DUNMORE BOROUGH PLANNING COMMISSION

HELD: Thursday, September 5, 2019

TIME: 7:00

LOCATION: Dunmore Borough Building
400 South Blakely Street
Dunmore, Pennsylvania

COMMISSION MEMBERS:
AL SENOFONTE, CHAIRMAN
THOMAS PICIARELLA
GERARD MICHAELS, SECRETARY
BETH ZANGARDI
GARY DUNCAN
JOSEPH GROCHOWSKI
JOSEPH PINTO
MARK CONWAY, SOLICITOR
DAVID LOPATKA, ENGINEER - absent
JOSEPH LORINCE, CODE ENFORCEMENT OFFICER

MARIA MCCOOL, RPR

OFFICIAL COURT REPORTER
(Pledge of Allegiance.)

MR. SENOFONTE: Roll call.

MR. MICHAELS: Mr. Senofonte.

MR. SENOFONTE: Here.

MR. MICHAELS: Mr. Pichiarella.

MR. PICIARELLA: Here.

MR. MICHAELS: Mr. Pinto.

MR. PINTO: Here.

MR. MICHAELS: Mr. Michaels, here.

Mr. Duncan.

MR. DUNCAN: Here.

MR. MICHAELS: Mr. Grochowski.

MR. GROCHOWSKI: Present.

MR. MICHAELS: Miss Zangardi.

Mr. Conway.

ATTY. CONWAY: Here.

MR. MICHAELS: Mr. Lopatka, absent.

MR. SENOFONTE: Old Business,

Dunmore Warehouse Investors, LLP, 100 Keystone Park, commercial land development time extension --

ATTY. CONWAY: Excuse me, Mr. Chairman. That's been continued to next month's meeting, October 2nd, 2019.
Mr. Lorince and I, we've got confirmation letters moving it to October 2nd.

MR. SENOFONTE: New Business.

Keystone Sanitary Landfill zoning ordinance amendment to amend Section 11.185 for the definition of sanitary landfill. This is something that we're going to do be doing in our zoning planning books.

And my question is, do we have anyone that wants to discuss this topic? Is there any questions before we make a vote on it?

ATTY. BELARDI: Allow me to introduce myself, Attorney Jeffrey Belardi on behalf of Keystone Sanitary Landfill here with my co-counsel David Overstreet. And we're here to answer any questions if there are any. Just let us know what you want to hear. And we're prepared. With that, I'll let you get back with the meeting.

But last time there was some confusion with regard to us being an applicant or petitioner. I just want that on the record. And we'll answer anything you have.

MR. SENOFONTE: Planning Commission,
I'm sure we all looked over the amendment and
do we have any questions? Does anyone have any
questions?

ATTY. CONWAY: Mr. Chairman, before
we get started, let me just say something
because we were here last -- a couple months
ago and we denied it because no one was here
from the landfill.

The way this was set up is the
Applicant has filed an application with the
Borough. And it went before Council in some
way. And they said let's let the Planning
Commission look at it. So they referred it to
us to review.

As the Board knows, we're a
recommending body. We can recommend it to
Council or not recommend it to Council.

MR. SENOFONTE: Right.

ATTY. CONWAY: So that's what our
job is. So we're here to review the proposed
amendment that everyone I know has in front of
them. We discussed that before we went on the
record.

So the Applicant is here.

Obviously, there is a full audience here of --
MR. SENOFONTE: That's why I'm asking if --

ATTY. CONWAY: -- of the Borough members. And that would be the next step. I just want to make sure we're all on the same page. And just for the record, Elizabeth Zangardi has appeared.

MR. SENOFONTE: Planning Commission members, before we make a vote, do we have any questions?

MR. GROCHOWSKI: Gary does and I have some.

MR. DUNCAN: I several questions that I would like to present to the members of the Board tonight. Some of the questions also if, Solicitor, if you would be able to help us as well with clarification from my -- for me.

When I went through everything and I did my homework on this, here are some of the questions that I have for you. The case that is still before the Commonwealth Court, is that still pending?

ATTY. CONWAY: The Mercer County case? Well, that's not pending any longer I don't believe. There is an appeal pending.
That's from 2014.

MR. DUNCAN: So has that been resolved that the Commonwealth Court has come to a --

ATTY. CONWAY: Yeah. You have the opinion, correct?

MR. DUNCAN: I thought there was some question about --

ATTY. CONWAY: I don't think there is any subsequent history to that case.

MR. DUNCAN: So there is no decision then, correct?

ATTY. CONWAY: The Commonwealth Court issued a decision, which is what you have.

MR. GROCHOWSKI: I think he meant Lackawanna County Court of Common Pleas --

MR. DUNCAN: Right, the Court of Common Pleas, I'm sorry.

ATTY. CONWAY: I'm sorry. That is still pending.

