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CITY OF MEDINA BOARD OF ZONING APPEALS

CASE Z25-09

999 LAFAYETTE ROAD

- - -

Transcript of Proceedings held on Thursday,
the 12th day of June, 2025, before the
City of Medina Board of Zoning Appeals, commencing
at approximately 7:00 p.m., as taken by
Meghan Bobrowski, Notary Public within and for
the State of Ohio, and held in Medina City Hall,
132 North Elmwood Avenue, Medina, Ohio 44256.

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MEDINA COURT REPORTERS
209 North Broadway Street
Medina, Ohio 44256
(330) 723-2482
office@crmedina.com

1 APPEARANCES:

2 Bert Humpal, Chairman,
3 Mark Williams, Member,
4 Paul Roszak, Member,
5 Logan Johnson, Member,
6 Steven Cooper, Member.

7 City of Medina Planning and Community
8 Development Department,
9 Andrew Dutton, Community Development Director,
10 Sarah Tome, Administrative Assistant.

11 Roetzel & Andress
12 by R. Todd Hunt, Esq.
13 on behalf of the City of Medina Board of Zoning
14 Appeals.

15 Gregory A. Huber, City of Medina Law Director,
16 on behalf of the City of Medina Board of Zoning
17 Appeals.

18 Tucker Ellis, LLP
19 by Anthony R. Vacanti, Esq.
20 on behalf of the Applicants.

21 Berns, Ockner & Greenberger, LLC
22 by Majeed G. Makhlouf, Esq.
23 on behalf of Minit Mart, LLC.

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1 (Whereupon, all persons intending to
2 testify were placed under oath by the notary.)

3 - - -

4 PROCEEDINGS

5 CASE Z25-09

6 CHAIRMAN: Thank you. Be
7 comfortable.

8 Before we begin our first case this
9 evening, we are, I believe, going to consider
10 going into executive session of the Board for
11 counsel.

12 Is there a motion?

13 MR. WILLIAMS: Mr. Chairman, I'd
14 make a motion that we go to executive session
15 to receive legal counsel from our attorney.

16 CHAIRMAN: Second?

17 MR. ROSZAK: Second.

18 CHAIRMAN: And a roll call,
19 please.

20 MS. TOME: Humpal?

21 CHAIRMAN: Yes.

22 MS. TOME: Johnson?

23 MR. JOHNSON: Yes.

24 MS. TOME: Roszak?

25 MR. ROSZAK: Yes.

1 MS. TOME: Williams?

2 MR. WILLIAMS: Yes.

3 MS. TOME: Cooper?

4 MR. COOPER: Yes.

5 MS. TOME: Motion carried.

6 CHAIRMAN: We shall return
7 after conversation with legal counsel, and then
8 we'll continue.

9 (Whereupon, the meeting stood in
10 recess while the Board entered executive
11 session.)

12 CHAIRMAN: We're back to
13 order. Thank you for bearing with us.

14 Our first case this evening is Z25-09, the
15 appeal at 999 Lafayette Road.

16 Andrew.

17 MR. DUTTON: (Displaying case
18 packet.)

19 Thank you. I just wanted to briefly go
20 over the application here.

21 So here you have the property on the
22 northeast corner of Lake Road and Lafayette
23 Road, which is 1.96 acres, so it's GC,
24 general commercial.

25 So there was an application to the

1 Planning Commission for a site plan and
2 conditional zoning certificate approval for a
3 project, as shown on the slide there, with a
4 convenience store and center, drive-through
5 building counterclockwise around it, a typical
6 passenger vehicle fueling station on the south
7 side, and a truck fueling station on the north
8 side. The conditional zoning certificate was
9 necessary due to the drive-through and the
10 filling station, which are both conditional
11 uses in the GC zoning district -- I'm sorry,
12 C-3 zoning district. Excuse me.

13 There is also a graphic of the exterior of
14 the building for rendering.

15 The application also required variances,
16 which were heard by the Board, to the number of
17 access drives. Two were permitted for a
18 service station/fueling station. Three are
19 proposed, one on Lafayette and two on Lake -
20 one ingress, one egress - for trucks; also to
21 the width of the access drives.

22 At the Planning Commission's March 13th,
23 2025 meeting, they approved both the site plan
24 and the conditional zoning certificate
25 applications with a number of conditions.

1 The first was their approval of variances --
2 requested variances by the Board of Zoning
3 Appeals. That was the access drives, the
4 number and the width. Those were approved by
5 the Board of Zoning Appeals. Two through four
6 on the slide were rather minor - a connection
7 to a public sidewalk, adding two trees, and a
8 detail of the light fixture - and the fifth was
9 that semi-trucks shall be prohibited from
10 turning into the property at the Lafayette Road
11 entrance, which was discussed at the meeting
12 and included as a condition.

13 The Planning Commission also adopted a
14 Final Decision and Conclusions of Fact at their
15 April 10th, 2025 meeting.

16 The approval from the Planning Commission
17 has been appealed to the Board of Zoning
18 Appeals by an attorney representing an adjacent
19 property owner, Majeed Makhoulf. You have the
20 appeal in your packet, along with documents
21 provided by Anthony Vacanti, representing the
22 Applicant of P25-02, and the City's response, a
23 Final Decision and Conclusions of Fact adopted
24 by the Planning Commission, documents submitted
25 to the Planning Commission for their review at

1 the March 13th meeting, and then transcripts
2 and meeting minutes from both the March 13th
3 and April 10th Planning Commission meetings.
4 You also have recent e-mail correspondence from
5 the attorneys to City staff, which was received
6 today. You also have a hard copy of that
7 correspondence in front of you.

8 So based on the appeal, Section
9 1107.08(i)(4) designates criteria applicable to
10 appeals. It states, "The Board shall reverse
11 an order of a zoning official only if it finds
12 that the action or decision appealed:

13 "A. Was arbitrary or capricious; or

14 "B. Was based on an erroneous finding of a
15 materiel fact; or

16 "C. Was based on erroneous interpretation
17 of this Ordinance or zoning law; or

18 "D. Constituted an abuse of discretion."

19 Thank you.

20 CHAIRMAN: Thank you.

21 Is the applicant present?

22 Come to the first table.

23 I think you may have to find the green
24 light on the microphone, if you would.

25 Name and address, please, sir.

1 MR. MAKHLOUF: Majeed Makhoulf.
2 I'm a partner with the law firm of Berns,
3 Ockner & Greenberger; 3201 Enterprise Parkway,
4 Beachwood, Ohio.

5 CHAIRMAN: Okay.
6 Counsel, would you --

7 MR. HUNT: Yeah. I've been
8 asked to sort of frame the issues for this
9 evening based upon what the parties have
10 submitted to the Board and to myself and to the
11 law director, Mr. Huber.

12 First of all, there was an issue raised as
13 to whether the Board of Zoning Appeals has
14 jurisdiction over this appeal that has been
15 brought. And the second issue -- these are two
16 preliminary matters before we would get to the
17 substance of the appeal itself, and that is
18 whether this should be an appeal de novo, which
19 means that it would be an evidentiary hearing
20 or whether it should not be an evidentiary
21 hearing.

22 And I've advised the Board that perhaps --
23 they have received your written reasons why you
24 have taken these positions, and I thought it
25 would be helpful if the Board would permit that

1 counsel for each of those parties give a very
2 brief -- and I don't know if you want to,
3 Mr. Chairman, put any time limit on it, to make
4 an argument with respect to each of those
5 issues.

6 CHAIRMAN: Do you think five
7 minutes each is adequate?

8 MR. HUNT: That's plenty.

9 MR. MAKHLOUF: Sure. Thank you.
10 I'll try to be very quick.

11 CHAIRMAN: Do you --
12 Go ahead. I'm sorry.

13 MR. MAKHLOUF: A number of
14 points.

15 We believe that this appeal should be heard
16 de novo by the Board of Zoning Appeals, and
17 that is actually required by the express
18 language of the City Code. Your code does not
19 distinguish on the application process or the
20 hearing process between a variance and an
21 appeal. Both are addressed in the same section
22 and the -- in 1107.08, and it actually
23 specifically provides in the -- in Section (e)
24 that "Within thirty days of receiving a
25 complete application, the Planning Director

1 shall forward the application, along with any
2 supporting materials and plans, to the Board.
3 Notice of the hearing shall be published in a
4 newspaper of general circulation in the City
5 at least ten days prior to the date of the
6 hearing ..."

7 This is not an oral argument. The idea
8 that this is an oral argument is that after the
9 fact it's against the express language of the
10 code; the code treats it as an evidentiary
11 hearing by the express language of that code.

12 A couple of other reasons why the Board
13 should consider this, this appeal de novo. We
14 have a number of objections to the evidence,
15 that that is before the Board of Zoning
16 Appeals. So I'll give you one of them.

17 You have in front of you the
18 Conclusions of Fact from the Planning
19 Commission. Those are improperly -- if you
20 were to agree with the decision of the -- with
21 the decision of your legal counsel that you're
22 restricted to the record that was before the
23 Planning Commission, those Conclusions of Fact
24 are improperly before the Board, and we submit
25 that the well has been poisoned. You've read

1 them. They've been submitted to you. You've
2 had them for too long.

3 The -- in this case, the procedural history
4 is very proper. The hearing was on March 13.
5 The notification of the decision -- the written
6 notification of the decision was issued and
7 served on the parties on March 14, which
8 triggered the appeal. We are in the
9 Ninth District Court of Appeals, and the Court
10 in the Ninth District Court of Appeals have
11 been very clear that notification of the
12 decision to the parties can be treated -- is
13 the final order and triggers the timeline for
14 the appeal. We appealed on March 25th. At
15 that point the Planning Commission was divested
16 of jurisdiction.

17 And then after the Planning Commission was
18 divested of jurisdiction on March 25th, it
19 proceeded to adopt those Conclusions of Fact on
20 April 10th. It did not have the jurisdiction
21 to adopt those Conclusions of Fact, nor should
22 they be before you. They're not part of the
23 evidence or the case that was made to the
24 Planning Commission and they're improperly
25 before you and the well has been poisoned.

