getting long. I call Mr. John Nickell, Ward 1 Council.

Chair: Mr. Nickell if you could have a seat next to Mr. Kulchytsky. Can you raise your right hand? Do you solemnly testify or state that your testimony tonight will be the truth, the whole truth and nothing but the truth.

Mr. Nickell: I do.

Chair: Will you state your name, spelling your last name for the record.

Mr. Nickell: John Nickell.

Chair: Are you the Ward 1 City Councilman?

Mr. Nickell: I am.

Chair: And have you been so since 2007?

Mr. Nickell: Correct.

Chair: Go ahead Mr. Kelly.

Mr. Kelly: Thank you Mr. Chairman. Mr. Nickell kindly state your address for the record please.

Mr. Nickell: 10092 Hawley Drive, North Royalton.

Mr. Kelly: Is the property on Patricia Drive that is the subject of tonight's appeal within your ward?

Mr. Nickell: Yes.

Mr. Kelly: Has it been within your ward for your entire service as the Ward 1 Councilman?

Mr. Nickell: Yes Sir.

Mr. Kelly: Are you familiar with it?

Mr. Nickell: Very familiar.

Mr. Kelly: Are you familiar with the neighbors who have lived in that area?

Mr. Nickell: I am.

Mr. Kelly: Can you describe to, as best you can, to the Board the condition to the premises as you see it.

Mr. Nickell: It is in very sad shape.

Mr. Kelly: I know you have been in the room since we've had this testimony. You've heard Ms. Enos say she hadn't stayed here since 2008. At least I believe that's what she said. Is that consistent with your understanding of the condition of the premises?

Mr. Nickell: Yes that would be my understanding because this would be a house that I kept track of because many neighbors call me asking what the city can do to get the house put back in better shape. It is something that we keep an eye on. I don't remember anyone ever living there.

Mr. Kelly: Have you been to the house?

Mr. Nickell: Yes.

Mr. Kelly: Have you made an effort to determine if anyone lived there. Did you knock on the door?

Mr. Nickell: Yes. Because actually during campaigning for Councilman way back in '07, knocking on doors, neighbors actually said nobody lives there. The previous Councilman Bobulsky, when I took office, she told me of certain problems in the Ward. She mentioned that since '06 the house has been empty.

Mr. Kelly: Very good Sir. Is it fair for me to say, Mr. Nickell, that this has been one of the more difficult problems for you in your Ward to get resolved over the years?

Mr. Nickell: Yes, it's been a problem. We have numerous complaints; I probably have many emails to the Building Department. Another words, neighbors call me, I turn the things into the Mayor's Office and we ask the Building Department to look at the house. Make a determination to at least number 1 the biggest thing was to cutting the grass. Then we got that. Then we even changed laws after all these housing issues to take care of the old Marquis (automobile) that sat, as the picture shows, sat there for years and years. That was a big complaint with the tarp half off, nobody doing anything with the car.

Mr. Kelly: The property appeared to you to be abandoned Sir?

Mr. Nickell: Yes, I have not gone in the house. I have looked in the windows. I have pictures through the windows that show the same as what you showed on the monitor. There is hoarding inside the house. There is some broken glass in the back of the house. At times the storm doors are wide open. At times the neighbors will call me and say they are concerned that kids are getting into the house. At times the house, it looks like in the back of the house there is no gutters. So again that can cause more water issues. The garage door needs a lot of work. Looking into the garage, the garage is fully loaded with debris of many kinds. So you could not even get in there with a car or something.

Mr. Kelly: Thank you Mr. Nickell. No further questions.
Your witness.

Mr. Myers: Thank you. I have also been in politics off and on most of my life. I congratulate you on the courage to be a Councilman.

Mr. Nickell: Thank you it has its days.

Mr. Myers: I've been trying to make sure of one thing that everybody couldn't find. I put my card on the front door. Have you had any attempts to contact me or my Client?

Mr. Nickell: I don't believe to my recollection I have ever seen a card on the door because I'm sure with neighbors who are in this room and neighbors who have left, they have called many times. I've looked at the back of the house; I've looked at the front of the house. I am very familiar home improvement type guy. Another words I know a lot of times when houses are abandoned and the banks take over there are notices on the window. I have looked through the windows and I did not see anything. I will have to look. Actually I have pictures on my phone. I'll look to see if your card is there, but I don't believe it is.

Mr. Myers: Well the picture we just looked at has my card on it. Also I would like you to look Sir, there should be a label on the door for a Glenn Folley some sort of investigative services. That is Ms. Enos' former husband.

