

1       BEFORE THE CITY OF BELOIT ZONING BOARD OF APPEALS

2

---

In the Matter of Administrative Appeal RE: Architectural  
Review Certificate and Certificate of Zoning Compliance;  
2102 Freeman Parkway, Parcel No. 22031650.

4

5       Beloit Health System  
1969 West Hart Road  
6       Beloit, WI 53511

BOA-2022-01

7       and

8       Nommo Donald  
2885 East Deer Path Court  
9       Beloit, WI 53511

10                               Appellants.

11

---

12                               TRANSCRIPT OF PROCEEDINGS of the hearing before  
13       the City of Beloit Zoning Board of Appeals, taken before  
14       Margaret M. Ciembronowicz, Certified Shorthand Reporter, at  
15       City Hall Forum, 100 State Street, Beloit, Wisconsin 53511,  
16       taken on Tuesday, April 12, 2022, commencing at 6:00 p.m.

17

18

19

20

21

22

23

24

25

## 1 APPEARANCES:

2 MR. TIMOTHY W. FEELEY  
3 Hall, Render, Killian, Heath & Lyman, PC  
4 330 East Kilbourn Avenue  
5 Suite 1250  
6 Milwaukee, Wisconsin 53202  
7 414-721-0461  
8 tfeeley@hallrender.com  
9 appearing on behalf of Appellants;

10 MR. MATTHEW J. FLEMING  
11 Murphy Desmond, SC  
12 33 East Main Street  
13 Unit 500  
14 Madison, Wisconsin 53703  
15 608-257-7181  
16 mfleming@murphydesmond.com  
17 appearing on behalf of the Beloit Zoning  
18 Board of Appeals;

19 MR. COLIN T. ROTH  
20 Stafford, Rosenbaum, LLP  
21 P.O. Box 1784  
22 Madison, Wisconsin 53701  
23 608-2592647  
24 croth@staffordlaw.com  
25 appearing on behalf of the City of Beloit;

MR. DUFFY DILLON  
Dillon Grube Attorneys at Law  
466 Midland Road  
Janesville, Wisconsin 53546  
608-373-5560  
appearing on behalf of OrthoIllinois.

20 BOARD MEMBERS PRESENT: Kara Purviance, Chairperson  
21 Susan Adams  
22 David Baker  
23 Dustin Gronau  
24 John Petersen  
25

1	INDEX	
2	EXAMINATION	PAGE
3	DREW PENNINGTON	
4	CX BY MR. FEELEY.....	60
5	CX BY MR. DILLON.....	94
6	JOHN EAGON	
7	DX BY MR. FEELEY.....	109
8	JULIE CHRISTENSEN	
9	DX BY MR. FEELEY.....	122
10	ANTHONY BROWN	
11	DX BY MR. DILLON.....	150
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24	Certificate.....	197
25		

1           CHAIRPERSON PURVIANCE: All right. I'm  
2 going to go ahead and call the meeting of the board  
3 of appeals to order at 6:02 p.m.

4           Mr. Pennington, will you go ahead and  
5 call the roll for us, please?

6           MR. PENNINGTON: John Petersen?

7           MR. PETERSEN: Here.

8           MR. PENNINGTON: Dustin Gronau?

9           MR. GRONAU: Here.

10          MR. PENNINGTON: Kara Purviance?

11          CHAIRPERSON PURVIANCE: Here.

12          MR. PENNINGTON: David Baker?

13          MR. BAKER: Here.

14          MR. PENNINGTON: Brooke Joos?

15                               (No reply.)

16          MR. PENNINGTON: Susan Adams?

17          MS. ADAMS: Here.

18          CHAIRPERSON PURVIANCE: All right. We do  
19 have a quorum.

20                               The board meeting and the public  
21 hearing to be considered this evening are open to  
22 the public, which means that anyone present may  
23 speak providing they identify themselves.

24                               This evening we will be beginning  
25 with Item No. 2, approval of minutes, 2.a,

1 consideration of the minutes of the March 8th, 2022  
2 meeting, BOA minutes 3/8/22.

3                   Item 3, the public hearing contested  
4 case proceedings. 3.a, contested case hearing.  
5 Beloit Health System and Nommo Donald have filed an  
6 appeal of administrative decision of the Director of  
7 Planning and Building Services Zoning Officer's  
8 approval of an architectural review certificate and  
9 certificate of zoning compliance on January 14th,  
10 2022, for a new medical facility in a C-3, community  
11 commercial district, for the property located at  
12 2102 Freeman Parkway.

13                   Item 3.b will be deliberation on  
14 Beloit Health System and Nommo Donald's appeal. The  
15 board of appeals may adjourn into closed session  
16 pursuant to Section 19.85(1)(a), Wisconsin Statute,  
17 to deliberate concerning a case which was the  
18 subject of any judicial or quasi-judicial trial or  
19 hearing before this body.

20                   Item 3.c., determination of the board  
21 on the Beloit Health System and Nommo Donald appeal,  
22 and;

23                   Item 4 will be adjournment.

24                   All right. Item 2, approval of  
25 minutes. Item 2.a., consideration of the minutes of

1 the March 8th, 2022 meeting.

2 MR. BAKER: I move we approve the minutes  
3 as presented.

4 MR. PETERSEN: I'll second.

5 CHAIRPERSON PURVIANCE: All right. We  
6 have a motion and a second to approve the minutes as  
7 submitted. All those in favor please say aye.

8 (Whereupon, all the ayes were  
9 heard.)

10 CHAIRPERSON PURVIANCE: Any opposed with  
11 no?

12 (Whereupon, no nays were heard.)

13 CHAIRPERSON PURVIANCE: All right.  
14 Minutes are approved.

15 All right. The City of Beloit Board  
16 of Appeals is an appellate board required by state  
17 law in any municipality which has adopted a zoning  
18 ordinance. The board is a quasi-judicial body whose  
19 purpose is to give full and fair hearing to any  
20 person whose property interests are directly or  
21 adversely affected by the provisions of the zoning  
22 ordinance or an interpretation of the ordinance by  
23 the local administrative officials.

24 The board does not have authority to  
25 amend or repeal any provision of the zoning

1 ordinance. Its sole authority is to interpret the  
2 ordinance and apply its provisions to the factual  
3 situation presented. In each case, the City will  
4 recommend approval or denial of the variance  
5 request; however, the board may follow, modify or  
6 completely reverse the City staff's recommendation.

7           The board is interested in hearing  
8 all pertinent evidence. Witnesses in favor of the  
9 appeal or application will be called following the  
10 staff report. Those opposed second, and persons in  
11 interest last.

12           After each witness has appeared, they  
13 may be cross-examined by the board, the Applicant  
14 and the City staff.

15           Persons present who are not appearing  
16 as witnesses will be allowed to propose relevant  
17 questions to the board; however, the Chair reserves  
18 the right to rule on relevancy. Because a record of  
19 this hearing is being tape recorded, it is  
20 imperative that each witness or speaker state their  
21 name and address and their interest in the subject  
22 matter of this hearing before speaking, and speak  
23 into the microphone at the podium.

24           We will not, at this time, impose any  
25 time limits on presentations; however, we request

1 that you avoid repetition, and limit your comments  
2 to the subject matter being considered. Neither the  
3 board nor the public will benefit from hearing  
4 statements that repeat opinions which have already  
5 been expressed or that relate to matters other than  
6 the case before the board. Personal attacks,  
7 abusive, belligerent or badgering testimony and  
8 gross hearsay, rumor or gossip, will be ruled out of  
9 order by the Chair.

10 All right. The contested case  
11 hearing on Beloit System and Nommo Donald is now --  
12 is hereby open and called to order.

13 Mr. Pennington, have the news media,  
14 general public, Applicant and property owner been  
15 notified of this hearing?

16 MR. PENNINGTON: Yes.

17 CHAIRPERSON PURVIANCE: All right.

18 Mr. Pennington, would you please read  
19 the staff report and recommendation?

20 MR. FEELEY: Madam Chair, if I may just  
21 interrupt for one, actually, two housekeeping  
22 matters?

23 CHAIRPERSON PURVIANCE: Hmm.

24 MR. FEELEY: One is, there are a number of  
25 witnesses that were subpoenaed to appear today by



1 authority of the Rock County Circuit Court. I had a  
2 conversation with Mr. Roth earlier today about  
3 releasing one of those witnesses, the city clerk,  
4 who I believe is Ms. Gulger -- Gulgan.

