

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
JULY 20, 2011**

Chair Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. Board members West, Becker, Karson and Morel were present. Alternate board member Boris Williams sat in for a quorum. Chair Morel introduced the Board members and explained the public hearing procedure to those present.

Bill Doraty Kia-(2925 Medina Rd.) Administrative Appeal of Notice of Violation by Zoning Inspector Ridgely on May 16, 2011

See attached transcription. The hearing was continued for purpose of Board deliberations until August 17, 2011 at 7:30 pm.

Variance Requests

Herrmann variance request-3389 S. Weymouth Rd.

Chair Morel reviewed the application. The applicant is Don Herrmann. The property requiring the variance-3389 S. Weymouth Rd. Present Zoning-RR. Previous Requests-Yes. Variation Requested: Section 401.3 D. Minimum Front Yard Depth-100 ft. exclusive of the road right of way to construct an addition (mudroom) to the existing house. Need a variance of 54 ft. The explanation for the variance request: Not far enough off the road; house over 100 yrs. old; add to appearance-upgrade.

The applicant and property owner Mr. Don Herrmann was sworn in. Mr. West asked about the previous variance that was granted? Mr. Herrmann stated ~~it~~ was for an addition on the other side of the house. Chair Morel stated the Board has granted many variances for the homes in this small area and he believed the granting of those variances have made the neighborhood better and better.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated yes.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? The Board stated just the opposite.
4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? The Board stated yes. Mr. West asked when Mr. Herrmann purchased the property? Mr. Herrmann said in 1992 but he grew up in the home.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated the only alternative would be no mudroom addition.

7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

Mrs. Karson made a motion to grant a 54 ft. Front Yard Depth variance for an addition of a mudroom on the east side of existing house at 3389 S. Weymouth Rd. It was seconded by Mr. West.

ROLL CALL-Karson-yes, West-yes, Becker-yes, Williams-yes, Morel-yes.

Farrell variance request-5068 Red Maple Ct.

Chair Morel reviewed the application. The applicants are Sean & Sheryl Farrell. The property requiring the variance-5068 Red Maple Ct. Present Zoning-R2 Forestview Estates. Previous Requests-No. Variation Requested: Section General Regulations R-2B.5.b. Minimum Rear Yard Depth-40ft. Requesting a variance of 9 ft. to construct an above ground pool. The explanation for the variance request. A. Strict application of the zoning regulations would not be practical because 40 ft. from our rear property line would place the pool within 3 ft. of our foundation. The existing deck also prohibits us from meeting that requirement. B. Forestview Estates is the only area in the Township with such large setback requirements. C. It is not unreasonable nor unusual to install a pool on a residential property. Other properties within the same zoning district have been granted variances for the same purpose. Additionally, there is 56' of zoned, grass green space that abuts our rear property line. With the variance requested, there would be 87' of grass space between the proposed structure and wooded green space that begins after the grassy green space.

The applicants / property owners were sworn in. Mr. Farrell stated for the record that they did not have knowledge of the zoning restrictions before they purchased the property. Mr. Farrell stated they thought because of the 56 ft. of grass green space and the woods behind it, that they had more land than they truly did.

Ms. Farrell stated when they purchased the property there was already a structure built on the grassy, green common space that abuts the property. That is why we thought that grassy area was ours to build on.

Mr. Farrell stated he was requesting the variance because the pool would be too close to the house as well as for financial reasons so that what needed to be added to the deck would be minimal.

Mr. West asked if the 40 ft. rear yard setback was exclusive to Forestview Estates?

Ms. Strogan, Chair of the Zoning Commission was sworn in. She responded that area was developed as R-2 under a court settlement agreement. The grassy, green area mentioned is part of the common open space that was required for this development. Ms. Strogan stated just because there is green or open space behind a lot does not mean one can build on that land because all structures built are to be contained on one's own property.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated no.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? The Board stated no.
4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? The Board stated that one is presumed to have knowledge of the zoning restrictions one purchases property.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated the alternative would be no pool.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

Mr. West made a motion to grant a 9 ft. Rear Yard Setback variance for the construction of a 21ft. above ground pool for the property located at 5068 Red Maple Court. It was seconded by Mrs. Karson.

ROLL CALL-West-yes, Karson-yes, Becker-yes, Williams-yes, Morel-yes.

Kaiser Permanente variance request-3645 Medina Rd.

A fax was received dated July 20, 2011 from Hasentab Architects who represented Kaiser Permanente. The fax stated that they were withdrawing their variance submittal to the Board of Zoning Appeals for the property located at 3645 Medina Rd. for the operation of a Kaiser Permanente Micro Clinic.

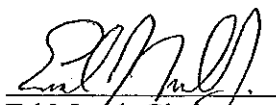
Meeting Minutes Approval

The April 20, 2011 meeting minutes and May 18, 2011 were tabled for approval as Board members stated they were not in receipt of those minutes.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 10:45 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


Ed Morel, Chairman

BEFORE THE MEDINA TOWNSHIP BOARD OF
ZONING APPEALS

IN RE: Bill Doraty Kia)
Administrative Appeal ..)

BE IT REMEMBERED that upon the hearing
of the above-entitled matter held at Medina
Township Board of Zoning Appeals, 3799 Huffman
Road, Medina, Ohio, and commencing on
Wednesday, the 20th day of July, 2011, at 7:30
p.m., the following proceedings were had.

COMPUTERIZED TRANSCRIPTION BY
BISH & ASSOCIATES, LLC
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Kelly Herrmann	104:1

COPY

APPEARANCES:

Members of Medina Township Board of
Zoning Appeals:

Edward Morel, Chairman
Horst Becker
Boris Williams
Charlotte Karson
William West

On Behalf of Bill Doraty Kia:

Mills, Mills, Fiely & Lucas, LLC
By: Laura L. Mills, Attorney at Law
Paul Vincent, Attorney at Law
150 Smokerise Drive
Wadsworth, Ohio 44681
(330) 336-7900

On Behalf of Zoning Inspector Elaine
Ridgley:

Walter & Haverfield, LLP

By: Sara J. Fagnilli, Attorney at Law
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(216) 781-1212

On Behalf of the Medina Township Board
of Zoning Appeals:

Buckingham, Doolittle & Burroughs,
LLP

By: John P. Slagter, Attorney at Law
1375 East Ninth Street, Suite 1700
Cleveland, Ohio 44114
(216) 615-7331

1 MR. MOREL: We're going to ask
2 William West if he would read the request and
3 the first two pages of Miss Mills' backup
4 letter into the record, please.

5 MR. WEST: This is an appeal of
6 the zoning inspector's decision. The
7 applicant is Bill Doraty Kia. The address is
8 2925 Medina Road, Medina, Ohio 44256. The
9 property owner is Doralis Holdings, LLC at the
10 same address, 2925 Medina Road, Medina, Ohio
11 44256.

12 The application is for property
13 located at 2925 Medina Road, Medina, Ohio
14 44256. The zoning district in which the
15 property is located is BG. The applicable
16 section of the zoning resolution cited is
17 Section 603. The decision being appealed is
18 the notice of violation by Zoning Inspector
19 Ridgley on May 16, 2011. The explanation for
20 the appeal: See the attached letter. It's
21 dated 5/31/2011 and it's signed I think by
22 William Doraty.

23 The letter is dated May 27, 2011,
24 that is referenced in the appeal. The letter
25 is from Laura Mills of Mills, Mills, Fiely &

1 Lucas, 150 Smokerise Drive, P.O. Box 27,
2 Wadsworth, Ohio 44282. It's addressed to the
3 Board of Zoning Appeals. The subject is
4 denial of temporary sign permit application.

5 Board of Zoning Appeals members:

6 I'm writing on behalf of Bill Doraty Kia to
7 convey my intent to appeal your decision that
8 the display on my roof is prohibited under

9 Medina Township's Zoning Regulation 603(E).

10 And Medina Township Zoning Regulation will be
11 referred to throughout I think as MTZR. Below

12 you will find my reason for appealing, as well
13 as any and all attachments that will create
14 the record for this appeal.

15 Within the attachments please find
16 an expert report from Mark Majewski,
17 M-a-j-e-w-s-k-i, a temporary sign permit
18 application and Elaine Ridgley's denial
19 letter.

20 MTZR 603(E) does not apply to our
21 static display. Zoning Inspector Ridgley
22 cites MTZR 603(E) as the basis of the notice
23 of violation that we received on May 16, 2011.
24 MTZR 603(E) requires movement as a requisite
25 for prohibition. MTZR 603(E) reads "No sign

1 according to that observation.

2 Additionally, the provision that
3 reads "No sign or part thereof shall contain
4 or consist of balloons and/or any inflatable
5 devices or other similar moving devices" only
6 applies when those items are part of another
7 sign. In our case, the inflatable display is
8 an isolated display on its own. It is not
9 part of a sign. It is part of the roof on our
10 main building. Thus, this portion of 603(E)
11 cannot apply.

12 When considering that our static
13 inflatable display does not move and that it
14 is not part of another sign, I vigorously
15 believe that 603(E) cannot apply.

16 Inflatables are permitted
17 according to the MTZR. Although I
18 unequivocally believe that 603(E) does not
19 apply to my static inflatable, the MTZR
20 permits my display under both the temporary
21 and portable sign definitions.

22 The definition for portable sign
23 reads "Sign, portable" and that's in quotes,
24 but I think the quotation continues here "is a
25 sign that is not permanent, affixed to a

1 shall employ any part or elements which
2 revolve, rotate, whirl, spin or otherwise make
3 use of motion to attract attention. No sign
4 or part thereof shall contain or consist of
5 flags, banners, posters, pennants, ribbons,
6 streamers, spinners, balloons, and/or any
7 inflatable devices, search light or other
8 similar moving devices."

9 Most notably, our inflatable
10 display is static and is made to stay
11 motionless. Any movement by the inflatable
12 would be harmful to our roof and to Inflatable
13 Image's leased product. With 12 harness
14 points where the inflatable is secured, the
15 display is as motionless as a piece of fabric
16 could be in the elements.

17 There is no mention with the MTZR
18 on how much movement is necessary to be a
19 moving sign according to 603(E). In serious
20 wind, anything can move. I cannot imagine
21 that Zoning Inspector Ridgley could believe
22 that any movement would prohibit a sign from
23 being displayed because that would mean that
24 all high-rise signs in the township, as well
25 as all temporary signs would be disallowed

1 building, structure or the ground."

2 According to the definition, the
3 inflatable display is a portable sign and
4 should be treated as one. The inflatable is
5 not permanent. It can be put up in about a
6 half an hour and can be taken down just as
7 quickly. To deflate it, it takes less than 30
8 seconds. It is secured to the roof with
9 airplane-strength cable and eye bolts. It
10 must be assumed that "affixed" is synonymous
11 with permanence in this definition or else it
12 would mean that there could be no portable
13 signs according to the definition.

14 Every sign needs to be "affixed"
15 in one way or another. If not, there would be
16 greater safety concerns with non-affixed signs
17 in the township. Every portable sign would be
18 flying all over the properties and roadways of
19 Medina Township.

20 The definition for temporary sign
21 reads "Sign, temporary is a sign or
22 advertising display constructed of cloth,
23 canvas, fabric, plywood or other light
24 material and designed or intended to be
25 displayed for a short period of time."

Under this definition, the inflatable display is precisely a temporary sign. The inflatable is an advertising display. It is constructed of a light hybrid fabric consisting of a polyester and cloth. Lastly, it is only displayed for 30 days or less. We believe, as do many other businesses in the township, that a static inflatable display meets exactly with the definition of a temporary sign and should be granted a permit accordingly.

There are inflatables throughout the township for a quarter of the year. An important piece in the inequity of our appeal is that from late October to early February you can find inflatable displays in dozens of residential yards throughout the township. These inflatables should bring a safety and aesthetic concern, if there truly is one, to the township, if they are permitted without petition.

As a business owner, I would enjoy the same treatment and am willing to even pay a fee for the same treatment. This would be an additional source of revenue to the

township and would ease many of the pressures to Zoning Inspector Ridgley. Additionally, it would provide fairness to all citizens in Medina Township - both residents and businesses.

There are "prohibited" 603(E) signs throughout the township. Within 603(E) there are several allegedly prohibited items that are strewn throughout the township. On any given day you can drive down Pearl Road or Route 18 and find flags, banners, balloons, et cetera which are to be prohibited. However, we believe that these are overlooked for whatever reason.

Currently there are dozens of American flags at various businesses that are receiving special privileges, although there are no exceptions allowing their display. If there are some items that are supposedly prohibited, but can be found at several businesses, then business owners cannot be expected to understand an arbitrary enforcement process.

Conclusion: We believe that the MTZR should be updated to fall in step with

the changing sign laws, which should allow for static inflatable displays to be utilized in a regulated and reasonable manner. We appreciate the opportunity to appeal Inspector Ridgley's interpretation of the MTZR and believe that her ruling is misguided when considering the MTZR as a whole. Respectfully, Laura L. Mills, again, Mills, Mills, Fiely & Lucas.

And then also attached to that application is an extensive letter dated February 18, 2011, addressed to Laura L. Mills, Esquire from Mark Majewski, M-a-j-e-w-s-k-i, from Northstar Planning & Design. I'm not going to read that letter. It's an extensive letter.

Also attached to the package is Mr. Majewski's CV, the rejection of the temporary sign permit by Elaine Ridgley, as well as the application for the sign permit by Mr. Doraty. Also attached is -- no, I think that's all the attachments.

MR. MOREL: Okay. At this time I would like to introduce Mr. Slagter and just go over some of the background.

MR. SLAGTER: First of all, to the members of the Board, nice meeting you. I'm John Slagter, an attorney with Buckingham, Doolittle & Burroughs and I was hired by the township to separately represent the Board of Zoning Appeals as it relates to this particular hearing.

The reason for that is because, you know, ultimately what this Board decides will be the decision of the township whether it supports the appeal or whether it upholds the decision of the zoning inspector. And at that time then the normal counsel for the township would handle the matter, but you sit in a quasi judicial capacity similar to what a judge would do in determining whether or not there is a basis for the appeal that's occurring.

