



KENTUCKIANA
— COURT REPORTERS —

CASE NO. 2021-172

IN RE: APPEAL OF DECISION ON 415 GREENWELL AVENUE



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1 DELHI BOARD ZONING APPEALS
2 HEARING ON CASE NO. 2021-172

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8 IN RE: APPEAL OF DECISION ON 415 GREENWELL AVENUE
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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>1</p> <p>2</p> <p>3 Scott Heenan</p> <p>4 Clay Tharp</p> <p>5 Andrew Mattei</p> <p>6 Steve Schott</p> <p>7</p> <p>8 Gregory DeLong</p> <p>9 Tony Roach</p> <p>10</p> <p>11 Bryan Pacheco, Township Law Director</p> <p>12 Kathleen F. Ryan, Attorney for Applicant</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">PROCEEDINGS</p> <p>1</p> <p>2</p> <p>3 MR. THARP: Good evening, everyone. I'd like</p> <p>4 to call this meeting of the Board of Zoning of</p> <p>5 Appeals of Delhi Township to order. The first thing</p> <p>6 to do is actually to say the pledge of allegiance.</p> <p>7 ALL: I pledge allegiance to the flag and to</p> <p>8 the Republic for which it stands, one nation under</p> <p>9 God, indivisible, with liberty and justice for all.</p> <p>10 CLAY THARP: All right. Now for roll call.</p> <p>11 Clay Tharp, present.</p> <p>12 ANDREW MATTEI: Andrew Mattei, present.</p> <p>13 STEVE SCHOTT: Steve Schott, present.</p> <p>14 SCOTT HEENAN: Scott Heenan, present.</p> <p>15 CLAY THARP: Absent, I believe, is Ms. Vatter.</p> <p>16 All right. Thank you. Okay. Mr. DeLong, I'd ask</p> <p>17 for a Sunshine Law certification.</p> <p>18 TONY ROACH: I hereby certify that the</p> <p>19 requirements of of the Ohio Revised Code and rules</p> <p>20 adopted pursuant thereto have been completely</p> <p>21 complied with for the meeting of October 5th, 2021.</p> <p>22 CLAY THARP: Great. Thank you. Did everyone</p> <p>23 receive the meeting minutes from May 11th, 2021?</p> <p>24 ALL: Yes.</p> <p>25 CLAY THARP: Okay. Does anyone have a motion</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX</p> <p>1</p> <p>2</p> <p>3 PROCEEDINGS</p> <p>4</p> <p>5 Scott Lovdal:</p> <p>6 DIRECT EXAMINATION BY MS. RYAN</p> <p>7 CROSS EXAMINATION BY MR. PACHECO</p> <p>8 REDIRECT EXAMINATION BY MS. RYAN</p> <p>9 RECROSS EXAMINATION BY MR. PACHECO</p> <p>10</p> <p>11 Tony Roach:</p> <p>12 DIRECT EXAMINATION BY MR. PACHECO</p> <p>13 CROSS EXAMINATION BY MS. RYAN</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 to have those approved?</p> <p>2 SCOTT HEENAN: This is Scott Heenan. I move to</p> <p>3 approve.</p> <p>4 CLAY THARP: This is Clay Tharp. I will</p> <p>5 second. All in favor?</p> <p>6 ALL: Aye.</p> <p>7 CLAY THARP: The meeting minutes are approved.</p> <p>8 Okay. On to our agenda items, case number A2021-02.</p> <p>9 This is an appeal for 415 Greenwell in the Delhi</p> <p>10 Pike Business Corridor Zoning District. All that</p> <p>11 are hoping to testify today, would you please be</p> <p>12 sworn? Swear to tell the truth, the whole truth,</p> <p>13 and nothing but the truth, so help you God?</p> <p>14 ALL: Yes.</p> <p>15 GREGORY DELONG: Thank you. Telling you guys to</p> <p>16 turn your microphone on, and I forget to do my own.</p> <p>17 I'm going to do a quick summary through a PowerPoint</p> <p>18 of just the staff report that was submitted to you.</p> <p>19 This information was based off of application</p> <p>20 materials submitted along with information from the</p> <p>21 zoning inspector's inspections of the property.</p> <p>22 This is case A2021-02. It's a hearing appeal</p> <p>23 request of the Delhi Township zoning administrator's</p> <p>24 determination for property located at 415 Greenwell</p> <p>25 Avenue in the Delhi Pike Business Corridor zoning</p>

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1 district based on the site inspection information
 2 provided on a submitted change of tenant
 3 application, that the property's use is not retail
 4 related versus the applicant stating on said
 5 application that he used it as retail. And it says,
 6 "Meeting was rescheduled from September 7th at the
 7 request of the applicant." Just some quick notes.
 8 The subject use did begin operations without any
 9 approved township community development permits,
 10 fire permits, or Hamilton County building and
 11 inspection permits. As I mentioned, the applicant
 12 is appealing the determination of the zoning
 13 administrator. The zoning administrator determined
 14 that the subject use is assembly, packaging, and
 15 warehousing of materials, and that there was no
 16 retail related operations occurring on the premise,
 17 and this determination was based on an interior site
 18 inspection of the property. Submitted staff report
 19 details a summary of events prior to this meeting.
 20 I did have a chronological order based on our notes
 21 and our zoning software. I don't need to go through
 22 all of those to take up time, but they are listed in
 23 the staff report. Based on notes taken by the
 24 zoning administrator during his inspection, there
 25 are discrepancies between comments made by the plant

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1 manager and the property owner as to the operations
 2 occurring and planned for the facility. The owner
 3 said that there is planned retail. The manager said
 4 there isn't. The letter submitted with the BZ
 5 application material states 3,000 square feet of the
 6 16,000 square foot building is retail. Submitted
 7 drawings show no retail space identified. General
 8 comments, of the zoning resolution states retail
 9 uses are permitted in the Delhi Pike Business
 10 Corridor but the question is, is this retail or not
 11 which you'll hear, I'm sure, later on in this
 12 presentation or in the meeting. Based on submitted
 13 square footage, calculation is 81.25 percent of the
 14 building is not a retail use. And of the zoning
 15 resolution defines accessory uses as being
 16 incidental to the main use. Here is a quick zoning
 17 map. This is a little bit bigger than the subject
 18 property. The property to the north is 423 [sic],
 19 which is the parking lot. My outline in green is
 20 actually showing both the 415 and 423. That
 21 crosshatched area is the Delhi Pike Business
 22 Corridor Zoning District. Here is a street view of
 23 the building. Here is a site plan of the building.
 24 The building is right here. The parking is to the
 25 north, and you'll see that in the aerial photo shown

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1 here. Here's the building and the parking, and you
 2 can see there's two different addresses. Here was
 3 -- it's a little small on here to see. But I did
 4 not pull all of the site plans or floor plans that
 5 were in the packet. This says, "proposed" on it, so
 6 -- but all of them were consistent. But this does
 7 have office space located in the front of the
 8 building up in this area, and then it lists storage
 9 back here. So there was no retail identified on the
 10 submitted -- not site plan but floor plan of the
 11 building. And then here's just a staff summary,
 12 which is on the last page of the staff report. It
 13 says, "Based on all of the information provided
 14 including the admissions of the property owner and
 15 tenant, the Delhi Township zoning administrator did
 16 not err determining the subject use is not retail.
 17 Consequently, staff recommends that the appeal be
 18 denied because the zoning administrator's decision
 19 was not unconstitutional, illegal, arbitrary,
 20 capricious, unreasonable, and is supported by a
 21 preponderance of substantial, reliable, or probative
 22 evidence. And this is why I'm not a law person so -
 23 - I cannot pronounce these words so -- and do you
 24 have any questions for me? Otherwise, I'll turn it
 25 over to the applicant. And tonight, we do have

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1 representatives. Bryan Pacheco is the township law
 2 director. He is here representing the township.
 3 Kathy Ryan is here representing the applicant. And
 4 Mr. Lovdal is also here this evening. So I think
 5 after Kathy's presentation, you guys will kind of
 6 figure out how they want to run the rest of this
 7 meeting from thereon after so -- any questions for
 8 me before Ms. Ryan takes the stand?
 9 BOARD MEMBER: I don't. That was the only
 10 question I really had.
 11 SCOTT THARP: Okay. There you go. Thanks.
 12 KATHY RYAN: Good evening, everyone. Can you
 13 hear me okay? The masks -- it's always a little bit
 14 of a challenge. Good evening. I'm Kathy Ryan from
 15 Wood + Lamping representing the applicant, Scott
 16 Lovdal regarding 415 Greenwell Avenue. I think my
 17 hope for this evening is that I'll present our
 18 witness who will run through his facts. And then
 19 after any kind of cross-examination, I'll close with
 20 my argument if that's fine. Okay.
 21 DIRECT EXAMINATION
 22 BY MS. RYAN:
 23 Q So Mr. Lovdal, if you could, go ahead and
 24 introduce yourself and your role in this project.
 25 A My name's Scott Lovdal. I own a company

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1 called Industrial Environments, LLC, small landlord
 2 operation. I purchased 415 Greenwell from the family
 3 that had it previous. I can't remember their name. It
 4 operated as an office building for a very long time, and
 5 then they had sold the business, so the company moved
 6 the office. So the building has sat vacant for several
 7 years. I purchased the building, and there's no need
 8 for 16 or 17,000 square feet of office in -- on
 9 Greenwell, so we demolished the back office and left the
 10 front end up. So there's an office which is being
 11 converted to retail in the front, and then the rest of
 12 the building was basically opened up into open storage,
 13 workspace, whatever you want to call it. But I do want
 14 to say one thing. We do have Hamilton County building
 15 permits. He's stated initially that we did not have
 16 Hamilton County building permits. That's incorrect.
 17 We've applied for all the Hamilton County building
 18 permits, and we were granted those building permits. It
 19 did take over a year, so that's where there was a little
 20 bit of confusion. When the gentleman from Delhi came
 21 through, we had not finalized out the inspections and the
 22 permits with Hamilton County, but they all had been
 23 approved. COVID, I -- we had to do a lot of building
 24 permits. It's been a total nightmare trying to get
 25 permits in the county and the city. So it -- we do have

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1 permits. On the drawing, another discrepancy was that
 2 when I applied for the application, we weren't sure what
 3 we were going to do with the building, so it did say
 4 "office" on the front of the building. And I forgot to
 5 change that to "retail" when I applied, so that was my
 6 mistake. I do want to apologize to Delhi for not
 7 initially coming in and getting the proper zoning
 8 application. We ran amongst a tenant very quick, and
 9 they were relocating from Mansfield, so that's kind of
 10 why things happened quickly. But I do apologize. I
 11 know that wasn't the proper way to do it, but we're here
 12 to rectify that. We want to make it right. We would
 13 love to operate our business in Delhi. We have fixed up
 14 the building a little bit, so it's definitely much nicer
 15 than it was, at least, from the exterior side. So real
 16 quickly, I'm the landlord, and I'm working with the
 17 tenant, Rocket Systems, to apply for the retail zoning.
 18 The retail is allowed in this district, and that's --
 19 we're -- we are applying for retail. So we're not
 20 looking for anything outside of retail. We talk about
 21 warehouse. You know, their claim is that this warehouse
 22 and distribution. One of the things I do want to refute
 23 is they did come in and they asked one of the gentlemen
 24 -- his job was to relocate the inventory from Mansfield
 25 to Cincinnati. They walked in. They, on the spot, just

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1 asked him what are the plans here? He doesn't know what
 2 the plans are. His job was simply to relocate the
 3 business from Mansfield down to here. So they asked
 4 him, "Is there plans to do retail?" He said, "I don't
 5 think so." He doesn't know what the plan is for the
 6 building. So we were simply in the process of
 7 relocating the business at the time from Mansfield down
 8 here into the building in Cincinnati, Ohio. So we talk
 9 about warehouse. They're saying that this was a
 10 warehouse distribution situation. I own many
 11 warehouses. This clearly is not a warehouse. This has
 12 frontage and a good street. This has plenty of parking.
 13 This has a nice retail office environment to the front
 14 end. So it's not set up like a traditional warehouse.
 15 Traditional warehouse is just a big, open space, lots of
 16 loading docks. You have more of a -- you don't have all
 17 the parking for the retail that we have. So it
 18 definitely fits in -- it definitely fits out of the
 19 warehouse experience. And then we talk about retail.
 20 Retail means that you're engaged in the sale of goods.
 21 That's clearly what we're going to do. We're going to
 22 have a retail store where people can come purchase our
 23 products. That's going to be roughly 3,000 square feet.
 24 In that area we also run an online business in the back.
 25 So in the back, we're doing traditional things that

