

MINUTES
BOARD OF ZONING APPEALS
FEBRUARY 14, 2008

Mayor Rothschild called the special meeting of the Board of Zoning Appeals to order at 7:39 p.m.

Roll Call: Present: Mr. Henry Zucker
 Mrs. Susie Rivers
 Mayor Beryl E. Rothschild
 Mr. Thomas Cozzens
 Mr. Ari Jaffe

 Also Present: Acting Secretary Kelly Thomas
 Building Commissioner William Nadeau
 Law Director Kenneth J. Fisher
 Councilman Peter Bernardo, Council Liaison
 Councilman Steven D. Bullock
 Chief of Police Gary Stehlik
 Fire Chief John Pitchler
 Service Director Christopher Vild
 City Engineer Joseph Ciuni
 Community Coordinator Walter Stinson

Agenda Items:

ITEM 1. Applicant: Waterway Gas & Wash Company, 727 Goddard Ave., Chesterfield, MO, for: 1) The issuance of a Special Permit renewable annually pursuant to Section 1262.02(b)(7) of the Codified Ordinances for a full service car wash, gasoline and convenience store facility with administrative office and training center/conference room on the second floor at 2216 Warrensville Center Road;

A moment of silence was held in memory of Hattie Delano, mother of Clerk of Council Nancy E. English

Mayor Rothschild welcomed everyone and explained the order of business for the

- 1) Presentation will be given by Waterway
- 2) Followed by questions from Board and any staff members
- 3) One (1) hour will be allowed for public comments/questions; each person will be limited to five (5) minutes.

The city has received approximately 100 emails from people both for and against this issue; however, made part of the record. The Board of Zoning Appeals normally meets in the morning, this special evening meeting of the Board was scheduled to afford the residents the opportunity to attend the meeting on the Waterway application.

Law Director Kenneth J. Fisher reported that the agenda item reads Applicant: Waterway Gas & Wash Company, 727 Goddard Ave., Chesterfield, MO, for: 1) The issuance of a Special Permit renewable annually pursuant to Section 1262.02(b)(7) of the Codified Ordinances for a full service Car Wash, gasoline and convenience store facility with administrative offices and training center/conference room on the second floor at 2216 Warrensville Center Road; and 2) To determine hours of operation if the Special Permit is granted. The standards that are to be followed tonight are as follows. In order for the Board of Zoning Appeals to be able to grant the Special Permit the Board of Zoning Appeals must make all of the following findings:

- (1) that “the use in the particular area is not likely to be a hazard to the existing and anticipated vehicle and pedestrian traffic movement in the area”, Codified Ordinance (CO) Section 1262.02(b)(7).
- (2) that “the use is not likely to be seriously harmful to a residential area”, Section 1262.02(b)(7).

- (3) that “the location, size and character of the proposed use is such that, in general, it will be in harmony with the existing development of the district (U7) in which the site is situated and will not hinder or discourage the appropriate future development and use of land and buildings in the vicinity or impair their value, and will not conflict with the aims and goals of the General City Plan”. Section 1244.03(b)(1).
- (4) that “if the location is in a business district, the size, nature and intensity of operation, the layout of the site and its relation to its access streets are such that vehicle traffic and pedestrian traffic will not be more hazardous, taking into consideration turning movements, sight distances and driveways across sidewalks”. Section 1244.03(b)(2).
- (5) that “the proposed development will be in harmony with the prevailing shopping habits, the physical and economic relationships of one type of use to another, and the characteristic grouping of uses in business districts”. Section 1244.03(b)(2).
- (6) that “the proposed development will not be objectionable to nearby dwellings in residence districts because of noise, fumes or flashing of lights to a greater degree than is normal for uses in a business district”. Section 1244.03(b)(2)

In acting in on any application for a Special Permit the Zoning Board of Appeals may impose any condition that it deems necessary to accomplish the reasonable application of the fore going standards and may deny such application but only in accordance with the six (6) standards stated above. Gasoline Service Stations are specifically defined in 1240.12 as a building or part of a building or structure or space used for retail sale, gasoline, lubricants, and motor vehicle accessories and for minor services conducted within buildings, including automobile washing and lubricating but not services accompanied by objectionable noise, flumes, odor nor the so called minute wash operation. This code section was enacted in 1956. The minute wash operation is not a defined term in either the University Heights Code or the Ohio Revised Code. Note section 202.03(a) Rules of Construction, the part of the code where the City of University Heights provides common and technical use. Words and phrases shall be read in context and concurred according to the rules of grammar and common uses. Words and phrases that have acquired a technical or particular meaning whether by legislative definition or otherwise shall be construed accordingly; the applicant (Waterway) has the burden of establishing that the Special Permit should be granted and must address all issues. The second item on the Board of Zoning Agenda are hours of operation for the purposed gasoline service station, retail store and car wash which will only be voted on if the Board of Zoning Appeals determines that the Special Permit should be granted. There is no specific code provision regulating hours of operation in a retail district. The Board of Zoning Appeals agenda decision tonight is subject to appeal to the City Council pursuant to 1244.08(a) of the code. Any person affected by the final decision of the Board of Zoning Appeals may appeal such decision to Council within ten (10) days of the published notice. In making its decision, the Council shall hear both sides of the issues in public and give it’s decision in a reasonable period of time.

