

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Minutes - FINAL

August 5, 2019

6:00 PM

PUBLIC HEARING

City Council

Bruce Jarvis – President

Mike Walker – Vice President

Jill Amos

Will Bennett

Bob Clark

Mike Coolman

Patrick Lynch

A. Call To Order

Call to order @ 6:05pm

B. Roll Call

Present 6 – Amos, Bennett, Coolman, Jarvis, Lynch, Walker

Absent 1 – Clark

A motion was made by Bennett to excuse Clark, seconded by Lynch. The motion carried with the following vote:

Yes 6 – Bennett, Lynch, Amos, Coolman, Jarvis, Walker

C. Purpose of Public Hearing**[APL-19-001](#)**

June 18, 2019 Appeal of Planning and Zoning Commission Denial of Conditional Use Application CU-19-001 and Variance Application VA-19-005 for Panda Express, Inc. and Waterloo Crossing Ltd. (**[Panda Express Appeal](#)**)

D. Staff Report

Panda Express Findings of Fact and Conclusions of Law (**[Panda Express Findings of Fact](#)**)

Conditional Use App CU-19-001 Staff Report (**[CU-19-001](#)**)

Moore: I'm going to talk through the Planning & Zoning appeal process; this appeal is for 2 sections that Planning & Zoning denied; the first section is for the conditional use of the drive thru component; the second appeal is for a variance denial to change the setback for the subject building; I'm going to talk about both of these separately, this is how Planning & Zoning talked about them; if you want me to stop after the first conditional use discussion to ask questions and have the applicant have a chance to talk, I can do it that way – or we can talk briefly through the conditional use with questions, and then I can move on to the variance, and let them do both, whichever you guys are comfortable with; Jarvis: The way the agenda is structured – if we could follow the agenda, I think that would be best; Moore: Absolutely, I'll be here to answer any questions along the way.

Moore: For the first application, it was an appeal for a conditional use application number 19-001; the applicant for this project is Panda Express, for property located in Waterloo Crossing; the location of the subject property is up on the map – the applicant is looking to do a lot split from this overall master parcel, for the Panda Express to be located here; the star on the map is the approximate location of the building and parking; the request that they had was conditional use, to allow for a restaurant with a drive thru window service, in the general commercial zoning district; up on the screen is a site plan of the proposed Panda Express project; a little harder to see on the screen, but if you look on your computers in front of you, you can see the dashed line of what would be the property limits; this area to the south they are reconfiguring some existing parking; the applicant is requesting approval for this particular user to

have a drive thru located at this subject property; chapter 1199 talks about a drive thru, and what kind of criteria are required; when looking at the conditional use standards as well, there's also criteria that need to be answered for the drive thru component to be justified; the first one is the proposed use, and the applicable development standards of the zoning code to be met; a drive thru is a conditional use for the general commercial zoning district, however the proposed use of a drive thru does result in requesting a variance to have the building be pushed back further from the street than what's required by code; the second part of that applicable development standards is not being met; when we are looking at the development standards, relating back to the Thoroughfare Plan that was discussed earlier – it says that any road that is a minor arterial, or less, the setback line is actually a build-to line, so that you're having buildings pushed towards the street to have more pedestrian context and connectivity; this site is fronting a minor arterial, so the building should be 25 feet away from Winchester Boulevard; the applicant, with the drive thru configuration on the site, they have that building pushed back approximately 47 feet away from the street; while they meet the major arterial designation for Gender Road for a building to be 50 feet back, this particular section calls for 25 feet.

Jarvis: Mr. Moore, if I could ask a question – the 25 feet – is that from the centerline – Moore: No, that is from the edge of the right-of-way, 6 inches to a foot behind the sidewalk; that's the premise of this conditional use here; the development standards are not being met; when looking at the proposed use, if it's compatible with adjacent land uses, zoning appropriate plans - while there are drive thru components in this corridor – the way that this drive thru is designed for this particular site is not compatible; this site has a set of plans for the Waterloo Crossing shopping center that date back to 2004, and all of the plans that staff has on file from 2004, 2005, 2006, 2010, and 2016 show this area located on the map to be a proposed parking expansion; the other plans do have callouts for potential building sites within the parking lot – this particular area is not one of them; further, the proposed plans should not adversely impact traffic flow or other public services; while this site is on a private drive where it's accessed on 3 sides by private roads, it does severely impact the traffic access and design; I wanted to stop at these 3 things to show you some illustrations.

