

Jackson Township Board of Zoning Appeals
August 8, 2019

Members Present: Patrick Snyder
Leon Vitale
Daniel Creighton
Edward McDonnell
Zoning Inspector: Joni Poindexter
Absent Member: Charles Rohr
Jared Singer

Vitale made a motion to nominate Mr. McDonnell to act as Chairman and Mr. Creighton seconded the motion.

The vote was: Mr. Creighton-yes, Mr. Vitale-yes, Mr. Snyder-yes, and Mr. McDonnell-yes.

5:00 PM Appeal #2377 – Classic Custom Homes and Remodeling, 2307 Whipple NW, Canton, OH 44708 agent for Lisa Prado, property owner, 3918 Gardiner Run, Copley, OH 44321 requests a variance for a 5 ft. south (rear) yard setback where 10 ft. is required for deck addition to principal dwelling per Art. IV Sect. 401.19(B)(6) of the zoning resolution. Property located at 9162 Forest Trail NW, Sect. 30NE Jackson Twp. Zoned R-3 PUD.

Mr. McDonnell read the file application and contents of the file into the record.

Mr. McDonnell asked who would like to speak in favor of the appeal.

Mr. McDonnell swore in Rachael Robinson, Howard Hanna Real Estate, 4758 Dressler Rd. Canton, Ohio 44718.

Ms. Robinson stated she represents the builder for the property. Bryan Simon is the owner operator. They are asking for a 5 ft. variance due to the elevation. They were going to have a patio but due to the elevation of the property a patio is not possible so they would like to have a deck.

Mr. McDonnell asked what size the patio would have been.

Ms. Robinson stated it would have been a 10 x 12.

Mr. McDonnell asked how far the house is from the rear lot line.

Ms. Robinson stated 15 ft. and the structure is 30 ft. at the front setback.

Mr. McDonnell asked why the front setback is 30 ft. when the requirement is only 25 ft.

Ms. Robinson stated that she was not sure.

Mr. McDonnell asked when it was determined a patio could not be put in.

Ms. Robinson stated when construction began around April 17th.

Mr. Snyder asked how high the patio door is from the ground.

Ms. Robinson stated it is about 6 ft. off the ground. The deck will be a composite material with railing and will be a nice looking structure.

Mr. Snyder stated the neighbor has their patio facing Revere and asked if it was considered to put the patio on the side of the house facing Revere.

Ms. Robinson stated no because that side is the master bedroom so it wasn't considered to go off the rear. The doors come off of the kitchen and dining room.

Mr. Vitale asked what changed in the elevation from the time the property was looked at and building began.

Ms. Robinson stated when they started digging they ran into bad soils so they had to dig deeper. There is one block showing on one side of the house and the other side shows several blocks. The property slopes.

Mr. Vitale stated the adjacent house falls down but it appears they graded down and asked if the elevation could have changed. He doesn't think it is clear as to why the house was set at 30 ft. setback as opposed to a 25 ft. setback.

Ms. Robinson stated she does not know.

Mr. Vitale asked if a 5 ft. platform could be added with steps and why they couldn't put in a patio.

Ms. Robinson stated because of the safety issue.

Mr. Vitale explained how he thought they could do the patio.

Mr. Robinson stated they would still need a variance to turn the stairs to go to the patio.

No one else in the audience spoke in favor of the appeal.

Mr. McDonnell asked Ms. Poindexter if the setback is 25 ft.

Ms. Poindexter stated yes.

Mr. McDonnell asked if the patio had a setback if it was raised.

Ms. Poindexter stated if it has footers then the answer is yes.

Mr. McDonnell swore in those is opposition to the appeal.

Mr. Ken Schafer, president of home owner, 9345 Forest Trail stated he thought she said the association approved this but they only approved the house and not the porch. They want to keep the rules of the township abided by.

Ms. Anita Kociuruba, 4462 Trail Head stated he abuts the lot in question to the south. There are bylaws for the association. When they built their house they had to comply. If the builder would have done proper planning they could have went at a 25 ft. setback. It will be close to her home at a 5 ft. setback even if is a nice deck.

Mr. William Paulus 4445 Trail Head NW, stated he lives adjacent to the property across the street. He purchased his property because of the restrictions and view in the back. He quoted from the home owners association bylaws. He is concerned about the rules being respected and it disturbs him that anyone can change the rules at will. Mr. Paulus showed the board where his home is located and stated if he looks out his front window he can see the house.

Mr. Vitale asked if what Mr. Paulus read was from the bylaws.

Mr. Paulus stated yes.

Mr. McDonnell asked if Mr. Paulus home is the first house on the circle.

Mr. Paulus stated yes.

Mr. Howard Bettis, 4477 Trail Head NW stated he lives across the street from the property. He thinks the laws of the township should be followed and it not their fault or the township's fault the home was built in the wrong location. He redesigned his house to make it fit.

Mr. Jay Bomze, 4463 Trail Head NW is across the street and katty corner from the house in question. He is a civil engineer and has attended several appeal hearings in the past. He stated is it the truth, is it fair to all concerned and will build better friendships and be beneficial to all concerned. This is not going to benefit many people but will benefit one person. This will set a precedence so if someone else wants to do it they can come before the board and ask for the same thing. There needs to be a compelling reason to change the rules. He doesn't see a benefit to anyone but the homeowner and the deck was not shown on the original plans. If the house were at a 25 ft. setback they wouldn't need a variance. He asked the board to think of the compelling reason.

No one else spoke in opposition to the appeal.

Ms. Robinson had nothing further to say.

Mr. McDonnell closed the appeal to public input.

Mr. Vitale stated he thinks the practical difficulty was not proven but if it was it was self-inflicted. If they house met the required setback they wouldn't need a variance. A 5 x5 ft. deck could be built. Mr. Bettis stated he had to redesign his house to meet the setback. He thinks the builder should have been present to answer question. He does not see a practical difficulty.

Mr. Snyder stated he agreed with Mr. Vitale. He doesn't see a practical difficulty. He thinks it is self-inflicted with the house being 30 ft. from Forest Trail as opposed to 25 ft.

Mr. McDonnell stated he looked at the R-3 requirements and the requirements are more liberal than the other residential district. He agrees with Mr. Snyder and Mr. Vitale about the 30 ft. front setback. Mr. McDonnell stated he doesn't think there is a practical difficulty. He thinks this is from the actions of the owner so they created their own problem. He has difficulty with the testimony that they realized there was a problem in April they didn't apply for a variance until July.

Mr. Snyder made a motion to approve appeal #2377 as requested.

Mr. Creighton seconded the motion.

The vote was: Mr. Snyder-No, Mr. Creighton-No, Mr. Vitale-No, and Mr. McDonnell-No.

5:30 PM Appeal #2376 – Larry Smith/Smith Outdoor Advertising, 8036 Fox Run Ave. NW, North Canton, Ohio 44720 agent for Belden Mall LLC, property owner, c/o Macy's Tax Department, PO Box 130940, Carlsbad, CA 92013 appeals the decision of the zoning inspector dated 6/24/19 in denying a permit per the application received on 6/12/19 for an off-premises billboard with digital display to be located on the property within a B-3 zoning district where billboards are permitted in an I-1 zoning district per Art. V Sect. 503.1 of the zoning resolution. Property located at 4230 Belden Village NW, Parcel #1607268, Sect. 24NE Jackson Twp.

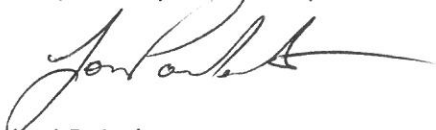
Mr. McDonnell made a motion to uphold the zoning inspector's decision per appeal #2376.

Mr. Vitale seconded the motion.

The vote was: Mr. Snyder-yes, Mr. Vitale-yes, Mr. McDonnell-yes, and Mr. Creighton-yes.

See transcript

Respectfully submitted,



Joni Poindexter
Zoning Inspector

**JACKSON TOWNSHIP BOARD OF ZONING APPEALS
CONCLUSIONS OF FACT
APPEAL #2377**

Upon the hearing the Board determined that the variance would allow for a 5 ft. south (rear) yard setback where 10 ft. is required for deck addition to principal dwelling per Art. IV Sect. 401.19(B)(6) of the zoning resolution. Property located at 9162 Forest Trail NW, Sect. 30NE Jackson Twp. Zoned R-3 PUD.

Whereas, upon the Board determined:

There was no practical difficulty that was not created by the property owner to allow for the variance.

Whereas, the Board further:

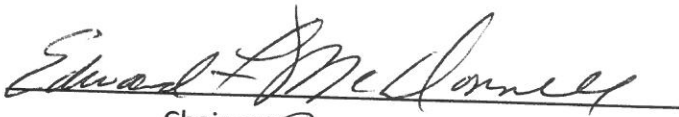
Denied X
Approved

The variance to allow a 5 ft. setback for deck addition to principal dwelling from the south (rear) property line which will result in a 5 ft. setback for the principal dwelling where 10 ft. is required for principal dwellings.

Mr. Snyder made a motion to approve the variance as requested.

Mr. Creighton seconded the motion.

The vote was: Mr. Creighton No
 Mr. Snyder- No
 Mr. Vitale- No
 Mr. McDonnell No



Chairman



Zoning Inspector, Joni Poindexter

**JACKSON TOWNSHIP BOARD OF ZONING APPEALS
CONCLUSIONS OF FACT
APPEAL #2377**

Upon the hearing the Board determined the appeal regarding the decision of the zoning inspector dated 6/24/19 in denying a permit per the application received on 6/12/19 for an off-premises billboard with digital display to be located on the property within a B-3 zoning district where billboards are permitted in an I-1 zoning district per Art. V Sect. 503.1 of the zoning resolution. Property located at 4230 Belden Village NW, Parcel #1607268, Sect. 24NE Jackson Twp.

Whereas, upon the Board determined:

The zoning inspector was correct in her decision in denying the application for a permit for a billboard in a B-3 commercial business district where a billboard is not permitted therefore the zoning inspector's decision is upheld and the appeal is denied.

Whereas, the Board further:

Denied X

Approved

The appeal and upheld the zoning inspectors decision.

Mr. McDonnell made a motion to uphold the zoning inspector's decision.

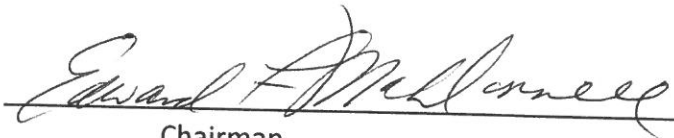
Mr. Vitale seconded the motion.

The vote was: Mr. Snyder- Yes

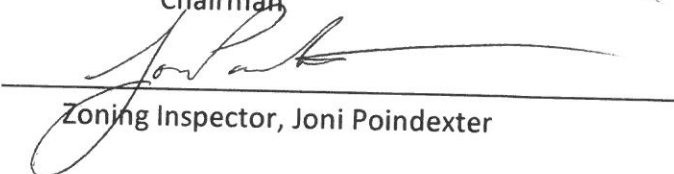
Mr. Vitale- Yes

Mr. McDonnell- Yes

Mr. Creighton Yes



Chairman



Zoning Inspector, Joni Poindexter

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BEFORE THE JACKSON TOWNSHIP BOARD OF ZONING APPEALS
JACKSON TOWNSHIP, OHIO
APPEAL NO. 2376

PUBLIC HEARING

The following Jackson Township Board of Zoning Appeals Hearing was taken before me, the undersigned, Deanna Gleckler, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, at the offices of Jackson Township, 5735 Wales Avenue, N.W., Massillon, Ohio, on Thursday, the 8th day of August 2019, at 5:50 p.m.

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APPEARANCES:

JACKSON TOWNSHIP BOARD OF ZONING APPEALS:

- ED MCDONNELL
- PATRICK SNYDER
- LEON VITALE
- DAN CREIGHTON
- MICHAEL VACCARO - Township Attorney
- JONI POINDEXTER - Zoning Inspector

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MR. MCDONNELL: Our next appeal is appeal 2376. By the way, before -- this is appealing a decision of the Zoning Inspector. This is appeal 2376. Property owner is Belden Village Mall. or Belden Mall - excuse me - LLC, 4230 Belden Village Avenue, N.W., Canton, Ohio 44718. The applicant is Larry Smith/Smith Outdoor Advertising, 8036 Fox Run Avenue, N.W., North Canton, 44720. Decision Being Appealed: Appeals the decision of the Zoning Inspector dated June 24, 2019 in denying a permit per the application received on June 12, 2019 for an off-premises billboard with digital display to be located on the property within a B-3 zoning district where per the Jackson Township Zoning Resolution, Article V, Section 503, billboards are permitted in an I-1 zoning district. Property located at 4230 Belden Village, N.W., parcel 1607268.

Premises Affected: 4230 Belden Village, N.W., Canton, Ohio, Parcel 1607268, quarter section, 24 northeast, zoned B-3. Date of Decision Being Appealed: June 24, 2019. Date Appeal Filed with Zoning Inspector and Board was July 12, 2019. Date of Notice Mailed to Parties In Interest was

1 July 26, 2019. Date of Publication in the
2 Repository was July 25, 2019. Date and Time of
3 Public Hearing, scheduled for today, August 8,
4 2019. Scheduled at 5:30. It is currently 5:53.
5 Date of Decision, hopefully will be this evening.

6 Within the file -- oh, and the reason for
7 the appeal says, "I maintain that the
8 interpretation of the Jackson Township Zoning
9 Resolution Book by the Zoning Department is
10 incorrect. Section 504 permits off-premise signs
11 for a commercial development with 175,000 square
12 feet or greater of leasable area on any parcel of
13 land in the B-3 or I-1 districts." And it is
14 signed by Larry Smith.

15 Within the file we do have, we have the
16 Jackson Township Zoning Department Board of Zoning
17 Appeals record of appeals, which is computerized,
18 which I just read from. We have the Jackson
19 Township Board of Zoning Appeals Application,
20 computerized, which I just read. Jackson Township
21 Board of Zoning Appeals Application, filed July 12,
22 2019 from Larry Smith and received by the Zoning
23 Department on July 12, 2019. We do have a letter
24 from Smith Outdoor Advertising to Jackson Township,
25 Jackson Township Zoning Department, addressed to

1 Joni Poindexter, Zoning Department, and it is dated
2 July 12, 2019 and it was from Mr. Walsh. Or No.
3 It was copied to Mr. Walsh, General Manager of
4 Belden Village, and it is three pages long, and
5 it's regarding the Notice of Appeal by the
6 Applicant Larry Smith of Smith Outdoor Advertising,
7 and Permanent Sign, regarding his Permanent Sign
8 Certificate.

9 We also have a copy of the Permanent Sign
10 Certificate Application. It was dated June 12,
11 2019. We also do have a schematic of the Belden
12 Village Mall Off-Premise Sign Site Plan, and we do
13 have a letter from Zoning Inspector Joni Poindexter
14 addressed to Larry Smith, Smith Outdoor
15 Advertising, and Mike Walsh, outlining the reason
16 for the rejection, for the denial for his
17 application for the Permanent Sign. Also within
18 the file, these are submitted by, and are so
19 numbered, they were submitted by the Zoning
20 Inspector, we have Exhibit 1, which is the
21 application submitted by the applicant on June 12,
22 2019 described, per the application description, as
23 an off-premises billboard with digital display.
24 And then again it is listed in the back, it has ZI
25 Exhibit Number 1. And the following Exhibits 2

1 through 8 were submitted with the application for
2 the off-premises billboard with digital display on
3 6-12.

4 Specifically Number 2, Exhibit Number 2,
5 Labeled Belden Village Mall Off-Premises Sign Site
6 Plan, Exhibit 3, which was a letter of permission
7 signed by Mike Walsh, General Manager for Belden
8 Village, and dated June 12, 2019 to the Township,
9 Jackson Township Zoning Department, granting
10 permission for Smith Outdoor Advertising to apply
11 for a zoning permit for an off-premises sign on the
12 Belden Village Mall's property. Exhibit 4 is a
13 picture or a schematic, and it's labeled Belden
14 Village Mall Off-Premises Sign Distances from other
15 billboards in proximity. Further labeled, minimum
16 1000 feet from another billboard. Exhibit 5
17 submitted by the Zoning Inspector is the Belden
18 Village Mall Off-Premises Sign Distances from
19 Property Lines/Right of Way. Exhibit 6 is a
20 schematic of the proposed sign and it is labeled
21 Back to Back Billboard 300 square feet per side,
22 and the Exhibit 7 is labeled, Documentation of
23 Leasable Area 175,000 square feet or greater, Stark
24 County Auditor, and it is Data for Parcel 1607267,
25 Building Data, and it does list the square footage

1 of the properties, the various locations or
2 building segments on that property. Exhibit 8 is
3 addressed to Jackson Township Zoning Department.
4 It is from, two-page letter from Larry Smith. This
5 is a letter that accompanied the zoning permit
6 application that he was submitting for an
7 off-premises billboard to be located at 4230 Belden
8 Village Street, N.W.