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1 retail would do. You have your storeroom in the back,
 2 and that's what we're doing in the back of the building
 3 and then selling up front in the retail environment. It
 4 is a good spot for retail. It's on a good street. It's
 5 not on Delhi Pike, but Greenwell's adjacent -- or Delhi
 6 Pike's adjacent to Greenwell. We've got a nice
 7 frontage. We've got plenty of parking. We've got a lot
 8 of the things that when we applied for a retail permit,
 9 those were the things the building department wants to
 10 see. You know, do you have adequate parking and things
 11 like that? And we have a nice area of 3,000 square feet
 12 up front. I do want to address one of the things that
 13 they say, well, "It's a big building, and only 3,000
 14 square feet is retail." I don't think that really makes
 15 a difference. The object is that we are engaging in
 16 sale of goods, which is the true definition of a retail
 17 space. Regardless of the size of the building, we're
 18 engaging in retail in the front. I don't know where the
 19 percentage comes in, but I don't -- I've never seen that
 20 before, where you can't get a retail certificate because
 21 your building's too big for what you're trying to do.
 22 One of the things also they talk about is an accessory.
 23 This is not an accessory. We're coming in for retail.
 24 And once again, this is a retail zoned space. We're not
 25 asking for anything different. We're just coming in,

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1 and we're asking for retail. One of the things I do
 2 want to discuss is that, you know, when they came to the
 3 building, there's packaging in the back, there's
 4 labeling in the back, there's a mailroom set up in the
 5 back. Those are all things that are applicable to our
 6 retail business that we're going to be running up front.
 7 And I think if you look at other businesses in the
 8 district -- I can give you the hardware store as an
 9 example -- you know, they're going to bring in their
 10 wheelbarrows and their things, and they're going to put
 11 them together and assemble them to sell them up front.
 12 They're going to bring in their grill. They're going to
 13 assemble it and move it to the front. This is similar
 14 to what we're doing. We're packaging, we're labeling,
 15 and then we're selling those products in the front and
 16 also in an online scenario. You know, we talk about the
 17 size of the building in the back. You know, you could
 18 -- you can use one of the auto parts stores. I mean,
 19 they're filled with tires and things in their back room
 20 that they move to the front. And essentially, that's
 21 what we're doing. We're doing the back end, and we're
 22 moving our products to the front to sell them through
 23 online and retail as well. I really want to drive home
 24 the point we're not asking for anything that's not
 25 allowed here. We're asking for a retail certificate. We

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1 realize when they came through initially we were making
 2 the move. It didn't look like retail obviously. We were
 3 just moving in. And they talked to a gentleman who
 4 really had no idea what's going on with the business
 5 other than his job was to move it here. So we are
 6 asking for retail, and that's what the zoning is allowed
 7 within the space.
 8 **Q Mr. Lovdal, you also saw on page 6 of the**
 9 **letter, the -- also the example of the paint store.**
 10 **Could you talk a little bit about that?**
 11 **A** Yeah. Very similar. Where you come to a
 12 paint store, they've got all of products in the back.
 13 They bring those forward. They mix them. They will
 14 create the product that you want, and then you'll leave
 15 with that. But most paint stores are at least 30
 16 percent retail up front with 70 percent in the back,
 17 where you've got -- and we've given you an example of
 18 that -- but where you've got a lot of your storage in
 19 that back room.
 20 **BOARD MEMBER:** Pardon me, ma'am. When you say,
 21 "letter," were you referring to the Wood Lamping
 22 document?
 23 **MS. RYAN:** Yes, I am.
 24 **BOARD MEMBER:** Thank you.
 25 **THE WITNESS:** Yes.

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1 **MS. RYAN:** You're welcome.
 2 **BY MS. RYAN:**
 3 **Q And we understand there was a discrepancy in**
 4 **the past between comments made by that individual and --**
 5 **A** Yes.
 6 **Q -- your representations here. Moving forward,**
 7 **are you able to verify that you can comply with the**
 8 **definition of retail --**
 9 **A** Yes.
 10 **Q -- as a --**
 11 **A** 100 percent, yes. Uh-huh.
 12 **MS. RYAN:** Okay. I have no more questions.
 13 **BOARD MEMBER:** I have a few, please, Mr. Chair
 14 -- Mr. Tharp.
 15 **MR. THARP:** Certainly.
 16 **CROSS EXAMINATION**
 17 **BY MR. PACHECO:**
 18 **Q Mr. Lovdal, you said that you're the owner of**
 19 **--**
 20 **A** Industrial Environments and Outdoor
 21 Environments as well.
 22 **Q And Outdoor Environments?**
 23 **A** Yes.
 24 **Q That's one of the letters you submitted on**
 25 **July 19th, correct?**

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1 **A** Yes.
 2 **Q All right. And you've characterized**
 3 **Industrial Environments as a "small landlord operation,"**
 4 **correct?**
 5 **A** Yes, sir.
 6 **Q And Rocket Systems, In., is the tenant,**
 7 **correct?**
 8 **A** Yes, sir.
 9 **Q And that's a wholly separate entity, correct?**
 10 **A** Yes, sir.
 11 **Q And you have no responsibility or position**
 12 **with that company, correct?**
 13 **A** I have no position with that company. My job
 14 is to facilitate this facility and help them get their
 15 business opened up.
 16 **Q And you're not paid by Rocket Systems as an**
 17 **employee, correct?**
 18 **A** No, sir.
 19 **Q And you're not paid by Rocket Systems as an**
 20 **owner, correct?**
 21 **A** No, sir.
 22 **Q And you don't go around representing Rocket**
 23 **Systems at any other entity, do you?**
 24 **A** No, sir.
 25 **Q All right. Are you aware that Rocket Systems**

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1 is a Wyoming company?

2 A I know they have a big footprint. I don't

3 know where they're -- I'm not sure, sir, where they're

4 out of.

5 Q Okay. Are you aware that in August of 2020,

6 that Rocket Systems filed a certificate with the State

7 of Ohio seeking a foreign for-profit corporation

8 license?

9 A I am not aware of that. No, sir.

10 MR. PACHECO: Let me mark Exhibit 1 for the

11 record. I'll get you a copy. There's a copy there,

12 Mr. Tharp.

13 (EXHIBIT 1 MARKED FOR IDENTIFICATION)

14 MR. THARP: Thank you.

15 MR. PACHECO: Anyway, I'm sorry about the

16 copies.

17 BY MR. PACHECO:

18 Q This is a document you've never seen before?

19 A No, sir.

20 Q All right.

21 MR. PACHECO: For the record, for the -- this

22 is a printed off -- the top, lefthand corner --

23 website, so it goes under hearsay exceptions and

24 public record exceptions. This can be admissible,

25 and it bears the Secretary of State seal on the

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1 first page.

2 BY MR. PACHECO:

3 Q If you could, are you aware of the purpose

4 that the -- are you aware that Rocket Systems filed this

5 on August -- or the effective date of this foreign

6 for-profit corporation license was August 21, 2020?

7 A No, sir.

8 Q All right. If you can take a look at the

9 second page, the next page, and at the bottom, it says,

10 "Rezoning for corporate purposes to be exercised within

11 Ohio." Do you see that?

12 A Yes, sir. Uh-huh.

13 Q What's that say?

14 A It says, "Warehouse and fulfillment."

15 Q Nothing about retail, correct?

16 A Exactly, 100 percent.

17 Q All right. And you said they were moving

18 their business from Mansfield to Delhi, correct?

19 A Yes.

20 Q All right. And the gentleman's name that

21 spoke to Mr. Roach, his name was Matt Smith, correct?

22 A Yes, sir. Uh-huh.

23 Q And he is the operations manager for Rocket

24 Systems, correct?

25 A I was introduced to him as the person who was

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1 relocating the business from Mansfield down to this

2 location.

3 Q Okay. But again, we established earlier, you

4 don't have any authority from Rocket Systems to talk

5 about who has what responsibilities --

6 A No. I just know that from my visits with him,

7 he was a very green individual.

8 Q So -- and you're aware that Mr. Smith told

9 Mr. Roach that they were -- Rocket Systems was

10 relocating its business from Mansfield to Delhi, correct

11 --

12 MS. RYAN: I'm going to --

13 Q -- to your ability?

14 A Yes. Uh-huh.

15 Q Okay. And you're aware that Mr. Smith told

16 Mr. Roach that Rocket Systems had no intention of doing

17 retail?

18 A I'm not aware of that. That's what was

19 presented to me.

20 Q Okay. And you don't have any reason to

21 dispute if Mr. Roach says that Mr. Smith told him he was

22 the operations manager for Rocket Systems, you don't

23 have any basis --

24 A I have no basis. All I know is when I met

25 him, he was a new employee. He had just finished

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1 farming in Mansfield, and this was his new venture. They

2 were staying in a hotel, him and his wife. That's all I

3 know, sir.

4 BOARD MEMBER: I'm sorry. Did you say,

5 "farming"?

6 THE WITNESS: Yes. Yeah. He was a farmer.

7 That's why I -- I mean, because I -- when I met him,

8 I was a little taken aback by appearance and

9 conversation, and he just said, well, I was a

10 farmer, and they hired me -- just hired me to do

11 this. So they were staying down here, him and his

12 wife, in a hotel.

13 BY MR. PACHECO:

14 Q The --

15 MR. THARP: It's -- pardon me, sir. Sir,

16 earlier -- and this is Clay Tharp. Earlier, you had

17 said you believed that he -- did you say he was --

18 he seemed pretty green? Is that what you said?

19 THE WITNESS: Green, like new.

20 MR. THARP: Very -- yeah, that's --

21 THE WITNESS: That's what I meant by green.

22 Yeah.

23 MR. THARP: I'm sorry. I just wanted to make

24 sure. Thank you.

25 THE WITNESS: Yeah. Sorry about that.

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1 MR. THARP: No. You're good. Great. Thank
 2 you. Sorry.
 3 MR. PACHECO: Thank you, Mr. Tharp.
 4 BY MR. PACHECO:
 5 Q And as part of the plans that you submitted,
 6 you talked about earlier how you acknowledge that they
 7 did not have anything listed for retail on any of the --
 8 A I -- that was my mistake when I -- I took the
 9 Hamilton County plans that I had submitted for a
 10 building permit with -- and submitted those, and I
 11 forgot to write "retail" where it said "office."
 12 Q And still, as we sit here today on October 5th
 13 for the BZA, you still have not submitted plans that say
 14 "retail," correct?
 15 A I have not to the BZA, no, sir.
 16 Q And in fact --
 17 A But I have made that known that is my
 18 intention. We made that our intention since the first
 19 time I spoke with the people from Delhi.
 20 Q Well, that's your intention. You don't -- you
 21 can't speak on what the tenant's intention is.
 22 A No. I -- that's -- the owner of the company
 23 and myself have had this lengthy conversation, yes, sir.
 24 Q I see. And the owner's name is -- of Rocket
 25 Systems is who?

Page 23

1 A I have J.J. It's a nickname. I don't know
 2 what his, honestly, what his full name is.
 3 Q So the owner, whose name is J.J., who you
 4 don't know the full name of, you're telling this Board
 5 is who has represented to you what Rocket Systems is
 6 going to do with the building, correct?
 7 A He told me he's the owner, and he's the one
 8 that sends me the checks every month. And I do a lot of
 9 business, sir. I don't know a lot of my tenants' full
 10 names if --
 11 Q Fair enough. Did J.J. know about this
 12 hearing?
 13 A Yes. They're fully aware of it, yes. Uh-huh.
 14 Q And J.J. didn't -- he's not here apparently?
 15 A He does not live around here, and I told them
 16 that this was my responsibility, to help them facilitate
 17 this.
 18 Q Okay.
 19 A So I told him I would take care of it.
 20 Q And Matt Smith, he is not here?
 21 A No, sir. I don't -- honestly, I don't even
 22 know if he still works there. I haven't -- I have not
 23 spoken to him in probably three or four months.
 24 Q Okay. Very good.
 25 A I would like to -- can I ask you a question?