5 MR. ROTH: I think that's right.

6 MR. FEELEY: At any rate, in return for  
7 releasing the subpoena on that individual, the City  
8 has agreed, and I would like to put a stipulation on  
9 the record for purposes of the presentation and  
10 hearing record in this appeal, the stipulation is  
11 that documents that have been -- that were disclosed  
12 by the City and/or created by the City in the  
13 exhibits submitted by Beloit Health System in this  
14 matter, the parties stipulate are true, correct and  
15 authentic copies of the City documents that they  
16 represent.

17 MR. ROTH: That's accurate. We agree with  
18 that.

19 CHAIRPERSON PURVIANCE: Okay.

20 MR. FEELEY: And then, Madam Chair, I'll  
21 just bring this to your attention, because I just  
22 found out myself. Ms. Donald, one of my clients,  
23 just advised me that there are three members of the  
24 public who are present, and I guess would like to  
25 make a statement under No. 15 of the rules of

1 procedure, and I would simply ask consideration that  
2 with respect to those members of the public, they be  
3 allowed to do it earlier, perhaps at the beginning  
4 of these proceedings, rather than the end as listed  
5 in the rules of procedure.

6 CHAIRPERSON PURVIANCE: Mr. Pennington,  
7 would you mind allowing some public comment prior to  
8 the staff report?

9 MR. PENNINGTON: It's fine with staff.

10 CHAIRPERSON PURVIANCE: Okay. All right.  
11 So then at this time, I'll go ahead and -- I do not  
12 have the names of the members of the public who are  
13 here who would like to speak, but if I could have  
14 someone come up to the podium who's here to speak,  
15 and state their name and address for the record.

16 MR. FEELEY: I don't know who these folks  
17 are, so now go ahead.

18 MR. KORBOL: Good evening. I'm Michael  
19 Korbol. I'm born and raised in Beloit. My family's  
20 name has been around since before 1900 in the city.  
21 I live at 2262 Walnut Grove, just two blocks down  
22 from the development. I am a member of Walnut Grove  
23 Homeowners Association, which is a new condominium  
24 development in that area. Do I go ahead and  
25 continue to speak or do I stop? Continue? Okay.

1 All right. Thank you.

2 I'm just here to talk about the  
3 possible adverse circumstances that may result from  
4 this decision by the commission and the City.

5 As a homeowner, the Turtle Creek  
6 area, as everybody knows, is a nice environmental  
7 area, and I was just shocked to see four acres of  
8 wooded land along the Turtle Creek being torn down  
9 of old grove trees. I don't know why that happened  
10 there. I wasn't sure why OrthoIllinois is not  
11 building out by G5 or somewhere else. I consider  
12 that unfortunate.

13 The area along the Turtle Creek is a  
14 environmental protected area. They're building just  
15 feet away. There's going to be pollution that goes  
16 into the creek. There's litter, pollution already  
17 along Fuller Street, which is just along the side  
18 there. It's a potholed-ridden street that's going  
19 to have to be replaced. It's an unsafe area. There  
20 are no walking paths, biking paths. There are a  
21 number of people in the area that walk their dogs,  
22 run and bike. It's a residential community. I know  
23 it's zoned differently, but if you go out and tour  
24 the area, it's completely residential. There's  
25 half-million-dollar homes, quarter-million-dollar

1 homes, and 30 yards away there's a multiunit  
2 apartment building which is full of family and kids.  
3 School buses pull up there every morning to put  
4 their kids on the bus. And all of that is going to  
5 be disrupted by the heavy traffic of OrthoIllinois.  
6 And to be in full disclosure, I'm a physician  
7 assistant. I have worked with the Beloit Health  
8 System previously, and I have also worked with  
9 OrthoIllinois. So I'm trying to stay neutral on  
10 this subject. I know many people in both  
11 circumstances.

12 As a homeowner, the only way into the  
13 condo association is along Freeman Parkway, and  
14 that's going to get very busy and very dangerous.  
15 There's going to be increased traffic, and you know  
16 there's going to be accidents along that area. I  
17 think it's going to be dangerous with the kids that  
18 play in the area, and they play in the street. They  
19 play on the ground. There's no City playground  
20 there, so they play wherever they can.

21 As people know here, you play in the  
22 street, and now there's going to be increased  
23 traffic in that area, and I think it's going to be  
24 very dangerous. Right now we're protected by the  
25 Walmart and Menard's area, because that area behind

1 that is completely residential.

2 My mother and many friends live along  
3 the Fuller Condominium Association, which is just  
4 next door as well, and many of them have moved into  
5 this area just for the privacy and the quietness  
6 that we have. And I think the home values are going  
7 to go down throughout the entire community.

8 I think there's going to be a lot of  
9 light pollution in the area because it's going to be  
10 24/7 community that's being built by this business.  
11 There's going to be a lot of noise pollution in the  
12 area. The people that live 30 yards away, I don't  
13 see how they're going to sleep, and then you're  
14 going to increase the auto exhaust in the area as  
15 well. Me, personally, I have respiratory issues.  
16 You keep increasing the auto exhaust areas, I'm  
17 going to have to take more inhalers. I'm already  
18 having a problem having to live through COVID with  
19 the health system, and now I'm going to have to live  
20 through all of the increased community. It's one of  
21 the reasons I moved into the condo association which  
22 used to be a farm field. I know the area. I grew  
23 up in the area, and now I've made a poor decision.  
24 I might have to move.

25 I think the safety concerns are

1 probably the biggest concerns again with the small  
2 children and families in the area. I don't think  
3 the City has required bike paths. I don't think  
4 they require walking paths. The sidewalks are  
5 discontinuous in the area, and there's only two  
6 streets that intersect in that area, so it's going  
7 to be a very heavily congested road, and I just  
8 don't think it's safe from many points of view.

9 I guess that's all I have to say.

10 Any questions from me?

11 MR. PETERSEN: Thank you.

12 MR. KORBOL: All right. Thank you.

13 CHAIRPERSON PURVIANCE: Would the next  
14 individual from the public who's wishing to speak  
15 come forward? State your name and address for the  
16 record, please.

17 MS. DONALD: Good evening. My name is  
18 Nommo Donald. I live at 2885 East Deer Path Court.  
19 And the purpose for me being here tonight is to also  
20 express my interest regarding the City's approval  
21 for a nearly 27,000 square feet inventory surgery  
22 center to be built on Freeman Parkway.

23 I joined this community to support  
24 the great work of the Beloit Healthcare System. As  
25 a condition of my employment, Beloit Healthcare

1 System Hospital President, Timothy McKeveatt,  
2 required that I live within the city limits of  
3 Beloit as he does all executive-level professionals  
4 and caregivers joining our community. However, I  
5 must admit to you, finding a home for me and my  
6 six-year-old daughter was quite an undertaking due  
7 to the lack of available suitable housing. But to  
8 demonstrate my commitment to the community, I was  
9 able to finally purchase a property on East Deer  
10 Path Court. It was my understanding further  
11 development of the property on Freeman Parkway,  
12 which is nearly seven acres of our cozy, quiet  
13 residential community, was intended for mixed  
14 residential development as opposed to a mega  
15 commercial development within our immediate  
16 surroundings.

17                   Its beginning construction has  
18 already begun to impact our tranquil neighborhood  
19 with the removal of the beautiful trees of nature,  
20 making noise from I-90 even more prevalent. Because  
21 the facility, if allowed to continue to build there,  
22 will be permitted to operate 24 hours a day, 5 days  
23 a week, upon completion, we will experience  
24 increased traffic, including emergency motor  
25 vehicles as well as additional noise and football

1 stadium lighting all throughout the night.

2 I come before you this evening  
3 because although I am proud to be part of a growing  
4 community, we find this approved development to be  
5 inconsistent with the City's current ordinance and  
6 long-range planning for the land that is in a mixed  
7 residential community consisting of single-family  
8 homes, residential units and townhomes.