9 Exhibit 9 submitted by the Zoning Inspector
10 is addressed to Larry Smith and Mike Walsh, Larry
11 Smith of Smith Outdoor Advertising, Mike Walsh,
12 Belden Village Mall. It is a two-page letter and
13 again it is regarding denial of their request, of
14 Mr. Smith's request for a billboard in a B-3
15 district. And Exhibit 10 is a page from the
16 Amendment 551-06 in which the zoning regulations
17 were changed to remove billboards as a permitted
18 use in the residential districts and also remove
19 billboards from being a permitted use in the B-1,
20 B-2 and B-3 districts, was effective July 12,
21 2006. It also says the reason was that billboards
22 would no longer be permitted in the residential
23 districts or the B-1, B-2, or B-3 districts.

24 Zoning Inspector's Exhibit 11 are two
25 photos showing the existence of freestanding signs

1 already in existence at Belden Village. Exhibit 12
2 from the Zoning Inspector is the Township tax map
3 for quarter section 24 northeast, and we also have
4 Exhibit Number 13, which is Section 504.1 of the
5 Zoning Resolution, and which was -- which is part
6 of the current Resolution. And also obviously
7 within the file, notification of hearing for Appeal
8 2376 dated July 26, 2018 with all the attachments.
9 And again, indicate the file also includes the
10 legal advertisement notifying -- or the legal
11 advertisement which was printed in the Canton
12 Repository July 25, 2019.

13 And, gentlemen, I think that concludes
14 everything that is in the file. Does everybody
15 have those?

16 MR. SNYDER: Yes.

17 MR. MCDONNELL: I do have a list of all
18 those attachments for you if you so desire. Before
19 we get started, this hearing will be a little bit
20 different than the last one, because it is appeal
21 of the Zoning Inspector's decision, and in
22 accordance with the Jackson Township Board of
23 Zoning Appeals rules of procedure, which was
24 approved March 14, 2002, we'll be operating under
25 Article 5, Section 7, order of business 6-B.

1 Gentlemen, do you have a copy of that? If you'd
2 like, we can get you copies.

3 ATTORNEY FRY: That would be great. Thank
4 you.

5 MR. MCDONNELL: Does anyone have a copy of
6 that, our rules? We'll get you copies.

7 ATTORNEY FRY: Sure.

8 MR. MCDONNELL: But it's basically how
9 we're going to conduct our business. Long story
10 short, as opposed to the Applicant coming first,
11 it's going to be a presentation, where we're going
12 to ask the Zoning Inspector to go first, then the
13 Applicant, and then comments. Same thing, comments
14 from the public in favor, those opposed, and then
15 following comments by all parties involved. We'll
16 make sure you get a copy of that.

17 ATTORNEY FRY: Sure. Thank you.

18 MR. MCDONNELL: The other thing is, we will
19 be taking all testimony under oath and it is being
20 recorded, but we also do have a court reporter here
21 who's taking it verbatim, Ms. Gleckler, by the way.
22 And, Mr. Vaccaro, if I may ask a question.

23 MR. VACCARO: Yes.

24 MR. MCDONNELL: Are you here to represent
25 the Zoning Inspector this evening?

1 MR. VACCARO: I am.

2 MR. MCDONNELL: Okay. That's all we need
3 to know. We also have Mr. Michael Vaccaro, the
4 Township Legal Officer, and he'll be representing
5 the Zoning Inspector and therefore, he'll be
6 unavailable to the Board for advice.

7 So with that, let's get started. First of
8 all, I'll call the Zoning Administrator.

9 WHEREUPON,

10 JONI POINDEXTER,

11 who, after being first duly sworn,
12 testified as follows:

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14 MR. MCDONNELL: And for the record state
15 your name, please.

16 MS. POINDEXTER: Joni Poindexter, Jackson
17 Township Zoning Inspector, 5735 Wales Avenue, N.W.,
18 Massillon, Ohio, 44646.

19 MR. MCDONNELL: Okay, Ms. Poindexter, go
20 ahead.

21 MS. POINDEXTER: Okay. A permanent sign
22 certificate application described as an
23 Off-Premises Billboard with Digital Display was
24 received by the zoning office on June 12th from
25 Mr. Larry Smith. This is labeled as ZI Exhibit

1 Number 1. It was submitted to Pat Primack in the
2 zoning office and I was informed of the application
3 the following week for review.

4 Upon reviewing the application I found, per
5 the permanent sign certificate application that
6 they were applying for an off-premises Billboard
7 with Digital Display, which is what was listed on
8 the application under the description. The denial
9 letter was issued on June 24, 2019 to Larry Smith,
10 Smith Outdoor Advertising and Mike Walsh, Belden
11 Village Mall in which the letter stated it was
12 found that the application applied for was for a
13 billboard as contemplated in section 503.1 and the
14 reasons for the denial was listed in the letter and
15 included that the billboards are only permitted in
16 the I-1 District.

17 To give the Board some background
18 information, prior to June 12 - or I'm sorry - July
19 12, 2006, billboards were permitted in residential
20 districts on land zoned for agriculture and zoned
21 residential as long as they met certain criteria.
22 They were also permitted in the B-1, B-2, B-3 and
23 I-1 Districts upon meeting certain criteria.

24 Per amendment 551-06, which was effective
25 on July 12, 2006, several updates were made to the

1 zoning resolution. Part of those updates included
2 billboards being removed as a permitted use in the
3 residential, B-1, B-2 and B-3 zoning districts
4 which is an exhibit marked as ZI Exhibit Number 10,
5 and is a copy of the amendment that was approved by
6 the Zoning Commission and Trustees. So as you can
7 see, on ZI Exhibit Number 10 under the reasons
8 listed, it states, Billboards will no longer be in
9 any residential district and billboards will no
10 longer be permitted in any B-1, B-2 or B-3
11 district. If the intent was to allow billboards in
12 the B-3 zoning district then the regulation would
13 not have been changed to remove them from the B-3
14 and they would have continued to have been listed
15 in section 503.1.

16 Per the current Zoning Resolution Chapter
17 503 Section 503.1 a billboard is permitted in the
18 I-1 district. It does not list anywhere else in
19 the billboard section of the regulations that a
20 billboard is permitted in the B-3 or any other
21 zoning district.

22 The exhibits, and this is kind of going to
23 be a repeat, but the exhibits that are marked as ZI
24 Exhibits 1 through 8 are items that were submitted
25 with the application when he applied for the

1 Permanent Sign Certificate Application for an off
2 premises billboard with digital display. Exhibit
3 1, labeled the Permanent Sign Certificate
4 Application, describing the requested signage as an
5 Off-Premises Billboard with Digital Display.
6 Exhibit Number 2, labeled Belden Village Mall
7 Off-Premises Sign Site Plan, shows the distance to
8 the nearest building to the north and south as well
9 as the setback for the proposed billboard which is
10 required under 503.1 (C)(1) regarding a distance
11 from a building.

12 Exhibit 3, the letter from Mike Walsh,
13 General Manager to Jackson Township Zoning
14 Department dated June 12, 2019, giving permission
15 for the sign to be located on the property at 4230
16 Belden Village. Section 503.1(E) requires written
17 permission from the property owner upon which the
18 billboard would be located.

19 Exhibit 4, the Belden Village Mall Off
20 Premises Sign Distances from other Billboards in
21 proximity, shows the distances from other
22 billboards and that the proposed billboard will be
23 greater than 1,000 feet from another such billboard
24 which is a requirement under Section 503.1(c)(2).

25 Exhibit 5, Belden Village Mall Off Premises

1 sign Distances from the Property Line/Right of way,
2 shows the setbacks from the property lines and the
3 road right of way, which setbacks are required to
4 be the same or greater than the principal building
5 regulations per section 503.1(D).

6 Exhibit 6, Back to Back Billboard 300
7 square feet per side. Per the drawing submitted
8 for the billboard it specifically states Back to
9 Back Billboard 300 square feet per side.

10 Exhibit 7, Parcel information from the
11 Stark County Auditor's website. It was included as
12 an exhibit because it was submitted by Mr. Smith
13 along with the sign Application; however, it has no
14 bearing on the application because it's not a
15 requirement to be submitted with a billboard.

16 Exhibit 8 is a letter dated June 11th from
17 Smith Outdoor Advertising to the Jackson Township
18 Zoning Department. That was submitted along with
19 the sign application that was received on June 12,
20 2019. As you can see in the letter it states in
21 the first sentence, This letter is to accompany the
22 zoning permit application I am submitting to the
23 Jackson Township Zoning Department for an
24 Off-Premises Billboard to be located at 4230 Belden
25 Village Street, N.W., which is the Belden Village

1 Mall. It goes on to say in the next paragraph, we
2 feel there may be some interpretation issues with
3 the current Zoning language and hopefully the
4 following will clarify what the current published
5 regulations permit. The application is for an
6 off-premises sign for a commercial development of
7 175,000 square feet or greater in the B-3 and I-1
8 District. So per the Sign Application, it was
9 described as an Off Premises Billboard with Digital
10 Display, and in his own words in the letter it
11 states the application is for an Off-Premises
12 Billboard, per Exhibit ZI Number 6, the drawing of
13 the sign states it's a back to back billboard, and
14 then he contradicts himself in stating the
15 application is for an off-premises sign for a
16 commercial development of 175,000 square feet or
17 greater. I have to go by what it states on the
18 application which on the application description it
19 states an Off-Premises Billboard along with the
20 supporting documentation so I don't believe the
21 sentence talking about an off-premises sign for a
22 commercial development of 175,000 square feet or
23 greater in the B-3 and I-1 district has any bearing
24 on the appeal because this is not what was applied
25 for per the application, the site plan and the sign

1 drawing. what was applied for per the application
2 was an Off-premises Billboard with digital display.

3 Now, while a billboard is not specifically
4 defined in the definition section of the Zoning
5 Resolution, it is specifically differentiated from
6 other signs throughout the resolution and is
7 defined in the zoning dictionary, as we cannot
8 include every definition in the resolution.
9 Section 503.1, the billboard section, is broken
10 down into six paragraphs of which when read
11 together they identify a Billboard. Size of
12 Billboard, Height of Billboard, Spacing for
13 Billboards, Setback Requirements, Written
14 Permission for Billboard Location and Site Plan.

15 Exhibits 9 through 13 are exhibits
16 submitted by me, the Zoning Inspector, for
17 additional support of the decision to deny the
18 permit application for an off-premises billboard
19 with digital display in the B-3 district.

20 Exhibit 9 is a letter to Larry Smith, Smith
21 Outdoor Advertising and Mike walsh, Belden Village
22 Mall, dated June 24th, denying the application for
23 an Off-Premises Billboard with Digital Display
24 based on the zoning regulations and the supporting
25 documentation.

1 Exhibit 10 is the documentation of the
2 change in the zoning regulations removing the
3 billboards from residential, B-1, B-2, B-3
4 districts per amendment 551-06, effective July 12,
5 2006.

6 Exhibit 11 is a photo showing that there is
7 currently a freestanding sign on the property.

8 Exhibit 12 is a quarter section map from
9 the Stark County Auditor's website showing the
10 property in question.

11 Exhibit 13 is for informational purposes,
12 to show the regulations for off-premises signs for
13 commercial development of 175,000 square feet or
14 greater, in the B-3 and I-1 district. I have only
15 included this because Mr. Smith mentioned it in his
16 letter attached to his appeal dated July 12, 2019.
17 He states he did not apply for a billboard, but it
18 was for an off-premises sign by way of Chapter 504,
19 although his application clearly states it's for an
20 off-premises billboard with digital display. To
21 give the board some background on Chapter 504, this
22 was added to the zoning resolution in 2015. The
23 purpose of this regulation was, if you have a
24 commercial development in a township that has
25 175,000 feet or greater of leasable area, that

1 commercial development is permitted to put an
2 off-premise sign on any other parcel of land in the
3 B-1 - or I'm sorry - B-3 and the I-1 District to
4 advertise their business as long as there's no
5 other freestanding sign located on the property.
6 So if a commercial development such as the mall,
7 which is a commercial development of 175,000 square
8 feet or greater, wanted to place a sign on a piece
9 of land where there's no signage, like along the
10 Strip or Portage, this would be an off-premise sign
11 for a commercial development 175,000 square feet or
12 greater that is advertising a commercial
13 development that is 175,000 square feet or greater.
14 If the intent was to allow a billboard per section
15 504, then it stands to reason that section 503.1
16 would have amended that with the addition of
17 section 504.

18 It's my determination that Mr. Smith
19 applied for a billboard. If he would have applied
20 for a sign under Chapter 504 in front of the mall
21 property, it's most likely he would have been
22 denied also because there's already a freestanding
23 sign on that property, and it appears what he is
24 proposing would not be advertising a commercial
25 development that is off premise that has 175,000

1 square feet or greater. If you look at the
2 application and the supporting documentation, I
3 think you will find that he did in fact apply for a
4 billboard, and if he felt that the decision was
5 wrong in denying the application for a billboard or
6 if he felt the interpretation of the application
7 was incorrect in stating it was a billboard, he
8 could have come back and specifically applied for a
9 sign under 504, which he did not do this.

10 Mr. Conley is in attendance in the
11 audience. He was a member of the Zoning Commission
12 Board when changes were made to the Zoning
13 Resolution, and he can confirm the reasoning for
14 the off premise signs for commercial development.
15 I'll be happy to have Mr. Conley address the Board
16 so the Board can confirm the reasons for that when
17 I'm finished with my presentation, although I feel
18 this has no bearing on an appeal because this is
19 not what was applied for per the application.

20 I would also like to submit to the Board
21 Exhibit 14. Take one and pass it. That is the
22 definition of a billboard from the zoning
23 dictionary, which is utilized because like I said,
24 we can't put all the definitions in the resolution,
25 so we do have a zoning dictionary that we go by.

1 So I'd like to present that as an exhibit.

2 MR. MCDONNELL: Gentlemen, what you've just
3 gotten is --

4 MEMBER OF AUDIENCE: Can we have a copy of
5 that, please.

6 MR. MCDONNELL: Of course. (Tendering
7 document).

8 MEMBER OF AUDIENCE: Thank you.

9 MR. MCDONNELL: What's just been given is
10 labeled ZI Exhibit Number 14. It is from the
11 Zoning Dictionary - Millennium Edition 1999, page
12 23 and page 24, and contains a number definitions,
13 including that for a billboard. Go ahead,
14 Ms. Poindexter.

15 MS. POINDEXTER: Okay. Thank you.
16 Mr. Smith's letter also states that section 102.3
17 of the zoning resolution states, "For the purpose
18 of the Ohio Revised Code 519.02 to 519.25, outdoor
19 advertising shall be classified as a business use
20 and shall be permitted in all districts zoned for
21 industry, business, or trade and land used for
22 agricultural purposes." The Township does permit
23 outdoor advertising as a business use. That is why
24 permits are required for signage and when you go
25 through the commercial and industrial areas of the

1 township you see signage. If we didn't permit
2 outdoor advertising, you wouldn't see anyone with
3 any signage in the township.

4 Mr. Smith stated in his letter that in 2006
5 the Trustees chose to use the language off premises
6 sign for section 504 of the Jackson Township Zoning
7 Resolution. This is incorrect because the language
8 referring to commercial development signs per
9 section 504 wasn't added into the zoning resolution
10 until the effective date of June 6, 2015 per
11 amendment 617-15. Therefore, section 504, per
12 Mr. Smith's letter, did not exist in 2006. Again,
13 if it was the intent to allow a billboard per
14 section 504, then it stands to reason that section
15 503.1 would have been amended with the addition of
16 section 504.

17 I believe the decision to deny the
18 application for the off premises billboard with
19 digital display is correct based on the application
20 and supporting documentation. And again, if
21 Mr. Smith felt the Zoning Inspector was incorrect
22 in determining the application for a billboard, I
23 would have thought he would have come back and
24 applied for a different type of sign, which he did
25 not.

1 So for these reasons, I would ask the Board
2 to deny the appeal and uphold the decision.
3 Mr. Conley is in the audience.

4 MR. MCDONNELL: And we can get to
5 Mr. Conley later, but first of all, Ms. Poindexter,
6 are you done with your presentation?

7 MS. POINDEXTER: Yes.

8 MR. MCDONNELL: Okay. So it's your
9 testimony -- what did the applicant request? It's
10 your testimony that what he requested.

