

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CITY OF HUDSON  
BOARD OF ZONING & BUILDING APPEALS

- - -

Thursday, April 21, 2016,  
7:30 o'clock, p.m.,  
Town Hall,  
27 East Main Street,  
Hudson, Ohio.

- - -

BEFORE: Mr. Lehman, Chairman,  
Mr. Dohner, Member,  
Mr. Drew, Member,  
Mr. Jahn, Member,  
Mr. Wagner, Member,  
Mrs. Lane, Assistant City Solicitor,  
Mrs. McMaster, Associate Planner.

- - -

1 P R O C E E D I N G S

2 - - -

3 MR. LEHMAN: We now move to the new  
4 business portion of the evening.

5 And we have one case tonight, it's Case  
6 No. 2016-10, and this is an appeal to the  
7 Community Development Directors's  
8 determination that cremation services were  
9 voluntarily discontinued pursuant to  
10 Section 1206.05(e)(3) of the Land Development  
11 Code and, therefore, a request to resume --  
12 then, therefore, a request to resume cremation  
13 services at the property requires BZBA  
14 approval for an enlargement of a nonconforming  
15 use; and (2) in the alternative, an  
16 application for an enlargement of a  
17 nonconforming use to resume cremation services  
18 at the property pursuant to the standards set  
19 forth in Section 1206.05(e)(1) of the Land  
20 Development Code. The applicant is  
21 Christopher J. Meager, Esquire, 75 East Market  
22 Street, Akron, Ohio, and the property owner is  
23 Friends of Pet Cemetery Association, Dan Kalk,  
24 President, located on Walters Road, Parcel  
25 No. 3003773, Hudson, which is District 2,

1 Rural Residential Conservation.

2 Before we proceed with the report, I've  
3 prepared a little preamble since this is a  
4 little bit different case than we regularly  
5 hear. So I kind of wanted to lay out the road  
6 map here for us with my colleagues'  
7 concurrence.

8 This interesting case represents an appeal  
9 of the determination by the Director of  
10 Community Development that there was a  
11 voluntary discontinuation of cremation  
12 services. In the alternative, if the appeal  
13 is not successful, the applicant is requesting  
14 an enlargement of the nonconforming use to  
15 resume cremation services at the property  
16 which would require several findings by the  
17 Board based on our Land Development Code that  
18 will be further described in the staff report  
19 to follow this statement.

20 As we have sometimes seen in prior cases,  
21 there are other underlying narratives involved  
22 that do not immediately present themselves in  
23 the simple application. This applicant is the  
24 Defendant in a case involving the immediate  
25 neighbor. So while their case, which is in

1 Summit County Court of Common Pleas, is beyond  
2 the scope of our duties, it may be  
3 inextricably related to the matter before us.

4 As I stated on other occasions before  
5 tonight, we are sometimes presented cases  
6 where win/win results can be obtained, and  
7 there are times when either the applicant or  
8 another party departs feeling that they lost.  
9 From the BZBA perspective, we generally feel  
10 that the Board came together for the correct  
11 decision in the matter regardless of the  
12 subjective feeling of any party.

13 So while not an inherent necessary  
14 component of our test this evening, we are  
15 able to bring the parties together -- if we  
16 are able to bring the parties together at some  
17 common ground before us in our quasi-judicial  
18 setting, then perhaps it will assist in a  
19 conclusion to their other judicial issues.

20 With that preamble concluded, I will now  
21 address the general format of how we plan on  
22 procedurally handling this matter with the  
23 concurrence of my colleagues.

24 Mrs. McMaster will provide us with the  
25 usual staff report. If any Board member has a

1           clarifying question before moving to the  
2           applicant, that is fine.

3           The applicant will then have the  
4           opportunity to expand upon the staff report  
5           with information suitable to assist the Board  
6           in its determination. Usually it is the  
7           obligation of the applicant to convince the  
8           Board to grant what this applicant is  
9           requesting. However, in the first request of  
10          the applicant tonight, it is more of a  
11          situation where the Board will hear from both  
12          the applicant and the City and then make a  
13          decision. On the second part of the  
14          application, if necessary then to expand the  
15          nonconforming use, the applicant will bear the  
16          burden to prove his case. After the applicant  
17          has spoken then, if the Board has any  
18          clarifying questions, again, that can occur.

19          Next Mr. Richardson will present on behalf  
20          of the City in his capacity as Director of  
21          Community Development with respect to his  
22          determination that the cremation services were  
23          voluntarily discontinued. The Board can ask  
24          any clarifying questions directed to  
25          Mr. Richardson. The applicant now will have

1 the opportunity to cross-examine Richardson.

2 At the conclusion of the  
3 cross-examination, the Board will go into a  
4 more in-depth questioning of either the  
5 applicant or the City would follow up and  
6 recross from the applicant if necessary.

7 At this point, the meeting will be open to  
8 comments from the public presumably including  
9 the immediate neighbor. Besides any questions  
10 directed by the Board, the applicant will have  
11 the opportunity to answer as well as rebut or  
12 query any guest speaker.

13 Upon conclusion of all parties present  
14 having the opportunity to speak, present  
15 evidence, respond and/or rebut, I will ask,  
16 "Are all parties satisfied that all facts and  
17 evidence have been entered into the record?"  
18 At this point, the public discussion will be  
19 closed and the Board will move into their  
20 deliberations. Note that this format could be  
21 modified depending upon how the Board treats  
22 the appeal, the result thereof, and the  
23 alternative request.

24 As always, I will ask all present -- I ask  
25 all present to be respectful during the

1 proceedings while other parties have the  
2 floor, and when you have the floor to be  
3 mindful of staying on point to the matter  
4 before us, be judicial with your time, which  
5 is really everybody else's time.

6 Mrs. Lane, do you have any thoughts to  
7 add?

8 MRS. LANE: I did want to add a couple  
9 thoughts, and one was, as I'm sure you're all  
10 aware, depending on the outcome of the appeal,  
11 the question of the appeal, that determines  
12 whether you even get to the application for  
13 the enlargement of the nonconforming use.

14 It would be my suggestion that the Board  
15 actually take testimony and evidence on the  
16 appeal and make a motion on that. And then  
17 if -- if it's deemed necessary to go further  
18 to make a decision on the enlargement  
19 application, then have the parties present  
20 testimony and evidence on that issue just  
21 because I anticipate that second issue  
22 being -- having a lot of discussion if we get  
23 to that point, and I think it could really  
24 hamper --

25 MR. LEHMAN: But the second is moot if

1           there's a factual determination that the --  
2           the appeal is sustained --

3           MRS. LANE:   Right.

4           MR. LEHMAN:   -- and the City Manager is  
5           reversed, then there's no need to address the  
6           remaining issues?

7           MRS. LANE:   Correct.

8           MR. LEHMAN:   Thank you, Mrs. Lane.

9           To my colleagues, is everybody in  
10          agreement of this approach on the vote for the  
11          evening?

12          MR. DREW:    Yes.

13          MR. JAHN:    Yes.

14          MR. LEHMAN:   Okay.   Well, thank you.

15          Thanks for bearing with me everybody.  
16          This is not something that we usually get the  
17          time to do, but I thought a clarification  
18          would help.

19          Mrs. McMaster, I understand that in  
20          addition to our report and staff documents,  
21          we, the Board, received supplemental documents  
22          that have been submitted by the immediate  
23          adjacent property owner.  They've been  
24          provided to all parties?

25          MRS. McMASTER:  They have.



1           We did receive an email today that was  
2           addressed to Mr. Richardson and myself, that  
3           has not been provided, it was too late to  
4           provide that one.

5           MR. LEHMAN:   Okay.   Is it relevant for  
6           tonight?

7           MRS. McMASTER:   That would be up to the  
8           property owner, he can address that as he  
9           speaks.

10          MR. LEHMAN:   Okay.   Well, please proceed  
11          with your report.

12          MRS. McMASTER:   Okay.   Just to give an  
13          overview of what the case is regarding, the  
14          subject property is in District 2, Rural  
15          Residential Conservation on approximately  
16          13 acres of land.   The subject property was  
17          known as the Boston Hills Pet Memorial  
18          dedicated as a pet cemetery in June of 1945,  
19          and since July of 2012 has been owned and  
20          operated by the Friends of Pet Cemetery  
21          Association.   The pet cemetery is a legal  
22          nonconforming use.   The owners have indicated  
23          that until 2012 the pet -- the Park offered  
24          pet cremation services on-site.   They have  
25          indicated in their application the structures

1           and other necessary cremation equipment have  
2           been maintained within the crematorium for  
3           future use. The owners have indicated the  
4           Park relies on donations and volunteers to  
5           maintain and operate the cemetery. To make  
6           improvements to the cemetery, the owners would  
7           like to offer on-site cremation service.  
8           Mr. Kalk, the President of the Friends of Pet  
9           Cemetery Association, contacted Mr. Frank  
10          Comeriato, who is the Assistant City Manager,  
11          regarding the reinstatement of the pet  
12          cremation services at the Park of which he  
13          asked Mr. Richardson to comment by a letter,  
14          the Community Development Director, to respond  
15          to a request regarding this use no longer  
16          being permitted per our Code. The  
17          determination of the cremation services were  
18          voluntarily discontinued.

19                 And if the appeal is not successful, the  
20          applicant is seeking an enlargement of the  
21          nonconforming use to resume the cremation  
22          services at the property.

23                 Any other comments we'll be glad to answer  
24          during the Hearing.

25                 MR. LEHMAN: Thank you, Mrs. McMaster.

1           So just to reiterate, what we will be  
2           starting on is -- first is the appeal and --  
3           which is the appeal of the Community  
4           Development Director's determination. And if  
5           that's successful for the applicant, then  
6           there's nothing else to do. If that fails,  
7           then we move to step two then.

8           So would the applicant approach the  
9           podium?

10          MR. MEAGER: Thank you, Mr. Chairman.

11                 My name is C.J. Meager, I'm Counsel for  
12                 Friends of the Pet Cemetery Association, who  
13                 is the applicant in this case. I also have  
14                 with me the President of the Association,  
15                 Mr. Dan Kalk, and Ron Salvatore, who works for  
16                 Matthews International, which is a large  
17                 provider of cremation services and devices  
18                 across the country and worldwide. I brought  
19                 Ron here to be able to answer questions  
20                 specific to cremation, cremation services,  
21                 cremation devices which are above and beyond  
22                 my knowledge. So Ron is here as a resource  
23                 for the Board.

24          MR. LEHMAN: Thank you.

25                 You were sworn in?

1 MR. SALVATORE: Yes, sir.

2 MR. LEHMAN: Okay. You can have a seat.

3 MR. MEAGER: To echo Mrs. McMaster's  
4 introduction, I'd like to give the Board just  
5 a brief background of the pet cemetery. It  
6 was dedicated back in June of 1945 by a family  
7 of veterinarians that wanted to offer a  
8 courtesy service to its clientele for burial  
9 of pets. It's commonly known as the Boston  
10 Hills Pet Memorial Park, so I'll be using the  
11 word "Park" and "cemetery" almost  
12 interchangeably.

13 Use of the Park as a pet cemetery predates  
14 the Summit County Environmental Code and the  
15 City of Hudson Zoning Code, so it is a prior  
16 nonconforming use.

17 From its inception, the Park was owned and  
18 operated by the Rasi family up until the time  
19 of foreclosure back in 2012 when the Friends  
20 of the Pet Cemetery Association took it over.

21 Back in 2008, Michael and Duane,  
22 descendants of the original Rasi family  
23 created two separate entities, the LLC and  
24 then the Association, Friends of the Pet  
25 Cemetery. The LLC ended up losing the

1 properties in foreclosure. During that  
2 process, the bank realized that the front  
3 three acres of the subject parcel have a use  
4 restriction that essentially provides that the  
5 front three acres cannot be used for anything  
6 else other than a pet cemetery. So knowing  
7 that, the bank then allowed the Association to  
8 take over the pet cemetery from the LLC and  
9 continue to operate it.