Mayor Rothschild clarified that there are two items that need to be considered, (1) a Special Permit and (2) the hours of operations.

Ken Fisher stated that the use itself is a permitted use only by Special Permit under 1262.02(b)(7). The six (6) standards listed above are taken from the various provisions in the code and that is what the Board must base its determination upon as to whether this Special Permit for this use is permitted or not permitted in this particular use district. The hours of operations will be considered if in fact the Board of Zoning Appeals does determine that the Special Permit should be granted.

Mr. Michael P. Goldman, vice president, site development and general counsel, was present along with Mr. Henry Dubinsky, chairman and CEO, Waterway Gas & Wash Company, along with Mr. John Nammour, Civil Engineer from Adwell Hicks and Joe Stamm, Cleveland Based Consultant who has worked over 34years in the petroleum industry with a gasoline marketing background. Mr. Goldman noted that the traffic study has been submitted to Board of Zoning Appeals and Council and that also the following items have been submitted: (1) the legal memo from Rick Sonkin of Sonkin & Koberna (2) the revised site plan and (3) testimonials letters from Mayors, business owners, relators, customers, former employees.

Mr. Dubinsky, founder, longtime CEO , now chairman of the board gave a brief introduction about the start of Waterway in 1970 with the goal of bringing quality and professionalism to the car wash industry. Waterway started in St. Louis then grew to Kansas City and then Denver, with the focus on employees, facilities and un-rivaled car wash quality. Waterway has been good neighbors to it’s host communities and wants to bring the Waterway experience to the Cleveland Metropolitan area.

Mr. Goldman stated that Waterway is requesting a Special Permit, under 1262.02, gasoline is an approved use only upon special permit from the Board of Zoning.

- (1) that “the use in the particular area is not likely to be a hazard to the existing and anticipated vehicle and pedestrian traffic movements in the area”, Codified Ordinance (CO) Section 1262.02(b)(7). We have submitted a traffic study that has been reviewed by a traffic engineer as well as the City Engineer. Based upon the results of the analysis of the study, it can be seen that the development’s traffic can be accommodated without impacting the area’s roadway network and cars efficiently flow within the site. The curb cut on Lansdale Road has been removed, so there is no curb cut on Lansdale Road. The curb cut meets the driveway. There will be a new driveway on Warrensville Center Road that lines up with the current light that goes into University Square. There will remain a driveway on Bushnell Road. It is expected that the great majority of customers will come in on Warrensville Center Road and gasoline customers will leave on Warrensville Center Road. Gasoline customers will not be able to exit on Lansdale Road due to the landscaping, some will leave on Bushnell Road and the rest on Warrensville Center Road. There are two driveway (cuts) so that fuel delivery trucks can come in to deliver their fuel at the far end of the site (next to Warrensville Center Road) and then leave thru the Bushnell curb-cut and go out to the light.
- (2) that “the use is not likely to be seriously harmful to a residential area”, Section 1262.02 (b)(7). Waterway is making an investment in the community. University Heights is a vital commercial community. As far as fuel delivery and hours of operation. The car wash we would like to have opened 7:30am - 8:00pm, gasoline opened 7:00am - 10:00pm. We aren’t a 24hours operation, we don’t stay open all night.

Gasoline Service Stations are specifically defined in 1240.12 as a building or part of a building or structure or space used for retail sale, gasoline, lubricants, and motor vehicle accessories and for minor services conducted within buildings including automobile washing and lubricating but not services accompanied by objectionable noise, fumes, odor nor the so called minute wash operation. As far as code section 1240.12 Gasoline Service Station, we know from our company being in business for 37years that noises, fumes and odors are not an issue. Gasoline is not what is used to be, it is now a very controlled closed system based on the laws. The minute carwash is a out of date 1950 terminology that really isn’t used anymore. Patently our carwash is not a minute carwash, it will take 15 minutes for most customers. It is a full service car wash where the each customer will get out of their car, the car will go thru the tunnel, the customer will enter the store to pay for car wash/gasoline and the car will be driven by an attendant into one of the fifteen finishing spaces where the Waterway employee will finish any other services purchased, i.e. hand towel drying, vacuuming interior and cleaning the interior windows of vehicle.

- (3) that “the location, size and character of the proposed use is such that, in general, it will be in harmony with the existing development of the district (U7) in which the site is situated and will not hinder or discourage the appropriate future development and use of land and buildings in the vicinity or impair their value, and will not conflict with the aims and goals of the General City Plan”. Section 1244.03(b)(1).
- (4) that “if the location is in a business district, the size, nature and intensity of operation, the layout of the site and its relation to its access streets are such that vehicle traffic and pedestrian traffic will not be more hazardous, taking into consideration turning movements, sight distances and driveways across sidewalks”. Section 1244.03(b)(2). The traffic study has been submitted and cites this as an appropriate use for the site. Traffic studies are done by traffic engineers with national standards. In our traffic study they use the most conservative standards possible. and assume that there was not one car and that every trip was a new trip, that we would be busy all day long/every day and they looked at Warrensville Center Road with actual counts (the counts were done in December at the beginning of the holiday season on a Saturday when you would expect the most drive-by traffic).