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1 Q No. You can't. You can --
 2 A Okay. Sorry. Okay.
 3 Q Sorry. My -- chance to --
 4 THE WITNESS: I want to address this right
 5 here, please.
 6 A Okay.
 7 Q You'll get a chance later.
 8 A All right. Thank you.
 9 Q All right. And as part of - you submitted a
 10 letter on July 19th, did you not, with respect to
 11 appealing the decision, the denial of your use as
 12 retail; is that correct?
 13 A Yes, I did.
 14 Q Do you recall that?
 15 A Yes, I do.
 16 MR. PACHECO: I'm going to mark this as Exhibit
 17 2 for the record. This is the app packet that was
 18 provided to both counsel and to the Board.
 19 (EXHIBIT 2 MARKED FOR IDENTIFICATION)
 20 MS. RYAN: Do you have copies?
 21 MR. PACHECO: I do.
 22 MS. RYAN: Okay.
 23 MR. THARP: Thank you.
 24 MR. PACHECO: Yeah --
 25 BY MR. PACHECO:

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1 Q So Mr. Lovdal, what I'd like to show you is
 2 you -- there's about -- about six or seven pages in
 3 there. There's your letter. It looks like it's dated
 4 July 19th, 2000 --
 5 A Okay. Yes, sir.
 6 Q And that was submitted as part of this appeal,
 7 correct?
 8 A Yes, sir.
 9 Q All right. And in your --
 10 MS. RYAN: Bryan, let me --
 11 MR. PACHECO: Sorry.
 12 MS. RYAN: -- get to it.
 13 THE WITNESS: It's right there.
 14 BOARD MEMBER: There's a lot in the packet.
 15 MS. RYAN: Yeah. It just wasn't showing up
 16 here.
 17 MR. PACHECO: Okay.
 18 MS. RYAN: All right. I've got it. Thank you.
 19 MR. PACHECO: Thank you.
 20 BY MR. PACHECO:
 21 Q So in your letter there, you're representing
 22 that you intend to sell dietary supplements, correct?
 23 A Yes, sir.
 24 Q Now, you're aware that Mr. Smith told
 25 Mr. Roach that keto tablets, male enhancement pills, and

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1 CBD oils and lotions would be sold on the property,
 2 correct?
 3 A I do not know that, sir.
 4 Q All right. Fair enough.
 5 MS. RYAN: And I would object to any kind of
 6 details -- discussion of an individual that's not
 7 here for cross-examination. We've got an individual
 8 here under oath to testify about the anticipated
 9 uses, and that's, to me, irrelevant.
 10 MR. HEENAN: Well, the question was just was
 11 he aware, so that's all I asked.
 12 BOARD MEMBER: Concerning that, do you have any
 13 authority that hearsay isn't allowed in this
 14 administrative proceeding under evidence -- civil
 15 rules of evidence? I don't think they apply to this
 16 hearing.
 17 MS. RYAN: You're correct, but I believe that
 18 it's not a reliable basis, and so I would like to
 19 just issue my objection to that.
 20 BY MR. PACHECO:
 21 Q And you acknowledge, too, that you have a
 22 16,000 square foot building, which the front 3,000 would
 23 be used for office and retail, and the remaining 13,000,
 24 in your own words, has been converted into a warehouse
 25 space, correct?

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1 A Yes, sir.
 2 Q And in that space, you are asking to, your own
 3 words, "to assemble, package, and fulfill your product,"
 4 correct?
 5 A Yes, sir.
 6 Q All right. Would you go ahead -- let's go
 7 further in the packet to what's been marked as Exhibit
 8 E, which was the front page. It looks like the back. In
 9 Exhibit E --
 10 A I think it's to the forefront, actually.
 11 Q Previously marked.
 12 A Okay. Yes, sir.
 13 Q Okay. And again, that's your handwriting at
 14 the bottom; is that correct?
 15 A Yes, it is. Uh-huh.
 16 Q All right. And on the applicant's notes,
 17 that's your handwriting as well?
 18 A Yes. Uh-huh.
 19 Q On the second -- sorry --
 20 A Yes.
 21 Q -- page 2 of 3 at the bottom of Exhibit E.
 22 A Right. Yes.
 23 Q And your handwriting says, "We converted an
 24 office environment into a retail space for storage and
 25 packaging facility in the rear of this space." Did I

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1 read that correctly?
 2 A Yes, sir.
 3 Q All right. And then the application, as
 4 you're aware, was denied, correct?
 5 A Yes, sir.
 6 Q And it was denied at least on page 3 of 3
 7 based on inspection on 6-11-21, "No retail per operation
 8 manager, Matt Smith, no intent on doing retail." Did I
 9 read that correctly? I'm not saying you agree with
 10 that. I'm saying did I read that correctly?
 11 A You've read it correctly, yes.
 12 Q All right. And in fact, the business has been
 13 open since March of 2021, hasn't it?
 14 A I don't think so. I would have to check but
 15 --
 16 Q It was open before June of --
 17 A We --
 18 Q It was open before you applied for the tenant
 19 change, correct?
 20 A Oh, yeah. Yes, it was. Clearly, yes, it was.
 21 I admitted that. Yes.
 22 Q And there was no retail going on at that
 23 point, was there?
 24 A No. We were not set up yet, sir.
 25 Q Okay. And it was open for at least how many

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1 months before you even applied for retail?
 2 A I would say maybe two months.
 3 Q And you only applied for retail after
 4 Mr. Roach said you could not operate in the current form
 5 in which you were operating, correct -- or which the --
 6 A We had not applied for anything, sir.
 7 Q Right. You just -- the tenant just started
 8 opening and didn't apply for anything, right?
 9 A I wouldn't say "open." We've -- we were
 10 moving into the space.
 11 Q Okay. It took --
 12 A And I had not applied for anything yet.
 13 Q Fair enough. All right. And then if you
 14 would, take a look at Exhibit D, which is another
 15 exhibit. Yeah, which is the other Exhibit D, which has
 16 the plan attached to it.
 17 MS. RYAN: The plans.
 18 A Uh-huh. Yes, sir.
 19 Q Yeah. Those are it. Do you see those plans?
 20 A I do see them, yes, sir.
 21 Q So you saw the -- I think we talked about them
 22 briefly. You saw the plans previously -- referred --
 23 remember testifying about that in your direct
 24 examination with Ms. Ryan?
 25 MS. RYAN: So this would be --

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1 A Yeah, I do.

2 MS. RYAN: -- drawing A3?

3 THE WITNESS: Yes.

4 Q Thank you. Yes.

5 A Uh-huh. Yes, sir.

6 Q Thank you for asking. And again, you have not

7 updated those since submitting those in June of 2021,

8 correct?

9 A No. I have not.

10 Q And you would agree that most retail uses --

11 that most of the retail use inventory is out in the

12 publicly accessible portion of the store, right?

13 A What was that question again, sir?

14 Q Sure. Most retail uses, their inventory is

15 out in the publicly accessible store?

16 A I would not -- I would probably disagree with

17 that.

18 Q You would disagree with that. Did you read

19 your attorney's letter to this Board of Zoning of

20 Appeals? Did you see that letter?

21 A Yes. Uh-huh.

22 Q Okay. Look at page 6 of that letter.

23 A Where's that?

24 Q And if you could, look at page 6 of that

25 letter.

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1 A Okay. Go ahead, sir.

2 Q All right. And Ms. Ryan writes about midway

3 through that paragraph, "Again, while retail uses most

4 commonly have most inventory out in the publicly

5 accessible portion of the store, and such area is

6 typically the larger area for retail use, this does not

7 foreclose the fact that there are some retail uses that

8 primarily rely on the employees handling the merchandise

9 rather than the customer." Did I read that correctly?

10 A Yes, you did. Uh-huh.

11 Q And you referred earlier to hardware stores

12 and to auto stores and to paint stores as exemplary of

13 retail stores where some larger portion than a typical

14 retail store would consist of storage or places where

15 they assemble the product -- before the customers,

16 correct?

17 A Yes, sir.

18 Q Okay. All right. In this particular case,

19 you don't disagree that over 80 percent of the floor

20 space to which your tenant wants to devote is devoted to

21 assembling or packaging or whatever words you want to

22 use as opposed to the less than 20 percent that he'll be

23 using for the retail you claim, right?

24 A Correct.

25 Q And we have nobody here from the tenant to

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1 confirm anything that you have to say, correct?

2 A No. No, sir.

3 MR. PACHECO: I have nothing further.

4 THE WITNESS: Do you want to speak or me to

5 speak?

6 MS. RYAN: Well, we're going to --

7 THE WITNESS: Okay.

8 MS. RYAN: -- have a redirect testimony at this

9 time.

10 REDIRECT EXAMINATION

11 BY MS. RYAN:

12 Q Mr. Pacheco mentioned -- he asked whether you

13 were -- you had a responsibility with the company. Would

14 you agree that it is --

15 A I have -- I have a --

16 Q -- within your interest to make sure --

17 A I have a large responsibility, yes.

18 Q -- the use complies with zoning. He also

19 referred to this document, which is the State of Ohio

20 certificate. Is this a zoning document?

21 A No.

22 Q No?

23 A No. This is just a simple application for

24 license in my name.

25 Q And so where this mentions -- he mentioned

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1 warehouse and fulfillment. Would fulfillment in this

2 context indicate a zoning use at all?

3 MR. PACHECO: For the record, I'm going to

4 object, but go ahead.

5 A No.

6 Q And can you describe what you believe

7 fulfillment to mean in that context?

8 MR. PACHECO: Same objection.

9 A Yeah. I'm not sure what -- when they ask for

10 warehouse and fulfillment, they're simply saying we're

11 going to warehouse and we're going to fulfill our

12 products in the back room. So whether we're labeling,

13 packaging, assembling, these are all things that bring

14 it to the front line but -- can I add something?

15 Q You can.

16 A Yeah. So this app -- this paperwork was

17 filled out and given to the State on 8-21 of '20, so

18 this was over a year ago. I own several businesses.

19 I've been in business for 37 years. I have changed the

20 things that I do with my businesses on a yearly basis.

21 When I started my original company, Outdoor

22 Environments, which is a largescale construction

23 company, we started out with landscaping. Well, 12

24 months later, we were building retaining walls. Twelve

25 months after that, we decided we were going to do brick

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1 pavers. Five years after that, I became a landlord. So
 2 then I started my Industrial Environments company.
 3 Industrial Environments has been in business for about
 4 25 years. I own a lot of warehouses and a lot of
 5 buildings all around the City of Cincinnati and suburban
 6 areas. We've changed what we do ten times. Originally,
 7 we were going to be a big warehouse box guy. Then we
 8 realized, you know, let's mix it up. We now do auto
 9 reclamation. We own junkyards. I mean, so for them to
 10 come in and say warehouse and fulfillment in April of
 11 '20 and not have -- they don't have the right to change
 12 their mind, Mr. Pacheco? They certainly do. The same
 13 way Dinsmore & Shohl maybe started out representing
 14 business owners, but then they led to let's do zoning
 15 also, or let's become an ambulance chaser. So
 16 businesses can change, okay? So just because they put
 17 warehouse and fulfillment, that doesn't lock us in to
 18 what this \$99 application to the State of Ohio says.
 19 Mr. Pacheco's done a wonderful job breaking
 20 down all this and working his way through it, and I
 21 respect you for that. But the bottom line is: I'm here
 22 asking for a retail zoning certificate. I'm not putting
 23 a strip club here. It's a retail zoning certificate,
 24 gentlemen, okay? I want what you have to offer. I want
 25 to bring our 40 to 50 employees into this area. We want

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1 to work as a team together. I'm here trying to make
 2 this right. I apologize that initially I did this wrong.
 3 It did not go through the proper channels. I've worked
 4 with these gentlemen over here. They've been very
 5 cordial to work with, and I'm trying to move this in the
 6 right direction. But certainly, a business has a right
 7 to change its mind and decide that it wants to do
 8 something different than what it wrote on an
 9 application. The person that filled this application
 10 out -- this is a big company, Rocket Systems. This was
 11 probably a secretary or someone that filled this out
 12 inside the office. They're not in the owner's mind. You
 13 don't know what the owner's going to do. So he's done a
 14 wonderful job of breaking all this down, but we're not
 15 asking for anything. If anything, give us a chance.
 16 Give us a chance. Let us prove to you that we're going
 17 to open a retail business. We can have this
 18 conversation in six months if these gentlemen come
 19 through and say, Mr. Lovdal, you're not operating a
 20 retail business. I'm not outside of the boundary here.
 21 I'm simply asking for something that you guys offer in
 22 Delhi Township. So I do want to address that. Go
 23 ahead.
 24 **Q Mr. Pacheco mentioned the July 19th letter**
 25 **where you used the word "warehouse."**

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1 A I did use the word "warehouse," yes. Uh-huh.
 2 Yeah.
 3 **Q Describe when you used it versus the way the**
 4 **resolution used it.**
 5 A I mean, the point we're trying to make is that
 6 we -- we're going to have -- we have a larger building.
 7 I'm sorry it's a larger building, okay? It's not a
 8 smaller building. There wasn't a smaller building
 9 available in Delhi at the time, so this was the building
 10 that came to us. It was a 16,000 square foot office
 11 building. We've wrecked the office in the back. We're
 12 trying to make this work. So it doesn't lay itself out
 13 to 6,000 square feet of retail, sadly. It lays itself
 14 out to 3,000 up front. It lays itself out really,
 15 really nice. And then the remaining back space is
 16 warehouse, it's distribution, it's fulfillment. You
 17 could use ten different words to describe the space. I
 18 used the word "warehouse." Yes, I did. But it's where
 19 we're going to operate our business. We're going to
 20 operate our business out of the back. We're going to
 21 bring our goods into the back, and we're going to
 22 assemble them, we're going to store them, we're going to
 23 repackage them, and we're going to move them out front
 24 for retail. It's no different than what half the
 25 businesses in your district does. It's -- we're not