11 MS. POINDEXTER: An off premises billboard
12 with digital display.

13 MR. MCDONNELL: And that is what you
14 denied?

15 MS. POINDEXTER: Correct.

16 MR. MCDONNELL: All right. In accordance
17 with section?

18 MS. POINDEXTER: 503.1.

19 MR. MCDONNELL: And you just stated that,
20 you did indicate, and both you and the applicant
21 indicated that the resolution does not -- Jackson
22 Township Resolution does not include a definition
23 for billboard.

24 MS. POINDEXTER: Correct.

25 MR. MCDONNELL: So you're using the

1 definition from the Zoning Dictionary - Millennium
2 Edition; is that correct?

3 MS. POINDEXTER: Correct.

4 MR. MCDONNELL: How does the definition of
5 billboard in the Zoning Dictionary, how does that
6 differ from outdoor advertising, or distinguish a
7 billboard from outdoor advertising?

8 MS. POINDEXTER: You mean like from a
9 regular sign?

10 MR. MCDONNELL: From a regular sign.

11 MS. POINDEXTER: Billboards, you advertise
12 anything on it. That's what a billboard is, it's
13 for advertising different items on it. You could
14 advertise restaurants on it, events on it,
15 different businesses on it. Freestanding signs are
16 signs that are on the property that are advertising
17 what is on the property. The off premise signs for
18 the commercial development, the reason for those
19 are, like I had stated, if the development itself
20 has 175,000 square feet of leasable area or
21 greater, you could go and put a sign somewhere else
22 in the township in a B-3 and an I-1 district, that
23 doesn't already have a freestanding sign, because
24 you're only allowed one per property, and you could
25 advertise that business there.

1 So, again, if the mall, and I'm using that
2 as an example, because it has 175,000 square feet,
3 if there was a vacant piece of land over on The
4 Strip and they said, well, we want to put a sign on
5 this piece of property advertising the mall,
6 because it has 175,000 square feet or greater of
7 leasable area, they could put that sign on that
8 property and say, Belden Village Mall, two miles
9 ahead, because they're advertising, it's an
10 off-premise sign, off premise from the mall
11 property, which has 175,000 square feet, and it's
12 on a property without another freestanding sign,
13 and it meets the criteria for that regulation.

14 MR. MCDONNELL: And off premises is -- so
15 am I understanding you correctly, when a billboard,
16 a billboard, per the definition of a billboard is,
17 it is an off-premises sign; is that correct?

18 MS. POINDEXTER: Right.

19 MR. MCDONNELL: I don't want to put words
20 in your mouth.

21 MS. POINDEXTER: Yes. The billboards can
22 advertise anything.

23 MR. MCDONNELL: And if it's advertising
24 what is on the site, then it becomes an on-premise
25 sign?

1 MS. POINDEXTER: Correct. And it's a
2 freestanding sign.

3 MR. MCDONNELL: It's freestanding?

4 MS. POINDEXTER: On the premises.

5 MR. MCDONNELL: And you said that section
6 102.3?

7 MS. POINDEXTER: Uh-huh.

8 MR. MCDONNELL: And you went through that.
9 what does that mean to you again? what does that
10 say, in your interpretation?

11 MS. POINDEXTER: 102.3?

12 MR. MCDONNELL: 102.3.

13 MS. POINDEXTER: That is saying that
14 outdoor advertising is classified as a business
15 use, okay, and it's permitted in business,
16 industry, trades and land used for agricultural
17 purposes. All outdoor advertising, if it's a
18 business use, and you see all these signs for these
19 stores, restaurants, whatever, that is an outdoor
20 advertising that's classified as a business use,
21 because they are permitted with a permit, it's part
22 of a business use, and if we didn't have that, if
23 we did not allow that, you wouldn't see any signs
24 in the township. So we do allow that, because it
25 shall be classified as a business use and shall be

1 permitted in all districts, industry, business,
2 trade or land used for agricultural purposes. We
3 do allow signage in those districts.

4 MR. MCDONNELL: Does it say all outdoor
5 advertising will be permitted in all districts?

6 MS. POINDEXTER: It says --

7 MR. MCDONNELL: I've got the book here.

8 MS. POINDEXTER: No, I have a copy of that
9 right here. The purpose of section -- this is from
10 the Ohio Revised Code. For the purposes of section
11 519.02, 519.25, exclusive of the Ohio Revised Code,
12 outdoor advertising shall be classified as a
13 business use and be permitted in all districts
14 zoned for industry, business, trade or lands used
15 for agricultural purposes. This is the same
16 language we have in our Zoning Regulations.

17 MR. MCDONNELL: Right. Gentlemen, any
18 questions for the Zoning Inspector?

19 MR. SNYDER: No.

20 MR. MCDONNELL: Okay, Ms. Poindexter. And
21 is the Applicant here this evening?

22 ATTORNEY FRY: Yes. Thank you, Mr. Chair
23 and Board members.

24 MR. MCDONNELL: Excuse me. Would you
25 please raise your right hand.

1 WHEREUPON,

2 ATTORNEY GARY K. FRY,

3 who, after being first duly sworn,
4 testified as follows:

5 - - - - -

6 MR. MCDONNELL: And for the record, please
7 state your name and address, please.

8 ATTORNEY FRY: Attorney Gary K. Fry, F-R-Y,
9 Fry Law, LLC. Business address, 610 Market Avenue
10 North, Canton, Ohio, 44702.

11 MR. MCDONNELL: Okay, Mr. Fry. I didn't
12 realize you were an attorney. You are
13 representing?

14 ATTORNEY FRY: Yes. I am here on behalf of
15 Mr. Larry Smith and Smith Outdoor Advertising, who
16 is the Applicant and Appellant to the Board this
17 evening. Mr. Smith is here, as well as Mr. Mike
18 Walsh representing the property owner.

19 MR. MCDONNELL: Go ahead.

20 ATTORNEY FRY: I believe that this evening
21 we've -- I appreciate Ms. Poindexter for going
22 through her analysis. Obviously while we agree
23 with some, we disagree with others, and that's why
24 we're here. Specifically she stated that if we
25 disagreed with her decision, we should just apply

1 for a new application. I disagree. That's why
2 we're here, is because we disagree with her
3 decision and that's the proper procedure is to
4 appeal this evening.

5 I want to start off by pointing out a
6 couple of things. We've already had discussion
7 about the Ohio Revised Code 519.20, which
8 Ms. Poindexter has pointed out that the Jackson
9 Township code 102.3 basically mirrors that language
10 from that state statute. Let me just briefly
11 explain how the courts have interpreted the meaning
12 of 519.20 with respect to townships. R.C. 519,
13 this is from Eleventh District Court of Appeals
14 case, American Outdoor Advertising versus Franklin
15 Township Board of Zoning Appeals, and it's dated
16 from June 20, 2008. R.C. 519.20 permits outdoor
17 advertising for business use in all districts zoned
18 for industry, business or trade. We've already
19 established that the subject property in question
20 is in a B-3 zone.

21 The Court goes on, The BZA does not dispute
22 that a billboard is a form of outdoor advertising.
23 With these premises in mind, we conclude that the
24 prohibitions set forth in 501.3.C of the Franklin
25 Township Zoning Regulation is in direct conflict

1 with the permissible uses of lands codified under
2 R.C. 519.20. Frankly, they chose the vernacular of
3 the Supreme Court of Ohio, Section 501.3.C.
4 forbids or prohibits that which the general law
5 clearly permits or licenses. As a result, we hold
6 that section, 501.3.C of the Franklin Township
7 Zoning Regulation as currently drafted as overly
8 broad and therefore void.

9 So just starting out, any township
10 regulation that prohibits a billboard in a business
11 or industrial - excuse me - the industry, business
12 or trade zone, is void. So we kind of start off
13 with that, but --

14 MR. MCDONNELL: What was that section for
15 Franklin Township?

16 ATTORNEY FRY: 501.3.C.

17 MR. MCDONNELL: Do you have that part of
18 the regulation?

19 ATTORNEY FRY: I don't have it with me this
20 evening.

21 MR. MCDONNELL: So we don't know what it
22 says?

23 ATTORNEY FRY: No, but the court in
24 interpreting it has said, If the township zoning
25 ordinance prohibits that which the state law

1 allows, specifically allows, that ordinance is
2 void.

3 MR. SNYDER: When was that determined?

4 ATTORNEY FRY: June of 2008. And I can get
5 with Mr. Vaccaro afterwards and share the citations
6 and things with him.

7 Ms. Poindexter spent a lot of time talking
8 about the interpretation of the application
9 submitted by Mr. Smith, and that's exactly why
10 we're here this evening, is because we feel that
11 she interpreted the application in an incorrect
12 way. She does a wonderful job as a Zoning
13 Inspector. I know that it's a thankless job,
14 having served in a position similar myself. I know
15 the difficulties that can come into play.
16 Unfortunately, we feel that she has brought in
17 other things which are not in the ordinances which
18 she used in making her decision.

19 I'll also point out what the Supreme Court
20 has said about interpretation of zoning ordinances,
21 and it's basically the same language in two
22 different cases. The case that I'm citing now
23 comes from the Tenth District Court of Appeals,
24 citing the Saunders Supreme Court case. This case
25 was from April of 2003. The court says,

1 Nevertheless, where there is ambiguity, courts must
2 strictly construe restrictions on the use of real
3 property in favor of the property owner. They go
4 on to state the reasoning. This is because such
5 restrictions are in derogation of the common law
6 and deprive a property owner of certain uses of his
7 land, which he would otherwise be lawfully
8 entitled. So when interpreting ordinances --

9 MR. MCDONNELL: What was that case? What
10 was the citation of that case, the name of it?

11 ATTORNEY FRY: This is the City of Columbus
12 Board of Zoning Adjustment. Let's see here.
13 Somehow that was versus the City of Columbus Board
14 of Zoning Adjustment, but that cited the Saunders
15 case, which is a Supreme Court case, and I do have
16 that here in my -- this is the Saunders versus
17 Clark County Zoning Department from May of 1981.
18 That's the Supreme Court case, talking about zoning
19 ordinances shall be interpreted in favor of the
20 property owner.

21 So with that in mind, Ms. Poindexter
22 pointed out certainly what may be called an
23 ambiguity. The application, you have it before
24 you, does state off premise billboard application.
25 Right there, unfortunately, there's an ambiguity.

1 off premise, which was the intent of the
2 application pursuant to 504, and then
3 unfortunately, billboard was put in there. Now, in
4 the signage industry, off premise, signage,
5 billboard, they're often used interchangeably. As
6 Ms. Poindexter's already pointed out, Jackson
7 Township does not have a definition of a billboard.

8 504, Section 504 of the Jackson Township
9 Zoning Resolution, specifically deals with off
10 premise signs for a commercial development 175,000
11 square feet. Once again, Mr. Smith's application
12 starts off by saying, I'm applying for an off
13 premise sign in a B-3 zone. It's not a long
14 section. It's pretty straightforward. Off
15 premise, which, again, is advertising something not
16 on that particular property. Off premise signs for
17 commercial developments - which once again,
18 commercial development is not defined by your
19 Zoning Regulations - in the B-3 and I-1 districts
20 that have 175,000 square feet or greater of
21 leasable area shall, not may be permitted, shall be
22 permitted on any parcel of land in a B-3 or I-1
23 district in accordance with the following
24 regulations.

25 Now, first and foremost, Ms. Poindexter has

1 added an additional requirement in there. She says
2 that the off premise location has to be vacant.
3 There's nowhere in the ordinances that it requires
4 the off premise location to be vacant.

5 MR. MCDONNELL: To be what?

6 ATTORNEY FRY: To be vacant.

7 MR. MCDONNELL: Vacant?

8 ATTORNEY FRY: Yes, or unbuilt.

9 Undeveloped.

10 MR. MCDONNELL: As in unoccupied?

11 ATTORNEY FRY: Well, not even unoccupied.

12 Ms. Poindexter alluded to the fact that the off
13 premise location has to be undeveloped. She gave a
14 specific example up by The Strip where, you know,
15 it's undeveloped, there's no buildings on the
16 property. That is nowhere in this requirement. So
17 in order for that off premise sign that shall be
18 permitted, it needs to meet the following
19 regulations. Number of signs: One freestanding
20 sign is permitted per street frontage per property
21 in which the sign shall be located. Now, I don't
22 have a copy of the exhibit Ms. Poindexter alluded
23 to, but she stated that there is a freestanding
24 sign on the property already, and I'm guessing
25 she's alluding to the Belden Village sign that's on

1 the corner of whipple and Belden Village Street.

2 Is that the sign that you're referring to,
3 Ms. Poindexter?

4 MS. POINDEXTER: No. I'm referring to the
5 one at the entrance going into the mall property
6 off of Belden Village Avenue.

7 ATTORNEY FRY: Okay.

8 MR. MCDONNELL: (Tendering document).

9 ATTORNEY FRY: Okay. And we do have the
10 applicant here and the property owner here that
11 have indicated that if that's the issue, that can
12 be relocated or removed or something like that if
13 that was the issue. And should we get to that
14 point where the Board is considering approval, we
15 are happy to make that a condition of approval on
16 the appeal.

17 Subsection B, Written Permission: Written
18 authorization from the property owner in which the
19 sign shall be located and the site plan shall be
20 required prior to issuance of the permit. I
21 believe that it was Exhibit Number 3, the written
22 permission from the property owner, which has been
23 submitted here this evening. Size: The maximum
24 size area for any one face of off premises signs
25 shall not exceed one times the property street

1 frontage in which the sign will be located, or 400
2 square feet, whichever is less. I have for you
3 this evening a printout from the Stark County
4 Auditor's Office - it might be a little bit
5 difficult to read - that shows the street frontage
6 of the property in question, and it shows it as
7 being 800, approximately 871 feet.

8 MR. MCDONNELL: We will mark that Appellant
9 A. It's entitled, Frontage Distance.

10 ATTORNEY FRY: So if you look down, about
11 midway down, you'll see, and I apologize, the
12 points are a little bit difficult to see, but you
13 see in white text that our frontage equals
14 approximately 871 feet. That is the frontage on
15 the proposed site of the off premise sign. This is
16 parcel 1607268. So based on the sign ordinance,
17 the off premise sign ordinance, the off premise
18 sign can be the lesser of 871 feet or 400 square
19 feet. Clearly, 400 square feet is the lesser of
20 the two. The application that was submitted was
21 for a sign of 300 square feet, which clearly
22 complies with 501.1(C). Under 504.1(D), Height,
23 The maximum height of an off-premises sign shall
24 not exceed 50 feet. Now, keep in mind this is the
25 same height as the billboard chapter, which is 503,

1 but once again, the application that was submitted,
2 I believe the maximum height of the proposed sign
3 was 40 feet. So clearly within the 50 feet allowed
4 by section 504.

5 section 504.E, Setback requirements. Off
6 premises signs shall be setback a minimum of five
7 feet from any side or rear property line or any
8 road right of way line. As you look at the
9 package, which you already have, and I forget, I
10 believe it was Exhibit Number 2, but I was unclear,
11 because I didn't get a listed exhibit list.

12 MR. MCDONNELL: It is.

13 ATTORNEY FRY: It's titled, Belden Village
14 Mall Off-Premise Sign Site Plan.

15 MR. MCDONNELL: Your applicant also has all
16 those attachments.

17 ATTORNEY FRY: Correct, they were
18 originally submitted, but I'm not sure how, I
19 couldn't remember how Ms. Poindexter had labeled
20 them. But number 2, it shows the setbacks. Once
21 again, 504.1(E) requires a minimum of five feet
22 from any side or rear property line or any road
23 right of way line. Here, we are 55 feet from that
24 south property line which is the road right of way
25 line, and honestly, the two side setbacks weren't

1 even listed because they're in far excess of the
2 minimum five feet. So, once again, clearly the
3 application meets the requirements of 504.1(E).

4 Lighting, subsection F, Any illuminated
5 sign or lighting device shall employ only emitting
6 light or constant intensity and no sign shall be
7 illuminated by or contain flashing, intermittent,
8 rotating, or moving lights. This is meant to be an
9 internally lit sign. It's not having lights down
10 on the ground or projecting onto it. So also F is
11 met. And then G, A site plan of an off-premises
12 sign must include the following: Drawing showing
13 the square footage of leasable area for the
14 commercial development. The location, dimension,
15 height, square footage and setbacks, et cetera.

16 Now, in her testimony Ms. Poindexter said,
17 oh, well, we received the square footage of the
18 mall, but it's completely moot. It has no bearing
19 on this. It has every bearing on this because it
20 was in completion of subsection G under 504.1.
21 It's a required submittal. Show us the square
22 footage of the commercial development to show that
23 it meets 175,000 square feet.