10 It's important to note that before the  
11 foreclosure action the LLC actually owned  
12 three different parcels. There's the subject  
13 parcel, which was actually two parcels  
14 originally, a ten-acre parcel, then a  
15 neighboring three-acre parcel, and then the  
16 Romans' property, which is immediately north  
17 of the subject parcel.

18 The bank, realizing that the restriction  
19 on the land did not allow them to sell it to a  
20 property owner, gave it back to the  
21 Association along with three acres because  
22 there was no current right-of-way that could  
23 be agreed upon by the parties. So what we're  
24 left with today is two separate parcels, one,  
25 the subject parcel, 13 acres, and the

1           neighboring parcel owned by Mr. Roman. And it  
2           is the reason for these -- these separation of  
3           two parcels that is a matter of ongoing  
4           litigation.

5           The crematorium that was on-site back in  
6           1960 was built straddling the two properties.  
7           Of course, this wasn't in good foresight of  
8           the LLC when they -- when they built the  
9           building. But not knowing that they would  
10          ever separate the two parcels in -- in this  
11          type of situation kind of opened it up for  
12          this current litigation between the parties.

13          To date, there's about 14,000 pets buried  
14          at the pet cemetery. It's important to note  
15          that a small portion of those burials do occur  
16          on the Romans' property. There's -- there's  
17          been a requirement in Ohio since 1988 that --  
18          that cemeteries diagram and map out where the  
19          burials occur and almost place a -- a  
20          restriction on the land on which the burials  
21          occur to prevent a situation where people can  
22          come in and dig up the burial sites and do  
23          anything else with the land. So that was  
24          recorded with the pet cemetery I believe in  
25          1988 or 1989, at least it says the front three

1           acres on the subject parcel has a use  
2           restriction for pet cemeteries only, and that  
3           a portion of the Romans' property also does  
4           have the same restriction.

5           So what brings us today is use of  
6           cremations on the land. As I stated,  
7           cremations first began on the subject parcel  
8           back in 1960s. Due to economic reasons,  
9           cremations ceased and no longer were performed  
10          on the property in about mid 2012 area.  
11          Because of economic reasons, people just  
12          weren't in that time having their pets  
13          cremated.

14          In 2012, as part of the recognition that  
15          the foreclosure was looming, the outgoing LLC  
16          members did remove the ovens for the cremation  
17          and the garage doors and pretty much anything  
18          else that wasn't nailed down in the  
19          crematorium.

20          And then as this matter progressed,  
21          Mr. Kalk contacted Mr. Comeriato in an email  
22          regarding the resuming cremations on the  
23          property.

24          I don't know if the Board actually knows  
25          Mr. Kalk, but Mr. Kalk is an active-duty

1 Police Officer for the City of Aurora. He  
2 constantly is in contact with the City of  
3 Hudson keeping them -- trying to be as  
4 transparent as possible, making them aware of  
5 upcoming plans or processes for the cemetery,  
6 and I think unintentionally almost triggered  
7 this appeal process to come full circle, why  
8 we're here today.

9 A little background on the Association.  
10 The Association is 501(c)(3) public charity.  
11 They rely heavily upon donations and volunteer  
12 labor.

13 For those of you who had an opportunity to  
14 visit the Park, you can see that the Park is  
15 well maintained on a very minimal budget and  
16 on voluntarily labor. As the Board can  
17 imagine, the small budget and volunteer labor  
18 is not sustainable for a cemetery for its  
19 maintenance, let alone a pet cemetery that has  
20 even less of -- of an appeal to its citizens.

21 As Dan told the Board, he's only involved  
22 in the Association because his pets, as far  
23 back as childhood, were buried at this pet  
24 cemetery. And as I said, there's 14,000 other  
25 pet owners that have pets buried at that pet



1 cemetery as well.

2 Dan's position has and always will be he  
3 wants to see that the Park is maintained. It  
4 is apparent through Dan's working at the  
5 property that the only way for this Park to  
6 remain maintained once the volunteer labor and  
7 the small budget is dried up is to reintroduce  
8 or resume cremation services on the property.

9 As Mr. Salvatore will attest to, a  
10 cremation, at least with respect to a pet  
11 cemetery, is paramount to successful pet  
12 cemeteries. There are not many pet cemeteries  
13 left in Ohio, and those that do exist have  
14 crematoriums on-site that perform cremations  
15 for its patrons.

16 So based on that background, I would like  
17 to make the Court aware that our argument is  
18 essentially three-fold. The first is  
19 challenging the abandonment of the prior  
20 nonconforming use, which is the crematorium.  
21 Since 1960 cremations were provided as an  
22 ancillary service for the cemetery itself. In  
23 Ohio, cemeteries, cremations, they're all  
24 about disposition of people's wishes of their  
25 loved ones, pets.

1           And I'd like to go back to the  
2           requirements under the -- under the ordinance.  
3           Section 1206.05 (e)(3), which is a  
4           discontinuance or abandonment of a prior or  
5           nonconforming use. "If non-conforming use is  
6           voluntarily discontinued for a period of  
7           twenty-four (24) consecutive months or more,  
8           any use of the property thereafter shall be in  
9           conformance with regulations and provisions  
10          set by this Code for the district in which  
11          such property is located." "Discontinuation  
12          of a nonconforming use may be indicated by  
13          non-use and the removal of either  
14          stock-in-trade or substantially all equipment,  
15          fittings, or furniture needed to operate the  
16          use."

17          Our position before the Board today is,  
18          yes, the ovens were removed from the premises,  
19          but this was removed by the prior property  
20          owners due to the looming foreclosure of the  
21          property. The actual building itself, the gas  
22          lines, the ventilation, the chimneys are all  
23          remaining at the property. Therefore,  
24          substantially all the equipment necessary to  
25          perform cremations has never been removed from

1 the property. Yes, a substantial portion of  
2 what is required for a crematorium was  
3 removed. But substantially all the equipment,  
4 which is the requirement of the Code, it did  
5 not meet the test.

6 To date, the Park has always been operated  
7 as a pet cemetery. Pet cemetery and pet  
8 crematoriums are interchangeable, they're both  
9 about the disposal of the remains of loved  
10 ones. So I ask the Court, based on those  
11 facts and for this aspect of the appeal, that  
12 the nonconforming use was abandoned to reverse  
13 the decision of the Community Director, Mark  
14 Richardson, and grant us the ability to resume  
15 cremations on the property.

16 At this time, I'd like to open it up to  
17 the Board for that aspect and reserve our  
18 right to bring up other points in the appeal.

19 MR. LEHMAN: Thank you, Mr. Meager.

20 Do you have any questions before we bring  
21 up Mr. Richardson?

22 MR. DREW: Well, I'll ask, at one point in  
23 your discussion you mentioned two entities,  
24 the LLC, and what was the second entity?

25 MR. MEAGER: It's called the Friends of

1           the Pet Cemetery Association, that's who owns  
2           the property now and that's who the applicant  
3           is. The LLC is no longer functioning, that's  
4           who lost the property in foreclosure. The  
5           Friends of the Pet Cemetery Association is a  
6           501(c)(3), that was the fundraising arm of the  
7           LLC. But when the bank realized during the  
8           foreclosure process that they couldn't do  
9           anything with the pet cemetery property  
10          because of the use restriction, Dan and the  
11          Association stepped up and said we will take  
12          title to the property without it being  
13          reverted back. So that's why the Association  
14          is the owner and that's why the Association is  
15          the applicant.

16                 MR. DREW: And back to your comments  
17                 regarding the equipment removal. And I did  
18                 visit the site, it was this week, not  
19                 24 months ago, but it seemed pretty clear to  
20                 me that substantially the equipment was  
21                 removed. I could see the chimney was there, I  
22                 could see where the substantial gas line was  
23                 disconnected. I can't understand your  
24                 argument that the use hasn't been abandoned.

25                 MR. MEAGER: Well, I'll acknowledge to the

1 Board that the ovens are a substantial aspect  
2 of what is necessary, but there's still gas  
3 lines there. We couldn't open up a  
4 crematorium on any other part of the property  
5 because the gas lines only go to that  
6 building. That building is necessary for the  
7 cremations, the gas line is necessary, the  
8 chimney is necessary, the ventilation is  
9 necessary. I understand that the ovens are a  
10 substantial need, but substantially all would  
11 be removal of the chimney, removal of the  
12 ventilation, removal of the gas lines, or a  
13 demolition or a different use of the building.

14 MR. DREW: The question is has the use  
15 been abandoned. And to me, once you remove  
16 the ovens, which is the primary equipment, it  
17 seems clear to me that the use has been  
18 abandoned.

19 MR. MEAGER: I agree -- I agree that the  
20 ovens are primary equipment, but the language  
21 in the statute says substantially all the  
22 equipment necessary for the prior  
23 nonconforming use. I understand the position  
24 that ovens are a substantial aspect of that,  
25 but removing substantially all the equipment

1           would be the gas line, the chimney,  
2           ventilation for the building.

3           And I think -- the nuance in this case is  
4           that because of litigation the barn is  
5           actually -- or the crematorium is actually  
6           being used for other uses because the property  
7           line almost draws not directly through the  
8           middle, but about 60 percent is still on the  
9           Romans' property. So there are vehicles and  
10          other uses being used in there, but that's  
11          just because there's pending litigation.  
12          There's nothing we can do to go in there and  
13          restart the crematorium process because of the  
14          pending litigation.

15          MR. DREW: Thank you.

16          MR. MEAGER: Thank you.

17          MR. LEHMAN: Does anybody else have  
18          anything?

19          MR. DOHNER: No.

20          MR. LEHMAN: Thank you for your  
21          presentation.

22          Let's hear from Mr. Richardson.

23          MR. RICHARDSON: Thank you, Chairman and  
24          Members of the Board.

25          Mrs. McMaster kind of recited the -- what

1           led to this, but I'll reiterate a couple of  
2           her points and maybe expand on the reasoning  
3           for my determination.

4           Mr. Kalk and Mr. Comeriato, Assistant City  
5           Manager, I believe they began correspondence  
6           over the winter of 2015, shortly into 2016. I  
7           was copied on a lot of this correspondence,  
8           but Mr. Comeriato was taking the lead on the  
9           early part of it. But in late January, I was  
10          becoming more involved and it was quickly  
11          becoming apparent to me that the determination  
12          had to be made about whether the  
13          introduction -- reintroduction of cremations  
14          was an expansion of a nonconforming use and  
15          what the procedures would be required to  
16          reintroduce that use.

17          So during the month of February, the  
18          staff, primarily between myself and  
19          Mr. Comeriato and Mrs. Lane, led to a decision  
20          in early March to put my writing -- findings  
21          into writing so that the applicant could deal  
22          with it as -- as they would, either to apply  
23          directly for an expansion or to appeal my  
24          decision. I -- we knew that was a real  
25          possibility.

1           So I finished drafting a letter and issued  
2           it on March 9, you have it in your records.  
3           Basically it was determined that the activity  
4           can be resumed, but only with the approval of  
5           this body and meeting the criteria that are  
6           outlined in the letter.

7           When the question arose, it was very  
8           obvious to the staff that this use has been a  
9           long-time nonconforming use in the community,  
10          very unique use frankly, and the question was  
11          presented to us as the reintroduction and  
12          expansion to the nonconforming use. So based  
13          on that information provided to me by  
14          Mr. Comeriato, there was several questions we  
15          had to answer. One was -- and we knew that  
16          there had been cremations in the building  
17          before -- was the abandonment of the activity  
18          voluntary, which is part of -- of the  
19          definition of discontinuation and abandonment.  
20          We could find no evidence that the cause of  
21          the abandonment was from an external force,  
22          that what -- it was an internal decision to  
23          remove the equipment.