MR. DUNCAN: And then the next question was the Lackawanna County Regional Planning Commission, have they come to a decision on it?
ATTY. CONWAY: Because of the unsettled law they did not recommend it.

MR. DUNCAN: Okay. Thank you.

MR. SENOFONTE: Is that it, Gary?

MR. DUNCAN: Yes.

MR. GROCHOWSKI: Following up with Gary actually mentioned the first one, I mean, I guess my question to Counsel on both sides would be, you know, number one, Lackawanna County Regional Planning Commission was, number one, they noted the two cases, one was a Lackawanna County Court of Common Pleas case that is currently on appeal I believe pending and the Mercer County which is settled which defines the landfill as a structure.

I would like commentary on that from I guess Counsel on that and how anything we're trying to do here affects what is considered unsettled law in PA in pending litigation. So that would be question number one I'd have and -- yeah, that's my primary question.

ATTY. CONWAY: Is that directed to the Applicant's Counsel? Do you want to address that first and I'll follow up if needed?
ATTY. OVERSTREET: Yeah, sure.

Sure. Thank you. My name is David Overstreet, Counsel for Keystone Sanitary Landfill here with Jeff Belardi. I want to make sure I understand your question. You are asking about the status of the current appeal before the Commonwealth Court?

MR. GROCHOWSKI: So, I guess, from my understanding there is two -- at least from what the Regional Planning Commission provided us says in terms of -- it says unsettled law because there was -- one, there was a court decision from 2014, the Mercer County case. That says a landfill is a structure.

And then they said there's the Lackawanna County Court of Common Pleas case where that is currently still pending in litigation, I believe, and active. So my question is, given this unsettled law in PA, what we do here, how does that affect pending litigation?

ATTY. OVERSTREET: Oh, I see. Well, to say that it's unsettled law in PA is not particularly an appropriate description and I'll tell you why. Each ordinance has its own
terms and conditions. Each municipality has its own terms and conditions. And you have your ordinance.

And so the question is what does this ordinance mean as opposed to what an ordinance in another township may or may not mean. And so I think that we've heard from the Zoning Hearing Board in this township. And we've heard from the Court of Common Pleas in this township. And we've heard from the Borough through its briefs in this township.

And all have concluded the same thing that the building height restrictions in the ordinance do not apply to landfills. That was never the intent. And so what we are trying to accomplish quite simply is to remove any uncertainty about that question because we foresee years of protracted litigation, expensive for all parties involved and quite candidly, we're not asking to change the ordinance.

We're simply asking to make it clear what the Borough had said they always intended. And there was never an intent to apply building height limitations to landfills in the Borough.
And that's sort of the purpose.

And I'm not sure if I answered your question. But that's the best I could explain it.

MR. SENOFONTE: Mr. Grochowski?

MR. GROCHOWSKI: If there is anybody that has questions, I'm just reviewing some notes.

MS. ZANGARDI: I have a question.

So if that was not the intention for the height for any landfill whatsoever across the Commonwealth or is it just with this Borough?

ATTY. OVERSTREET: Well, yes, ma'am. Each borough to the extent it's adopted an ordinance has its own ordinance. And so the question is, what does this ordinance for this borough say? It really -- it could be quite different in another Borough. Right? Another borough could have limits on landfills or not as they choose.

MS. ZANGARDI: However, don't you agree we have to have limits, period, across the Board? We all have to have boundaries. We all have to have restrictions on everything. Wouldn't you agree that it would apply to this
landfill as any other landfill or any other building?

If you're going 50 feet building, why wouldn't you -- and the landfill, let's say is a structure, wouldn't you say the 50 feet applies?

ATTY. OVERSTREET: I'm not sure that I understand the question. You asked do we need to have limits on -- height limits on everything?

MS. ZANGARDI: Correct.

ATTY. OVERSTREET: Okay. Well, I think that's a decision for each municipality to make. You don't even have to have a zoning ordinance. Many municipalities across the Commonwealth do not have a zoning. In fact, the majority of them don't.

And so I think that this township has adopted a zoning ordinance in which they impose limits on certain things as is the prerogative of the governing body. And so they decide what they want to pose limits on.

And in this case, they did not impose limits on sanitary landfills. That's a decision they are free to make or not make as
the case may be. It's a legislative decision. Did that answer your question?

MS. ZANGARDI: Well, my issue -- my question really is, if we have a 50 feet limit and it goes for everything else, why wouldn't it apply to the landfill structure? That's my question. If it's for everything else in this community, why wouldn't -- why would it not apply to the landfill structure?

ATTY. OVERSTREET: And you're probably more familiar with the other provisions of the ordinance than I am. And I didn't think there was a 50 foot limit on everything in the township. Maybe there is. Maybe I misread it.

I thought there was certain limits on certain different things. It was 50 feet certain things and other things have different limits. And there is 50 feet on buildings. I think, maybe certain sizes of buildings, types of buildings.

But the fact is, the question really is as the governing body, did this municipality -- what is it '70 or '72?