24 signature of the property owner in which
25 the sign will be located, which we've already

1 indicated that that was submitted with Exhibit 3,
2 and then any other pertinent data required by the
3 Zoning Department, which to our knowledge, no
4 additional information was required.

5 So, clearly as we go through this, the
6 Applicant has met every single requirement, or is
7 allowing himself to be subject to removal of the
8 one sign.

9 MR. MCDONNELL: You say removal of the one
10 sign.

11 ATTORNEY FRY: Meaning --

12 MR. MCDONNELL: Let me finish my question.

13 ATTORNEY FRY: Okay. You bet. I
14 apologize.

15 MR. MCDONNELL: You mentioned the sign on
16 the corner of Whipple and Belden Village Drive.

17 ATTORNEY FRY: Correct. I thought that was
18 the sign that Ms. Poindexter was referring to.

19 MR. MCDONNELL: Okay. Let's assume it is.
20 What about that sign?

21 ATTORNEY FRY: It's not on this premises.

22 MR. MCDONNELL: Which premises is that?

23 AUDIENCE MEMBER: It's not on the parcel.

24 MR. MCDONNELL: I didn't ask you.

25 ATTORNEY FRY: I'll answer those questions.

1 That sign is located on parcel 1607036. Basically
2 the Sears side. It is a completely separate
3 parcel.

4 MR. MCDONNELL: Okay.

5 ATTORNEY FRY: Just so you're -- so
6 everybody's clear -- oh, go ahead.

7 MR. MCDONNELL: No. Forget it. Forget it.
8 Continue.

9 ATTORNEY FRY: There are basically four
10 parcels that kind of constitute the Belden Village
11 Mall area. Three of the four, on its own site, has
12 the minimum 175,000 square feet. Dillard's, Sears,
13 and then the main portion of the mall. All of
14 those lots have the minimum 175,000 square feet,
15 and therefore would be entitled to an off-premise
16 sign.

17 MR. MCDONNELL: Continue.

18 ATTORNEY FRY: The parcel that was applied
19 to put the sign on, parcel 1607268, is the parcel
20 that Macy's is associated with. Now, that parcel
21 only has 130,648 square feet approximately, based
22 on the county's records. So that parcel in and of
23 itself does not necessarily qualify. Therefore, it
24 makes it a perfect spot for the off-premise sign
25 for other developments that meet the 175,000 square

1 foot minimum requirement, per the Jackson Township
2 Zoning Regulations. Did I answer the question
3 about the off premise sign? So, once again --

4 MR. MCDONNELL: No, you didn't, but we'll
5 get to that. Continue.

6 ATTORNEY FRY: Okay. Once again, while
7 there may have been some confusion with regards to
8 analyzing this under the billboard ordinance due to
9 the use of the term billboard in the application,
10 clearly there was also the use of the term
11 off-premise, which was the intent pursuant to 504.
12 And, once again, pursuant to the Supreme Court's
13 decision, any ambiguities in interpreting the
14 zoning have to be in favor of the property owner
15 themselves. And what has happened here is, it
16 feels like the Township has bent over backwards to
17 add language which is not in the ordinances to go
18 to, you know, legislative intent, which, once
19 again, if the intent, if that's the intent that
20 they wanted, it did not transfer over into the
21 ordinances that they adopted.

22 I'd be happy to answer any questions. I
23 have additional exhibits as far as 175,000 square
24 feet, what other developments might meet those,
25 et cetera. I'd be happy to answer any questions

1 that the Board might have at this time.

2 MR. MCDONNELL: First of all, Mr. Fry, any
3 time you present something, a citation, to this
4 Board, you cited Franklin Township. Long story
5 short, if you're going to cite a legal precedence
6 or legal case, this Board requires a copy of that.

7 ATTORNEY FRY: Okay. I can certainly get
8 that to you.

9 MR. MCDONNELL: Make sure you do, please.
10 Let's get to the meat of the question. First of
11 all, what did the Applicant request?

12 ATTORNEY FRY: An off-premise sign for a
13 commercial development over 175,000 square feet.

14 MR. MCDONNELL: why did he put billboard?

15 ATTORNEY FRY: Once again, in the
16 vernacular of the sign company, off-premise sign,
17 billboard tend to be one in the same, and it was an
18 oversight on his part.

19 MR. MCDONNELL: The vernacular of the what
20 company?

21 ATTORNEY FRY: In the signage business, and
22 we can certainly ask Mr. Smith to come up and
23 further explain why.

24 MR. MCDONNELL: We'll be happy to. You're
25 his attorney, right?

1 ATTORNEY FRY: Correct.

2 MR. MCDONNELL: You may ask those questions
3 to your client, but first of all, you have to come
4 up here.

5 ATTORNEY FRY: Mr. Smith, would you please
6 come up.

7 WHEREUPON,

8 LARRY SMITH,

9 who, after being first duly sworn,
10 testified as follows:

11 - - - - -

12 MR. MCDONNELL: State your name and
13 address, please.

14 MR. SMITH: Larry Smith, 8036 Fox Run
15 Avenue, N.W., North Canton, Ohio, 44720.

16 MR. MCDONNELL: Mr. Fry, you may question
17 Mr. Smith.

18 MR. FRY: Mr. Smith, you submitted the
19 application for an off-premises billboard, that's
20 the term that you used on the application that you
21 submitted, off-premises billboard digital sign, or
22 digital display. Excuse me.

23 MR. SMITH: Yes.

24 MR. FRY: What was the reasoning -- number
25 one, you used two different terms from the Jackson

1 Township Zoning Ordinance; one from section 504
2 off-premises and one from section 503 regarding
3 billboards. What, number 1, if you could explain
4 what your intent was and number 2, if you could
5 explain why you used the term billboard.

6 MR. SMITH: Yes. And I wanted to mention a
7 couple of other things, too.

8 MR. MCDONNELL: Why don't you answer the
9 question presented by your attorney.

10 MR. SMITH: Billboard, off-premise sign,
11 advertising device, those are all terms that mean
12 exactly the same thing. The State of Ohio has
13 rules for off-premise signs and on-premise signs.
14 The name of the department that runs the billboard
15 permitting process for the State of Ohio is the
16 Advertising Device Control. The industry
17 association in the whole United States for
18 billboards is called the Outdoor Advertising
19 Association of America. Outdoor advertising is
20 billboards. It's not the gas station sign, it's
21 not the restaurant sign. That's billboards.

22 MR. MCDONNELL: So in your -- there's a
23 sign, there's a McDonald's down the street here.

24 MR. SMITH: Yes.

25 MR. MCDONNELL: Golden arches.

1 MR. SMITH: On-premise.

2 MR. MCDONNELL: That's not my question.

3 MR. SMITH: Excuse me.

4 MR. MCDONNELL: Is that outdoor
5 advertising?

6 MR. SMITH: Not to me. I've been in the
7 billboard business --

8 MR. MCDONNELL: That's not my question. Is
9 that outdoor advertising?

10 MR. SMITH: I suppose you could say that it
11 was.

12 MR. MCDONNELL: Is that a billboard?

13 MR. SMITH: No.

14 MR. MCDONNELL: But your testimony is, if
15 it's outdoor advertising and billboard are
16 synonymous, are the same thing. So that's either,
17 if that's outdoor --

18 MR. SMITH: No. I'm saying off-premise
19 sign and billboard are synonymous.

20 MR. MCDONNELL: I'm sorry. What?

21 MR. SMITH: Off-premise sign and billboard.

22 MR. MCDONNELL: I didn't say off-premise.
23 I said billboard, and that's all I'm concerned
24 about, because you applied for a billboard, and I'm
25 trying to determine what you mean when you said a

1 billboard.

2 MR. SMITH: An off-premise sign.

3 MR. MCDONNELL: An off-premise sign?

4 MR. SMITH: Correct.

5 MR. MCDONNELL: A billboard is by
6 definition an off-premise sign; is that what you're
7 saying?

8 MR. SMITH: I included in my material the
9 State of Ohio's definition of an off-premise sign.

10 MR. MCDONNELL: So you say a billboard is
11 an off-premise sign?

12 MR. SMITH: Correct.

13 MR. MCDONNELL: Okay. And I think the
14 other question your attorney asked you, correct me
15 if I'm wrong, Mr. Fry, is what constitutes
16 off-premise. Is that correct, Mr. Fry?

17 MR. FRY: What? I'm sorry.

18 MR. MCDONNELL: I didn't mean to interrupt
19 you. I just want to clarify something.

20 MR. FRY: No. I asked him what his intent
21 was when he applied for it, you know, because he
22 included two different things, off-premises and
23 billboard.

24 MR. MCDONNELL: Right.

25 MR. FRY: So I asked him to clarify his

1 intent, and then I asked him why he used the term
2 billboard.

3 MR. SMITH: why I used the term billboard
4 in my application?

5 MR. MCDONNELL: That's what you -- I'm not
6 asking you. Your attorney's asking you.

7 MR. FRY: The confusion is that you used
8 the term billboard on the application, which caused
9 confusion for the Zoning Inspector and therefore,
10 she reviewed it under 503.1 as opposed to 504.1,
11 which is off-premise.

12 MR. SMITH: well, I did it because the
13 regulation that is currently on the books is kind
14 of quirky. An off-premise for a commercial
15 development of 175,000 square feet or greater, I've
16 always known about it. For ten years I thought it
17 meant that a billboard could be at the mall. And
18 I've talked to previous owners at the mall in an
19 attempt to do that. And I also noticed that you
20 have a different section for billboards. So my
21 assumption was that, well, you've got this quirky
22 thing for a billboard for the mall if they wanted
23 to do one, but they're calling it an off-premise
24 sign, which is identical to a billboard in the
25 industry. It's off-premise billboard. There's no

1 such thing as an on-premise billboard, I suppose,
2 but it's synonymous with billboard. So I used it
3 to clarify that I'm applying for a billboard, but
4 your regulations are calling it an off-premise sign
5 for a commercial development. So I used both of
6 the words so that there was no confusion, because
7 again, that's an unusual regulation. I've been
8 looking at them for 20 years. To say that the only
9 guy that can have one is someone with 175,000
10 square feet of leasable area. But I'm okay with
11 it. I mean, there's eight other billboards in the
12 immediate Belden Village Mall area. Spacing alone
13 would keep anybody else from doing a billboard in
14 the B-3 in that area. They couldn't do it anyway,
15 if you hadn't have changed the regulations in 2006.
16 The only other spot left was the mall. So I
17 assumed, well, they put that in there, so that if
18 in the future the mall ever wanted a billboard they
19 could have one on their property. It's a big
20 property. It kind of died, and --

21 MR. FRY: Let me clarify something. It's a
22 big development, but there's multiple properties
23 within that development; is that correct?

24 MR. SMITH: Yes, but the regulation doesn't
25 say parcel. It says a commercial development. And

1 I've asked dozens of people in the billboard
2 business since I started this and since it was -- I
3 was surprised it was turned down, and I've shown
4 them the regulation that Jackson Township has and
5 have asked them, how would you interpret this?
6 They all say, That means you're allowed a
7 billboard. If the mall has 175,000 square feet,
8 then they would be allowed a billboard, or an
9 off-premise sign. You know, it's funny, the
10 industry doesn't use the word billboard hardly at
11 all. It's bulletin or poster pin or off-premise
12 sign. They don't use the word. But I know what it
13 means to most, but, again, the language of your
14 regulation indicated to me, and to any other normal
15 person, that a billboard or off-premise sign is
16 permitted for a commercial development with 175,000
17 square feet or greater. That's a hard sentence to
18 say. And that's why I'm here. And on the entrance
19 sign, you do allow relief, so to speak, for
20 entrance and exit signs in other parts of your
21 regulations. This is page 146 from your
22 regulations that says, In addition to a
23 freestanding sign, other freestanding signs shall
24 be permitted in commercial and industrial districts
25 and shall not count towards the maximum area and so

1 forth. And this sign, the picture you've provided
2 is an entrance sign. The management of the mall
3 has indicated that they'd be willing to move it if
4 it kept them from getting a permit to do the
5 billboard. They're interested in it as well.
6 Local advertisers love using them. You guys have
7 seen them up at the mall or at The Strip. There's
8 a waiting list to get on that billboard, and
9 they're all local advertisers, and it helps their
10 business.

11 I mean, if you're looking for a way to
12 split hairs and say no to this, I think you'd have
13 to look hard because of way the regulation is
14 written, but I think it's a good thing for all
15 concerned that you look at this. And I probably
16 talk too much, but in summary, I hope you've read
17 what I've submitted. Those are my beliefs. I'm
18 not trying to trick the Township into sneaking a
19 billboard in the back door. Again, for ten years I
20 thought this was the deal, that they could have a
21 billboard. When it was rejected, I was surprised.
22 That's all. I'll sit down. I'm getting dry.

23 MR. MCDONNELL: Excuse me. Are you done
24 with Mr. Smith, Mr. Fry?

25 MR. FRY: I have no more questions for my

1 client at this time.

2 MR. MCDONNELL: First of all, does anyone
3 have questions for Mr. Smith?

4 MR. VITALE: I do. Thank you.

5 MR. MCDONNELL: Mr. Smith, if you would
6 speak into the microphone, please.

7 MR. SMITH: Yes, sir.

8 MR. VITALE: Sir, by your testimony, you
9 said that billboard and off-premises signs are
10 identical.

11 MR. SMITH: Yes.

12 MR. VITALE: The zoning book has a page for
13 each one. They don't have a definition, I'll grant
14 you that, but there is a definition for billboards.
15 So they both have very similar requirements, not
16 all the same, but very similar.

17 MR. SMITH: Very, very similar, yes.

18 MR. VITALE: Then you also made a
19 statement, is it your testimony, sir, that nobody
20 uses the word billboard anymore, haven't for years?

21 MR. SMITH: Well, not nobody. The
22 billboard companies, those that are in the
23 industry, that's what I --

24 MR. VITALE: But your testimony was, sir,
25 people in your industry, the other people that do

1 the signage, don't use billboard. Why then would
2 you put that on your application?

3 MR. SMITH: Because I was aware that you
4 had a section entitled billboards and I wanted to
5 use both words so that there was no confusion as to
6 what I was applying for.

7 MR. VITALE: That seems an odd way to not
8 having completed -- if there's a section for
9 billboards, and there is a section for off-premise
10 signage, why would you try to combine them to one
11 application?

12 MR. SMITH: Again, I found that odd, that
13 the regulations have them both, but I'll live with
14 what the written regulations are. If that's what
15 Jackson Township chose to identify those two
16 things, then I'll use both words. I wasn't, again,
17 trying to manipulate the system.

18 MR. VITALE: But if you thought it odd,
19 prior to filling out your application, wouldn't a
20 phone call to the Zoning Department and say, This
21 is what I want to do, what bucket does it fit into?

22 MR. SMITH: That's an excellent question.
23 I was in the zoning office on another project and I
24 asked specifically about the off-premise sign,
25 commercial development, et cetera, and it wasn't

1 Ms. Poindexter, it was someone else in the zoning
2 office, and they said, and I'm paraphrasing, well,
3 that's a regulation that if the mall wanted to do a
4 billboard. That's exactly what they told me. So,
5 again, for years I've thought that was the deal.

6 MR. VITALE: I'd like to go back to my
7 question, sir. Before you filled out your
8 application did you contact the Zoning
9 Administrator?

10 MR. SMITH: No. Based on that information
11 I had gotten in the past and the way the regulation
12 is written, no. But I'm one of those people, and
13 you can probably tell by the stuff I submitted, I
14 like to cover all the bases. I probably wrote too
15 much. But I do that with everything.

16 MR. VITALE: Okay.

17 MR. SMITH: So I thought, well, if this
18 gets through the system and there's any question, I
19 want to be clear.

20 MR. VITALE: With that statement you just
21 made, who was it that told you that's just in case
22 the mall wants to put up a billboard?

23 MR. SMITH: I don't have a name, but it was
24 someone in the zoning office.

25 MR. VITALE: You seem very detailed and

1 very meticulous.

2 MR. SMITH: I am horrible with names.

3 MR. VITALE: Well, I would think if you're
4 hanging your hat on it, you would know who that
5 was. I mean, it's just my opinion.

6 I have one more question for you, sir. You
7 said you've tried, and I believe it was in your
8 letter somewhere, I can't find it right now, but
9 you had provided to the mall multiple times, but
10 the mall was never really in favor of it, and I am
11 just trying to put it into context what I read, and
12 I don't know where it's at in here.

13 MR. SMITH: There have been I think three
14 owners since 2006, and one of the owners, I believe
15 it was Westfield, they were interested, and they
16 turned it over to a manager in San Francisco. I
17 was working with him for a while. And then he got
18 promoted to a higher position and it kind of just
19 got lost. You send so many messages and make so
20 many phone calls and you get back-burnered, so you
21 just move on to another project. And I've called
22 on another one that just said, No, we're not
23 interested. The current ownership is interested.
24 And hopefully that answers your question.