- (5) that “the proposed development will be in harmony with the prevailing shopping habits, the physical and economic relationships of one type of use to another, and the characteristic grouping of uses in business districts”. Section 1244.03(b)(2). Waterway is a company that has sites next to other grocery stores including Whole Foods and other high end retail stores just like the ones in University Heights. The building will be a full brick building on all sides, with full brick canopy columns, the building has a metal canopy area to match the Whole Foods metal.
- (6) that “the proposed development will not be objectionable to nearby dwellings in residence districts because of noise, fumes or flashing of lights to a greater degree than is normal for uses in a business district”. Section 1244.03(b)(2) This is U-7 commercial business district. Waterway will have no degree greater than a normal business district.

Mr. Goldman stated that Mr. Stamm will provide details on the process, procedures, safeguards employed with the safe delivery/dispensing of fuel and how it will work here at the University Heights facility.

Mr. Stamm, 3930 Lander Road, Orange OH 44022 informed everyone that he has 34 years of experience particularly in the marketing of retail fuels, supply and distribution of fuel and health safety, environment and risk management. Great strives have occurred during this time including what Waterway is proposing for University Heights. In terms of handling the vapors at such a facility, practices that comply with the EPA, State, EPA Stage 1 (when the fuel delivery truck deliver to the gas station), Stage 2 (process when you disburse fuel at a self serve station into your car) vapor control requirements for the handling and dispensing, distribution of fuel is all done without vapors, it is a closed system. The underground tanks all have secondary tanks or a tank within a tank with a vacant space in between the two with monitors that sense smell or liquid thus signaling station operators that there may be a leak between the tanks. All piping is also double lined. The tanks also have overflow protection and shut off automatically at 95% full. There are weekly visual inspections, tightness tests are run when equipment is installed, at least once a year by state law; there are daily inventory checks and meters that have to be retained and available have inspection at the sight as are the tightness tests; and other things regulated by state law, fire marshal and the EPA. If there are discrepancies then tanks will be shut down and investigated immediately. There are also certified installers and inspectors for the underground storage tanks. The other type of spill potential is if someone forgets to take the fuel nozzle out of their car and drive off pulling the hose off the dispenser. The dispenser does have a breakaway valve on it that won't allow fuel to come out. There is a similar cut off valve on the bottom of the dispenser (pumps) where the product feeds incase someone runs into the dispenser (pumps). There are also metal posts to surround the dispenser. The trucks themselves are subject to DOT regulations and safety inspections. The drivers have commercial drivers licenses (CDL) along with special training for hazardous materials. The tanks on the trucks themselves are subject to an annual tightness test that is registered with the State and DOT, but this is generally done more frequently. The trucks are also equipped with spill kits. All fill nozzles on the ground level are usually on a elevated covered mound to keep water away from the fill neck and contaminating the product. The actual operation is noiseless and the attendant must stay in attendance during the entire dispensing operation. The system of dispensing fuel is self-regulating based on gravity.

Mr. Goldman presented a power point presentation about Waterway. Waterway is a 37 year old company with 17 locations and 18 locations under construction. It is a stated goal/purpose of Waterway to differentiate itself from what people expect of a car wash. Waterway offers fuel, a convenient store (that doesn't sell alcohol, wine) and our car wash. We invest heavily in our building in terms of landscape we are proposing 10,000 square feet. Waterway goes into premium/expensive real estate; this project is under contract for 2.4 million dollars. Mr. Goldman then explained the traffic flow when vehicles go thru the car wash. The exit vacuums are poles with underground vacuum lines are for employee use only. Most of the traffic will use the curb-cut (driveway) on Warrensville Center Road, there will not be a curb-cut on Lansdale Road. Waterway is committed to not allowing traffic to back up into the public streets by turning customers away if traffic pulls into the public streets. The exit vac controls the traffic, all work is done in the 15 finishing spots (in our busiest sites in the country we have 12 spots). Waterway works to hire the best employees it can, that's what we are know for. We don't sell beer and alcohol, we do sell many greeting cards. The actual part of the vacuum that does the sucking is inside the building. We are 20' away from the property line. There are 9 evergreen trees, 2 deciduous trees and 6' tall sidewall all between us and the neighbors. Waterway is making a \$6 million investment, the site will be maintained. If things don't meet our standards we take care of it. Waterway is a town company, we have two connections; (1) the huge investment we are making in this site because we want this site to start the market, we are investing in a second floor where a company manager, personnel, training center will be. We are bringing in two people from St. Louis with 20+ years of experience with Waterway, one of them currently runs four stores, so this will be one store instead of four. We recessed the lights under the canopy so light

goes down and doesn't funnel out and the side lights are hooded fixtures. We offer superior architecture, investment in the community, premium services and good jobs. Waterway is deeply involved in every community they are in, i.e. junior achievement, MADD, car washes and donations virtually to every charity especially with kids that ask, every silent auction, every charitable auction will have a Waterway clean car membership.

Mr. Goldman showed a video where customers were interviewed about the Waterway experience.