And specifically the Revised Code Section 519.24(A) provides the right of an applicant, such as the applicant in this case, if they are denied a permit, for example, they have a right to appeal, and they come to this body for that determination.

This is not a variance. This is

1 not a conditional use and those are other
2 powers that you have. I don't know whether
3 there's conditional uses in the township. I
4 see someone shaking their head yes. So those
5 are other things that you normally hear.

6 This is a separate power that you
7 have and all you're doing is listening to
8 evidence that's presented and making a
9 determination as to whether or not in this
10 case the decision of your zoning inspector was
11 correct or not. So the determination is
12 really focused on that narrow issue: Whether
13 they made -- the zoning inspector made an
14 error.

15 The applicant has certain rights
16 under procedural due process. One, you spoke
17 about swearing people in and you need to make
18 sure that everyone that testifies or presents
19 evidence is sworn in. They have the right to
20 present evidence. They have a right to
21 cross-examine any witnesses that may testify
22 and they have a right to obviously make sure
23 that if there are any objections to evidence
24 or otherwise you need to make a determination
25 on those.

1 MR. MOREL: Okay.

2 MR. SLAGTER: So I'm here to help
3 you procedurally through the process. At the
4 end of the hearing you need to close the
5 hearing and ultimately you would go through
6 your deliberations and you would basically
7 need to produce what's called -- the Revised
8 Code calls it a conclusion of fact, but it's
9 similar, for the lawyers that are here, to a
10 conclusion of fact -- or finding of fact and
11 conclusions of law.

12 Basically there may be conflicting
13 testimony about a certain fact and you
14 ultimately need to determine what you think
15 are the facts of the case and then at the end
16 apply the law to those facts, which in this
17 case would be a determination of whether or
18 not the zoning inspector made the right
19 decision. So that's what you're here to do.

20 This is not like a trustee meeting
21 where it's a public hearing where everyone has
22 a right to come in and make comments about
23 whatever their issue may be. Whether the
24 zoning code should be changed is not a
25 relevant issue for you this evening. Your

1 determination is whether or not the current
2 zoning resolution that exists was correctly
3 applied to this particular application that
4 was submitted.

5 One issue is a procedural matter
6 because this is a little bit unusual. I know
7 that there's been -- when this application I
8 believe was originally submitted there was a
9 pending court case for the same exact sign
10 between the same parties, the township and the
11 applicant and that case was ultimately
12 decided.

13 We have received a memorandum of
14 opinion from Judge Nugent and I don't know if
15 all the Board members received it. And I
16 would ask the township's attorney, and also
17 the attorney for the applicant, whether this
18 is a true and accurate copy of the -- that
19 decision because we have received this. It
20 was sent to the township. And I don't know
21 whether, one, this is true and accurate or,
22 two, I just think from a procedural standpoint
23 for us what -- really what impact this has on
24 today's decision because there are specific
25 findings in here by a court and we're asked

1 really to -- from my review -- it looks like
2 we're asked to interpret the same thing.

3 MS. MILLS: No.

4 MR. SLAGTER: That's why we would
5 like to hear that from that standpoint. So I
6 don't know if the township's attorney -- okay.
7 There we go. If this is a correct copy of the
8 opinion and I assume it is.

9 MS. FAGNILLI: I don't have any
10 disagreement on it.

11 MS. MILLS: No. I mean, it's on
12 appeal currently.

13 MR. SLAGTER: Okay.

14 MS. MILLS: It's pending appeal,
15 but the issues are not similar --

16 MR. SLAGTER: Okay.

17 MS. MILLS: -- to what we'll be
18 discussing tonight. I'll address it in my
19 opening statement --

20 MR. SLAGTER: Sure.

21 MS. MILLS: But --

22 MR. SLAGTER: The date of the
23 opinion is June 8, 2011.

24 MS. MILLS: Yeah, uh-huh.

25 MR. SLAGTER: The Board would

1 probably want to take notice, what we call
2 judicial notice, that this opinion is out
3 there and I would suggest that, although it's
4 -- that you probably start off with a short
5 summary of the procedural issues, then have
6 the applicant's attorney explain from their
7 perspective, maybe in light of this, what we
8 should be looking at. Obviously we can hear
9 the same thing from the township's attorney
10 and then proceed through the normal process.

11 MR. MOREL: Okay.

12 MS. MILLS: That's fine. Does it
13 matter where I stand because it doesn't appear
14 that -- I think I'm just going to use the
15 window sill and move around. We don't have a
16 podium anywhere in here?

17 MR. MOREL: Right there.

18 MS. MILLS: Well, I'm going to lay
19 it this way so -- that's okay. If you don't
20 mind me walking back and forth, I'll try to
21 continue to make eye contact.

22 MS. GARDNER: Would this help you?

23 MS. MILLS: Yes, it would. Thank
24 you, Sally.

25 MS. GARDNER: Moved it out of the

1 interested party.

2 Mr. Doraty has been leasing. He's
3 never purchased any of the inflatables that
4 any of you have ever seen on his roof. He has
5 leased them all from Mr. Scherba, Scherba
6 Industries. And Dave, in case we don't get to
7 it during his testimony, I'm going to put it
8 in the record anyways. I don't think anyone
9 will object.

10 But he has had Scherba Industries
11 for over 30 years. So he'll go into a little
12 bit of detail. We don't want to keep you here
13 long. He supplies inflatables for all the NFL
14 teams and Cleveland Indians and has been doing
15 this for a long time. So he's certainly
16 well-versed to speak of its components.

17 In this case you received a letter
18 and what we were hoping not to do tonight is
19 spend too many minutes on addressing the
20 appeal issues, although I'll speak to it, but
21 I seem to notice that you received from the
22 township attorney, Miss Fagnilli, you received
23 a letter and I received it today, so I'm not
24 sure if that's part of the record yet or not,
25 in which she outlined her position on behalf

1 way earlier and it's coming back.

2 MS. MILLS: Thank you very much.

3 Well, good evening, everyone. I'm
4 Laura Mills. As you heard, obviously from the
5 appeal that we put in, I represent Mr. Doraty.
6 I also represent Mr. Scherba, and just for
7 clarification here so that the Board
8 understands and everyone else that's
9 listening, Mr. Doraty actually rents the
10 inflatable that is currently on his roof from
11 Mr. Scherba. So Scherba Industries is going
12 to talk just a little bit today.

13 We're not going to be here very
14 long. I promise. Maybe about half an hour.
15 So we'll be brief.

16 But he'll talk about how the
17 inflatable is manufactured, what it consists
18 of. And then procedurally, how all this works
19 is, when Bill wants an inflatable on the roof,
20 Mr. Scherba actually provides that inflatable;
21 actually places it on the roof and then takes
22 it down. So all maintenance, installation and
23 all issues related to the inflatable are Mr.
24 Scherba's responsibility, which is why he's
25 obviously here tonight and why he's an

1 of Elaine Ridgley and she also outlined her
2 position on behalf of the township.

3 And I want to correct some of the
4 things in the letter, because even if we don't
5 get to it tonight as part of the record, and
6 you're relying on it when you come up with
7 your facts and your conclusions, there are
8 quite a few inaccuracies that we believe exist
9 in this particular letter.

10 First of all, just to the
11 memorandum that Mr. Slagter spoke to: We did
12 go through a full-blown trial. What we
13 brought to trial and what Mr. Doraty sued the
14 township for was based on 603(B) saying that
15 that particular code provision was
16 unconstitutional and in that unconstitutional
17 argument he said it's not fair. That if you
18 take a look at the zoning resolution, if you
19 take a look at the very first part, 601, it's
20 going to tell you that that entire sign
21 regulation is going to apply to residential
22 and it's going to apply to businesses;
23 although it's applied differently when we
24 start talking about inflatables. So he had an
25 equal protection claim.

1 He also had a due process claim
2 and he said, you know, 603 is very vague
3 because there's a difference between a static
4 inflatable and between a moving inflatable.
5 We don't necessarily believe that it's
6 prohibitive across the board.

7 And the third element of our
8 complaint, that you will actually see in that
9 memorandum, was a First Amendment Right saying
10 we ought to be able to have the right to put
11 that inflatable up and this is an infringement
12 on our speech, and you're not using the least
13 restrictive means to do so. That's the
14 complaint; that's what's in the memorandum.

15 Does not speak to the fact that an
16 inflatable can be permitted under the
17 temporary sign provision, which is defined in
18 Article II, and portable signs, which are in
19 605(K), permits them as well. And as you'll
20 see in Mr. Majewski's report, and we're going
21 to talk a little bit more about that as well,
22 that there is no reason that an inflatable
23 cannot be a temporary sign.

24 So if you're going to say we're
25 going to look at 603 and we're going to say

1 that you just can't put that sign up forever,
2 they're still permissible under the other code
3 section. And we really want to spend the
4 majority of tonight just looking at the
5 temporary sign and portable sign provision,
6 staying out of the constitutional arguments,
7 obviously.

8 And even during the trial what was
9 interesting is that Miss Ridgley admitted that
10 Mr. Doraty could just go fill out a temporary
11 sign permit. And once you fill out that
12 temporary sign permit, then it could be
13 appealed to the Board of Zoning Appeals and
14 then all of you would have an opportunity to
15 look at whether or not an inflatable is a
16 temporary sign.

17 So we're here doing just that.
18 We're hoping that you'll be objective, and
19 listen obviously to the testimony and to our
20 arguments tonight and give Mr. Doraty due
21 consideration in his claim.

22 Just a little bit of history: The
23 inflatable has been up a long time. October
24 of 2008 I think is when the first inflatable
25 went up. And in October of 2008 the township

1 trustee was -- trustee board was set up a
2 little bit differently. Rita Holt was then on
3 the board.

4 You'll hear testimony through
5 Elaine, because it certainly came out at
6 trial, that Rita Holt told Bill he could have
7 that inflatable up there. They would work
8 with him. It was going to be fine, and there
9 was going to be some type of text amendment is
10 actually how she felt that they should handle
11 it.

12 So Mr. Doraty, and for purposes of
13 just history so you understand how much time
14 has passed and why we're here, Mr. Doraty has
15 had that inflatable on his roof since October
16 of 2008. And is it helping? Yes. It is
17 tremendously helping. He employs 60 people in
18 Medina Township. He has done increasingly
19 well through one of the worst economic times
20 that we could have.

21 From October 2008 until today he
22 has branded that inflatable as his own. So
23 when you see those commercials and when the
24 township talks about Bill being the
25 inflatable-man or let's talk turkey to sell a

1 car or whatever it is that he's doing, he is
2 branding himself with that inflatable. And he
3 did that coming into the situation, starting
4 that branding because the township said we're
5 going to work this out.

6 Well, Rita passes away
7 unfortunately. We have a different make up of
8 the trustee board and all of a sudden the
9 perception of inflatables is no longer
10 positive. Now all of a sudden Medina and
11 Route 18 is a gateway and we can't possibly
12 have this terrible, awful inflatable on the
13 roof. However, that's not what Mr. Doraty was
14 led to believe. That was not why he started
15 branding it and using it and it's not why it's
16 on his roof today. He believed in that and he
17 kept it up.

18 When the board changed, many
19 discussions went back and forth for a long
20 period of time. In fact, prior to this
21 difference in the trustee board, Elaine will
22 admit that she didn't cite Bill for a while.
23 She wasn't citing him for that particular
24 inflatable because she was told it would be
25 worked out.

1 MS. FAGNILLI: I want to enter an
2 objection. We're going way far afield of what
3 the topic of this --

4 MS. MILLS: A little bit of
5 background because of your letter, Sara, I--
6 think is very relative here.

7 At some point in time obviously
8 the trustees could not work it out with Bill,
9 but you're going to notice this time frame and
10 I think that's what's so important. You're
11 wondering how can I be standing in front of
12 you in July of 2011 when we're talking about
13 an inflatable that's been on the roof since
14 October of 2008? Well, it's because of some
15 of these issues.

16 I know that Bill has met with the
17 trustees individually. They tried to come to
18 terms. Nothing was done. Eventually he filed
19 suit. This suit that he filed was in October
20 2010; it was in district court. Mr. Slagter
21 obviously mentioned the memorandum. There was
22 a trial.

23 In the particular letter that you
24 received from Miss Fagnilli, though, it is
25 somewhat misleading. We're going to talk

1 indicate that we're complaining. We're
2 saying, well, wait a minute. You know, we
3 shouldn't be entitled to this inflatable just
4 because we're complaining about the banner-man.
5 and just because we're complaining about the
6 balloon-man and the poster-man and all of
7 these other things. It's not complaint. It's
8 saying look at how this works for other items
9 in 603. We're not trying to obviously get the
10 banner-guy cited.

11 We're saying wait a minute, under
12 603(E) no banners. You had a temporary sign
13 permit permitting banners in the township for
14 at least 11 years, maybe longer.

15 MS. FAGNILLI: Objection.

16 MS. MILLS: There was a banner.
17 Elaine can testify where the banner was on the
18 form for at least 11 years and you checked the
19 box and you said I want that banner and you
20 know what? You paid 50 bucks. You put down
21 \$275 deposit, you paid your 50 bucks. You got
22 them all over the township.

23 I know that there may be a
24 distinct -- I know that Elaine will testify
25 that once I deposed her and she recognized

1 about what occurred at that trial.

2 We are appealing it. 603 was
3 found to not be unconstitutional. However, it
4 was an advisory jury. The jury were only
5 given two interrogatories to answer. We're
6 going to talk about those two interrogatories,
7 which was really is 603 unconstitutional in
8 regards to equal protection and is 603 vague?

9 It doesn't talk about a temporary
10 sign permit. It doesn't talk about whether or
11 not he should be entitled to a temporary sign
12 permit. None of that was an issue before the
13 jury to decide. None of that was an
14 interrogatory. And the memorandum that you're
15 going to receive from her that the jury did
16 not agree with Mr. Doraty has nothing to do
17 with the issue before you tonight. It is an
18 entirely different issue.

19 When you take a look at 603,
20 obviously we have the inflatable language in
21 there. We also have banners in there and we
22 also have posters. So we're going to talk
23 about the banners and posters a little bit
24 tonight.