25 MR. VITALE: Okay. Yes, sir. Thank you.

1 MR. CREIGHTON: I have one question. What
2 will be advertised, or what would be advertised on
3 this sign?

4 MR. SMITH: Well, by definition, an
5 off-premise sign, it would be businesses.

6 MR. CREIGHTON: I didn't ask you that.
7 What will be advertised on this sign?

8 MR. SMITH: Local businesses, national
9 accounts, if I secure them, but most of our
10 business is local.

11 MR. CREIGHTON: So it won't be specific to
12 Belden Village possibly; it will be anybody?

13 MR. SMITH: There will be some Belden
14 Village.

15 MR. CREIGHTON: It could be Bob Evans, it
16 could be Brown Derby, it could be Chevrolet?

17 MR. SMITH: Andreas Furniture, et cetera.

18 MR. CREIGHTON: So it's a billboard; by
19 definition --

20 MR. SMITH: Correct.

21 MR. CREIGHTON: -- of a billboard in the
22 zoning thing, it's a billboard?

23 MR. SMITH: It's also an off-premise sign.
24 By the Township's definition, it's an off-premise
25 sign.

1 MR. CREIGHTON: That's all.

2 MR. MCDONNELL: Any other questions?

3 MR. SNYDER: Yeah, Mr. McDonnell. The
4 sketch here for the size and dimensions, Exhibit 6,
5 the fact that that billboard says two panels?

6 MR. SMITH: Correct.

7 MR. SNYDER: Digital displays, right?

8 MR. SMITH: One on each side.

9 MR. SNYDER: It's poster size, not a
10 bulletin?

11 MR. SMITH: Correct.

12 MR. SNYDER: It's a billboard, right? So
13 it's the same panel size as the Lamar board on the
14 corner of Fulton and Everhard?

15 MR. SMITH: Those are 12 by 25.

16 MR. SNYDER: Correct. Right. There's a
17 bulletin one on Whipple overtop of Table 6, and
18 there's another bulletin on Portage by Wendy's?

19 MR. SMITH: Those are 14 x 48's.

20 MR. SNYDER: Correct.

21 MR. SMITH: Those are the big ones. This
22 would not be --

23 MR. SNYDER: This would be smaller, poster
24 size, two panels?

25 MR. SMITH: Single pole.

1 MR. SNYDER: Right. And this, I mean,
2 that's just traditional specs you wrote there for a
3 billboard, right; off premises sign versus a
4 billboard, and your argument is that they're the
5 same, so we're just basically bantering over this
6 off premise sign is the same thing as billboard or
7 billboard same thing as off premise sign, long
8 story short, but I'm just confirming the details of
9 this; it's not one panel, it's two panels?

10 MR. SMITH: Correct.

11 MR. SNYDER: You would see them coming and
12 going up and down Belden Village Avenue, correct?

13 MR. SMITH: (Indicating affirmatively).

14 MR. SNYDER: Going east and west on Belden
15 Village Avenue?

16 MR. SMITH: And the State of Ohio requires
17 us to be 660 feet away from the edge of Interstate
18 77, which we would be.

19 MR. SNYDER: Okay. I just wanted to,
20 Mr. McDonnell, I just wanted to clarify the details
21 of the sign.

22 MR. MCDONNELL: Okay.

23 MR. SNYDER: Thank you.

24 MR. MCDONNELL: Any other questions for
25 Mr. Smith? If not, I do have a few more questions.

1 I guess I'm still a little confused, but your
2 application included the distance from various what
3 I'll call billboards, which you indicated were
4 billboards. First of all, is it your testimony you
5 are applying under section 504.1?

6 MR. SMITH: Yes.

7 MR. MCDONNELL: That is correct.

8 MR. SMITH: Is that the one for off premise
9 sign?

10 MR. MCDONNELL: Do you know where in
11 section 504.1 it requires you to plot the distance
12 to the other signs, other billboards; where does it
13 require that?

14 MR. SMITH: It does not.

15 MR. MCDONNELL: Why did you do that?

16 MR. SMITH: Because, and I believe this, I
17 thought that twelve years ago they chose the word
18 off premise sign and they probably just were using
19 another word for billboard. So I was again
20 covering my bases.

21 MR. MCDONNELL: So you assumed that
22 billboard equals off premise sign?

23 MR. SMITH: Yes.

24 MR. MCDONNELL: You've already told us a
25 billboard by necessity is an off premise sign; is

1 that correct?

2 MR. SMITH: Billboard by necessity? Yeah,
3 anything that advertises a service or business that
4 is not on the same premises as the sign is an off
5 premise sign and that's what everybody calls
6 billboards.

7 MR. MCDONNELL: Okay. I guess the question
8 also is not - I think it boils down to more than
9 whether that's a billboard or not - is the
10 rationale for what section 504.1 actually says, was
11 designed for. What do you think section 504.1
12 actually says, what's it designed for; what's it
13 saying to you?

14 MR. SMITH: It's funny you ask, because I
15 thought about it driving down here, that I have all
16 along thought it meant that the Township was given
17 an opportunity for the mall, because they're the
18 only one with that much square footage, for a
19 billboard, and they call it an off premise sign.

20 MR. MCDONNELL: They what? I'm sorry.

21 MR. SMITH: They were giving, when they
22 wrote this in 2006, they must have been giving the
23 mall an opportunity to do a billboard, was all I
24 could think of, and they called it off premise
25 sign. And then I thought, well, if it didn't mean

1 that, what could it mean; what else could it mean?
2 But if they want to put an off premise sign in an
3 industrial district, they can do it anyway under
4 503. They don't need a regulation to do it. And
5 anything they put in B-3 is going to be an on
6 premise sign. If it's per the outdoor advertising
7 discussion we had earlier, outdoor advertising is a
8 gas station sign and a restaurant sign, they could
9 have put that up at the mall under your current
10 sign regulations for on premise commercial signs.
11 So to me, it couldn't have meant anything else. I
12 don't know what it could have meant. And that's
13 the truth. I'm not making that up.

14 MR. MCDONNELL: Well, I guess off premise
15 sign means it's got to be for something that is not
16 on premises, or is that on a different site; your
17 testimony is you're planning on advertising for
18 local businesses, Andreas Furniture, whatever.

19 MR. SMITH: Correct.

20 MR. MCDONNELL: Are there any businesses
21 that you would advertise that have 175,000 square
22 feet of leasable area?

23 MR. SMITH: I can't think of one.

24 MR. MCDONNELL: Because that's what the
25 regulation says. The regulation says that you're

1 allowed to have an off premise sign if you are a
2 commercial development with 175,000 square feet,
3 and it can be located in a B-3 or an I-1. It does
4 not say that if you are a commercial development of
5 175,000 square feet or more, you can have an off
6 premise sign even on premise, because now it's an
7 on premise sign. That's not what it says.

8 MR. SMITH: It says anywhere in a B-3 or
9 I-1.

10 MR. MCDONNELL: That's it, as long as it
11 meets the requirements in those areas. But what
12 it's saying is, Belden village can have a sign on
13 another site, because they're 175,000 square feet
14 or greater, as long as it meets the requirements
15 for an off premise sign in a B-3 or I-1. It does
16 not say that Belden village can have a billboard or
17 a sign on their premises because they are a
18 commercial development of 175,000 square feet or
19 more. That's just what I'm saying, I don't think
20 that you actually are interpreting that for what it
21 means.

22 MR. FRY: Are you done with questions for
23 Mr. Smith?

24 MR. MCDONNELL: No, I'm not done with the
25 questions for him. I'm done with that question.

1 MR. FRY: I'm just trying to find -- here
2 it is.

3 MR. SMITH: If you take it word by word,
4 off premise signs, to me in my head that's a
5 billboard.

6 MR. MCDONNELL: Well, but -- go ahead.

7 MR. SMITH: In the State of Ohio, that's
8 what they call them.

9 MR. MCDONNELL: I don't care what the State
10 of Ohio says. What I'm saying is, is not here in
11 Jackson Township. Let's not argue the point.
12 Let's move on.

13 MR. SMITH: Okay. You guys do define it in
14 your records, but in it, an off-premise sign for
15 commercial development. For commercial
16 development. Not by a commercial development.
17 For. An off premise sign for, I'll just put the
18 word the mall in there because they're big enough.
19 Off premise sign for the mall, and here's the rules
20 you've got to follow, if you want them. That's how
21 I read it. And that's -- to me, that's how it's
22 written. And I'm not trying to be a smart aleck.

23 MR. MCDONNELL: I understand that, but I
24 read it as and I interpret it as and I believe the
25 purpose of it is off premises signs for the

1 benefit, for the benefit, for advertising the mall
2 or a commercial development of 175,000 square feet
3 are more, can be located in a B-3 or an I-1 as long
4 as it meets the conditions. That's what it said.
5 And I've got no problem with the mall. Anybody
6 else. If The Strip was 175,000 square feet or
7 more, go for it. Let them do the same thing. But
8 they can't put it at The Strip. They've got to put
9 it at a different site.

10 MR. SMITH: But the regulations say any
11 parcel in a B-3 or I-1. Any.

12 MR. MCDONNELL: What regulation says that?

13 MR. SMITH: 504. It says if you meet those
14 requirements, you can put it on any parcel.

15 MR. FRY: Mr. Chair.

16 MR. MCDONNELL: For off-premises signs for
17 commercial developments for the purpose of
18 advertising. It's not on premise.

19 MR. FRY: Mr. Chair, if I may, I would like
20 to read the definition of an off-premises sign,
21 which is from your regulations. It is section
22 501.7, subsection 18, or number 18, off premises
23 sign. A sign that advertises or otherwise directs
24 attention to a product sold, services provided, or
25 an activity that occurs on a different parcel than

1 where the sign is located. The only activity on
2 the premise where the sign is proposed to be
3 located is Macy's. By the off premise definition,
4 Macy's would be prohibited from advertising on it,
5 but not the rest of the mall. By your own
6 definitions, the parcel that it is supposed to be
7 located on is a separate parcel from what it is
8 proposing to advertise for. Therefore, making it
9 off premises. I'm just quoting straight from the
10 Jackson Township Regulation. I'm not interpreting
11 that. I'm just reading exactly what it says. It
12 clearly defines as long as it's on a separate
13 parcel than what it's advertising, it's off
14 premises.

15 MR. MCDONNELL: That's not what it's
16 saying. It's saying it has to be 175,000 square
17 feet.

18 MR. FRY: Well, certainly, and as you look
19 at commercial developments, certainly Dillard's
20 qualifies, the rest of the mall qualifies, Sears
21 qualifies.

22 MR. MCDONNELL: That's not what your
23 applicant said. The applicant said Andreas, he
24 said restaurants.

25 MR. SMITH: You're interpreting that as if

1 that's who's going to be on the board.

2 MR. MCDONNELL: That's who you told us was
3 going to be on the board, sir.

4 MR. SMITH: Right, but you're saying your
5 situation is defining who's on the board. The only
6 person that could be on the board is someone who
7 has 175,000 square feet.

8 MR. MCDONNELL: No, that's not what I'm
9 saying. That's not what I said. But anyway, let's
10 proceed.

11 MR. FRY: So, you know, to wrap this up,
12 you know, it's our contention that what was
13 submitted, while there was some ambiguity, should
14 have been interpreted most favorable to the
15 property owner, pursuant to the Ohio Supreme Court
16 decisions, and that it meets the requirements of
17 section 504.1 for an off premise sign for a
18 commercial development of 175,000 square feet or
19 more. We've already gone through how it meets all
20 of those, and be happy to answer any other
21 questions at the end, but, you know, once again, we
22 feel that the interpretation of the Zoning
23 Administrator's incorrect. Not that she does a bad
24 job or anything, but it was incorrect in this
25 instance and that it should be interpreted, or that

1 the application should be evaluated under 504.1 for
2 off premise signs.

3 MR. MCDONNELL: All right. Any questions
4 of Mr. Fry?

5 MR. VITALE: Yes, please. You said Macy's
6 is the only one that could not advertise on that
7 sign; is that correct?

8 MR. FRY: Macy's is the on premise.

9 MR. VITALE: But what you're saying --

10 MR. FRY: Oh, go ahead. Finish your
11 question. I apologize.

12 MR. VITALE: But you had said Macy's could
13 not advertise on that sign because it sits on their
14 parcel; is that correct?

15 MR. FRY: That is correct.

16 MR. VITALE: Okay. The information that
17 was submitted with the application, parcel number
18 1607267, second line down, building ID 1784078,
19 shopping center, regional mall, 329,484 square
20 feet; would you agree with that?

21 MR. FRY: Correct.

22 MR. VITALE: How was that broke down in
23 multiple parcels when it's sitting under a building
24 ID and a routing and map number that is under
25 parcel 1607267?

1 MR. FRY: What you have, is if you look at
2 that building data for 1607267, you have all of the
3 buildings, businesses, et cetera, that are located
4 on that parcel.

5 MR. VITALE: Okay.

6 MR. FRY: You have a restaurant, 5649
7 square feet, you have the mall, 329,484, which
8 constitutes all of the individual shops within the
9 mall. Within that section.

10 MR. VITALE: May I stop you there?

11 MR. FRY: Sure.

12 MR. VITALE: But you're saying that parcel
13 encompasses everything, and in the next sentence
14 you're saying there's multiple parcels there that
15 make up the mall. You said there was four parcels.

16 MR. FRY: Correct.

17 MR. VITALE: Which is it; is it all one
18 encompassed or is it four independent parcels?

19 MR. FRY: There are four independent
20 parcels on this parcel that we're talking about,
21 1607267. You have almost 400,000 square feet of
22 leasable area.

23 MR. VITALE: Correct.

24 MR. FRY: It contains part of the mall. It
25 does not contain Dillard's, it does not contain

1 Macy's and it does not contain Sears. Those are
2 all separate parcels, and I have all of that
3 information here for you if you would like.

4 MR. VITALE: Well, why would this be
5 submitted with the application then?

6 MR. FRY: That's to show that it meets the
7 requirement of the 175,000 square feet to be
8 eligible for an off premise sign.

9 MR. VITALE: But was it not Mr. Smith's
10 testimony, and I think you agreed with it, that
11 Macy's was a stand-alone parcel, which is greater
12 than 175,000 square feet?

13 MR. FRY: No, that was not the testimony.
14 The testimony was that Macy's, which is in its own
15 parcel, it's in parcel 68, it only has 130, it has
16 approximately 130,000 square feet on that parcel.

17 MR. VITALE: So then how could this sign be
18 permitted if it doesn't meet the requirements of
19 175,000 square feet?

20 MR. FRY: Because it's an off premise sign
21 that is not advertising what is on the premise
22 where it's going.

23 MR. VITALE: But it was filed as a
24 billboard, and there is quite -- it's very well
25 defined in our regulation books what is off

1 premise, what is billboard. Agreement?

2 MR. FRY: There are two regulations, one
3 for billboards and one for off premise signs,
4 correct.

5 MR. VITALE: So you applied, or your client
6 applied for a billboard?

7 MR. FRY: No. That is not the testimony.
8 The testimony was that he applied for an off
9 premise sign, which happened to include the word
10 billboard.

11 MR. VITALE: Off premise billboard with
12 digital display.

13 MR. FRY: Correct.

14 MR. VITALE: This's right off the
15 application.

16 MR. FRY: And off premises on there which
17 is covered under 504.1.

18 MR. VITALE: Off premise billboard.

19 MR. FRY: Once again, there's some
20 ambiguity.

21 MR. VITALE: Okay. Thank you.

22 MR. MCDONNELL: Is there anyone else who
23 wishes to speak in favor of the appeal, i.e., to
24 overturn the Zoning Inspector's decision?

25 MR. FRY: Just for the record, I'll object

1 to taking testimony either for or against the
2 appeal, because this is an appellate process. So
3 I'll raise that objection and let you do it as you
4 may.

5 MR. MCDONNELL: I'm sorry. What was that?

6 MR. FRY: I'm objecting to taking public
7 testimony as to who is in favor or who is against
8 this. This is not a conditional use permit, it's
9 not a site plan application. It's an
10 interpretation quasi judicial of the interpretation
11 of the zoning ordinance. I'm raising an objection
12 for the record. You can do with it as you see fit
13 from there.

14 MR. MCDONNELL: I think the official term
15 is overruled, but whatever. And so, again, my
16 question is, is there anyone here who wishes to
17 speak in favor of overturning the Zoning
18 Inspector's ruling? By your silence, I'll gather
19 there's no one. Is there anyone in the audience
20 who is opposed to overturning the Zoning
21 Inspector's ruling; in other words, supports the
22 Zoning Inspector's ruling?

