

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

DUNMORE BOROUGH PLANNING COMMISSION

HELD: Thursday, September 5, 2019

TIME: 7:00

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

C O M M I S S I O N M E M B E R S :

- AL SENOFONTE, CHAIRMAN
- THOMAS PICHIARELLA
- 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

1 (Pledge of Allegiance.)

2

3 MR. SENOFONTE: Roll call.

4 MR. MICHAELS: Mr. Senofonte.

5 MR. SENOFONTE: Here.

6 MR. MICHAELS: Mr. Pichiarella.

7 MR. PICHIARELLA: Here.

8 MR. MICHAELS: Mr. Pinto.

9 MR. PINTO: Here.

10 MR. MICHAELS: Mr. Michaels, here.

11 Mr. Duncan.

12 MR. DUNCAN: Here.

13 MR. MICHAELS: Mr. Grochowski.

14 MR. GROCHOWSKI: Present.

15 MR. MICHAELS: Miss Zangardi.

16 Mr. Conway.

17 ATTY. CONWAY: Here.

18 MR. MICHAELS: Mr. Lopatka, absent.

19 MR. SENOFONTE: Old Business,

20 Dunmore Warehouse Investors, LLP, 100 Keystone

21 Park, commercial land development time

22 extension --

23 ATTY. CONWAY: Excuse me, Mr.

24 Chairman. That's been continued to next

25 month's meeting, October 2nd, 2019.

1 Mr. Lorince and I, we've got confirmation
2 letters moving it to October 2nd.

3 MR. SENOFONTE: New Business.
4 Keystone Sanitary Landfill zoning ordinance
5 amendment to amend Section 11.185 for the
6 definition of sanitary landfill. This is
7 something that we're going to do be doing in
8 our zoning planning books.

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

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

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

25 MR. SENOFONTE: Planning Commission,

1 I'm sure we all looked over the amendment and
2 do we have any questions? Does anyone have any
3 questions?

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

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

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

18 MR. SENOFONTE: Right.

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

24 So the Applicant is here.
25 Obviously, there is a full audience here of --

1 MR. SENOFONTE: That's why I'm
2 asking if --

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

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

11 MR. GROCHOWSKI: Gary does and I
12 have some.

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

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

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

1 That's from 2014.

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

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

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

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

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

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

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

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

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

22 MR. DUNCAN: And then the next
23 question was the Lackawanna County Regional
24 Planning Commission, have they come to a
25 decision on it?

1 ATTY. CONWAY: Because of the
2 unsettled law they did not recommend it.

3 MR. DUNCAN: Okay. Thank you.

4 MR. SENOFONTE: Is that it, Gary?

5 MR. DUNCAN: Yes.

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

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

22 ATTY. CONWAY: Is that directed to
23 the Applicant's Counsel? Do you want to
24 address that first and I'll follow up if
25 needed?

1 ATTY. OVERSTREET: Yeah, sure.
2 Sure. Thank you. My name is David Overstreet,
3 Counsel for Keystone Sanitary Landfill here
4 with Jeff Belardi. I want to make sure I
5 understand your question. You are asking about
6 the status of the current appeal before the
7 Commonwealth Court?

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

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

22 ATTY. OVERSTREET: Oh, I see. Well,
23 to say that it's unsettled law in PA is not
24 particularly an appropriate description and
25 I'll tell you why. Each ordinance has its own

1 terms and conditions. Each municipality has
2 its own terms and conditions. And you have
3 your ordinance.

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

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

22 We're simply asking to make it clear
23 what the Borough had said they always intended.
24 And there was never an intent to apply building
25 height limitations to landfills in the Borough.

1 And that's sort of the purpose.

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

5 MR. SENOFONTE: Mr. Grochowski?

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

9 MS. ZANGARDI: I have a question.
10 So if that was not the intention for the height
11 for any landfill whatsoever across the
12 Commonwealth or is it just with this Borough?

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

21 MS. ZANGARDI: However, don't you
22 agree we have to have limits, period, across
23 the Board? We all have to have boundaries. We
24 all have to have restrictions on everything.
25 Wouldn't you agree that it would apply to this

1 landfill as any other landfill or any other
2 building?

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

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

11 MS. ZANGARDI: Correct.

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

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

23 And in this case, they did not
24 impose limits on sanitary landfills. That's a
25 decision they are free to make or not make as

1 the case may be. It's a legislative decision.
2 Did that answer your question?

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

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

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

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

25 ATTY. BELARDI: '79? In 2000 they

1 adopted both ordinances.