Moore: Up on the screen is the site plan that the applicant has put together overlaid on the aerial to give you context, showing the distance from the pavement to the edge of the building; with this particular layout, the applicant is showing a full access curb cut right here that wraps around the front of the building, along with the drive thru exit lane having the ability to turn back south, go east, and then also go west; this approximate location is creating a possible 7 different directions traffic function at a 3-point intersection; this intersection to the south currently exists, but the applicant is redesigning the parking to configure this existing layout with the number of approximate spaces that used to be there; they are also adding an access point in this location that lines up with Walgreens; typically we want access drives to line up to each other; this specific access point was initiated by staff.

Moore: Taking a look at a closer view, turning some of the zoning and other information off, you can see some of those movements that I was talking about, showing how these accesses line up; the drive thru component with this setback of the building, and allowing the vehicles drive in either direction is forcing a variance from the 25 foot build-to line; without this drive thru orientation, the building could be pushed up closer to the street, and meet that setback that is required; they could also produce a drive thru

component, in staff's opinion, that is compatible with this subject site; the applicant in their written report discusses how they cannot design this site to meet our standards; they can't get the building to not require the setback variance, and that they need this for their function and flow of the product and brand; this is a concept that was produced early on by the applicants trying to figure out how to meet our code; I apologize that it's blurry, it was a cad drawing that was sent to me; they're showing that they can get that building right where we need it, and still have the drive thru component that actually exits only in one spot, where traffic can only go 2 directions; the only thing that is different about this plan is that this access point does not line up as fluid with Walgreens as before; the plans that the applicant put together on this, I'm not sure if they had some issues with the scaling.

Moore: Some of the other criteria for a conditional use approval is that the proposed use should not result in destruction, loss, damage of the natural scenic features of the site; going back to the beginning – this is a green field that is designed for future parking expansion for the shopping center development; this proposal does not lose any of the natural features, it was always planned for future development; this is Casto's shopping center plan for Waterloo Plan; they're planning on developing these outparcels, while the subject's site is shown simply as a parking expansion; just the shape of it, and how it is cock-eye oriented to the street – it doesn't show itself as being a future building location; when you're looking at outside this box, where it says future building, there are renderings that show a building sitting at a 45 degree angle to follow the shape and curve of the street; when you are looking at the product here, they don't have the width or the frontage to get that to work; this site being disclaimed as being a developable site is an after-thought, when it was always planned to be a parking expansion; when looking at the conversation from Planning & Zoning and city council from when this shopping center was being developed, this area was highly discussed as not being allowed to have the through-traffic movement, as it would create a stacking issue; they talked about a private drive allowing traffic to flow, rather than multiple curb cuts; this road was designed to be the access point, and make the access to the shopping center smooth and convenient; they're bringing back some issues that I think the initial design tried to eliminate.

Moore: Planning & Zoning discussed this application at their May meeting; they discussed that the drive thru – reiterated through the staff report – as designed, is not compatible; we are not suggesting that the drive thru component is completely incompatible with the plans of the area, it just doesn't work when half the sites have drive thru components; what makes this site unique from the surrounding in this location that have drive thru components is that they only have access to their property from one location, while the proposed applicant is asking for access on 3 different sides of the building, further elaborating the incompatibility of the drive thru component; in plans shared with staff, they can meet our setback requirement, and also create a more efficient traffic flow for that drive thru component.

Jarvis: Mr. Moore, could you address something – in reading the 109 pages, there was a lot of repetition in there, but the appellant made a point that this 3-point access existed at the O'Charleys across the street – can you tell me what makes that different? Moore: Yes, so O'Charleys – this drive, in this location that connects Starbucks to O'Charleys – that's a private road; this private road has O'Charleys sitting in this location, they have their main circulation around the site, where O'Charleys sits right on that private road; they also have what looks like a parking expansion that was designed in their building layout that creates