23 MR. CONLEY: Good evening.

24 WHEREUPON,

25 JAMES CONLEY

1 who, after being first duly sworn,
2 testified as follows:

3 - - - - -

4 MR. CONLEY: My name is Jim Conley, 3161
5 Dunbarton, Canton, Jackson Township. I am Chair of
6 the Jackson Township Zoning Commission, and it was
7 in 2015 when 504 was passed. I think that - I
8 don't think - I know that Joni's interpretation is
9 correct. I think that it takes incredible amount
10 of gymnastics to interpret this to mean that you
11 can put a billboard or an off premise sign on the
12 parcel that has the 175,000 square feet with the
13 notion that it is advertising businesses that are
14 off the premises. It simply doesn't make any
15 sense.

16 The argument that it is ambiguous, I
17 disagree with. Mr. Fry quoted the first paragraph,
18 and let me add emphasis where I think there should
19 be. Off premises signs for commercial developments
20 in the B-3 and I-1 districts that have 175,000
21 square feet or greater of leasable area, shall be
22 permitted on any parcel of land in a B-3 or I-1
23 district in accordance with the following
24 regulations. It's clear to me, and it was clear at
25 the time that we passed this, that what was

1 intended was that a commercial development with
2 175,000 square feet or more might want to give some
3 evidence of its existence other than on its own
4 property, and therefore, along 77, if that's
5 permissible, but wherever the other parcel of land,
6 on the other parcel of land, you would be able to
7 say, as I think Ms. Poindexter pointed out, Belden
8 village Mall, exit two miles. Fine. I don't have
9 any problem with that. That's what the idea was.
10 The sign is off the premises advertising the
11 175,000 square feet. Off-premises signs for the
12 commercial development are on another property.
13 That's what it says. This interpretation is simply
14 inaccurate from the perspective of the Zoning
15 Commission, and I don't think that's what it says.

16 MR. MCDONNELL: So, Mr. Conley, it's your
17 testimony that the way to read section 504.1 is for
18 the benefit of a commercial development of 175,000
19 square feet or greater, but it has to be off that
20 site; is that correct?

21 MR. CONLEY: Yes, sir. And I'll admit if
22 the words "the benefit of" were on there, maybe it
23 would make it a little clearer, but I think the
24 word "for" means "for," and I think the word "on"
25 later on means where it is. Those are two

1 different parcels. One of them is the 175 and the
2 second is B-3 or I, which does not already have a
3 sign, et cetera, et cetera.

4 MR. MCDONNELL: Any other questions for
5 Mr. Conley?

6 MR. SNYDER: No, sir.

7 MR. FRY: Can I ask some questions?

8 MR. MCDONNELL: Yes, you may.

9 MR. FRY: Mr. Conley, you're indicating
10 that we included Macy's in the computation of the
11 175,000; is that what your testimony is?

12 MR. CONLEY: I don't know what you
13 included. I'm not arguing your application. I'm
14 arguing what the 504 was intended to mean.

15 MR. FRY: Okay.

16 MR. CONLEY: Since you asked the question,
17 it doesn't look like that parcel has enough square
18 footage anyway.

19 MR. FRY: Which is why we're requesting an
20 off premise sign on that parcel.

21 MR. CONLEY: And boot strapping it on the
22 rest of Belden Village?

23 MR. FRY: No, we're not boot strapping it.

24 MR. CONLEY: You've got to find 175
25 someplace.

1 MR. FRY: We did. We testified that the
2 mall itself exclusive of Dillard's, Sears and
3 Macy's --

4 MR. CONLEY: You're boot strapping it on.

5 MR. FRY: -- has 175,000 on a different
6 parcel. Do you disagree with that?

7 MR. CONLEY: I think the mall is clearly
8 greater.

9 MR. FRY: That the mall exclusive of
10 Dillard's, Sears and Macy's is greater than
11 175,000?

12 MR. CONLEY: Yes, it certainly looks like
13 it to me.

14 MR. FRY: Okay. Are you aware of any other
15 commercial developments in Jackson Township that
16 have greater than 175,000?

17 MR. CONLEY: I don't believe that there are
18 any, unless The Strip has a parcel that is
19 contiguously including a number of those stores,
20 but, yeah, I agree with you. I don't think there
21 are any others.

22 MR. FRY: What about the Target
23 development; would you consider Target, Dick's and
24 Kohl's a commercial development?

25 MR. CONLEY: If it's one parcel.

1 MR. FRY: So you're saying that it has to
2 be on the one parcel?

3 MR. CONLEY: That's what it says.

4 MR. FRY: Okay.

5 MR. CONLEY: It says on any parcel, that's
6 where the sign is to be located. I will grant that
7 it does not use the word parcel.

8 MR. FRY: To come up with the 175,000.

9 MR. CONLEY: Correct.

10 MR. FRY: Okay. Thank you.

11 MR. MCDONNELL: Any other questions for
12 Mr. Conley? Thank you, sir. Is there anyone else
13 in the audience that wishes to speak in opposition
14 to the appeal? By your silence, I'll gather there
15 is no one. Ms. Poindexter, do you have anything
16 more?

17 MS. POINDEXTER: Yes, actually, I do.
18 Mr. Fry said that I had said that it had to be a
19 vacant piece of property. I will read exactly what
20 I said. The purpose was, if you have a commercial
21 development in the Township that has 175,000 square
22 feet or greater of leasable area, that commercial
23 development is permitted to put a off premise sign
24 on any parcel of land in the B-3 or I-1 district to
25 advertise their business as long as there is no

1 other freestanding sign located on the property.

2 I never said anything about the property
3 had to be vacant and couldn't have a building.
4 That was never said. And Mr. Smith keeps talking
5 about ten years ago, and in 2006 the off premise
6 sign. That wasn't even put into regulations till
7 2015, so I don't know how ten years ago he could
8 have looked at that and thought that was for a
9 billboard, because that wasn't even in the
10 regulation back then. And just for a point, I did
11 speak to Mr. Walsh several months ago, it might
12 have been six months or more, and he specifically
13 asked me is a billboard permitted on the mall
14 property, and I stated no, because it's zoned B-3,
15 it's not permitted in a B-3 district. And his
16 words, and I'm not quoting, but were more or less
17 was, well, that's good, because we didn't really
18 want it anyways.

19 MR. MCDONNELL: Who was that?

20 MS. POINDEXTER: Mr. Walsh from Belden
21 Village Mall.

22 MR. MCDONNELL: Any questions of
23 Ms. Poindexter?

24 MR. FRY: Objection to that, Mr. Chair.
25 we'd like to clarify. Mr. Walsh is here to clarify

1 his statement.

2 WHEREUPON,

3 MICHAEL WALSH,

4 who, after being first duly sworn,

5 testified as follows:

6 - - - - -

7 MR. MCDONNELL: Would you state your name
8 and address.

9 MR. WALSH: Sure. Mike Walsh, W-A-L-S-H,
10 and address 4230 Belden Village Mall, Canton, Ohio,
11 44718.

12 MR. MCDONNELL: Okay, Mr. Walsh.

13 MR. WALSH: I did have the conversation
14 with Ms. Poindexter. She's been very helpful in
15 every question I've had. To represent that I said
16 we didn't want it anyways is completely and utterly
17 false. We would not proceed with this if I didn't
18 deem or my company did not deem it a benefit to the
19 property.

20 MR. MCDONNELL: Any questions of Mr. Walsh?

21 MR. VITALE: Yes. Mr. Walsh.

22 MR. WALSH: Yes.

23 MR. VITALE: Were you the manager with the
24 prior owners also?

25 MR. WALSH: I was not.

1 MR. VITALE: You were not. You're just
2 with the current owner?

3 MR. WALSH: Correct.

4 MR. VITALE: Okay. So when you addressed
5 the billboard originally, your owners thought it
6 was a great idea and they wanted to move forward
7 with it; is that correct?

8 MR. WALSH: Correct. As well as the
9 previous developer. I was with Westfield, I just
10 was not manager of the Belden Village Mall. As
11 Mr. Smith alluded to, there was interest with
12 Westfield when Westfield owned it, and then there
13 was some changes and some promotions, if you will,
14 and it just kind of fell off the table. Again, I
15 was not associated with the property, but I was
16 with Westfield, and now I was with the Starwind and
17 represented the property since July of last year.
18 Absolutely we're interested in this.

19 MR. VITALE: Okay. Well, let me back up
20 then, because maybe I didn't ask the question the
21 proper way the first time. You were associated
22 with the prior owner before the current owner?

23 MR. WALSH: Absolutely.

24 MR. VITALE: And they were interested, but
25 it fell through the cracks?

1 MR. WALSH: Absolutely. There was
2 interest, as Mr. Smith alluded to.

3 MR. VITALE: So then when the current
4 owners came up, did you approach your new owners
5 and say, Hey, we got this opportunity. We need to
6 get the billboard up there, or did you wait till
7 Mr. Smith gave you the okay with the current owner?

8 MR. WALSH: Sure, I waited for Mr. Smith to
9 approach.

10 MR. VITALE: You waited for Mr. Smith to
11 approach you?

12 MR. WALSH: Correct.

13 MR. VITALE: So it then probably would have
14 been, there was some interest, but it wasn't like a
15 burning issue, we have to get this?

16 MR. WALSH: I can't speak. I was not that
17 involved.

18 MR. VITALE: Okay. Very good. Thank you,
19 sir.

20 MR. WALSH: Sure

21 MR. MCDONNELL: Any questions? What is on
22 the parcel 1607267?

23 MR. WALSH: Can you restate that number,
24 please.

25 MR. MCDONNELL: 1607267. First of all, is

1 that the parcel on which a sign would be located?

2 MR. WALSH: It is not, correct.

3 MR. FRY: Correct.

4 MR. WALSH: That would be, out of the four
5 parcels that was alluded to before, that would be
6 the section that does not include where the sign's
7 going. It's hard to delineate without a photo, if
8 I can show you.

9 MR. MCDONNELL: What is on the parcel where
10 the sign is going to be located?

11 MR. WALSH: It's the Macy's building, as
12 well as the parking lot on the south side.

13 MR. MCDONNELL: What is the lot number the
14 billboard's going to be located?

15 MR. WALSH: 1607268.

16 MR. MCDONNELL: 160?

17 MR. WALSH: 1607268.

18 MR. MCDONNELL: And that includes Macy's
19 and the parking lot?

20 MR. WALSH: Correct. The southern part of
21 that parking lot, correct.

22 MR. MCDONNELL: And on the other parcels
23 that constitute that commercial development, Belden
24 village, how large are those; what is the square
25 footage for those parcels?

1 MR. FRY: Could you rephrase that question.
2 Do you want the square footage of the actual parcel
3 or the square footage --

4 MR. MCDONNELL: I didn't ask you. I asked
5 him.

6 MR. WALSH: okay. could you repeat the
7 question, please.

8 MR. MCDONNELL: You're representing
9 Mr. Smith. You're not representing Mr. Walsh.

10 Yeah. The other parcels, first of all, was
11 it your intent -- well, first of all, what is the
12 square -- yeah, I do want to know what the square
13 footage of leasable property on those parcels are
14 that constitute Belden Village.

15 MR. WALSH: So you have Dillard's, the
16 parcel we're talking about, 267, that's about
17 390,000.

18 MR. MCDONNELL: I'm sorry. What?

19 MR. WALSH: It's about 390,000.

20 MR. MCDONNELL: Dillard's is 390?

21 MR. WALSH: I'm sorry. I'm sorry. Excuse
22 me. Dillard's is 196.

23 MR. MCDONNELL: 196,000?

24 MR. WALSH: Correct.

25 MR. MCDONNELL: Excuse me, Mr. Fry. You're

1 not his attorney.

2 MR. FRY: He's our witness.

3 MR. MCDONNELL: You are representing -- it
4 was your testimony, you came and you said you were
5 representing Mr. Smith. You are not representing
6 Mr. Fry, unless you wish to represent Mr. Fry now.

7 MR. WALSH: walsh.

8 MR. MCDONNELL: walsh. I'm sorry.

9 MR. WALSH: No worries.

10 MR. MCDONNELL: Okay.

11 MR. WALSH: So starting from west to east,
12 Dillard's, 196,000, Macy's portion, 130,000 square
13 feet.

14 MR. MCDONNELL: well, Macy's is on the
15 same.

16 MR. WALSH: There's four sections. So
17 there's Dillard's, and then there's Macy's and the
18 southern parking lot, which is 130.

19 MR. MCDONNELL: well, that's the one that
20 is parcel 1607268, the one where you want the sign;
21 is that right?

22 MR. WALSH: 268, correct, is 130,000. That
23 includes Macy's building and the south parking lot.
24 Then there's the remaining mall and north parking
25 lot, that's about 390,000 square feet. And then

1 the fourth parcel is Sears, and that's about
2 222,000 square feet.

3 MR. VITALE: 222, sir?

4 MR. WALSH: Yes.

5 MR. VITALE: Thank you.

6 MR. MCDONNELL: So we've got Dillard's,
7 Macy's, north mall.

8 MR. WALSH: And Sears, correct.

9 MR. MCDONNELL: Yeah. Do those -- they're
10 not located on that parcel. Are those the ones
11 that you're going to be advertising on this sign?

12 MR. WALSH: Generally, no. Would they have
13 the opportunity to? Yes.

14 MR. MCDONNELL: They have the opportunity
15 to.

16 MR. SNYDER: Can I ask a question of
17 Mr. Walsh?

18 MR. WALSH: Yes, sir.

19 MR. SNYDER: Maybe you don't know the
20 answer, maybe you know. Why the location in Macy's
21 lot and not Sears or Dillard's?

22 MR. WALSH: Sure. I can answer why not
23 Sears and Dillard's. Obviously I'm not the parcel
24 owner of that, so I cannot speak for that. As far
25 as the location on that south side, Mr. Smith can

1 answer that as far as vicinities from the highway,
2 vicinities from other billboards, off premise,
3 however you want to call it. I'm not getting into
4 that debate. But there's certain distances; is
5 that correct, sir?

6 MR. MCDONNELL: No.

7 MR. WALSH: So that's why.

8 MR. MCDONNELL: We get to ask that question
9 of you later. So you indicated Belden Village
10 Mall?

11 MR. WALSH: Correct.

12 MR. MCDONNELL: Which you're the manager
13 of?

14 MR. WALSH: Belden Mall, LLC.

15 MR. MCDONNELL: Does not include that Sears
16 parcel?

17 MR. WALSH: Sears, nor Dillard's.

18 MR. MCDONNELL: Pardon?

19 MR. WALSH: Sears, nor Dillard's.

20 MR. MCDONNELL: Nor Dillard's?

21 MR. SNYDER: Nor Macy's.

22 MR. MCDONNELL: So Sears parcel, which is
23 222,000 square feet.

24 MR. WALSH: Correct.

25 MR. MCDONNELL: Is not owned by the mall?

1 MR. WALSH: It's not owned by Belden Mall,
2 LLC, correct.

3 MR. MCDONNELL: Are you speaking -- when
4 you signed that thing giving him, giving Mr. Smith
5 authority to build this thing, were you signing for
6 Sears?

7 MR. WALSH: Absolutely not. Belden Mall,
8 LLC.

9 MR. MCDONNELL: Okay. So the Belden
10 village Mall is what now? Tell me that.

11 MR. WALSH: It is --

12 MR. MCDONNELL: The north mall; am I
13 correct?

14 MR. WALSH: Yes, sir. Main mall and the
15 north parking lot.

16 MR. MCDONNELL: Okay. Main mall. I'm
17 sorry. Main mall.

18 MR. WALSH: Yes. Main mall, yes.

19 MR. MCDONNELL: And north parking lot. And
20 that was 390,000 square feet?

21 MR. WALSH: Correct.

22 MR. MCDONNELL: Okay. And Macy's and the
23 south parking lot?

24 MR. WALSH: Macy's building and the south
25 parking lot is also owned by Belden Mall.

1 MR. MCDONNELL: Is that parking lot
2 restricted just for Macy's customers?

3 MR. WALSH: I'm sorry. Is it restricted
4 for just customers of Macy's?

5 MR. MCDONNELL: Correct.

6 MR. WALSH: No, sir.

7 MR. MCDONNELL: So that's for the benefit
8 of the mall?

9 MR. WALSH: Absolutely.

10 MR. MCDONNELL: And that's where the sign's
11 going to be located?

12 MR. WALSH: Absolutely.

13 MR. MCDONNELL: And as far as the main mall
14 and north parking lot, it is not your intent to
15 advertise on that sign?

16 MR. WALSH: To my understanding, and again,
17 this is just through Mr. Smith, the vicinity from
18 the highway and the vicinity from other billboards
19 would not fit into that parcel owned by Belden
20 Mall, LLC.