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1 asking for anything that doesn't apply.
 2 MS. RYAN: All right. And I think you can have
 3 a seat. I will give a closing argument.
 4 THE WITNESS: Okay. That's fine.
 5 MS. RYAN: Thank you. Do you have any more
 6 questions for Mr. Lovdal at this time?
 7 MR. THARP: --
 8 MS. RYAN: Sure.
 9 MR. THARP: I just have a couple.
 10 MS. RYAN: Yeah. Sure.
 11 RE-CROSS EXAMINATION
 12 BY MR. THARP:
 13 **Q So you essentially, again -- not to -- I just**
 14 **want to make sure that I'm clear. You actually are not**
 15 **-- you are here on behalf of Rocket Systems, but you are**
 16 **more, of course, in the landlord capacity, right?**
 17 A It's my --
 18 **Q But you were not --**
 19 A Yeah. Go ahead.
 20 **Q You're not actually -- I'm sorry. I should**
 21 **have let you answer. I apologize.**
 22 A You're fine. No. It's -- my agreement with
 23 them --
 24 **Q Uh-huh.**
 25 A -- is to facilitate this process and make this

<p style="text-align: right;">Page 38</p> <p>1 work for them.</p> <p>2 Q I understand.</p> <p>3 A I mean, they're all in. They love the</p> <p>4 location. They moved here from Mansfield. They</p> <p>5 literally want to bring 40 to 50 people into the</p> <p>6 building. So my job is a lot of responsibility to get</p> <p>7 this deal done for them, to --</p> <p>8 Q Yes.</p> <p>9 A -- get Delhi happy, to get this approved, and</p> <p>10 get it open. I'm all the way through to getting the</p> <p>11 retail business open for them. The owners are out of</p> <p>12 town. It's a big business and they've put that</p> <p>13 responsibility on me, and I've accepted that</p> <p>14 responsibility.</p> <p>15 Q Okay. But you are not a part of their</p> <p>16 operations, per se?</p> <p>17 A No. No, sir. No. But I will be as far as</p> <p>18 getting this retail business open.</p> <p>19 Q Understood.</p> <p>20 A Yes.</p> <p>21 Q Understood.</p> <p>22 A Yes. Uh-huh.</p> <p>23 Q I understand that, but you are not a --</p> <p>24 A I'm not a paid employee or anything, no.</p> <p>25 Q Right. Okay. And you've never worked for</p>	<p style="text-align: right;">Page 40</p> <p>1 furniture in it.</p> <p>2 Q So it's empty. Okay. Great. Thank you. No</p> <p>3 updated plans have been provided to us.</p> <p>4 A The only thing we'd update would say "retail"</p> <p>5 instead of "office."</p> <p>6 Q Understood.</p> <p>7 A Literally, that's it.</p> <p>8 Q Understood. But --</p> <p>9 A But all the spaces --</p> <p>10 Q Uh-huh.</p> <p>11 A -- that show on the Hamilton County</p> <p>12 application are the same.</p> <p>13 Q Uh-huh. Right. Okay.</p> <p>14 A Yeah.</p> <p>15 Q But you have not provided those to us nor to</p> <p>16 Hamilton County; is that correct?</p> <p>17 A Everybody has those plans. It just says</p> <p>18 "office" --</p> <p>19 Q Right. That's what I mean.</p> <p>20 A -- and it doesn't say "retail." That's it.</p> <p>21 Q Okay. Just --</p> <p>22 A Yeah.</p> <p>23 Q Just making sure. Okay.</p> <p>24 A Yep.</p> <p>25 MR. HEENAN: Can I ask a question off of that?</p>
<p style="text-align: right;">Page 39</p> <p>1 them prior and --</p> <p>2 A No, sir. No.</p> <p>3 Q -- seen -- have you ever visited any of their</p> <p>4 other locations?</p> <p>5 A I haven't because they don't have anything</p> <p>6 around here.</p> <p>7 Q Okay. Great. Thank you. Do you currently --</p> <p>8 I have driven by. We usually do --</p> <p>9 A Sure. I understand.</p> <p>10 Q -- you know, frequently, et cetera. Do you</p> <p>11 have any signage outside? The last time, I didn't -</p> <p>12 A No. We haven't done any of that because we</p> <p>13 want to --</p> <p>14 Q --</p> <p>15 A -- get this approval first --</p> <p>16 Q --</p> <p>17 A -- so we can -- we haven't even -- we haven't</p> <p>18 spent the money to open the retail space yet because we</p> <p>19 need to get past this. We're not going to spend money</p> <p>20 on signage and everything to get denied here.</p> <p>21 Q That, of course, was -- my next question --</p> <p>22 A Yeah.</p> <p>23 Q -- was: Have you finished the retail space?</p> <p>24 A No. We haven't anything yet. It's just -- it</p> <p>25 looks just like this, but it's just empty with no</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. THARP: Oh, yeah, sure.</p> <p>2 MR. HEENAN: This is Scott Heenan. Looking at</p> <p>3 these plans -- I'm just looking at -- A3 is the</p> <p>4 sheet because that's the one people are referring to</p> <p>5 this whole time. There is a number of rooms on here</p> <p>6 marked as "office." Which one's going to be retail?</p> <p>7 THE WITNESS: The -- let me find that sheet,</p> <p>8 sir. So you got -- you gentlemen have that in front</p> <p>9 of you?</p> <p>10 MR. HEENAN: Yes.</p> <p>11 THE WITNESS: So you'll come in the front door</p> <p>12 off of Greenwell. You have everything to the</p> <p>13 righthand side. My eyes are horrible. But it's</p> <p>14 office, then office behind it with a lavatory there.</p> <p>15 That's on the right as you come in the front door.</p> <p>16 And then to the left, everything to the left that</p> <p>17 says office and then the two smaller offices,</p> <p>18 they're -- that's all of it. And it's going to be</p> <p>19 this front-end space right up front here.</p> <p>20 MR. HEENAN: So is it -- the plans here show</p> <p>21 one, two, three, four, five, six, seven offices up</p> <p>22 there.</p> <p>23 THE WITNESS: There are others. So when we</p> <p>24 demolished the existing office building, everything</p> <p>25 in the back, we demolished, but the stuff to the</p>

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1 front end, we left that for -- you could use -- I
 2 mean, it says "office." It could be used for a
 3 meeting room. It could be used for storage. It
 4 could be used for a manager's office.
 5 MR. HEENAN: Okay. So --
 6 THE WITNESS: But the main retail is going to
 7 be everything up in the front on both sides.
 8 MR. HEENAN: So which one -- all right. Which
 9 -- looking at these, there's -- it's listed as
 10 general office two, general office seven. There's
 11 numbers underneath these. If I walked into there
 12 whenever you start doing retail, which of these
 13 numbers am I going to be able to shop at?
 14 THE WITNESS: Can you show me what you're -- my
 15 eyes are horrible. I'm sorry, sir.
 16 MR. HEENAN: Number's there, and underneath of
 17 each of those, there's --
 18 THE WITNESS: Yes.
 19 MR. HEENAN: -- a number for each room.
 20 THE WITNESS: Yeah. This room here.
 21 MR. PACHECO: For the record, Mr. Heenan, which
 22 plat is this? I'm sorry.
 23 MR. HEENAN: This is sheet A3 of 5 and --
 24 THE WITNESS: -- larger plan.
 25 MR. PACHECO: Yes.

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1 MR. HEENAN: And he is pointing to general
 2 office seven.
 3 THE WITNESS: Here, here, here, and these two.
 4 MR. HEENAN: So he --
 5 THE WITNESS: So anything from here forward,
 6 this will be the retail space. Then these offices
 7 in here will be managers, meeting rooms.
 8 MR. HEENAN: And just to make sure that the
 9 record's clear, at first, he was pointing to the
 10 offices labeled as two, seven, five, six, four --
 11 THE WITNESS: Yes.
 12 MR. HEENAN: -- hallway five.
 13 THE WITNESS: Yes.
 14 MR. HEENAN: So you're planning on demo'ing all
 15 those walls?
 16 THE WITNESS: No, no, no. Those walls will be
 17 there. This will be, like, a -- an office in the
 18 retail right here. This would be another. Like, we
 19 -- once again, we haven't completed the exact floor
 20 layout of what we're going to do, but we're going to
 21 use all this space up front, everything in front of
 22 my hand will be retail.
 23 MR. HEENAN: With these walls and this hallway
 24 and everything in place?
 25 THE WITNESS: Well, this is a bearing wall down

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1 the center, sir, so I have to leave that. And these
 2 demising walls, yeah, someone could come in, walk
 3 into this space, and we may put different products
 4 in each room, or we may demo the wall.
 5 MR. HEENAN: Well --
 6 THE WITNESS: We haven't come up with a retail
 7 plan yet.
 8 MR. HEENAN: And let me ask you -- you keep
 9 saying, "we" are going to do this, but you're just
 10 the landlord, so you're actually -- I mean, have you
 11 seen their --
 12 THE WITNESS: Landlord and contractor.
 13 MR. HEENAN: Have you seen their business plans
 14 as to what they actually plan on, on how they plan
 15 on laying this retail out?
 16 THE WITNESS: No, because I'm designing that
 17 myself. I'm helping them open the front retail
 18 space. I mean, there's not -- I mean, to be quite
 19 honest with you, it's just like taking this room
 20 here, adding racking, adding shelving, adding
 21 storefront. I mean, it's not like we're building
 22 out an Applebee's. I mean, this is going to be just
 23 a matter of racking and storing and putting product
 24 out. There'll be a counter space, cashier space.
 25 So I mean, there's really -- I mean, there's a --

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1 it's just going to be a matter of filling the rooms
 2 with tables and things for displaying the product.
 3 This is not a fancy business.
 4 MR. THARP: This is Clay Tharp. Would you be
 5 doing that retail plan at the direction of Rocket?
 6 THE WITNESS: I'm going to work with them, and
 7 we're going to lay it out.
 8 MR. THARP: In essence, so that would be your
 9 responsibility to lay it out or would they direct
 10 you how to do that?
 11 THE WITNESS: No. I'll have input in it, for
 12 sure. Yeah.
 13 MR. THARP: Do you have personal knowledge of
 14 what products they actually would be selling? I
 15 know we --
 16 THE WITNESS: All their products and new ones
 17 that they're developing. So it's anywhere from
 18 dietary supplements -- it's the Andro400 that you
 19 hear advertised. It's a lot of vitamins. It's --
 20 I'm trying to think of a better word for it -- male
 21 enhancement products. I mean, it's the whole --
 22 it's a whole line of the stuff you'd -- Balance to
 23 Nature [sic] that you see on television advertised.
 24 I mean, any dietary supplement.
 25 MR. THARP: Okay.