ATTY. BELARDI: '79? In 2000 they
adopted both ordinances.

ATTY. OVERSTREET: Did they intend to impose a height limit on landfills and they have answered no. That's what they said to the courts. And that's what we're asking them to clarify by this amendment so we don't have any uncertainty about that question.

MR. SENOFONTE: Any other questions?

MS. CUFF: Why did you decide to pull the amendment that you requested last time in April?

MR. SENOFONTE: You have to stand up and state your name.

MS. CUFF: My name is Sharon Cuff from Dunmore. And I was just asking the attorneys why they pulled the amendment request that they filed in April. Why they did not show up to this Board at that time?

ATTY. OVERSTREET: Let me start by saying we're not here to sort of field questions from the audience. That's not really the procedural posture. But as a courtesy, we'll try to respond to this one and explain that what's really going on here is that we have petitioned the Council for a zoning
amendment which triggers a series of events, one of which is referral to the Planning Commission for a recommendation.

That's typically in most cases a very informal process because after all, it's only a recommendation. It's not a hearing. And it comes to this body for an informal recommendation which they can choose to make or not make.

And it has to be made within the timeframe provided. So technically we are not an applicant. Like, one would be an applicant if you sought a zoning permit, for example, or if you sought a curative amendment --

ATTY. BELARDI: Subdivisions.

ATTY. OVERSTREET: Subdivisions. We have asked the governing body to exercise its legislative authority to make an amendment and so technically we didn't even have to be -- we don't have to be here tonight.

But we came because we understood last time there was some frustration that we weren't here. We disagree. We don't think we had to be here so we came. So that's the reason why we came back and pulled it and we're
back here tonight.

MR. GROCHOWSKI: I have a question.

So the amendment you're proffering here is to 1185. And you're basically adding onto the end of that to say it's more specifically not a structure. So how do you -- that seems to conflict, obviously, with 11201 in our zoning ordinance in terms of the definition of a structure which seems crystal clear. So how do you square the two?

ATTY. OVERSTREET: That's illustrating the reason why we think that the Borough should clarify that it never intended for that to be the case as they've said in their briefs in court and as the courts have found and that we can create all sorts of ambiguities if we get creative about reading the ordinance.

But we think the Borough has been very clear and the Zoning Hearing Board is very clear and the Court of Common Pleas is very clear that this ordinance was never intended to impose a height on landfills.

And so that illustrates exactly why we're here because it's -- we can argue that
indefinitely in the courts. And we think that is a time -- a waste of time and everyone's resources.

MR. GROCHOWSKI: Well, I mean, the way I read structure in 11201, that seems to clearly apply to a landfill. And then you're adding into a different amendment to try to, you know, get around that and again, it gets back to -- it seems you're trying to get some legal -- this would give you legal clarity.

But I don't see the reason we need to alter the ordinance with the pending litigation. But I defer to other's questions. That's just my comment and opinion.

MR. SENOFONTE: Zoning amended this how many years ago?

ATTY. CONWAY: Pardon me?

MR. SENOFONTE: How long did zoning amend this?


ATTY. OVERSTREET: I would just note that is an excellent question, sir, because it illustrates the point for more than a decade no one ever suggested that this -- that the
landfill was subject to the building height. No one ever suggested it. And, in fact, so that then raises the very question if this were the case, why didn't the Borough bring enforcement action?

MS. ZANGARDI: Sir, you never suggested it either. Neither one of us did on either side.

ATTY. OVERSTREET: That's the point.

MS. ZANGARDI: However, that being the point, let's talk about the landfill -- let's hypothetically say you do get your height limit removed. How high up? Where does it stop? It there a limitation here? Is it a widening? Is that -- really --

ATTY. BELARDI: Yeah, let me answer that question. It's a limit that we've had imposed upon us since 1997. And to put that in context, you had a '79 ordinance that made the landfill a permitted use.

In '97 Keystone gets DEP approval to go to 1585 above sea level. And three years later you adopted a new ordinance and you once again made a landfill a permitted use and imposed no height restriction.
Now, this time around -- and we submitted for an application for a phase three major modification expansion. We originally submitted an application that said 165 feet above 1585. We've amended that application to take that out. And we said we'll be fine with 1585 like we were in 1987, which we're operating under right now.

And so if and when a permit comes from DEP, it's going to have a condition that says that we're limited to 1585, the same number we've been limited to in 1997. Part of the application is you give drawings for all the years that you intend for the landfill to be open, those topographical drawings show the limits.

So the entire application is replete with limit of 1585. So -- and so people understand, the landfill is not a soup bowl where the ultimate product is the top of the soup bowl where it's all one height. The landfill's a pyramid.

And the reason it's a pyramid is because of the regulations which say depending on how much acreage you have when you look at
the volume that the acreage can support in terms of weight.