21 MR. MCDONNELL: I'm sorry. My question
22 was, is the main mall and the north parking lot,
23 are they going to advertise on this proposed
24 billboard or sign?

25 MR. WALSH: Yes, potentially there will be

1 a face with Belden Village Mall on that.

2 MR. MCDONNELL: On that sign?

3 MR. WALSH: Correct.

4 MR. MCDONNELL: That's going to be the only
5 thing on that sign?

6 MR. WALSH: Negative. There would be eight
7 faces that are rotated. We would be one of those
8 eight, as well as any events or anything that
9 benefit Belden Village Mall.

10 MR. MCDONNELL: So they could be
11 advertising things other than Belden Village Mall;
12 is that correct?

13 MR. WALSH: Yes, sir.

14 MR. MCDONNELL: Other than the main mall?

15 MR. WALSH: Yes, sir.

16 MR. MCDONNELL: Because Macy's can't
17 advertise?

18 MR. WALSH: To my understanding today, I
19 guess not.

20 MR. MCDONNELL: And you can't speak for
21 Sears?

22 MR. WALSH: Absolutely, nor Dillard's.

23 MR. MCDONNELL: And you can't speak for, is
24 it Dillard's?

25 MR. WALSH: I cannot speak for Dillard's.

1 I'm not sure the parcel owner's name, but I cannot.

2 MR. MCDONNELL: Okay. The parcel with
3 Dillard's.

4 MR. WALSH: Sure.

5 MR. MCDONNELL: Are there going to be other
6 people advertising on this sign?

7 MR. WALSH: The intent, yes.

8 MR. MCDONNELL: The intent is to have other
9 people, as in an Andreas Furniture, Outback
10 Steakhouse?

11 MR. WALSH: I don't sell the advertising on
12 that, so I can't answer that question.

13 MR. MCDONNELL: Okay. Thank you.

14 MR. WALSH: Yeah, thank you.

15 MR. MCDONNELL: Any other questions for
16 Mr. Walsh?

17 MR. VACCARO: Mr. Chair, may I ask
18 Mr. Walsh?

19 MR. MCDONNELL: Mr. Vaccaro.

20 MR. VACCARO: Mr. Walsh, first of all, Mike
21 Vaccaro on behalf of Jackson Township. The name of
22 your company is Westfield?

23 MR. WALSH: When we were Westfield?

24 MR. VACCARO: No. No.

25 MR. WALSH: That's a trick question, sir.

1 MR. VACCARO: That is. What is the current
2 name of your company?

3 MR. WALSH: Belden Mall, LLC.

4 MR. VACCARO: Okay. And just so I'm
5 clear --

6 MR. MCDONNELL: Excuse me, Mr. Vaccaro.

7 MR. VACCARO: Yes.

8 MR. MCDONNELL: Would you mind coming up
9 here and speaking into the mike?

10 MR. VACCARO: Oh, absolutely.

11 So parcel number 1607268 is the parcel that
12 is owned by your company?

13 MR. WALSH: Correct, with the Macy
14 building.

15 MR. VACCARO: So you lease to Macy?

16 MR. WALSH: Yes, sir.

17 MR. VACCARO: Okay. Dillard's owns their
18 own, or someone other than your company owns that
19 other, that parcel?

20 MR. WALSH: Dillard's and Sears, correct.

21 MR. VACCARO: Do you know that parcel
22 number tonight where Dillard's is at?

23 MR. WALSH: 1614455.

24 MR. VACCARO: Okay. And then Sears is
25 obviously, again, not owned by you?

1 MR. WALSH: That is correct.

2 MR. VACCARO: Do you know that parcel
3 number?

4 MR. WALSH: I believe I have it right here.
5 1607036.

6 MR. VACCARO: Okay. And I just want to be
7 clear that I understood what you were -- the
8 questions you were asking, or answering the Chair
9 on. It is the intent then for those who lease
10 within the main mall, not Dillard's, not Sears, not
11 Macy's, to advertise on this particular, whatever
12 we want to call it, sign?

13 MR. WALSH: My understanding was anybody.
14 The restrictions were very limited on what we would
15 allow on that billboard.

16 MR. VACCARO: Okay. And obviously the mall
17 also would have a front on that?

18 MR. WALSH: We would have a front, correct.

19 MR. VACCARO: Okay. And so you indicated,
20 and I'm just going to go a little bit off script
21 here.

22 MR. WALSH: Sure.

23 MR. VACCARO: You indicated in your
24 testimony, or in your follow-up to Ms. Poindexter,
25 that you did have a conversation with her

1 specifically about a billboard.

2 MR. WALSH: Correct.

3 MR. VACCARO: Okay. And is it your
4 understanding that a billboard is differentiated
5 within the Jackson Township Zoning Code or Zoning
6 Resolution as opposed to an off premise sign and
7 et cetera?

8 MR. WALSH: Honestly, I can't answer that
9 question.

10 MR. VACCARO: Okay. Sitting here tonight,
11 do you have a basis or understanding that that may
12 be the case?

13 MR. WALSH: Honestly, I hear two sides of
14 the story. I don't know which one's right.

15 MR. VACCARO: Okay. All right. No, that's
16 a fair answer. I would like to just quickly show
17 you -- well, let me back up. On parcel number
18 1607268, you would agree with me there is an on
19 premise sign that already exists in there?

20 MR. WALSH: Are you referring to the --

21 MR. VACCARO: The one you own. Or when I
22 say you, I mean your company.

23 MR. WALSH: We're talking about the low
24 level one right at the entrance, is that what we're
25 referring to?

1 MR. VACCARO: Yeah. To me it's a sign.

2 MR. WALSH: Obviously to me as well. I'm
3 in the mall business. I'm not in the sign
4 business.

5 MR. VACCARO: Right.

6 MR. WALSH: But I believe that's the one
7 that we're alluding to, yes.

8 MR. VACCARO: Okay. Are you aware of
9 whether or not Mr. Smith submitted, when he filed
10 his application, for what's being requested
11 tonight, a construction plan or removal plan or
12 anything for that current sign you just -- you and
13 I just talked about?

14 MR. WALSH: I don't believe that was in the
15 original application.

16 MR. VACCARO: Okay. And, sir, you would
17 agree with me that the mall is in the zoning
18 classification within Jackson Township of B-3?

19 MR. WALSH: From what I've been told, yes.

20 MR. VACCARO: All right. Just one more
21 second, if I may. No further questions. Thank
22 you.

23 MR. VITALE: Mr. Chairman, can I ask
24 Mr. Walsh a question, because I'm still a little
25 bit of gray on something? Sir, your company

1 manages or owns the parcels where the main mall and
2 north parking lot sit, 329,000 square feet and some
3 change?

4 MR. WALSH: Plus, yes.

5 MR. VITALE: Okay. They also own Macy's,
6 which is 130,000 and some change?

7 MR. WALSH: Yes.

8 MR. VITALE: Okay. So the sign is going to
9 go on the Macy's parcel that's only 130,000 square
10 feet?

11 MR. WALSH: That is correct.

12 MR. VITALE: How can -- and I'm just going
13 to throw it out now because we've been polled the
14 gamut here tonight.

15 MR. WALSH: Sure.

16 MR. VITALE: Our off parcel sign, the
17 175,000 square feet, I think Mr. Conley had asked,
18 so he's going to boot strap it in with something
19 else, and that would be the 329,000 square feet; is
20 that correct?

21 MR. WALSH: Honestly, I can't answer that
22 question.

23 MR. VITALE: To come up with a number over
24 175,000, because we're missing a couple thousand
25 square foot.

1 MR. WALSH: Sure.

2 MR. VITALE: Okay. So we need to have -- I
3 need to get it clear where this sign is going, and
4 the statement you just made to Mr. Vaccaro, that
5 people in the mall would be allowed to advertise on
6 this sign.

7 MR. WALSH: Correct.

8 MR. VITALE: Which if it is an off-premise
9 sign, they cannot advertise on that sign.

10 MR. WALSH: Are you telling me or asking
11 me? I'm sorry.

12 MR. VITALE: I am telling you.

13 MR. WALSH: Okay.

14 MR. VITALE: Okay. An off sign, a sign
15 advertising an establishment, merchandise, service,
16 or entertainment, which is not sold, produced,
17 manufactured or furnished on the property on which
18 the sign is located. So basically nothing there
19 could advertise on this sign, unless I am way off
20 on my reading of this and interpreting it.

21 MR. WALSH: I will have to defer to the
22 experts behind me.

23 MR. VITALE: Okay. Well, Mr. Smith, I'm
24 trying to figure out what Mr. Walsh is telling me,
25 so I can get that and then we can move on to you

1 guys again. I'm still confused on the square
2 footage.

3 MR. WALSH: Okay.

4 MR. VITALE: It can't go under Macy's
5 parcel because it doesn't have enough square
6 footage.

7 MR. WALSH: It is actually going on the
8 Macy's parcel.

9 MR. VITALE: But it doesn't have enough
10 square footage to put the sign on it. Macy's is
11 only 130,000 by your testimony, sir, and I think
12 possibly Mr. Fry's.

13 MR. WALSH: I hear what you're saying.

14 MR. VITALE: So I guess I'm really grey on
15 this how this trick works.

16 MR. WALSH: Sure.

17 MR. VITALE: Okay, sir. Thank you.

18 MR. WALSH: No problem. Any other
19 questions for me?

20 MR. MCDONNELL: Any questions for
21 Mr. Walsh?

22 MR. SNYDER: No, sir.

23 MR. CREIGHTON. No.

24 MR. WALSH: Okay. Thank you.

25 MR. MCDONNELL: Thank you, Mr. Walsh.

1 MR. WALSH: No problem.

2 MR. MCDONNELL: Comments by the applicant?

3 MR. SMITH: I just want to say a couple of
4 things.

5 MR. MCDONNELL: If you can speak into the
6 microphone.

7 MR. SMITH: Yes. Larry Smith again. To
8 address your question, which the way this thing has
9 evolved, it's I suppose good question. The
10 regulation states that my off premise sign is for a
11 commercial development with that square footage,
12 but it doesn't use the word parcel anywhere in it.
13 The definition of off premise sign does use it, and
14 that's how this whole can of worms kind of got
15 opened. If you're going to say parcel, well,
16 Macy's is on just the one parcel, but not on the
17 other two and they don't have the square footage,
18 but the commercial development, which by ownership
19 is those three parcels, don't even count Sears and
20 Dillard's, is way over the 175,000 square feet.
21 But technically, if someone wanted to push it why,
22 if Macy's were on -- if the board was permitted and
23 Macy's were on it, well, technically they couldn't,
24 because it's an on premise sign, because that's
25 their premises. But in the definition of the

1 regulation it doesn't say anything about parcel.
2 It just says development. And that's why we
3 never -- I never labored a lot on providing all
4 this square footage. I thought there's not going
5 to be anybody in the room that doesn't think the
6 mall is at least 175,000 square feet. So that's to
7 answer that.

8 MR. VITALE: Okay. Hang on a second, sir.
9 Okay. So Macy's, by your testimony, you said
10 Macy's could not advertise on that sign?

11 MR. SMITH: Based on the numbers you're
12 telling me, I didn't look closely at just Macy's
13 numbers.

14 MR. VITALE: These are not my numbers, sir.
15 These are what was given to us by Mr. Walsh and
16 Mr. Fry.

17 MR. SMITH: Okay.

18 MR. VITALE: These are numbers that came --

19 MR. SMITH: Right.

20 MR. VITALE: -- from out there. Okay. So
21 what you're saying then, is any commercial
22 development.

23 MR. SMITH: Right.

24 MR. VITALE: So you guys are joining with
25 all of the mall property?

1 MR. SMITH: Just the ones owned by them.

2 MR. VITALE: Right.

3 MR. SMITH: Which is their commercial
4 development.

5 MR. VITALE: Okay. We're on the same page.
6 Let's stay focused. We're at 460,000 square feet.

7 MR. SMITH: Okay.

8 MR. VITALE: I'm trying to think. Excuse
9 me, sir. I apologize. I don't know who your
10 tenants are, but let's say, I think there's
11 something, Egg Scrambler or something is one of the
12 things, or Melt, those are probably part of the
13 mall.

14 MR. SMITH: Yeah, sure.

15 MR. VITALE: So then they could not
16 advertise?

17 MR. SMITH: Yes, they could.

18 MR. VITALE: Sir, by your testimony you
19 said they couldn't.

20 MR. SMITH: They're not on that parcel.

21 MR. VITALE: They're not in the mall?

22 MR. SMITH: They're part of the
23 development, but they're not on that specific
24 parcel where the board's going, if you're splitting
25 hairs.

1 MR. VITALE: No. You said, and right on
2 here, commercial development of 175,000 square feet
3 or greater.

4 MR. SMITH: Correct.

5 MR. VITALE: Okay. Macy's doesn't qualify
6 by itself, a stand-alone doesn't qualify, so we're
7 going to group and we're going to have 460,000
8 square feet, by your numbers, plus or minus. So
9 all the tenants in the 329,000 square feet could
10 not advertise either.

11 MR. SMITH: Sure, they could, because it's
12 an off premise sign. The sign's off the premises,
13 the premise they're on.

14 MR. VITALE: Okay.

15 MR. SMITH: I apologize for the semantics.

16 MR. VITALE: No.

17 MR. SMITH: In other words, Macy's isn't a
18 commercial development. They're just a store.

19 MR. VITALE: I got you. They are a parcel
20 and it doesn't say parcel. They are part of a
21 commercial development which you're boot strapping
22 on, which is a separate stand-alone parcel, okay,
23 to make the 175,000 or greater square feet that you
24 need for your sign. Am I correct with that
25 statement; do you agree with that?

1 MR. SMITH: I'm not sure how to answer.

2 MR. VITALE: Okay. And that's fine.

3 MR. SMITH: Our premise was that I looked
4 at who owned what. The mall in the middle
5 basically owns those three parcels right in the
6 center. And do they have enough, this commercial
7 development, Belden Mall, LLC, have enough square
8 footage to apply for a 504. And I thought we were
9 way over, they're fine. I don't know how the
10 Macy's thing came up, but in other words, if you're
11 splitting hairs --

12 MR. VITALE: That's where you guys said you
13 wanted to put the sign.

14 MR. SMITH: Yeah, I know, we brought it up.
15 I apologize. It's me.

16 MR. VITALE: I'm just trying to get
17 clarification.

18 MR. SMITH: Yeah. Technically, if somebody
19 come out and said, Hey, Macy's is on that sign and
20 they shouldn't be, they'd have to come in here and
21 prove it, I suppose. Macy's doesn't use that store
22 that much anyway, so it wouldn't have been an issue
23 with me to begin with.

24 MR. VITALE: All right. Thank you, sir. I
25 appreciate it.

1 MR. MCDONNELL: Mr. Smith.

2 MR. SMITH: Yes.

3 MR. MCDONNELL: Go ahead, Mr. Fry.

4 MR. FRY: Mr. Smith, I have some questions
5 for you. The reason you applied for this is
6 because you're applying for an off premise sign,
7 correct?

8 MR. SMITH: Yes.

9 MR. FRY: So the sign needs to be off the
10 premise where the 175,000 or greater is, correct?

11 MR. SMITH: No.

12 MR. FRY: If it's on the 175,000 then it
13 would be an on premise sign, correct?

14 MR. SMITH: I'm not sure how to respond to
15 that, Gary. To me, and I've been doing this for 25
16 years, an off premise sign is a billboard. That's
17 what I applied for.

18 MR. FRY: You applied for an off premise
19 sign, correct, pursuant to 504.1?

20 MR. SMITH: And I wrote on the application
21 off premise billboard.

22 MR. FRY: I didn't ask that. You applied,
23 your intent was to apply for an off premise sign
24 under 504.1, correct?

25 MR. SMITH: Correct.

1 MR. FRY: And therefore, off premise means
2 you cannot be on the parcel that is making up the
3 175,000 square feet, correct?

4 MR. SMITH: I'm confused.

5 MR. FRY: If Macy's has 175,000 square
6 feet, you cannot put an off premise sign there
7 because then it is on premise?

8 MR. SMITH: Not necessarily. I mean, I
9 could put an off premise sign on a gas station and
10 if once a month the gas station wanted to go on the
11 sign, if the local regulations permitted it, then
12 they could go on it.

13 MR. FRY: I have no further questions at
14 this time.

15 MR. MCDONNELL: Mr. Smith.

16 MR. SMITH: Yes.

17 MR. MCDONNELL: So you applied under
18 section -- I'm sorry.

19 MR. SMITH: Would the Board like a
20 two-minute recess?

21 MR. MCDONNELL: No, that's okay. Was that
22 you that asked that? I'm sorry. I didn't see who
23 was asking that question. I tell you what, let's
24 do this. Let's recess until 8:15.