24          And the Attorney just recited part of the  
25          definition for what discontinuance and



1           abandonment meant. We felt that the situation  
2           did indicate that the equipment had not been  
3           used at all for at least two years and that  
4           substantially all of the equipment to conduct  
5           the cremations had been removed, that is that  
6           cremations cannot occur in the structure as it  
7           exists now, there is not the equipment to  
8           conduct that. So therefore, that's -- that's  
9           how we came to the conclusion we did and why  
10          we're here tonight.

11                 Do you have any questions of me?

12                 MR. LEHMAN: Any follow-up questions from  
13                 anybody for Mr. Richardson?

14                 Thank you.

15                 Please have a seat.

16                 At this point, we could ask any questions  
17                 to either the applicant or Mr. Richardson, or  
18                 we can -- the applicant has the opportunity to  
19                 cross Mr. Richardson if he wants to.

20                 MRS. LANE: Mr. Lehman, I just wanted to  
21                 bring to your attention that the Assistant  
22                 City Manager is in attendance this evening,  
23                 Frank Comeriato, and he could, I think, also  
24                 offer some information about -- related to  
25                 what Mr. Richardson spoke to, I think that

1 might be helpful.

2 MR. LEHMAN: Well, this would be a good  
3 spot to do that then. I didn't realize that.  
4 Thank you, Mrs. Lane, for pointing that out.

5 Mr. Comeriato, would you like to -- do you  
6 have anything add?

7 MR. COMERIATO: I think I can just echo  
8 Mark Richardson's comments.

9 Around 2005 the City was approached by the  
10 former owner, and that's how I became involved  
11 with the pet cemetery. There was some talk  
12 about the City being involved in possibly the  
13 operation that didn't come to fruition. You  
14 have what you have today. So I'm very  
15 familiar with the property and -- and the  
16 operation, and I concur with Mark's  
17 statements.

18 I have been talking to Mr. Kalk on and off  
19 on a number of issues. They're very, very  
20 forward with us, they always keep us up to  
21 date on what's going on and what they're  
22 thinking, so I was very appreciative of that.  
23 But it came to a point where I really couldn't  
24 answer his questions, and that's why I brought  
25 Mark in, and they were able to work with him

1 to get the answers that he needed.

2 I was on that site and on that property  
3 when it was in full operation and cremations  
4 were occurring. I toured the crematorium, and  
5 the equipment is not there. I don't have much  
6 to say about the argument that some of the  
7 equipment is there, but the ovens are not  
8 there obviously, that's a true statement. So  
9 that's the only change I see.

10 And insofar as the property, it's very  
11 well maintained, I think probably better than  
12 I've ever seen.

13 If anyone has any other questions, I can  
14 try to answer.

15 MR. LEHMAN: All right. Thank you.

16 Mr. Meager, do you want to cross the City?

17 MR. MEAGER: Thank you.

18 With the Court's permission, Mr. Kalk  
19 would like to make a brief statement to the  
20 Board as well, if that's acceptable to the  
21 Board.

22 MR. LEHMAN: Sure.

23 Actually, before he comes up, let's make  
24 sure we're clear in the dates and the Code.

25 I believe either Mrs. McMaster or maybe

1 Mr. Richardson said in terms of the  
2 discontinued use, it was 24-month --

3 MRS. McMASTER: Correct.

4 MR. LEHMAN: -- period. So let's look at  
5 the date that it went into the foreclosure,  
6 state that date, and then when you opened up  
7 discussions with the City about being able to  
8 reinitiate the program.

9 MR. MEAGER: Well, I believe the actual  
10 foreclosure was actually resolved in '12 and  
11 the property was deeded back to the  
12 Association. So I believe it was a long  
13 process because of the uniqueness of the  
14 restrictions of the land.

15 I know there was an approach to the City  
16 early on, but not my client, but the former  
17 owners, the Rasi family, and -- and the LLC  
18 that were set up afterwards created to let  
19 them take over before they lost the land.

20 But I -- I can see that cremations last  
21 took place in 2012, which is beyond the  
22 24 months. I think my argument is more  
23 essentially to whether or not substantially  
24 all the equipment was removed from the  
25 property.

1 I'm sorry, does that answer your question?

2 MR. LEHMAN: Yes. I presumed it was  
3 greater than 24 months or we wouldn't be here,  
4 but I just kind of wanted to hear the dates to  
5 satisfy that it is -- we do have some  
6 accountants here, and every once in a while  
7 somebody has numbers that don't make sense and  
8 either Mr. Drew or Mr. Jahn or somebody will  
9 query the numbers, so I just wanted to make  
10 sure we're clear on the dates.

11 MR. MEAGER: I can't speak to when the LLC  
12 approached the City to take it over, but I do  
13 know the property was -- taken title by the  
14 Friends of the Pet Cemetery Association back  
15 in 2012. So foreclosure happened around that  
16 period, 2012.

17 MR. LEHMAN: Well, then, let's --

18 MR. MEAGER: Mr. Kalk would like to make a  
19 presentation.

20 MR. LEHMAN: Sure.

21 MR. KALK: Thank you.

22 What happened was a lot of people had  
23 buried their pets at the cemetery since 1945  
24 because a lot of like-minded people said our  
25 animals are part of our family, when a family

1 member dies you bury your family member in a  
2 cemetery with dignity and respect.

3           Unfortunately, in the time around 2010,  
4 2011 the cemetery went into foreclosure and  
5 the owners were basically going to abandon it.  
6 A group of people that had no affiliation with  
7 the cemetery except that we buried our animals  
8 there -- I buried my first animal there in  
9 1978, I have 11 animals there now. We have a  
10 lot of people that are like-minded, we're not  
11 activists, we're not vegetarians, we're not  
12 nuts, we are people that love our animals. I  
13 go to sleep at night, my dog sleeps in the bed  
14 with my wife and myself. We go on vacation,  
15 you take the dog in the car with you and visit  
16 relatives. And when the dog dies, he is not  
17 discarded like trash in the cemetery.

18           We took it over. Unfortunately, the prior  
19 owners took a lot of things from the property.  
20 We did not abandon the ability to do  
21 cremations, we had no opportunity to do them  
22 because when the current group took it over --  
23 and I was involved in 2012 -- the ovens were  
24 no longer there for us to have a chance to  
25 use, and we didn't have the ability to replace

1           them until recently when we now have the  
2           ability to do so, because we barely had the  
3           ability to cut the lawn and maintain the  
4           premises.

5                     From day one, I contacted the City of  
6           Hudson and said, "We are going to do something  
7           different than what the previous owners did,  
8           we are going to cooperate and keep you posted  
9           and talk with you and discuss things with you  
10          in advance." That's why I called Frank  
11          Comeriatto and said, "We're trying to figure  
12          out how we can keep enough funds to maintain  
13          this place because it's part of our mission."

14                    And, you know, we've always offered  
15          burials, we've always offered cremation. We  
16          still offer cremation, but we send out now to  
17          human crematories, get the cremations done,  
18          bring the cremated remains back and then bury  
19          the cremated remains of the animals in the  
20          cemetery. We can't do it there because we  
21          didn't have the equipment.

22                    We're giving away income that could be  
23          used to maintain the place, and we've done one  
24          heck of a job maintaining the place. I'm not  
25          patting myself on the back, I'm patting on the

1 back of 186 families that volunteered, stepped  
2 forward and did this. We have one person that  
3 gets paid a small salary for doing some  
4 administrative work, and everyone else is a  
5 volunteer. I spend countless hours every  
6 week, I get paid zero. I don't want anything,  
7 I do it because it's the right thing to do.  
8 And that's what the 186 families do it for,  
9 because it's the right thing to do.

10 We need a way to maintain our property at  
11 the high standards that we have it at. We're  
12 losing members because our average age of  
13 membership is over 70 years old and,  
14 unfortunately, some of our members die each  
15 year. And the best avenue available to us to  
16 supplement our income is resume the cremations  
17 on the premises, cremations that we're sending  
18 out somewhere, so we can use that money to  
19 maintain the place, and that's all we want to  
20 do.

21 But no, we didn't get to do anything since  
22 we took over in 2012 because somebody  
23 removed -- I don't know who exactly -- the  
24 ovens themselves, but all we have to do is  
25 replace the oven, it's a self-contained unit,



1           and start the cremations again so that we can  
2           make the profit from this to make ends meet.

3           Thank you.

4           MR. LEHMAN: Thank you, Mr. Kalk.

5           MR. MEAGER: I guess I don't have any  
6           cross-examination of Mr. Richardson, but more  
7           or less I -- I would like to propose to the  
8           Board the prior nonconforming use of the  
9           cremation is much like the prior nonconforming  
10          use of the cemetery. For example, if there's  
11          no burials performed at the pet cemetery for  
12          24 consecutive months and you removed a  
13          backhoe from the property for that period, my  
14          question to be Board would be would they then  
15          lose the ability to bury pets in the cemetery  
16          because of that substantial piece of equipment  
17          that was removed.

18          So I don't have anything else further for  
19          the Board with respect to that argument, but  
20          I'd like to reserve my ability to discuss the  
21          expansion if necessary.

22          Thank you.

23          MR. LEHMAN: Thank you.

24          MRS. LANE: Mr. Chairman, if it would be  
25          helpful to the Board, I wanted to give some

1 background, too, just about sort of some legal  
2 aspects related to the concept of voluntarily  
3 discontinuing a nonconforming use, if --

4 MR. LEHMAN: Certainly. I was going to be  
5 asking you for that, so this is a good time.

6 MRS. LANE: Well, just -- and I'm going to  
7 just give some preliminary thoughts, and then  
8 I'll get right into the voluntarily  
9 discontinued piece.

10 But as I'm sure you're aware, a  
11 nonconforming use is actually a protected  
12 property interest, it's something that is  
13 going on on a piece of property before a  
14 zoning change came into play. And that is why  
15 Zoning Codes have these nonconforming use  
16 provisions, it's to acknowledge the fact that  
17 these uses were legal uses at the time the  
18 Code was changed and thus they can continue to  
19 exist on the property. And in fact, the Ohio  
20 Revised Code specifically says that  
21 municipalities cannot retroactively apply a  
22 zoning ordinance. But what we can do, and do  
23 in our Code, is acknowledge that these uses  
24 exist, they can continue to exist, and they  
25 can be regulated based on reasonable

1 regulation, which is what we have in our Code.  
2 We have regulations regarding enlargement,  
3 relocation, discontinuance and abandonment,  
4 damage or destruction, change of use and --  
5 and more.

6 First obviously, specifically in this part  
7 of the case, looking at the issue of  
8 voluntarily discontinued, and I just wanted to  
9 emphasize that -- that when you read the case  
10 law on these points, it's really a -- a fact  
11 specific inquiry. The cases say that it can  
12 be an express -- there can be an express  
13 intention by a property owner or it can be an  
14 implied intention, and usually just non-use  
15 isn't enough. And it usually involves  
16 circumstances beyond the property owner's  
17 control.

18 And one of the pivotal cases is a case  
19 from, I think it was the Fifties, it was a  
20 Cuyahoga County case, where land was used for  
21 mining shale, and the main customer for this  
22 mining business was a nearby brick-making  
23 factory. Well, the depression hit, that  
24 brick-making factory went out of business, and  
25 over time that factory became completely

1           obsolete. Economic times changed, it got  
2           better. And so -- I guess what I'm saying is  
3           that when that brick plant went out of  
4           business, the mining activity halted, they  
5           didn't have their number one customer to be  
6           mining for.

7           The brick plant was then rebuilt and  
8           updated with new equipment and the mining  
9           activity resumed. This was in -- so in the  
10          Thirties was the depression, and then this new  
11          brick plant was opened in the Fifties. In the  
12          Forties, the City rezoned this mine to  
13          residential. And once the new brick plant was  
14          opened in 1951, the mining operations resumed.