25 Miss Fagnilli's letter seems to

1 that this could be a problem, that then the
2 township trustees decided to take banner off
3 the form but now they call them temporary
4 signs. They look like a banner to me and
5 we're going to look at a couple of pictures.

6 Fifty dollars every 14 days is
7 what the township makes off a banner. And
8 banners are in the same code section as
9 inflatables and there is no difference.
10 Posters are also in that same code section, in
11 that 603. Posters are permissible under
12 outdoor advertising. So if the poster looks
13 like it's on a billboard, it's permissible.

14 So our argument is 603 may stand
15 as it is and we're not asking you to knock out
16 603. We're not asking you today to find
17 constitutional problems with 603. We're not
18 asking you to do anything.

19 What we're asking is the temporary
20 sign, under the definitions, is clearly what
21 we are, and if we filled out a permit, just
22 like anybody else would fill out a permit for
23 a banner, for a poster, for anything else, why
24 can't we pay our \$50, put our \$275 deposit
25 down and have the inflatable and pay the money

1 into the township? So that's really the crux
2 of the argument today.

3 By the way, on the jury, another
4 thing that's not necessarily mentioned in Miss
5 Fagnilli's letter is that they were out for
6 four hours and came back at one particular
7 point in time because they were confused about
8 the jury interrogatory questions.

9 We have appealed to the Sixth
10 Circuit and we believe very strongly in our
11 constitutional issues and will continue that
12 particular argument, but that argument is for
13 another forum, another judicial body and
14 another time.

15 All that we're asking for today is
16 that you consider the temporary sign permit
17 and consider Mr. Doraty's arguments.

18 Sara, do you want to --

19 MS. FAGNILLI: Sure.

20 MS. MILLS: I will leave the
21 podium for you.

22 MS. FAGNILLI: Okay. I'm going to
23 work from right here, Laura.

24 MS. MILLS: Okay.

25 MS. FAGNILLI: I can be heard.

1 is here.

2 Number 21 under findings of fact:
3 Bill Doraty Kia never applied for a temporary
4 sign permit, applied for a variance or
5 appealed any of the decisions or
6 interpretations of the zoning inspector.

7 Miss Mills would have you believe
8 that because he didn't do that he now can come
9 back and do that, that he just missed that.

10 The reason that finding is in
11 there is for a very specific legal purpose and
12 that's because the complaint that was filed by
13 Bill Doraty Kia that started the trial that we
14 had talks about temporary use of these
15 inflatables and almost every allegation that
16 they had -- I'll give you a copy of the
17 complaint. You can see it for yourself, but
18 that's why that's in there. There's a very
19 specific legal reason why that's in there.

20 Now, Miss Mills is absolutely
21 right. This is an advisory jury. In federal
22 court it's something that a judge has the
23 ability and right to do and Judge Donald
24 Nugent decided to do that in this case. And
25 you have to understand what happens.

1 MS. MILLS: Okay.

2 MS. FAGNILLI: My name is Sara
3 Fagnilli. I've been retained to represent
4 Zoning Inspector Elaine Ridgley on behalf of
5 the township.

6 Let me answer the question for you
7 right up front that Laura last raised. Why
8 can't we fill out the application? Why can't
9 we pay our money? Why can't we get the
10 permit? And the answer to that question is
11 really very, very simple. Because it's not
12 allowed. An inflatable is not allowed. And
13 it doesn't matter whether it's a temporary
14 sign, a permanent sign, a portable sign.
15 Inflatables are not allowed.

16 To suggest that there's
17 misrepresentation in my letter quite frankly I
18 find offensive. There is nothing in that
19 letter that isn't true. You can read the
20 opinion for yourself.

21 But here's what you've not been
22 told. In the findings of fact, and I think I
23 point this out to you in the letter, there is
24 a specific finding of fact by the court. Let
25 me pull it up so you can know exactly where it

1 Because these are constitutional
2 claims that are brought, the jury has certain
3 abilities and certain things that they can
4 make findings on. The judge, in an attempt to
5 really save judicial time, decided to impanel
6 the jury right up front and let them hear the
7 facts and make a decision. It's that advisory
8 to the court.

9 The opinion that you have in front
10 of you is signed by United States District
11 Judge Donald Nugent. He makes the final
12 decision. And there are some very important
13 things in that decision that you really need
14 to look at and note.

15 Number one, the entire zoning
16 resolution, this book, and 603(B) are presumed
17 to be valid. It's up to someone challenging
18 it to show that they're not.

19 MS. MILLS: Objection for the
20 record.

21 MS. FAGNILLI: At the end of the
22 trial --

23 MS. MILLS: Objection.

24 MS. FAGNILLI: -- at the end of
25 the trial the plaintiff, Bill Doraty Kia,

1 determined they were not able to do that. The
 2 judge made some very specific findings.
 3 You'll be able to read them. I'm not going to
 4 go through all of them. And to say that the
 5 jury only had two interrogatories or had
 6 four -- they actually had more than that --
 7 it's not relevant to this matter. What's
 8 really relevant is whether or not Elaine
 9 Ridgley made the right decision.

10 And the reason, in the letter that
 11 we submitted to you, we point out paragraph
 12 eight is because there can be some specific
 13 rules in the zoning regulations and there can
 14 be some more general rules, and the point is
 15 that there may be forms of temporary signs
 16 that are allowed, and clearly there are.
 17 There are permits that are issued.

18 Elaine can tell you about how she
 19 does that. There might be a portable sign.
 20 There might be other kinds of things that are
 21 allowed on a temporary basis and they have to
 22 be of a certain character, but inflatables is
 23 not one of them. And the judge's opinion very
 24 clearly states unequivocally inflatables are
 25 not allowed in the township and that's a

1 decision that the township can and has made.

2 MS. MILLS: Objection.

3 MS. FAGNILLI: And unless and
 4 until another court changes that ruling that
 5 is the law. That's the law for the case. And
 6 I suggest to you that you're going to -- and
 7 you really should follow it. The fact of the
 8 matter is there were several claims made. The
 9 jury found on behalf of the township on a
 10 couple of those claims.

11 What you have to understand is
 12 there are several other claims that are out
 13 there and we outlined them in the letter for
 14 you. There's a First Amendment claim that the
 15 jury doesn't hear because the judge threw it
 16 out before it got to the jury. There's a
 17 state claim, there's an injunction claim and
 18 some other things, all of which were decided
 19 in the township's favor. Okay. And that's a
 20 very important --

21 MS. MILLS: Objection.

22 MS. FAGNILLI: -- thing to note.

23 MS. MILLS: Totally irrelevant to
 24 the purposes of this hearing.

25 MS. FAGNILLI: So I submit to you

1 that Section 603(E) is not only constitutional
 2 and it's valid, it is the more specific
 3 provision that says inflatables aren't allowed
 4 in the township and that Inspector Ridgley
 5 made the right decision.

6 Thanks.

7 MS. MILLS: We're going to call
 8 Bill Doraty to the stand so you probably need
 9 to swear him in and then we'll figure out
 10 where he should sit.

11 Bill DORATY
 12 of lawful age, a Witness herein, called for
 13 examination, as provided by the rules of the
 14 Board of Zoning Appeals, being by Mr. Morel
 15 first duly sworn, as hereinafter certified,
 16 testified and said as follows:

17 MR. MOREL: And your name, sir?

18 MR. DORATY: Bill Doraty.

19 MR. MOREL: And your address?

20 MR. DORATY: 4013 Dogleg Trail.

21 MR. MOREL: Thank you.

22 MS. MILLS: Could we just put a
 23 chair right here by the court reporter and
 24 then --

25 MR. MOREL: You can just question

1 him right there. He's right in front.

2 MS. MILLS: Okay. As long as
 3 you're comfortable. David will be --

4 MR. MOREL: It's pretty quiet in
 5 here. Everybody will be able to hear him.

6 MS. MILLS: All right.

7 DIRECT EXAMINATION

8 BY MS. MILLS:

9 Q. We're going to try to cut to the
 10 chase obviously to not keep anyone here very
 11 long. So I'm just going to ask some basic
 12 questions.

13 What was the first month that you
 14 had an inflatable on your roof?

15 A. October 2008.

16 Q. Okay. And what was the first step
 17 that you took with the township in trying to
 18 make sure that there wouldn't be a problem
 19 with that inflatable being on your roof?

20 A. Showed up to the trustees meeting in
 21 late September, early October. I don't know
 22 the exact date. And came before the trustees
 23 and told them that I'd like to put an
 24 inflatable on my roof.

25 They explained to me that the

1 inflatable was not permitted unless there was
2 a text amendment change. And I said, well, I
3 have that in front of me. And they said that
4 is not a text amendment. You need to hire
5 counsel and submit a text amendment that would
6 be properly worded and, you know, that could
7 be inserted into the zoning book.

8 Q. Did any one of the trustees tell you
9 that you could keep the inflatable up in the
10 interim while you worked through this
11 particular process?

12 A. Yes.

13 MS. FAGNILLI: Objection to the
14 line of questioning.

15 BY MS. MILLS:

16 Q. And who was that?

17 A. I had two people actually. I had
18 Rita Holt and -- it was one. Rita Holt I
19 believe.

20 Q. And for a period of time there you
21 weren't receiving --

22 A. I testified to that in court. I'm
23 not sure. It was definitely Rita and I'm not
24 sure if Mike Todd did as well.

25 Q. And during that time frame, though,

1 Bill, you weren't receiving violations, were
2 you, for that particular inflatable?

3 A. At the time --

4 Q. While you're working through this
5 text amendment issue.

6 A. There was a time I started to receive
7 violations and then the violations stopped for
8 a short time.

9 Q. And did you feel comfortable or
10 assured at that period of time that the
11 inflatable could remain on your roof?

12 A. Well, I felt that -- okay. We
13 started the text amendment process. I hired
14 Laribee, Mike Laribee in town here, and he
15 started working with the trustees,
16 specifically Rita Holt.

17 There was some correspondence back
18 and forth. You have those. And probably, you
19 know, have seen some of the e-mails that went
20 back and forth between Mike and Rita. And
21 Rita definitely gave me the feeling that we
22 were going to work through this. They were
23 trying to come up with some language that
24 would be acceptable for both sides.

25 We went -- they went back and

1 forth. I really didn't -- I got the original
2 text amendment started and then they -- to try
3 to cut the back and forth, you know, out of it
4 they tried to get together and tried to
5 present something that was favorable to both
6 sides. So that's how the process started.

7 Q. So from October 2008 until currently
8 you have had an inflatable on your roof?

9 A. Correct.

10 Q. What's the inflatable now?

11 A. A dinosaur, if I'm not mistaken.

12 Q. And who owns the inflatable?

13 A. This guy (indicating).

14 Q. Okay. Just -- I'm sure that they've
15 seen the inflatable, but if you could just
16 explain for the Board actually how it's
17 affixed to your roof. I think that would be
18 helpful.

19 A. The inflatable is affixed with some,
20 what I would consider, steel cable. He has
21 testified that they're aircraft-type material.
22 There are four to eight of them, somewhere in
23 that area.

24 Q. Do you have anything to do with the
25 installation, Bill?

1 A. Zero, none.

2 Q. And what about any maintenance or,
3 you know, if there's a storm coming, do you
4 personally have anything to do with --

5 A. No.

6 Q. -- maintaining the --

7 A. The inflatable-man handles it all.

8 Q. And approximately how often does the
9 inflatable go up or down?

10 A. Once a month it's changed out.

11 Q. When they put the inflatable up,
12 approximately how long does it take?

13 A. You know, honestly I've not been up
14 there when they've done it. I've seen it
15 plugged in and inflate, but it's been
16 testified it takes about a half hour.

17 Q. And what about taking it down?

18 A. Probably quicker than that.

19 Q. What about with weather concerns; are
20 they able to get out there and get it down?

21 A. I always get a weather alert from
22 Inflatable Images that the sign -- or the
23 inflatable could be coming down due to
24 incimate weather.

25 Q. Do you know what the inflatable is

1 made of?

2 A. Some -- it's a fabric. I don't know
3 exactly what they call it, but it's a soft
4 material.

5 Q. Do you feel that it's helped your
6 business?

7 A. Without question.

8 Q. And how; explain for the Board?

9 A. You know, it's a -- we've branded
10 ourselves as the dealership at 18 and 71 with
11 the inflatable. It's -- when people see me in
12 the airport or on the street or anywhere, ball
13 field, I mean, there's clearly conversation
14 about, oh, you're the dealer with the
15 inflatable on his roof. So, yeah, I mean,
16 there's no question that it's -- help people
17 identify who we are.

18 Q. You filled out a temporary sign
19 permit?

20 A. Correct.

21 Q. And why did you do that?

22 A. Because I was -- at the trial, you
23 know, I was told that I didn't take the proper
24 channels, but if I wanted to I could, if I'm
25 not mistaken, you know. It really is the

1 I mean, we talked about the make
2 up of the trustees changed. Yes, there were
3 some times in between where I couldn't make
4 meetings, they couldn't make meetings. I
5 actually got a wrong date, but there was no
6 time in -- during that time nobody did
7 anything to make any type of progress towards
8 this text amendment. It could have been, you
9 know, sliced and diced and handed back to me
10 and said, hey, this isn't going to work.
11 Nothing.

12 Q. You understand, Bill, with the
13 temporary sign permit that you would have to
14 pay \$50 is the current fee schedule?

15 A. Yes.

16 Q. And that you'd have to put down a
17 deposit of \$275?

18 A. Correct.

19 Q. And that every 14 days you'd have to
20 have the inflatable down for at least a 24
21 hour period before the next 14 days can run,
22 correct?

23 A. Correct.

24 Q. And you're willing to do all those
25 things?

1 reason.

2 It's in the testimony. Someone
3 testified that I did not take all the proper
4 channels. But I didn't take the proper
5 channels because I wasn't advised to. When I
6 came before the trustees, they said, Bill, if
7 you want -- if you want to have that
8 permitted, you have to have a text amendment
9 change, and in order to have a text amendment
10 change, you have to bring to us -- create a
11 text amendment.