25 MR. SMITH: Thank you.

1 (Short break was taken)

2 MR. MCDONNELL: Okay. I've got 8:15.
3 We'll go back on record. And, Mr. Smith, I believe
4 you were up here when we left. And you had
5 finished with your -- with what you wanted to say;
6 is that correct, Mr. Smith?

7 MR. SMITH: Yes. Or is this my last bite?

8 MR. MCDONNELL: This is your last bite,
9 yes, it is.

10 MR. SMITH: Could I have the Board's
11 permission to let my attorney speak one more time
12 also?

13 MR. MCDONNELL: Since he's representing
14 you, I think we can do that, but before you leave,
15 can you refresh my memory. Who do you envision
16 advertising on this thing, billboard or sign or
17 whatever?

18 MR. SMITH: The categories that outdoor
19 uses most often are hospitals, restaurants. We've
20 promised Mr. Walsh that we wouldn't put any
21 political ads on there, just to satisfy the
22 landowner. No sexually explicit material. We
23 don't do it anyway, but we were going to put it in
24 our agreement. Car dealers, furniture stores,
25 local businesses. I went by that board up by The

1 Strip and I think eight out of ten of them that are
2 on that board right now are all within Jackson
3 Township. They love them. There's a waiting list
4 to be on that thing and it helps their business.
5 It helps local businesses. There are eight
6 billboards already in the Belden Village area, so
7 it wouldn't be anything new or different or
8 shocking to anyone.

9 MR. MCDONNELL: You had hospitals,
10 restaurants, car dealers, furniture stores. Who
11 else is going to be advertising on there?

12 MR. SMITH: We call on anyone who has a
13 business that uses, also uses other media. For
14 example, if I heard them on the radio, I might call
15 on them to see if they'd like to also do
16 billboards.

17 MR. MCDONNELL: Is there anyone else you
18 can think of?

19 MR. SMITH: Jackson Township could if they
20 wanted to. Promote upcoming events.

21 MR. MCDONNELL: Could The Strip?

22 MR. SMITH: We would not -- we've also
23 promised the mall that we wouldn't put a
24 competitive business on. I would ask them before
25 they let me put The Strip on there. They probably

1 wouldn't.

2 MR. MCDONNELL: Understandable.

3 Understandable.

4 MR. SMITH: Right.

5 MR. MCDONNELL: Would you promote repair
6 shops?

7 MR. SMITH: Yes.

8 MR. MCDONNELL: And really, almost anybody,
9 who you couldn't put on, who you wouldn't put on,
10 is sexually explicit?

11 MR. SMITH: Correct. Competitors of the
12 mall.

13 MR. MCDONNELL: Okay. Political?

14 MR. SMITH: We've agreed to do that and
15 some landowners prefer that, because they don't
16 want to be aligned with a particular ad.

17 MR. MCDONNELL: Right. So political
18 advertising. What else would you not put on that
19 sign?

20 MR. SMITH: Sexually explicit.

21 MR. MCDONNELL: Okay. We got that.

22 MR. SMITH: Oh, did we?

23 MR. MCDONNELL: Yeah, we got it.

24 MR. SMITH: What would I not put on there?
25 Anything that I felt violated the standards of the

1 community that we're in.

2 MR. MCDONNELL: But other than that, if it
3 didn't violate the standards, it's go for it; is
4 that right, you'd put it on? And I'm not asking
5 for anything offensive, anything else like that.
6 I'm just saying standard advertising.

7 MR. SMITH: Yeah.

8 MR. MCDONNELL: There could be Andreas,
9 there could be King's Furniture, it could be the
10 Mattress Store.

11 MR. SMITH: Yeah. The list is pretty
12 endless really.

13 MR. MCDONNELL: Waikem Honda.

14 MR. SMITH: Yes.

15 MR. MCDONNELL: Waikem Ford. Waikem Auto
16 Group.

17 MR. SMITH: Correct.

18 MR. MCDONNELL: I want to make sure I
19 mention them all.

20 MR. SMITH: Aultman Hospital.

21 MR. MCDONNELL: Aultman Hospital.

22 MR. SMITH: They use a lot of boards.

23 MR. MCDONNELL: Mercy Hospital, Cleveland
24 Clinic.

25 MR. SMITH: Yes. Akron Childrens is

1 putting a new building down there, they'll probably
2 want to be on there, if it were approved.

3 MR. MCDONNELL: Okay. Just your opinion,
4 if I could, what do you -- what in your opinion is
5 a commercial development? And I'm talking about if
6 you applied an exception 504.1 and it lists
7 commercial developments, what in your mind
8 constitutes a commercial development?

9 MR. SMITH: I want to say the mall, because
10 that's what we're talking about.

11 MR. MCDONNELL: Sure.

12 MR. SMITH: But in my mind, a big strip,
13 something that the Deville Developers would build.

14 MR. MCDONNELL: Can you give us an example?

15 MR. SMITH: They do a lot of plazas.

16 MR. MCDONNELL: So plaza, right? And would
17 that be a conglomeration of different stores?

18 MR. SMITH: I would think. I suppose a
19 giant apartment building could be a commercial
20 development if you were selling the condos, so to
21 speak.

22 MR. MCDONNELL: Yeah. Yeah.

23 MR. SMITH: But, I mean, I think commercial
24 because that's the business I've been in for so
25 long.

1 MR. MCDONNELL: Right. What if there were
2 separate parcels, but they're all put together?
3 Like, for example, I know that Target complex
4 actually encompasses a number of separate parcels.

5 MR. SMITH: Kohl's, Target.

6 MR. MCDONNELL: Yeah. There are, I don't
7 know which are which, but is that, the Target
8 center, a commercial development?

9 MR. SMITH: I would think about it as one,
10 but there are probably different parcels in there,
11 right.

12 MR. MCDONNELL: Yeah, there probably are.

13 MR. SMITH: I would go by ownership, who
14 owns them.

15 MR. MCDONNELL: I think that's it. Does
16 anyone else have any questions for Mr. Smith?

17 MR. SNYDER: No, none from me.

18 MR. MCDONNELL: Okay.

19 MR. SMITH: Again, my attorney would like
20 to say a few closing statements. Gary.

21 MR. FRY: Appreciate the time that you've
22 given us this evening. So, further -- well, I
23 think at this point we've, unless you have any
24 further questions of me, we've stated our points.
25 We've applied under the 504.1, we've shown how we

1 meet all of those, how the signage is off premise,
2 and again, with respect to interpreting zoning
3 ambiguities or whatnot, they should be interpreted
4 in favor of the property owner as opposed to the
5 townships, municipalities, et cetera. Be happy to
6 answer any further questions. If you have specific
7 questions about other 175,000 square foot
8 developments, I'd be happy to answer those as well.

9 MR. MCDONNELL: Any questions for Mr. Fry?

10 MR. VITALE: None. Thank you.

11 MR. MCDONNELL: I can't think of anything,
12 Mr. Fry, but I appreciate it. Thank you for coming
13 in.

14 MR. FRY: Thank you.

15 MR. MCDONNELL: Normally I would ask if
16 there are any questions for the Zoning Inspector,
17 but I don't think that's appropriate this evening.
18 I think we're on our own, gentlemen. So without
19 any objection, we'll close the public input. What
20 are your thoughts, gentlemen?

21 MR. VITALE: Mr. McDonnell, if I may. I
22 have a lot of thoughts on this one. There are an
23 awful lot of moving parts here, first of all.
24 They haven't quite seemed to align here this
25 evening in my mind. First we talked about

1 commercial development, then we talked about
2 parcels, we talked about square footage. We talk
3 about who can advertise, who can't advertise, if
4 it's a billboard, if it's a sign, if it's this, if
5 it's that, and it's just very, very confusing. And
6 I didn't get a real good defined answer on exactly
7 what you folks want. Right off the application it
8 says, off premise billboard. So a billboard is a
9 billboard, it's not a sign, in my mind. I'm not in
10 the sign business. Don't pretend to understand it
11 all, but from a lay person, a billboard is what I
12 see beside the expressway, not in Belden Village
13 parking lot. I don't care if it's digital, I don't
14 care if it's paper, I don't care what it is.

15 So with that being said, I find it hard to
16 justify overturning the Zoning Inspector's
17 decisions, because we've got to take this at face
18 value, and like I said, we've heard a lot of things
19 tonight. And you folks are no different than us.
20 We don't always agree. You guys haven't always
21 agreed on your testimony, because first it was one,
22 then it was another, then it was well, maybe it
23 could have been. So it just seems to be a lot of
24 the same rhetoric of what I've read, what I see in
25 the zoning book, the way I interpret the book, so I

1 don't believe in my mind, this is just my opinion,
2 that there's been a valid reason to overturn the
3 Zoning Inspector's decision.

4 MR. MCDONNELL: Thank you, Mr. Vitale.
5 Mr. Snyder.

6 MR. SNYDER: Mr. McDonnell.

7 MR. MCDONNELL: Yes, Mr. Snyder.

8 MR. SNYDER: I'm taking this at face value.
9 As I imagine Joni got the application, she looked
10 at it and says, This is an off premise billboard.
11 It's a billboard, 12 foot by 25 foot billboard.
12 They got them all over the area. I don't think it
13 falls under section 504. I think it falls under
14 section 503 as a billboard. Billboards aren't
15 allowed in B-3's. They're allowed in I-1's. I
16 know we talked semantics and off premises and that
17 stuff, but it's a billboard. That's all.

18 MR. MCDONNELL: Okay, Mr. Snyder, thank
19 you. Mr. Creighton.

20 MR. CREIGHTON: You know me, I like to keep
21 it simple. A billboard is a billboard is a
22 billboard, period. That's what you call it on the
23 application. Ambiguity or whatever that word was,
24 you made a mistake putting it on there, but you
25 did, and that's what Joni went by, so I'm backing,

1 I would back her in her decision.

2 MR. MCDONNELL: Thank you, Mr. Creighton.

3 MR. SNYDER: I will add.

4 MR. MCDONNELL: Go ahead.

5 MR. SNYDER: I don't think it's a mistake.
6 It is a billboard.

7 MR. CREIGHTON: I don't think he wanted to
8 put it on the application.

9 MR. SNYDER: Right.

10 MR. CREIGHTON: But he did.

11 MR. SNYDER: It could have made a
12 difference in the application.

13 MR. CREIGHTON: That creates a real problem
14 to call it a billboard.

15 MR. SNYDER: There's an identical display
16 on the corner of Fulton, and it's not on a pole.

17 MR. MCDONNELL: Gentlemen, I concur with
18 you, number one. I think the applicant applied for
19 a billboard, which the resolution specifically says
20 billboards are only allowed in an industrial -- in
21 an I-1, or industrial business; and to further
22 compound that, the applicant and everything was
23 labeled billboard, you know, all his schematic was
24 labeled billboard. He included with his
25 application the distance to the other billboards, I

1 think it's got to be a thousand feet from any other
2 billboard, which, again, is in section 503.1, but
3 the applicant specifically said he applied under
4 section 504, which is off premise signs. What the
5 Zoning Inspector saw and what she was given was an
6 application for a billboard, and I believe
7 rightfully turned it down. But then if the
8 applicant applied under section 504.1, off premises
9 signs for commercial development 175,000 square
10 feet or greater in a B-3 and I-1, well, to me it
11 means that, first of all, it's got to be off
12 premises, it's got to be for the benefit of a
13 commercial development 175,000 square feet or
14 greater, and the manager of Belden Village Mall
15 said that they weren't necessarily going to take up
16 100% of the advertising on that. And we could get
17 into what is on premises, what is off premises,
18 whether it's a parcel, whether it's a property in
19 general, whatever, but even then, as I read it,
20 it's for the benefit of the commercial development
21 175,000 square feet or greater, but then the
22 applicant tells us that he's going to advertise for
23 hospitals, restaurants. I don't know of too many
24 restaurants that are 175,000 square feet or
25 greater. Car dealers, maybe by the time you take

1 all of -- there are a number of guys that say
2 they've got this miles of cars, and it's one auto
3 show under one roof, but anyway, car dealers,
4 175,000. And the applicant was not making the
5 distinction of 175,000 square feet. That is what
6 section 504.1 says, it's got to be a commercial
7 development. And I appreciate the fact nothing
8 sexually explicit or derogatory or political
9 advertising, but even if we assume that the off
10 premises is defined under section 504.1, his intent
11 is not to meet the requirements of 504.1 or even
12 the intent of 504.1.

13 So I think that about does it. So in this
14 member's opinion, I think the Zoning Inspector was
15 correct in denying the application, and it would be
16 my intent to uphold the Zoning Inspector's ruling
17 and therefore deny the applicant's appeal. Any
18 other comments?

19 MR. SNYDER: No.

20 MR. MCDONNELL: I'll make a motion -- are
21 there any other comments, gentlemen?

22 MR. VITALE: No, sir.

23 MR. MCDONNELL: I'll make a motion to
24 uphold the decision of the Zoning Inspector
25 regarding the application for an off premises

1 billboard and deny appeal 2376. Do we have a
2 second?

3 MR. SNYDER: Do you want to clarify?

4 MR. MCDONNELL: I'm sorry?

5 MR. SNYDER: Do you want to clarify? So a
6 no vote means?

7 MR. MCDONNELL: Okay. Uphold the decision
8 of the Zoning Inspector. So a yes vote means we
9 agree with the Zoning Inspector. Let's just leave
10 it at that. If I may, let me amend my motion. A
11 motion to uphold the decision of the Zoning
12 Inspector with regards to appeal 2376. Does that
13 make it clear? A yes vote in my opinion, my intent
14 is a yes vote means yes, we agree with the Zoning
15 Inspector. A no vote means we do not.

16 MR. SNYDER: Okay.

17 MR. VITALE: Second that motion.

18 MR. MCDONNELL: Any comments?

19 MS. POINDEXTER: Okay. Mr. Snyder?

20 MR. SNYDER: Yes.

21 MS. POINDEXTER: Mr. Vitale?

22 MR. VITALE: Yes.

23 MS. POINDEXTER: Mr. McDonnell?

24 MR. MCDONNELL: Yes.

25 MS. POINDEXTER: And Mr. Creighton?

1 MR. CREIGHTON: Yes.

2 MS. POINDEXTER: Okay.

3 MR. MCDONNELL: So, Mr. Smith, your appeal
4 has been denied, and the ruling of the Zoning
5 Inspector to deny your application for the off
6 premises billboard has been upheld. You do have 30
7 days, which starts this evening, the date of
8 decision, you can appeal this to the Court of
9 Common Pleas.

10 MR. SMITH: Will I get a written letter
11 documenting the 30-day thing?

12 MS. POINDEXTER: Yeah, you'll get a copy of
13 the decision sheet in the mail.

14 MR. MCDONNELL: Will that include the
15 notice of the 30 days right to appeal?

16 MS. POINDEXTER: No. The decision sheet
17 does not say that. That's why we announce it at
18 the meeting.

19 MR. MCDONNELL: It does not say that.

20 MR. SMITH: Just say 30 days from today?

21 MR. MCDONNELL: You have 30 days, and
22 that's in accordance with the Ohio Revised Code.

23 MR. SMITH: Gotcha.

24 MS. POINDEXTER: Okay. I don't have
25 anything else, so we just need a motion to adjourn.

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MR. VITALE: Motion to adjourn.

MR. CREIGHTON: Second.

MR. MCDONNELL: Those in favor say aye.

MR. VITALE: Aye.

MR. CREIGHTON: Aye

MR. SNYDER: Aye.

MR. MCDONNELL: Those opposed say no.

MR. VACCARO: Silence.

MR. MCDONNELL: We are adjourned.

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(Hearing adjourned at 8:37)

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C E R T I F I C A T E

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3 STATE OF OHIO)

4 STARK COUNTY)

5 I, Deanna Gleckler, a Registered
6 Professional Reporter, Certified Realtime Reporter, and
7 Notary Public in and for the State of Ohio, duly
8 commissioned and qualified, do hereby certify that the
9 within Hearing was by me reduced to Stenotypy and
10 afterwards transcribed upon a computer, and that the
11 foregoing is a true and correct transcription of the
12 proceedings as aforesaid.

13 I do certify that this Hearing was taken at
14 the time and place in the foregoing caption specified. I
15 do further certify that I am not a relative, counsel or
16 attorney of any party, or otherwise interested in the
17 event of this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my seal of office at Louisville, Ohio on
20 this 25th day of September, 2019.

21
22
23 _____
24 DEANNA GLECKLER, RPR-CRR, Notary Public
25 My commission expires 1-6-20.