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1 MR. MATTEI: This is Andrew Mattei. The --
 2 obviously, after you pointed out which portions of
 3 the office were going to be used as retail, the vast
 4 majority is listed as storage. Is all of that
 5 storage area, the product stored there, intended to
 6 be sold just in this small retail portion, or is
 7 some of this intended to be sold --
 8 THE WITNESS: No, sir. It's an online business
 9 also, and they'll also ship to other locations that
 10 they have as well.
 11 MR. MATTEI: Okay. Because when you say, "ship
 12 to other locations," that changes the nature of the
 13 use of the space from strictly retail to more of a
 14 distribution.
 15 THE WITNESS: No. The -- I mean, you've got
 16 AutoZone that brings in product and can move it from
 17 one store to the other.
 18 MR. THARP: Do you know how many stores -- this
 19 is Clay Tharp. And again, I'm sorry. I hate to --
 20 THE WITNESS: No. I understand. You're fine.
 21 MR. THARP: Do you know how many stores that
 22 they have now nationally?
 23 THE WITNESS: I do not.
 24 MR. THARP: Okay. Do you know --
 25 THE WITNESS: I know it's a big company, but I

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1 don't know, honestly.
 2 MR. THARP: Sure. Do you know where the
 3 closest, the nearest store, let's say --
 4 THE WITNESS: I --
 5 MR. THARP: They've moved from Mansfield. I
 6 --
 7 THE WITNESS: I mean, I do not know, to be
 8 honest with you.
 9 MR. THARP: Okay.
 10 THE WITNESS: I have not researched any of
 11 that.
 12 MR. HEENAN: This is Scott Heenan. What was
 13 the nature of how they were running their business
 14 in Mansfield?
 15 THE WITNESS: I do not know, to be honest with
 16 you, sir. I have not been there. I have not
 17 visited them. It was a very quick deal that we did
 18 putting them in connection -- in connecting them
 19 with myself. They had a desire to be in Cincinnati.
 20 They wanted to be out of the Mansfield location, and
 21 he -- they were very excited to acquire this space.
 22 MR. SCHOTT: This is Steve Schott. I just have
 23 two questions. I want to make sure -- I'm a little
 24 blunter than some of the others, maybe, but are you
 25 aware of any other operations this company has where

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1 they have retail establishments?
 2 THE WITNESS: I'm not. No, sir.
 3 MR. SCHOTT: Okay. Have they -- I'm assuming
 4 they have made no retail sales so far since they
 5 don't have finished plans for the front of the
 6 building. Is that -- when I say retail, store front
 7 sales. Let's put it that way.
 8 THE WITNESS: In this location, no.
 9 MR. SCHOTT: Have they been fulfilling orders
 10 in the back section of the property?
 11 THE WITNESS: Online orders, yes.
 12 MR. SCHOTT: Okay.
 13 MR. HEENAN: Looking at some of the -- this is
 14 Scott Heenan. Looking at some of the other drawings
 15 that you submitted -- I'm looking specifically at M1
 16 of 1, which is involving your HVAC systems. I'm
 17 seeing a lot of work on the HVAC back in what you're
 18 describing as the warehouse area. I'm seeing no
 19 work whatsoever in the offices that -- or the --
 20 well, now, offices, what you're saying will be
 21 retail. It looks like there might be some ceiling
 22 fans. Am I looking at this correctly and seeing
 23 that there is not HVAC in that retail area?
 24 THE WITNESS: No. There is, sir. So what
 25 happened was --

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1 MR. HEENAN: There is?
 2 THE WITNESS: -- this was an office building.
 3 The entire building had HVAC, air conditioning and
 4 heat. So when we demo'd the back offices, we had to
 5 modify all those HVAC systems. So we didn't touch
 6 anything up front. That's why the drawings don't
 7 show anything.
 8 MR. HEENAN: Okay.
 9 THE WITNESS: Yeah.
 10 MR. HEENAN: Do you have any idea how long
 11 they've been processing orders?
 12 THE WITNESS: At this location?
 13 MR. HEENAN: Yes.
 14 THE WITNESS: I would think just a few months.
 15 MR. HEENAN: At least since June, right?
 16 THE WITNESS: That'd be my guess. I'm not -- I
 17 don't know that answer for sure, sir.
 18 MR. HEENAN: But, I mean, you have no reason to
 19 question -- when Mr. Roach in his report says that
 20 he saw people packaging and labeling things, you
 21 have no reason to doubt that?
 22 THE WITNESS: No. No, not at all.
 23 MR. HEENAN: Do you have any reason to doubt
 24 that two people at that location told him that there
 25 was no plans that they were aware of for retail?

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1 THE WITNESS: That would not surprise me.
 2 MR. HEENAN: And is there a reason why they
 3 didn't make their applications in a timely manner or
 4 you or them or whomever?
 5 THE WITNESS: I dropped the ball on that, sir.
 6 MR. HEENAN: Okay. So you didn't get around to
 7 filing the application until after the cease-and-
 8 desist letter was sent?
 9 THE WITNESS: Yes. That's correct, sir. Yes,
 10 sir.
 11 MR. HEENAN: And finally, on your variance
 12 application for the Board of Zoning Appeals, it
 13 shows that your request is for a use variance. What
 14 authority does this Board have to grant a use
 15 variance under the current zoning code?
 16 THE WITNESS: To be quite honest with you, I
 17 told these gentlemen over here what I was applying
 18 for. I think I was directed with a use variance; is
 19 that correct or --
 20 MR. DELONG: That was a mistake on the
 21 Township's part. That was the wrong form, and so
 22 that's not Mr. Lovdal's. That's -- that was --
 23 MR. HEENAN: Okay.
 24 MR. DELONG: That's the wrong -- it would --
 25 he was told the right advice. He was told to mark

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1 the wrong thing, so that's on the Township, not
 2 Mr. Lovdal.
 3 MR. HEENAN: Okay.
 4 THE WITNESS: Can I add something --
 5 MR. HEENAN: Sure.
 6 THE WITNESS: -- Mr. Heenan? Today, on my
 7 construction company side, my -- one of my customers
 8 called me, and he said, "Are you guys really doing
 9 that back fire pit and patio in our back yard,
 10 because that wasn't part of the deal?" And I said,
 11 "I have no idea what you're talking about." He
 12 said, well, your guy out here working said that you
 13 guys are putting in a fire pit and a patio also.
 14 That happens all the time. It's not uncommon for an
 15 employee to speak with -- completely with no
 16 knowledge at all and get everything wrong. It
 17 happens every day in my world.
 18 MR. HEENAN: But you do have contact with the
 19 owner, who would have knowledge of these things. I
 20 know you only know him as J.J., and not actually by
 21 his full name or even his first name, but you have
 22 contact with this person somehow.
 23 THE WITNESS: With him, yes.
 24 MR. HEENAN: Yes.
 25 THE WITNESS: Not his people that are working,

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1 his people that were directed to move the location
 2 down here. I mean, they're -- that -- to expect
 3 them to deny me based on an employee saying this is
 4 -- it's absurd.
 5 MR. HEENAN: That's not my point. My point
 6 here is that -- why is that gentleman, Mr. J.J. --
 7 why is he not here tonight? I mean, as we discussed
 8 earlier with your counsel, hearsay's allowed here to
 9 some degree but, I mean, we've, over the past year
 10 and a half, two years, all learned how to do a lot
 11 of things remotely. There is a dozen new ways that
 12 your tenant could be here to actually tell us what
 13 his actual plans are as opposed to what you're
 14 telling us you essentially think they are from what
 15 he's told you in a business where your only
 16 relationship is to collect rent money. And you --
 17 why is he not here? Why is -- I mean, I don't know
 18 that that's necessarily on you. I'm just asking if
 19 you know because, ultimately, it's their business
 20 that is going to be affected here. I realize that
 21 might affect your rent but, ultimately, they're the
 22 ones that want to operate retail out of this
 23 location, not you. So where are they? Where's a
 24 letter from them?
 25 THE WITNESS: In his -- I'm just going to speak

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1 very bluntly. He thinks he is the second coming.
 2 So, I mean, he's a very arrogant, cocky, don't-
 3 bother-me type person. I have a lot of tenants and
 4 a lot of properties, and he's one where it's, like,
 5 I don't -- that's below me to deal with this. You
 6 deal with it.
 7 MR. HEENAN: Okay.
 8 THE WITNESS: You're the landlord, this is what
 9 our intentions are, the same way that I've hired Ms.
 10 Ryan to help me facilitate this, I'm representing
 11 them, and my relationship is more than just me
 12 collecting rent by far. I'm much more involved with
 13 my tenants. I'm much more involved with their
 14 businesses, and I -- I don't know if you guys got a
 15 look at this property before we worked on it, but I
 16 mean, we've come through, and we've definitely made
 17 it nicer. I've been out there myself and making
 18 sure that the things we do are good for Delhi. And
 19 I want to get this thing over the hump. He does not
 20 want to be bothered with -- this is way below.
 21 MR. HEENAN: Does he not have a vice president
 22 --
 23 THE WITNESS: I --
 24 MR. HEENAN: -- or some other employee?
 25 THE WITNESS: It is a very -- it's a very

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1 different business, shall I say?
 2 MR. HEENAN: You said it was a larger business
 3 earlier.
 4 THE WITNESS: It is -- or they are a larger
 5 business. I mean, they have a lot of revenue. I
 6 was very impressed by the things that I found out
 7 about them, but I -- yeah. I mean, he's not a
 8 person that would -- I don't know. He's -- I took
 9 responsibility for this, and I own several other
 10 buildings where I'm doing the same thing right now,
 11 where we're helping people, out-of-town tenants, get
 12 things done on a local level. And it's just -- it's
 13 just what I do for my tenants. You know, I'm sure
 14 you don't see a lot of landlords that would come in
 15 here and do all this but, I mean, this -- to me,
 16 it's a worthwhile venture. It's --
 17 MR. HEENAN: Well, he at least has an
 18 operations manager. He's hired staff here. You'd
 19 think that an operations manager would be familiar
 20 with the operations that that business is going to
 21 run.
 22 THE WITNESS: He was strictly brought down here
 23 to relocate the business. I mean, this --
 24 MR. HEENAN: So --
 25 THE WITNESS: These -- yeah. I mean --

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1 MR. HEENAN: I mean, I appreciate that you're
 2 saying that your tenant is cocky, but I'm assuming
 3 at this point you'd agree that he's the type to ask
 4 for forgiveness instead of permission.
 5 THE WITNESS: Well, in more than one way, sure.
 6 MR. HEENAN: All right.
 7 THE WITNESS: But I -- like, the gentleman that
 8 these gentlemen met at the space, Matt, he's a nice
 9 person but, I mean, I'm here to speak on their
 10 behalf. I have a vested interest in this. I mean,
 11 in my opinion, I could have brought him, but I don't
 12 think it would bring -- I don't think it would
 13 answer any questions or bring anything to the table.
 14 The -- this -- these -- I don't know. I don't want
 15 to be demeaning, so I'm not going to --
 16 MR. HEENAN: All right.
 17 THE WITNESS: -- continue any further, but I'm
 18 just telling you I have a right to represent my
 19 building and my tenant. And I'm here, and I've
 20 hired Ms. Ryan to help me. Once again, I'm asking
 21 for retail. I'm not out on a limb. I don't feel
 22 I'm out on a limb here. I think I made a horrible
 23 mistake by not addressing this up front, and I want
 24 to make it right. But you know, I would love to
 25 work with Delhi. I would love to see us be able to

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1 put this together.
 2 MS. RYAN: Thank you.
 3 THE WITNESS: Do you have any more questions or
 4 --
 5 MS. RYAN: All right.
 6 THE WITNESS: Okay.
 7 MS. RYAN: Thank you. Thank you, everyone, and
 8 thank you for accommodating my schedule and pushing
 9 it back to this month as well. So with this zoning
 10 resolution, I'm just going to kind of run through a
 11 couple rules of statutory interpretation that I
 12 believe are significant with respect to this use
 13 this evening. Your zoning resolution 24.2 defines
 14 warehousing as "any building or structure which is,
 15 quote, "limited to" the storage of equipment and
 16 material." It's a very simple definition, and it's
 17 one that is not met by this use. And in fact, I
 18 believe if this use was attempting to go in as
 19 retail in a warehouse district where retail was
 20 prohibited, you could easily point to that
 21 definition as a reason why it is prohibited -- the
 22 retail portion is prohibited. The courts state
 23 that, yes, words in a legislative enactment must be
 24 accorded their usual, customary meaning. However,
 25 where a term is defined in an ordinance, that

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1 definition controls. So certainly an applicant,
 2 particularly one that's not commonly versed in
 3 zoning code, zoning resolutions may use the term
 4 "warehousing" in what they believe is the -- their
 5 customary sense of the word. Here, the significant
 6 point is that it is defined and that's what
 7 controls. So you cannot penalize someone who has an
 8 application where they've casually used the word
 9 relative to this use. The important thing here is
 10 to look at the facts of the use against the
 11 definition in the code, regardless of how they
 12 causally use the word "warehouse" and to see whether
 13 that applies. And just like your definition for
 14 warehousing is quite simple, so is your definition
 15 for retail sales. It goes on to list including but
 16 not limited to a number of uses. But the important
 17 point in that definition is "It is an establishment
 18 engaged in the sales of goods." There are zoning
 19 codes that may elaborate on that and say these are
 20 uses where you have to have people -- you have to
 21 have foot traffic, or you have to have a certain
 22 percentage of this versus that. There are
 23 definitely zoning regulations out there that will
 24 specify that. But in your case, your legislative
 25 body has decided that retail, as they intend it, is

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1 very simple, sales of goods. And here, these sales
 2 are occurring, sales of goods online and in person.
 3 And to the extent that there is a Secretary of State
 4 filing, again, as my client has testified to, these
 5 can have any number of descriptions in the little --
 6 you know, it's just like a little field. Sometimes
 7 those fields are empty. You know, it's -- that is
 8 not something that is adequate to indicate the
 9 zoning that is occurring on a site. And as far as
 10 the statements of an individual, we did not ask J.J.
 11 -- that is an individual who clearly has made a
 12 statement contrary to what we are representing is
 13 the truth. Your staff has relied on that
 14 individual's statement as being what they -- what
 15 you believe to be factually correct. You know, you
 16 certainly had subpoena power to bring him in, cross-
 17 examine him to support your position. But as far as
 18 we are concerned, we don't believe -- you know, we
 19 have somebody here under oath to testify to the use.
 20 Frequently, I've seen, especially in multi-tenant
 21 buildings, you may have the architect, the engineer,
 22 the landlord. I'm not going to pick on -- but,
 23 like, in anchor properties, like, some kind of use
 24 like that where they're not going to have the
 25 Chipotle representative or the Super Cuts