1 We've also had the Planning Director give
2 you a summary today, and even facts outside of
3 the record in terms of what happened with the
4 variances. Again, we -- it's too late at this
5 point, that the Board has proceeded in a matter
6 that prevents -- prevents it from -- from
7 proceeding on this simply as if it were an
8 appeal, even if the express language of the
9 ordinance that it required.

10 Thirdly, you don't have a complete
11 transcript. There are a number of places in
12 this transcript, which provide -- even for
13 deliberation by the Planning Commission
14 members, where the transcript provides that it
15 was done outside of the hearing of the notary,
16 that the notary could not transcribe it because
17 it was outside of the hearing of the notary.
18 So there is part of the record that does not
19 exist in front of you; incomplete.

20 I'll give you an example. If you go to the
21 transcript on Page -- Page 16 of the
22 transcript, there is a note "... a discussion
23 amongst the board members was then had out of
24 the hearing of the notary." So you do not have
25 a complete transcript of the record before the

1 Planning Commission in front of you --

2 CHAIRMAN: We're close to
3 five minutes.

4 MR. MAKHLOUF: Okay.

5 -- to be able to -- to do that.

6 Again, so we -- I'll reserve -- we'll move
7 separately to strike the Conclusions of Fact
8 and the letter from the Planning Director, but
9 I -- those bases and the express language of
10 the ordinance requires the Board to hold a
11 hearing tonight.

12 MR. HUNT: I believe it's
13 Mr. Vacanti. You're representing the other
14 party?

15 MR. VACANTI: Correct, the
16 applicants.

17 MR. HUNT: If you would like
18 to sit at the --

19 MR. VACANTI: Sure.

20 CHAIRMAN: So please
21 introduce yourself again, please.

22 MR. VACANTI: Absolutely, yeah.
23 Good evening, Members of the Board.

24 Is this on?

25 CHAIRMAN: Green light.

1 MR. VACANTI: Now it is. All
2 right.

3 CHAIRMAN: Yes.

4 MR. VACANTI: Good evening
5 Members of the Board. My name is Tony Vacanti.
6 I represent the applicants of the conditional
7 use and site plan approval. I'm a partner of
8 Tucker Ellis. Tony Vacanti; 950 Main Avenue,
9 Suite 1100, Cleveland, Ohio.

10 I appreciate the Board's entertainment of
11 these jurisdictional issues, and I will be
12 brief.

13 First off, dealing with jurisdiction.
14 There are a couple of issues with jurisdiction.
15 One, based off of the plain language of your
16 codified ordinances and your home rule
17 municipality, you can adopt your own
18 procedures.

19 It states -- and it does treat variances
20 different than appeals. And this is an appeal.
21 It states that any application for an appeal
22 must be notarized. Sounds like a technical
23 issue, and it is, but it's important. We have
24 to strictly follow what your code provides.

25 In the application, the -- counsel for the

1 objecting business here did sign the
2 application as agent, but it was not notarized;
3 did not follow the proper procedure. So on
4 that basis, in and of itself, the appeal was
5 not perfected pursuant to your codified
6 ordinances and it should be dismissed.

7 Put that technical reason aside. There are
8 two additional reasons why this Board doesn't
9 have jurisdiction over this appeal. One,
10 there's no standing here. Under your
11 ordinances, only an aggrieved person can
12 appeal a decision from a board, like the
13 Planning Commission in this instance, subject
14 to certain objections. I won't bring that up
15 now.

16 They have to be aggrieved. That's a term
17 of art under Ohio law. And I lay it out in my
18 letter that you have at the end of your packet.
19 To be an aggrieved person, you have to
20 establish -- and it's the first thing, you
21 know, a lot of us do when we attend a hearing
22 like the Planning Commission hearing. If
23 you're opposing something, you establish why
24 your client opposing it has some special impact
25 that's going to be caused by the approval

1 before the Planning Commission.

2 Here Mr. Makhoul appeared with the store
3 manager and simply asserted, as the lawyer,
4 that the special impacts are going to be
5 devaluation of his client's property and
6 potential traffic issues and potentially maybe
7 visibility issues. Zero support, factual
8 support, for those assertions.

9 Under Ohio law, attorney statements aren't
10 fact, they're argument. Even if we like to
11 bluster and puff and huff, we aren't witnesses,
12 we're advocates. So those statements certainly
13 do not establish it. They're certainly
14 completely unfounded and not based on fact.

15 The store manager did appear and submitted
16 some photographs of trucks stacking up almost
17 two miles away - this is on the record - almost
18 two miles away on Smith Road by the rail line.
19 That was fleshed out really quickly in the
20 transcript.

21 There's one additional picture of a single
22 truck near the property. The store manager
23 isn't a traffic expert, not an engineer. There
24 is no substance to his claims and so,
25 therefore, there's been a complete failure to

1 establish that the objecting business is an
2 aggrieved person who has the ability to appeal
3 to this Board. They have the opportunity, full
4 opportunity with a hearing to present
5 testimony, witnesses. They failed to do that.
6 They failed to preserve their ability to
7 appeal. There is such an ability to this
8 Board, and that is also why it should be
9 dismissed.

10 With regards to the de novo review,
11 briefly. 1107.08 does distinguish between
12 variances and appeals. We can go through it.
13 There's a different criteria for appeals than
14 variances. There are different application
15 requirements for appeals than variances.

16 Yes, there's a provision for notice of
17 hearing, as Mr. Makhoul said, but that
18 dealt with -- if you look at the plain
19 language, it deals with variances.

20 And it doesn't say evidentiary hearing, it
21 says a hearing. So that -- you know, that is
22 not a basis to open this up. The criteria
23 you're supposed to review is based on the
24 record before the Planning Commission.

25 It wouldn't make any sense if all of a

1 sudden they can get a second bite at the apple
2 and have the record and then you have to
3 determine that the Planning Commission erred
4 because they didn't have all this evidence
5 before them. They had their shot, they had
6 their bite at the apple. This is simply a
7 situation of trying to thwart business
8 competition, which is not allowable under Ohio
9 law, and this City should not allow that.

10 Thank you. I appreciate your time.

11 MR. MAKHLOUF: If I may just
12 respond to a couple of those points?

13 CHAIRMAN: Two minutes.

14 MR. MAKHLOUF: Okay. Number
15 one, with respect to the application form, the
16 ordinance specifies that it's on a form that is
17 approved by the Planning Director. We applied
18 on the form that is approved by the Planning
19 Director, the form that the Planning Director
20 uses a certification in lieu of notarization.
21 The form, the ordinances entrust the -- and
22 delegate that duty to determine completeness of
23 the application to the Planning Director. We
24 even had it confirmed in writing that the
25 application was determined complete and

1 accepted.

2 And it wouldn't have been referred to the
3 Board of Zoning Appeals had it not been deemed
4 complete and accepted, which was had here --
5 and actually the director even asked for
6 revisions to the application, and we did revise
7 it before it was submitted, so it was -- the
8 person with the duty to make that determination
9 made that determination. It's done and it's
10 final.

11 Secondly, that's an issue because -- it's a
12 technical issue, but it's an issue of form.
13 The application was submitted timely, it was
14 submitted on the form that was submitted by the
15 City, it was accepted. We could always amend
16 the application if the Board feels strongly
17 about the notarization, but that is not a basis
18 to dismiss an application. It can always be
19 amended. But we submit that it was already
20 deemed complete and submitted to the Board.
21 There is no reason to do that.

22 Number two, in terms of standing, we were
23 before the Board -- we were before the
24 Planning Commission. We spoke. We are one of
25 the property owners that was given notice of

1 the hearing, and we have to come, so under the
2 City's own ordinances, we are within the
3 purview of properties that are affected and
4 received that notice and showed up at the
5 Planning Commission. There clearly is an
6 impact on our property, and the fact that we
7 showed up, why else would we be here if there
8 is no impact on our property? And actually
9 there's case law that specifically cites that
10 very issue. The fact that a property owner
11 even showed up and spoke at the hearing,
12 they're a party to it and they're entitled to
13 appeal.

14 MR. VACANTI: If I may have
15 just have one minute?

16 CHAIRMAN: Go ahead.

17 MR. VACANTI: Thirty seconds.
18 All right.

19 With regard to the application form,
20 Mr. Makhoulf is an experienced attorney. We
21 all know to look at the ordinances as to what
22 is required. We're put on notice to follow
23 what the ordinances say. I double-check them
24 all the time because there are mistakes. So
25 that's a duty of the applicant to make sure the

1 application conforms, not to pass the buck back
2 off to the City.

3 And, two, with regard to the de novo
4 review - I had mentioned this in my letter -
5 the law director on May 7th issued a written
6 opinion that the -- your review should be based
7 on the record before the Planning Commission.
8 The objecting business owner is familiar with
9 the appeal process, that he could have appealed
10 that decision, and that appeal deadline would
11 have been May 21st. That deadline is long
12 gone. The ability to appeal and challenge that
13 final determination of the law director with
14 regards to the scope of this Board's review has
15 been waived, and it's binding and we relied on
16 that determination that wasn't appealed as
17 well.

18 Thank you.

19 MR. MAKHLOUF: The law director
20 is not an officer entrusted with enforcing the
21 zoning code. That was not a legal -- that was
22 not a -- and actually the record is, we
23 immediately objected to it and we were told
24 that we will talk about it, but that -- the
25 idea that that was waived is quite outrageous.

1 But, two --

2 AUDIENCE MEMBER: Why does he get
3 to talk? I mean --

4 MR. HUNT: You started
5 talking.

6 MR. MAKHLOUF: Yeah.

7 CHAIRMAN: I think your time
8 is pretty --

9 MR. MAKHLOUF: Okay.

10 MR. HUNT: We've heard the
11 arguments. As the parties' counsel have said,
12 I have made decisions and opinions given to the
13 Board with respect to this that they have
14 jurisdiction over this appeal and that this
15 should be a non-evidentiary hearing. There's a
16 support in our code, and I don't know anywhere
17 in the United States jurisprudence that a party
18 gets a second evidentiary hearing without a
19 finding of error by a -- that was committed by
20 the tribunal below. So that's why we're here
21 today, to see if there was an error.