15          There was a lawsuit and the Court found  
16          that that temporary -- it was not voluntarily  
17          abandonment of the preexisting nonconforming  
18          use, it was a temporarily suspended use due to  
19          circumstances beyond the control of that  
20          property owner.

21          There's other cases showing that a  
22          decrease in business alone isn't necessarily  
23          an abandonment. However, that case does speak  
24          to -- or I guess that was a different case.  
25          This case was a junkyard where they stored

1 vehicles and car parts and they sold vehicles  
2 and car parts. However, for a period of time,  
3 the sales piece of that business went way  
4 down, only a few transactions I think in a  
5 year's time. However, it was still going on,  
6 it just was reduced. The Court found that  
7 that was not a voluntary abandonment.

8 I guess another case -- and I realize  
9 there's no -- this is a unique case tonight,  
10 so it's very hard to find a case that was  
11 parallel to what we're dealing with tonight.  
12 But there was another case about a residential  
13 property that was a nonconforming use, it had  
14 been damaged by a flood and the property owner  
15 was repairing the house and intending to get  
16 it to a condition so that he could rent it  
17 out, and this took place over four years, and  
18 it wasn't -- the property wasn't currently  
19 being used as a residence, but the evidence  
20 showed he was continuing to make repairs on it  
21 so it could be put to that use. And in that  
22 case, it was found that that was not a  
23 voluntarily discontinuance.

24 I did want to emphasize that in the Land  
25 Development Code it does specifically say,

1           under Part B, "Discontinuance of a  
2           nonconforming use may be indicated by non-use  
3           and the removal of" "substantially all  
4           equipment." It says "may," so I wanted to  
5           point that out. It's not "shall."

6           MR. LEHMAN: To go to the mining one -- in  
7           this case, there were cremations going on,  
8           which would be like the mining going on, the  
9           equipment was removed. I'm wondering at the  
10          mining place, the cranes or the diggers -- or  
11          assuming it's a surface mine, probably not  
12          underground, but just for the sake of the  
13          argument there had been equipment, I doubt  
14          that the equipment would have sat there for  
15          20 years unused and then be workable. So it  
16          would seem to me that they viewed it more --  
17          or rather than equipment they looked more at  
18          the activity. And because they lost their  
19          major account, no one was buying bricks so  
20          they weren't able to sell their shale.

21          MRS. LANE: Right.

22          MR. LEHMAN: The parallel argument in this  
23          case is we had our own recession here, more or  
24          less, the predecessor owner, you know, saw  
25          business kill off and, you know, people chose,

1           you know, other avenues or something in terms  
2           of how to handle their departed pets, and the  
3           cremation business kind of dried up. Maybe  
4           the market is better now and they can, you  
5           know, do like what the shale mining did. So  
6           it seemed like your case turned more on the  
7           market coming back --

8           MRS. LANE: Right.

9           MR. LEHMAN: -- than the equipment that  
10          was there.

11          MRS. LANE: Which is -- right, which is  
12          considered to be something that -- it's just  
13          an example of -- a lot of times Courts are  
14          finding things not to be voluntarily  
15          discontinued where it's circumstances outside  
16          of the property owner's control, whereas  
17          arguably somebody at the pet cemetery made  
18          some sort of decision.

19          MR. LEHMAN: Does it matter whether it's a  
20          prior owner or the current owner who had --  
21          came into the situation to take it over,  
22          probably still within the time limits in terms  
23          of when the last cremation was and when they  
24          were able to take it over, but their best  
25          efforts, for reasons beyond their maybe

1           limited control as a 501(c)(3), weren't able  
2           to now -- to be able to initiate it, can that  
3           be compared to your example?

4           MRS. LANE: Yeah, I mean, it really -- I  
5           would say it doesn't -- the transfer of  
6           ownership doesn't really affect the analysis.  
7           If I buy a property that's a nonconforming use  
8           and the prior owner is using it for that use  
9           and I come in and use it for that use, it  
10          continues.

11          The only thing I can think is that  
12          potentially, when you look at these things,  
13          you're trying to look for an intent --

14          MR. LEHMAN: Well --

15          MRS. LANE: -- to keep this use.

16          MR. LEHMAN: Or -- but the way I heard  
17          Mr. Richardson say it, he was looking for  
18          intent to discontinue it, but really it's was  
19          there an intent to continue it.

20          MRS. LANE: Well, I think -- I think it  
21          could be --

22          MR. LEHMAN: Either on --

23          MRS. LANE: Well, because the way the  
24          cases read, they're saying that voluntarily  
25          discontinuance is exhibited through some



1 express intent or implied intent. So I think  
2 that's -- I guess the express intent is where  
3 you get the removal and the actions to remove  
4 the equipment.

5 MR. LEHMAN: But does that intent carry  
6 over to a new party who didn't have that  
7 intention, but they kind of are left with what  
8 the former party did?

9 MRS. LANE: I believe that the current  
10 owner is stuck by what the prior owner did,  
11 yes.

12 MR. LEHMAN: Okay. Any other queries to  
13 our Counsel while we --

14 MR. DREW: I'm not sure if this is to  
15 Mrs. Lane or Mrs. McMaster.

16 The cemetery itself is a conditionally  
17 permitted use in District 2; isn't that right?  
18 Isn't the pet cemetery -- isn't the cemetery a  
19 conditionally permitted use in several of the  
20 districts in Hudson?

21 MRS. LANE: You're just talking generally  
22 or are you talking about this specific --

23 MR. DREW: Any cemetery.

24 Cemeteries are, unless I misread the book,  
25 are conditionally permitted in several

1 districts in town.

2 MRS. LANE: That is correct.

3 MR. DREW: And it's literally stated in  
4 1206.02 that a pet cemetery is considered the  
5 same as a human cemetery.

6 And the point I'm trying to make is  
7 that -- that I think the only nonconformity is  
8 the crematorium and not the cemetery itself.  
9 Am I correct in that thinking?

10 MR. WAGNER: I thought the only issue  
11 before us was literally the cremation  
12 services. I don't think anyone is arguing  
13 that they can't continue to operate as a pet  
14 cemetery.

15 MRS. LANE: I mean, I guess the way -- the  
16 way that it's been analyzed from our office is  
17 the use is a preexisting nonconforming use, a  
18 legal preexisting nonconforming use. The  
19 cremation use, which was part of that  
20 cemetery, was abandoned. And now to bring  
21 that back to the property, it falls under the  
22 nonconforming use regulations for expansion of  
23 that use.

24 MR. LEHMAN: So you are saying it's both,  
25 the cemetery is nonconforming and the

1 cremation?

2 MRS. LANE: Right.

3 MR. LEHMAN: Mr. Drew is saying something  
4 different. Which would beg the question, why  
5 are the two separate then?

6 You know, if you have multiple things that  
7 you do in the course of your nonconforming  
8 thing, do you always have to do all of those  
9 multiple things? As long as you continue the  
10 overall nonconforming business, what's the --  
11 what's the difference for one -- why does one  
12 aspect get picked out over something else  
13 that's nonconforming?

14 MRS. LANE: I'm not sure I understand.

15 MR. LEHMAN: What Mr. Drew is saying is if  
16 the cemetery -- having a pet cemetery and  
17 having pets continually buried there is a  
18 nonconforming use also --

19 MR. DREW: And I don't think it is.

20 MR. LEHMAN: He's just clarifying if -- or  
21 is it only the cremation that's nonconforming?

22 MRS. LANE: Well, you know, I -- I looked  
23 at the Code today, and it's my understanding  
24 that a lot of Codes will say that -- in the  
25 nonconforming use provisions will say that

1           upon the effective date of this Zoning Code  
2           provision all nonconforming uses shall be  
3           deemed conditional, if there is a conditional  
4           use, shall be deemed a conditional use under  
5           this Code. I cannot find that language in our  
6           Land Development Code calling that out. A  
7           nonconforming use on the effective date of the  
8           ordinance becomes a conditional use.

9           So we analyzed this as a nonconforming use  
10          and --

11          MR. LEHMAN: But only the cremation part?

12          Like if they stopped having pets buried  
13          there for the same period, would that prevent  
14          them from burying new pets now -- deceased  
15          pets now?

16          MRS. LANE: I -- that's a good question.

17          MR. LEHMAN: Because then my follow-up to  
18          that -- although I don't think Mr. Drew was  
19          going down this path, and he may be correct on  
20          it -- but if the whole thing was  
21          nonconforming, having a stay -- an interim  
22          stay that's created a two years or more  
23          portion of that, does that stop the whole  
24          thing? Is it even fair to stop the one  
25          portion? As long as they were still doing the

1 rest of the stuff that's nonconforming, why  
2 does the cremation matter?

3 MRS. LANE: You know, I guess -- the  
4 way -- and I apologize, I'm not quite  
5 following. But the way I look at it is this  
6 is a use that's been existing on the property  
7 since the Forties and it's allowed to continue  
8 to exist subject to the regulations in the  
9 nonconforming use chapter. And in fact, the  
10 nonconforming use chapter talks about the fact  
11 that it is the general policy of the City to  
12 allow nonconforming use of structures or lots  
13 to continue to exist and to be put to  
14 productive use.

15 MR. DREW: Well, I'm sorry it took me a  
16 minute, but I did find on the chart here on  
17 the -- we have a chart of the permitted uses,  
18 and under cemetery they're conditionally  
19 permitted in Districts 1, 2, 3, 4 and 5, and  
20 then they do have some specific conditions  
21 that provide to any cemeteries. And just to  
22 read those, it talks about a cemetery,  
23 including a pet cemetery, there's a 100-foot  
24 setback from the property line to the street,  
25 it talks about adequate screening for

1 maintenance structures. It also,  
2 interestingly, spoke about adequate funding.  
3 Adequate funding is a requirement for the  
4 conditional use of the cemetery.

5 So I think if someone came along and said,  
6 "Well, I'd like to start a new cemetery"  
7 wherever, next door or around the corner, it  
8 could be conditionally permitted if those  
9 conditions are met.

10 MRS. LANE: Correct.

11 MR. DREW: And I think we're spending time  
12 tonight talking about the cemetery, and it's  
13 really not the cemetery that's the issue, it's  
14 the cremation services, and that's where I'm  
15 trying to go with my line of questioning. I  
16 don't think we're really here to argue about  
17 the cemetery, it's only the cremation services  
18 because the cemetery is conditionally  
19 permitted.

20 MR. LEHMAN: Where does it say that  
21 cremation is --

22 MR. DREW: Wait a minute, I didn't say  
23 anything about cremation.

24 In the chart we have of permitted uses  
25 under cemeteries, they're conditionally

1           permitted in those districts.

2           MR. LEHMAN:   Mr. Dohner.

3           MR. DOHNER:   I was going to -- I'm walking  
4           down the same path you are on this.

5           Following up with what Mr. Drew said,  
6           cemetery is a permitted use, what is the  
7           definition of a cemetery? Does it include,  
8           you know, burial services, cremation services,  
9           you know --

10          MR. LEHMAN:   We've heard testimony that --

11          MR. DOHNER:   -- headstones?

12          You could put in an umbrella of -- this is  
13          purely a lay viewpoint, you could put a lot of  
14          things in the Park. So if that's true, that  
15          this is a conditionally permitted use and  
16          cremation is just one of the things that is  
17          there or not there at different times, do they  
18          even need --

19          MR. DREW:   Well, if you think of any of  
20          the human cemeteries that we have here in  
21          Hudson, many of them predated certainly this  
22          current Code, but I certainly don't believe we  
23          do any cremations at any of the human  
24          cemeteries.

25          MR. DOHNER:   For example, you know, I

1 don't know how much you see a chapel in the  
2 city cemetery, but that's something you don't  
3 see in every cemetery, is a chapel that has  
4 services and other things, you know. So it's  
5 not cremation, but it's something else.