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1 representative come in from corporate to represent
 2 them. You see somebody who's on the ground, a
 3 Cincinnati native familiar with the area, familiar
 4 with the codes, doing some of that legwork. And
 5 it's perfectly plausible, particularly in your
 6 application form -- you have the owner as one of the
 7 individuals that has a right to make that
 8 application or to make the appeal. Just like if you
 9 were to issue a notice of violation, that can go to
 10 the owner just as it can the tenant, and they will
 11 have responsibility -- every bit a responsibility to
 12 what happens on that site zoning-wise as does the
 13 tenant. So I -- to me, it makes no difference
 14 whether he is here representing what's going to
 15 occur on his property on behalf of the tenant or
 16 whether the tenant themselves are here. And as I
 17 have mentioned, the zoning definitions in your code,
 18 they're very, very broad. And where there is
 19 broadness, there is ambiguity And where there is
 20 ambiguity courts realize that zoning is in
 21 derogation of private property rights. And,
 22 therefore, where there is ambiguity in interpreting
 23 a code, you should always err on the side of the
 24 private property owner. And I believe that's
 25 particularly safe in this instance because you've

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1 got an individual here making these representations
 2 to you. You're interpreting the code. I believe
 3 you're able to find within the information we've
 4 provided that there are sales, online and in-person
 5 sales of goods, occurring at this site. It's not a
 6 site limited to storage. And if there are future
 7 violations and a future noncompliance with the
 8 representations that we are making to you as part of
 9 this appeal, those are something that are always, in
 10 any use, subject to compliance and enforcement in
 11 the future and shouldn't be penalized now for the
 12 potential that you believe they won't be able to
 13 comply with the representations made this evening.
 14 And again, the discrepancies between individuals'
 15 statements, what's important here is that somebody
 16 who does have a legitimate responsibility to the
 17 property, to the enforcement of anything that occurs
 18 on that site, has shown up under oath to testify to
 19 you about what's going to occur at that site. And
 20 there is nobody here under oath, testifying to be
 21 contrary to those statements. And another important
 22 principle is that in interpreting a statute, courts
 23 may not delete words used or insert words not used.
 24 That's very significant. Here, to find the way
 25 staff has found, requires you to insert a set of

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1 standards that don't exist in your resolution
 2 regarding the percentages of this versus that, or
 3 the retail sales occurring by someone walking in off
 4 the street versus online, and how much and how
 5 often. Those simply are not in the code. And it's
 6 very, very reasonable to say, well, these are sales
 7 of goods at this site, online and in-person, as a
 8 combination. To add all those extra standards that
 9 are not in the code is not permissible. And, yes,
 10 there is -- you know, there's a little bit of a
 11 disagreement possibly about how common it is to have
 12 a retail site that's mostly publicly accessible area
 13 versus mostly otherwise. But again, we've provided
 14 examples. And your resolution does not distinguish
 15 or make one acceptable and one not acceptable.
 16 Again, those -- you know, an old -- I'd say an old-
 17 fashioned pharmacy -- you don't see them very often
 18 anymore, but that was how pharmacies were. You
 19 know, you'd walk in. There's a counter. They might
 20 have a few things with a -- knee braces on the wall,
 21 but otherwise, everything's occurring behind the
 22 counter. But they're selling goods to you. The
 23 other example I would give is the days before
 24 Blockbuster. You walk in. You want to rent a
 25 movie. They have them all in back. You have to

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1 give them a card. It's at the counter. That was a
 2 retail operation. And again, the paint store, if
 3 you look at the plan on here, that's a modern-day
 4 Sherwin Williams. It's slightly over 50 percent
 5 backroom operations. And, in fact, the few
 6 paintbrushes they're going to sell in the front are
 7 very minor compared to what's happening on the back
 8 half is what's actually servicing the sales of goods
 9 primarily. So with this in mind, we would ask you
 10 to review your code, not as it's interpreted by
 11 staff's discretion, when you are able to look at the
 12 words as they are written -- plainly written and
 13 plainly defined, and you're able to, on behalf of
 14 the property owner, find that this use, as proposed,
 15 fits your resolution. Thank you.

DIRECT EXAMINATION

16 BY MR. PACHECO:

17 **Q Mr. Roach, would you state your name for the**
 18 **record, please?**

19 A Tony Roach.

20 **Q And where are you employed?**

21 A Delhi Township.

22 **Q For how long?**

23 A Thirteen years.

24 **Q In what capacity?**

25

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1 A For the past three, zoning administrator.

2 **Q All right. In your capacity as being employed**
 3 **at Delhi, how many retail businesses have you inspected**
 4 **or visited?**

5 A Several.

6 **Q Have you ever seen any that have an 80**
 7 **percent-20 percent ratio as proposed by the applicant**
 8 **here?**

9 A Not in my experience, no.

10 **Q All right. With respect to this particular**
 11 **site here at 415 Greenwell, did you inspect it?**

12 A I did.

13 **Q When?**

14 A On June 11th.

15 **Q Why'd you go there on June 11th?**

16 A We received a complaint of warehousing in that
 17 zone district, which is not permitted. In checking with
 18 our assistant chief, Jesse Moore -- fire chief, Jesse
 19 Moore, who does new business inspections, I talked with
 20 him. And he knew nothing about it. And then he
 21 contacted the building department. So we all three
 22 visited it the same day.

23 **Q And what did you learn during the inspection?**
 24 **What did you observe?**

25 A We actually met Mr. Smith there. I guess they

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1 were maybe out on break. He was in the parking lot. And
 2 he introduced himself as the operations manager. And he
 3 invited us in to come see the facility. And they were
 4 up and running, full-functioning for what they were
 5 doing there. The machines were. They had several
 6 machines there that run the bottles down the assembly
 7 line. I think they fill them, cap them, everything
 8 there. So they were functioning on June 11th and their
 9 -- and that back warehouse was full of cardboard boxes
 10 that, I assume, had the product in them.

11 **Q At that point did -- based on your knowledge**
 12 **and understanding, did the business have any permission**
 13 **to operate that way?**

14 A No.

15 **Q What would the business have needed to obtain**
 16 **by that point to be lawfully doing business?**

17 A First and foremost, for zoning, they would
 18 have needed a zoning certificate for occupancy -- for a
 19 change of occupancy or change of tenant. Not -- I don't
 20 know if they would have needed anything from the
 21 building department but, certainly, they would have
 22 needed an inspection from the fire department as well
 23 for life safety.

24 **Q All right. How many people did you observe**
 25 **there on the premises that appeared to be employees or**

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1 **workers?**

2 A Between ten and 15.

3 **Q Okay. And how long were you there on the**
 4 **site?**

5 A About 30 to 45 minutes.

6 **Q How were your conversations with Mr. Smith?**

7 A I'm sorry?

8 **Q How were your conver- -- did you have -- let**
 9 **me back up. Did you have a conversation with Mr. Smith?**

10 A Yes.

11 **Q What did he tell you?**

12 A He, basically -- well, he called Mr. Lovdal
 13 first. And I spoke with him on the phone, and then I
 14 went back and spoke with Mr. Smith and asked him his
 15 intent, the company's intent on doing retail. And he
 16 said they have no intent on doing retail, they were -- I
 17 actually have it. He wrote it down. He said, "We're a
 18 manufacturer/distributor."

19 **Q Did -- you said you had a conversation with**
 20 **Mr. Lovdal at that time?**

21 A I did.

22 **Q Can you tell the Board about that**
 23 **conversation?**

24 A Sure. So Mr. Smith called Mr. Lovdal on his
 25 cell phone. And we spoke, and he said the intent there

<p style="text-align: right;">Page 66</p> <p>1 was to do -- they were going to do retail there. My 2 observation, I saw no intent for retail whatsoever. Alls 3 I saw was the packaging and the warehousing. And I said 4 -- I told that retail is permitted, but it's the back 5 side of the warehousing and the distribution that would 6 not be permitted in that zone district. We ended our 7 conversation. He stated he agreed to go apply for the 8 proper permits. Then I went back and spoke with Mr. 9 Smith. I said -- I asked Mr. Smith -- I said, "Are you 10 planning on doing" or "What's your intent on doing 11 retail here?" He goes, "We have no intent on doing 12 retail here. We're a manufacturer/distribution center." 13 Q At any time since that date, have you talked 14 to Mr. Smith again since then? 15 A No. 16 Q Have you talked to anybody from Rocket Systems 17 about what they intend to do on the property? 18 A No. 19 Q Has anybody from Rocket Systems said what was 20 told to you was wrong or incorrect? 21 A No. 22 Q The -- so what happened? What else did you 23 observe that day? You've already -- have you told the 24 Board everything you observed or the conversations that 25 happened that day?</p>	<p style="text-align: right;">Page 68</p> <p>1 putting bottles on the assembly line. And it would roll 2 them down. And I guess there was a hopper there filling 3 boxes. And then the pills and the cap would go on and 4 then go into, you know, a box. And they'd tape them up 5 and set them aside. 6 Q Was there eventually an application for an 7 intended use filed? 8 A Yes. 9 Q Who filed that? 10 A Mr. Lovdal. 11 Q All right. Did anybody from Rocket Systems 12 sign off on that application? 13 A No. 14 Q Did anybody from Rocket Systems represent that 15 they were going to do retail in that location? 16 A No. 17 Q Who is the only person or entity that's ever 18 represented that retail is going on in that location? 19 A An employee from Rocket Systems, Mr. Matt 20 Smith. 21 Q Okay. But, I mean, in terms of retail, retail 22 itself, specifically, who is the only person that you 23 ever heard from that retail is allegedly going into that 24 spot? 25 A The landowner, Mr. Lovdal.</p>
<p style="text-align: right;">Page 67</p> <p>1 A Yes. 2 Q All right. Have you been to the property at 3 any other time? 4 A I've driven by several times. 5 Q And what have you observed as you've driven 6 by? 7 A Just the -- I've seen semi-trailers backed up 8 to the loading dock. I've seen a box truck in the 9 parking lot being loaded and then several vehicles in 10 the parking lot, I assume employee vehicles. 11 Q Do you have knowledge of how long the business 12 was being operated there before June 11th? 13 A I do not know. 14 Q Do you know if the business was being operated 15 before June 11th? 16 A No. 17 Q Okay. But, certainly, when you went there on 18 June 11th, did it appear to you based on your 19 experience, that it had just not been set up that day? 20 A No. They were full-functioning for what they 21 were doing. The machinery was up and running, and it 22 was large machinery. 23 Q Yeah. What kind of machinery was it? 24 A Some type of assembly with some type of 25 racking system where it looked like the gentleman was</p>	<p style="text-align: right;">Page 69</p> <p>1 Q And you've never heard that from anybody from 2 Rocket, correct? 3 A Correct. 4 Q Now, did you grant or deny the application? 5 A I denied it. 6 Q Because? 7 A Because I saw no intent on doing retail at the 8 time of our inspection. 9 Q All right. And what did you determine to be 10 the use going on at the property? 11 A As assembly and distribution. 12 Q Was it warehousing, too? 13 A And warehousing as well. 14 Q And what did you base those determinations on? 15 A On what I observed that day on our inspection. 16 Q Did you base it on what Mr. Smith told you? 17 A Some, yes. 18 Q Did you base it all on any of the plans that 19 were submitted to you? 20 A Yes. 21 Q And what did the plans -- we've done exhausted 22 -- looked at those plans already, but would you agree, 23 based on your review, that there was nothing that 24 indicated there was any retail on those plans? 25 A Correct.</p>

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1 Q All right. Was that also a factor in making
 2 your determination?
 3 A Yes.
 4 MR. PACHECO: All right. Mr. Tharp, may I have
 5 one second, please?
 6 MR. THARP: Certainly, sir.
 7 MR. PACHECO: Thank you.
 8 BY MR. PACHECO:
 9 Q Oh, yeah. The exhibit that I provided to the
 10 Board, which is Exhibit 2, the zoning packet, that has -
 11 - you've seen that? You've seen the zoning packet
 12 before?
 13 A Yes.
 14 Q And that has all the -- those are all true and
 15 accurate copies of the various correspondence, staff
 16 report, the letters that have gone back and forth, all
 17 the submissions that were before the BZA; is that
 18 correct?
 19 A Yes.
 20 MR. PACHECO: All right. I don't have anything
 21 further, Mr. Tharp.
 22 MR. THARP: Okay.
 23 MS. RYAN: I have a couple of questions for Mr.
 24 Roach.
 25 CROSS EXAMINATION

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1 BY MS. RYAN:
 2 Q Mr. Roach, do you have any reason to believe
 3 that retail would not work at this site?
 4 A No. But the ratio of -- at this -- it does --
 5 in my experience, I don't ever see retail operate in
 6 that fashion.
 7 Q In your observations regarding the site as it
 8 existed and the statements made by those employees,
 9 those happened in the past, correct?
 10 A Yes.
 11 Q And this evening we're before the Board asking
 12 for an appeal on an interpretation of the word -- the
 13 retail use, correct?
 14 A Yes.
 15 Q If we were here defending a zoning violation,
 16 what was occurring in the past would be relevant,
 17 correct?
 18 A Yes.
 19 Q But to interpret the use for future proposed
 20 uses, that's different?
 21 A From my interpretation, yes. The section of
 22 the code, 3.7, empowers me to give me that
 23 interpretation of what I observed, yes.
 24 Q And that's significant about how to grant an
 25 application for future operations?