9 I purchased the property on East Deer  
10 Path Court with the understanding I would have the  
11 legal right to enjoy and rely upon the restrictions  
12 afforded by the City's comprehensive long-range plan  
13 and commitment to housing as stated by the president  
14 of the city council during the State of the City  
15 Address this past March 22nd -- sorry -- 23rd of  
16 this year.

17 So with all things considered, my ask  
18 of you this evening is that you revisit our zoning  
19 ordinance, along with the long-range planning for  
20 the City of Beloit. The approval of this commercial  
21 construction is in contradiction to what the City  
22 has committed to the citizens of Beloit for housing,  
23 particularly in this residential neighborhood many  
24 of us call home.

25 Thank you for your time and



1 reconsideration.

2 MR. PETERSEN: Thank you.

3 MS. MILLS: Molly Mills, 2905 East Deer  
4 Path Way.

5 I don't want to repeat what's already  
6 been said. I completely agree that I'm very upset  
7 by the change in the zoning to allow, instead of  
8 mixed residential use of this property for the  
9 medical center, equally concerned about the  
10 increased traffic. We have one way out. We get a  
11 line of traffic right now behind the school bus  
12 every morning, all the people exiting the  
13 neighborhood, and now we're going to have a medical  
14 center on the same street where we're all lining up,  
15 and there's people bringing their kids across the  
16 street, and we've got on-street parking, and it's  
17 already restricted. And I walk my dogs, same  
18 street. There's, like was already said, there's not  
19 continuous sidewalks. We're walking on the street.  
20 It's not well lit. One street sign outside of the  
21 apartment area. One street sign -- one stop -- one  
22 light at the four-way stop, one light at the  
23 apartment building. It's dark streets, you know, in  
24 the morning and early in the evening all winter  
25 long, and people are walking on the street, and now

1 we're putting in a medical center with lots of  
2 traffic without addressing the safety of the  
3 residents.

4                   The last communication I recall was a  
5 postcard to the residents saying that we would have  
6 mixed-use housing and small business development in  
7 the area with a, you know, kind of a layout of what  
8 that would look like, and that's the last  
9 communication I had. So I don't know how, in  
10 December, the input from the neighborhood was  
11 collected to determine that there was no concern  
12 from the neighborhood with this zoning change.

13                   So thank you for hearing my input  
14 today, and I strongly oppose this change in zoning.

15                   CHAIRPERSON PURVIANCE: Thank you.

16                   MR. CHRISTOFFERSON: I'm Martin  
17 Christofferson, 2747 East Ridge Road. I just moved  
18 in there last July 31st, and in that time that I've  
19 lived there, and there's a lot of people that walk  
20 the streets and talk all the time, I was not made  
21 aware of this possible change, and given how much I  
22 enjoy my view, I think this is the view of the creek  
23 there. This is the prime area for residential  
24 housing in Beloit to be expanded, and I think we  
25 need more rooftops in Beloit, and I can't imagine

1 why we would waste such prime land for a commercial  
2 development that would be just as well served in an  
3 industrial park or any of the different industrial  
4 areas. Certainly the view is not needed for a  
5 medical facility such as we have here. And,  
6 otherwise, I basically had all the same concerns  
7 that they have, so I won't bother you with that.  
8 But I thought the City needed rooftops for  
9 higher-end housing, and there's no better place for  
10 that than this, and, otherwise, I really -- I didn't  
11 hear anything about this. I know you guys said -- I  
12 heard that supposedly the community was told, but  
13 I've been there since July. I didn't receive any  
14 mailings. Nobody came and put anything in our  
15 mailbox about this, so I don't feel that we were  
16 truly updated on what was about to happen. Anyway,  
17 that's -- I'm opposed.

18 CHAIRPERSON PURVIANCE: Thank you.

19 Are there any other members of the public  
20 this evening wishing to make public comment at this  
21 time?

22 (No public comment.)

23 CHAIRPERSON PURVIANCE: All right. Seeing  
24 none, we'll go ahead then with, Mr. Pennington, if  
25 you would please read the staff report and

1 recommendation. Thank you.

2 MR. PENNINGTON: Sure.

3 Beloit Health System and Nommo Donald  
4 have filed an appeal of administrative decision of  
5 the director of planning and building services  
6 approval of the architectural review certificate and  
7 certificate of zoning compliance on January 14th,  
8 2022, for a new medical facility in the C-3,  
9 community commercial district, for the property of  
10 2102 Freeman Parkway.

11 The board of appeals is authorized to  
12 hear and decide appeals where it is alleged there is  
13 an error in the order, requirement, decision or  
14 determination made by any administrative official of  
15 the City in administration of the zoning ordinance.

16 This appeal relates to the  
17 development of an ambulatory surgery center on the  
18 property at 2102 Freeman Parkway by Rockford  
19 Orthopedic Associates doing business as  
20 OrthoIllinois. The project is under construction  
21 with building permits. Project renderings indicate  
22 the completed facility will be named OrthoWisconsin  
23 Surgery Center. This appeal was submitted by Beloit  
24 Health System, signed by Timothy McKeveatt, President  
25 and CEO. This appeal was co-signed by Nommo Donald,

1 a resident of the City of Beloit at 2885 East Deer  
2 Path Court. Beloit Memorial Hospital, which is  
3 owned by Beloit Health System, is 3.3 miles north of  
4 the subject property. Ms. Donald's residence is two  
5 blocks, about 1700 feet north of this subject  
6 property.

7           The property is a vacant, seven-acre  
8 property along Turtle Creek previously used as a  
9 supper club or restaurant locally known as The  
10 Manor. The Manor building was demolished in 2011,  
11 and the property sat vacant for more than a decade  
12 until OrthoIllinois began working in March of this  
13 year. The subject property is zoned C-3, community  
14 commercial. Parts of the property are within a  
15 floodplain overlay district. There's a recently  
16 rehabilitated multifamily apartment development  
17 known as Maple Creek, zoned R-3 to the east, and a  
18 single-family dwelling zoned R-1A, to the north.  
19 The subject property is just north of Fuller Drive  
20 and the Menards store.

21           There's a location and zoning map  
22 attached to the staff report showing the location of  
23 this facility along with the surrounding zoning  
24 classifications.

25           On September 30th, 2021,

1 OrthoIllinois submitted site and architectural plans  
2 for the construction of a 26,571 square foot  
3 ambulatory surgery center or ASC with nursing or  
4 recovery suites on the subject property. Planning  
5 staff reviewed the plans against City of Beloit  
6 ordinances and issued several rounds of review  
7 comments resulting in revised plans before  
8 ultimately approving the plans on January 14th,  
9 2022. The formal document approving architectural  
10 and site plans is called the architectural review  
11 certificate and certificate of zoning compliance.  
12 OrthoIllinois' contractor obtained a building permit  
13 on January 14th, and work is underway.

14                   The approved site plan and  
15 architectural review certificate and certificate of  
16 zoning compliance are in the official record for  
17 this matter. A full set of civil site plans is also  
18 in the official record. The approved site plan  
19 includes the building, one driveway on Freeman  
20 Parkway, multiple parking lots, stormwater  
21 management areas, sidewalks, that includes both  
22 public sidewalks along the frontage of Freeman  
23 Parkway, and landscaping, lighting, et cetera. All  
24 of these elements were reviewed against the  
25 standards in the City ordinances.

1                   This particular development also  
2     obtained a land management plan which is for native  
3     or prairie grasses over eight inches in height. As  
4     part of that process, City staff notified  
5     surrounding property owners within 200 feet and  
6     solicited objections. No objections were received  
7     by any of the neighboring property owners, and the  
8     land management plan was approved along with the  
9     site plan.

10                   With respect to the C-3, community  
11     commercial zoning. The property is zoned C-3. The  
12     property has been zoned C-3 for decades. That has  
13     not changed. It has not been rezoned recently.  
14     There has been no notification of the neighborhood,  
15     because the property has not been rezoned. Section  
16     4-802 of the zoning code states, "Uses shall be  
17     allowed in the C-3 district in accordance with the  
18     use regulations, Article VI, and all other  
19     applicable standards of this chapter." Article VI  
20     of the zoning code includes the use table, which is  
21     included in the official record.