Mr. Nickell: And what would that have to do with the homeowner?

Mr. Myers: I am trying to figure out, why nobody seems to be able to talk to each other.

Mr. Nickell: I think since '06,

Mr. Myers: Mr. Kulchytsky and I worked together and granted we didn't accomplish a lot but I went to his office and that man is standing there. And I've talked to him a dozen times. I'm just trying to figure out why we are standing here with all of these issues. I want to make sure you know how to find me and I'll find my client for you.

Mr. Nickell: Well if I understand the records are correct and it is me and the people that are pushing Dan to say what is with this house. We feel very compassionate for you Mrs. Enos. If anything, we want the house fixed up. It doesn't look like you have the means or the ability to do this. I am very sorry about that. The public good, people are concerned about the house. They are concerned if there are animals in the house. They are concerned about their own house values. They are concerned about people getting into the house. Who knows if there is copper in the house anymore because if that front door is open, it's probably open for a reason. We have been trying to get ahold of somebody in that house since I've taken office in '07. You can see I left my phone number there. City taxes, that taxes have been charged for grass cutting for many years. We even did a program where we lowered tax, the charge for cutting grass to help people like Mrs. Enos and not charge them \$300 a cut but only like \$45 a cut. Those charges are indicated on your tax documents. Somebody paid them. Nobody typically gets, she paid them. Would she never call the city to say why are you cutting, why are charging me for cutting the grass.

Mr. Myers: I called.

Mr. Nickell: Yea, and what did they say?

Mr. Myers: I went to the house. I get out here every once in a while.

Mr. Nickell: So why have you not done anything if you are the title holder?

Chair: OK. OK. The Attorney asks the questions.

Mr. Nickell: I'm sorry.

Mr. Myers: Do you know whose cutting the grass?

Mr. Nickell: Yes. It is the City by Ordinance.

Mr. Myers: Nobody is sending me any notices. Nobody is sending me any bills. I approached the appropriate party and asked them for notice so I can get somebody up there to cut the grass. I could get it done cheaper than you can.

Mr. Nickell: There are probably many notices from either Dan Kulchytsky or Rito Alvarez. This problem has been a problem since '06. #2 residents that lived behind there were cutting the grass before the City started.

Mr. Myers: I'd like to know who it is, so I could say thank you.

Mr. Nickell: He left.

Chair: We're getting into the weeds here, so to speak. Let's stick to the issue of whether or not Dan's decision was contrary to law.

Mr. Myers: It's not my witness Your Honor.

Chair: I understand.

Mr. Myers: Sir, thank you very much again for Councilman. I rest my questioning.

Chair: Thank you.

Mr. Kelly: No further witnesses. Mr. Chairman moved to admit my Exhibits.

Chair: Your Exhibits are admitted Mr. Kelly.

Mr. Kelly: We Rest.

Mr. Myers: Do I need to move to admit my Exhibits?

Chair: Your Exhibits are admitted.

Mr. Myers: Thank you very much Sir. Do I get my final arguments?

Chair: Yes you do.
Let's take a five minute break first.

(5 minute recess)
Residents questioned if they would be able to speak.

Chair: Before we get into closing argument, our code that controls the hearing that we are involved in now indicates that the evidence has to be submitted by the parties. The parties to this case are the City and the Appellant. If the Appellant or the City chose not to call a particular person to testify, then this Board does not have the ability to listen to that person. So if Mr. Kelly or the Appellant saw the desire to call any of the neighbors to the witness stand, they had the ability to do that and did not. If the parties do not call a person to testify, our code does not permit the person to speak.

Ms. Vozar: If I could address, Mr. Chairman. (Speaking to the neighboring residents) Our code does provide that we should send out notices to the neighboring residents so you have an opportunity to come and hear the hearing. And I apologize that there may have been some confusion on the form. What they did is they actually used the form that they send out for all the normal variances. I apologize it was there.

Mr. Kelly: Let me state this for the record both to the Chair, to the Board and to Mr. Myers and his client and to the neighbors. In my experience this is the first time we have ever done this. We've not had any prior appeals from the decision of the Board of the Building Commissioner before the Board of Zoning Appeals. That being so, the requisite notice that might appropriately have gone to the neighbors, we apologize as Donna just mentioned. The appropriate notice should have told you about the fact there was this Appeal Hearing at which you might attend. If it suggested that you should come and be heard, that is incorrect, and we apologize for that. I am very sorry. It is late to find that out which is why I am apologizing. I am very sorry about that.