6 MR. JAHN: Cremation, burial, memorial  
7 services, you know, it's hypothetical, but I  
8 can see some pet owner that would want a  
9 memorial service for their pet.

10 MR. LEHMAN: I believe that there was  
11 testimony earlier that there weren't many pet  
12 cemeteries to provide this, more or less, and  
13 we can clarify that when we go back to the  
14 parties' testimony.

15 MR. DREW: And I guess my -- my  
16 questioning along the conditionally permitted  
17 and trying to segregate the cremation service,  
18 is that to me -- and I visited the site not  
19 24 months ago, but this week, and to me it was  
20 clear that the equipment had been removed.  
21 There certainly hadn't been any cremation  
22 service since the equipment was removed, and I  
23 think there's been testimony tonight that that  
24 was back 2012, so we're talking at least three  
25 to four years ago.



1           So maybe we're walking too far down the  
2           path on the second question, and maybe we can  
3           make some progress and resolve the first  
4           question of has there been a voluntarily  
5           discontinuance. I think clearly there's been  
6           a continuance of pet burials. And I'll admit  
7           the cemetery was nicely mowed and maintained  
8           and looked nice. As far as the cremation  
9           service -- and I'm trying to segregate these  
10          two functions -- it has clearly been  
11          discontinued. It may have been discontinued  
12          by the prior owner, but it was discontinued,  
13          they chose to remove the equipment and give up  
14          that service.

15          And I think we're -- I think we're walking  
16          down either the second path or we're trying to  
17          debate what exactly is a cemetery, and I think  
18          we need to focus on a narrow question of -- of  
19          the cremation service which, to me, is the  
20          nonconforming use, was that voluntarily  
21          discontinued, and I think it clearly was.

22          MR. LEHMAN: So you're saying that the  
23          cemetery is not a nonconforming --

24          MR. DREW: I don't think it is, I think it  
25          is conditionally permitted.

1 MR. DOHNER: Can I respond?

2 MR. LEHMAN: Sure.

3 MR. DOHNER: I see the point Mr. Lehman  
4 has raised with -- as a principal issue to  
5 figure out first. We don't have to go any  
6 further if cremation services are a normal  
7 part of the cemetery, and it's something  
8 that -- I would think they can decide to do  
9 for a while, not do for a while, as part of  
10 the service package that they're offering.

11 I disagree that the -- that we're meeting  
12 the definition of voluntarily discontinuation.  
13 I think the prior owner did that, but it  
14 doesn't meet the time limit, they didn't do it  
15 for 24 months. The new owners came in in the  
16 meantime, they could not and had no intent not  
17 to continue. They wanted to continue, they  
18 could not continue, they didn't have the  
19 finances to continue as Mr. Kalk just said to  
20 us. They're looking to reopen now because now  
21 they have the finances to do it, but I don't  
22 think the new owners within that 24-month  
23 window had the intent of -- of voluntarily  
24 discontinuing it. I think just because the  
25 prior owners took the ovens -- if the new

1 owners had the money, they probably would have  
2 put them back in.

3 MR. DREW: But they didn't.

4 MR. DOHNER: They didn't have the money.

5 MR. DREW: But they didn't.

6 MR. DOHNER: I know, but it goes to  
7 voluntarily done.

8 MR. DREW: That's what Mrs. Lane said.

9 MR. DOHNER: Was it voluntarily done?

10 MR. LEHMAN: That seemed to be important  
11 in all the cases that she cited.

12 You've been patient, we'll get to you  
13 in -- we'll make sure we get to you.

14 MR. PATRICK: I appreciate that. I have  
15 some information which might answer some of  
16 your questions, which are very good questions.

17 MR. LEHMAN: Are you Counsel for --

18 MR. PATRICK: I'm Counsel for Mr. Roman.

19 MRS. LANE: I have a -- just a follow-up,  
20 and I guess it goes to Mr. Drew's point about  
21 the chart regarding pet cemeteries as  
22 conditional uses and the fact that a pet  
23 cemetery would be permitted pursuant to  
24 conditional use approval in this district.  
25 Mr. Drew mentioned some of the things already,

1           that there's some setback requirements and  
2           there's this funding requirement, and it  
3           specifically claims that the term cemetery  
4           includes pet cemetery.  However, I will note  
5           that under items, special conditions for  
6           cemeteries, Item B, it does say there shall be  
7           no crematorium on the property.  So, you know,  
8           I think that that would apply -- that that  
9           would be an issue for a new cemetery going in  
10          that district, but this regulation wasn't in  
11          place when the current pet cemetery was --

12                 MR. LEHMAN:  Thank you for sharing that.  
13           I don't think that undercuts Mr. Dohner's  
14           argument there, but it will be for Mr. Drew's  
15           potential client who wants to open a new one.

16                 Anything else amongst ourselves?

17                 And I think we haven't opened it to the  
18           public yet, and I think I'll let Mr. Meager --  
19           or ask the applicant if there's anything else,  
20           and then we'll open it to the public.

21                 Does that sound appropriate?

22                 MR. DREW:  Yes.

23                 MR. LEHMAN:  Okay.

24                 MR. MEAGER:  Thank you.

25                 Those are all great questions, I wish I

1           had done a better job of answering those  
2           before the dialogue.

3           But I guess right to our point, and it's  
4           the voluntary removal of the ovens. The  
5           economic times -- the pet cemetery didn't have  
6           the funds, now they do to reinstate these.  
7           They never ceased doing burials. They never  
8           ceased offering cremation services, they just  
9           had to be done off site. So these are all  
10          factors that I think lend themselves to this  
11          Board reversing the decision.

12          Thank you.

13          MR. LEHMAN: All right. Thank you.

14          All right. Let's open it to the public  
15          portion.

16          And is there anybody, other than Legal  
17          Counsel of Mr. Roman, who's planning on  
18          speaking?

19          MR. LEHMAN: Why don't you -- are you  
20          Mr. Roman?

21          MR. ROMAN: Yes.

22          MR. LEHMAN: Do you want to go first and  
23          then we'll let the Counsel finish or do you  
24          want to do it the other way around?

25          Do you think you might go longer than him?

1           MR. PATRICK: No, mine is going to be  
2           rather short.

3           MR. LEHMAN: Oh, for an Attorney, that's  
4           terrific.

5           MR. PATRICK: I know.

6           Thank you for allowing me to speak.

7           My name is Carl Patrick, I represent  
8           Mr. Roman and his wife, they are the northern  
9           adjacent property owners to the pet cemetery.

10          A couple things -- and I'm glad Mrs. Lane  
11          brought it up, the -- under the Chapter 1206  
12          Subsection 20, "Special Conditions for  
13          Cemeteries," it does say in 2 -- Section 2, it  
14          says that "There shall be no crematorium on  
15          the property." And I mention that again  
16          because I think it goes to your argument -- or  
17          your discussion, Mr. Lehman, about whether or  
18          not you can have a portion of a -- of a prior  
19          nonconforming use which is discontinued,  
20          whether or not you have to -- can address that  
21          individually or you have to address the bigger  
22          issue of a -- of the whole property, and I  
23          think that section goes to the -- goes right  
24          to the merits of that.

25          The new -- the new regulations clearly

1 identify that you can't have crematoriums when  
2 you have a conditional use cemetery, it  
3 clearly states that. So it's important enough  
4 to put it in that -- that you can't -- you can  
5 no longer do that. So if you do it before and  
6 it appears as though that you discontinue it,  
7 you have -- you can't do it again and --  
8 because it's clearly delineated -- if they  
9 didn't talk about that in particular, I could  
10 understand your -- your logic on that. But  
11 since it is specifically identified, I think  
12 it -- there are delineations within the prior  
13 special use and conditional use.

14 Second thing is the prior use was by the  
15 old owner, they're the ones that ran a  
16 crematorium. Now, they intended -- and  
17 there's no doubt that they intended to stop  
18 because they removed all their equipment, they  
19 took it all out. Not only did they intend to  
20 remove it and discontinue it, it became  
21 impossible at that point to continue because  
22 Mr. Roman bought the property, the gas lines  
23 that go to where the crematorium -- where they  
24 want to re-establish it right now go through  
25 Mr. Roman's property, and he's -- he's cut

1           those gas lines off.

2           The -- the hoods or the chimneys that are  
3           where they normally run the chimneys are on  
4           Mr. Roman's property. So they could not have  
5           manifested any intent to continue, the  
6           subsequent owner, the Friends of the Pet  
7           Cemetery, because they had no -- they had no  
8           means to do it. They had no gas, they had no  
9           chimney and they had no oven.

10          So their subjective intent here is nothing  
11          more than them coming here today saying, "We  
12          wanted to" or "We intended to." I don't think  
13          that's what -- I don't think that's what the  
14          abandonment statute goes to. They removed the  
15          equipment necessary to do the -- the prior  
16          owner remove the equipment, then it became  
17          impossible.

18          MR. LEHMAN: Well, how do you know there  
19          wasn't maybe an intent, because it's all  
20          hearsay since they're not here and we can't  
21          cross them. How do we know there wasn't an  
22          intent for them to modernize it?

23          And we have not heard testimony from the  
24          equipment manufacturer, but maybe their intent  
25          was more modern equipment that's more suitable



1           in a town like ours or something with possibly  
2           less pollution or whatever, you know, and then  
3           simply because of the foreclosure and  
4           unforeseen circumstances beyond their control  
5           weren't able to do that. This is a  
6           hypothetical -- I guess it is hypothetical as  
7           your --

8           MR. PATRICK: Well, I think it goes back  
9           to the prior owner. The owner who had the  
10          conditional use of the cemetery under their  
11          ownership discontinued, there is no doubt  
12          about that. They removed the equipment, they  
13          had no ability to go forward. The new owner  
14          has not ever -- has not ever done any type of  
15          crematorium activity here. So they would --  
16          they are basically coming into the whole thing  
17          anew, and that's not a continuation, that's  
18          not an intent to continue, that is a brand-new  
19          enterprise and operation because the old owner  
20          yanked the equipment.

21          I understand and I applaud Mr. Kalk on  
22          his -- on his presentation, I understand that  
23          he is employing the sympathy here. And I can  
24          see the sympathy, I have pets myself, I buried  
25          them in my backyard. I can understand --

1           MR. LEHMAN: I wonder about whether that  
2 was -- I did not do that with my dog that  
3 passed away last year, but I wondered earlier  
4 if that's legal or not.

5           MR. PATRICK: I probably violated the law.

6           But in any event, I understand that. I  
7 understand that they're trying to do that, but  
8 that doesn't -- that has really no bearing on  
9 whether or not they discontinued the use.

10          How they fund their organization could be  
11 a lot of ways. And to say "We want to do it  
12 through a crematorium" when it's been  
13 discontinued is -- is a good ploy, but I don't  
14 think that's what the regs of the City  
15 require.

16          So having said that, I believe that  
17 Mr. Roman has photographs for you.

18          Did you --

19          MR. LEHMAN: I believe we received those  
20 on Monday, and I believe the Plaintiff  
21 received -- or applicant, I should say.

22          MR. PATRICK: Yeah. And what I would like  
23 to address --

24          MR. LEHMAN: Sure.

25          MR. PATRICK: -- if I could, is the

1 next-door neighbor now, and there is  
2 significant litigation pending.

3 MR. LEHMAN: It's more than pending, it's  
4 in process.

5 MR. PATRICK: It is -- it is in process.

6 And where they want to put this  
7 crematorium, also, is in the barn, which is  
8 the whole focus -- or a large amount of the  
9 focus of the litigation. It's right down the  
10 middle of the barn. So this is really  
11 problematic if you grant this, if you grant  
12 this appeal. As you know, what's happening --  
13 and we have to get an injunction and have it  
14 prevented from being put in. I mean, it's  
15 just a mess, and so I'm not sure you want to  
16 step into that.