22 You will also have a right of appeal from
23 this final decision to the Court of Common
24 Pleas of Medina County. As you know, there is
25 already an appeal pending of this Board's

1 decisions on variances in this case. That is a
2 matter of public record. And the -- there was
3 a full-blown quasi-judicial hearing in front of
4 the Planning Commission in March of this year
5 on this matter. This appeal to the Board of
6 Zoning Appeals is like any other appeal that
7 comes before the Board, whether it's a variance
8 or whether it's an appeal from the zoning
9 administrator, who is interpreting the code,
10 who doesn't give a hearing. We've had a
11 hearing.

12 So my position - I think it's been public
13 since May, if not earlier - has been that this
14 is not an evidentiary hearing and this Board
15 has jurisdiction to do this hearing.

16 CHAIRMAN: And that would
17 call for a motion that we do have jurisdiction
18 and accept the --

19 MR. WILLIAMS: Mr. Chairman, I
20 would make a motion that based on counsel's
21 advice, the Medina City Board of Zoning Appeals
22 does have jurisdiction for this hearing.

23 CHAIRMAN: And is there a
24 second?

25 MR. ROSZAK: Second.

1 CHAIRMAN: Sarah, please
2 call the roll.
3 MS. TOME: Johnson?
4 MR. JOHNSON: Yes.
5 MS. TOME: Roszak?
6 MR. ROSZAK: Yes.
7 MS. TOME: Williams?
8 MR. WILLIAMS: Yes.
9 MS. TOME: Cooper?
10 MR. COOPER: Yes.
11 MS. TOME: Humpal?
12 CHAIRMAN: Yes.
13 MS. TOME: Motion carried.
14 CHAIRMAN: Thank you.
15 MR. HUNT: Okay. And then
16 there needs to be a motion with respect to an
17 evidentiary hearing. Whether it's an
18 evidentiary hearing or not, that is a matter
19 that's within the discretion of the Board based
20 on the legal advice, legal arguments that are
21 being made.
22 CHAIRMAN: Is there a motion
23 from the Board?
24 MR. COOPER: I'd like to make
25 a motion that this is not an evidentiary

1 hearing based on legal advice.

2 MR. WILLIAMS: Second.

3 CHAIRMAN: Second.

4 Sarah, you may call the roll, please.

5 MS. TOME: Roszak?

6 MR. ROSZAK: Yes.

7 MS. TOME: Williams?

8 MR. WILLIAMS: Yes.

9 MS. TOME: Cooper?

10 MR. COOPER: Yes.

11 MS. TOME: Humpal?

12 CHAIRMAN: Yes.

13 MS. TOME: Johnson?

14 MR. JOHNSON: Yes.

15 MS. TOME: Motion carried.

16 CHAIRMAN: And with that, we
17 turn to counsel.

18 MR. MAKHLOUF: Thank you.

19 A couple of procedural issues just to
20 protect the record.

21 We also obviously object to the Board's
22 decision not to hold an evidentiary hearing.
23 This is an internal process within the City to
24 reach the City's final decision. The City's
25 final decision is reached today. It was not

1 the Planning Commission's decision under the
2 City's own code, and there is nothing in the
3 code that prevents the applicant from
4 presenting any additional evidence. If
5 anything, the express language of the code
6 speaks of the hearing that would be -- and
7 there is a difference between a hearing and a
8 meeting, and the language uses the hearing, the
9 very same hearing, for a variance, and as Mr.
10 Hunt indicated, even if -- if there was a
11 decision of the zoning administrator that was
12 appealed, you would be entitled to a hearing.
13 Your code nowhere distinguishes between the
14 type of procedure that you would follow,
15 whether it's an appeal from the Planning
16 Commission or it's an appeal from the zoning
17 administrator.

18 So with that, we object and we state our
19 objections on the record.

20 I do have at least two witnesses with me
21 here, a traffic engineer by the name of
22 Andrew Pierson with Langan Engineering, who's
23 ready to testify, and we will proffer his
24 testimony on the record; and Mr. Greg Soltis, a
25 professor at Cleveland State University Urban

1 Planning, who has a report that we will also
2 proffer into the record.

3 MR. HUNT: Mr. Chair, I
4 think it would be appropriate that after the
5 oral arguments in the case, based on the
6 Planning Commission record, if Mr. Makhlouf
7 have the opportunity, with the court reporter
8 present, to make his proffer, so --

9 MR. MAKHLOUF: Thank you.

10 MR. VACANTI: Just -- Mr. Hunt,
11 and, Mr. Chair, just one thing I would request.
12 I would request that the proffer occur after
13 the vote of this Board, because otherwise it's
14 evidence outside of the record and it's hard,
15 especially for a lay board, to distinguish and
16 taint the record. So I have no problem with
17 the proffer, but I think it should be after the
18 vote's taken and it be on the record.

19 MR. HUNT: That would be
20 fine.

21 MR. VACANTI: Okay.

22 MR. HUNT: As long as we get
23 the proffer in the record. I assume this case
24 is going to the Court of Common Pleas, as part
25 of it is already there, and Judge Hutson is

1 very adept to these sort of issues.

2 MR. MAKHLOUF: Also for purposes
3 of the record, I formally move to strike the
4 Planning Commission's Conclusions of Fact from
5 the record. As I've explained previously, the
6 Planning Commission does not have jurisdiction
7 to enter those Conclusions of Fact when it did.
8 The decision was voted on March 13. The
9 written notification of the decision that
10 triggered the appeal period happened on
11 March 14. It was served on the applicant and
12 it was served on us, and then we appealed on
13 March 25th, which divested the Planning
14 Commission of jurisdiction over the matter.
15 The Planning Commission, after the institution
16 of the appeal, proceeded to have these
17 Conclusions of Fact, which were not part of the
18 record before the Planning Commission and
19 should be stricken from the record and cannot
20 be considered by the Planning Commission.

21 I similarly move to strike the April 10th
22 letter from the Planning Director to the
23 Board of Zoning Appeals. It references much of
24 the -- the -- the -- sorry.

25 I move to strike the June 3rd memo from the

1 Planning Director to the Board of Zoning
2 Appeals. It relies on the Conclusions of Fact
3 and has information outside of the record that
4 was before the Planning Commission as well.
5 Those are not properly before the Board. But
6 obviously the Planning Commission is the big
7 issue here, that it did not have jurisdiction
8 to enter the Conclusions of Fact when it did.

9 MR. HUNT: My advice to
10 the Board is that to not strike the
11 Conclusions of Fact. I've been practicing
12 for forty-one years. I started when I was
13 ten years old practicing -- actually, no,
14 thirty years old, and I don't know how many
15 occasions I can cite where a board has filed
16 Conclusions of Fact with the common pleas court
17 after the appeal to the court was filed. It's
18 very common. So it's really not a
19 jurisdictional issue, it is an act that's taken
20 in aid of the appeal and totally proper and
21 never has been stricken from the record in a
22 court of law. I don't think it's appropriate
23 to strike here for today.

24 And in terms of any letter from Mr. Dutton
25 that might contain the Conclusions of Fact or

1 reference to them, I can rely on the same
2 opinion.

3 And I don't know what other facts were in
4 the record, other than the fact that there were
5 variances that were granted. Of course those
6 were granted after the Planning Commission's
7 decision and hearing, but they are a matter of
8 certainly public record, and you are the ones
9 who granted the variance, so take that out of
10 your mind with the variance, with respect to
11 listening to the arguments of the counsel this
12 evening.

13 And I think you need to make a motion as to
14 whether you're going to strike the conclusions
15 or not.

16 MR. VACANTI: And just for the
17 record, on behalf of the applicant, for the
18 Planning Commission, we concur with Mr. Hunt's
19 conclusions and adopt them as ours.

20 MR. MAKHLOUF: Obviously we
21 object and the Planning Commission did not have
22 jurisdiction to enter the conclusions.

23 CHAIRMAN: Seek a motion
24 from the Board.

25 MR. WILLIAMS: I make a motion

1 that we do not strike the Conclusions of Fact
2 nor the letter from the zoning official.

3 CHAIRMAN: And a second?

4 MR. ROSZAK: Second.

5 CHAIRMAN: Sarah, will you
6 call the roll, please.

7 MS. TOME: Williams?

8 MR. WILLIAMS: Yes.

9 MS. TOME: Cooper?

10 MR. COOPER: Yes.

11 MS. TOME: Humpal?

12 CHAIRMAN: Yes.

13 MS. TOME: Johnson?

14 MR. JOHNSON: Yes.

15 MS. TOME: Roszak?

16 MR. ROSZAK: Yes.

17 MS. TOME: Motion carried.

18 CHAIRMAN: Motion carried.

19 Thank you.

20 MR. MAKHLOUF: I will also
21 launch another objection, that the City failed
22 to issue notice of the hearing or -- the
23 hearing that we're here today on to the
24 neighboring property owners as required by your
25 zoning code, specifically requiring the service

1 of the notice on property owners within a
2 certain radius of the appeal, that that did not
3 take place where we are here today.

4 CHAIRMAN: Noted. Thank
5 you.

6 MR. MAKHLOUF: Thank you.

7 All right. The last at least line of
8 objections I would have is, I think there has
9 been a pattern here with -- again, there's
10 lawyers here and we argue and I think sometimes
11 when the outside world sees us -- you know,
12 Mr. Hunt is a friend, Mr. Vacanti is a friend,
13 but I think we have clients and we have
14 interest to represent here.

15 But I -- there has been a pattern here
16 from the property owner or from the applicant
17 of ex parte communications with the City
18 without any copies to us. So there was the
19 initial request to table the hearing from May
20 to June, that we did not get any copy of it,
21 and specific requests to restrict the evidence
22 and the type of hearing without any notice to
23 us.

24 The City responded to that request with a
25 letter from the law director, and even the

1 law director's letter specifically said that
2 the Board will grant the continuance, not that
3 the Board is likely to grant the continuance,
4 from our experience, or may; the Board will
5 grant the variance.