And when you start at the toe, the lowest part of the landfill, you must have a 33 percent slope, no more -- 33 percent slope. And then every 25 feet that you go up at 33 percent slope, you go in 15 feet at a 15 percent slope.

And that's why when you see from the highway it kind of looks like this (indicating) like a pyramid that eventually works it's way up. So what is the phase three expansion? It's basically filling in the space between the four quadrants that already exist at the landfill.

You have the old Keystone original landfill. You have Logan. You have Taber. And you have phase two which is up against the Casey Highway right now.

So in between there, there's a -- kind of a crooked plus sign. They're the valleys between the four quadrants. That's going to be filled in. Some of it will bleed over on the toe of each of those four quadrants, but over four years it will work its
way to a pyramid in the middle.

So you are only going to have a 1585 point at the very top at the end of this whole project. So -- and just to put it in reference because I think there is some misunderstanding about the height of the landfill.

People that oppose the landfill often say it's going to be taller than the Empire State Building or something that like. Well, that would assume that you stand on the ground and you look up 1585. But you need to know that the City of Scranton 750 above sea level. The Borough of Dunmore on average is a thousand feet above sea level.

So we're talking about 1585 above sea level. It's not taller than the Empire State Building. You just got to keep that in perspective. Did I answer the question on the height?

MS. ZANGARDI: Yes, however --

ATTY. BELARDI: It's limited, the 1585 like it was in 1987.

MS. ZANGARDI: That's correct.

You're saying that it's limited to 1585 from -- since 1997 and there's no changes; is that
correct? But you're going into phase three, correct?

ATTY. BELARDI: If -- if -- no, we're not yet. If we get permission and we get the permit --

MS. ZANGARDI: Correct. So you're on phase two.

ATTY. BELARDI: We're on phase two.


There is two young children in this community who have Leukemia. One's an infant and one is a six year old, unheard of. I have been a lifelong member of this community, unheard of. I am not saying it's the landfill's fault.

But I'm indicating there's issues here that we don't see and repercussions that we're not going to see until ten years, four years, from any expansion from any landfill. It's a health issue. It's a safety issue.
It's a long-term community investment for us and why continue?

If you have your phase two, why continue? And if you are not satisfied with your phase two and you're working towards a phase three, is there going to be a phase four? Is there going to be a phase five? Where is the limit? When does it stop?

ATTY. BELARDI: I would have to say that at the end of phase three if we're granted that, I don't -- this is just my humble opinion, I'm not an engineer. But again, we're not -- we're doing a vertical expansion, not a horizontal expansion.

The amount of volume that is allowed to come into a landfill is based on -- you start with how wide can you go, right, that determines the byproduct of the height is how wide can you start and you take that volume in. I don't see where we can go horizontal anymore.

So I think at end of phase three, I think we're at the end of what the land can bear in terms of weight.

MS. ZANGARDI: But we don't know.

ATTY. BELARDI: I don't know. I
would have to believe that if we had the
ability to put even more waste we would have
gone for something more at this point. But we
just gave it what we know we can fill
reasonably, efficiently, and safely. And
that's the valleys in between the quadrants.

MR. SENOFONTE: Excuse me, Joe, is
this our present zoning --

MR. LORINCE: That's from the
Keystone --

ATTY. CONWAY: That's the proposed
amendment that they're seeking. What they're
doing, Al, is they're adding -- and I think Joe
mentioned it to 11.185, they're adding the last
clause -- and I'll just read it, quote --
they're adding to the end, quote, and shall

neither be considered, nor subject to
regulation as, structures for purposes of this
ordinance, closed quote. So that's the whole
amendment.

MR. SENOFONTE: How do we draw up
the motion so it's clear?

ATTY. CONWAY: Well, you would
either move to recommend the amendment as
submitted or not to recommend.
MR. SENOFONTE: Recommend as submitted? And then we vote on that.

ATTY. CONWAY: Right.

MR. GROCHOWSKI: I have one more question for -- I mean, Attorney Conway, maybe you can just -- KSL's attorney mentioned -- I was talking and I think Gary was too about the Lackawanna saying it's unsettled law basically that Mercer County -- landfill's a structure. Lackawanna County Court that seems to be still --

ATTY. CONWAY: Pending.

MR. GROCHOWSKI: It's been appealed and it's pending. That's why I'm saying they seem to be saying I'm using the term unsettled law. I'm just curious is this unsettled --

ATTY. CONWAY: Well, certainly the Lackawanna County Regional Planning Commission in their evaluation report dated August 27th, 2019, used those exact terms. Their conclusion was and I'll quote just so everybody is clear, "Therefore, since this unsettled law in the Commonwealth and due to the comprehensive zoning amendment work underway, the LCRPC can not make a recommendation on this request at
this time, period, closed quote.

And that came from the Lackawanna County Regional Planning Commission. I think that's -- they're the ones that started that language as far as unsettled law.