17 In any event, I -- I appreciate your time,  
18 and thank you.

19 MR. LEHMAN: Certainly.

20 And of course, after Mr. Roman is done, we  
21 might have some questions and/or the applicant  
22 may want to follow up with you, too.

23 MR. ROMAN: Okay. I'm John Roman, I'm the  
24 property owner just to the north of the pet  
25 cemetery.

1                   And I had sent an email to Mrs. McMaster  
2                   and I think she sent it to you, but I have  
3                   better pictures than the email. I was having  
4                   lots of trouble getting the email to take the  
5                   picture size. So --

6                   MR. LEHMAN: We can certainly do that.  
7                   Do you have multiple copies?

8                   MR. ROMAN: Yeah, I do.

9                   MR. LEHMAN: Okay. Let's make sure that  
10                  we get one into the record that's more  
11                  visible.

12                  MR. ROMAN: If it wasn't obvious in my  
13                  email, I am against them having permission to  
14                  start up -- or restart and run a crematorium.

15                  When I bought the property, I was well  
16                  aware of the cemetery next-door and the  
17                  operations going on. I was also aware -- as  
18                  you can see in some of the photographs right  
19                  after that red tab, there's a nice panoramic  
20                  that I took February of 2014 right after I  
21                  submitted a -- and I think it was approved --  
22                  or accepted my purchase offer. I took a  
23                  picture of the property and you can see it is  
24                  empty.

25                  The barn there. There is a brick chimney

1 to the right, and that is entirely on my  
2 property. The majority of the barn is on my  
3 property. And you can see some wheelbarrows,  
4 that is the extent of the equipment that the  
5 cemetery folks had stored in the barn.

6 (Indicating)

7 As I mentioned in my email, there is some  
8 ongoing litigation where we are trying to get  
9 the Courts to declare that I am the full owner  
10 of the barn. So the property in question that  
11 they're talking about restarting this  
12 crematorium happens to be the barn that I own.

13 If you look at a couple of the other  
14 pictures, there's a few pictures of the  
15 interior barn, again showing virtually nothing  
16 in the barn. A few pipes from the gas line,  
17 it's a -- it looks like about a two-inch line  
18 coming in from the street. (Indicating)

19 And you can also see a picture there where  
20 it was disconnected, and that was disconnected  
21 before I bought the property. It turns out  
22 that the gas service that goes to the barn is  
23 listed under my address. So when I contacted  
24 Dominion to get the gas service to the house  
25 that is towards the front of the property,

1           they were well aware of this and they said --  
2           they're telling me that this commercial line  
3           belongs to my property.

4           They did also require me to put in a  
5           residential line, so I have a residential line  
6           for gas coming to the house. There is a line  
7           from the house to the office, and it runs  
8           along the same path as the electric goes to  
9           the barn. So in the barn, the only utilities  
10          there are the gas and electric that come from  
11          my house. There are no -- no other pieces of  
12          equipment that were there when I purchased the  
13          house. You saw from your own inspection -- I  
14          think Mr. Drew went out there and there is  
15          really nothing there today. And the same goes  
16          for the office building, which is the brick  
17          building towards the front.

18          If you look at the aerial view where the  
19          red tab is -- so that's the satellite view --  
20          that just gives you an idea of the close  
21          proximity of the cemetery operations to my  
22          property.

23          Again, I knew the cemetery was there,  
24          there's no denying that, when I bought the  
25          property, and it was a very quiet and peaceful

1 park-like setting.

2 MR. LEHMAN: You didn't read Steven King's  
3 Pet Cemetery before --

4 MR. ROMAN: I did get the movie, it's a  
5 terrible movie. It didn't scare me off. I  
6 also checked Walking Dead. And only humans  
7 come back as zombies, so I'm okay.

8 MR. LEHMAN: All right.

9 MR. ROMAN: But you can see I drew in a  
10 line, so that's my line based on the survey  
11 that was actually done by the pet cemetery  
12 showing exactly where the property line is and  
13 the close proximity of my brick building,  
14 which I plan to use as a workshop some day  
15 once all my lawsuit is settled, the -- the  
16 close proximity to their drive.

17 So the question I have is maybe not the  
18 fumes -- and they brought the manufacturer of  
19 the ovens to show it -- to tell you how quiet  
20 they are and how they don't omit any fumes,  
21 but I am worried about the traffic. So in a  
22 article, I believe -- I had quoted it in my  
23 email, I think it was from 1999 -- or 2009  
24 rather, they talk about 75 cremations a week.  
25 So imagine traffic of either veterinarians

1 bringing that or people -- you know, a truck  
2 pulling up and cremating those in the ovens  
3 every week.

4 So I don't believe -- I don't know what  
5 their intent is, what the business plan is,  
6 but in order to make money you have to have a  
7 certain volume of cremations, and I believe it  
8 will extend beyond just a few burials that  
9 they have each year in the cemetery.

10 So I'm very concerned about the traffic  
11 and the close proximity because of strangers  
12 coming and pulling up the next-door neighbor's  
13 drive looking in my barn, looking in my office  
14 and even back in my house.

15 There is -- I did provide and I think you  
16 read the Complaint where they talk about the  
17 valuation of the building and they said it was  
18 zero dollars for the barn -- or actually for  
19 any building on the property. So for them to  
20 claim that they now own the barn after not  
21 paying taxes all these years is kind of  
22 ludicrous and self-serving. And you can see  
23 that it has their signature on the blue tab, a  
24 couple pages back there highlighted in yellow,  
25 their signature and where they've got the



1 value of the property dropped to \$6,000 with  
2 no value of the land.

3 And I know we're not here to debate  
4 whether I own the building or not, whether I  
5 own the barn or not, the whole barn or half  
6 the barn, but since that's the building in  
7 question I did provide a copy of the tax  
8 record here that shows, number one, that I own  
9 the entire barn on the second page of that tax  
10 record. If you look looked at the 13 --  
11 1,344 square feet of the building, it's  
12 described as a pole building, that's exactly  
13 the square footage of the building, and it's  
14 described there entirely on mine. If you look  
15 at the tax record that they've provided, there  
16 is no building on their tax record.

17 I will also point out that the buildings,  
18 the brick building as well as the barn, are  
19 classified as residential by the county, so  
20 any future use as a commercial operation would  
21 have to come, I assume, back here to get  
22 conditional use or whatever it is called to --  
23 for them to operate it.

24 And then the last page I have highlighted  
25 the section in the conditional use standards

1 of the regulations specific for cemeteries,  
2 and I highlighted in red -- I think it's what  
3 Mrs. Lane and Mr. Drew were referring to --  
4 where they specifically say there shall be no  
5 crematorium on the property, so maybe that is  
6 for the next section of the meeting if you  
7 decide that they have continued for the past  
8 couple years and have to apply again. But  
9 it's very clear that the intent of the  
10 conditional use standards was not to allow  
11 crematoriums on the cemetery property, and, of  
12 course, it does include pet cemeteries in all  
13 these definitions.

14 I mentioned the electric and the gas  
15 coming from my house. I will also point out  
16 that there are no restroom facilities on the  
17 cemetery site so the people coming to visit,  
18 the people coming to work, I have no place  
19 to -- to use facilities, so I would assume  
20 whoever is operating this future crematorium  
21 if it does get potentially approved would also  
22 have a place to do whatever they have to do.  
23 I do see some of their workers and some of  
24 their visitors walking out of the woods I  
25 think after relieving themselves or taking

1           care of whatever they have to take care of.  
2           And as a neighbor, I don't like that. It's  
3           all on their property thankfully, but I don't  
4           appreciate that, even if it is on a 10-acre  
5           property next-door.

6                   MR. LEHMAN: Thank you, Mr. Roman.

7                   Any questions?

8                   MR. DREW: I have a couple questions.

9                   I know from past situations -- we're  
10           looking at the satellite photo, do you believe  
11           that this red dotted line is accurate for the  
12           property line, not to the inch --

13                   MR. ROMAN: Yes, I do. I think that's  
14           more accurate than if you look at the -- the  
15           county maps. This is based on a survey marker  
16           that -- it was a survey that the cemetery had  
17           done.

18                   After I made my purchase offer, I believe,  
19           and before I closed on the house I saw all the  
20           survey markers and I lined them all up, and it  
21           kisses -- basically it goes right next to that  
22           brick building and cuts the barn slightly  
23           less -- less than half on their side and  
24           slightly more than half on my side. So I do  
25           believe that is very accurate.

1           MR. DREW: So you purchased the house --  
2           and you have this labeled as office, but what  
3           I'll call the middle building is entirely on  
4           your property.

5           MR. ROMAN: Correct.

6           MR. DREW: And then, again, there may be a  
7           dispute in the litigation, but you own at  
8           least half of the land underneath the pole  
9           building?

10          MR. ROMAN: That's correct.

11          MR. DREW: And I want to clarify, I  
12          noticed on your cover letter you listed an  
13          address from Hollis Boulevard.

14          MR. ROMAN: Yes. So the property on  
15          Walter Road is property I bought with my wife,  
16          so it's in our name. We reside on Hollis. We  
17          have several properties in Hudson. This one  
18          we bought and fixed up the house. My son  
19          Vince, who is in attendance here, is living on  
20          the property and enjoying it.

21          MR. DREW: Thank you.

22          MR. ROMAN: Any other questions?

23          MR. LEHMAN: Thank you.

24          MR. ROMAN: Thanks.

25          MR. LEHMAN: Anyone else in the audience

1           who wants to speak?

2           Do you want to rebut or redirect or ask  
3           anything?

4           MR. MEAGER: I have a quick -- I'll make  
5           just a quick -- couple quick points.

6           Just that definition of cemetery is  
7           disposition of remains and cremation is a form  
8           of disposition, so we were treating them the  
9           same. I think this is an aspect of burial,  
10          just disposition of remains. And it's not  
11          segregated from, it's the same. It will be  
12          offered as a complete package of the cemetery.  
13          It just so happened that the prior owners  
14          removed the ovens for financial reasons. It  
15          was not to my client's knowledge, he took it  
16          over and he was intending to put it back on.

17          And then with respect to the prior  
18          nonconforming use, that runs with the land, it  
19          does not terminate just because somebody lost  
20          it in foreclosure or somebody sold it. So the  
21          fact the use was a prior nonconforming use  
22          runs with the land, it ran to my client.

23          A couple other things is traffic, I  
24          don't -- I brought Ron, maybe he can make a  
25          couple comments specific to the traffic. How

1           these cremation service is actually handled,  
2           it's a delivery service. Two or three times a  
3           week they bring in animals for cremation.  
4           It's not every person who has an animal comes  
5           in and brings it and has it cremated.

6                   And there was a Porta-Potty on the  
7           property, it's removed every winter. So  
8           that's why -- I don't know -- there are  
9           restrooms on the property when it's visited by  
10          people.

11                   And as for the barn -- I didn't put this  
12          in my presentation, but I want to make the  
13          Board aware, the idea that we're trying to  
14          seek here is just approval that has conditions  
15          attached to it. We understand there is  
16          litigation going on with the barn and the  
17          other property. What we're saying is if you  
18          allow us to reinstate our -- our cremation  
19          service on the property, we have now means to  
20          go forward with confidence that we spend the  
21          money and we solve those conditions, that we  
22          can reinstate the cremation services and  
23          generate income for the property. Some of  
24          those options includes purchasing Mr. Roman's  
25          property from him, purchasing a portion of the

1 property that deals with the pet cemetery use  
2 restriction which is the office and the  
3 10-linear feet that goes all the way back  
4 about three acres and includes the barn, or  
5 relocating the barn. I have contacted  
6 Mr. Roman's Attorney and asked him if his  
7 client is interested in purchasing. We have  
8 not come to a number and he has not submitted  
9 an offer.