6 In fact, I think a determination was made
7 and conveyed to the applicant and we only
8 received notice of it after the fact through
9 notification from the -- through an e-mail
10 from -- from Mr. Dutton that forwarded that
11 correspondence to me to alert me to it after it
12 was made -- after the City had responded to
13 Mr. Vacanti's letter.

14 And then secondly, even today I understand
15 there was a letter submitted to the City. I
16 haven't checked my e-mail, but I believe I was
17 not copied on it when I looked at the cc's, so
18 it's repeated ex parte communications with the
19 Board and its representatives without any copy
20 to us or any opportunity to respond. Literally
21 walking in at the hearing, Mr. Dutton handed me
22 a copy - and it's not Mr. Dutton's job to hand
23 me a copy of that letter - handed me a copy of
24 the letter from Mr. Vacanti that I was supposed
25 to instantaneously respond to it, but that

1 letter had already been submitted to the Board,
2 and I was handed it after the Board, which is
3 an improper practice.

4 So we object for that practice of what
5 happened there.

6 MR. VACANTI: Mr. Chair, if I
7 may respond? Just because -- I mean, it's
8 calling into question some ethical matters,
9 then I think it's appropriate for me to
10 respond. Or I can wait until my turn, but I
11 think --

12 CHAIRMAN: A minute or two.

13 MR. VACANTI: Pardon me?

14 CHAIRMAN: Can you do it
15 very quickly?

16 MR. VACANTI: Yeah, absolutely.

17 There's been no ex parte communication with
18 members of this Board. I would ask any member
19 of the Board, if you communicated directly with
20 me, you know, please identify your -- on the
21 merits of this matter, please identify
22 yourselves.

23 (No response.)

24 MR. VACANTI: Okay.

25 My client has a constitutional right under

1 the Ohio Rules of Professional Conduct to
2 communicate with its government. All right?
3 Those are not ex parte communications. I
4 didn't communicate with board members, I
5 communicated with the law department.
6 Entirely proper under the Ohio Rules of
7 Professional Conduct. I've given seminars on
8 this.

9 Mr. Makhlouf, the record shows there's been
10 e-mails that he had been e-mailing with the law
11 department and Mr. Hunt and I wasn't copied on
12 it. My clients' application, which he
13 appealed, I wasn't given a courtesy copy. My
14 client wasn't given any type of courtesy copy.
15 So if he was so concerned about it, his
16 activities, which are shown in the record, are
17 at the same level.

18 So I submit to you this is not ex parte.
19 My letter was in the record. I checked the
20 record before I came, as I always did; it was
21 included in it. So all he had to do was click
22 on the packet for tonight's hearing, which I
23 always double-check before the hearing, my
24 letter was included.

25 If Mr. Makhlouf failed to do that, out of

1 all due respect, that's not on you guys, it's
2 not on me, it's on the competing business.

3 MR. MAKHLOUF: If I may just
4 respond to the factual issues here?

5 CHAIRMAN: Just briefly.

6 MR. MAKHLOUF: The -- and just
7 so that the record is very clear, the letter
8 was sent to the City and the City responded to
9 the letter and we received a copy of it after
10 the response. So that is number one.

11 And two, the letter today, this is an
12 appeal. We're here for an appeal. We're being
13 told that the -- it's quasi-judicial and
14 parties of the appeal are not receiving notice
15 of -- it's just the entire process has been --

16 CHAIRMAN: The objections
17 and response are so noted. Thank you.

18 MR. MAKHLOUF: All right.

19 With respect to the appeal, we have
20 highlighted a number of issues in the appeal
21 application, and I would go through them
22 briefly for the Board, and the Board has the
23 transcript and we will also proffer the
24 evidence.

25 The applicant had to prove its case beyond

1 a reasonable doubt. This is effective -- this
2 is the requirement under your code, and it
3 presented no evidence. At the hearing it
4 literally said nothing. It -- the only time
5 was after the fact when it was asked questions
6 when we pointed out. And there was no evidence
7 presented by the applicant, not even a
8 presentation of its plan. The Planning
9 Commission effectively did the work for the
10 applicant instead of the applicant which bears
11 the burden of proof of doing the work.

12 The decision of the Planning Commission is
13 contrary to the criteria of the -- of your
14 code. Section 1152.03 has the criteria that
15 the Planning Commission had to consider and
16 that this Board, which sits -- has the same
17 powers as the Planning Commission, I may
18 emphasize, in your code. You sit in the place
19 of the Planning Commission, which again is
20 contrary to the no de novo hearing here. You
21 sit in the place of the body from which the
22 appeal was lodged; had to make a determination
23 that there's seven criteria:

24 That the use will be harmonious with and in
25 accordance with the general objectives or with

1 any specific objectives of the Land Use and
2 Thoroughfare Plan of current adoption. That
3 did not happen;

4 Will be designed, constructed, operated,
5 and maintained so as to be harmonious in
6 appearance and with the existing or intended
7 character of the neighborhood. That did not
8 happen. It was not -- it's not in accordance
9 with the character of the neighborhood and
10 there was no testimony or anything to that
11 effect.

12 We've presented evidence regarding the
13 traffic issues. I think the -- a plain
14 review of the record shows that the
15 Planning Commission was blindsighted in the
16 sense that it saw a competitor across the
17 street, or what they deemed to be a competitor,
18 object to the application, and in their mind
19 that was sufficient, and that's not a proper
20 basis, and they were willing to ignore
21 everything else based on who the applicant is.

22 Just to give you an example, when we were
23 talking about traffic, this is a site plan
24 that involves a major retail component -
25 drive-through, gas pumps in the front, semi gas

1 pumps in the back, areas for large trucks to
2 park. The City did not require any traffic
3 impact study or even a traffic analysis. It's
4 an issue that we repeatedly raised. The City
5 did not even have in front of it any evidence.
6 We asked them and we raised it in the record -
7 and the record is in front of you - "Do you
8 have -- do you know how many trips are
9 generated by the site?" Nobody on the
10 Planning Commission knew anything about the
11 number of trips.

12 The response that we got, and that's on the
13 record, is "There is not going to be additional
14 traffic because they're taking your client's
15 customers; therefore, it's not additional
16 traffic."

17 Think of the precedent that this Board is
18 setting by taking that position. Any time you
19 have a McDonald's coming in across from a
20 Burger King and "You don't have to do a traffic
21 impact study because you're taking your traffic
22 from Burger King." That is effectively what
23 the City is saying.

24 But that is not true. And we argued before
25 the Planning Commission a number of issues.

1 Number one, there's the gravitational model.
2 That's why these types of businesses often
3 locate next to each other, because it draws
4 more customers into the area.

5 Our customers are not going to -- we're not
6 worried about competition. There's a rewards
7 program. Many of our customers have a rewards
8 program. They'll come because they want their
9 discount. They have a BP discount.

10 MR. VACANTI: I'm just going to
11 object for the record. Mr. Makhoulf is
12 testifying, and none of this is in the record,
13 so if we're limiting it to the record, we
14 should limit it to the record.

15 CHAIRMAN: We do overrule to
16 the objection.

17 MR. MAKHLOUF: Yes. I direct
18 the Board --

19 MR. HUNT: He's speaking.

20 MR. MAKHLOUF: I'm sorry. Oh, I
21 thought he was asking me to respond to the
22 objection. I'm sorry.

23 MR. HUNT: No.

24 MR. MAKHLOUF: You overruled the
25 objection?

1 CHAIRMAN: Yes.

2 MR. MAKHLOUF: Thank you.

3 And I would point the Board -- sorry, I
4 thought you were asking me to respond to the --
5 and I was going to point you to the record on
6 Page 19.

7 MR. HUNT: I think it's
8 important that I caution you, though, to be on
9 the record, I remember the argument about
10 gravitational --

11 MR. MAKHLOUF: That was in the
12 record.

13 MR. HUNT: Yes. Yes.

14 MR. MAKHLOUF: And so is
15 Ms. Russell's question. "I guess my question
16 here would be, why would there be more traffic?
17 I think the issue is that there would be less
18 traffic going to your business and some going
19 to the competitor across the street because
20 it's a similar business. So I don't know why
21 there would be more traffic."

22 That is directly in the record, what the
23 Planning Commission was saying, which is
24 completely wrong.

25 We've addressed the proximity of -- the

1 workability of the site plan in terms of
2 Lafayette having the curb cuts within the turn
3 lanes. Three cars within the turning lane.
4 What we're talking about here is effectively a
5 site that is a bowling alley and we're trying
6 to sandwich a use in that bowling alley that
7 just simply does not have the necessary width
8 on Lafayette to belong there.

9 And the site doesn't work. When you
10 look to the condition that the Planning
11 Commission made -- which, again, I think that
12 you can't have -- semis cannot have turn-in
13 access to the site from Lafayette, but it's
14 okay for the semis to turn out from Lafayette?
15 That is the Planning Commission decision that
16 is in front of you. They only prevented semis
17 from entering the site from Lafayette, they did
18 not prevent semis from leaving the site on
19 Lafayette.

20 When you look to the character of the
21 neighborhood that you have, we argue it would
22 show how Smith Road is more of an industrial
23 area. Lafayette is really more of a business
24 office, more kind of a -- yes, there is some
25 industrial uses, but they're not of the kind of

1 intensity with semis going through them quite a
2 bit. There's residential --

3 MR. VACANTI: I hate to do
4 this, but I'm going to have to object again,
5 and I don't want to -- that is not in the
6 record, that -- that Smith Road has more
7 industry and it's not industry on Lafayette.
8 None of this was testified to. And
9 certainly --

10 MR. MAKHLOUF: The Board can --

11 MR. VACANTI: -- Mr. Makhoulf
12 isn't able to testify.

13 MR. MAKHLOUF: The Board can
14 simply look to the area plans that were in the
15 record.

16 MR. VACANTI: There are no area
17 plans in the record.

18 CHAIRMAN: Objection
19 sustained.

20 MR. MAKHLOUF: Okay. We've
21 explained how that use will be hazardous and
22 cause traffic issues to my client's property.
23 The issue here is not competition. The issue
24 here is that you were going -- that site being
25 sandwiched where it does not belong, it's a

1 conditional use. Being sandwiched where it
2 does not belong is going to create traffic
3 issues that will be detrimental to my
4 property -- to my client's property values.
5 It will inhibit my client's use of its
6 property. It will clearly create -- and
7 Mr. Deluca testified on how it will create
8 hazards and how it will interfere with the
9 traffic of the surrounding public streets. I
10 think -- Mr. Vacanti laughs, but it's two miles
11 away. That is precisely where the traffic -
12 much of it - is coming from, and would be
13 impacted --

14 MR. VACANTI: Objection again.
15 That's not in the record, that that traffic on
16 Smith Road comes through Lafayette. Again, I
17 hate to do this, so I don't -- but I need to
18 preserve it.