the third curb cut; when this site was designed, we talk about in our Thoroughfare Plan and in the zoning text that you should only have 2 access drives on a public street, this is all on a private street; everything that this project is connecting to is all private – they can have more than the 2 our zoning is calling for in that instance, but it is something that we do not promote, because it creates more of a traffic hazard; at any cost, we would like to restrict those items to follow our mantra for public street improvements; Planning & Zoning discussed this concept – they took a look at what was done; some of the discussion that was had revolved around the previous approval for this site for the Kay Jewelers; while they do not have a drive thru component, they were able to meet the setback variance; Planning & Zoning saw that this plan that was produced results in that variance being necessary; when looking at a variance proposal, which will be the next topic, a variance is for the life of the property, not for the applicant; if Kay Jewelers received a variance for the setback, then Panda Express would be able to apply that to their site plan; Kay Jewelers never built on this property, but they were able to meet all of the zoning requirements; granted, they are a different type of user, but staff finds that since the applicant has produced plans that show they can meet our criteria, that the conditional use should not be granted as presented; same with the variance application.

Variance Application VA-19-005 Staff Report ([VA-19-005](#))

Moore: Moving along into that next portion, the applicant is showing that the building does need a variance from the setback line; this variance is to allow for 2-way traffic between the building and the street; the applicant at the Planning & Zoning Commission meeting did discuss at length Panera Bread, and how they have a similar scenario; Panera does not allow traffic to go both directions – they only allow traffic to leave the drive thru lane, and make that final destination loop; while they do have a drive thru lane that wraps in front, it's only in one direction, and it's not allowing for traffic to start their drive thru experience from multiple directions, or allows people to leave and travel different directions from it; from that standpoint, staff feels that it's a completely incompatible comparison, other than they are a restaurant that has a drive thru; this site is accessed from multiple locations; they do have the ability to have that drive thru exit differently than what some of the other parcels in the shopping center have the ability to do; this site does have a unique ability to be more compliant with our code regulations, if designed appropriately, while other sites do not.

Moore: The applicant put together their special circumstances, and why they feel they are applicable to this development text; the applicant, again, talks about the unique shape of the site and how it necessitates pushing the building back from the build-to line; staff would argue that they produced a site plan that shows they can meet this; the applicant stated that the little interpretation of the zoning code deprives the rights of the applicant from enjoying the property; again, the applicant shows a site plan where they can meet this, and the same user can go here and function, and operate, just without the drive thru loop wrapping around the front of the building; during the preliminary discussion, the applicant indicated they needed that drive thru, because if someone has to wait for fresh food, they can park in the parking lot, and the food will be prepared; during that public meeting for Planning & Zoning Commission, the applicant stood up here and said that it's the fastest drive thru service around, based on the nature of the food; typically the only time that someone needs to park is if they specifically request fresh food; we don't feel that it's a justification for that process, either; that was not prompted; the applicant notes that

special circumstances do result effectively limiting how place the building can be placed to the build-to line; granting the variance puts the applicant in undue privilege.

(Discussion ensued)

Moore: Most of the properties in this corridor that the applicant references were already constructed; the goal and intent is to have future development on this stretch of West Waterloo pushed toward the street, and to promote pedestrian access; while this site has its current grade challenges with a switchback ramp, and other things, pushing the building back and allowing traffic to flow both directions in front of the pedestrian is further going against the premise of what the code calls for; the applicant has shown that they can meet the design requirements for our zoning code and text.

(Discussion ensued)

Moore: The way that the Planning & Zoning process works is that when the conditional use application was denied, they would have tabled the rest of the applications, so that way they can work through the rest of the items; the applicant pushed really hard for all of the variances to be discussed, that way they could bring it all to you in one shot; this decision had a different vote than the conditional use; the conditional use was 3 to deny, 1 to approve; this application was 2 to deny, 2 to approve; if there are any questions on these processes, or why they look at it separately, I can answer any questions.

Lynch: Mr. Moore, has any application been made for the drive thru loop-around to be one lane, and close off the access? Moore: This site in the shopping center plans says that it's a parking expansion; it wasn't until Kay Jewelers came around in 2015 and asked for it to be developed on, it was the first application we had; there is nothing that says we are going to prohibit someone from developing on this property, if they can get it to work; this current site plan does not work; the applicant has shown that they can design the building to not have that wraparound in this context; I believe they've done another site plan, where from the suggestion of staff, we would support the setback variance, if they provide an amenity in the front of the building, such as a large patio.