Mrs. Rivers questioned whether the noise heard in the background of the video was the noise of the car wash. Mr. Goldman replied no, that the noise was from a microphone.

The meeting was then opened to the audience for questions and comments.

Mary Bondy, 2295 Loyola Rd., asked the zoning board to consider the city's future in their decision. What do we want our city to look like in 25 years, what do we want to pass on to our children in the community who want to stay here. I have asked many elected and appointed officials why is this project good for University Heights, what are the positives, who and what are the benefits. The only answer I received so far is that it will allow a seamless transfer of the property. It will be developed and avoids something worse that could come along. Something else that people don't want or need, or that could be a detriment to our neighborhood. I submit that what is happening is a significant shift in the use of this land it being converted from a local use to a transient use. It's seem that many of our officials perceive that we have very few options, control or leverage in seeking, inviting or recruiting desirable businesses. I conducted a quick study of the real estate taxes now generated by the 51 homes on these two blocks and with conservative estimate with the decrease in property values, I suggest that it will result in a total decrease in our tax base per year combined for real estate and income taxes of \$80,000 per year compared to the estimate I heard from Waterway of \$50,000.

Amy Roth, a merchant at 2260 Warrensville Center Rd., asked about the safety of the 10' vacant strip running from Bushnell to Lansdale between the property lines of the current homes and side wall, which will basically be unlighted, unused property. How will this be patrolled for the safety of those of us who will be around. Will that be patrolled by the police or by Waterway?

Mayor Rothschild stated that it is 20' just like the fire lane it is now and the police regularly patrol everything in the city.

Angela Shahin, 3953 Lansdale Rd., presented aerial photos of Waterway sites. Angela is from the St. Louis area originally just about 5 miles or 15 miles from each of the St. Louis Waterway sites and also the Kansas City location. The areas are nothing like University Heights. My house has been projected to lose quite a bit of money; we just brought it 1½ ago.

Brian Ulery, 3969 Bushnell Rd., most of the traffic that goes to Cedar Road from Warrensville Ctr. Road does not turn left from Warrensville onto Cedar, most traffic goes down my street to Washington Blvd. and then to Cedar. That's the traffic I'm concerned about.

Christopher Cooney, 2319 Miramar Blvd., I've noticed that it is not just residents of Lansdale and Bushnell, it's the residents of the city taking pride in their city. This is a premium piece of real estate and should be treated as such, it should not be a gas station. The growth economy in Northeast Ohio is the health care market. University Hospital and Cleveland Clinic are not building in the City of Cleveland they are looking to the suburbs. I think a professional building would be more appropriate for the income of the people who would be working there would be a little bit greater than the hourly wages that this project would generate.

Mr. Fisher asked a Waterway representative to explain the traffic flow on Bushnell again.

Mr. Goldman stated that there's not a entry way on Lansdale, there will be a driveway on Bushnell and Warrensville Center Road. We are willing to make the Bushnell driveway a right hand turn only, left hand turn out only. The traffic is on our site.

Mr. Fisher stated that there has to be a 20' fire lane.

Jack Kluznik, 2308 Loyola Rd., resident, read parts of code 1242.01 (local retail district), wants tough questions asked i.e., how many cars are they projecting per day, how long will they be there, what is the residential impact, with answers. Site should be used for the right purpose.

Mr. Fisher asked Waterway how many cars do they anticipate per day and if you distinguish between the car wash people and people who might just come for gas?

Mr. Goldman responded that cars per day will change, the traffic study was conducted with 40 -50 cars washed every hour the car wash is opened. This was based on actual counts at our locations in St. Louis. Gasoline per hour again peaks and valleys, I don't have those figures, but I will refer to the traffic study and pull those figures you.

Marty Gelfand, 3954 Eastway, South Euclid, not for or against project, for the neighborhood. Would like University Heights absorb the business lost from South Euclid.

Luke Johnston, 2391 Loyola Rd., 1956 when most of the zoning ordinances were enacted in response to the development that was going on at Cedar Center on both sides of the street. One of the business' was the Al Paul Car Wash, it had been in business for about 3-4 years at the time that this ordinance had come into existence. I think (suggesting) the context is that when this Ordinance was drafted they were looking down the road to South Euclid and seeing the Al Paul Car Wash, saying we do not want to park a car wash into our residential district and therefore included this so called minute wash operation language to specifically exclude a car wash in a U-7 district. I would asked the board to take a very close look at the definitions 1240.12, I don't think that the site plan fits in the definition.

Paul Wolff, 4073 Bushnell Rd., which is a block between Washington Blvd. and Warrensville Center and professionally I'm a traffic engineer, this evening I glanced through the traffic that was, they estimate about 15,000 cars a day using the facility including the gas and the car wash. Waterway has shown us a very nice building in the wrong place. As the woman earlier pointed out and I looked at all their sites on their web site, I looked at all the locations they have in the three (3) cities and none of them are immediately adjacent to a residential neighborhood, they are all at least ¼ mile ½ mile away in major district like Chagrin Blvd. and that type of neighborhood, they're not in residential neighborhoods. Is the existing building a prime location/site, no it's not, I'll be the first one to say it's not. Although I frequent the stores there, when their open. I think Waterway has got a great idea but it's in the wrong place.