19 MR. MAKHLOUF: I think --

20 CHAIRMAN: Sustained.

21 MR. MAKHLOUF: Okay. I
22 think -- I think that objection precisely
23 shows the problem that was before the
24 Planning Commission, and I'm glad it was made
25 and it was sustained. Right?

1 You had an application before the
2 Planning Commission where the property owner
3 or the applicant bore the burden to prove all
4 these elements beyond a reasonable doubt, and
5 we have Mr. Vacanti saying that the
6 Planning Commission made a decision that
7 there will be no traffic issues without having
8 a clue where the traffic will be coming from.
9 I think that objection speaks volumes to the
10 error that happened here and why it would be
11 reversed.

12 We ask you to reverse the decision of the
13 Planning Commission to allow us to have an
14 evidentiary hearing. We want to put the record
15 in front of you.

16 Again, this is not about competition. This
17 is not about any of these issues. It's about
18 this will have real detriment on our property,
19 it will have detriment on the area, it's not
20 harmonious with the area that exists.

21 If you -- we've also pointed out that the
22 approval fails to comply with Sections 1109 and
23 1137 of the Revised Code. And when you look to
24 1109 -- again, this is for the site plan, what
25 it needed to have. It -- it requires that

1 "All the development features including the
2 principal buildings, open spaces, service
3 roads, driveways and parking areas are located
4 ... to minimize the possibility of any adverse
5 effects upon adjacent development."

6 That's not what this does. We've shown how
7 there's adverse effect from this adverse --
8 from this development.

9 There is another issue I just need to point
10 out. This will be for the Court, because we
11 will bring a constitutional claim in addition,
12 and if the Board were to approve the -- affirm
13 the decision of the Planning Commission, there
14 is a constitutionality issue here with the
15 City Ordinance in the sense of there is zero
16 criteria as to when a traffic impact study
17 would be required, and two property owners --
18 basically it's on the whim of the City Engineer
19 without any criteria to do that.

20 And this issue was brought up, and you were
21 told the traffic engineer simply just did not
22 require a traffic impact study. Based on what
23 criteria? Based on what? There is nothing
24 before the Planning Commission on that.

25 So with that, I think you have our

1 arguments.

2 We did request the Planning Commission
3 repeatedly to not make a decision that night,
4 to table it, to give us an opportunity to come
5 with more evidence because we did not have it.
6 By the time we received the notice it was too
7 late. We offered to bring a traffic engineer.
8 We offered to bring a land use plan. We asked
9 for the opportunity to do that, and we were
10 denied that opportunity with the idea that
11 you had to be there and it was there in
12 front of you. We specifically made that
13 request to the Planning Commission, and the
14 Planning Commission refused to table it or
15 give us the opportunity to do that.

16 And with that, I move to proffer the
17 evidence that we wanted to proffer.

18 CHAIRMAN: Thank you.

19 Counsel, care to add or comment?

20 MR. VACANTI: Yes. I'll try to
21 be brief, though.

22 CHAIRMAN: Please.

23 MR. VACANTI: Before I get into
24 some of the merits, I want to address a few
25 things that my esteemed colleague has raised.

1 He keeps citing to the fact that the burden
2 was beyond a reasonable doubt under your
3 codified ordinances. Remember, there are two
4 issues here, site plan review and conditional
5 use -- or -- yeah, review.

6 Under Chapter 1109, which governs site plan
7 review, nowhere will you find a beyond a
8 reasonable doubt standard. That is not the
9 standard. It's been misrepresented - I'm sure
10 unintentionally - to this Board. So there is
11 no burden beyond a reasonable doubt for my
12 client to have established that. Regardless,
13 it did, as I'll discuss.

14 Two, under Chapter 1153 dealing with
15 conditional zoning certificates, my esteemed
16 colleague here keeps saying that the burden was
17 on the applicants to prove beyond a reasonable
18 doubt. If you look at the language in 1153.03
19 for basis of determination - and this is where
20 Mr. Makhoulf is getting this notion - it
21 states, "The Planning Commission shall
22 establish beyond a reasonable doubt ..."

23 So that's not just based off of my clients'
24 testimony or the representatives. It's also
25 based off of the architect-stamped plans and

1 surveys submitted, the application and its
2 narrative, the staff report, the review from
3 the fire department, the review from the
4 Engineer, and all of those items. All right?

5 And as I'm about to walk through, you'll
6 see the overwhelming evidence supports the
7 Planning Commission's decision beyond a
8 reasonable doubt based off of all the evidence
9 on the record and pretty much no probative,
10 reliable, or substantial evidence presented to
11 the contrary.

12 What you've heard a lot about from counsel,
13 legal counsel from the objecting business, is
14 that this site doesn't work. Well, that's the
15 opinion of legal counsel, which isn't fact, and
16 that wasn't in the record.

17 "This site is a bowling alley and supposed
18 to be squeezed in." Mr. Makhoulf is legal
19 counsel. He's not an engineer, not a planner.
20 He's here in his capacity as lawyer, and I
21 cited to the case law in my letter, the U.S. --
22 or Ohio Evidence Rule, attorney's statements
23 are not considered evidence.

24 Mr. Makhoulf indicated that a traffic study
25 is needed. Again, Mr. Makhoulf is -- nowhere

1 in the record does anyone other than.

2 Mr. Makhoulf state that. And, again, he's
3 a lawyer, not a traffic engineer, not a
4 planner. His statements should not be
5 considered as probative, reliable, and
6 substantial evidence. Mr. Makhoulf, as legal
7 counsel, stated here and before the Planning
8 Commission that "This is detrimental to the
9 value of my client's --" his client's property
10 and the use.

11 First of all, that use was never brought
12 up, it was only traffic and value, and it was
13 only Mr. Makhoulf's conclusory statements as
14 legal counsel. There was no appraisal
15 evidence, there was no engineering or planning
16 evidence.

17 Mr. Deluca, the store manager, did testify
18 that there is going to be increased traffic
19 based off of pictures, tried to misrepresent to
20 the Planning Commission pictures from two miles
21 away - all right? - but was called out. And
22 certainly he has no expertise to opine.

23 The City Engineer does, and the testimony
24 showed the City Engineer, who's an engineer,
25 reviewed it and determined that there was not

1 an issue.

2 Mr. Makhoulf says that all they wanted was
3 an opportunity to present and they just didn't
4 have enough time. Certainly he could have
5 showed up with his clients and established that
6 for some unforeseen circumstances out of their
7 control they couldn't prepare for this hearing.
8 They didn't. All they said, that this Board
9 should table it because it shouldn't be
10 conditioned on variances. All right?

11 There's no other evidence as to the reason
12 why it should have been continued. This
13 application was filed by my clients in November
14 and here we are.

15 So putting those items aside, let's take a
16 look at the criteria again. All right?
17 Mr. Makhoulf is talking about all this other
18 criteria. As been instructed, the criteria is
19 whether the Planning Commission's decision's
20 arbitrary, capricious, was it based on an
21 erroneous finding of material fact or an
22 erroneous interpretation of the zoning
23 ordinance or laws, or if it constitutes an
24 abuse of discretion. The only way that
25 criteria makes sense is if you're reviewing the

1 record before the Planning Commission, which is
2 what you're doing now.

3 So let's take a look at that record. All
4 right?

5 First and foremost, Minit Mart on the
6 record objected to both the site plan and
7 conditional use approval because variances were
8 needed. All right?

9 Thereafter, the Board -- or the Commission
10 pushed back - and this is in the record -
11 saying, "Well, we're allowed to condition
12 approvals on things like variances," and
13 Mr. Makhoulf agreed. Moot issue.

14 Thereafter, he raised no objection to the
15 site plan, other than the fact that it was
16 being -- the approval of it was being approved.

17 So all these items that he's talking about
18 the site plan, they were never raised, even by
19 the attorney, and under Ohio law those
20 arguments are waived now. Even if they are
21 supposed to be factual statements -- and
22 they're not, but if you were to accept that
23 based on the site plan, they've been waived
24 because they weren't raised before the Planning
25 Commission.

1 Let's say they weren't waived. All right?
2 As you'll see in the letter submitted -- that's
3 part of the record, that was available publicly
4 online prior to this hearing, you'll see my
5 letter and there are two exhibits attached. I
6 went through the record and summarized it.

7 Exhibit A deals with the site plan
8 criteria, and I have broken down the evidence
9 in the record that supported each individual
10 criteria and the purported contrary evidence.

11 Now, I can walk through this or I can
12 incorporate it by reference. I'm going to
13 incorporate it by reference just -- just, you
14 know, so you have the details, but I'll just
15 briefly -- briefly rush -- you know, run
16 through it.

17 The first --

18 CHAIRMAN: We have received
19 those in an e-mail today.

20 MR. VACANTI: Yes. I'll
21 summarize it fast.

22 CHAIRMAN: Go ahead.

23 MR. VACANTI: Yeah. So the
24 first criteria is set forth in Section
25 1109.02(c)(1) to (2). All right?

1 The site plan shows that a proper
2 relationship exists between thoroughfares,
3 service roads, driveways, parking areas, you
4 know, and encourages pedestrian and vehicular
5 traffic safety and shows all the development
6 features.