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1 A Yes.
 2 MS. RYAN: Thank you.
 3 MR. PACHECO: That's all I have, Mr. Tharp. I
 4 don't -- for -- on behalf of the Township, no more
 5 witnesses, just I know Ms. Ryan wanted to rebut, so
 6 if it's okay with the Board and Ms. Ryan, I would
 7 kind of give my closing and then Ms. Ryan would have
 8 rebuttal after that.
 9 MS. RYAN: Sure.
 10 MR. PACHECO: All right. First thing, we're
 11 here on a Board of Zoning Appeals, and at this
 12 particular point, it's not -- well, we'll get it
 13 right eventually, well, just give us some more
 14 chances. It's that -- we're here because there was
 15 an application. It was denied -- appeal. There is
 16 a process. You're here in court, you're here at
 17 trial. It's time to put up. You don't get to say
 18 well, the jury said they didn't really like that
 19 conduct, and so I can come back to the next trial
 20 and fix what I told this jury so I can get it right
 21 the second time. We're here. It's time to put up
 22 the evidence or not. It's their burden. The
 23 Township has no burden to prove anything in front of
 24 the Board of Zoning Appeals. All right. It's their
 25 burden. With respect to, well, Mr. Lovdal can

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1 testify. There are two attorneys on this panel, and
 2 there is no foundation for that testimony. If this
 3 were to be a court of law and Mr. Lovdal would say,
 4 "I have no idea with the tenant wants, but let me
 5 tell you what the tenant wants," you know that
 6 testimony would not be admissible. Now, I know
 7 we're not in a court of law, but what I also
 8 recognize is it's their burden. And there's no
 9 foundation. And he's admitted a couple of things
 10 Mr. Heenan and Mr. Tharp went through and Mr. -- I'm
 11 sorry --
 12 MR. SCHOTT: Schott.
 13 MR. PACHECO: -- thank you -- Schott. I knew
 14 it was. I was going to say sheep. I knew that was
 15 wrong. No other evidence of any other retail uses
 16 by Rocket Systems. In fact, Mr. Lovdal, I believe,
 17 said "I don't know." There's no retail plan. Mr.
 18 Heenan took him through it. Well, now I'm going to
 19 take out -- well, I can't take out a wall, well,
 20 now, I'm going to move that office. We still don't
 21 even have the retail plan. We're here in front of
 22 the BZA, and there was a 30-day continuance. If
 23 there was more information to be provided, it could
 24 have been provided. And Mr. Lovdal's position is
 25 that the Township should just kind of wave that away

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1 because, well, we're going to do retail eventually.
 2 Well, it's not eventually. We're here, and the
 3 Township has to make a decision. And it's not as if
 4 Mr. Lovdal has not been treated fairly here.
 5 There's a bit of that in terms of -- a bit of that
 6 argument. But as Mr. Heenan pointed out, in my
 7 viewpoint, in my cross- examination, something I
 8 tried to elicit, too, the use is already going on,
 9 folks. The retail came in only after they got
 10 caught. And it's very interesting, is it not, that
 11 you can't have a tenant up here who's about -- could
 12 -- as a result of what this Board does, could lose
 13 his entire operation. And there's nobody here from
 14 the tenant. Nobody here to support one word of what
 15 Mr. Lovdal says, and that's who's losing in this.
 16 And maybe it's because -- and I think the Board can
 17 fairly look at credibility determinations, look at
 18 the fact that somebody didn't show up, is that maybe
 19 the tenant can't support that statement. By the
 20 way, if there's a bunch of people working there now,
 21 but we can't get J.J., whoever that is. And we
 22 can't get the operations manager because he's too
 23 green. We can sure get somebody who's working
 24 there, ten or 15 people, to come up and say, "Here's
 25 what we need." They're working in Delhi. Not one

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1 person is here. And we already know that even if
 2 you could get past all of the foundational problems
 3 with Mr. Lovdal's testimony, you still don't have
 4 evidence that this is actually what they need or
 5 what they want to do. You don't have it. Again,
 6 the bottom line is that without the evidence of
 7 retail, of which there is none -- and I want to go
 8 back and close with this. When you look at what
 9 retail is, it says, "Retail sales, an establishment
 10 engaged in the sales of goods." -- is not engaged
 11 in the sale of goods but engaged in the
 12 manufacturing, packaging, and assembly of -- or
 13 warehousing of -- well, we're not even sure, right?
 14 Remember when we -- when Mr. Tharp asked the
 15 question, "What kind of pills?" "I don't know, male
 16 enhancement." We don't even know the product and,
 17 yet, we're in retail? It just -- it's not there.
 18 The evidence is not there. And it's now time to be
 19 there or it's not ever going to be here. So this is
 20 not an establishment engaged in the sales of goods.
 21 By the way, even if he's right about everything he
 22 said for which he has no authority to say and for
 23 which -- not in writing, nor orally, not in
 24 affidavit, nothing, no authority that he can speak
 25 on behalf of the tenant -- we also have nothing that

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1 says he has any role in the company. So get this
 2 now. If you would credit his testimony, this Board
 3 would credit someone who says, "I don't have any
 4 authority with the company, I don't make money for
 5 the company, I don't have a role in this company, I
 6 don't have a position with the company, I don't have
 7 any written or oral authority from the company to
 8 talk on their behalf, but I'm going to talk on their
 9 behalf." You know what their products are? "No,
 10 it's some kind of male enhancement." Do you know
 11 what their store was in Mansfield? "No, I don't
 12 really know that. I don't get involved in that and
 13 you know, it's J.J.'s too," you know, whatever J.J.
 14 is. Mansfield store, you know what they did? "No,
 15 I don't really know what they did there either. But
 16 I know what they want here, and what they want here
 17 is retail sales." There's no -- the evidence
 18 doesn't support that statement. So for all the
 19 reasons that were cited by the Township, this use is
 20 not retail. And even if it were retail, even if you
 21 could credit and get over the foundational hurdles,
 22 the insurmountable foundational hurdles, and the
 23 insurmountable evidentiary hurdles with respect to
 24 what actually is going on here, this still isn't a
 25 company engaged in the sale of goods. 80 percent of

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1 it is assem- -- their own words. You know, they
 2 pick a little bit in the letter on Mr. Roach's use
 3 of the words "assembly and packaging." That's a
 4 word they used in their application. They used the
 5 word "warehouse." And I would just finish with
 6 this. You know, don't -- Ms. Ryan made the point,
 7 well, you shouldn't really use the vernacular word
 8 "warehousing" against Mr. Lovdal. Well, as Mr.
 9 Lovdal pointed out, he owns a bunch of warehouses.
 10 There's nobody better who knows what warehousing
 11 means than Mr. Lovdal. That's point one. Point two
 12 is it is ironic -- and I think the Secretary of
 13 State would appreciate the notion that whatever you
 14 file with the Secretary of State, ah, that changes
 15 all the time, what's that matter? Warehouse and
 16 fulfillment, that's the only thing you have from the
 17 actual tenant that's a representation of what the
 18 tenant does in Ohio. The zoning administrator's
 19 interpretation should be affirmed. Thank you.
 20 MS. RYAN: I want to start by offering a little
 21 bit of concern, hearing your attorney argue for this
 22 -- against our -- against the applicant. Never have
 23 I seen that occur. To me, that's equivalent to any
 24 staff attorney in the judge's chambers coming up and
 25 making the argument on their end. You know, where

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1 we come from -- where I'm coming from, you're an
 2 objective quasi-judicial body. He's here to advise
 3 you procedurally. And if there is any defense to be
 4 had, it is of this quasi-judicial body in the scope
 5 of an administrative appeal before the Court of
 6 Common Pleas. So I'm a little concerned about the
 7 due process rights of my client when the same person
 8 entrusted with advising you on your procedural
 9 matters is also here advocating strongly against the
 10 applicant, when I believe it is this body's
 11 independent judgment that is to be had. And,
 12 certainly, because the only other individuals with
 13 whom you entrust your judgment are those that I can
 14 cross-examine. So I just wanted to start with that.
 15 The evidence before you, again, is from the owner of
 16 the property. Your zoning resolution, as is
 17 customary everywhere, allows the owner of property
 18 to apply and to appear on behalf of their property
 19 to testify about what is going to happen at that
 20 site. Mr. Pacheco said, well, "We asked him what
 21 uses are going to be at that site?" He threw up his
 22 hands. "We're not even sure, we don't even know."
 23 That is not what he said. Mr. Lovdal gave you a
 24 series of products that are the products that are
 25 sold at this time by the company. I don't believe

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1 that was a fair characterization of what is
 2 occurring at the site. And, again, all the evidence
 3 -- you can have a mountain of evidence that says,
 4 "Here's what occurred on the site between June and
 5 now." If we were here defending a zoning violation,
 6 that is evidence, proof of the zoning violation.
 7 We're not here to do that. We are here asking the
 8 Board to interpret the use as we're proposing in the
 9 future against the word "retail" in your code. And
 10 then when you interpret that code within the
 11 confines of the wording provided in your zoning
 12 resolution, then the question moving forward once
 13 they've met what you've deemed to be an appropriate
 14 use for that site, ongoing future compliance is like
 15 it is for any other use. Will they comply in the
 16 future? What happened before is not relevant for the
 17 specific question that is before this Board this
 18 evening. And with that, we would ask that you find
 19 for my client that the proposed use with the sale of
 20 goods as shown on the site plan with retail in the
 21 front and the area in the back that is -- works in
 22 congruence with the front retail is retail as
 23 intended by your code and as permitted to be
 24 intended by your code due to the kind of, somewhat
 25 broad definitions provided. Thank you.

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1 MR. PACHECO: Mr. Tharp, can I be heard because
 2 I've been called out with respect to my role? That
 3 is a fundamental misunderstanding of who's the party
 4 in interest. The party in interest is the Delhi
 5 Township zoning inspector. This Board is a quasi-
 6 judicial board. I have not talked to one of you
 7 about this case. I've not given you any advice in
 8 this case. I haven't told you how you should rule or
 9 how you shouldn't rule. That's up to this
 10 independent, quasi- judicial, independent board.
 11 There is plenty of case law. The City of Cincinnati
 12 has a Board of Zoning rule that talks about the
 13 staff attorney can actually participate in the
 14 hearings. I'm not the staff attorney for the Board
 15 of Zoning Appeals like that happens in Cincinnati.
 16 So that is a fundamental misunderstanding and a
 17 misrepresentation of who's the real party in
 18 interest. The real party in interest here is the
 19 Delhi Township zoning inspector and who I'm
 20 representing and who I'm advocating a position. The
 21 Board is a quasi- judicial body. The Board is never
 22 represented and not represented and not a party in
 23 these cases. They may be a nominal party in the
 24 sense of that's who you sue, but the Board is not a
 25 party any more than a common pleas court is a party

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1 to an appeal of a decision from a common pleas
 2 court. There's plenty of law on it. I have
 3 researched it. I do not take that comment or that
 4 accusation lightly. And I have looked it, and there
 5 are no issues with that, so I just wanted to make
 6 that clear for the record, and I am happy to provide
 7 the case law that says so.
 8 MS. RYAN: And I would object to any case law
 9 or anything being provided to the Board if this
 10 hearing is closed. And again, the staff attorney
 11 role of the City of Cincinnati is not to get up and
 12 argue on behalf of the zoning inspector. Thank you.
 13 MR. PACHECO: Rule 3A2 of the Board of Zoning
 14 Appeals in Cincinnati specifically says, "The staff
 15 attorney can prosecute the appeal as well." So --
 16 and by the way, there's also an Attorney General
 17 statute where the Attorney General not only
 18 represents the Medical Board but it can also proceed
 19 in front of the Medical Board. So there's plenty of
 20 case law on it, and I'm happy to provide it if the
 21 Board thinks it needs it. Thanks.
 22 MR. THARP: This is Clay Tharp. I believe at
 23 this point we should probably be open for
 24 discussion; is that correct, Mr. -- ?
 25

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1
2 MR. DELONG: Yeah. You guys can have your
3 own discussion. I mean, you have options tonight.
4 You can make a decision tonight. You can table this
5 until the next meeting, which will be November 12th,
6 so you can come up with some findings at that time
7 should this proceed to the next level of court. So,
8 really your option.