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

8 MR. SENOFONTE: Any other questions?

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

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

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

19 ATTY. OVERSTREET: Let me start by
20 saying we're not here to sort of field
21 questions from the audience. That's not really
22 the procedural posture. But as a courtesy,
23 we'll try to respond to this one and explain
24 that what's really going on here is that we
25 have petitioned the Council for a zoning

1 amendment which triggers as series of events,
2 one of which is referral to the Planning
3 Commission for a recommendation.

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

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

15 ATTY. BELARDI: Subdivisions.

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

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

1 back here tonight.

2 MR. GROCHOWSKI: I have a question.
3 So the amendment you're proffering here is to
4 1185. And you're basically adding onto the end
5 of that to say it's more specifically not a
6 structure. So how do you -- that seems to
7 conflict, obviously, with 11201 in our zoning
8 ordinance in terms of the definition of a
9 structure which seems crystal clear. So how do
10 you square the two?

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

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

24 And so that illustrates exactly why
25 we're here because it's -- we can argue that

1 indefinitely in the courts. And we think that
2 is a time -- a waste of time and everyone's
3 resources.

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

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

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

17 ATTY. CONWAY: Pardon me?

18 MR. SENOFONTE: How long did zoning
19 amend this?

20 ATTY. CONWAY: Amend the whole
21 ordinance? August 2000.

22 ATTY. OVERSTREET: I would just note
23 that is an excellent question, sir, because it
24 illustrates the point for more than a decade no
25 one ever suggested that this -- that the

1 landfill was subject to the building height.
2 No one ever suggested it. And, in fact, so
3 that then raises the very question if this were
4 the case, why didn't the Borough bring
5 enforcement action?

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

9 ATTY. OVERSTREET: That's the point.

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

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

21 In '97 Keystone gets DEP approval to
22 go to 1585 above sea level. And three years
23 later you adopted a new ordinance and you once
24 again made a landfill a permitted use and
25 imposed no height restriction.

1 Now, this time around -- and we
2 submitted for an application for a phase three
3 major modification expansion. We originally
4 submitted an application that said 165 feet
5 above 1585. We've amended that application to
6 take that out. And we said we'll be fine with
7 1585 like we were in 1987, which we're
8 operating under right now.

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

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

23 And the reason it's a pyramid is
24 because of the regulations which say depending
25 on how much acreage you have when you look at

1 the volume that the acreage can support in
2 terms of weight.

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

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

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

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

1 way to a pyramid in the middle.

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

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

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

20 MS. ZANGARDI: Yes, however --

21 ATTY. BELARDI: It's limited, the
22 1585 like it was in 1987.

23 MS. ZANGARDI: That's correct.

24 You're saying that it's limited to 1585 from --
25 since 1997 and there's no changes; is that

1 correct? But you're going into phase three,
2 correct?

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

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

8 ATTY. BELARDI: We're on phase two.

9 MS. BELARDI: Working on phase
10 three. So where does it stop? If you're on --
11 went to one. You had one. Now you're onto
12 two. You're completing two. Now you're going
13 to three. Where does it stop? My whole issue
14 here is long-term affects on the children.

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

21 But I'm indicating there's issues
22 here that we don't see and repercussions that
23 we're not going to see until ten years, four
24 years, from any expansion from any landfill.
25 It's a health issue. It's a safety issue.

1 It's a long-term community investment for us
2 and why continue?

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

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

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

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

24 MS. ZANGARDI: But we don't know.

25 ATTY. BELARDI: I don't know. I

1 would have to believe that if we had the
2 ability to put even more waste we would have
3 gone for something more at this point. But we
4 just gave it what we know we can fill
5 reasonably, efficiently, and safely. And
6 that's the valleys in between the quadrants.

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

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

11 ATTY. CONWAY: That's the proposed
12 amendment that they're seeking. What they're
13 doing, Al, is they're adding -- and I think Joe
14 mentioned it to 11.185, they're adding the last
15 clause -- and I'll just read it, quote --
16 they're adding to the end, quote, and shall
17 neither be considered, nor subject to
18 regulation as, structures for purposes of this
19 ordinance, closed quote. So that's the whole
20 amendment.

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

23 ATTY. CONWAY: Well, you would
24 either move to recommend the amendment as
25 submitted or not to recommend.

1 MR. SENOFONTE: Recommend as
2 submitted? And then we vote on that.

3 ATTY. CONWAY: Right.

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

12 ATTY. CONWAY: Pending.

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

17 ATTY. CONWAY: Well, certainly the
18 Lackawanna County Regional Planning Commission
19 in their evaluation report dated August 27th,
20 2019, used those exact terms. Their conclusion
21 was and I'll quote just so everybody is clear,
22 "Therefore, since this unsettled law in the
23 Commonwealth and due to the comprehensive
24 zoning amendment work underway, the LCRPC can
25 not make a recommendation on this request at

1 this time, period, closed quote.