7 The evidence in the record, the application
8 narrative:

9 "Describing the site plan and how it is
10 designed to segregate automobile traffic from
11 tractor-trailer traffic and allow full access
12 to rights-of-way;

13 "An agreement in the record to add
14 tractor-trailer --" or permitting
15 tractor-trailer access on Lafayette, I believe.

16 "Architecturally stamped and surveyed
17 stamped site plans and renderings showing the
18 vehicular approaches, streets, parking areas,
19 and sidewalk."

20 Providing a sidewalk on my clients' -- or
21 on the subject property itself, which is
22 unusual. The City Engineer wanted that.
23 Normally it's within the right-of-way, but the
24 City Engineer had some concerns over the site
25 constraints here, that there might be a safety

1 issue, and my client agreed to allow the City
2 to have a sidewalk on its property. All right?
3 That's encouraging proper pedestrian safety.

4 The Planning staff report's evidence and
5 Planning staff testimony - all right? -
6 concerning the project and how it satisfies the
7 applicable criteria and recommending approval.
8 There is testimony in the record concerning how
9 this use will serve the existing traffic, not
10 increase. All right?

11 There was broker testimony by
12 Mr. Gerspacher, testifying that this use is a
13 benefit to the industrial uses and properties
14 in the vicinity because they need fuel. All
15 right?

16 There was testimony concerning the
17 City Engineer and fire department review, and
18 they had no concerns, and it was determined
19 there was no need for a traffic study.

20 And contrary to that, on this single
21 criteria, there were conclusory statements by
22 Mr. Makhoulf concerning the access points and
23 increase in traffic and all those things. As I
24 mentioned before, those should be discounted,
25 it's not evidence.

1 There was also the other supported
2 conclusory testimony of the store manager with
3 the misrepresenting pictures that traffic is
4 going to increase. Again, it's unsupported, so
5 under Ohio law it should be dismissed.

6 There was one resident who lives all the
7 way on the other side of Medina - her address
8 is in the record - that said she was concerned
9 about the existing traffic. That's it. That's
10 it.

11 The Planning Commission reviewed all that
12 and approved the site plan.

13 Next criteria, Section 1109.02(c)(3) and
14 (6). I'll summarize, "The site plan includes
15 adequate provision for screening of parking
16 areas, service areas --" provides landscaping
17 and those types of -- it's all written in here.

18 Again, application narrative,
19 architecturally stamped and designed survey
20 showing the land -- substantial landscaping.
21 It's been characterized by the Commission and
22 the staff as substantial landscaping along
23 Lake Road.

24 My client agreed to add additional trees
25 along Lafayette in a green area. All right?

1 You had the staff planning report
2 identifying the development of the site,
3 describing the adjacent properties. They
4 recommended two more trees. My client agreed
5 and they recommended approval with conditions.

6 Planning staff testimony talked about
7 redevelopment -- the addition of two trees and
8 recommended approval based on the criteria.

9 Testimony from Mr. Berry, our architect,
10 that Appellant - meaning Mr. Makhoulf's client
11 - has similarly sized curb cuts - okay? - as my
12 client. So it's consistent with the character
13 of the area and good design.

14 Again, the Planning Commission reviewed
15 that and rendered its determination that the
16 site plan approval was proper.

17 Next criteria is Section 1109.02(c)(4).
18 This deals with grading and surface drainage
19 provisions that are reviewed and approved by
20 the City Engineer, and the design and
21 construction standards are all up to snuff.
22 That's not the technical term, but that's it in
23 summary.

24 The evidence in the record support a
25 satisfaction of that criteria. Again, the

1 site plans, Planning staff report and
2 recommendation, Planning staff report
3 confirming the refuse area was properly
4 enclosed - all right? - Planning staff
5 testimony concerning that the criteria was
6 established and satisfied, testimony concerning
7 the Engineer who didn't have any concerns about
8 the engineering stuff. There was an indication
9 that there's going to have to be some
10 underground stormwater management and that the
11 applicant - my clients - would have to reach an
12 agreement with the City as to that. So that
13 was addressed and it would have to be subject
14 to an agreement. Evidence in opposition or
15 calling into question any of that; none.

16 Site plan criteria in Section
17 1109.02(c)(7), "The design of the building
18 should be developed with consideration given to
19 the relationship of adjacent development in
20 terms of building height, mass, texture,
21 materials, line and pattern and character."
22 Again, you have the designs, the concept, the
23 site plan, Planning staff report describing the
24 area, the commercial area, and industrial uses
25 that this would serve; broking -- broker

1 testimony concerning the character of the
2 surrounding property which is industrial and
3 commercial; Planning staff report and testimony
4 that the elevation with the proposed
5 stucco-like material is acceptable because it
6 incorporated different colors and recessed
7 panels; testimony from the architect and
8 comments from Mr. Makhoulf and Commission
9 Member Russell about how Appellant -
10 Mr. Makhoulf's client - has a similar business
11 operating across the street. Reported contrary
12 support in the record; none.

13 Site plan criteria, Section 1109.02(c)(8),
14 "Building location and placement should be
15 developed with consideration given to
16 minimizing removal of trees ..."

17 This is an existing property with a
18 structure on it. We're adding landscaping and
19 trees. The site plan, Planning staff report,
20 Planning staff testimony all established that.
21 Purported contrary support, none.

22 Criteria for site plan, Section
23 1109.02(c)(10), "On-site circulation shall be
24 designed to make possible adequate fire and
25 police protection."

1 Again, the plans, the concepts, the
2 narrative, the staff report, the staff
3 testimony, the agreement of my client to add a
4 no-access-to-trucks sign along where the access
5 points at the request of the City, the
6 testimony concerning City Engineer and fire
7 department review and approval and no concern.
8 Contrary evidence; none.

9 Site plan criteria, Section
10 1109.04(c)(10)(D) --

11 MR. HUBER: Anthony, are you
12 going to read every one of these that are
13 attached to your letter? We're going to be
14 here all night if that's what you're going to
15 do. You've already admitted it into the
16 record.

17 MR. VACANTI: Okay. I will use
18 that as an example. Let me just posit, and
19 you're free to review this, it continues on
20 just like that.

21 So the evidence in the record on all these
22 issues, both conditional use -- I also, in
23 Exhibit B, walked through the conditional use
24 approval criteria, and I cite to the testimony,
25 the staff report, the stamped plans, the

1 architect's testimony - all right? - the
2 City Engineer's review and the fire
3 department's review, and compared to what
4 contrary evidence was there on the record,
5 the only contrary evidence was not evidence,
6 it was legal -- it was statements by a lawyer,
7 and it was conclusory statements by the site
8 manager.

9 So I think it's clear based on the
10 criteria, site plan, was there enough evidence?
11 More than enough.

12 Conditional use application. Was the
13 Planning Commission -- did it establish beyond
14 a reasonable doubt that the site plan criteria,
15 some of which I just walked through, was
16 supported by the evidence? Yes.

17 So let's not kid ourselves here. This is a
18 case of a competing business, not with
19 legitimate concerns over the public health,
20 safety, welfare. If they had legitimate
21 concerns, they would have been involved earlier
22 on in the process and not showed up to ambush
23 and hijack these proceedings to gain and keep a
24 competitive advantage. Under Ohio law that is
25 not acceptable, and I ask that this Board not

1 fall prey to what is really going on here.

2 So for all the reasons set forth here and
3 all the reasons set forth in the record, all
4 the reasons set forth in my letter, I ask that
5 this Board please affirm your colleagues' on
6 the Planning Commission's decision. They have
7 the expertise, they took time, they reviewed
8 all of this, as did the City staff, as did our
9 architect, and affirm the Planning Commission's
10 decision.

11 Also, I still want to posit a continuing
12 objection over -- to the jurisdiction of this
13 Board and the ability -- standing of
14 Mr. Makhoulf's client to appeal.

15 I appreciate your attention --

16 CHAIRMAN: Thank you.

17 MR. VACANTI: -- in this
18 matter.

19 And thank you, Mr. Huber, for moving me
20 along.

21 MR. MAKHLOUF: If I may, just a
22 quick clarification of a few issues here?

23 Number one --

24 Sorry.

25 MR. HUNT: You need to have

1 his permission.

2 MR. MAKHLOUF: Oh, sorry.

3 CHAIRMAN: Repeat your
4 question.

5 MR. MAKHLOUF: If I may,
6 clarification of a few issues just to respond
7 to the other --

8 CHAIRMAN: Can you keep it
9 to a minute or two, please?

10 MR. MAKHLOUF: I'll try my best.
11 Just very quick.

12 CHAIRMAN: I'll cut you off.

13 MR. MAKHLOUF: Number one, just
14 with respect to this June 12th letter - and
15 Mr. Dutton can correct me if I'm wrong - that
16 letter was submitted today. It's dated today.

17 I was on the City's website today. It was
18 not on the website. I printed a copy that I
19 have with me here today. I don't know what
20 time it was submitted, but it was not on the
21 City's website as of today. The only time I
22 saw that was literally walking in here, Mr.
23 Dutton handed me a copy of it. And we're
24 talking about an appeal with different parties
25 a part of it without any copy to me.

1 Number two, in terms of the -- requesting
2 the Planning Commission to table the
3 application, Mr. Vacanti said that the basis
4 for tabling would be variances. That is
5 incorrect. That was one of the bases cited.
6 If you look to Page 13, we specifically said --
7 he said the application's been there since
8 November. The application has not been there
9 since November. The application is dated and
10 stamped February 21 and the hearing was on
11 March 13.

12 And I told the Planning Commission it just
13 was submitted on February 21. The Commission
14 at least has forty-five days under its rules.
15 "Give us the chance - because we just learned
16 of this - to bring you the traffic experts who
17 would testify as to the impact of this." So
18 this specifically was a request that was made
19 of the Planning Commission, and the Planning
20 Commission denied it.

21 And even with respect to the variances, the
22 discussion, the way that the record works, the
23 discussion happened, as we said, "There are
24 substantial variances here. You should wait
25 until the Board of Zoning Appeals rules on

1 them."

2 And they said that it could be conditioned.

3 And we said "Yes, it could be conditioned,
4 but we're talking about very substantial
5 variances here and it's a conditional use. You
6 don't have to vote on it." Denied and they
7 refused to do that.