MR. GROCHOWSKI: Thank you. And just the last question I had maybe this is for -- but how does what we're doing with SAPA, Scranton-Abington Planning Association and the comprehensive plan where we're actually updating all the ordinances -- I've read through that.

I haven't seen much mentioned on landfill and things like that. But how does this plan to this, all of this active zoning changes that we're into --

ATTY. CONWAY: And that's a question for me. I'm not sure to be honest with you. I think that certainly has to be brought to their attention. I don't know if they weighed in on this or not. I haven't heard anything. I haven't been involved in that process. So it's difficult for me to give you any kind of opinion.

MR. GROCHOWSKI: Okay. That's all
for now.

MR. SENOFOnte: Yes, sir.

MR. MCDONALD: My name is Kevin McDonald. I'm a Dunmore resident. And a question for mister -- Attorney Belardi here. The Keystone Landfill withdrew part of their application that would extend the landfill 165 feet higher.

What is going to stop them from in 25, 30 years coming out and apply again to increase the height of the landfill? I know it's a pyramid. And apparently if the pyramid could reach an additional 165 feet, what is to stop it from phase four, phase five to just keep on going?

ATTY. BELARDI: Well, the answer would be the Department of Environmental Protection based on engineering, their engineers.

MR. MCDONALD: They haven't done a thing. You could see where the judge scolded them for not doing anything to the landfill, letting them get away with leaks and --

ATTY. BELARDI: That's your interpretation of the litigation. We have been
successful in the litigation. Again, it's a matter of engineering and science. And it's really up to the engineers to say how much weight based on how much volume could come in.

It's not my call. It's not the landfill's call. It's strictly an engineering call.

MR. MCDONALD: It was the landfill's call to take 165 feet off because it was -- it's unpopular to begin with the whole landfill. So to try to appease people they took 165 feet off. What is to stop them from adding 165 feet in 30, 35 years. This apparently, this new application is for 40, 44 years.

So they're going to come out. They just got a new permit for ten years. So ten years before they're shut down they are going to come out and apply for another 165 feet. What's to stop them from doing that?

ATTY. OVERSTREET: It's a good question. It's a fair question. And I understand where you're coming from. I think that -- I think what Jeff was trying to describe for you is what is happening now. And
that is all the drawings are being redone.

And the landfill has been redesigned so it will pyramid up no higher than 1585.

Once it is constructed that way, you can’t then keep increasing the pyramid. It’s just -- from an engineering perspective, once you built those steps up, you’ve maxed out because you -- it’s like starting with anything. If you don’t build it with that in mind and the drawings will be part of the permit.

MR. MCDONALD: But once upon a time, those drawings were 165 feet --

ATTY. OVERSTREET: Absolutely.

MR. MCDONALD: And then they included piping --

ATTY. OVERSTREET: Yeah, absolutely.

MR. MCDONALD: -- for gas collection --

ATTY. OVERSTREET: Absolutely.

MR. MCDONALD: -- piping for leachate collection --

ATTY. OVERSTREET: Absolutely.

MR. MCDONALD: -- piping for water runoff --

ATTY. OVERSTREET: And that’s why --
MR. MCDONALD: -- a structure.

ATTY. OVERSTREET: Well, again, the question you had asked is whether once the new drawings are created and approved, will that be locked in and the answer is yes. It will be locked in because that's how the landfill will be built.

And once it is built that way with a different base and a structure to use your words, not to agree with you, but then it's built. And you can't just simply go back in and start adding to the top of the pyramid.

MR. MCDONALD: Unless they leave it flat on the top.

ATTY. OVERSTREET: Well, again, you have cap enclosure requirements which will be specified in the approved drawings. And department is making Keystone do something truly extraordinary here, drawings for all 40 years.

And so they are going to make sure that they understand precisely how that landfill is designed.

MR. MCDONALD: They already did it for 30 or 40 years.
ATTY. OVERSTREET: They're all being redone because of the new lower limit.

MR. MCDONALD: I'm talking about the existing landfill.

ATTY. OVERSTREET: Phase two.

MR. MCDONALD: Phase two, so now they are adding phase three.

ATTY. OVERSTREET: Correct. Correct.

MR. MCDONALD: And possibly phase four.

ATTY. OVERSTREET: Correct. But you were talking about -- I think your question was whether the landfill could keep going higher once it's built. And I was trying to explain once it's built according to those drawings it cannot go higher. Because once it's built it wouldn't permit it. You cap out.

MS. DEMPSEY: But if they apply for another permit and there is technological innovations and technologies happen quickly and there's an ability to engineer the structure to be 400 feet higher, what would stop them from doing it?

ATTY. OVERSTREET: Well, I guess if
technology changes to that degree, ma'am, that's something we all cannot predict today. Forty or 50 years from now if something is that different --

MS. DEMPSEY: I don't think it's that out of the realm of possibility.