9 MR. THARP: Thank you.

10 MR. DELONG: Uh-huh.

11 MR. THARP: Is it -- I thought it was the --
12 I'm sorry, sir. Yeah. Sorry. I was just checking.
13 Was that November 9th?

14 MR. DELONG: No. Sorry. November 9th, yeah.
15 Sorry. Oh, my gosh. I first had the meeting
16 scheduled on the night of election night, and I'm,
17 like -- yeah, it's seven days later, November 9th.
18 Sorry.

19 MR. THARP: Gentlemen, would you like to remain
20 open for discussion at this point?

21 MR. HEENAN: I don't think there's much to
22 discuss.

23 MR. THARP: Mr. Heenan, please share your point
24 of view.

25 MR. HEENAN: From my independent evaluation of

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1 the evidence that's been presented tonight and also
2 taking into account I recognize Mr. Pacheco's role
3 as a senior solicitor for the City of Cincinnati who
4 represents the Zoning Board of Appeals for the City.
5 As part of my duties there, I recognize his role,
6 and I recognize my role as a member of this Board.
7 In my independent evaluation of the evidence that's
8 been presented tonight, I see no credible evidence
9 of retail use at that location. As such, I would
10 affirm the Township's ruling.

11 MR. THARP: Understood.

12 MR. MATTEI: This is Andrew Mattei. I would
13 agree with you, Scott. They had every opportunity
14 to provide documentation from the tenant themselves
15 to prove some existing retail plan. And the lack of
16 even a plan, a site plan that shows the change of
17 the word "office" to "retail" on, I think it was A3,
18 shows that there's no -- the intention can be
19 stated, but there seems to be no effort being made
20 towards operating in that fashion when they have
21 clearly have been operating in a fashion that does
22 not qualify as retail under the definition. So I
23 will also agree that -- would affirm the zoning
24 administrator's decision on this.

25 MR. THARP: Well -- this is Mr. Tharp. Yes. I

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1 feel that Mr. Lovdal in a way, unfortunately, has
2 been put in a tough position and that I think that
3 he has not been able, quite frankly, to provide any
4 evidence for the intent of someone else. There has
5 been no updated site plan. There has been no floor
6 plan. There has been no future plan. We have no
7 idea of the type of retail. We've been told some
8 racks set up, et cetera, that type of thing. We
9 don't know what product's being sold. But we do
10 know that prior to this, this building was rented
11 and was fully in opera -- I don't -- well, I can't
12 say fully in operation because I can't speak to
13 that, but was clearly in operation and was
14 manufacturing it appeared, from all the evidence we
15 have, and also distributing something. However, we
16 don't know if that was as a result of something
17 being sold or just being sent out to other places to
18 be sold or if there ever -- anything's going to be
19 sold. So, unfortunately, I don't see any evidence
20 of retail. There's no signage. There's no -- there
21 -- unfortunately, I think Mr. Lovdal is dealing with
22 what he's been told and that's fine. But that does
23 not mean -- and one thing that he said which was
24 very true, and I believe that he's telling the truth
25 about everything as far as he knows, you know,

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1 companies change their -- they change their intent
2 all the time. And if he has been told, oh, we're
3 going to do retail, well, that could have changed --
4 and unbeknownst to him, of course -- but there is no
5 evidence whatsoever that there is going to be any
6 retail other than what has been told to him. But we
7 do know that there is a business there operating in
8 some fashion. So I would have to agree. I would
9 have to at this point deny the application.

10 MR. SCOTT: Yeah. This is Steve Schott. In
11 listening to the testimony and reviewing the
12 documents, I don't see any evidence of a retail
13 establishment either. I didn't hear anything about
14 order acceptance taking place at the store, which
15 would typically be something you would see in a
16 retail establishment. I don't -- it's obviously an
17 operation from a shipping and manufacturing
18 standpoint, but there's no retail operation.
19 There's no over-the-counter operation there, which I
20 would typically associate with a retail
21 establishment. As such, and in the absence of the
22 plans being available to look at that says that
23 there is going to be some sort of a retail
24 establishment, I would also have to reaffirm the
25 Township's decision.

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1 MR. THARP: All right, then. Is there a motion
 2 to take a vote?
 3 MR. HEENAN: Sure. This is Scott Heenan. I
 4 will move that we vote to affirm the decision of the
 5 zoning administrator.
 6 MR. THARP: Clay Tharp. I will second. All in
 7 favor?
 8 BOARD MEMBERS: Aye.
 9 MR. HEENAN: Are we allowed to do that just by
 10 that or do we actually have to call -- go by name?
 11 MALE SPEAKER: That's -- I'm not quite sure,
 12 but let's do --
 13 MR. HEENAN: Why don't we do it by name? This
 14 is Scott Heenan. I vote aye.
 15 MR. SCHOTT: This is Steve Schott. I vote aye.
 16 MR. THARP: This is Clay Tharp, and I vote aye.
 17 MR. MATTEI: This is Andrew Mattei. I vote
 18 aye.
 19 MR. THARP: Okay. I think that concludes our
 20 hearing on this particular matter.
 21 MS. RYAN: Thank you.
 22 MR. PACHECO: Thank you for your time. Thank
 23 you.
 24 MR. THARP: Thank you very much. Okay. At
 25 this point, is there any old business for the Board?

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1 -- Right. New business? My understanding is we
 2 will have a meeting on November 12th.
 3 MALE SPEAKER: Yeah. You'll have one on the
 4 9th --
 5 MR. THARP: No.
 6 MALE SPEAKER: -- not the 12th.
 7 MR. THARP: The 9th.
 8 MALE SPEAKER: I apologize. My gosh. I don't
 9 know what I was looking at.
 10 MR. THARP: November 9th.
 11 MALE SPEAKER: So we already have a variance
 12 case on that night that an application's come in, so
 13 we'll have that on that evening.
 14 MR. THARP: Okay. Cool. So we -- at -- as of
 15 this point, just one?
 16 MALE SPEAKER: Uh-huh.
 17 MR. THARP: Okay.
 18 MALE SPEAKER: Yeah. The deadline -- we had
 19 two that were out there. Their deadline was the
 20 30th to submit.
 21 MR. THARP: Oh, okay.
 22 MALE SPEAKER: And we only got one. One came
 23 in so --
 24 MR. THARP: Cool.
 25 MALE SPEAKER: Just some quick other -- I can

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1 give you some quick updates on things going on in
 2 the Township. I was trying to remember them and
 3 listening to everyone talking earlier. Clean
 4 Sweep's under construction. Blue Rue's (phonetic)
 5 under construction as you know. Jim Luby's
 6 (phonetic) new office building on Ebenezer's open.
 7 Garden Grove is well under construction. We've
 8 issued permits for four buildings, I believe, so
 9 far, out of 11, so that's moving along quite well.
 10 Greenside Estates only has ten lots remaining out
 11 there, so that's really moving along.
 12 MR. THARP: How many total were there? I'm
 13 sorry.
 14 MALE SPEAKER: 31.
 15 MR. THARP: Pretty good.
 16 MALE SPEAKER: Yeah. It's pretty good. Yeah.
 17 We're expecting Heather Ridge up on up on Cleves
 18 Warsaw to start taking off soon. I know the tenants
 19 that were in the storage facility got their letters
 20 to get their stuff out. So that property,
 21 hopefully, will be transferring soon, and that'll be
 22 a new 19-lot, single-family development up there.
 23 You guys saw Take 5 in May for your conditional use,
 24 your first conditional use case. We got plans on
 25 Friday, so they are moving forward with it. So

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1 we've got to get those reviewed this week so we can
 2 get it out the door. So the whole -- the old
 3 Arby's should be coming down, hopefully, sometime
 4 soon, and that going in there. And then the Delhi
 5 mixed use that's exhausting Bryan, Jack, myself,
 6 everyone -- we don't even know what day of the week
 7 it is anymore -- everything's really falling into
 8 place quite well right now, so we have passed
 9 resolutions to sign the lease agreement with PLK
 10 Northpoint -- or Northpoint PLK. We have permission
 11 now to sign bonds or go into the bonds, so that's
 12 moving forward. We had our Moody's hearing a couple
 13 weeks ago. Our rating didn't change. That was
 14 good. Getting ready to sign contracts with Turner,
 15 the OVR (phonetic) contractor for just our portion.
 16 The residential component will be different. The
 17 most important thing is we're going to have a
 18 ceremonial groundbreaking on October 27th probably
 19 at 4:00, so stay tuned to that. We'll have a nice
 20 little event that evening. Right now, our goal is
 21 to hopefully break ground in November, like, start
 22 doing earth work and have buildings rising up in
 23 April to May and a completion date in June-ish of
 24 2024. It's crazy, but yeah, it's moving along.
 25 Tenants are still changed. Beacon will be a partner

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1 in this building now. They're going to have about
 2 seven to 8,000 square feet in the building, so that
 3 is our medical provider we haven't been able to
 4 announce, but now we can announce.
 5 BOARD MEMBER: Who?
 6 MALE SPEAKER: Beacon Orthopedic.
 7 BOARD MEMBER: Cool.
 8 MALE SPEAKER: Yeah. So that'll be their
 9 presence so -- and the key thing I want to share
 10 with everyone, the -- oh, everything on the Pike
 11 right now -- our vacancy rate's really low in the
 12 Township. We're sitting at 10.7 percent right now.
 13 Yeah. It's really good in today's market. So you
 14 have naysayers out there saying, oh, the vacancies.
 15 There really isn't anything. I just wish we'd get a
 16 reuse plan for the former Central Hardware. They
 17 are leaving 21,000 square feet up, which makes me a
 18 little nervous how it appears right now. I'm just
 19 hoping we don't see some storage going in over there
 20 -- outdoor storage. So just I -- just the way it
 21 looks, it just makes me nervous, and Tony and I talk
 22 about it all the time so -- is there anything else
 23 that I missed, Tony?
 24 MR. ROACH: No.
 25 MALE SPEAKER: So --

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1 MR. ROACH: I'm sorry. No disrespect, Bryan.
 2 I'm lawyered out.
 3 MALE SPEAKER: Tony has been in court for all -
 4 - half of today and then came in tonight for this,
 5 so he is exhausted so -- but we're good so --
 6 BOARD MEMBER: --
 7 MR. ROACH: I'm lawyered out today.
 8 MALE SPEAKER: He's lawyered out.
 9 MR. ROACH: I've been at the courthouse from
 10 9:00 this morning till 1:30 this afternoon.
 11 MALE SPEAKER: And then came in here for this.
 12 He needs a break. Do you have any questions about
 13 anything, hearing anything in the community?
 14 BOARD MEMBER: -- the mistake that I am asking
 15 about -- mistake, is that something that's been
 16 corrected so that's not going to happen to somebody
 17 else again?
 18 MALE SPEAKER: What was that?
 19 BOARD MEMBER: The use var --
 20 BOARD MEMBER: The use variance.
 21 MALE SPEAKER: Yeah. That was just an -- that
 22 was an error on staff.
 23 BOARD MEMBER: Has that been fixed?
 24 MALE SPEAKER: Yeah. We, unfortunately --
 25 well, it's just the wrong application got sent in

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1 the packet, so we need to probably go in and delete
 2 that one out of the system, so it doesn't happen
 3 again. But it happened so -- all right. That's all
 4 we have.
 5 MR. THARP: Motion to adjourn?
 6 MR. HEENAN: Sure. This is Scott Heenan. I
 7 move to adjourn.
 8 MR. THARP: All in favor?
 9 BOARD MEMBERS: Aye.
 10 BOARD MEMBER: I'll even second it.
 11 BOARD MEMBER: Oh, yeah. We...
 12 BOARD MEMBER: Did anybody second?
 13 MR. THARP: I'll second. Clay Tharp, I'll
 14 second and, hey, let's go.
 15 (HEARING CONCLUDED)
 16
 17
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1 CERTIFICATE OF REPORTER
 2 COMMONWEALTH OF KENTUCKY AT LARGE
 3
 4 I do hereby certify that the said matter was reduced to
 5 type written form under my direction, and constitutes a
 6 true record of the recording as taken, all to the best
 7 of my skill and ability. I certify that I am not a
 8 relative or employee of either counsel, and that I am
 9 in no way interested financially, directly or
 10 indirectly, in this action.
 11
 12
 13
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 15
 16
 17
 18
 19 *Brooke Andrew*
 20
 21
 22 BROOKE ANDREW
 23 COURT REPORTER / NOTARY
 24 COMMISSION EXPIRES ON: 11/27/2021
 25 SUBMITTED ON: 10/26/2021

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