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

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

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

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

25 MR. GROCHOWSKI: Okay. That's all

1 for now.

2 MR. SENOFONTE: Yes, sir.

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

9 What is going to stop them from in
10 25, 30 years coming out and apply again to
11 increase the height of the landfill? I know
12 it's a pyramid. And apparently if the pyramid
13 could reach an additional 165 feet, what is to
14 stop it from phase four, phase five to just
15 keep on going?

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

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

24 ATTY. BELARDI: That's your
25 interpretation of the litigation. We have been

1 successful in the litigation. Again, it's a
2 matter of engineering and science. And it's
3 really up to the engineers to say how much
4 weight based on how much volume could come in.

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

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

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

21 ATTY. OVERSTREET: It's a good
22 question. It's a fair question. And I
23 understand where you're coming from. I think
24 that -- I think what Jeff was trying to
25 describe for you is what is happening now. And

1 that is all the drawings are being redone.

2 And the landfill has been redesigned
3 so it will pyramid up no higher than 1585.
4 Once it is constructed that way, you can't then
5 keep increasing the pyramid. It's just -- from
6 an engineering perspective, once you built
7 those steps up, you've maxed out because
8 you -- it's like starting with anything. If
9 you don't build it with that in mind and the
10 drawings will be part of the permit.

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

13 ATTY. OVERSTREET: Absolutely.

14 MR. MCDONALD: And then they
15 included piping --

16 ATTY. OVERSTREET: Yeah, absolutely.

17 MR. MCDONALD: -- for gas
18 collection --

19 ATTY. OVERSTREET: Absolutely.

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

22 ATTY. OVERSTREET: Absolutely.

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

25 ATTY. OVERSTREET: And that's why --

1 MR. MCDONALD: -- a structure.

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

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

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

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

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

24 MR. MCDONALD: They already did it
25 for 30 or 40 years.

1 ATTY. OVERSTREET: They're all being
2 redone because of the new lower limit.

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

5 ATTY. OVERSTREET: Phase two.

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

8 ATTY. OVERSTREET: Correct.

9 Correct.

10 MR. MCDONALD: And possibly phase
11 four.

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

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

25 ATTY. OVERSTREET: Well, I guess if

1 technology changes to that degree, ma'am,
2 that's something we all cannot predict today.
3 Forty or 50 years from now if something is that
4 different --

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

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

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

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

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

25 MR. CLARK: Yes. Yes.

1 ATTY. BELARDI: -- it works. It's
2 just not profitable.

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

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

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

15 MR. CLARK: Anyone else?

16 MR. PICHIARELLA: In my experience
17 we have.

18 MR. CLARK: How often?

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

21 MR. CLARK: Okay. My next question,
22 has this Board ever recommended amending the
23 Zoning Board for the benefit of one single
24 company -- amending the zoning -- or changing
25 the zoning code itself to the benefit of one

1 specific company? Is the Board aware of that
2 ever happening?

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

6 MR. CLARK: Does anyone have
7 experience with that?

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

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

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

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

21 MR. DUNCAN: I don't.

22 MR. PINTO: No.

23 MR. SENOFONTE: No.

24 MS. ZANGARDI: I don't.

25 MR. GROCHOWSKI: No.

1 MR. CLARK: That's good. Has
2 everyone had an opportunity to read the case --
3 the controlling law -- the Pennsylvania State
4 Court?

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

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

9 MR. GROCHOWSKI: Yes.

10 MS. ZANGARDI: I --

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

13 MR. DUNCAN: Mercer County one --

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

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

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

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

23 MR. PICHIARELLA: This ordinance was
24 different than ours.

25 MR. CLARK: Has anyone had the

1 opportunity to read through the DEP engineer's
2 testimony in front of the Zoning Hearing Board
3 a couple years ago, Jeffrey Spaide, the
4 engineer who testified about the complexity and
5 the sophistication of the landfill?

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

11 MR. GROCHOWSKI: Yes.

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

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

22 MR. PICHIARELLA: I don't interpret
23 it the way you're interpreting it.

24 MR. CLARK: That's fair. Does
25 anyone else have an answer on that?

1 MR. PICHIARELLA: In my mind it's
2 crystal clear how it's spelled out in this
3 book. It's spelled out as an earth-moving
4 activity and makes no other reference in the
5 book.

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

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

15 It is mentioned on page 1117 --
16 11.185. It's an earth-moving activity, which I
17 would assume it would be without even reading
18 this.

19 MR. CLARK: But I think reading it
20 is important and reading the case law in
21 Pennsylvania is important and reading the
22 testimony about the complexity of the landfill
23 is important. And listening to what the
24 landfill said for the last 30 years about it's
25 essentially the eighth wonder of the world how

1 sophisticated it is is important as well.

