

Much of what you heard from Mr. Obenshain, frankly, has been irrelevant. Why would he bring up a 2015 -- '17 -- excuse me -- change in the law? What does that got to do with this case here today? Nothing, other than to suggest to you that's where the legislation is heading so you need to get on board.

You must base your decision on the statutes that are in effect at the time. And I will say that there is a disagreement about whether that's the 2015 or the 2014 amendment, and without waiving my right to suggest the 2015 amendment applies and the reason why Mr. Obenshain doesn't want the 2015 amendment to apply is that without a doubt, without any doubt at all, the variance can't be granted, but I will tell you the same applies to the 2014 amendment, so I'm going to concentrate and direct all my argument to the 2014 amendment.

Again, Mr. Obenshain asked that you apply a sense of fairness. He went into great detail about the testimony of Earl Thompson. He went into testimony about what Dr. Belloni said happened. Let me tell you what Paul Harvey said one time when his show was "You need to hear the rest of the story."

Tim Hartless will tell you without equivocation that he met with the -- with Dr. Belloni at the site before any construction started and told them they could not build the wall higher than 3-1/2 feet. Dr. Belloni did not like that answer and then went to Earl Thompson and asked him, basically, the same thing.

Now, I will tell you, if you read the transcript of the Board of Zoning Appeals hearing, what Earl Thompson said was when he met -- he testified that he met with Belloni -- this is on page 26 -- early spring, and his initial response was that the existing zoning code would not permit that but then the existing hedge might be a nonconforming condition which would allow the wall to be built behind the hedge if it was lower than the hedge. He didn't say you could do it. He said you may be able to do it.

Now, Dr. Belloni, as you know, is a professor. Obviously Ms. Belloni is very educated and articulate. When you are faced with two different responses, is it not incumbent on you to get to the bottom of whether you could or could not do it, or do you have the right to simply say "I like what Earl Thompson said. I didn't like what Tim Hartless said"?

You also recall -- I know that Mr. Vames was the only one on that Board at the time -- that Sherry Burke, who was the secretary -- may I have that -- at the zoning office at that time testified that when she -- when Tim Hartless came back that, in fact, she -- he said -- she asked him what had taken place, and he told her that he had to build it 3-1/2 feet. I'll read it exactly.

"As I remember, it was a warm day. Dr. Belloni had called and wanted to have the zoning administrator come out and tell him

what he could. He wanted to build a sound barrier wall. Tim was in a meeting with two other department people, so I took the message. I did take it on a piece of scrap paper. When Tim went out, he came back."

MR. BRYANT: Give us the page of that.

MR. SANTOS: I'm sorry, 19.

MR. BRYANT: Thank you.

MR. SANTOS: Bottom of 18, starting at 19. Do you have that, Mr. Bryant?

MR. BRYANT: Yes, sir. Thank you.

MR. SANTOS: "When Tim went out, he came back and I asked him, 'What does he want to do?'

"He said, 'He wants to build a sound barrier wall.' 'I said, 'Well, you know, what did you tell him?' "He said 'Three and a half feet, but he didn't; he recommended it would not work because of the high level of traffic that would come across the road.'"

So Sherry Burke corroborated that [T]im Hartless had gone out and told them they could not build the wall.

Now, where does that leave us? At best, it leaves us with we're not sure how, exactly, that came about, but what we do know is the Bellonis received two different answers, and it was incumbent upon them to get to the bottom of it. They could have gotten on line and seen what the code required. Again, we're talking about a professor. They could have called down and said, "I want to talk to the zoning administrator; we're getting two different answers from two different people." They chose not to do that. They chose to take the answer they wanted to take.

But you know what? All of that is irrelevant. It doesn't matter. No one from the City not the mayor, not a City Councilman, not the zoning administrator, no one can grant permission to a citizen to violate an ordinance. The law is very clear. If that wasn't the case, then could you imagine the City and all of the people that's employed by the City having someone call up Mayor Dull and say, "Can we do this?"

And Mayor Dull says, "Yeah, you can do that," binding the City as a whole. That's why it doesn't bind the City, even if Earl Thompson said what he said, and I would suggest to you what I read

was an equivocation. He said "might,"

I want to emphasize, permission has nothing to do with this case. What we have to do is look at the 2014 ordinance. Before I do that, I do want to comment on a couple things that Mr. Obenshain said. Again, irrelevant, but why is the City spending so much money? There were three people that were in violation of the zoning ordinance. They all appealed -- the City appealed it to the Circuit Court, and the Circuit Court denied the variance on all three. The other two came quickly into compliance and did what they were supposed to do.

Now, Mr. Obenshain suggests to you the City did nothing until it enforced it. I have eight separate letters from the City asking Dr. Belloni and then Ms. Belloni to come into compliance, to do what they were supposed to do, to avoid litigation. All these letters were ignored.

Ms. Belloni suggested that we didn't compromise. I will tell the Board that I was authorized by the City and proposed to Mr. Obenshain and Ms. Belloni that the City would agree that they could take that wall down to the closest grout line to 3-1/2 feet, which my recollection meant the wall was still in violation by eight inches or so. That's a hollow core wall. All they had to do was cut to the grout line and put the top on it. We even offered to provide a City loader and have all of the debris loaded on that loader and taken to the dump at the City's expense. No response other than "we want to keep the wall the way it is." So it's unfair to suggest, although, again, irrelevant, in my opinion, unfair to suggest that the City has not done its part to try to compromise this case.