8 So the idea that we waived any of that
9 stuff is just contrary to the express language
10 of the transcript.

11 We ask that you reverse the Planning
12 Commission, at a bare minimum, to remand it
13 back to the Planning Commission for further
14 consideration.

15 MR. VACANTI: Mr. Chair, can I
16 have just fifteen seconds? Just fifteen
17 seconds, I promise. I would appreciate --

18 CHAIRMAN: I'm watching the
19 clock.

20 MR. VACANTI: Okay. I draw
21 your attention to the record, Application
22 Number P25-02; date of application,
23 November 20th, 2024.

24 CHAIRMAN: Counsel suggests
25 that the Board go into executive session to --

1 MR. HUNT: And the reasons
2 for that being, number one, imminent threat of
3 court action.

4 Thank you, Mr. Makhoulf.

5 MR. MAKHLOUF: You're welcome.

6 MR. HUNT: Number two is to
7 obtain legal advice from the Board's counsel,
8 legal counsel.

9 Number Three, the case law of Ohio is very
10 clear that quasi-judicial boards have the
11 authority to deliberate in private and -- but
12 no decision can be made unless it's made
13 publicly.

14 CHAIRMAN: Do you make that
15 motion?

16 MR. WILLIAMS: I do make the
17 motion, for those reasons as stated by counsel.

18 MR. COOPER: And a second.

19 MR. MAKHLOUF: And just a
20 reminder that we need to do a proffer.

21 Sorry.

22 CHAIRMAN: Moved and
23 seconded.

24 MR. HUNT: We will make sure
25 you get the opportunity to proffer probably to

1 the side with Mr. Vacanti present - would that
2 be acceptable? - so it gets into the record.

3 MS. TOME: Cooper?

4 MR. COOPER: Yes.

5 MS. TOME: Humpal?

6 CHAIRMAN: Yes.

7 MS. TOME: Johnson?

8 MR. JOHNSON: Yes.

9 MS. TOME: Roszak?

10 MR. ROSZAK: Yes.

11 MS. TOME: Williams?

12 MR. WILLIAMS: Yes.

13 MS. TOME: Motion carried.

14 CHAIRMAN: Okay.

15 (Whereupon, the meeting stood in
16 recess while the Board entered executive
17 session.)

18 PROFFER BEGINS

19 (Whereupon, the following proffer was
20 had in the presence of Attorney Makhlouf,
21 Attorney Vacanti, Greg Soltis, and
22 Andrew Pierson.)

23 MR. MAKHLOUF: We proffer the
24 testimony of Greg Soltice, and he has the
25 expert report that's been submitted into the

1 record.

2 MR. VACANTI: Is there a copy?

3 MS. TOME: I was going to
4 say, can I have a copy?

5 MR. VACANTI: Okay. I guess
6 we're incorporating this into the proffer?

7 MR. MAKHLOUF: Yes. He's going
8 to explain it.

9 Go ahead.

10 MR. SOLTIS: This is an
11 analysis of the evolution of the built
12 environment in Medina that caused this
13 condition for industrial uses to be in conflict
14 with other uses, and it's an analysis of
15 West Smith Road and West -- or Lafayette Road
16 and their appropriateness for truck traffic.
17 It analyzes their conditions and basically
18 recommends that a gas station on that corner,
19 because of its intensity -- it will increase
20 the intensity of use, potentially alter the
21 characteristics of Lafayette Road, would not be
22 advised.

23 Additionally, the Comprehensive Plan puts
24 forth that it requires or recommends traffic
25 studies, and it also requires the maintenance

1 and enhancement of existing roads, and the
2 addition of this and added truck traffic would
3 be detrimental to the neighborhoods of Medina
4 and Southwest Medina.

5 There's more details in there, but that's
6 kind of a summary.

7 MR. VACANTI: And just, you
8 know, for the record on the proffer, I'd
9 reserve my right to cross-examine if this is
10 ever -- and challenge the qualifications of
11 Mr. Soltis, who does not appear to be a traffic
12 engineer, and the reliability of this expert --
13 alleged expert report. His qualifications are
14 not included as part of that, and this is not a
15 traffic study.

16 MR. MAKHLOUF: Thank you.

17 And just for the record, we do have a
18 traffic engineer who's about to proffer his
19 testimony.

20 Mr. Soltis, if you can quickly, for the
21 record, state your qualifications and your
22 history.

23 MR. SOLTIS: I am AICP
24 certified. I work at RDL Architects as
25 a --

1 PROFFER ADJOURNED

2 (Whereupon, the Board then re-entered
3 the room.)

4 MR. HUNT: Hello. Why don't
5 we go back to order.

6 CHAIRMAN: Thank you. We'll
7 come back to order and resume.

8 Comments or thoughts from the Board?

9 MR. WILLIAMS: No.

10 MR. HUNT: May I?

11 CHAIRMAN: Yes, Counsel.

12 MR. HUNT: I do appreciate
13 the demeanor of counsel this evening and
14 ability to counsel. Very good arguments this
15 evening.

16 Thank you.

17 CHAIRMAN: Thank you,
18 Counsel.

19 MR. WILLIAMS: If I could make a
20 motion, Mr. Chairman?

21 CHAIRMAN: Yes, you may.

22 MR. WILLIAMS: Having heard
23 the oral arguments from counsel, I make a
24 motion to deny the appeal and affirm the
25 Planning Commission decision, and its decision

1 will be finalized upon the special legal
2 counsel submitting draft findings that support
3 the decision of the Board for its review and an
4 adoption at our next regular meeting.

5 CHAIRMAN: Do we have a
6 second?

7 Counsel?

8 MR. HUNT: When is that next
9 meeting?

10 MR. WILLIAMS: Uh --

11 CHAIRMAN: Second Thursday
12 in July.

13 MS. TOME: July 10th.

14 MR. WILLIAMS: July 10th?

15 MS. TOME: Yes.

16 MR. WILLIAMS: On July 10th.

17 CHAIRMAN: Is that
18 appropriate? Does that work for you?

19 MR. COOPER: I second that
20 motion.

21 CHAIRMAN: Call the roll,
22 Sarah.

23 MS. TOME: Humpal?

24 CHAIRMAN: Yes.

25 MS. TOME: Johnson?

1 MR. JOHNSON: Yes.
2 MS. TOME: Roszak?
3 MR. ROSZAK: Yes.
4 MS. TOME: Williams?
5 MR. WILLIAMS: Yes.
6 MS. TOME: Cooper?
7 MR. COOPER: Yes.
8 MS. TOME: Motion carried.
9 CHAIRMAN: Thank you.
10 Appeal denied.
11 MR. MAKHLOUF: And as Mr. Hunt
12 knows, it's my duty to inform the Board that we
13 intend to appeal in the Court of Common Pleas.
14 MR. HUNT: Thank you.
15 MR. MAKHLOUF: And with that, we
16 ask that we continue to proffer the evidence.
17 MR. HUNT: Yes.
18 MR. MAKHLOUF: Now?
19 MR. HUNT: Yes.
20 Do you need the court reporter for the next
21 case? Are you going to be able to get through
22 fairly quickly?
23 MR. MAKHLOUF: We're almost
24 done.
25 MR. HUNT: Okay. The court

1 reporter has to be here for the next case.

2 MR. VACANTI: Thank you,
3 members of the Board. I appreciate your time
4 this evening.

5 (Meeting concluded.)

6 PROFFER CONTINUED

7 (Whereupon, the following proffer was
8 had in the presence of Attorney Makhoulf,
9 Attorney Vacanti, Greg Soltis, and
10 Andrew Pierson.)

11 THE NOTARY: Mr. Soltis, could
12 you repeat your qualifications?

13 MR. SOLTIS: I'm AICP
14 certified. I work at RDL Architects and -- as
15 a planner and architectural designer, and I
16 teach urban design at Cleveland State
17 University and have done so for about ten
18 years.

19 MR. MAKHLOUF: Have you ever
20 testified in any proceeding before?

21 MR. SOLTIS: Yes.

22 MR. MAKHLOUF: Zoning
23 proceeding?

24 MR. SOLTIS: I have.

25 MR. MAKHLOUF: Have you been

1 accepted as an expert?

2 MR. SOLTIS: Yes.

3 MR. MAKHLOUF: Thank you.

4 MR. SOLTIS: And I'm on
5 Downtown Design Review Committee for Downtown
6 Cleveland as well.

7 MR. MAKHLOUF: And with that,
8 we offer the -- proffer the testimony of
9 Mr. Andrew Pierson.

10 Mr. Pierson, if you can begin by describing
11 your background and history for the record.

12 MR. PIERSON: Hello. My name
13 is Andrew Pierson. I'm a professional
14 engineer, work for Langan International. I've
15 been a traffic engineer in Northeast Ohio for
16 roughly twenty-nine years. Over that time I've
17 done several hundred traffic impact studies and
18 various studies, a handful for the City of
19 Medina and surrounding areas.

20 Here to present customary study procedures,
21 specifically mentioned in the State Highway
22 Access Management Manual that ODOT has
23 published. It specifies various times that a
24 traffic impact study or a traffic analysis is
25 required.

1 I will preface that the City of Medina is a
2 home rule, they do not necessarily have to
3 follow the access management manual, but it is
4 a de facto manual that is being used throughout
5 Ohio when there is no access management for a
6 specific city.

7 I'll first preface that I looked at the
8 number of trips for this type of site, which
9 would be a twelve-pump gas station with a
10 specific-size convenience store that is
11 specified in the ITE Trip Generation Manual.
12 It specifies that roughly -- well, actually
13 exactly three hundred and twenty-four trips are
14 expected in the a.m. peak and three hundred --
15 or sorry, two hundred and seventy-three is in
16 the p.m. peak. That is the amount of vehicles
17 entering and exiting -- actually half would be
18 entering, half would be exiting during that
19 peak hour.