22                   The use table identifies property  
23     uses as permitted by right, which is denoted with a  
24     "P," as in "Paul," conditional "C," as in "Cat" or  
25     uses not allowed. Permitted by right uses are

1 automatically allowed on a parcel of land as long as  
2 the plans meet City requirements. As shown in the  
3 use table, medical facilities are permitted by right  
4 in the C-3 districts. Medical facilities are  
5 defined in Section 11.2.4 of the zoning ordinance  
6 which explicitly lists ambulatory surgery centers as  
7 an example of a medical facility that's a permitted  
8 use.

9                   There's an ordinance in the official  
10 record, Ordinance No. 3719 that was adopted on  
11 September 20th of 2021, to clarify the ordinance as  
12 it relates to medical facilities by changing the  
13 word "hospitals" as a use category, to "medical  
14 facility," and broadening the definition and  
15 examples to include surgery centers, medical  
16 offices, hospitals, et cetera.

17                   The important note that both  
18 hospitals and medical facilities -- excuse me --  
19 medical offices were permitted by right in the C-3  
20 district prior to Ordinance No. 3719. In other  
21 words, both hospitals and mini hospitals would have  
22 been permitted by right on the subject property even  
23 without the clarifications in Ordinance No. 3719.

24                   When development plans are submitted  
25 for a property, they are reviewed against the City's



1 current zoning classification, which I said earlier  
2 is C-3 and has been C-3.

3                   As far as building plan review. The  
4 City of Beloit does not license or regulate the  
5 operation of healthcare facilities. Those  
6 responsibilities lie with the state and federal  
7 governments. In Wisconsin, the building plans for  
8 healthcare facilities like hospitals and nursing  
9 homes, are reviewed by the Wisconsin Department of  
10 Health Services, while building plans for  
11 freestanding day surgery centers like OrthoWisconsin  
12 Surgery Center, are reviewed by the Wisconsin  
13 Department of Safety and Professional Services,  
14 known as DSPS. That's similar for all commercial  
15 and industrial buildings. The proposed surgery  
16 center facility was approved by the City's DSPS  
17 authorized building plan reviewer on December 15th  
18 of 2021.

19                   The classification of the proposed  
20 OrthoWisconsin Surgery Center by the State as a  
21 hospital or ASC or nursing home for building plan  
22 purposes, had no bearing on the City's decision  
23 whether the proposed project was permitted under the  
24 zoning code. That is because hospitals, surgery  
25 centers, nursing homes, et cetera, are all examples

1 of medical facilities under the City's ordinance.  
2 They are all permitted by right in the C-3 zoning  
3 district.

4 City staff had no obligation to  
5 condition site plan approval on a state or federal  
6 licensing requirement, particularly when all of the  
7 possible license types fall within one permitted  
8 land use category.

9 As far as the comprehensive planning  
10 law. Section 66.1001 of Wisconsin Statutes is the  
11 comprehensive planning law, which defines  
12 comprehensive plan as the guide to the physical,  
13 social and economic development of a local  
14 governmental unit. A comprehensive plan must  
15 contain nine elements, one of which is land use.  
16 Under the comprehensive plan law, if a local  
17 government "enacts or amends" a zoning ordinance,  
18 that ordinance must be consistent with the adopted  
19 comprehensive plan. In other words, if a property  
20 is proposed to be rezoned, the proposed rezoning  
21 must be consistent with the plan. The plan itself  
22 is a guide to future rezoning actions, but it is not  
23 a regulation. In fact, Section 66.1001(2m)(a) of  
24 the Wisconsin Statutes states, "the enactment of a  
25 comprehensive plan by ordinance does not make the

1 comprehensive plan itself a regulation."

2           In the implementation section of our  
3 comprehensive plan, Chapter 10, Section (C)(2)  
4 states, "proposed zoning map amendments or rezonings  
5 should be consistent with the recommendations of  
6 this plan." Importantly, this means that the  
7 issuance of a plan approval or a developmental  
8 approval under the current zoning ordinance is not a  
9 decision to which the comprehensive plan applies.

10           In summary, the proposed ambulatory  
11 surgery center was evaluated against the applicable  
12 regulation, which is the zoning ordinance and not  
13 the long-term comprehensive plan. The proposed use  
14 is permitted as a right in the C-3 zoning district,  
15 and the site plans were approved because they comply  
16 with the City's use and development standards.

17           Beloit Health System and Ms. Donald  
18 submitted their appeal application on February 14th,  
19 2022, 30 days after the OrthoWisconsin Surgery  
20 Center received site plan approval and a building  
21 permit was issued. Therefore, as far as the staff  
22 recommendation, the planning and building services  
23 division recommends denial of the Applicants' appeal  
24 based upon the above considerations in support of  
25 City staff's issuance of an architectural review

1 certificate and certificate of zoning compliance for  
2 the construction of a medical facility at 2102  
3 Freeman Parkway.

4 CHAIRPERSON PURVIANCE: Thank you,  
5 Mr. Pennington.

6 Do any board members wish to question  
7 Mr. Pennington concerning the staff report?

8 (No questions asked.)

9 CHAIRPERSON PURVIANCE: Okay. With that,  
10 does the Applicant wish to question Mr. Pennington  
11 regarding the staff report?

12 MR. FEELEY: I do wish to question him as  
13 a witness. Are we not following the rules of  
14 procedure?

15 MR. FLEMING: Chair, I think at this  
16 point, these are just opening -- well, the staff --  
17 we get a staff report, and then the parties get to  
18 have opening statements, then the City would present  
19 its case in chief, and once people are presenting  
20 their case in chief, that's the opportunity under  
21 the procedures for questions.

22 CHAIRPERSON PURVIANCE: Okay.

23 MR. FLEMING: So step back to it.  
24 After -- yeah, no, it would have to be after that.  
25 I was looking to see if -- make sure there wasn't an

1 opportunity for questions by the board, but that  
2 only happens after the cases in chief begin.

3 CHAIRPERSON PURVIANCE: Very well. So at  
4 this time then, we would move on to the Applicant  
5 then sharing their case?

6 MR. FLEMING: Well, they would make their  
7 opening -- opening statement.

8 MR. FEELEY: So the staff would make the  
9 opening statement, Appellant or Applicant, and then  
10 statement of persons aggrieved?

11 MR. FLEMING: Correct.

12 MR. FEELEY: So that would signal to me an  
13 opening statement by the City attorney --

14 MR. FLEMING: Yeah, I spoke with the City.  
15 Yeah, you're right. The City should supplement --  
16 do you have anything else other than the staff  
17 report to say?

18 MR. ROTH: Yeah, I mean, I guess I'm happy  
19 to make my argument at this point if that makes  
20 sense.

21 MR. FLEMING: Sure.

22 MR. ROTH: In terms of the case in chief,  
23 we don't intend to rely on anyone but  
24 Mr. Pennington's staff report, so, you know, I'm  
25 happy to do my argument now, otherwise, I can do it

1 after the case in chief stage and No. 5. Frankly, I  
2 don't care either way. I'm happy to do it now.

3 MR. FEELEY: Your choice, my friend.

4 MR. ROTH: I'll go ahead. And I'll try  
5 not to be repetitive, because I think  
6 Mr. Pennington, in his staff report, outlined most  
7 of what I had on my agenda to say.

8 I do think one thing that I want to make  
9 absolutely clear is the board's role here this  
10 evening. And the board's role is not to simply  
11 decide, as a matter of policy, whether this proposed  
12 project is a good idea. It's not the board's role  
13 here tonight to decide whether the current zoning of  
14 this property is a good idea. The only thing the  
15 board here is charged with tonight is evaluating the  
16 project that's been proposed at this property and  
17 deciding whether the City's zoning officer correctly  
18 decided that the project conforms with the current  
19 zoning at the property. That's the only thing the  
20 board is here to do tonight.

21 And so I think to accomplish that task,  
22 and, again, I'll try not to repeat too much of what  
23 Mr. Pennington said, I think there's just a few  
24 basic relevant facts that matter here. One, what is  
25 the proposed project that the City has approved? As

1 Mr. Pennington has explained to you, it's an  
2 ambulatory surgery center proposed by OrthoIllinois,  
3 and that as part of this surgery center, there will  
4 be accompanying it a number of lodging suites for  
5 patients who have been discharged to stay overnight  
6 after their procedures have been completed at the  
7 ambulatory surgery center. So that's what we're  
8 dealing with here today. That's the project that's  
9 at issue.