(Discussion ensued)

Moore: I have worked with this applicant for 9 months; another alteration – they had the building pushed back, didn't have the loop, but they had 2 parking spaces in front of the building, in between the building and the street; that specific scenario required 2 variances – one for parking in front of the building, and one for the building pushback; the applicant didn't pursue that one, because it had more risk; it eliminated that loop, however; there have been multiple iterations of this plan to try to be in code compliance; what you see in front of you with this plan is what ended up at Planning & Zoning Commission as what they wanted to go through with; that's part of the reason it's being recommended for denial.

(Discussion ensued)

Amos: Is there a reason that the outparcels that are currently next to Panera and Chipotle are not the primary ones these companies are targeting? Moore: That would be a question for the applicant, I don't know any rhyme or reason on why they picked this site over another site.

Jarvis: If there are no further questions for Mr. Moore, we will move onto the appellant's presentation.

E. Appellant's Presentation

Brief to City Council in Support of Conditional Use Application CU-19-001 and Variance Application VA-19-005 ([Appellants' Brief](#))

Joseph Miller, Attorney Representative for Panda Express: We have submitted to you, as you know, the brief of the applicant and the owner, as well as the affidavits for support that we asked be part of the record for tonight; we appreciate your time and attention to that, as well as this presentation, and the live testimonies of witnesses that we have before us; respectfully, I am glad to hear Mr. Moore state that he agrees a drive thru is appropriate for this site, it's just a question of the design or the layout; I also appreciate his statement that while plans for the shopping center may reflect one thing, this is a developable site in staff's view.

(Discussion ensued)

Miller: While staff has proposed to you one particular layout, we would submit to you that the layout as proposed to this council is safe, efficient, and in fact, optimal; you are well familiar with the site, and I can move quickly through this.

(Discussion ensued)

Miller: We are simply asking for a change to the applicable setback requirement to accommodate for the drive thru that both the applicant and staff agree would be appropriate for the area, and for the site; I agree that we need to consider the specific factors, as it relates to the variance, and as it relates to the conditional use application; let me tell you what we can take off the table from our perspective – Planning & Zoning Commission found that this was an expressly permitted conditional use; in fact, you just heard that staff found that it is compatible with the adjacent used, and compatible with surrounding development.

(Discussion ensued)

Miller: We would present to you the live testimony of Bryan Kan, senior design manager of Panda Express, Henry Klover, the architect with 4 decades of experience and site design/layout of commercial property such as this, we have a traffic expert, John Gallagher; while I am respectful of Mr. Moore's opinions, they were just that, and feelings as expressed in the staff report – Mr. Gallagher has several decades of traffic and onsite circulation studies; likewise, to satisfy the few remaining factors, appraiser and commercial real estate developer Bob Wyler is here to tell you why this is perfectly compatible.

Bryan Kan, Senior Design Manager for Panda Express: I have been with Panda for 14 years; my background is in design, I've been in the design field for about 20 years; Miller: An affidavit has been submitted to council as exhibit E, is that your affidavit? Kan: Yes; the site was selected due to the fact that it's at a very optimal location, in terms of the street visibility; as you can see, the street does curve away from the building; in commercial real estate, once you are outside the curve, the visibility is enhanced, therefore the location of the site is suitable for our drive thru business; Panda Express has been focusing

on drive thru business, mainly to serve the communities and to celebrate the time that they can order, and pick up their food, and go home; we've experienced a large number of drive thru business in Ohio, particularly in the Columbus area, therefore the design of the site is tailored to that need of the market; this site is designed with multiple points of access to accelerate the circulation of the site, because in a commercial site, especially in restaurants – I'm sure many of you have experienced going into a site where there is dead-end parking; once you enter, you have a hard time maneuvering and getting out of the site; we are trying to avoid that in all site designs, to provide multiple access points, so our guests can come in and out of the site very easily, without any trouble circulating.

Miller: We saw staff's preferred design, where they said they would approve a design such as that? In your opinion, based on your experience, is that safe or optimal? Kan: That is not optimal; we have done different iterations of the site plan in our feasibility study – 18 to be exact – we try to work with the city in terms of site design; we are operation-driven, and all of the site designs are tailored to our guests, and also our operations; Miller: Do you have a site layout similar to this in locations throughout the nation? Kan: Yes, we do; Miller: Have you ever encountered opposition to this site proposal before? Kan: Very rarely.