Francine Price, 4057 Washington Blvd., my husband and I approx. 8 years ago chose to buy the house that my great grandparents built. My grandmother and grandfather raised my mother there and now I'm raising my family there with my husband, and very proud to do so. And, we consciously made that choice knowing we pay the higher taxes because of the neighborhood we have here and I submit that many of the people I know have families just like mine that are choosing to stay in this neighborhood for the reason of the community that we have. And, I asked Council to consider that when you are making the decision on the use of this property because what I fear and what I have not seen is evidence of traffic studies done on the side streets, Silsby, Bushnell, Washington Blvd. and the traffic that's going to occur there as result of the business that is being considered. I have small children and Washington is a busier road, I knew that when I brought the home, however, I do not want to see the traffic increase further on that street and I think that the property value will become an issue because there will be a lot of people that will be displeased with the changes in the community as a result of a business like this and I would agree that Waterway is a probably an excellent business but maybe in the wrong spot.

Harry Morrison, 2424 White Rd., I'm quite removed from this location, but I am bothered by the proposal, when you turn off of Green Rd. onto East Carroll there's a sign that says welcome to University Heights, the City of Beautiful Homes. Mr. Dubinsky, with all due respect, your comparison of your car wash in and Whole Foods is like comparing apples and oranges literally. We have heard nothing this evening, although maybe it was discussed previously about how the city, school system are going to benefit from this. I don't know how many employees you're going to have, how many dollars are going to come by way of city income tax, we have a school system that is hard pressed for dollars, I don't know what benefit the schools are going to get. You are talking about a \$6 million dollar project, how much is land, how much is equipment? The schools don't get anything on the equipment it I'm not mistaken. Support your local car wash, it's a locally owned business. We don't need another car wash within walking distance of Al Paul. Waterway has the burden of proof. I haven't heard anything of value except a drawing, pictures of people, customers who may have gotten car washes, we only saw what they wanted us to see. Deny the application and make the city the City of Beautiful Homes.

Chris Tunison, 2544 Traymore, I have a couple of questions to raise and for consideration of the Board. First of all I don't believe the proposal is suitable from a traffic, pedestrian and selection of site along with what is to be put on that site. I question the financial consideration that Waterway is indicating to the citizens of University Heights a total of \$6million dollar investment, \$2.4million of that is land, I say you are foolish to buy it for \$2.4, especially with a estimated revenue coming that your giving the city \$50,000 a year, I also ask the board to consider its loss of 20 to 40% even more in home values on property of homes on Bushnell and on Lansdale and any immediate area. Once those

property values go down it will become addictive to the other streets and areas. I question this because I have not heard a word of this, the 2002 Master Plan that the city invested in wholeheartedly with our money to project the next 10 years of what our city should be. Did it contain a gas station and a car wash and I would like clarification since there's confusion in regards to the fire lane that would be necessary for this property. We are a bedroom community and we have a minimum amount of retail for development we need to make wise and smart decisions for that property and I expect the Board of Zoning Appeals to not grant the Special Permit.

Mr. Fisher stated that 1262 of the code does require a 20' fire lane. When the Planning Commission gave out preliminary site plan approval they had a condition of a variance, the 20' rear setback requirement, they granted a 10' variance that was not proper and I have ruled as the Law Director that there must be a 20' fire lane in the rear. The 20' setback can be part of the fire lane but it must be unobstructed so there must be a fire lane for emergency vehicles to get in and out of the rear portion of the building.

Fire Chief John Pitchler stated that under the Ohio Fire Code what you have is only 10' or less, but the city ordinance requires 20' which is an extra restriction of what we normally have, allowing our firefighters to get back there to put up ladders up and our fire hoses, it does not have anything to do with actually bringing a vehicle through there. As long as we have access to fight the fire that's all that required.

Mary Ann Rini, Tyndall Rd., asked actually how many on the Board would be a voting member and since there was always been a back log of getting the information, and there is only a ten (10) day time period from the date of the vote until the day of an appeal to Council, do you intend to put this on the website tomorrow so that all the citizens will have access to the results of the vote and the individual members who voted and what their decision was?

Mr. Fisher replied that there are five (5) members of the board by ordinance.

Mr. Jaffe stated that he was a member of the Board of Zoning Appeals and has been for 6 or 7 years. Mr. Jaffe then read the statement he sent out on February 3 to the members of City Council and Board of Zoning Appeals before the last meeting. "In advance of tomorrow night's meeting, I want to advise you that I will be abstaining from voting as part of the University Heights Board of Zoning Appeals. I represent Decor Design, which is the Hold It store in the building and Quesair Inc. which is Empire Restaurant, both of whom are tenants in the subject property. My representation is a matter of public record in cases pending before Cuyahoga Common Court of Common Pleas. Please note neither I nor my clients have taken any position either for or against the project; however, I have advised my clients; and they agree that it would be prudent for me to abstain from voting on this matter. For your information I have advised Clerk of Council, Nancy English of this issue when the meeting was originally scheduled. If you like further information regarding the pending litigation I refer you to the docket of these matters in the Cuyahoga County Court of Common Pleas. Please note that I have copied my clients, Council and the landlords on this correspondence for information purposes only." So I regret to the members who are here that I will not be able to vote this evening.