10 So the second relevant question for the  
11 board, and as I've alluded to this already, how is  
12 the property currently zoned? And as Mr. Pennington  
13 explained, the property is currently zoned C-3. And  
14 so, again, the question for the board, what kinds of  
15 uses are permitted in a C-3 zone? If you look at  
16 the use table that Mr. Pennington referenced, you'll  
17 see that one of the types of uses that is permitted  
18 by right are medical facilities. And so we ask  
19 ourselves then, well, what is a medical facility?  
20 What does that mean? And, again, we can look in the  
21 City ordinance, and it helpfully defines what a  
22 medical facility is. There's a number of  
23 characteristics that are listed, and it's about what  
24 you would expect given the name medical facility.  
25 It says a medical facility, quote, uses -- "medical

1 facility uses" excuse me, "provide medical, dental  
2 or vision examinations, care, treatment or  
3 laboratory services, or they provide surgical care."  
4 So those are some characteristics of a medical  
5 facility. The ordinance goes on to list a few  
6 examples, like different kinds of medical facilities  
7 that you might expect to see. Those include  
8 hospitals, medical, dental or vision clinics,  
9 laboratories, emergency medical clinics, ambulatory  
10 surgery centers, nursing homes, and then there's a  
11 few more examples.

12           So, again, let's revisit what we've talked  
13 about so far. We have a proposed project that's an  
14 ambulatory surgery center. We have C-3 zoning,  
15 which we look at the use table, we see that C-3  
16 zoning allows medical facilities as a right; in  
17 other words, that should make clear that doesn't  
18 require a conditional use permit. These are uses  
19 that are permitted by right. We've looked at the  
20 definition of a medical facility, and I think when  
21 you look at those three factors, it becomes very  
22 clear that the City's decision was, in fact,  
23 correct.

24           OrthoIllinois has proposed to build an  
25 ambulatory surgery center, which we've just heard,



1 is expressly included in the definition of a medical  
2 facility, which, again, is a permitted by right use  
3 in a C-3 zone. And I think that's all the board  
4 really needs to do to resolve this question here  
5 tonight.

6           Very briefly, I will address, in advance,  
7 because I suspect I know what my friend on the other  
8 side here will say, and so I'd like to briefly  
9 address some of the arguments that BHS has raised as  
10 to why the decision of the City should be reversed.

11           The first argument that BHS has made is  
12 that the decision is inconsistent with the City's  
13 comprehensive plan. Again, I will just briefly  
14 repeat what Mr. Pennington said, but he's absolutely  
15 correct that the City's comprehensive plan does not  
16 regulate current uses. In other words, it doesn't  
17 rezone existing properties. It's a set of  
18 recommendations for future uses, and there is  
19 nothing in state law that requires individual  
20 applications of existing zoning ordinances, which is  
21 exactly what's happened here, to conform to the  
22 comprehensive plan. Because, again, the  
23 comprehensive plan is about recommended future uses.  
24 It's not about regulating existing uses under  
25 existing zoning law. So that's all I have to say

1 about the comprehensive plan issue.

2           And so the only other issue that's been  
3 raised here relates specifically to the lodging  
4 suites, the overnight lodging component of this  
5 project. Again, as I gave a brief overview of what  
6 this project is, it's an ambulatory surgery center  
7 with, I believe it's six overnight lodging units.  
8 And so really the basis of the objection, I think,  
9 here is that the lodging suite portion of this  
10 project somehow removes it from the scope of a  
11 permissible use in a C-3 zone. And I think the  
12 problem with this argument is, again, what's  
13 permitted by right in a C-3 zone is a medical  
14 facility. And that's all that this project needs to  
15 be to be permitted by right in a C-3 zone is a  
16 medical facility. And so these lodging suites, and  
17 we explain this more in the City's brief, and I'll  
18 try not to just read it out loud to you all here,  
19 but it's all in our brief. One way you can consider  
20 this is it's all part of the same facility, the  
21 ambulatory surgery center, and the lodging suites,  
22 it's all just one medical facility permitted use.  
23 Another way to look at it is that the lodging suites  
24 are accessory uses, which is another thing that can  
25 accompany a primary use, in this case, an ambulatory

1 surgery center, and accessory uses can include  
2 things like lodging and the like. And that's also  
3 permitted by right. And those are the two primary  
4 routes that we see. There's a third option that  
5 this board could also take. If you look at the  
6 group living use category, it provides that a  
7 tenancy of less than 30 days is automatically deemed  
8 a hotel or a motel use, which, if you look at the  
9 use table, it is yet again another use that's  
10 permitted by right in a C-3 zone.

11 So the City's position is that you can  
12 take any of these three paths to approve the entire  
13 project, including the overnight lodging suites.  
14 And the final thing I'll say is even if you  
15 disagreed with everything I just said, all that  
16 means is that there's an issue with the overnight  
17 lodging portion of this project. We don't think  
18 there is, but, again, if the board was to disagree,  
19 that's the only potential issue we have here. There  
20 is no question whatsoever that the ambulatory  
21 surgery center part of this is permitted by right in  
22 a C-3 zone. And it's very, very clear that that  
23 should be allowed to go forward no matter what.

24 But, again, the City's position is that  
25 even the lodging suite portion of this project fits

1 within the C-3 zoning. So that's all I have. I'm  
2 happy to answer questions or we can do that later if  
3 Mr. Feeley would prefer.

4 CHAIRPERSON PURVIANCE: I think that the  
5 normal rules here lay out that, you know, we do  
6 presentation of --

7 MR. ROTH: Understood. We can do  
8 questions later. Thank you.

9 CHAIRPERSON PURVIANCE: And then in this  
10 case would we go to Mr. Dillon next to make  
11 statements or would we go to Mr. Feeley?

12 MR. FLEMING: You know, it might make  
13 sense because they're on the same side, but the  
14 order of procedure has the Appellants going next.

15 MR. FEELEY: You know, just for  
16 clarification, I actually think I'm the aggrieved  
17 person. And I think the Applicant or the Appellant  
18 and the Applicant is OrthoIllinois.

19 MR. FLEMING: Well, no --

20 MR. FEELEY: I mean, it doesn't really  
21 matter, but whatever you prefer.

22 MR. FLEMING: You are clearly the  
23 Appellant, in my opinion.

24 MR. FEELEY: Okay.

25 MR. FLEMING: But if the parties want to

1 agree to some other order and the board is fine with  
2 it, we can do that, but, otherwise, I think the  
3 Appellant is up.

4 CHAIRPERSON PURVIANCE: Okay. So that  
5 would be you, Mr. Feeley.

6 MR. FEELEY: Thank you.

7 A couple of points I want to bring to the  
8 board's attention immediately, and that is, there's  
9 this whole issue about who has the burden of proof.  
10 You have a couple of parties here. Presumably  
11 somebody has to prove something to you. But with  
12 respect to that burden of proof, the aggrieved  
13 person or the Appellant has none. We don't have to  
14 prove anything to the board this evening. The  
15 burden of proof with respect to the application for  
16 the ambulatory surgery center and the lodging suites  
17 rests a hundred percent on OrthoIllinois. That is  
18 stated quite clearly in 2.108 of the City's zoning  
19 code, Chapter 19.

20 The Wisconsin Supreme Court has also said  
21 in AllEnergy Corporation v. Trempealeau County, it's  
22 a 2017 decision of the Wisconsin Supreme Court, that  
23 the City of Beloit would have the burden of proof to  
24 establish that all legal requirements with respect  
25 to the zoning determination that was made in this

1 case have been established. So when you think about  
2 what the result is going to be in this case, what  
3 you're going to need to ask yourselves is has the  
4 City proved to me, to my satisfaction, that all  
5 legal requirements under the zoning code have been  
6 met? And has OrthoIllinois, as the Applicant,  
7 satisfied you that with respect to the submission of  
8 information, have they met all the requirements to  
9 satisfy the approval criteria under the ordinance?

10           This appeal does not seek to impose an  
11 obligation on the City of Beloit to license any  
12 types of healthcare facilities. It does not seek to  
13 have the City adopt that requirement. What it does  
14 seek is a requirement that the City follow the  
15 ordinance that was passed by the city council on  
16 September 20th. It's a six-page ordinance. It says  
17 "An ordinance to create, amend and repeal various  
18 sections of Chapter 19 of the Code of General  
19 Ordinances of the City of Beloit pertaining to  
20 zoning of medical facility uses."