(Discussion ensued)

Miller: The access point to the north of the site – does that concern you at all that it's full-access, versus one-way? Kan: No, full-access does give us the ability for the vehicular traffic to circulate around the site; for customers that are going out to the street, they can either turn right after their drive thru order has been picked up, or they can circulate back into our site; Miller: Are you concerned at all that the drive thru service as proposed will create traffic or safety concerns? Kan: No, that's the reason we provided multiple entryways, so that our guests can circulate without having to backup; when they encounter a dead-end parking situation, they have to backup; providing multiple access points is essential.

(Discussion ensued)

Jarvis: Mr. Kan, before you leave the podium, I have a question – I found online that there is approximately 1,800 locations all over the country, is that still accurate? Kan: It's over 2,000; Jarvis: I do have a question – are there variations in design to what we're looking at here? Kan: Yes, there are; Jarvis: This is not a single-standard design that is a part of the Panda Express model; Kan: This is the current generation of the building design; the orientation of the building is optimal, in terms of our system throughout site designs; we do have other orientations; Miller: Do you avoid the dead-end parking situation, however? Kan: Yes.

Henry Klover, Site Architect for Panda Express: I graduated from the University of Kansas in 1980 with the highest distinction, with a Bachelors in Environmental Design at that time; Bachelors of Architecture in 1985, I'm a registered architect in all 50 states, plus the District of Columbia; I was weened and specialized in major shopping center design, lifestyle centers, have been the Panda Express architect for 25 years; I've been working on sites across the country; I am the architect of record for the project, as well as the initial designer; I should explain to you – I would like to bring up their site plan – when we do these, we do every layout you can think of; one of the layouts is can we accommodate everything; I'd like to

explain why that's not a good idea.

(Discussion ensued)

Klover: It's not a good idea for several reasons – number one is that it's dead-end parking; realistically, if you count, there are 29 intersections in the Walmart parking lot; we try to avoid this in all of our shopping center designs.

(Discussion ensued)

Klover: The planner stated that I said at our last meeting that we wanted something special; now I know this, because my wife always wants the vegetables; the vegetables don't go that fast, so a lot of times they're low and make it fresh; if they have to make it – if you pick something that's not really popular – in this particular case, they'd have to go all the way around and go back into a dead-end parking lot; Miller: While we are on that topic, the suggestion was made that Panda could make do with a one-way lane at the front of the store, which would still require a variance; do you consider that safe? Klover: No, that's still dead-end parking.

(Discussion ensued)

Klover: In my opinion, we did not seek any particular issues with the arrangement or layout; there are more access points because there is leftover parking lot, and in the leftover you don't want to make that a dead-end; also, you might notice – when they did this layout, they did a single island that's unused along the edge; in my world, we don't do that, either; the reason we don't do that is because nobody has to make a full right, or a full left turn to go anywhere; it creates a situation we call "dive-ins"; the new plan fixes that as well, and makes people make full rights, or full left turns; Miller: Let me ask you – the Planning & Zoning Commission found that 3 access points on the property creates an adverse impact on traffic, do you agree with that? Klover: No, not at all; I've spoken about it a little bit, but the whole issue is about how people circulate; to me, if you say to not have the access below, then there is a dead-end parking area; if you don't have the access parking above, there is a dead-end parking area, again; if you do like the Panera, you end up with circulation coming around, and dead-end parking.

(Discussion ensued)

Klover: When you work on these types of sites, typically you'd have enough room and the site would be wide enough to get complete circulation around it; in this particular case, it was important to us to make sure that we had plenty of stacking – the previous site only had 7-8 stalls, this has up to 11; it's not going to be a back-up situation, it has free-flow for people to get around it; being narrow, it forces the building and the parking to be on one side, and the drive thru on the other; I think there is one site, like the Burger King, that is similar; there's utilities and easements through there (the setback), and when you look at the rendering, it's 3-feet down on the corner – to create the pedestrian access, you're getting a switchback to get down there, so you're trying to get down the 3-foot change in grade; the thing that is unusual about this is that usually the closer you get to intersections, the wider the setbacks are, because that's where all the activity happens, where future road widening's happen; in this case, for some reason – this is a 25-foot, and everything else behind this is 50-feet, which is completely backwards from what you normally see; Miller: The suggestion has been made, even though we recognize it as zoned general commercial,

that perhaps this should be reserved as parking for Walmart; is that the best use? Klover: Not even close, a lot of times when Walmart does these site plans, they'd pick areas where they'd allow buildings.