12 So I did. I hired counsel. I
13 hired Laribee Archer, actually Laribee &
14 Laribee at the time, to create it because I
15 couldn't. Mine was I'd like to have my
16 inflatable. They said, no, you have to have a
17 text amendment created by your attorney. So I
18 did that.

19 Then based on their conversations
20 back and forth we were trying to come up with
21 the proper wording that might satisfy the
22 township, the trustees. Mike Laribee thought
23 what he had was the best thing that he could
24 possibly put together. We submitted that.
25 And then that's when the stonewall started.

1 A. I am.

2 Q. I'm going to hand you what's been
3 marked as Plaintiff's Exhibit 1. Sara, we're
4 getting you a book so -- just ask you to take
5 a look at that, if you would, please. We'll
6 just read this into the record so everybody
7 who doesn't have the book can hear and then
8 we'll leave you a book, John.

9 MR. SLAGTER: Sure.

10 BY MS. MILLS:

11 Q. That first -- Plaintiff's Exhibit 1
12 is that the denial that you received from Miss
13 Ridgley?

14 A. I'm trying to find where it says it
15 was denied. Oh, yeah, okay. "Temporary sign
16 permit cannot be issued for an inflatable
17 device due to the fact that inflatable devices
18 are not allowed in Medina Township per our
19 zoning resolution below." Okay.

20 Q. And then only --

21 A. Doesn't it say that banners and --

22 Q. Well, this is --

23 A. -- temporary signs are not permitted
24 as well?

25 Q. This 603 that's in this particular

1 letter, this is the only denial that you
2 received from Miss Ridgley, right?

3 A. Correct.

4 Q. You never received any denial that
5 605 would not apply, correct?

6 A. Correct.

7 Q. Mr. Doraty, if you will take a look
8 at Exhibit 4 and take a look at actually
9 page --

10 MS. FAGNILLI: What exhibit,
11 Laura?

12 MS. MILLS: Exhibit 4, Sara.
13 We're taking a look at page 8 on the
14 right-hand corner, but it's 1-7 on the bottom
15 in the middle of the page.

16 BY MS. MILLS:

17 Q. Temporary sign. I'm going to read
18 this and then I want you to explain whether or
19 not your inflatable obviously meets this
20 particular definition.

21 "Temporary sign is a sign or
22 advertising display constructed of cloth,
23 canvas, fabric, plywood or other light
24 material and designed or intended to be
25 displayed for a short period of time." Do you

1 Q. And Mr. Majewski's report has been
2 submitted with our appeal documentation that
3 you've seen; isn't that right?

4 A. Correct.

5 MS. FAGNILLI: Objection.

6 BY MS. MILLS:

7 Q. What is your understanding of Mr.
8 Majewski's opinion in regards to temporary
9 signs and the inflatable?

10 MS. FAGNILLI: Objection. It's
11 hearsay.

12 MR. SLAGTER: If I may interrupt,
13 just for the Chair on this issue. There has
14 been some objections flying around and for the
15 most part you've allowed them to continue,
16 which is fine, but there's two things you
17 normally do.

18 One is you sustain it, meaning
19 they would not be able to continue with the
20 line of questioning or you could overrule it
21 and allow them to go forward.

22 MR. MOREL: I would really like to
23 have them both be uninterrupted and let us
24 sort it out.

25 MR. SLAGTER: They need to at

1 see where I'm reading, Bill?

2 A. I do.

3 Q. Okay. Is there any reason why the
4 inflatable on your roof would not meet that
5 definition?

6 A. No.

7 Q. And we're going to take a look right
8 above that, same page, where it says "Portable
9 sign is a sign that is not permanent, affixed
10 to a building, structure or the ground." Do
11 you see where I'm reading?

12 A. I do.

13 Q. An inflatable is never permanently
14 affixed to the structure, is it?

15 A. No.

16 Q. So as you understand it, Bill, was
17 there any reason that you felt you could not
18 receive a temporary sign permit for your
19 inflatable?

20 A. No.

21 Q. Okay. Have you hired any consultants
22 to actually look at that particular issue?

23 A. Yes.

24 Q. Okay. And who did you hire?

25 A. Majewski.

1 least -- for the record they will be
2 objecting, though, and they will be saying the
3 reasons why at times, if it's not obvious.
4 This one is the fact that they say that
5 there's hearsay, meaning that they're making
6 comments about what someone else said that's
7 not necessarily here.

8 MR. MOREL: Right.

9 MR. SLAGTER: And there's some
10 exceptions to it or otherwise. You know, you,
11 as you look at that, the issue is, if you
12 allow that type of hearsay in, you need to
13 make sure that on both sides it's fair. There
14 is some case law that talks as long as you're
15 fair in doing it, you know, that's okay and
16 that's -- ultimately that's your decision and
17 your call on it.

18 MR. MOREL: Yeah. I feel more
19 comfortable if both attorneys speak and nobody
20 interrupts here, don't interrupt there and I
21 think the Board is smart enough to figure out
22 how it applies to this, you know, and I
23 understand.

24 MR. SLAGTER: Okay. Okay. Sure.

25 MS. MILLS: Thank you.

1 MR. SLAGTER: I guess then as long
2 as you're allowing it to continue. If it
3 becomes an issue, you can stop and we can talk
4 about it.

5 MR. MOREL: Okay.

6 MR. SLAGTER: They're allowing you
7 to continue, so I imagine it's overruled.

8 MS. MILLS: Yes, I would say
9 that's the consensus.

10 MR. SLAGTER: Sure.

11 BY MS. MILLS:

12 Q. Bill, what was your understanding of
13 Mr. Majewski's opinion as it related to your
14 inflatable being a temporary sign?

15 MS. FAGNILLI: Objection.

16 THE WITNESS: Well, I don't have
17 the report in front of me to read what he
18 said, but if you look in there I got the
19 impression that he felt that inflatables and
20 temporary signs, there was a consistent manner
21 where the -- one was allowed, they both should
22 have been allowed.

23 And he was an expert in the, you
24 know, in this field and how could you have --
25 how can you say all these things: A sign, a

1 banner, a temporary sign, an inflatable are
2 not allowed and then let three out of the four
3 permissible with a fee and a deposit?

4 BY MS. MILLS:

5 Q. Bill, I'm going to direct your
6 attention to Plaintiff's Exhibit 1, which was
7 submitted to the BZA with the appeal, and if
8 you take a look right after the picture of the
9 eagle inflatable, which is the best marking
10 system I can give you here --

11 A. Okay. Wait a minute. Page before
12 that?

13 MR. WEST: This is not something
14 we have in front of us?

15 MS. MILLS: Yes, you do and you
16 will in that binder at the conclusion. But
17 this would --

18 MR. WEST: So there is a binder
19 which contains everything you're talking about
20 that we'll see later?

21 MS. MILLS: Yes, Mr. West, you'll
22 have it.

23 MR. WEST: Okay.

24 MS. MILLS: But it was also
25 attached with the original appeal. It was the

1 long letter you didn't want to read into the
2 record --

3 MR. WEST: Right.

4 MS. MILLS: -- which I was
5 perfectly thrilled with that.

6 MR. MOREL: You ended it by Mr.
7 Majewski. It was 13 pages.

8 MR. WEST: Yeah. I just don't see
9 the eagle yet.

10 MR. SLAGTER: It's the last --

11 MR. MOREL: Thirteenth page. Here
12 it is. Remember, you referred to it when you
13 read it.

14 MR. WEST: Uh-huh.

15 MR. BECKER: Pages 12 and 13.

16 MS. FAGNILLI: For the record, Mr.
17 West, I don't think it was presented with your
18 original application. It wasn't in the one we
19 got either.

20 MR. WEST: I just want to be sure
21 we're all looking at the same thing.

22 MS. MILLS: Oh, yes, thank you.

23 MR. WEST: Okay. Go ahead.

24 BY MS. MILLS:

25 Q. We are on Plaintiff's Exhibit 1. I'm

1 asking you to take a look at that particular
2 February 2011 letter. Have you see that
3 before?

4 A. Yes.

5 Q. And what is that?

6 A. That is the findings from Majewski,
7 if I'm not mistaken.

8 Q. And you hired Mr. Majewski; did you
9 not?

10 A. Correct.

11 Q. And would you take a look at page 12
12 of that particular expert report.

13 A. Okay.

14 Q. Since I don't have it in front of me
15 I'm really stretching. Might have to lean
16 over your shoulder.

17 Taking a look at page 12 in that
18 section is inflatable signs. Just take a
19 moment to read that and see if that was, in
20 fact, your understanding of Mr. Majewski's
21 opinion in regards to inflatables.

22 A. Should I read it aloud?

23 Q. Yes, you may.

24 MS. FAGNILLI: Objection.

25 MS. MILLS: It will be admitted

1 into the record, Sara.

2 THE WITNESS: "Inflatable signs as
3 temporary signs. We note that temporary signs
4 are permitted to be constructed of cloth,
5 canvas, fabric, plywood or other light
6 material and designed or intended to be
7 displayed for a short period of time.
8 Inflatable signs comply with this definition
9 of temporary signs." Continue or that's it?
10 That's probably good.

11 MS. MILLS: That's fine. Thank
12 you.

13 Bill, I have no further questions.

14 MR. MOREL: Do you have anything
15 further?

16 MS. MILLS: I will but I'm going
17 to let her question Bill if you think that's
18 appropriate. We can move this over.

19 MR. MOREL: Go ahead.

20 MS. FAGNILLI: I'm going to do it
21 from right here. It's fine.

22 CROSS-EXAMINATION

23 BY MS. FAGNILLI:

24 Q. Mr. Doraty, how long -- start over
25 again.

1 You've had inflatables up since
2 October of 2008, correct?

3 A. Correct.

4 Q. And how long are each one of those
5 inflatables up?

6 A. Thirty days, approximately.

7 Q. Okay. And you said there's still one
8 up today?

9 A. Correct.

10 Q. Okay. Miss Mills' letter on your
11 behalf was dated, I think you said, May 27th,
12 correct?

13 A. Which letter?

14 Q. The letter appealing to the Board,
15 the denial of the zoning permit.

16 A. I don't have the date in front of me
17 but if you have it.

18 Q. I do. I think it was your Exhibit 1
19 in front of you.

20 MR. WEST: Yes, it's the 27th.

21 THE WITNESS: Okay. Yes.

22 BY MS. FAGNILLI:

23 Q. Did you have an opportunity to read
24 the opinion issued by Judge Nugent?

25 A. Yes.

1 Q. And you understand clearly from Judge
2 Nugent's opinion that inflatables are not
3 permitted in the district, do you not, in the
4 township?

5 MS. MILLS: Objection.

6 THE WITNESS: No.

7 BY MS. FAGNILLI:

8 Q. You don't understand that. Okay.
9 You were told -- you testified when you came
10 to the trustees that you were told that
11 inflatables were not permitted in the
12 township; isn't that what you told us?

13 A. That is correct under 603(E), yes.

14 Q. Okay. That's what you were first
15 told?

16 A. Correct.

17 Q. Rita Holt, you claim, told you you
18 could keep it up any way. You were also told
19 at that time that you'd probably be cited if
20 you kept an inflatable on your roof or put one
21 up. Were you not told that?

22 A. Correct.

23 Q. Okay. And, in fact, I think you
24 testified at trial, if my memory is correct,
25 that Mike Todd told you you'd probably be

1 cited; one of the township trustees, correct?

2 A. Correct.

3 Q. And, in fact, you put inflatables on
4 your roof and you were issued notices of
5 violation, correct?

6 A. Correct.

7 Q. Okay. And federal court has told us
8 that 603(E) is perfectly valid, correct?

9 A. I don't know if I agree with that.

10 Q. You don't agree with that?

11 A. I'm saying I don't know if I agree
12 with that, Sara.

13 Q. Did you read the opinion?

14 A. I did.

15 Q. Does it say in there that 603(E) is
16 unconstitutional in any fashion?

17 A. I don't believe so.

18 MS. MILLS: Objection.

19 BY MS. FAGNILLI:

20 Q. Well, did it say in there, in fact,
21 that 603(E) is a valid regulation; does it
22 not?

23 A. I believe so, yeah.

24 Q. Okay. Did Mr. Majewski testify at
25 trial?

1 A: He did not. Yeah, he did.
 2 Q: He did?
 3 A: It was your expert. Ours did, yes.
 4 Q: He answered about four questions,
 5 didn't he?
 6 MS. MILLS: Objection.
 7 THE WITNESS: I don't recall how
 8 many questions he answered.
 9 BY MS. FAGNILLI:
 10 Q: Okay. You have other signage at your
 11 building, do you not, that would be considered
 12 temporary signage?
 13 A: Yes..
 14 Q: And you testified at the trial that,
 15 in fact, you had other signage at your
 16 facility, Bill Doraty Kia, that's temporary
 17 signage for which you have never applied for a
 18 permit, correct?
 19 A: I believe so.
 20 Q: Okay. For example, the window shades
 21 with the Kias on the windows?
 22 MS. MILLS: Objection.
 23 BY MS. FAGNILLI:
 24 Q: Those are temporary signs, as you
 25 testified at trial, that you have that you

1 didn't apply for a permit for, correct?
 2 A: I don't recall if I said that those
 3 were or were not, but we can certainly go back
 4 to that and find out.
 5 Q: Okay. And you could have at any time
 6 applied for permits for those temporary signs
 7 and you've never done that, have you?
 8 A: I don't recall if that's what I said.
 9 Q: I'm asking whether or not you've ever
 10 applied for a temporary sign permit for any of
 11 those other signs.
 12 A: No, I don't believe so.
 13 MS. FAGNILLI: Nothing further.
 14 Thank you.
 15 MR. MOREL: Thank you.
 16 (Witness excused.)
 17 MS. MILLS: If we could call Mr.
 18 Scherba to the stand and I guess he can stay
 19 put.
 20 DAVID SCHERBA
 21 of lawful age, a Witness herein, called for
 22 examination, as provided by the rules of the
 23 Board of Zoning Appeals, being by Mr. Morel
 24 first duly sworn, as hereinafter certified,
 25 testified and said as follows:

1 MR. MOREL: Your name, sir.
 2 MR. SCHERBA: David Scherba.
 3 MR. MOREL: And address, please.
 4 MR. SCHERBA: 7231 Valleyview
 5 Road, Hudson, Ohio 44236.
 6 MR. MOREL: Thank you.
 7 DIRECT EXAMINATION
 8 BY MS. MILLS:
 9 Q: Mr. Scherba, you are one of the
 10 owners of Scherba Industries; is that correct?
 11 A: Yes.
 12 Q: Who's the other owner?
 13 A: My brother Bob.
 14 Q: And how long have you owned Scherba
 15 Industries?
 16 A: My brother Bob and I started it in
 17 1982. So we're just about ready to start our
 18 thirtieth year of manufacturing inflatables.
 19 Q: And just briefly, so that the Board
 20 can get an idea, how many inflatables do you
 21 manufacture in your opinion?
 22 A: Yearly I would say somewhere -- we
 23 manufacture somewhere around two to 3,000 per
 24 year in our Cleveland, actually Brunswick,
 25 Ohio facility. And we also import somewhere

1 around 100,000 inflatables that we direct to
 2 be manufactured by a sister manufacturing
 3 facility of ours in China. And then we also
 4 have a small manufacturing facility in
 5 California where we probably manufacture
 6 several hundred a year.
 7 Q: So you've been doing this for 30
 8 years?
 9 A: Yes.
 10 Q: Obviously manufacture quite a bit in
 11 a given year. Can you just name, you know,
 12 maybe your top five customers, David, just so
 13 they have an appreciation.
 14 MS. FAGNILLI: Objection.
 15 THE WITNESS: Well; one of our
 16 clients would be the National Football League,
 17 National Hockey League. We do a lot of work
 18 with the United States Military manufacturing
 19 actual decoys that are used on the
 20 battlefield, as well as with training of our
 21 military personnel.
 22 We do work with just about every
 23 major bottler, whether it be adult beverage or
 24 non-adult beverage. So Anheuser Busch,
 25 Coca-Cola, Pepsi. We service a lot of fast

1 food feeders: McDonald's, Burger King,
2 Wendy's. So pretty much every Fortunate 500
3 company that you could name we've probably
4 done some business with over the last 30
5 years.

6 Q. And you're more of the marketer,
7 sales piece of Scherba Industries and your
8 brother is more of the manufacture, creative
9 --

10 A. That's correct.

11 Q. -- idea guy?

12 A. That's correct.

13 Q. And you obviously provide temporary
14 rentals of your inflatables?

15 A. Yes, we do. That's actually the way
16 we started our business in 1982 is we were hot
17 air balloonists and that's how we started our
18 expertise in the cut and sew, if you will,
19 manufacturing arena. We got our hot air
20 balloon and we actually flew it underneath a
21 temporary or not a temporary but an
22 experimental FAA license. And I'm sorry.
23 What was the question?

24 Q. Just whether or not you lease
25 temporary inflatables.

1 up so --

2 Q. Okay. Just briefly, and Bill did a
3 very good job describing it, but can you just
4 briefly explain for the Board how the
5 inflatable is affixed to Bill's roof.

6 A. Well, when we put an inflatable on a
7 roof, we anchor it down with anywhere between
8 12 and 16 anchor straps depending on the size
9 and shape of the inflatable. In Bill's case
10 we use an aircraft-rated stainless steel
11 braided cable. These things have a crazy burr
12 strength of 5,000 pounds or something like
13 that. Those are then anchored to the
14 inflatable and then down to the roof into eye
15 bolts that are imbedded into the building.

16 That's the way we've been doing
17 this for 30 years. Proud and happy to say,
18 and I'm sure my Westfield Insurance Company is
19 as well, that we've never had a claim as it
20 relates to inflatable advertising balloons for
21 damage to a building or passerby. They're
22 designed that in high winds they come down.
23 In most cases, though, we have a weather watch
24 system where our guys come out and take them
25 down.

1 A. Oh, so we started making inflatables
2 and renting them. So that was our first. We
3 weren't really a manufacturer per se at the
4 beginning. We made them and started renting
5 them throughout northeast Ohio. Our factory
6 was right on the border of Cleveland and Parma
7 and we started out of our garage.

8 So we really built our business
9 based on that rental portion of the business
10 and then grew it into what it is today, which
11 is a manufacturing facility in northern Medina
12 County of 70,000 square feet and we employ a
13 little over a hundred people.

14 Q. And, in fact, you had provided a
15 temporary inflatable for the city of Medina
16 just in the last week or so?

17 A. We do that quite often. This one
18 happened to be for their bee festival at the
19 library. So we had an inflatable up there. I
20 believe it was this past weekend, yes.

21 Q. Any problems with putting the
22 inflatable in the city of Medina?

23 A. No, not at all. They let it go up.
24 You know, again, it's, you know, if it suits
25 their, I guess, plan, then they will let it go

1 Q. And, Mr. Scherba, is the structure
2 that you've just described meant to
3 temporarily affix this particular inflatable?

4 A. That's correct, yes.

5 Q. It's not a permanent structure?

6 A. No, you know, most inflatables that
7 we put up, we put them up on the building
8 knowing that they're going to come down, you
9 know, by our choice, whether it be in 10 days
10 or 30 days or whatever length of time the
11 promotion would be run.

12 Q. And I think you've also testified
13 before, but if you could explain today that a
14 lot of times you just leave the blower on the
15 roof so it's there and convenient and ready to
16 put the inflatable up; is that correct?

17 A. Occasionally, you know, in the case
18 if we're switching out inflatables, typically
19 we use the same blowers. So if we were to
20 switch out an existing inflatable for another
21 one, we would -- our installers would come,
22 they put the ladder up against the building,
23 they would take the new inflatable up, deflate
24 the old inflatable, harness in the new
25 inflatable, turn the blower back on and away

1 you go and so that whole process would take
2 somewhere around an hour from start to finish
3 to, you know, change out an inflatable. If we
4 were removing it permanently, 30 minutes.

5 Q. And what about just to put it up?

6 A. If it's a first time install, it's
7 going to take about an hour and a half. The
8 next time it's much easier because your anchor
9 points are already on the building, we already
10 know where the power's coming from. All of
11 that stuff has already been, you know,
12 predone.

13 Q. Has anyone ever called the inflatable
14 that you manufacture a temporary sign?

15 A. Yeah. As it relates to our rentals,
16 every city that we are able to pull a permit
17 for it's under temporary sign permit. There's
18 no -- I have never run across, in any of the
19 cities that I do business with here in
20 northeast Ohio, something called an inflatable
21 permit. It's always -- we're always calling
22 it a temporary sign permit.

23 Q. And can you describe for the Board
24 what the actual material is of an inflatable?

25 A. Yeah. It's an eight ounce

1 vinyl-coated polyester. Take one and pass it
2 on, if you like; back in high school. And
3 that's the same material that we would use if
4 we were going to manufacture, for example, a
5 banner that --

6 Q. Okay.

7 A. -- you would put out in front of your
8 business, either it's affixed to your building
9 or, you know, poles or anything like that.

10 Q. Well, and that brings up an
11 interesting question. I'm going to look here
12 and you're going to have to give me a moment.
13 But I'm going to hand -- I'm going to hold up,
14 just for purposes of you continuing to talk,
15 this particular picture of a banner. It says
16 register now for summer dance classes. If
17 everybody can see that.

18 MS. FAGNILLI: What exhibit is it,
19 Laura?

20 MS. MILLS: It is not an exhibit.
21 We're going -- it is an exhibit in form. You
22 will see the actual permit for this banner,
23 but for this, purposes of the picture, just to
24 allow David to keep talking.

25 BY MS. MILLS:

1 Q. Do you see that particular --

2 A. I do.

3 Q. Did you manufacture that banner?

4 A. I did.

5 Q. Do you know where that banner was
6 placed?

7 A. It was put on -- in the front of a
8 business called Dance Excel. I can't give you
9 the exact address, but it's on Route 18 just
10 west of Bill Doraty. I think it might be even
11 west of Interstate 71, but there's a Mexican
12 restaurant there. There's a liquor store; so
13 you get an idea of that little strip mall over
14 there.

15 Q. I'm going to ask you to take a look
16 at Plaintiff's Exhibit 6, Sara.

17 MS. FAGNILLI: Thank you.

18 BY MS. MILLS:

19 Q. That first page, do you know who Greg
20 Koch is?

21 A. Oh, I'm sorry. Where are we looking?

22 Q. Very first page of Plaintiff's
23 Exhibit 6.

24 A. Yeah, Greg Koch.

25 Q. Yes. And who is that?

1 A. He, I believe, is one of the owners
2 of Dance Excel. If he's not an owner, he's
3 someone who works there.

4 Q. Name of the business on sign: It
5 says Dance Excel, correct?

6 A. Yes.

7 Q. You've seen this particular form
8 before; isn't that right?

9 A. Yes.

10 Q. Okay. And what was this form for?

11 A. This apparently was filled out by
12 Greg to get a temporary sign permit or zoning
13 sign permit for that particular banner.

14 Q. Okay. If we take a look at the third
15 page of the same exhibit, it says register now
16 for summer dance classes. Do you see that?

17 A. Yes.

18 Q. And that is the color photo that we
19 have tried to hand hold up for everyone to
20 see. And you, in fact, manufactured the
21 banner; is that right?

22 A. Yes, I did.

23 Q. And throughout this entire form, and
24 the Board will be able to look at the
25 particular binder as you convene, but you have

1 referred to it as a banner through your work
2 orders and through everything you've done; is
3 that correct?

4 A. Yeah. I think, you know, generally
5 if someone would take a look at a piece of
6 material that has print or artwork or some
7 sort of graphic design on it I would say most
8 people would call that a banner.

9 Q. Now, the material for that banner, is
10 it similar in nature to the material that we
11 have just handed out for the Board?

12 A. Yes, that's correct. It could -- the
13 banner we may have made out of a little bit
14 heavier material, you know. That particular
15 material is eight ounce per square yard. So
16 if you weigh a square yard of it, it's going
17 to be eight ounces. The banner material we
18 may have upped it to an 18 ounce material just
19 because it's not supported by very much. We
20 don't like it to rip.

21 So, you know, that would be akin
22 to, let's say, a truck tarp, you know. It's
23 going to be a little bit heavier but the same
24 material basically. It's a vinyl-coated
25 polyester.

1 Q. And this Dance Excel I know that you
2 couldn't give an exact address, but now that
3 you're looking at Exhibit 6, 3583 Medina Road.
4 Does that kind of trigger your memory --

5 A. Yeah.

6 Q. -- that this particular banner --

7 A. Yes.

8 Q. -- is in Medina Township?

9 A. I'm looking at it now, yes.

10 MS. MILLS: I have no further
11 questions.

12 CROSS-EXAMINATION

13 BY MS. FAGNILLI:

14 Q. You said this is the same material
15 but heavier as the inflatables?

16 A. Yeah. I can't speak exactly, but I
17 would guess that we may have made it heavier.
18 I would have to go back.

19 Q. So a different weight?

20 A. Yeah, it would be slightly heavier.

21 Q. Okay. And the picture that you have
22 shown here on this exhibit, is this that sign
23 in front of the building where you sold it to
24 the Dance Excel place?

25 A. Yes.

1 Q. Or is that at your place?

2 A. No, that was taken out in front of
3 Dance Excel on Route 18. Okay.

4 Q. And does your company or did your
5 company install that sign?

6 A. No.

7 Q. Who installed it; do you know?

8 A. I do not know.

9 Q. Do you just sell it to the company?

10 A. Yes.

11 Q. Okay. And do you sell the supports
12 that hold it up as well?

13 A. No. I do but we didn't sell these.

14 Q. You didn't sell it to these guys. So
15 you just sold them the sign itself that says
16 register now for summer dance classes?

17 A. Well, I sold them a banner, yeah.

18 Q. You call it a banner.

19 A. Well, so did the client.

20 Q. Okay. But you know from being at the
21 trial that it's a temporary sign, correct?

22 A. It's a temporary sign in the form of
23 a banner.

24 MS. FAGNILLI: Thank you. I have
25 no further questions.

1 (Witness excused.)

2 MS. MILLS: We would call Elaine
3 Ridgley to the stand.

4 ELAINE RIDGLEY

5 of lawful age, a Witness herein, called for
6 examination, as provided by the rules of the
7 Board of Zoning Appeals, being by Mr. Morel
8 first duly sworn, as hereinafter certified,
9 testified and said as follows:

10 MR. MOREL: And your name.

11 MS. RIDGLEY: Elaine Ridgley, 420
12 Heather Lane, Medina, Ohio 44256.

13 MR. MOREL: Thank you.

14 MS. MILLS: Sara, can you share
15 your binder over there?

16 MS. FAGNILLI: Sure. Laura,
17 excuse me, does this go in with that Exhibit
18 6?

19 MS. MILLS: I don't know that I'll
20 enter it. If we -- you can keep it and if we
21 enter it into the record -- I'm going to keep
22 talking about it.

23 MS. FAGNILLI: Did you mark it or
24 no?

25 MS. MILLS: I did not mark it.

DIRECT EXAMINATION

BY MS. MILLS:

Q. Elaine, would you please turn to Plaintiff's Exhibit 5. And you have seen this form before, correct?

A. Yeah.

Q. We've talked about it quite a bit. This particular sign permit was actually the temporary sign permit that had been in place until I deposed you. Is that fair to say?

A. Yes.

Q. Okay. And I think before trial you told me that it could be at least 10 or 11 years that that temporary sign permit had the word "banner" on there?

A. I told you that I couldn't be sure.

Q. Okay. You said it was at least 2004. Do you recall that?

A. Yeah.

Q. Okay. So, I mean, we're somewhere in at least seven years, if not greater, correct?

A. Sure.

Q. Okay. And this particular exhibit that says banner temporary was the Medina Township temporary sign permit that was used;

A. And \$250 deposit.

Q. Okay. So you put the \$250 deposit down and then you pay the \$50 for what, under this form, was a banner?

A. Correct.

Q. Okay. And then I took your deposition.

A. Uh-huh.

Q. And we pointed out the word "banner," correct --

A. Yes.

Q. -- on the form?

MS. FAGNILLI: Hold on a second, Laura. You have to talk so she can hear you.