Mr. Fisher named Henry Zucker, Tom Cozzens, Mayor Rothschild and Susie Rivers as the voting members. For purposes of procedure there are four (4) members who vote and in order for this to be approved, three (3) members, which would be the majority, would have to vote "yes". So three out of four members have to vote "yes" for approval. A tie vote loses, two (2) to two(2) is a fail. Three members have to vote "yes" for the application of the Special Permit to be approved. We will get the decision on the website tomorrow.

Matt Summerson, 4169 Bushnell Rd., has been a homeowner in University Heights for 5 years, grew up in the area. My concern is that in my neighborhood there are a lot of young children that play around the neighborhood and traffic has been really bad lately. I've noticed lots of traffic being bad from the buses from Wiley using Bushnell as a cut through when they weren't even supposed to use Bushnell as a cut through. My concern is that when this gas station is built and with all the little kids in the neighborhood its going to be even more dangerous and more traffic on the street and I think it's unfair. Another issue I have is that I am a branch manager at a bank, used to be a loan manager for 8 years. When I brought my house 8 years ago I put myself on an adjustable rate mortgage. Just went through three different appraisals, my value on my home is already down \$38,000 from 5 years from when I brought it. I think it is wrong and the trends are getting really bad in the city. I think an gas station isn't going to help the situation, its going to make it worse. Values are going to go down in the area, it is going to make things more difficult for the younger people and what's going to continue is a trend of people buying cheap homes in University Heights to use as their first home when they get old enough to have a family they are going to move to a different neighborhood where their children are going to be safe. And I'm at that point now. If this gas station gets built I will be one of those

people that will put my house up for sale and I will move out of this city because I refuse to have my children be in a city that's like that. Maybe there's something else you can put in that area, a rec center something that could be good for the community some other ideas that might be better for the community, a gas station is not the right thing to have at that location. Bring some local businesses in the area who have been here for a long time, people who care about the community should be at that location, not this gas station.

Fred Luri, lives at 2567 Saybrook for 50 years, for 25 years his office is on the second floor at the corner of Bushnell and Warrensville, I get to watch this corner everyday, I watch and see everything. Not once have I heard anybody talking about traffic during the week day, the traffic on Warrensville is unbelievable. Where are the trucks being counted, they aren't there on Saturdays. Every single day we have trucks, we have line ups. The traffic going in and out of the new plaza next door is a disaster, it backs up traffic every day to what they will say new entranceway. My bigger problem is that the traffic study was done on a Saturday; has anyone considered the problem all the children will have to walk past this place everyday? Where are your gasoline trucks going to turn around come in and out, are you going to give them special rights to go down Bushnell?

Mr. Goldstein responded that the gas trucks will enter off Warrensville Center Road, our plan then shows them going through the driveway on Bushnell out to the light back on to Warrensville Center Road.

Mr. Fisher stated. "No right turn through that street at any point".

Judy Nappy, Traymore Rd., I've only lived in University Heights for two years but I love the community, I love my house, I love my street and I love all my neighbors. I take great offense tonight. One of the things that I think Mr. Goldman said was that he was welcomed in a commercial community, well this is not a commercial community, this is a residential community, made up of families, homes, children, pets, people who like each other and who want to be here as families, as a residential community. This is according to our website of the City, that we a jewel of the suburbs, lets not become it's rubrics cube.

Charisse Johnston, 3961 Bushnell Rd., three doors down from the proposed site for 9 years, prior to that I lived in Shaker Heights and prior to that I lived in University Heights. Because everyone couldn't speak, I wanted to let you know that we did collect a petition, that I'm sure you are aware of, online and walking. We have 594 signatures to be exact, signed petitions of residents. I'm sure we could have gotten more if we had more time and energy so please BZA listen to what the people have to say.

Kathy Skettle, 3806 Bushnell Rd., for 30 years. I was one of the first residents, me and Dr. Charles Harper to protest this gas station back in December. And if you were at the January 14th meeting we were the only two people that did. I went to the meeting/luncheon given by Waterway today and I was very impressed by them. I think they are a wonderful company with wonderful people and they almost convinced me to go ahead and support them. I put this on the email address to a lot of peoples' dismay, I think where I got there was living in this city for 30 years down from that street, I've seen business' go in and out. Every other strip center can somehow keep business but for some reason that strip is always vacant or business' go in and out, or they use terrible businesses. So, I think I was just giving up and saying well here we have a great company and I'm thinking, oh well, this will be better that what we have, better than vacant buildings. And coming here tonight I am so reinvigorated to finally after 30 years of trying to protest, trying to get people stimulated, no one supports anyone and finally we do have support. Once this is defeated I hope this will continue and we will start finding ways to get these buildings built especially these new buildings, our gateway to the city. I think it's wrong that we are targeting Waterway as a bad company, they are very good company. The point is that it is the wrong site for this development. We all have to stick together and I hope we continue this movement to bring this a community friendly city.