ATTY. BELARDI: If I could interject, the technology that exists today that's not profitable is actually plasma gasification is really to take garbage that's already buried and turn it into hydrogen and carbon dioxide which is fuels.

If we're still burying garbage the way we do now 35 years from now, I would shocked. I think what -- I think ultimately that landfill gets mined and the peaks come down. I think ultimately they'll be digging everything that's buried that hasn't been biodegradable and turning it into fuel.

MR. CLARK: The landfill's been saying that for 30 years already, the exact same thing.

ATTY. BELARDI: No, no. Thirty years ago it was about incineration --

MR. CLARK: Yes. Yes.
ATTY. BELARDI: -- it works. It's just not profitable.

ATTY. CONWAY: If you guys could speak one at a time. The record is not going to be picked up at all.

MR. CLARK: Can the public speak?
Okay, I'll go. Pat Clark from Dunmore. I'll start here. How often does the Planning Commission accept versus reject Lackawanna County Regional Planning Commission recommendations?

MR. GROCHOWSKI: In my experience I have been on the Planning Commission for roughly two years. Never in my experience.

MR. CLARK: Anyone else?

MR. PICHIARELLA: In my experience we have.

MR. CLARK: How often?

MR. PICHIARELLA: I could only remember once in the last seven years.

MR. CLARK: Okay. My next question, has this Board ever recommended amending the Zoning Board for the benefit of one single company -- amending the zoning -- or changing the zoning code itself to the benefit of one
specific company? Is the Board aware of that ever happening?

MR. GROCHOWSKI: Again, everybody has been on different times. It's not my experience.

MR. CLARK: Does anyone have experience with that?

MS. ZANGARDI: As long as I'm here never.

MR. DUNCAN: No, not since I've been on board.

MR. CLARK: We would -- a positive recommendation would be going against history's trend of looking at the county recommendation and looking at what one individual company is looking for, correct? Okay.

Does anyone on the Planning Commission have any business relationships, financial or otherwise with any of the owners of landfill or the landfill itself?

MR. DUNCAN: I don't.

MR. PINTO: No.

MR. SENOFONTE: No.

MS. ZANGARDI: I don't.

MR. GROCHOWSKI: No.
MR. CLARK: That's good. Has everyone had an opportunity to read the case -- the controlling law -- the Pennsylvania State Court?

MR. DUNCAN: The Tri-County? Yes, I have it.

MR. CLARK: Has everyone had an opportunity to read that?

MR. GROCHOWSKI: Yes.

MS. ZANGARDI: I --

MR. SENOFONTE: Tri-County, is that the one in Pittsburgh?

MR. DUNCAN: Mercer County one --

MR. SENOFONTE: -- closed for 25 years --

MR. CLARK: It's the controlling case law in Pennsylvania, that case, the Tri-County one.

MR. SENOFONTE: Is that the landfill that was closed for 25 years?

MR. CLARK: I'm not sure if it was closed for 25 years or not.

MR. PICIARELLA: This ordinance was different than ours.

MR. CLARK: Has anyone had the
opportunity to read through the DEP engineer's
testimony in front of the Zoning Hearing Board
a couple years ago, Jeffrey Spaide, the
engineer who testified about the complexity and
the sophistication of the landfill?

Is anyone aware that the -- one of
the largest landfills companies in the world
actively promote all modern landfills as modern
engineering structures? Keystone has in the
past referenced itself as such.

MR. GROCHOWSKI: Yes.

MR. CLARK: We mentioned before if
the Borough clearly did not intend for a height
restriction to apply to landfills, that's why
we're here. Except isn't it true that the
zoning code does list all the exclusions for
which height doesn't apply?

So the code itself lists the
exclusions of things that height doesn't apply
to, correct? Are landfills one of the things
that's listed there?

MR. PICIARELLA: I don't interpret
it the way you're interpreting it.

MR. CLARK: That's fair. Does
anyone else have an answer on that?
MR. PICHIARELLA: In my mind it's crystal clear how it's spelled out in this book. It's spelled out as an earth-moving activity and makes no other reference in the book.

MR. CLARK: There's a whole section defining landfills in the book.

MR. PICHIARELLA: Yeah, but it mentions it as moving activity not as a structure. And structures -- in the structure section, doesn't list the landfill. And it says if it's not mentioned in this book it would be a structure. But it is mentioned in this book.

It is mentioned on page 1117 -- 11.185. It's an earth-moving activity, which I would assume it would be without even reading this.

MR. CLARK: But I think reading it is important and reading the case law in Pennsylvania is important and reading the testimony about the complexity of the landfill is important. And listening to what the landfill said for the last 30 years about it's essentially the eighth wonder of the world how
sophisticated it is is important as well.

If the Borough intended for height
not to apply to it, it would have listed as
such. And it does not. That's why we're here.

Keystone is not here because they think it's
clearly not a structure. They're here because
they're worried that it is and Pennsylvania
case law says it is.