Mr. Myers: Mr. Chairman, Members of the Board. I believe that Mr. Kulchytsky, I'm not trying to say nice things about a kind working guy, but that sounds like I'm doing evil things. He has done everything I think he could do. I think he made a mistake. He needs to get into the house to make these decisions. It never dawned on me that the recent inspections that I have been asking for were done "years" ago. So he doesn't truly know what she's done yesterday. So I would ask Mr. Chairman and Members of the Board that you deny this agreement, this instruction. Give us a chance to get him into the house and figure out what he wants fixed and let's get on with this. She wants to live in this home and for whatever reason folks; she wants to live in this town. I've been around here now for some years. It has been hell. If this will make her happy and if she could afford it, then God bless America. Please. Thank you.

Chair: Thank you.

Mr. Kelly: Mr. Chair and Members of the Board, Mr. Meyers and it please you all. The fact of the matter is that Mr. Kulchytsky very clearly stated that his inspections were visual inspections that he made during the month of November of 2015 before he issued the most recent notice and ordered of condemnation. So it isn't a question of anything from long ago. He's very recently been there. He's been there repeatedly as he has testified. The issue is before you is narrow and clear. Has the Appellant established by clear and convincing evidence that a gross abuse of the authority of the Building Commissioner by the issuance of this order. That's all. That is the only question. I suggest to you that he does not. There is more than sufficient evidence to demonstrate the property has been vacant and abandoned at least since 2008. We have that from Ms. Enos' own testimony. It is a problem in the neighborhood as both Mr. Kulchytsky testified and Mr. Nickell testified. It is an attractive nuisance. The photographs demonstrate there is no adequate ingress and egress through that place. It is a nightmare. I am very sorry for Ms. Enos' difficulties in life and for her problems. This is not the forum for the resolution of those problems. This is a forum for determination in your quasi and judicial capacity as to whether or not the Appellant has made his case; I suggest to you he has not. Thank you Mr. Chair and Members of the Board.

Chair: Thank you. Thank you. Members of the Board we have heard approximately 90 minutes worth of evidence, testimony. The code section 1486.01 defines an unsafe structure and we've heard a little bit about this tonight with Mr. Kelly's questionings. All buildings or structures which are structurally unsafe, unsanitary or not provided with adequate safe egress, which constitute a fire hazard or are otherwise dangerous to human life or which, in relation to existing use, constitute a hazard to safety of

health by reason of inadequate maintenance, dilapidation, abandonment are hereby declared to be unsafe structures. In my opinion, the testimony I heard even from the Appellant herself was that the interior of the house was woeful. You can't walk in the house; you can see that from the pictures that Mr. Kulchytsky took. Mr. Nickell testified that he saw pretty much the same thing in looking through the windows of the house. Mr. Nickell said the house was in sad shape. He offered evidence that the house has been abandoned since at least 2006. I didn't hear any evidence to contradict that. And quite frankly the pictures show that no one, in my opinion, has been living in the house. It's my view, I don't know about the other Members of the Board, but it's my view that the Appellant has not met their burden to prove that Mr. Kulchytsky by clear and convincing evidence grossly abused his authority, committed fraud or colluded with anybody to deprive the property of her due process rights. Anybody else?

Mr. Bull: I concur.

Mr. Rohloff: Mr. Chairman, I concur with your findings.

Ms. Ragone: I concur.

Ms. Sadowski: I concur with your findings.

Chair: Will the Clerk please call the roll on Appellant's appeal

Ms. Vozar: Looking at subsection (e). It says: The Board of Zoning Appeals shall uphold the notice, order, or decision of the Building Commissioner unless it finds, by clear and convincing evidence. So the motion should be in the positive.

Chair: I'll **move to uphold the order the notice or the decision of the North Royalton Building Commissioner**. Is there a second?

Ms. Ragone: **Second**

Chair: Discussion to uphold the order would mean that the appeal is denied. If you feel the Appellant has met their burden, then you would vote "No". Would the Clerk please call the roll.

Clerk: Roll call: Yeas: Five. (Rohloff, Ragone, Bull, Sadowski, Kasaris). Nays: None. **Appeal Denied.**

Adjournment:

Moved by Mr. Bull, seconded by Ms. Ragone to **adjourn the BZA meeting of January 28, 2016.**
Motion carried.

Meeting adjourned at 10:00 p.m.

APPROVED: /s/ Dan Kasaris
Chairman

DATE APPROVED: February 25, 2016

ATTEST: /s/ Diane Veverka
B.Z.A. Secretary