Mayor Rothschild invited the landlords of the building to speak.

Mr. Bill Barnett stated that he is representing the owners of the building. It been a process of finding somebody who can take over this property, who is economically feasible able to do so, This is a very good use, very good potential owner. There are other potential uses for this property, right now this is the best use, this is a very good potential owner. I'm not sure that if this is defeated that you will be appreciative of who the next owner could be. There are already proposals on the table for a fast food restaurant, and some other potential tenants who might not be as acceptable even as you think Waterway is not acceptable. Be careful of what you wish for. Consider this as very good potential buyer.

Mayor Rothschild asked if Waterway had any more comments before the board ask questions.

Mr. Goldman had few comments to add, just that in terms of taxes the number \$58, 000 came from the city and didn't know if that is currently correct. It's based on payroll which we have shared with city of equal size and value that has average payroll of \$600,000. As far as real estate taxes we have talked to the assessor's office and are expecting \$200,000 plus in real estate taxes. That money will be funneled into the community, the money gets broken up to the communities and school systems. As far as being ½ mile, ¼ mile from the closest residence at our Kirkwood store, border to border we are 28' across the street. Waterway has always worked to be a good neighbor; this is what; we do. We work with neighborhoods, we work with retail areas, we work in commercial areas to be a good user/neighbor.

Mayor Rothschild opened the floor to the Board of Zoning members.

Mr. Zucker commented that ever since January 14 when the Planning Commission ruled on this, "I've studied this and read most of your emails (I think that's great) but there's one thing I have to mention, looking for a legitimate reason not to approve this. In 1989 we had Northcoast Community Homes come into this city at the corner of Edgerton and Hillbrook (2441 Edgerton) and we had more than one meeting where we had people in favor of the group home and those who were opposed to the group home and what they mostly said was that it would ruin the neighborhood and that's what I've read in your emails. Well, that group home was approved and it has been there 19 almost 20 years and now we have 2 others in the city and you don't hear any complaints. The other part of legitimate turning this down I turn to Costco in Mayfield Heights. That area was strictly zoned residential, but the city voted against it and the developer and Costco sued the City and won. The city lost millions of dollars, I find it very hard to keep competition out of a commercial district."

Mr. Cozzens remarked that a large number of emails were received and he read them all, actually one was in favor of the project. Of the information I've received, there were some that influenced my thoughts on this position, one in particular, a letter from Kevin Murphy, member of Council who went to the location sites and submitted a strong letter of recommendation to be supportive of Waterway's desire to locate in our community. The second item was a list of testimonials, which can be made available. The third item an email that was strongly opposed to the project, based on an article in the Sun Press [... Mr. Goldman ... also brought land in Aurora and stated he still wants to get in Northeast Ohio... where does he think he is, it might be Portage County but it's Northeast Ohio. So he's been given the ok to build in Aurora, which is the kind of place he should be building in.] For the last 12 years I've worked at the Urban College at Cleveland State University. But, the concern is Urban Sprawl, so we have to face the fact that sprawl is here. University Heights is a member of the First Suburbs Consortium and one of their objectives is to fight sprawl. The ordinance that were referred to today was written in 1956, this is 2008. I have got to face the fact that we love our rural urban environment and we love our City of Beautiful Homes. If Waterway was going to tear down some beautiful homes I'd feel differently, but they are in a commercial district. I haven't heard anybody here say that they are not a good prospective employer. They've shown a record of being a good substantial employer. Who knows what will happen with that building. I hope for some really viable use for that property. We have to face some hard realities, and accept the fact that the world is changing around us and we have to deal with that. If I was living on Bushnell or Lansdale I would feel upset, but my decision/recommendation of the Board here today are based on my convictions which are equally as strong as yours.

Mrs. Rivers; resident of University Heights for 28 years said I have no doubt that Waterway is a formidable, quality company. But I am not convinced that to put this kind of business in this small space and so close to our residential area, I'm not convinced that, that should be. I applaud the neighborhood who have come here and expressed their opinion, I'm sure the camaraderie among you has been wonderful and you should keep it up because that is the fabric of any city. We don't have to have every service in this city.

Mr. Fisher stated that as Law Director it's not my opinion that if for some reason the Zoning Board determines that this Special Permit should not be granted, that the city would be subjective to damages as in Costco, Shemo verse the City of Mayfield Heights case, this is not a inverse condemnation case where the city would be liable in my opinion.

A University Heights resident asked Mr. Fisher if this does not have to go to Council why is the meeting scheduled for the 28?

Mr. Fisher replied that the preliminary site plan approval with conditions from the Planning Commission meeting on January 14 has to go to Council. Planning Commission recommendations do go to Council unlike BZA where there's a right to appeal to Council. There's a difference in the

procedures in the code.

A University Heights resident reiterated Mr. Fisher's statement that Mr. Zucker's alluding to the Costco matter and the susceptibility of the city as to damages is wrong. Is Mr. Zucker's concern not relevant?