So I would suggest that if we look
at history as this Board, we typically look to
what the county says. We typically don't do
things amending a zoning ordinance on behalf of
one company. The Pennsylvania case law tends
to recommendation without question that
landfills are a structure and this one would be
as well backed up by the testimony of the
engineers of the DEP as well as what Keystone's
own words are.

So I think if we're going read
things, I think there's only one conclusion you
could logically draw. But we'll see how the
vote goes. Thank you.

MR. SENOFONTE: We have a decision
here from Judge Zito. Are you familiar with
that?
MR. CLARK: I am.

MR. SENOFONTE: And he sided with the Zoning Board of Dunmore.

MR. CLARK: He did. That's a county court -- the appeal right now is in the state court which the controlling law is that says landfills are structures.

MR. SENOFONTE: That's tough because you have your Zoning Board that sided with them. You have the Judge Zito that sided with the Zoning Board. I'm sure he's gone through all the facts and --

MR. CLARK: Judge Zito's been wrong a couple of times already so we'll see.

MR. SENOFONTE: Well --

MR. PERRY: I just have one question, just a procedural question. I don't understand the procedure. I'm Mark Perry, Dunmore resident. Just for the attorneys, just so I understand it, the Mercer County case was a Commonwealth Court case.

And Al is pointing out Judge Zito's case which is the Lackawanna County case. That's the case being appealed now, right? In other words, Judge Zito's decision is on
appeal.

ATTY. CONWAY: That's correct.

MR. PERRY: And that has proceeded to the point where oral argument is scheduled like this month or something. I know Jeff's comment was perfectly dead on about the cost and expense to everybody. But it's gone to the state. You're already at the Commonwealth Court; am I right?

MR. CLARK: Correct. Oral argument is scheduled for September 17th.

MR. PERRY: And this very issue with very smart lawyers on both sides is going to be argued in front of a Commonwealth Court and I guess a decision will be on our specific ordinance, correct?

MR. CLARK: Correct.

MR. GROCHOWSKI: Which circles back to my original question is how this -- obviously we're just recommending to, you know, Dunmore Council and they'll make a decision. Is again, given what's going on, how would what we do here affect pending litigation?

It seems it would just -- oh, it's a structure. Case is over. We win kind of
thing? I just don't understand how that --
that was my original question.

ATTY. OVERSTREET: Yeah, and that's
a good question. You know, I think it's
important to note here what the county
commission -- and they have three options.
They could vote. It could recommend denial.
It could recommend approval or it takes no
action. It chose the third. It took no
action. So it didn't recommend or not. It's
important for those of you that -- referring to
that decision.

I think the other thing is, let's
not -- let's not misunderstand the fact that
even though there's an argument in a few weeks
in front of Commonwealth Court that that sort
of -- that that case is the end of anything.

And when we talk about protracted
years of expensive litigation, let's just
assume for a moment that the Commonwealth Court
were to agree with the argument that the
building height limitations apply to landfills
in the Borough. Is that the end or is that
really just the beginning of years of
litigation?
MR. GROCHOWSKI: My question specifically is, adding this -- the motion to add, the clarity that you're seeking that it's not a structure --

ATTY. OVERSTREET: Correct.

MR. GROCHOWSKI: -- say we recommend it.

ATTY. OVERSTREET: Right.

MR. GROCHOWSKI: What happens next week? Is that, you know, hey, is this evidence you're going use it in court and just say, you know, we got favorable things and this will affect that litigation? That's my question.

ATTY. OVERSTREET: The Commonwealth Court will decide what, if any, affect a decision by Council has on the pending litigation. I just think when we talk about years of protracted litigation, we're not talking about the current case.

We're trying to prevent even the possibility of the extraordinary problematic litigation that would arrive if there was a decision to try to impose a height limit on this landfill that has never been imposed since that ordinance was adopted. That is the
expensive protracted litigation that -- so,
yes, while this case is almost over, valid
point.

Well, arguably it would be months
after argument before we hear. The truth is,
we think that eliminating this uncertainty and
clarifying with the Borough has said in its
brief, the zoning officer, and what Judge Zito
said that that is, in fact, what the Borough
always intended and what they did by way of
performance for 15 years without question that
that makes good sense for everybody. That's
why --

MR. GROCHOWSKI: Thank you.

MR. CLARK: Though you may be trying
to limit the cost of litigation five years out,
we're trying to protect the future of this town
being dominated by a landfill. And the cost of
that would certainly would outweigh the cost of
litigation in the next couple of years.

We've already been in this for five
years. So to suggest that -- challenges for 15
years, we have been at this for five years
already. And we know this is -- litigation,
playing cost games.
Either side is prepared as well. So with litigation, let's get the thing right instead of trying to shortcut litigation.

ATTY. OVERSTREET: And I guess the question for you, Mr. Clark, is you may be prepared to fund litigation. But is the Borough prepared to fund years of litigation in federal court if they try to impose a height limit retroactively on Keystone Landfill?