MS. MILLS: Oh, okay.

MS. FAGNILLI: Thanks.

BY MS. MILLS:

Q. I pointed out the word "banner" on the form to you, correct, during your deposition?

A. I'm not sure if you did or not.

Q. Okay. You testified at trial that until I took your deposition you didn't realize that the banner was on the temporary sign --

isn't that correct?

A. Yeah.

Q. Okay. And you also told me at trial, and I assume that would be your testimony today, that if someone came into the township and they obviously saw this form and the schedule of fees that said banner, they would think that they could pay \$50 and put their banner up --

A. Today?

Q. -- by virtue of this form?

A. Today?

Q. No. While this form existed. While this form existed, if you walked in the township and you looked at the schedule of fees and you pulled this temporary sign permit, you would think you could have a banner?

MS. FAGNILLI: Objection, speculative.

BY MS. MILLS:

Q. So you testified?

A. Yeah.

Q. Okay. And in this particular form all you had to do was pay the \$50, right?

A. Correct.

Q. -- correct? Okay. And then you went through some process to try to change the form, correct?

A. Correct.

Q. Okay. But what we did and I want to take a look at -- if you would look at Plaintiff's Exhibit 6 for me, which is what we just looked at for the Dance Excel banner, correct?

A. Correct.

Q. Okay. This particular form is the same, other than there's something blocked out next to the word "temporary"; isn't that correct?

A. Yes, it is.

Q. So the word was "banner." You guys just blackened it out, right?

A. Correct.

Q. Okay. Used the same form just so that you felt you were in some type of compliance or what was the basis of blackening out the banner?

A. We've never permitted banners. We've always permitted temporary signs and until you

1 brought it to my attention that's why that's
 2 blacked out.
 3 Q. Let's talk about posters for just a
 4 moment.
 5 A. Okay.
 6 Q. Okay. 603(E) and let's go to Article
 7 VI, if we can. Article VI is Plaintiff's
 8 Exhibit 3. We're looking at 603(E). Posters
 9 are not permissible, correct?
 10 A. Hang on a second. Let me make sure
 11 I'm where you're at.
 12 Q. Page 2-2 in the middle. We're in
 13 Article VI, Plaintiff's Exhibit Number 3.
 14 MS. FAGNILLI: Ask again, Laura.
 15 I don't think --
 16 BY MS. MILLS:
 17 Q. Okay. Plaintiff's Exhibit 3, page
 18 2-2. I'm looking at 603(E) the infamous
 19 movement section.
 20 A. Got it.
 21 Q. Got it. Okay. Posters aren't
 22 permissible under that section; is that
 23 correct?
 24 A. Correct.
 25 Q. Okay. And it says banners, correct?

1 A. Correct.
 2 Q. This is the only code section in the
 3 entire Medina Township Resolution that has the
 4 word "inflatable" to your knowledge; isn't
 5 that correct?
 6 A. No. Under sign, the definition of a
 7 sign, there's inflatable.
 8 Q. Okay. But as far as regulation here,
 9 this is the only one you're aware of 603(E);
 10 is that correct?
 11 MS. FAGNILLI: Objection. She
 12 just said no.
 13 BY MS. MILLS:
 14 Q. She said no, other than the
 15 definition.
 16 Is there any other regulation in
 17 the entire Medina Township book in regards to
 18 inflatables?
 19 A. No.
 20 Q. Okay. In this particular section you
 21 already testified it addresses banners and
 22 posters, correct?
 23 A. Correct.
 24 Q. But posters are permissible, aren't
 25 they?

1 A. On billboards.
 2 Q. On billboards. And why are they
 3 permissible on billboards? And if you need
 4 to, the definitions are in Plaintiff's Exhibit
 5 4.
 6 MS. FAGNILLI: Objection. This
 7 has nothing to do with this.
 8 BY MS. MILLS:
 9 Q. It really does.
 10 A. We allow posters on billboards.
 11 Q. Okay. And you allow posters on
 12 billboards because it's defined in the
 13 definition. It is defined as outdoor
 14 advertising; is that correct?
 15 A. Uh-huh.
 16 Q. Okay. And, in fact, at trial you
 17 told me that the definition for poster
 18 supersedes 603(E) which makes it allowable;
 19 isn't that correct?
 20 A. We don't allow posters. We allow
 21 posters on billboards.
 22 Q. Okay. When I asked if it was your
 23 testimony that the definition of outdoor
 24 advertising supersedes what we see in 603(E),
 25 which says no posters, you told me at trial

1 that that was true. You needed to go to the
 2 definition. Is that still your testimony
 3 before the Board?
 4 A. Yes.
 5 Q. Yes. So that definition supercedes
 6 603 at least in regards to posters, correct?
 7 A. Yes.
 8 Q. Okay. And banners, like we have here
 9 for Dance Excel, as long as we call them
 10 temporary signs are permissible under the
 11 temporary sign provision, correct?
 12 MS. FAGNILLI: Objection.
 13 BY MS. MILLS:
 14 Q. Isn't that correct?
 15 A. We allow temporary signs, yes.
 16 Q. And let's take a look at the
 17 definition for temporary signs, if we can.
 18 That is in Plaintiff's Exhibit 4 and we are at
 19 page 1-7 in the middle.
 20 "Temporary sign is a sign or
 21 advertising display constructed of cloth,
 22 canvas, fabric, plywood or other light
 23 material and designed or intended to be
 24 displayed for a short period of time"; is that
 25 correct?

1 A. Yes.

2 Q. Okay. And, in fact, you testified
3 for me previously, Elaine, that there is no
4 regulation as to the size of that temporary
5 sign; isn't that correct?

6 A. Correct.

7 Q. Okay. So it can be any size, it just
8 has to meet this particular definition,
9 correct?

10 A. Correct.

11 Q. Okay. And, in fact, the inflatable
12 meets that particular definition. You admit
13 that. It's just you're relying on Section
14 603; isn't that correct?

15 A. Absolutely.

16 Q. I want to talk about the Mexican
17 banner we had talked about previously.
18 They're the ones that every 14 days they take
19 the banner down or temporary sign, as you
20 refer to it, and they leave it down for 24
21 hours and then they put it immediately back
22 up; is that correct?

23 A. That's only during Cinco de Mayo they
24 did that.

25 Q. Okay. But I think you said that they

1 inflatables, they're permissible; are they
2 not?

3 A. Pardon me?

4 Q. Residential inflatables, they're
5 permissible; are they not?

6 A. Yeah.

7 Q. Regardless of their size; isn't that
8 correct?

9 A. Yeah.

10 MS. MILLS: Thank you. I have no
11 further questions.

12 MS. FAGNILLI: Better to do it now
13 and be done. Let me ask you just a couple of
14 follow-up questions.

15 CROSS-EXAMINATION

16 BY MS. FAGNILLI:

17 Q. The sign that Miss Mills is talking
18 about, the Mexican sign, although I think she
19 tried to trick you by calling it a Mexican
20 banner, what is it; describe it for us.

21 A. It's a temporary sign. It is
22 attached. Temporary sign attached by four
23 corners.

24 Q. Does it look like this Dance Excel
25 sign?

1 had it kind of down to a science. They knew
2 exactly when they needed to get that
3 banner/temporary sign down; is that fair to
4 say?

5 A. No.

6 Q. Okay. They left it down for the 24
7 hours and they put it immediately back up for
8 another 14 days and all they had to do was pay
9 the 50 bucks; is that right?

10 A. They have to bring in a new check for
11 \$50 and a new check for \$250 deposit.

12 Q. Well, the deposit just stays with
13 you, you just don't release it?

14 A. No.

15 Q. No. You release that and bring a new
16 one in?

17 A. For the auditors a new one has to be
18 brought in.

19 Q. But as long as they take it down
20 every 14 days, they can have that Mexican
21 banner up the entire year; isn't that correct;
22 if every 14 days they take it down for 24
23 hours?

24 A. Yeah.

25 Q. And just briefly on the residential

1 A. Yes, it does.

2 Q. And does this Dance Excel sign that
3 you see in what's been marked plaintiff's
4 exhibit attached at four corners?

5 A. Yes, it is.

6 Q. Explain for us how that's attached.

7 A. It has the poles and it is -- they
8 had it attached with some type of strapping on
9 all four corners.

10 Q. Is a banner attached like this or is
11 it different?

12 A. A banner is different than a
13 temporary sign. A banner is on a stick and is
14 attached at the bottom and the top. That's a
15 banner.

16 Q. On two sides or four -- or two sides
17 or one? I'm sorry.

18 A. It's just on one side, one pole
19 attached to the upper and the lower part of
20 it.

21 Q. The inflatable Miss Mills referred to
22 in the residential area, she asked you if
23 they're permitted regardless of size.

24 A. Yeah.

25 Q. You said yes. Why is it they would

1 be permitted?

2 A. In a residential area -- in a
3 business it's considered a sign. In a
4 residential area it is not considered a sign.

5 When a resident has an inflatable
6 up, a santa or a witch, it is not attracting
7 attention to that place. Now, if, say, the
8 house is Betty and she has a bakery and she
9 has a big cupcake out front, then that would
10 be cause for a violation and that would be one
11 that we need to -- because it's attracting
12 attention to that home or to like the actual
13 business that she's conducting.

14 Q. When somebody applies for a temporary
15 sign, how long are they allowed to keep it up?

16 A. A temporary sign is 14 days.

17 Q. And I think you just testified a
18 moment ago a new application is required each
19 time they want to use one of those 14 day
20 periods?

21 A. Correct.

22 MS. FAGNILLI: I have nothing
23 further. Thank you.

24 MR. MOREL: Thank you.

25 MS. MILLS: Just briefly, just two

1 A. Yes.

2 Q. If you walk in a high school gym and
3 you see a championship, because that
4 particular team won a championship, would you
5 call that a championship banner or
6 championship temporary sign?

7 A. I don't know what you're talking
8 about.

9 Q. Well, I don't understand how these
10 two posts seem to make it a temporary sign and
11 not a banner.

12 MS. FAGNILLI: Objection.

13 THE WITNESS: It's connected to
14 four corners. That's what I consider a
15 temporary sign. If it's connected to one
16 pole, just up and down, it's a banner.

17 BY MS. MILLS:

18 Q. But at least for seven years it was
19 defined as a banner on the township form,
20 correct?

21 A. Just a word "banner."

22 MS. MILLS: Thank you. Nothing
23 further.

24 (Witness excused.)

25 MS. MILLS: If we can just have a

1 questions just for follow-up.

2 REDIRECT EXAMINATION

3 BY MS. MILLS:

4 Q. Elaine, you were describing how these
5 posts need to be on either side, that's your
6 -- that's how you're differentiating between
7 the banner and the temporary sign now,
8 correct?

9 A. Yes.

10 Q. Okay. But there isn't any type of
11 definition anywhere that exists in the entire
12 Medina Township Resolution that says these two
13 posts allow you to pay the 50 bucks and get
14 the permit, right? I mean, there isn't
15 anything in the code that says that?

16 A. No.

17 Q. No. And, in fact, after your
18 deposition you went to the dictionary and
19 started to try to figure out the difference
20 between a banner and temporary sign; isn't
21 that fair to say?

22 A. We went to the dictionary?

23 Q. You said you started to look it up,
24 started looking in the dictionary to see what
25 a banner was.

1 presentation, kind of a summation.

2 MR. SLAGTER: At the end.

3 MS. MILLS: Yeah, we are at the
4 end.

5 MR. MOREL: Does anyone have
6 anything pertinent to add? I told you guys
7 I -- okay.

8 MS. MILLS: Just briefly.

9 MR. MOREL: Yes, please.

10 MS. MILLS: Thank you.

11 All right. We apologize. We
12 tried to be as brief as possible tonight and
13 it's warm in here but obviously --

14 MR. MOREL: It's a big issue, you
15 know. We want everybody to have ample time,
16 you know. There's a lot to digest here so,
17 you know, it is what it is.

18 MS. MILLS: Well, I appreciate it.
19 We want to narrow the issues, you know,
20 obviously we were talking about residential
21 inflatables being permitted and that goes more
22 to the constitutional argument.

23 It is really a matter of taking a
24 look at 603, taking a look at the definitions
25 in Article II and taking a look at 605. And

1 605 we believe is very critical because it
2 talks about temporary signs, portable signs
3 and then when you go to those definitions to
4 see what that is, it defines an inflatable to
5 a T.

6 So as you heard the testimony from
7 Elaine, and from anyone that's ever discussed
8 this, an inflatable meets the temporary sign
9 definition. I mean, I think that that is
10 completely undisputed. It's canvas. It's a
11 fabric. It's portable. It's up for a
12 temporary period of time. There's no
13 question.

14 The only question is whether or
15 not, in Elaine's determination, 603 prevents
16 Bill from having his temporary sign permit.
17 And what we're saying is don't go cite the
18 poor Mexican banner people or the Dance Excel
19 people or any of the other individuals that
20 have utilized the banner temporary sign permit
21 for, I think, at least ten years in this
22 particular township, but take a look at how
23 that has been handled and how the zoning has
24 been handled in regards to 603.

25 603 throws a myriad of different

1 type of devices and objects into it. The
2 three most notable and that we've discussed
3 are: Posters, inflatables and banners.
4 Posters and banners have been permitted in the
5 township for, at least on the banner end, I
6 can say at least ten years. I don't know how
7 long the posters have been permitted as long
8 as it's on a billboard.

9 And what I find so interesting is
10 that Miss Ridgley is adamant to say the
11 definitions permit and supersede 603 when it
12 comes to posters. She says it supersedes it.

13 So when that definition for
14 outdoor advertising gives you the right to put
15 up the poster, we're going to throw 603(E) out
16 the window. Doesn't apply any more. But when
17 it comes to Bill Doraty and we're talking
18 about an inflatable, 603 is king and 603
19 prohibits him from having a temporary sign.
20 That doesn't make any sense. He's willing to
21 pay the 50 bucks. It's a temporary sign.