21           Chapter 19 is the relevant chapter for  
22 purposes of what the board of appeals needs to be  
23 considering in this case. The ordinance was  
24 approved by the city council on September 7th.  
25 Twenty days later -- 20 days earlier, it was

1 approved by the plan commission at a hearing on  
2 August 18th. However, the plan commission made a  
3 specific amendment that it proposed to the city  
4 council. By changing and enacting this ordinance  
5 the way it was proposed to the plan commission and  
6 the city council, 265 properties in the City of  
7 Beloit had their permitted uses as of right where  
8 they were located in C-1 districts and CBD-1  
9 districts had them removed. By enacting this  
10 ordinance, it changed the permitted uses by right of  
11 265 properties in the city, and changed them to  
12 conditional uses. No notice was given to any of  
13 those property owners. None were notified. None of  
14 the requirements for the passage of this ordinance  
15 were followed.

16           Twenty days to pass this ordinance. Now,  
17 what's interesting about that is the date it was  
18 passed. And as of the date it was passed, the City  
19 had already been -- had applied for approvals. It  
20 had already engaged a consultant to perform a  
21 examination or soil testing out at the Freeman  
22 Parkway site, and I submit to you the City knew that  
23 and passed this ordinance, despite the fact that it  
24 harmed 265 properties, because it wanted to favor  
25 OrthoIllinois as a developer in this community.

1 That's wrong.

2 MR. DILLON: Object on relevance grounds.  
3 You have no evidence to support that. You're not  
4 going to call any witnesses from the city council.  
5 It's inappropriate to impugn the character and the  
6 integrity of those members who voted on this at a  
7 public hearing.

8 MR. FEELEY: There are documents in the  
9 record that show that OrthoIllinois was applying and  
10 doing work out on the site to determine the  
11 applicability of that property in May of 2021.

12 So it took 20 days to pass this.  
13 Ultimately, President Anderson, city council  
14 president, had a hearing at the city council on  
15 January 18th, said, oops, we harmed 265 property  
16 owners in the city. We took away their permitted  
17 uses by right. We raised that issue with the City  
18 on September 7th. We raised that issue with the  
19 City on August 18th. It took almost five months for  
20 the City of Beloit to correct that, and, ultimately,  
21 they did.

22 Now, one of the things that is argued in  
23 this case, and you just heard Mr. Roth state it, is  
24 that with respect to the lodging suites that are at  
25 issue, there are basically three ways that the



1 lodging suites should be permitted. One is that  
2 they should be considered part of the ambulatory  
3 surgery center. Mr. Eagon here who is a department  
4 of health services certified inspector, is going to  
5 testify tonight that lodging suites are not a part  
6 of an ambulatory surgery center. An ambulatory  
7 surgery center is a distinct entity that performs  
8 surgical services within its four walls. This  
9 entity, the lodging suites, is not part of the ASC.  
10 It's also not an accessory use. When Mr. Pennington  
11 testifies, I'm going to refer him to Section 6 --  
12 actually, 6.3 of the zoning code. That's applicable  
13 to this decision. If it's an accessory use, it has  
14 to meet the definition of an accessory use, which by  
15 definition of the code, is a detached use that has  
16 to be a minimum of six feet away from the principal  
17 use. This is not an accessory use to an ambulatory  
18 surgery center, and to take any position that it is,  
19 violates the Wisconsin Statutes and the City's  
20 ordinances. The other way that's been proposed by  
21 my friend, Mr. Roth, or Attorney Roth here, is that  
22 this could be considered a community living  
23 arrangement.

24           The code does define a community living  
25 arrangement, and it's defined specifically as a

1 facility that's licensed, operated or permitted by  
2 the department of health services with respect to  
3 the definition provided under Wisconsin Statute  
4 50.01(6d). The City ordinances that was adopted by  
5 the city council adopts that definition. That  
6 definition requires a residential care apartment  
7 complex to have separate apartments, separate doors,  
8 separate entrances, a kitchen, separate sleeping  
9 area, separate living area, none of which the  
10 evidence will show is in the plans for these lodging  
11 suites that are in the record today.

12 Now, the City wants you just to focus on  
13 Section 6 of this six-page ordinance. And, in  
14 effect, I submit to you there's definitions of an  
15 ambulatory surgery center in here. There's a  
16 definition of nursing home. There's a definition of  
17 a hospice. There's a definition of community living  
18 arrangement, but what the City would have you  
19 believe is forget about these six pages. In fact,  
20 just do this (indicating). This is all you need to  
21 look at. Just the section that applies to medical  
22 facilities. That would be error to do. You're  
23 bound to follow the ordinance as it was enacted by  
24 the city council, all six pages of it that apply  
25 with respect to this zoning decision.

1           Now just briefly about the comprehensive  
2 plan. I agree with Mr. Roth. I agree with  
3 Mr. Pennington that what the state statute says is  
4 that the comprehensive plan applies to enactments or  
5 amendments of the zoning ordinance. However, the  
6 state statutes set forth the minimum requirements  
7 for comprehensive plans. What does that mean? The  
8 City of Beloit, under its home rule powers by  
9 statute, can choose to go beyond the minimum  
10 requirements and place additional requirements on  
11 the use of a comprehensive plan to guide zoning  
12 decisions. And the evidence is going to show that  
13 in the City of Beloit's Comprehensive Plan, the City  
14 adopted the plan stating that it would apply to all  
15 land use decisions related to any private or public  
16 development in the city of Beloit. The City has a  
17 right to do that. That's a local option. And the  
18 City is bound to follow its comprehensive plan. And  
19 I submit to you that the City understands that  
20 requirement, because, for example, the state statute  
21 specifically says that conditional use permits do  
22 not need to be consistent with the City plan.  
23 However, I'm going to present examples to you where  
24 Ms. Christensen has referred to the comprehensive  
25 plan with respect to proposing conditional uses to

1 be approved by the plan commission and city council.  
2 That's direct evidence that the City has chose to go  
3 beyond what the state statute applies and to bind  
4 itself to a stricter procedure.

5 One final point. You know, some of you I  
6 hope remember that when you were appointed to this  
7 body, you took an oath, and you took an oath to  
8 follow the laws, the constitution, the ordinances of  
9 the City of Beloit. And I hope that you take that  
10 oath seriously and find that with respect to the  
11 burdens that are imposed on OrthoIllinois and the  
12 City of Beloit staff in this case, that that burden  
13 of proof has not been met; that the City and  
14 OrthoIllinois are proposing that you ignore all six  
15 pages of the ordinance except for four paragraphs  
16 relating to medical facility, and find that there  
17 was no authority, under the ordinances of Wisconsin  
18 law, to permit this development. Thank you.

19 CHAIRPERSON PURVIANCE: Thank you.

20 At this time, Mr. Dillon, would you like  
21 to give an opening statement?

22 MR. DILLON: Yes, please. Thank you.

23 Good evening ladies and gentlemen. I'm  
24 Duffy Dillon. I represent OrthoIllinois in  
25 connection with this matter. I have represented

1 OrthoIllinois since about February of last year when  
2 this body had an appeal pending before it in a  
3 separate matter. Some of you may have been involved  
4 in that. I'm going to keep my comments as brief as  
5 I possibly can, because I anticipate this hearing  
6 could go a while.

7           You are aware that your record already  
8 consists of over 2,000 pages, I believe. If you  
9 have each found time to read all of that, I commend  
10 all of you. I assume that you have, but it's a  
11 monumental task to do that, and I appreciate the  
12 effort, and OrthoIllinois appreciates the effort  
13 you're putting into this.

14           When we do opening statements in court, we  
15 talk about what the evidence is going to show.  
16 That's what I'm going to tell you now. And I follow  
17 the K.I.S.S. principle when I'm talking to folks  
18 about what is it we have before us here. Keep It  
19 Simple Silly.