That's the litigation we're trying to get everyone to common sense look at this and say this is not worth it because we have said from the beginning we never intended for it to apply. We're trying to simply clarify that and move on.

We can fight at the Department of Environmental Protection, the Environmental Hearing Board about your concerns. I'm not trying to belittle those or delegitimize them. But that is the forum for that dispute. It's not here in front of these gentlemen who are simply -- and lady who are simply trying to interpret an ordinance that's been on the books, for what, two decades?

MS. ZANGARDI: Sir, I'm so glad you
brought that up because Mark -- mister --

Attorney Conway, sorry.

ATTY. CONWAY: You can call me Mark.

We've known each other a long time.

MS. ZANGARDI: Right. Is it ethical or moral or logical for the community of Dunmore to come out and oppose a landfill, get the lawsuit and then the Dunmore Solicitor is representing the Borough against the people who are paying his salary?

That's -- I mean, shouldn't we be appointing somebody outside or -- because now it's costing the Borough to represent the citizens of Dunmore against suing Dunmore.

Tom -- Mr. Cummings is representing the Borough. There are citizens in Dunmore who pay his salary, the Dunmore taxes. And he's representing the Borough. And they are suing the landfill decision. So shouldn't we be getting out of this with our Solicitor?

ATTY. CONWAY: Well, you're going way past what I know about the facts here because I haven't been involved in any of that. But Attorney Cummings is directed by Council, not by the citizens of the Borough. So I'm
assuming he's doing what the majority of Council is telling him to do.

MS. ZANGARDI: Correct. I understand that. But when I was reading the paperwork and it names -- well, it names the Mays, Mizantys, and the Spanish filed notice of land appeal regarding -- and then Mr. Cummings is listed as the Borough Zoning Board representation.

He's representing the Borough on both the -- I'm sorry, the Interveners and the Appellee. My question is -- and was just more it's a legal question. If they're paying the taxes for this community and he works for the community, shouldn't we get outside counsel or more an objective counsellor?

ATTY. CONWAY: Well, again, Mr. Cummings is representing the Council and not Mr. and Mrs. May or Mizanty or Mr. and Mrs. Spanish. They certainly -- I think they have separate counsel. You know, if you're not happy with Attorney Cummings representation or if you think there is something improper, I think you have to bring that before Council.

MS. ZANGARDI: No. I just think
it's counterproductive for the community.
That's how I just think, you know, the
taxpayers, the community are being represented
against -- or a lawsuit against the community
and the community solicitor is fighting that.
That's -- I'm just thinking it's --

ATTY. CONWAY: That's because the
Borough is a party to the lawsuit now. They
are an Intervener in the lawsuit. So they need
counsel. And I guess Attorney Cummings is
counsel for the Borough in that case.

MS. ZANGARDI: Right. Right.

MR. PINTO: I'd like to make a
motion we vote on this.

MR. PICHIARELLA: I'll second that.

MR. SENOFONTE: All right. At this
time Keystone --

MR. MCDONALD: Hold on. We have a
question here from the Mayor.

MAYOR BURKE: Would it be fair to
ask Attorney Cummings if he does any business
with the landfill?

MR. SENOFONTE: Guys, that is not on
the agenda. We're talking about this structure
or not a structure, not about Attorney Cummings
or, you know, the taxpayers --

MAYOR BURKE: -- say that he represents Council who advises Council what to do. When we have a legal problem --

MR. SENOFONTE: Well, you talk to Attorney Cummings before the Council meeting.

MAYOR BURKE: -- exactly.

MR. SENOFONTE: He has no jurisdiction down here. He has no say what we do here. What's happening now we're getting off track. I'm trying to let it go to appease everybody. But it's going to get goofy. So we're going to make a vote. We're going to vote. Thank you.

At this time we're going to recommend as submitted the zoning ordinance amendment Section 11185 for the definition of sanitary landfill. Do we have a motion?

MR. PICHIARELLA: I make a motion.

MR. PINTO: I'll second it.

MR. SENOFONTE: Roll call.

MR. MICHAELS: Mr. Senofonte.

MR. SENOFONTE: Yes.

MR. MICHAELS: Mr. Pichiarella.

MR. PICHIARELLA: Yes.
MR. MICHAELS: Mr. Pinto.

MR. PINTO: Yes.

MR. MICHAELS: Mr. Michaels, yes.

Mr. Duncan.

MR. DUNCAN: No.

MR. MICHAELS: Mr. Grochowski.

MR. GROCHOWSKI: No.

MR. MICHAELS: Miss Zangardi.

MS. ZANGARDI: No.

MR. SENOFONTE: Thank you very much.

Motion to adjourn? All say aye.

ALL MEMBERS: Aye.
CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me of the above-cause and that this copy is a correct transcript of the same to the best of my ability.

Maria McCool, RPR
Official Court Reporter

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