Mr. Fisher replied that's not my opinion. My legal opinion is that this is not an inverse condemnation case and is completely opposite of Shemo versus City of Mayfield Heights, which went to the Ohio Supreme Court three times. It's a much different situation. In my opinion, Mr. Zucker's concern is not relevant, in terms of the city being subjected to damages for inverse condemnation if in fact it's denied. There are no grounds for appeal, the ordinance states, if any person affected and aggrieved by any final decision of the Board of Zoning Appeals may appeal such decision to Council within ten days of the published notice of the decision. Council shall hear both sides of the issue in public and give its decision within a reasonable period of time. In answer to the resident's question, assuming that there is an appeal, that would be added and heard at the Special Council meeting that was scheduled for the 28th. At that time, the recommendation from the Planning Commission's January 14 meeting for preliminary site plan approval will be heard. Such appeal shall be in writing, shall set forth reasons for the appeal and be filed in triplicate with a filing fee of \$25.00, with the Finance Director, who shall forward one copy to the secretary of the Board of Zoning Appeals or City Planning Commission and one copy to the Building Commissioner. A member of Council may appeal as a matter of general public interest, and in such case no filing fee shall be required.

Mrs. Rini, asked if somebody files an appeal on this they have 10 days to file the appeal taking us to the 25th but you have to give notice to the community after the appeals filed? You can't give notice now.

Mr. Fisher answered that we have a 24 hour notice requirement according to the Ohio Revised Code. The meeting is set for February 28th, we will put it on the website, post notices, get word out to everyone we can. The meeting is also scheduled for site plan approval. If the Board of Zoning Appeals denies the Special Permit then that meeting would not go forward. The reason it has been set for the Dolan Center at John Carroll University is because Council Chambers is too small to accommodate the public, so the city made arrangements for a larger room.

Mayor Rothschild asked Waterway if they looked at any other site beside this one in University Heights, and would you? Waterway responded "this is the site we've chosen".

Mayor Rothschild stated that she personally felt that this matter should be sent to the Council, for a final resolution.

MOTION BY MAYOR ROTHSCHILD, SECONDED BY MR. COZZENS to grant a Special Permit to Waterway Gas & Wash Company, 727 Goddard Ave., Chesterfield, MO for a full service car wash, gasoline and convenience store facility with administrative office and training center/conference room on the second floor at 2216 Warrensville Center Road with the following conditions:

- 1. a 6ft. masonry wall is required and shall be tapered at both the north and south ends for line of site purposes;**
- 2. the location and configuration of the masonry wall is to be determined by the Architectural Review Board with the prospect that they will be able to place the wall in such a place as to increase the square footage of the adjoining residential properties;**
- 3. the landscaping shall be approved by the Architectural Review Board;**
- 4. lighting is to be directed downward and inward on the site and away from the residential district and lights over the canopy are to be recessed, not hanging down;**
- 5. signage shall be approved by the Architectural Review Board and the Police Department with respect to line of site at entry and exit;**
- 6. traffic signal shall be replaced or augmented with the cost to be paid by the developer and approved by the City;**

7. **right hand turns shall not be permitted on Bushnell Road at any point and time;**
8. **the approval is conditioned upon no wine, beer or spiritous liquor being sold at the establishment;**
9. **the developer shall present a written commitment to turn away cars that are backed up into the street in order to prevent queuing in the street;**
10. **final plans are subject to the approval of all City departments.**

On roll call, Mayor Rothschild, Mr. Zucker, Mr. Cozzens voted “aye,” Mrs. Rivers, voted “no.” and Mr. Jaffe abstained.

ITEM II. Applicant: Waterway Gas & Wash Company, 727 Goddard Ave., Chesterfield, MO, to determine hours of operation if the Special Permit is granted, BZA 08-13

Mr. Goldman requested the hours of operations for gasoline purchases are from 7:00am to 10:00pm; the requested hours for car wash operation is 7:30am until 8:00pm; the requested hours for deliveries are during hours we are open for fuel (7:00am until 10:00pm).

Mayor Rothschild asked if the hours of gasoline delivery be reduced?

Mr. Goldman stated that there no reason to have gasoline delivery before 10:00am.

Mr. Harding, 3945 Lansdale Rd., a resident of 20years expressed his strong feelings against Waterway.

Mr. Nick Trancito, 2591 Traymore feels it is highly unreasonable to have trucks going until 10:00pm at night. I don't see any reason why can't do it from 9 to 5 if they're going to do this at all.

A resident on Lansdale Rd. for 26 years stated that it unfortunate when money comes into the equation things happen and I will lose about \$40,000 to \$50,000 on my home, which is paid for. I will lose all my equity. If you want to do this, buy all the houses on Lansdale and Bushnell.

MOTION BY MR. ZUCKER, SECONDED BY MAYOR ROTHSCHILD to approve the following hours of operations:

1. **Gasoline Service Station Operation: 7:00am - 10:00pm**
2. **Car Wash Operation: 7:30am - 8:00pm**
3. **Fuel Deliveries: 10:00am - 8:00pm**

On roll call, Mayor Rothschild, Mr. Zucker, Mr. Cozzens voted “aye,” Mrs. Rivers, voted “no.” and Mr. Jaffe abstained.

There being no further business to discuss, the meeting was adjourned.

Beryl E. Rothschild, Mayor

Kelly Thomas, CMC