20 Based on the access management manual, this
21 type of roadway, it would be considered a
22 high-volume of number of vehicles that would
23 enter and exit. The manual specifies that
24 anything over two hundred trips would be a
25 specific situation that a TIS - or a full

1 traffic impact study - would be required.
2 Anything sixty to two hundred would be a
3 traffic analysis, and we would just look at the
4 driveways themselves, not the surrounding
5 intersections.

6 So in this situation, the surrounding
7 intersections would be analyzed in a traffic
8 impact study typically. In this case, my
9 understanding is there was no traffic study
10 performed for this site.

11 The secondary item that I want to
12 reference, in what is commonly referred to as
13 the SHAMM, which is the State Highway Access
14 Management Manual, it does specify in 4.4,
15 "Driveways located too close to intersections
16 can cause operational and safety problems."
17 They provide a table that specifies two hundred
18 and fifty feet is the preferred distance
19 between an intersection and a nearby driveway.
20 That is to give, based on the manual,
21 appropriate corner clearance distance. "In
22 most cases driveways near intersections
23 shouldn't allow full access movements in and
24 out if these movements are required to cross
25 left-turn lanes ..."

1 In this case the access on Lafayette would
2 cross over a left-turn lane, which is contrary
3 to the access management. In my twenty-nine
4 years' experience, we are trying to get rid of
5 these kind of access, because any time I do a
6 safety study of a corridor, we try and
7 eliminate these because these inherently are
8 the highest crash locations because traffic has
9 a hard time exiting with very limited sight
10 distance.

11 Further, the manual states, "Driveways
12 should not be permitted within the boundaries
13 of a turn lane, but if there's no other option,
14 consideration should be given to limiting the
15 drive to right-in/right-out ..."

16 It's my opinion, based on dealing with ODOT
17 and surrounding agencies, that typically access
18 is provided on the side street and
19 right-in/right-out is provided on the main line
20 in these kind of situations. Access is not
21 denied, it is just restricted because the
22 right-in is a very free-flow movement, and a
23 right-out there's very little confliction.
24 It's the left turns that cause a considerable
25 potential for crashes in this kind of scenario.

1 And I don't know why the City Engineer did
2 not require a traffic impact study, but I will
3 say that in my twenty-nine years I have done
4 dozens of convenience stores with gas stations
5 with this amount of pumps, and I've never not
6 been able to have a traffic impact study
7 required. Various dozens of cities and ODOT
8 would definitely have required a full traffic
9 impact study based on their criteria.

10 MR. MAKHLOUF: Does the
11 City of Medina have a traffic access manual?

12 MR. PIERSON: Not to my
13 understanding.

14 MR. MAKHLOUF: Okay.

15 MR. VACANTI: Just for the
16 record, I have a continuing objection to this
17 and reserve the right to cross-examine if this
18 evidence is to be admitted. I object to the
19 reliability, the helpfulness, and relevance of
20 the testimony provided as the City of Medina is
21 a home-rule municipality and the traffic -- has
22 its own traffic engineer and policies.

23 Again, I want to just preserve the
24 objections and the right to cross-examine if
25 that is introduced.

1 And, also, object; no expert report has
2 been provided.

3 MR. MAKHLOUF: We're more than
4 happy to make Mr. Pierson available for
5 cross-examination at the evidentiary hearing in
6 court per Revised Code Section 2506.03.

7 MR. VACANTI: Which we
8 repeatedly object to the appropriateness of
9 such hearing.

10 And just to confirm, Mr. Pierson, you did
11 not perform a traffic impact study?

12 MR. PIERSON: I did not.

13 MR. VACANTI: All right. Thank
14 you.

15 MR. MAKHLOUF: Thank you.

16 MR. VACANTI: Thank you so
17 much.

18 PROFFER CONCLUDED

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1 STATE OF OHIO)
) ss:
2 COUNTY OF MEDINA.)

3 CERTIFICATE

4 I, Meghan A. Bobrowski, Notary Public within
5 and for the State of Ohio, duly commissioned and
6 qualified, hereby certify that before the giving of
7 their testimony, all persons were first duly sworn
8 to testify to the truth, the whole truth, and
9 nothing but the truth in this case aforesaid.

10 I further certify that said hearing was held at
11 the time and place specified in the above case and
12 was concluded on the 12th day of June, 2025.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and affixed my seal of office at Medina, Ohio this
15 3rd day of July, 2025.

16 *Meghan A. Bobrowski*

17 -----
18 Meghan A. Bobrowski
19 Notary Public within and for
 the State of Ohio.
 My commission expires 05/20/27.

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0	3	added ^[1] - 69:2 adding ^[2] - 6:7, 59:18 addition ^[3] - 46:11, 57:7, 69:2 additional ^[6] - 15:8, 16:21, 26:4, 39:13, 39:15, 56:24 additionally ^[1] - 68:23 address ^[3] - 7:25, 47:24, 56:7 addressed ^[3] - 9:21, 41:25, 58:13 adept ^[1] - 28:1 adequate ^[3] - 9:7, 56:15, 59:24 adjacent ^[4] - 6:18, 46:5, 57:3, 58:19 ADJOURNED ^[1] - 70:1 Administrative ^[1] - 2:6 administrator ^[3] - 23:9, 26:11, 26:17 admitted ^[2] - 60:15, 78:18 adopt ^[4] - 11:19, 11:21, 14:17, 30:19 adopted ^[2] - 6:13, 6:23 adoption ^[2] - 38:2, 71:4 advantage ^[1] - 61:24 adverse ^[3] - 46:4, 46:7 advice ^[5] - 23:21, 24:20, 25:1, 29:9, 66:7 advised ^[2] - 8:22, 68:22 advocates ^[1] - 16:12 affected ^[1] - 20:3 affirm ^[4] - 46:12, 62:5, 62:9, 70:24 affixed ^[1] - 80:14 aforesaid ^[1] - 80:9 agencies ^[1] - 77:17 agent ^[1] - 15:2 aggrieved ^[4] - 15:11, 15:16, 15:19, 17:2 agree ^[1] - 10:20 agreed ^[4] - 52:13, 55:1, 56:24, 57:4 agreement ^[4] - 54:13, 58:12, 58:14, 60:3 ahead ^[4] - 9:12, 20:16, 53:22, 68:9 AICP ^[2] - 69:23, 73:13 aid ^[1] - 29:20 alert ^[1] - 33:11	alleged ^[1] - 69:13 alley ^[3] - 42:5, 42:6, 49:17 allow ^[5] - 18:9, 45:13, 54:11, 55:1, 76:23 allowable ^[1] - 18:8 allowed ^[1] - 52:11 almost ^[3] - 16:16, 16:17, 72:23 alter ^[1] - 68:20 ambush ^[1] - 61:22 amend ^[1] - 19:15 amended ^[1] - 19:19 amount ^[2] - 75:16, 78:5 analysis ^[5] - 39:3, 68:11, 68:14, 74:24, 76:3 analyzed ^[1] - 76:7 analyzes ^[1] - 68:17 Address ^[1] - 2:7 Andrew ^[7] - 2:6, 4:16, 26:22, 67:22, 73:10, 74:9, 74:13 Anthony ^[2] - 2:12, 6:21 anthony ^[1] - 60:11 appeal ^[47] - 4:15, 6:20, 7:8, 8:14, 8:17, 8:18, 9:15, 9:21, 10:13, 11:8, 11:14, 12:8, 14:20, 14:21, 15:4, 15:9, 15:12, 17:2, 17:7, 20:13, 21:9, 21:10, 21:12, 22:14, 22:22, 22:25, 23:5, 23:6, 23:8, 26:15, 26:16, 28:10, 28:16, 29:17, 29:20, 32:2, 36:12, 36:14, 36:19, 36:20, 37:22, 62:14, 63:24, 70:24, 72:10, 72:13 appealed ^[8] - 6:17, 7:12, 11:14, 21:9, 21:16, 26:12, 28:12, 35:13 appeals ^[5] - 7:10, 14:20, 17:12, 17:13, 17:15 APPEALS ^[1] - 1:4 Appeals ^[17] - 1:12, 2:9, 2:11, 6:3, 6:5, 6:18, 8:13, 9:16, 10:16, 11:9, 11:10, 19:3, 23:6, 23:21, 28:23, 29:2, 64:25 appear ^[2] - 16:15, 69:11 appearance ^[1] - 38:6	APPEARANCES ^[1] - 2:1 appeared ^[1] - 16:2 Appellant ^[2] - 57:10, 59:9 apple ^[2] - 18:1, 18:6 applicable ^[2] - 7:9, 55:7 Applicant ^[1] - 6:22 applicant ^[14] - 7:21, 20:25, 26:3, 28:11, 30:17, 32:16, 33:7, 36:25, 37:7, 37:10, 38:21, 45:3, 58:11 applicants ^[3] - 13:16, 14:6, 48:17 Applicants ^[1] - 2:13 Application ^[1] - 65:21 application ^[32] - 4:20, 4:25, 5:15, 9:19, 9:25, 10:1, 14:21, 14:25, 15:2, 17:14, 18:15, 18:23, 18:25, 19:6, 19:13, 19:16, 19:18, 20:19, 21:1, 35:12, 36:21, 38:18, 45:1, 49:1, 51:13, 54:7, 56:18, 61:12, 64:3, 64:8, 64:9, 65:22 application's ^[1] - 64:7 applications ^[1] - 5:25 applied ^[1] - 18:17 appraisal ^[1] - 50:14 appreciate ^[6] - 14:10, 18:10, 62:15, 65:17, 70:12, 73:3 approaches ^[1] - 54:18 appropriate ^[5] - 27:4, 29:22, 34:9, 71:18, 76:21 appropriateness ^[2] - 68:16, 79:8 approval ^[14] - 5:2, 6:1, 6:16, 14:7, 15:25, 45:22, 52:7, 52:16, 55:7, 57:5, 57:8, 57:16, 60:7, 60:24 approvals ^[1] - 52:12 approve ^[1] - 46:12 approved ^[7] - 5:23, 6:4, 18:17, 18:18, 52:16, 56:12, 57:19 April ^[4] - 6:15, 7:3, 11:20, 28:21 arbitrary ^[2] - 7:13,
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