20           In this case, Mr. Pennington has already  
21 given you the staff report. It is about as  
22 straightforward as it can be. And what  
23 OrthoIllinois' materials will show you, and what the  
24 evidence will show you, is that OrthoIllinois has  
25 been trying to get a development off the ground in

1 the city of Beloit for about 18 months now. And  
2 when OrthoIllinois first came to the City of Beloit,  
3 the City staff and OrthoIllinois went back and forth  
4 many times for a long period of time about what  
5 OrthoIllinois' proposed use was, because the  
6 ordinance, at the time, did not have a perfect fit  
7 for the proposed use. The record will reflect that.  
8 The record will show that eventually what happened  
9 is after Beloit Health System vehemently opposed  
10 OrthoIllinois' efforts to locate here on Gateway  
11 Boulevard in a commercial area on the grounds that  
12 it constituted a hospital use under the old  
13 ordinance. And after Beloit Health System commenced  
14 an appeal of City staff's decision that  
15 OrthoIllinois could locate on Gateway Boulevard,  
16 OrthoIllinois decided to pull its application for  
17 that property. The reason being, Beloit Health  
18 System was arguing this use under the old version of  
19 the ordinance constituted a hospital use. And  
20 instead of wasting more City staff time and  
21 embroiling the City in litigation and facing an  
22 uncertain determination, because, as this board  
23 probably knows, Beloit Health System can appeal this  
24 body's decision to the Circuit Court of Rock County.  
25 OrthoIllinois decided discretion is a better part of

1 valor. Instead of sticking with this property where  
2 we know Beloit Health System is going to object and  
3 continue fighting this tooth and nail until the end,  
4 let's go find property that's already zoned for  
5 hospital uses, because if we do that, that's what  
6 Beloit Health System has been saying all along, that  
7 this would be a hospital use. Let's take their  
8 argument into account. Let's go find hospital-zoned  
9 property and locate there.

10           You'll hear from Anthony Brown, CEO of  
11 OrthoIllinois, that OrthoIllinois embarked on an  
12 effort in that regard and found the subject property  
13 that we're dealing with now that is zoned C-3, has  
14 been zoned C-3 for over 20 years, as far as we can  
15 tell, and always has been carrying that zoning and  
16 could have allowed hospital use as a matter of right  
17 before the ordinance was amended.

18           You will hear that OrthoIllinois, when the  
19 city council was considering amending the ordinance,  
20 OrthoIllinois submitted a written submission to the  
21 city council saying we already are under contract  
22 with property that is zoned for hospital use, so we  
23 support the zoning amendment. We believe our use is  
24 going to be permitted under the old ordinance or the  
25 new, regardless of whether you change the ordinance.

1 The reason being, OrthoIllinois had no way to know  
2 if this ordinance was going to be changed, and so  
3 had to rely upon the old ordinance as it was, and  
4 made its decisions in that regard.

5 Now, turning to the issue before you. The  
6 issue before you is simple. The issue before you is  
7 what is the current zoning of OrthoIllinois'  
8 property, and is the proposed use allowed on the  
9 property under the zoning ordinance? The answer to  
10 those questions is, it's zoned C-3. The ordinance  
11 was just amended by the city council to allow  
12 ambulatory surgery centers -- surgical centers and  
13 medical facilities. What OrthoIllinois has proposed  
14 to do is unquestionably an ambulatory surgery  
15 center. Unquestionably an ambulatory surgery  
16 center. The evidence will show OrthoIllinois  
17 already operates an ambulatory surgery center in  
18 Rockford. No dispute about that. There are no  
19 overnight stay rooms at the surgery center in  
20 Rockford, but they are operating an ambulatory  
21 surgery center in Rockford now. This is an entity  
22 that knows how to operate an ambulatory surgery  
23 center and knows what one is.

24 The evidence will show that for this  
25 project, OrthoIllinois intends to operate an



1 ambulatory surgery center on the subject property.  
2 It's going to do that under an entity that it has  
3 formed, and that entity will be the distinct entity  
4 that performs the surgeries and does provide all  
5 that care.

6           If OrthoIllinois was not proposing to have  
7 some overnight stay capabilities for this project,  
8 there would be no basis for Beloit Health System to  
9 appeal. And I would submit to you that the appeal  
10 has no basis in law or fact, and I think this body  
11 would make quick work of that. And we have tried,  
12 prior to today, to stipulate with Beloit Health  
13 System that if we did not have these overnight stay  
14 rooms involved, that there be would no basis for an  
15 appeal; in other words, this would be an ambulatory  
16 surgery center, and we would not be here tonight.  
17 We have not been successful in getting a stipulation  
18 in that regard, so we will see what the evidence is  
19 tonight.

20           That said, the arguments that we are  
21 hearing from Beloit Hospital and from the other  
22 aggrieved party, is not that what OrthoIllinois  
23 intends to do does not consistent of an ambulatory  
24 surgery center. Instead, what they are arguing, is  
25 because there are overnight stay rooms that could be

1 used in some way in this facility, again, as  
2 Mr. Roth said, that's what takes this away from an  
3 ambulatory surgery and turns into something  
4 different. The responses to that are, no, it does  
5 not.

6           Number one, the evidence is going to show  
7 that those overnight stay rooms -- well, the  
8 evidence will show you that Medicare has some  
9 significant regulations that apply to ambulatory  
10 surgery centers. And for OrthoIllinois,  
11 OrthoIllinois could operate an ambulatory surgery  
12 center without being Medicare accredited, but it  
13 would not be paid by Medicare to do any surgeries.  
14 So most ambulatory surgery centers get accredited  
15 with Medicare. If you are accredited with Medicare,  
16 Medicare can pull your accreditation if you stray  
17 from what its rules are, which are you must be a  
18 distinct entity; you must do discharges within  
19 24 hours. You cannot stray from those rules.  
20 OrthoIllinois has no intention to violate those  
21 rules, and it will be complying with those rules.

22           You will hear evidence that with regard to  
23 these overnight stay suites, first of all, the  
24 record shows initially when OrthoIllinois applied in  
25 early September for this, the plan was to have these

1 be nursing suites, and the plan for OrthoIllinois  
2 was to license those as a nursing home because there  
3 will be a small amount of care provided there, and  
4 that should be regulated in some form or fashion.  
5 And OrthoIllinois received advice from a consultant  
6 saying do it as a nursing home. That application  
7 was made. The record shows DHS came back and said,  
8 sorry, there are no beds available for this type of  
9 use. And so OrthoIllinois realized at that point  
10 this isn't going to be possible. We can't go under  
11 that approach with these overnight suites. So  
12 OrthoIllinois switched gears and said, "What other  
13 ways can we do this?" A consultant recommended you  
14 could register these as residential care apartment  
15 complexes, register those with the State. Register  
16 them with a separate entity, and those should be  
17 okay. And we have identified, in the zoning  
18 ordinance, what OrthoIllinois believes is a  
19 correct -- that that is a permissible use on this  
20 property as well. We'll get into that as the  
21 evidence gets put in.

22 But the point that I want to emphasize to  
23 this body is just this: OrthoIllinois does not  
24 intend to have overnight stays unless and until the  
25 state approves that RCAC use, residential care

1 apartment complex use. It's going to do it through  
2 a separate entity, but it's not going to do anything  
3 with those rooms unless and until that use is  
4 approved. So what does that mean? What that means  
5 is, OrthoIllinois is ready to go forward with this  
6 project as an ASC and only being as an ASC, and the  
7 RCAC registration does not happen for a while, and  
8 once it happens, if it's not approved, OrthoIllinois  
9 is not going to be violating the law by putting  
10 another use on its property that the state could  
11 come in and find a violation. So what this zoning  
12 or this appeal amounts to, it's not a debate about  
13 the ASC and what the use is going to be. The ASC is  
14 clearly an ASC. It's clearly a medical facility.  
15 And there are no rules and regulations that dictate  
16 that OrthoIllinois cannot build overnight stay rooms  
17 there and choose not to use those rooms down the  
18 road as part of its facility, just as people can  
19 build a house with extra closets or a 10-bedroom  
20 house, or 20-bedroom house. OrthoIllinois can build  
21 a building however it looks. The question is, what  
22 is the use? The use here will be for an ambulatory  
23 surgery center. That's clearly permitted. And,  
24 again, if that were the only use that we were  
25 putting this property to, there would be no appeal

1 here.