22 There's also a code section and
23 it's in the particular binder that discusses
24 prohibited signs. There's specific code
25 section in 603(A) tells you what is absolutely

1 prohibited. Inflatables aren't in there.
2 There isn't an absolute prohibition.

3 The question before this Board is:
4 Is 603 more important than 605 and the
5 definition that you find in Article II or is
6 605 and the definitions permit a temporary
7 sign? And they certainly do in the case of
8 posters. They certainly do in the case of
9 banners and we would ask that they certainly
10 do in regards to inflatables.

11 Thank you.

12 MR. MOREL: Okay.

13 MS. FAGNILLI: Thank you.

14 That's a very creative argument
15 but it doesn't apply. Remember I told you
16 early on the idea of something that's more
17 specific is controlling over something more
18 general. It's a couple of good examples.

19 A poster is permitted in outdoor
20 advertising. It's a separate section. It has
21 its own set of rules. Doesn't apply in this
22 case. Banners, if you listen to what Elaine
23 said carefully, not the way Miss Mills wants
24 it to be, but what Elaine told you is banners
25 have never been permitted in the township.

1 There's an error on the form. It was fixed.
2 Because it was an error on the form doesn't
3 mean they were allowed. They weren't and they
4 never have been, as you heard her say.

5 Banners, flags -- I mean, you can
6 read the definitions yourself. It's common
7 sense. Go look in the dictionary. Yes, it
8 makes perfect sense. Those are the things
9 that you aren't allowed to have.

10 Temporary signs, however, are
11 permitted. Is the inflatable a temporary
12 sign? Absolutely could be. Is it permitted?
13 It absolutely is not because inflatable
14 devices are not permitted under any
15 circumstances.

16 And Mr. Doraty tried to challenge
17 on the constitutional level in federal court.
18 That didn't work and the court came back and
19 said very clearly 603(E) is valid. Based on
20 that valid section the zoning inspector denies
21 the permit for a temporary sign because it's
22 not permitted as a temporary sign, as a
23 permanent sign. Doesn't matter what it's made
24 of or how it's put up or how it's used. It's
25 not permitted. And a federal judge has told

1 us that they're not permitted.
 2 Okay. And it's clever to try and
 3 pick and choose and say, well, you look at
 4 this definition and that definition and it's
 5 not quite right there. Well, it's not that
 6 easy. And if the case were about posters, we
 7 could look at posters and look at all that
 8 information, but that's not relevant and
 9 that's not really what the question is before
 10 you.

11 And the question isn't banners
 12 either. The signs that you were shown aren't
 13 banners. They're signs. They're temporary
 14 signs. Mr. Scherba can call them a banner if
 15 he wants and his work order form can call it a
 16 banner if he wants, but for the purposes of
 17 the township resolution, which is presumed to
 18 be valid, which was found to be valid, they're
 19 temporary signs and they're only allowed if
 20 they're affixed on four corners.

21 Really boils down to a very simple
 22 question. Are inflatables allowed in the
 23 township? They're not so, therefore, the
 24 zoning inspector's decision to deny the
 25 temporary sign permit for Mr. Doraty's

1 inflatable was the correct decision and we
 2 would ask you to uphold that decision.

3 Thanks.

4 MR. MOREL: Okay. Read some notes
 5 here.

6 MR. WEST: Do you want to talk
 7 about where we go from here?

8 MR. SLAGTER: You have given an
 9 opportunity to the audience to make comments.

10 MR. MOREL: Correct.

11 MR. SLAGTER: No one is interested
 12 to come forward, so I would, at this point,
 13 close the hearing unless there are questions
 14 that the members of the BZA have for the
 15 applicant or the township because there may be
 16 some questions you have. You do have the
 17 right to ask questions to people that
 18 testified. I don't know if you have any.

19 MR. WEST: I have one question.

20 MR. MOREL: Sure.

21 MR. SLAGTER: I would say before
 22 we close the hearing you could.

23 MR. WEST: Mr. Doraty, if I could
 24 ask you with regard to your conversation with
 25 Rita Holt, you commented that she told you to

1 go ahead. Did anybody else hear that
 2 conversation?

3 MR. DORATY: Mike Todd was there.

4 MR. WEST: So Mike Todd would
 5 testify that that's what she said you think?

6 MR. DORATY: I believe so.

7 MR. WEST: Okay. You've been so
 8 successful with these inflatable over the last
 9 three years, why are you even here? What's
 10 the point? I mean, is there a penalty
 11 involved?

12 MR. DORATY: Well, I did exactly
 13 -- I'll answer the question. I came before
 14 the Board of Trustees before I did it and
 15 asked them what it took to make these
 16 inflatables permissible.

17 I said this -- I believe what I
 18 said at the time in 2008 was, you know, I
 19 notice that we have some things in the zoning
 20 code that, in my opinion, are outdated. This
 21 township is not the same township that it was
 22 20, 25, 30 years ago. You have big box stores
 23 all over the place. You have two intense
 24 retail districts and times have changed. So
 25 if I want to do this, tell me what -- tell me

1 the steps that I have to take. So I did
 2 exactly what the trustees asked me to do. Got
 3 to a certain point and then got stonewalled
 4 and I think that's wrong.

5 MR. WEST: Do you know off the top
 6 of your head how many citations you received?

7 MR. DORATY: About this many
 8 (indicating).

9 MR. WEST: That would be more than
 10 20?

11 MR. DORATY: Yeah.

12 MR. WEST: Twenty-five?

13 MR. DORATY: Yes.

14 MR. WEST: More than 30 since
 15 2010?

16 MS. MILLS: There was a time
 17 period where he was not cited.

18 MR. WEST: Okay. Thank you.

19 MR. MOREL: Elaine, I have a
 20 question for you.

21 MS. RIDGLEY: Sure.

22 MR. MOREL: If somebody wanted to
 23 put up a temporary sign and it contained a
 24 flasher or a blinker or looked like a traffic
 25 signal would you approve that?

1 MS. RIDGLEY: No.
 2 MR. MOREL: Why?
 3 MS. RIDGLEY: We don't allow any
 4 flashing, blinking, movement on a temporary or
 5 a portable sign.
 6 MR. MOREL: Okay. Yes, sir.
 7 MICHAEL BAACH
 8 of lawful age, a Witness herein, called for
 9 examination, as provided by the rules of the
 10 Board of Zoning Appeals, being by Mr. Morel
 11 first duly sworn, as hereinafter certified,
 12 testified and said as follows:
 13 MR. MOREL: And your name, sir.
 14 MR. BAACH: Michael Baach.
 15 Address is 3838 Weymouth Woods Drive here in
 16 Medina Township.
 17 MS. FAGNILLI: I'm going to enter
 18 an objection.
 19 MR. MOREL: Go ahead.
 20 MS. FAGNILLI: It's not
 21 appropriate in a hearing like this to have
 22 outside comment.
 23 MR. MOREL: Yeah.
 24 MR. BAACH: Everyone, and what
 25 we're trying to do is present evidence here

1 that is important to the Board. I see you
 2 have a lot of attorneys here giving advice
 3 that we're paying for I assume.
 4 But I ask that when the Board
 5 reads its own documents it understands how
 6 confusing it is to us as business people in
 7 order to try to comply and do our very best.
 8 If I believe what I'm hearing here
 9 right now, I'm in violation for flying my
 10 American flag at my home because it's a
 11 banner.
 12 MR. MOREL: Not at your home.
 13 MR. BAACH: At my business?
 14 MR. MOREL: Probably.
 15 MR. BAACH: Let's think about what
 16 we're doing before we decide and understand
 17 the implications of what we're doing. That's
 18 my testimony and I thank you.
 19 MR. MOREL: Okay.
 20 SEAN FARRELL
 21 of lawful age, a Witness herein, called for
 22 examination, as provided by the rules of the
 23 Board of Zoning Appeals, being by Mr. Morel
 24 first duly sworn, as hereinafter certified,
 25 testified and said as follows:

1 MR. MOREL: State your full name.
 2 MR. FARRELL: Sean Farrell, 5068
 3 Red Maple Court 44256.
 4 MR. MOREL: Thank you.
 5 MR. FARRELL: Why is an inflatable
 6 not allowed in the township? Where is it
 7 stated that you can't have one and what are
 8 the reasons why you can't have one? That's
 9 all I want to know.
 10 MR. MOREL: We're not here to
 11 discuss, okay, why you can't have one. It
 12 states in 603(E) that they're not allowed.
 13 Why we can't have them is because the zoning
 14 resolution here, which is our -- this is our
 15 bible here in the township, specifically
 16 states they're not allowed.
 17 MR. FARRELL: Okay.
 18 MR. MOREL: So that's -- because
 19 this Board gives variances and does what we're
 20 doing today. It doesn't create this book.
 21 This book is created and amended by the zoning
 22 board and the trustees. We just interpret and
 23 give variances if they're deemed necessary.
 24 That's -- our scope of our stuff is small.
 25 Okay.

1 MS. FAGNILLI: Mr. Chairman,
 2 before you go any further, I have a question
 3 for Mr. Baach. If you're going to let people
 4 comment, then I'm going to ask for the ability
 5 to --
 6 MR. MOREL: Sure.
 7 MR. SLAGTER: If I may interject
 8 too, just for the purpose of procedure here,
 9 and I understand there are residents that have
 10 concerns and things like that, but this is
 11 like a hearing in front of a judge. They're
 12 acting like a judicial panel and they're
 13 hearing evidence on one particular issue and,
 14 as the Chairman had indicated, if there are
 15 problems with the zoning or things like that
 16 that's typically something the trustees or the
 17 zoning commission or even the property owner
 18 files that to amend your zoning. They would
 19 have to go through that procedure. They have
 20 no authority there.
 21 What's relevant, though, is to the
 22 extent there are, you know, issues out there
 23 relating to this particular thing, if you can
 24 add value for one reason or another,
 25 definitely I think that's appropriate for this

1 hearing, but if you do make any comments you
2 have the right to cross-examination by any of
3 the parties that are here. So just so you
4 know. And I would -- so everyone understands
5 what we're doing.

6 MR. MOREL: Okay. Go ahead.

7 MS. FAGNILLI: I'm just going to
8 find my spot here. Mr. Baach, you said that
9 as a business person you find this all
10 confusing. Is that what you just said?

11 MR. BAACH: I did.

12 MS. FAGNILLI: Okay. But you are
13 aware, are you not, that an advisory jury of
14 12 people in federal court, which I believe,
15 if I recall right, you testified in that
16 trial; did you not?

17 MR. BAACH: I did.

18 MS. FAGNILLI: And there were 12
19 people sitting in the jury box.

20 MR. BAACH: Didn't count them, but
21 I wouldn't argue with you.

22 MS. FAGNILLI: Okay. I wouldn't
23 represent to you that that's not true. Laura
24 would agree. And they're citizens like us.

25 MS. MILLS: I would object,

1 though. It has nothing to with why we're here
2 today, but I want it noted for the record, but
3 go ahead and ask your question.

4 MS. FAGNILLI: And you're aware
5 that that jury was asked to make some
6 decisions, correct?

7 MR. BAACH: I'm not aware of the
8 procedure.

9 MS. FAGNILLI: Are you aware that
10 the jury, when asked, came back and said --
11 read it for you. Yes, do you find that a
12 person of ordinary intelligence would have
13 known from a reading of Medina Township Zoning
14 Resolution 603 that the display of inflatable
15 device, the nature of the display at Bill
16 Doraty Kia, is prohibited and they said yes; a
17 person of common intelligence. Are you aware
18 that that was their finding?

19 MR. BAACH: No, I'm not.

20 MS. FAGNILLI: Thank you.

21 MR. BAACH: But I still state it's
22 confusing.

23 DON HERRMANN
24 of lawful age, a Witness herein, called for
25 examination, as provided by the rules of the

1 Board of Zoning Appeals, being by Mr. Morel
2 first duly sworn, as hereinafter certified,
3 testified and said as follows:

4 MR. MOREL: And your name, sir.

5 MR. HERRMANN: Don Herrmann, 3389
6 South Weymouth Road.

7 MR. MOREL: Thank you.

8 MR. HERRMANN: I was just kind of
9 wondering that Rita Holt and that Todd that
10 was up here they said that they would work
11 with him, you know, but you just came back and
12 said that it was in your book. You have your
13 own zoning codes. Where did she come up with
14 that then?

15 MR. MOREL: I don't speak for
16 somebody else.

17 MR. HERRMANN: I was just kind of
18 wondering. Are you guys trying to work to get
19 this over with or you know?

20 MR. MOREL: We're not involved.
21 This Board is not involved in that procedure,
22 the Zoning Board of Appeals. We're not one of
23 the channels that does that.

24 MR. HERRMANN: I was just kind of
25 wondering who told that.

1 KELLY HERRMANN
2 of lawful age, a Witness herein, called for
3 examination, as provided by the rules of the
4 Board of Zoning Appeals, being by Mr. Morel
5 first duly sworn, as hereinafter certified,
6 testified and said as follows:

7 MR. MOREL: And your name.

8 MS. HERRMANN: Kelly Herrmann,
9 3389 South Weymouth Road.

10 There is a banner right up at
11 Blakslee Park. It's tied on a fence to watch
12 out for motorcycles. It's not on posts. So
13 did they -- how is the township getting away
14 with that?

15 MR. MOREL: That is, once again --

16 MS. HERRMANN: That's a banner.
17 There are four grommets. It's tied on a post
18 to watch for motorcycles.

19 MR. MOREL: Once again, that's not
20 a matter before this Board and we're not going
21 to waste -- that's something to bring up at a
22 trustees meeting. It really is.

23 MS. HERRMANN: They are letting
24 someone else --

25 MR. MOREL: That's something to

1 bring up at a trustees meeting. It really is.
 2 Our scope here is very narrow.
 3 MS. FAGNILLI: Mr. Chairman, let
 4 me ask a question. Do you know whether or not
 5 there was a sign permit application for that
 6 sign?