10 I believe that if we get approval from  
11 this Board based on the condition that we  
12 either purchase the property, relocate the  
13 crematorium, that my client has incentive now  
14 to put the money into a survey, to put the  
15 money into installing a gas line, put the  
16 money into developing plans to come back and  
17 forth -- to come back in front of the Board  
18 and say, if we have to relocate the  
19 crematorium, here's the plans. That way, once  
20 we put that money into it, there is not an  
21 issue about whether the cremation can exist.  
22 If we get crematorium -- permission to have a  
23 crematorium if we meet these certain  
24 conditions, then we can spend the money and  
25 have confidence that that money is not going

1 to be wasted.

2 So I would ask the Board that, even if  
3 they decide to vote in our favor, that they do  
4 place conditions on this because I realize  
5 litigation may cause some concern.

6 Thank you.

7 MR. LEHMAN: Thank you.

8 Do we want to hear from the crematorium  
9 manufacturer? I don't think that really  
10 addresses our --

11 MR. DREW: No. I think the first issue is  
12 strictly the discontinuance of the cremation  
13 service.

14 MR. LEHMAN: Has all parties, at least  
15 with respect to the first issue before us,  
16 entered all evidence and got their say to  
17 their satisfaction?

18 Then we'll finish, close the public part.

19 Now occasionally as we go through the  
20 discussion on this we may reopen it just a  
21 little bit to clarify some questions or  
22 something, but generally that takes care of  
23 it.

24 MR. DREW: Mrs. Lane, I wonder if you  
25 could help us on the type of motion that we



1           have here. This is different than a typical  
2           area variance that we have and we use the  
3           Duncan Factors. I don't know that the Duncan  
4           Factors apply, at least in this first --

5           MRS. LANE: Actually, the Duncan Factors  
6           wouldn't apply in either instance this  
7           evening. So the Board would be making a  
8           motion to either grant or deny the appeal.

9           MR. LEHMAN: But do you have to show  
10          reasons or --

11          MRS. LANE: You should state some reasons.

12          I think your task is generally whether or  
13          not Mr. Richardson came to the correct  
14          conclusion in determining that the crematory  
15          use had been voluntarily discontinued on the  
16          property, so it would be appropriate to state  
17          some reasons why you agree with that or do not  
18          agree with that conclusion with your motion.

19          MR. LEHMAN: So the way that it would be  
20          worded then is it would be a motion to uphold  
21          the Director's decision or --

22          MR. DREW: Affirm.

23          MR. LEHMAN: Is it uphold or affirm?

24          MRS. LANE: I see it in terms of granting  
25          or denying, but it could be affirming the

1           appeal or denying the appeal.

2           MR. LEHMAN: Oh, not his decision, it's  
3           the --

4           MRS. LANE: I'm sorry. You're making the  
5           decision, right, on -- on the appeal.

6           MR. DOHNER: So you are either granting  
7           the appeal or denying it?

8           MRS. LANE: Granting it or denying it.

9           MR. LEHMAN: Okay. Thank you.

10          MR. WAGNER: I guess I'm still confused.

11                 Is the operation of the crematorium  
12           portion of the pet cemetery coexisting with  
13           the operation of the pet cemetery? In other  
14           words, do they -- and it's really coming to  
15           the discussion that we had earlier, are the  
16           two necessarily intertwined?

17                 As the point was made before, cessation of  
18           a portion of that nonconforming use, is that  
19           the only part that is being terminated and  
20           that the continuation of -- because they did  
21           continue to have pet burials, so that's always  
22           been continued ever since the Forties,  
23           whenever it started, at least according to  
24           testimony we have here. The only thing that's  
25           been terminated was literally the cremation

1 component.

2 And it begs my question: Are the two  
3 intertwined to where they can't be separated?

4 MR. LEHMAN: Well, I would say that if one  
5 comes to the conclusion that they're  
6 intertwined, then you're more likely to  
7 support the applicant. If one views them as  
8 each standing separately, then you would  
9 probably accept Mr. Richardson's position.

10 MR. WAGNER: Correct.

11 MR. DREW: And I'm of the opinion that  
12 they are separable and that the cemetery,  
13 whether it's human or pet cemetery, is  
14 conditionally permitted, but one of the  
15 specific conditions is cremation is not  
16 permitted. So the cemetery is conditionally  
17 permitted, it's only cremation service that's  
18 in question. And think they -- they're  
19 perfectly viable to --

20 MR. WAGNER: That's what I think.

21 MR. DOHNER: I buy that.

22 MR. LEHMAN: Well, do we have a motion  
23 or --

24 MR. DREW: I think I'm prepared to make a  
25 motion.

1 MR. LEHMAN: Go ahead, Mr. Dohner.

2 MR. DOHNER: Go ahead with the motion,  
3 I'll have discussion after that.

4 MR. DREW: Well, I move to deny the appeal  
5 of the City of Hudson ruling that the  
6 cremation service at the Boston Hills Pet  
7 Cemetery was voluntarily discontinued as the  
8 equipment was removed prior to 2012. Burials  
9 have continued at the facility, and, in my  
10 opinion, the burial function and the cremation  
11 function are separable. And therefore, the  
12 cremation service was voluntarily  
13 discontinued.

14 For those reasons, I move to deny the  
15 appeal of the City of Hudson's ruling.

16 MR. LEHMAN: Thank you, Mr. Drew.

17 Do we have a second?

18 MR. WAGNER: I'll second.

19 MR. LEHMAN: Thank you, Mr. Wagner.

20 All right. Let's have some discussion  
21 then, Mr. Dohner.

22 MR. DOHNER: I'm listening to our City  
23 Solicitor tonight and -- and the case -- the  
24 cases that -- that she has mentioned, and  
25 decided whether this is temporary and beyond

1           the control of the property owner, did not  
2           make it a voluntary abandonment, and -- and I  
3           think that's what we have here. We have prior  
4           property owner coming in and taking the  
5           equipment. And without any testimony from the  
6           prior property owner -- maybe it was to beat  
7           the bank to the equipment, maybe it was  
8           because the equipment was old, we could  
9           speculate all night long why that was, but it  
10          wasn't for 24 months. There were new property  
11          owners that -- that took over this property  
12          with the intent, in the testimony tonight,  
13          that they wanted to do this, but were unable  
14          to. That takes the voluntary -- the voluntary  
15          away, in my opinion, of the decision to, you  
16          know, not have this service. So I don't think  
17          there's that 24-month period that has gone by  
18          where there is some intent to abandon that.

19                 And I certainly respect what our staff has  
20          said, but I'm -- I'm really looking to what  
21          Counsel has shared with us tonight on how the  
22          Courts sometimes look at what voluntary  
23          abandonment is. And if it's something beyond  
24          the control of the property owner, such as new  
25          property owners here, I don't think it was

1           voluntary. And I think that, you know, the --  
2           the cessation of that was not their decision.  
3           And maybe it would have started, who knows,  
4           had the equipment not been removed by the  
5           prior property owner, but certainly that was  
6           the testimony tonight, that it would have  
7           started sooner had the funds been available.  
8           So I don't think there was a voluntary  
9           abandonment that -- for the requisite length  
10          of time.

11                 For what it's worth, I don't buy the  
12          argument that a substantial portion of the  
13          equipment was removed. I think it certainly  
14          was, it would fit the evidence.

15                 But for that reason, I would vote to grant  
16          the appeal, not deny it.

17                 MR. LEHMAN: Mr. Jahn, do you want to --

18                 MR. JAHN: I concur.

19                 MR. LEHMAN: And I kind of felt -- I think  
20          I concur with your argument, too.

21                 MR. DREW: Well, I better speak up to  
22          defend my position.

23                 I think -- I think the change in ownership  
24          isn't really relevant. I think the former  
25          owner and operator that had been operating the

1           pet cemetery for maybe 50 or 60 years had a  
2           cremation service and had they continued, it  
3           wouldn't be an issue, but they stopped, they  
4           voluntarily stopped. Now, maybe it was  
5           voluntary and under duress of a bank and  
6           financial issues. I think we need to look at  
7           one -- one of the conditions of the operation  
8           of a cemetery is financial solvency. I think  
9           the City doesn't want to be burdened with an  
10          abandoned cemetery, whether it's human or pet.  
11          And I think that the statement that the new --  
12          the current owner wants to use that for  
13          financial reasons isn't relevant to the prior  
14          owner voluntarily stopping. They may have  
15          been under duress from the bank, but they  
16          voluntarily stopped. And it's certainly been  
17          24 months, this was -- I think the threatened  
18          foreclosure proceeding was before 2012, four  
19          years. So to me, the operation ceased,  
20          there's no question it ceased and -- and the  
21          choice was that of the former owner.

22                 MR. LEHMAN: I don't think that -- I will  
23          be able to -- the former owner, they're not  
24          here, it would all be kind of hearsay and  
25          speculation.

1           MR. DREW: Well, it's hearsay and  
2 speculation to say that the current owner  
3 would have started within the 24 months if  
4 they could have.

5           MR. LEHMAN: No.

6           MR. DREW: They didn't.

7           MR. LEHMAN: That was the testimony,  
8 that's not hearsay.

9           MR. DREW: But they didn't.

10          MR. DOHNER: You're right, they didn't.

11                 But how is that different from the mine  
12 owner who voluntarily stopped for 20 years  
13 mining and then came back to it and the Court  
14 said that wasn't voluntarily abandonment?

15          MR. DREW: To me, that was different in  
16 that I presume there at least has been some  
17 need for cremation. Pets have continued to  
18 die over these last 10 years and people obtain  
19 the service somewhere else.

20                 I think that was a very unique case where  
21 the mine was serving a specific factory,  
22 one -- all their output was going to one  
23 place. Here was an operation -- and to me,  
24 it's a quasi-industrial operation in a  
25 residential neighborhood. A cemetery is



1           pretty benign. I mean, I went out there to  
2           visit, they've done a very nice job of  
3           maintaining, everything looked nice, it was  
4           mowed, it was well maintained.

5           MR. LEHMAN: And --

6           MR. DREW: But a cremation service -- is a  
7           cremation service is much different. This is  
8           almost like a factory operation. And I think  
9           it's an unfair burden, not just to Mr. Roman,  
10          but any of the other neighbors on that purely  
11          residential street to have an industrial  
12          cremation service in a residential district.

13          And I think you're wrong to try and  
14          justify and come up with a justification for  
15          permitting that to continue on the point of  
16          whether or not it was voluntary. It --

17          MR. LEHMAN: But that goes right to the  
18          heart of the codist who we're -- who were  
19          being respectful to the Code.

20          But you pointed out -- and that was a  
21          little emotional, you know, seeing the -- all  
22          the markers and flowers and some of the other  
23          symbolism and stuff. But I think we've heard  
24          testimony that to be able to keep that level  
25          of a memorial that would -- that the City

1           would desire, residents in the City,  
2           reinitiating the cremation services would be  
3           an essential link to the cemetery to be  
4           successful.

5           MR. DREW: Let's go back and re-read the  
6           nonconforming uses. It's the general policy  
7           of the City to allow nonconforming uses,  
8           structures to continue to exist to be put to  
9           productive use. And to me, the cemetery is  
10          still in productive use. However, it's the  
11          general policy of the City to bring as many  
12          aspects, "as many aspects," of such  
13          nonconforming use into conformity with the  
14          Code. And it's clear that if someone wanted  
15          to start a new cemetery, even though it's  
16          conditionally permitted, they could not have a  
17          cremation service. And it states right here  
18          that our job is to try and bring -- it's the  
19          general policy of the City to bring as many  
20          aspects of such nonconformities into  
21          conformance with the Code. It boils down to  
22          that one sentence.

23          MR. LEHMAN: I think that your argument  
24          would be better stated when we're in the  
25          second phase, if we go to the second phase.

1           If the first one fails and we move to two,  
2           then your argument would clearly be no on two,  
3           but I don't think that that's appropriate -- a  
4           successful argument for one.