(Discussion ensued)

Miller: You touched on this a moment ago – do you have any concerns that the site plan is not consistent or compatible with the surrounding area? Klover: The answer is no, but it's completely opposite; if anybody that didn't go to this meeting were to drive through that area, and someone said you're going to put a Panda there, and you said 'that's not compatible', they would think you're drunk.

(Discussion ensued)

Miller: In conclusion, do you have any concerns about the safety, proper circulation, and compatibility of this site, and the consistency granted to other owners within the area? Klover: No, none; Bennett: Mr. Klover, I do have one question – when the Panera was approved, there was discussion of pedestrian travel, there was discussion of having 2 lanes cross; it did get limited to a one-way drive that swept across the front; if you could go back to your map for a moment, and explain to me a little bit why a one-lane travel in in that direction is not appropriate? Klover: Personally, the minute I saw it, I thought it was a mistake; Bennett: Part of the reason for it was to make sure that it was a little bit safer for pedestrian travel, to navigate one lane of travel, instead of both lanes; Klover: When I first saw this, and actually drove it; it's not very conducive to overall internal design; it creates dead-end parking, they made it a little bit wider; it's confusing, the only way you keep people out of there is to have signs that say 'do not enter'; if we were concerned with traffic moving both ways, you wouldn't have the crosswalks out front of your building here; people are not incapable of moving their head from the right to the left; this to me was exceptionally confusing, and not what I consider to be good site design; Bennett: I guess, that's opinion; the fact of the matter is that we have one that exists, Panera is not 'dark', they are thriving, I would argue; I guess I would argue why is the one lane of travel not plausible on your site; Amos: Mr. Klover, I'm going to add to his argument that if you look at our current restaurants that we do have downtown – Arby's, McDonald's, Taco Bell – they all have a one-way direction; Klover: It's because you can loop around the building, which I stated on this site is too narrow; Amos: Burger King you cannot; Klover: That's the only one – every one of these sites have the ability to loop completely around the building.

(Discussion ensued)

Bennett: I don't understand why there's a need to turn right out of the site; the drive thru lane can loop back around the building; Miller: I would submit that Mr. Gallagher can speak to this as well; Klover: That's still not going to solve the problem of how far the building is from the street; it doesn't magically pick up 15 feet; if you look at the Panera site, they made their access point for the parking wider, it's not a traditional 20-foot driveway, they made it bigger so that when people get stuck they can turn around; when you're doing site designs, you always have pros and cons; if you're talking about that their might be conflict for somebody trying to get around the corner versus dead-end parking, the dead-end parking is always the loser.

(Discussion ensued)

John Gallagher, Traffic & Circulation Expert for Panda Express: I'm the director of traffic and planning for

Carpenter Marty Transportation; I've been there for a total of 11 years, I have 30 years of experience in transportation, both on the government and public side; I've done site layouts and site consultation for Home Depots in just about every state in the country, so I'm familiar with this type of thing; for the last 10 years, I've represented the City of Worthington in such matters in the same way that I believe EMH&T does for you; for the last 5 years, I've done that for the City of Gahanna; Miller: You've worked for ODOT in the past as well? Gallagher: And the City of Columbus, yes; Miller: I'd like you to describe for council some of the work you've done in evaluating this site plan, and the conclusions to which you came; Gallagher: We visited the site, examined the site plan, did some research on the crosswalk that they had proposed, and some potential upgrades to that - I'm talking about the one across the drive aisle; we researched some trip generation a similar-sized site that wouldn't have a drive thru through the IT trip generation; we did a 24 hour count at the existing Panda on North Hamilton Road, and compared those to the IT national data; Miller: Could you describe generally for the council members to what conclusions you came with the results of this study? Gallagher: I'll go through my report - as far as access and site circulation, as we've discussed, they're proposing it be a full access; there's the access through the south side of the site, through easement, through what still belongs to Walmart, and then they proposed the full access point to the west side, that lines up with the drugstore across the private drive; all of those are proposed to be full access points, not having full control of the one to the south - I would argue that that one is somewhat in question, from a traffic engineering perspective; the conclusion that I came to with my experience with these types of sites is that any commercial entity that would come forward on this site, it's bordered by 3 roadways, to not be asking for at least 2 access points directly onto their property would be extremely unusual; I think what they're asking for is more than reasonable for this site that's bordered by this many roadways, especially because they are private roadways; as you guys know, most of the time you get somebody show up, and they want access onto Winchester; I think this is pretty reasonable - Miller: What about the layout itself of the site, anything exceptional about it? Gallagher: This is a pretty typical site layout; as you discussed with the Panera, there are situations where parts of the drive thru remain one lane; what makes the Panera different is the limits of their drive-thru-only portion are one-way; everywhere they are parking people and circulating access points are two-way; if somebody came in with a site just to the east of the Panera, and wanted cross-access across the top, they would want theirs to be two-way in front as well, so people could circulate; Miller: Let's talk about that specifically, the two-way traffic in the northeast of the site; based on your experience, does anything concern you about pedestrian safety? Gallagher: No, it's not concerning; they are proposing a ladder-type crosswalk, which even in the public world would be considered an upgraded crosswalk; it's not the volumes of a public street, or anything like that; I would also argue, as most Casto developments, this is a very car-centric development; this is very suburban-esque; while I appreciate the build-to lines, and all the cities that want to try to increase walkability, the potential to walking to this site is 0 from the actual sidewalk; I think we'll get pedestrians from the Walmart area, and their employees that come to eat lunch, and from the rest of the adjacent commercial activity; I'd be surprised if we get 1 a month that actually comes from the sidewalk; in your opinion, there is no concern as it relates to pedestrian safety? Gallagher: No.