2 If the Borough intended for height
3 not to apply to it, it would have listed as
4 such. And it does not. That's why we're here.
5 Keystone is not here because they think it's
6 clearly not a structure. They're here because
7 they're worried that it is and Pennsylvania
8 case law says it is.

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

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

23 MR. SENOFONTE: We have a decision
24 here from Judge Zito. Are you familiar with
25 that?

1 MR. CLARK: I am.

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

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

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

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

15 MR. SENOFONTE: Well --

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

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

1 appeal.

2 ATTY. CONWAY: That's correct.

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

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

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

17 MR. CLARK: Correct.

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

24 It seems it would just -- oh, it's a
25 structure. Case is over. We win kind of

1 thing? I just don't understand how that --
2 that was my original question.

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

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

18 And when we talk about protracted
19 years of expensive litigation, let's just
20 assume for a moment that the Commonwealth Court
21 were to agree with the argument that the
22 building height limitations apply to landfills
23 in the Borough. Is that the end or is that
24 really just the beginning of years of
25 litigation?

1 MR. GROCHOWSKI: My question
2 specifically is, adding this -- the motion to
3 add, the clarity that you're seeking that it's
4 not a structure --

5 ATTY. OVERSTREET: Correct.

6 MR. GROCHOWSKI: -- say we recommend
7 it.

8 ATTY. OVERSTREET: Right.

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

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

20 We're trying to prevent even the
21 possibility of the extraordinary problematic
22 litigation that would arrive if there was a
23 decision to try to impose a height limit on
24 this landfill that has never been imposed since
25 that ordinance was adopted. That is the

1 expensive protracted litigation that -- so,
2 yes, while this case is almost over, valid
3 point.

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

14 MR. GROCHOWSKI: Thank you.

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

21 We've already been in this for five
22 years. So to suggest that -- challenges for 15
23 years, we have been at this for five years
24 already. And we know this is -- litigation,
25 playing cost games.

1 Either side is prepared as well. So
2 with litigation, let's get the thing right
3 instead of trying to shortcut litigation.

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

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

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

25 MS. ZANGARDI: Sir, I'm so glad you

1 brought that up because Mark -- mister --
2 Attorney Conway, sorry.

3 ATTY. CONWAY: You can call me Mark.
4 We've known each other a long time.

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

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

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

21 ATTY. CONWAY: Well, you're going
22 way past what I know about the facts here
23 because I haven't been involved in any of that.
24 But Attorney Cummings is directed by Council,
25 not by the citizens of the Borough. So I'm

1 assuming he's doing what the majority of
2 Council is telling him to do.

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

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

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

25 MS. ZANGARDI: No. I just think

1 it's counterproductive for the community.
2 That's how I just think, you know, the
3 taxpayers, the community are being represented
4 against -- or a lawsuit against the community
5 and the community solicitor is fighting that.
6 That's -- I'm just thinking it's --

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

12 MS. ZANGARDI: Right. Right.

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

15 MR. PICHIARELLA: I'll second that.

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

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

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

23 MR. SENOFONTE: Guys, that is not on
24 the agenda. We're talking about this structure
25 or not a structure, not about Attorney Cummings

1 or, you know, the taxpayers --

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

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

7 MAYOR BURKE: -- exactly.

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

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

19 MR. PICHIARELLA: I make a motion.

20 MR. PINTO: I'll second it.

21 MR. SENOFONTE: Roll call.

22 MR. MICHAELS: Mr. Senofonte.

23 MR. SENOFONTE: Yes.

24 MR. MICHAELS: Mr. Pichiarella.

25 MR. PICHIARELLA: Yes.

1 MR. MICHAELS: Mr. Pinto.

2 MR. PINTO: Yes.

3 MR. MICHAELS: Mr. Michaels, yes.

4 Mr. Duncan.

5 MR. DUNCAN: No.

6 MR. MICHAELS: Mr. Grochowski.

7 MR. GROCHOWSKI: No.

8 MR. MICHAELS: Miss Zangardi.

9 MS. ZANGARDI: No.

10 MR. SENOFONTE: Thank you very much.

11 Motion to adjourn? All say aye.

12 ALL MEMBERS: Aye.

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3 I hereby certify that the proceedings and
4 evidence are contained fully and accurately in the
5 notes taken by me of the above-cause and that this copy
6 is a correct transcript of the same to the best of my
7 ability.

8
9
10 _____
11 Maria McCool, RPR
12 Official Court Reporter
13
14
15
16
17
18
19
20
21

22 (The foregoing certificate of this transcript does not
23 apply to any reproduction of the same by any means
24 unless under the direct control and/or supervision of
25 the certifying reporter.)