7 MS. HERRMANN: No. That's what
 8 I'm asking.

9 MS. FAGNILLI: That's what you're
 10 asking. So you're not aware of whether or not
 11 there was a permit for it?

12 MS. HERRMANN: Well, I guess I'll
 13 have to come and find out, right?

14 MR. MOREL: Uh-huh.

15 MS. FAGNILLI: There is.

16 MS. HERRMANN: But that's a
 17 banner.

18 MS. FAGNILLI: No, it's a
 19 temporary sign.

20 MS. MILLS: I have just one other
 21 comment in regards to Mr. West's comment of
 22 Rita from Bill Doraty.

23 Elaine, it's true that Rita
 24 threatened your job if you cited Bill any
 25 further and, in fact, you stopped citing him,

1 do you think?

2 MR. WEST: I don't know. You have
 3 got other applicants.

4 MR. MOREL: I know, but it's kind
 5 of not great to be the last guy on the list
 6 but, you know, I mean --

7 MR. WEST: Whatever.

8 MR. MOREL: We very rarely
 9 continue these things, Bill, unless there's
 10 something that needs to be done.

11 MR. WEST: I think you've had an
 12 awful lot of evidence presented here and
 13 you've got a book down there that's four
 14 inches thick that we haven't seen and you want
 15 to make a decision tonight and I'm not sure
 16 that there is enough time for the members of
 17 this group to seriously consider the
 18 information that's being presented. That's
 19 all I'm asking.

20 An awful lot of information has
 21 been presented here by everybody and you want
 22 to do the right thing here and I just -- I'm
 23 just wondering if, in deliberating this thing,
 24 it should be done, if not after we finish the
 25 other applicants tonight or on another evening

1 didn't you, for a period of time and that's
 2 why there are not citations that you will see
 3 anywhere that were consistent during the
 4 entire time frame; isn't that correct?

5 MS. RIDGLEY: You know, she sat in
 6 my office on a Friday and told me it would be
 7 in the newspaper on Monday for my job if I did
 8 not listen to what she said. I did not cite
 9 him, but I continued to take the pictures.

10 MS. MILLS: I just wanted that
 11 clarified for Mr. West who I think had some
 12 questions in regards to that issue.

13 MR. WEST: Thank you.

14 MR. MOREL: Okay. All right.

15 MR. WEST: Should we --

16 MR. SLAGTER: Now, you want to
 17 close the hearing.

18 MR. MOREL: Yeah.

19 MR. WEST: Then we move on to
 20 other business.

21 MR. SLAGTER: Well, you move on.
 22 Right now would be deliberations if you want
 23 to this evening make a determination on this
 24 matter.

25 MR. MOREL: I think we can. What

1 here where we consider what our conclusions
 2 are going to be about the facts. I'm asking
 3 the question. I'm not dictating the result.

4 MR. SLAGTER: You have the right
 5 to --

6 MR. DORATY: Can I ask you, we
 7 would be okay if you took the other
 8 applicants, put them, get them handled and
 9 then deliberate after that.

10 MR. MOREL: Well, if we're going
 11 to deliberate, we'll deliberate on another
 12 day. We'll do the applicants. Either we do
 13 it now or we convene some other -- I think
 14 five days from now.

15 MR. SLAGTER: You can hold a
 16 special meeting.

17 MS. MILLS: Yeah, we would
 18 consent. There's no objection to you
 19 deliberating on another day, no.

20 MR. SLAGTER: One thing I may
 21 suggest that might be helpful is, you know,
 22 obviously we've received a series of exhibits.
 23 It looks like there is Exhibits 1 through 8
 24 and I don't know if all of these were covered.

25 MS. MILLS: They're

1 self-authenticating. You can have them, John.
 2 I mean, they were referred to.
 3 MR. SLAGTER: Obviously the Board
 4 will need copies. I don't know if the
 5 township can get that.
 6 MS. MILLS: We can provide them in
 7 the morning, if you want.
 8 MR. SLAGTER: Yeah, if we could
 9 have a copy for each of the Board members and
 10 if I could have one.
 11 MS. MILLS: Absolutely.
 12 MR. SLAGTER: And then sometimes
 13 during these hearings a court would ask that
 14 each side submit proposed conclusions of facts
 15 or findings; kind of what they would ask that
 16 the Board do so -- not that you have to follow
 17 it, but at least you can see it. And then
 18 they can draw it out for you and I don't know
 19 if either the township or the applicant would
 20 like to do that.
 21 MS. MILLS: If the Board would
 22 find it helpful.
 23 MR. MOREL: Sure, we would.
 24 MR. WEST: I think that's correct.
 25 I think we would find it helpful from both

1 sides.
 2 MS. FAGNILLI: We will be happy to
 3 do that.
 4 MR. SLAGTER: And I think if I'm
 5 correct in defining the issue for you, and we
 6 can talk more about this, you know, either
 7 then or now, but I think the issue seems to be
 8 one, you know, broadly whether your zoning
 9 resolution prohibits this type of sign. You
 10 know that there is a federal court ruling out
 11 there and its applicability is a little bit in
 12 dispute. That's kind of another issue. And
 13 whether this might be a temporary sign and
 14 somehow exempt from that requirement or that
 15 restriction. I think that's what the issue
 16 is, if I'm correct.
 17 MR. MOREL: Uh-huh, sounds like it
 18 to me.
 19 MR. SLAGTER: What -- is there --
 20 there is a general prohibition and then
 21 there's this temporary sign issue and somehow
 22 is that exempted from it or meets that or does
 23 it generally and completely prohibit it
 24 whether it's temporary or not. I mean, that's
 25 the issue before you.

1 And you're correct as a Board, you
 2 know, whether you agree with it or not and
 3 whether it makes sense, you know, generally
 4 politically is not necessarily relevant.
 5 You're looking at the zoning resolution as it
 6 exists and was written and whether their
 7 proposed sign is prohibited by that, which is
 8 what the zoning inspector believed, and
 9 whether she made a mistake or not in
 10 determining that and I think that's the narrow
 11 issue before you as a Board.
 12 MS. MILLS: And, John, if we're
 13 going to brief it, which I think is a
 14 wonderful idea, we would ask for a little bit
 15 of time to get the transcript because it will
 16 be essentially helpful to the Board if we can
 17 refer to the transcript instead of making
 18 general allegations of what occurred here. We
 19 can cite to the transcript and we'll have a
 20 written record of what occurred.
 21 MR. MOREL: Okay. When is a good
 22 time to --
 23 MR. SLAGTER: How long -- now I
 24 guess we can go off the record.
 25 (Off record discussion had.)

1 MR. SLAGTER: Back on the record.
 2 We went off the record. We spoke to the court
 3 reporter who indicated it would be
 4 approximately seven to ten days to get the
 5 transcript and then they will need, the
 6 applicant and the township, sufficient time to
 7 review it, to put together their brief and
 8 proposed findings of fact and conclusions of
 9 law and so it's the thinking that we would
 10 have this deliberation continued for your next
 11 scheduled meeting.
 12 MR. MOREL: Right.
 13 MR. SLAGTER: Which would be what
 14 date?
 15 MR. MOREL: It's the third
 16 Wednesday of August, whatever that is.
 17 MS. FAGNILLI: August 17th.
 18 MR. MOREL: Will everybody be
 19 here? Horst.
 20 MR. BECKER: Yes.
 21 MR. MOREL: Boris?
 22 MR. WILLIAMS: Yeah.
 23 MR. MOREL: You'll be here for
 24 sure.
 25 MS. KARSON: Yes.

1 MR. MOREL: Okay.

2 MR. WEST: Yeah.

3 MS. FAGNILLI: John, we need to
4 set some dates then if we're going to have
5 proposed findings.

6 MR. SLAGTER: Sure. I would say
7 that we should receive these briefs a week
8 before. Will that be enough time?

9 MR. MOREL: Yeah, that's about
10 right.

11 MS. MILLS: August 10th, is that
12 what we're looking at?

13 MR. WEST: Yeah, at least if we
14 have them a week in advance.

15 MS. MILLS: Then let's say the
16 11th. Wait. What day is August 10th?

17 MS. FAGNILLI: It's a Wednesday.

18 MR. SLAGTER: If you submit it to
19 the township, they'll distribute it to the
20 BZA.

21 MS. MILLS: Yes. I will make sure
22 there's enough copies of that book delivered
23 tomorrow morning so you will have it here.

24 MR. WEST: That will be very
25 helpful.

1 evidence that was presented and the evidence
2 that was presented is what you heard here
3 under oath or the documents that have been
4 submitted to you.

5 Now, there were some objections
6 that were raised about the comments and also
7 the testimony and also the documents. So we
8 may receive some of those but, yes, you've got
9 to limit your review to the zoning code, the
10 exhibits and the testimony you heard.

11 MR. MOREL: Uh-huh.

12 MR. SLAGTER: And also you don't
13 want to -- you can't be influenced by
14 individuals or otherwise that come to you.
15 They may call you up and give you an opinion.
16 My advice there is, you know, until that next
17 hearing just really I would not talk about it.
18 If someone brings it up to you or tries to
19 influence you, say on advice of our counsel
20 we're not going to talk about it.

21 MS. FAGNILLI: Mr. Slagter, one of
22 the things we didn't really kind of formally
23 go through the entire process. I only have
24 one document to submit. It's a copy of the
25 complaint without all the exhibits.

1 MR. SLAGTER: If you could each
2 exchange also what you provide.

3 MS. MILLS: We did.

4 MR. MOREL: Okay.

5 MR. BAACH: Mr. Slagter, may I ask
6 a question? And I have the greatest respect
7 for you guys sitting on this Board. I don't
8 know how you do it. You live in this
9 community and we thank you for all you do.

10 One of the things that I am often
11 troubled about when these things have breaks
12 in the action is that it's difficult to live
13 in the same community with you and not try to
14 influence you based on if I see you at the
15 store and what goes on.

16 I've not heard any advice from
17 counsel as to how the process of what
18 information you should use to make your
19 decision and I would like to understand that
20 is why I'm asking.

21 MR. SLAGTER: Sure, sure.

22 MR. BAACH: So I know absolutely
23 why I don't want to serve on a board.

24 MR. SLAGTER: Right. You are to
25 -- your determination is to be based on the

1 MS. MILLS: Sure.

2 MR. SLAGTER: Sure. It's the copy
3 of?

4 MS. FAGNILLI: Copy of the
5 complaint.

6 MS. MILLS: I would object saying
7 it's irrelevant but obviously it is what it
8 is.

9 MR. SLAGTER: Right. And also an
10 exhibit or part of the record would be that
11 order that we had talked about but it was
12 referred to. I don't know whether it's in
13 here or not, but I think it's relevant.

14 MS. FAGNILLI: We have a letter.
15 Laura has her appeal letter. I think all that
16 would be part of the record.

17 MR. SLAGTER: We would probably
18 mark this as an exhibit also. That was
19 submitted.

20 MS. MILLS: Yes.

21 MR. SLAGTER: The fabric, whatever
22 it's called.

23 MR. MOREL: So what do we formally
24 do, call this a continuance or --

25 MR. SLAGTER: Yeah. You would

1 continue this matter for -- to your next
2 meeting. And at that point it would be -- you
3 would just have a deliberation. There would
4 be no new evidence taken in.

5 MR. MOREL: Right, right.

6 MR. SLAGTER: Because you've
7 closed the hearing.

8 MR. MOREL: I need a motion then
9 for that and a second.

10 MR. WEST: I'll move the hearing
11 be closed.

12 MR. WILLIAMS: Second.

13 MR. MOREL: Closed it. Now we
14 need one to continue it to the next regular
15 meeting, the third Wednesday of August.

16 MR. WEST: Okay. So we're moving
17 to close it and continue it until the -- until
18 August the 17th, to our meeting on August the
19 17th, right? Is that the date we decided?

20 MR. MOREL: Is that the date?

21 MR. WEST: 17th.

22 MR. MOREL: Okay. And a second.
23 One of you guys going to second it?

24 MR. WILLIAMS: I'll second.

25 MR. MOREL: Boris seconded it.

1 the alternate has to stay because they heard
2 the evidence and the testimony.

3 MR. MOREL: Right, right. That's
4 why I asked if everybody is going to be here.
5 So don't get run over. Okay.

6 MS. MILLS: Thank you.

7 MS. FAGNILLI: Thank you.

8 ---
9 (Hearing concluded at 9:20 p.m.)

10 ---
11

1 Okay. All in favor, aye.

2 MR. BECKBR: Aye.

3 MR. WILLIAMS: Aye.

4 MR. MOREL: Aye.

5 MS. KARSON: Aye.

6 MR. WEST: Aye.

7 MR. MOREL: Okay. So we'll
8 continue this and then we will deliberate on
9 the 17th.

10 MR. SLAGTER: And just
11 procedurally I know you'd asked about people's
12 attendance that are on the Board. The
13 applicant or the township's attorney or zoning
14 inspector doesn't need to be there. Obviously
15 I'm sure they would want to be there, but
16 you'll need to be there.

17 You need to have a quorum and you
18 have during this part, but also during your
19 deliberations and that's set forth in your
20 book and a majority of that quorum would have
21 to vote.

22 MR. MOREL: Right.

23 MR. SLAGTER: If someone else
24 comes that was on the BZA, the alternate that
25 took their position, you really -- I would say

CERTIFICATE

STATE OF OHIO,)
) SS:
 SUMMIT COUNTY,)

I, LORI K. PHILLIPS, RMR and
Notary Public within and for the State of
Ohio, duly commissioned and qualified, do
hereby certify that the proceedings were by me
reduced to Stenotypy, afterwards transcribed
upon a computer; and that the foregoing is a
true and correct transcription of the
proceedings so given as aforesaid.

I do further certify that these
proceedings were taken at the time and place
in the foregoing caption specified, and were
completed without adjournment.

I do further certify that I am not
a relative, council or attorney of any party,
or otherwise interested in the event of this
action.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed my seal of
office at Akron, Ohio, on this 27th day of
July, 2011.

Lori K. Phillips, RMR and Notary
Public in and for the State of
Ohio.

My Commission expires December 2, 2015.