(Discussion ensued)

Hollins: I have one clarification - this site plan, is it the same site plan that was submitted? The only thing that catches my eye is that there seems to be an additional parking spot that serves as an area to turn

around, is this the same site plan? Gallagher: Are you talking about the hatched-out area? That's hatched-out next to a handicap spot, I believe.

Miller: We do have Mr. Wyler yet to testify – Jarvis: We were looking at approximately 35 minutes, we have exceeded that; Miller: I understand, and I appreciate that; my last witness is Mr. Wyler.

Bob Wyler, Commercial Realtor Rep for Panda Express: I received a Bachelor's Degree in Real Estate many years ago, in 1957; I received a Master's in Real Estate from Ohio State, received a Doctorate in Real Estate from Ohio State University; Miller: Could you please describe your place of work? Wyler: Our office is at 10 North High Street – I was confused coming here, we are both at 10 North High; we are in downtown Columbus, right across from the capital; been there about 10 years; the company was started in 1938 by my dad, we are in our 81st year; I was not very good at sales, and went into appraising; I've been doing appraising and consulting in the central Ohio area; from an appraisal side, I've been a member of all the major appraisal associations, I was chairman of the Ohio Appraisal Board, and a member for many years; I've just spent just about all my adult life in real estate appraisal and consulting; Miller: I would ask you to describe what you did to formulate your opinions; Wyler: Certainly, I know time is important here; let me just say that I had 2 major functions – one is to look at this site and see whether this use is compatible with the area; I don't think we need to spend a lot of time on that, I think we all agree that this use is compatible; the second is whether this use would have a negative impact on the surrounding property values, and whether or not this use would have any adverse effect as far as property values are concerned; in both cases, my opinion is that it definitely is compatible, as are the other dozen – more than a dozen – fast food restaurants that are on either side of the highway in the 2 shopping centers; as far as the adverse effect, maybe I could take an extra minute on that; after looking at the site in the plans, I tried to examine other Panda Express locations; there are 12 in the metropolitan area, and they are in established areas just like the subject.

(Discussion ensued)

Miller: In conclusion, I would bring it back to where we began – this city, its staff, its Planning & Zoning Commission must be governed by its code as set forth, not mere feelings or notions; this council has to be guided by the evidence before it in making this decision, because we are dealing with property rights, where rights under the US Constitution are implicated, where 25 drive thrus exist within the immediate vicinity of this site, including 11 for fast food or fast casual establishments; this property owner has the right to be treated similarly to those owners, and frankly, similar to prior appellants before you; I've had the privilege of coming before you several times, including drive thrus and conditional permits – each time, based on the evidence, you got it right; I would ask that you do the same thing here.

F. Public Comments - Five Minute Limit Per Person

G. Council Discussion and Recommendation

H. Adjournment

A motion was made by Lynch to adjourn, seconded by Bennett. The motion carried with the following vote:

Yes 6 – Lynch, Bennett, Amos, Coolman, Jarvis, Walker