5           MR. WAGNER: I'm not sure I completely  
6           agree with that because --

7           MR. LEHMAN: But you had to think about it  
8           for a moment.

9           MR. WAGNER: No, I -- I don't disagree  
10          there, which I think is the value of having  
11          stimulating conversation, you know, directed  
12          to, you know, esoteric points to be quite  
13          honest.

14          Even if I concede your point, which I will  
15          do only for -- for discussion purposes,  
16          there's no ability unless the lawsuit goes a  
17          certain way for the pet cemetery to ever put  
18          anything. Even if they decide to move that  
19          building, physically lift it off its  
20          foundation and put it somewhere else, I don't  
21          think you can then grandfather in the  
22          nonconforming use. You shift the location,  
23          that becomes a moot point, that becomes a new  
24          cemetery then.

25          MR. LEHMAN: That's an interesting

1 question because it's -- I wondered that  
2 myself on -- because it just kind of goes with  
3 the land. But if you change the building or  
4 add another building, as long as you were to  
5 be continuing it -- if the cemetery said,  
6 okay, we'll give up that pole barn and we'll  
7 build our own if we get this approved --

8 MR. WAGNER: I don't think that would be  
9 permitted.

10 MRS. LANE: I think it -- I think that --  
11 and, actually, one of the discussions with the  
12 pet cemetery was if you're going -- if this  
13 use would be permitted, the -- we have an  
14 issue obviously with this building crossing  
15 the property line, and it would be the City's  
16 preference actually to have that building  
17 moved to be in conformance with the setback  
18 requirements.

19 MR. WAGNER: Moved or built brand-new.

20 MRS. LANE: Right.

21 MR. LEHMAN: But they can't move it if  
22 they don't own it, so they'd have to build a  
23 new one, but the new one wouldn't be subject  
24 to any different ruling than what  
25 Mr. Richardson already considered and for us

1 to affirm or deny.

2 MRS. LANE: And this goes to the second --  
3 I think this goes to the second issue tonight,  
4 which is expansion of the nonconforming use.  
5 It doesn't -- an expansion of a nonconforming  
6 use doesn't mean it has to take place in the  
7 exact same building or the exact same location  
8 where that building is currently. It just  
9 happens that -- you know, not all expansions  
10 of nonconforming uses involve resuming a use  
11 that was previously existing at the property.

12 MR. WAGNER: I suppose you could make the  
13 analogy to American Fireworks. But at the  
14 same time, they own that property, that entire  
15 piece of property they owned, so the expansion  
16 there was within the confines of their  
17 property.

18 MRS. LANE: Right. And I think that's why  
19 the applicant has said that they would accept  
20 a conditional approval, because it's my  
21 understanding they are trying to work out an  
22 arrangement where that building would --  
23 either both parcels would be under common  
24 ownership and all used jointly or a portion of  
25 the neighboring property would be purchased

1           and then essentially consolidated into one lot  
2           for the use.

3           MR. LEHMAN: I also think that doing -- I  
4           mean, Mr. Roman would be against us doing this  
5           I presume, but I don't think this harms their  
6           civil litigation. If he's successful at that,  
7           then this becomes somewhat -- if it does  
8           anything, maybe it would give the Association  
9           a better chance of surviving as an entity, to  
10          provide it a way to maintain the property in  
11          perpetuity.

12          MR. DREW: It's not our job to give them a  
13          means to fund their operation.

14          MR. DOHNER: Nobody is suggesting that.

15          MR. DREW: Absolutely Mr. Lehman is.

16          MR. DOHNER: We're not looking to fund it,  
17          we're just looking for what -- for the intent,  
18          was there intent to abandon this?

19          MR. DREW: Well, I think there was.  
20          Again, it may have been the former owner, but  
21          it was abandoned and it certainly has been  
22          more than 24 months.

23          MR. LEHMAN: They took it over before the  
24          24 months was up.

25          MR. DREW: I'm not sure that's relevant.

1           MR. LEHMAN: Well, it is because the  
2           question would be when -- as they were going  
3           through their process of redoing it, it just  
4           took them more than 24 months to get us now  
5           where we are, but --

6           MR. DREW: Again, read the Code. If a  
7           nonconformity is voluntarily discontinued for  
8           a period of 24 months. It doesn't say  
9           anything about a change the owner --

10          MR. LEHMAN: The prior --

11          MR. DREW: Voluntarily discontinued, and I  
12          think the former owner voluntarily  
13          discontinued and --

14          MR. LEHMAN: Even as --

15          MR. DREW: Let me finish, please.

16          MR. LEHMAN: Sure.

17          MR. DREW: It goes on to state that  
18          discontinuation of a nonconforming use may be  
19          indicated by non-use and removal of  
20          stock-in-trade or equipment, which they did.

21          Now what I was referring to earlier  
22          related to segregating the cremation function  
23          from the burial function. And -- and we don't  
24          need to argue about the burial function, it's  
25          strictly the cremation function. And to me,

1           those are clearly two separate -- two separate  
2           things. And it even states in the Code, if  
3           someone wanted to start a new cemetery,  
4           conditionally they could, but they could not  
5           have cremation service.

6           To me, the issue here is that the former  
7           owner voluntarily gave up that service, this  
8           is an industrial use in a residential  
9           neighborhood, and it's gone. We're trying to  
10          bring nonconforming use into conformity,  
11          that's what it said -- the very heading of  
12          this whole section. The City needs to  
13          ultimately bring nonconforming use into  
14          conformity. And you're trying to make  
15          excuses -- you're trying to make excuses to  
16          let them continue or restart this operation  
17          that's been gone for four years.

18          MR. ROMAN: Mr. Chairman, may I make one  
19          quick statement?

20                 You allowed that earlier.

21          MR. LEHMAN: We're closed, sorry. Sorry.

22                 Could we have a vote, please?

23                 And remember, in this case, the vote is to  
24          deny the applicant's appeal. So a "Yes" means  
25          you're denying it and supporting the City, and



1 a "No" would mean you're rejecting this  
2 motion. And if the noes were to carry, then  
3 we'd have to have another motion.

4 Okay.

5 MRS. WESTFALL: Mr. Jahn.

6 MR. JAHN: No.

7 MRS. WESTFALL: Mr. Drew.

8 MR. DREW: Yes.

9 MRS. WESTFALL: Mr. Dohner.

10 MR. DOHNER: No.

11 MRS. WESTFALL: Mr. Wagner.

12 MR. WAGNER: Yes.

13 MRS. WESTFALL: Mr. Lehman.

14 MR. LEHMAN: No.

15 So we have three noes and two yeses, which  
16 means the motion failed.

17 Now we have to attempt to create another  
18 motion, and perhaps one of the people that  
19 turned the motion down would like to create a  
20 new motion.

21 MR. DOHNER: Mr. Chairman, I'm ready to  
22 make a motion.

23 MR. LEHMAN: Thank you, Mr. Dohner.

24 MR. DOHNER: I move that we grant the  
25 appeal of the City's determination in this

1 matter for the reasons that were already  
2 stated in the discussion, that it is the  
3 voluntarily abandonment -- if there was  
4 voluntary abandonment, it certainly was not  
5 for the 24-month period, and the testimony  
6 tonight was that the applicant has acted on  
7 this when they were able to try to reinstate  
8 the -- reverse the actions of the prior owner  
9 and reinstate the cremation services.  
10 Therefore, I don't believe there is a  
11 voluntary abandonment of the crematorium and  
12 services from being performed in that regard  
13 for the 24-month period, and I would grant --  
14 move to grant the appeal.

15 MR. LEHMAN: Mr. Jahn.

16 MR. JAHN: I concur.

17 MR. LEHMAN: You second the motion?

18 MR. JAHN: I second the motion.

19 MR. LEHMAN: All right. We have a motion,  
20 we have a second.

21 The new motion in the opposite direction.

22 Any discussion?

23 MR. DREW: Well, I doubt that I'm going to  
24 sway a vote here, but I think you're wrong and  
25 I think you're making the wrong determination.

1           I think we might be better served to walk  
2           down the second path and decide whether or not  
3           this should be permitted. To me, the -- the  
4           operation stopped, I think it's not an  
5           appropriate operation for a residential  
6           neighborhood, and I think we would be better  
7           off to either forgo or -- forgo this motion  
8           and let's walk down the second path and make a  
9           determination of whether or not a  
10          crematorium -- a pet crematorium is  
11          appropriate for this property.

12          MR. LEHMAN: I think your comment is well  
13          taken and I appreciate it, but it's not what's  
14          before us. That places us in a -- kind of an  
15          altered judicial position because all that  
16          we're merely asked to do is uphold or deny the  
17          City's decision, which was separate from all  
18          the other things that may came out.

19          Furthermore, as I indicated in the  
20          preamble at the beginning, there's a lot of  
21          other things tied in with this. Maybe nothing  
22          will come out of what we did tonight, maybe it  
23          will help bring the parties together. I don't  
24          think this will hurt the neighbor as much  
25          as -- he's probably not happy with this, but I

1 believe that it will help overall achieve a  
2 result we want -- that the City and residents  
3 would like for both properties respectively.

4 Anybody else want to add anything?

5 Let's have the vote.

6 This is a motion that grants the appeal  
7 and overturns the decision by the City on  
8 the -- whether there was a discontinuation.  
9 So a "Yes" will do that, a "No" will be  
10 against granting the appeal.

11 Could we have the vote, please?

12 MRS. WESTFALL: Mr. Wagner.

13 MR. WAGNER: No.

14 MRS. WESTFALL: Mr. Dohner.

15 MR. DOHNER: Yes.

16 MRS. WESTFALL: Mr. Jahn.

17 MR. JAHN: Yes.

18 MRS. WESTFALL: Mr. Drew.

19 MR. DREW: No.

20 MRS. WESTFALL: Mr. Lehman.

21 MR. LEHMAN: Yes.

22 Well, we have three yeses, so the appeal  
23 has been approved. And so as a result of that  
24 there is -- the second half of the case  
25 becomes moot.

1 I thank everybody for actually -- you  
2 know, how well we were able to treat each  
3 other, even among ourselves, and get to the  
4 technical aspects of your equipment.

5 And good luck in, you know, solving the  
6 other aspects.

7 As a City resident, I don't like intercity  
8 squabbles, so I hope you can come to some  
9 other conclusions, and maybe this will help.

10 So we have just --

11 MRS. LANE: Mr. Lehman, I just have one  
12 comment for the pet cemetery folks. Just that  
13 if that building would be relocated and used  
14 for cremations, it would require a zoning  
15 certificate from the Community Development  
16 Department.

17 MR. MEAGER: Thank you.

18 MR. PATRICK: Just for clarification, is  
19 it your intent to put the crematorium in the  
20 existing building? Is that what you're --

21 MR. MEAGER: I think it's more or less  
22 they're giving us time to work it out.

23 MR. PATRICK: Because that's really  
24 problematic.

25 MRS. LANE: I believe it's just up to the

1                   pet cemetery to decide that.

2                   MR. LEHMAN: You guys still have a lot of  
3                   stuff to work out, but this at least will  
4                   hopefully help more than it hurts.

5                   MR. PATRICK: I seriously doubt that.

6                   Okay. Thank you.

7                   MR. LEHMAN: Certainly.

8                                   - - -

9                   (Proceedings concluded at 9:34 o'clock, p.m.)

10                                  - - -

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

STATE OF OHIO,)  
                  )SS:  
SUMMIT COUNTY.)

I, Susan M. Petro, a Notary Public, certify that I  
attended the foregoing Proceedings in their entirety, and  
that I wrote the same in stenotype, and that this is a  
true and correct transcript of my Stenotype notes.

---

Susan M. Petro, Notary Public  
in and for the State of Ohio.  
My commission expires May 7, 2017.

- - -