2           So what does this appeal amount to? This  
3 appeal amounts to speculation by Beloit Health  
4 System about what this other use is going to be that  
5 is uninformed, and as Mr. Feeley said, they are  
6 asking us to prove what those uses are. And we're  
7 prepared to do that. But those uses will not be  
8 violating the zoning ordinance. And if we had a  
9 stipulation from Beloit Health System that the ASC  
10 use is a permitted use as the ordinance says, I  
11 don't think this body would have much heartburn  
12 about any of these issues.

13           Now, the last thing I want to say  
14 here is that we do anticipate that based on Beloit  
15 Health System's pre-hearing filings, Beloit Health  
16 System apparently wants to make a big deal out of  
17 the fact that the comprehensive plan, in its view,  
18 is inconsistent with this use. You've already heard  
19 from Mr. Roth, and we agree, the comprehensive plan  
20 has no relevance to this body's decisions. This  
21 body is charged, by statute, to enforce the  
22 ordinance as written. The city council is the body  
23 in the City of Beloit that sets policy here. This  
24 body sits as a quasi-judicial body. You are the  
25 proverbial umpire calling balls and strikes. What

1 does the ordinance say? Does this meet the  
2 ordinance? If it meets the ordinance, it goes  
3 forward. It clearly meets the ordinance, and we  
4 will establish that. But I do want to mention,  
5 because Beloit Health System apparently is intent on  
6 relying on the plan as being a central issue for  
7 this body to consider, I anticipate this body will  
8 be fielding multiple objections. And we're not  
9 going to be objecting to this body because we want  
10 to be difficult or we want to prolong these  
11 proceedings. In fact, it's quite the opposite. To  
12 the extent that I object during these proceedings,  
13 it will be because I believe the evidence that's  
14 being presented to you is so far out of bounds and  
15 so irrelevant, that to consider it would be a waste  
16 of this body's time and the public's time as a  
17 result.

18 Thank you very much. We look forward  
19 to presenting our case.

20 CHAIRPERSON PURVIANCE: Thank you.

21 At this time we will move on to the City  
22 staff's case in chief, please.

23 MR. ROTH: The City intends to rest on the  
24 testimony that Mr. Pennington gave and the evidence  
25 that he presented in the staff report. I anticipate

1 there will be additional testimony that Ortho  
2 presents from its witnesses and then Beloit will  
3 present its own witnesses, but the City does not  
4 intend to call any additional witnesses beyond what  
5 Mr. Pennington has already presented to the board  
6 regarding the staff report.

7 So if this is the time for the board to  
8 ask Mr. Pennington questions, I guess that makes  
9 sense, but I don't intend to present anything else,  
10 nor do I believe Mr. Pennington does.

11 CHAIRPERSON PURVIANCE: Thank you.

12 So, yeah, then, I believe it would be  
13 appropriate at this time to ask questions, for board  
14 members to ask questions.

15 MR. FLEMING: Yeah, the first thing I want  
16 to check was, and it was entered as part of staff's  
17 opening statement. I'm not sure Mr. Pennington was  
18 sworn in. Would the parties stipulate that the  
19 staff report presentation stand as sworn testimony  
20 or would you like to swear Mr. Pennington in?

21 MR. FEELEY: Yeah, we'll stipulate to  
22 that, and he can simply be sworn in then for any  
23 further examination.

24 MR. FLEMING: Okay. So his previous  
25 reading will be accepted as sworn testimony?

1 MR. FEELEY: Yes, we stipulate to that.

2 MR. DILLON: For the record, we do as  
3 well.

4 MR. FLEMING: Thank you.

5 Yeah, so I guess now we would move to  
6 questions by the board.

7 CHAIRPERSON PURVIANCE: Any questions from  
8 the board at this time? Mr. Petersen?

9 MR. PETERSEN: I have a question. So Drew  
10 just confirmed it's zoned C-3. It has been zoned  
11 for 21 years plus the 16 years since the place  
12 burned down.

13 MR. PENNINGTON: Correct.

14 MR. PETERSEN: The zoning standards for  
15 this specific piece of property have not changed  
16 whatsoever?

17 MR. PENNINGTON: Correct.

18 MR. PETERSEN: And you did notify all the  
19 relevant neighbors to the property within 150 feet  
20 of the plan, and all that was done, right? All the  
21 procedural items were taken care of to make sure it  
22 was done, correct?

23 MR. PENNINGTON: Correct. I believe it  
24 was 200 feet from the land management plan, but,  
25 yes.



1           MR. PETERSEN: I know it was a certain  
2 distance. So procedurally you took care of those  
3 things?

4           MR. PENNINGTON: Yes.

5           MR. PETERSEN: Okay. I have nothing  
6 further.

7           MR. BAKER: I have nothing.

8           CHAIRPERSON PURVIANCE: Anyone else?

9                           (No further questions were  
10                           asked.)

11           CHAIRPERSON PURVIANCE: At this time I  
12 believe we move on to cross-examination of  
13 Mr. Pennington, and so, therefore, if we want to  
14 begin -- do we want to go in the same order as the  
15 opening statements?

16           MR. FLEMING: We usually would keep it in  
17 the same order, yes.

18           CHAIRPERSON PURVIANCE: Okay. And so we  
19 will begin then with Mr. Feeley, if he would care to  
20 cross-examine Mr. Pennington at this time.

21           MR. FEELEY: Has he been placed under  
22 oath?

23           MR. FLEMING: Oh, we can do that now.

24           MR. FEELEY: Before I begin, do the other  
25 parties have their book of exhibits to provide to

1 the witness?

2 MR. ROTH: So how do you want to do this?  
3 I mean, if you want to use the City record,  
4 document, do you want me to give it to him? And if  
5 you want to use an Ortho document, do you want Duffy  
6 to give it to him? And if you want to use one of  
7 yours, you're going to give it to him? Is that how  
8 you want to handle it?

9 MR. FEELEY: Yeah, I thought the  
10 agreement, I mean, we can do it that way, but I  
11 copied all my exhibits and put it them in the binder  
12 so the witness can just refer to the exhibit in the  
13 binders. And I actually thought that's what we had  
14 discussed, but --

15 MR. ROTH: We can do that, sure, if you  
16 have a copy of the exhibits printed.

17 MR. FEELEY: Just mine, though.

18 MR. ROTH: Is that our record?

19 MR. FEELEY: No, those are the exhibits  
20 that were --

21 MR. DILLON: I have the complete record.  
22 I'll hand it to the witness.

23 CHAIRPERSON PURVIANCE: If you do that,  
24 will you, like, tell us what page it is?

25 MR. FEELEY: Yeah, I'll refer you to the

1 exact page.

2 MR. DILLON: One clarification. I did  
3 pull OrthoIllinois' proposed findings out of here,  
4 but I trust you're not going to be referencing  
5 those. The page numbers are here (indicating).

6 MR. PENNINGTON: Thank you. I appreciate  
7 it.

8 MR. FEELEY: So what exactly are these?

9 MR. DILLON: It's the entire record.

10 MR. FEELEY: The City's record or Beloit  
11 Health System's exhibits?

12 MR. DILLON: It's a copy of page 1 through  
13 2000-whatever.

14 MR. FEELEY: Everything?

15 MR. DILLON: Correct.

16 MR. FEELEY: Okay. So where do you --

17 MR. DILLON: They're paginated, and the  
18 spines have the page numbers on them. So I think  
19 you can probably direct him to page numbers if you  
20 have those.

21 DREW PENNINGTON,  
22 having been first duly sworn, was examined and  
23 testified as follows:

24

25

## 1 CROSS-EXAMINATION

2 BY MR. FEELEY:

3 Q. With respect -- so with respect to your  
4 staff report, Mr. Pennington, and this is a  
5 follow-up to a question that was just made by  
6 Mr. Petersen. The only notification that you  
7 provided to landowners in the area related to the  
8 land management plan; is that correct?

9 A. Correct.

10 Q. And the only information that would have  
11 been provided to a landowner by the land management  
12 plan would have related to -- or would have involved  
13 or referenced the eight-inch native prairie grasses  
14 that were being proposed to be grown on the  
15 property?

16 A. That and it also would have included a  
17 copy of the landscape plan.

18 Q. Now, if you would, I'd like to refer you  
19 to Document 465, which is City Ordinance No. 3719 in  
20 the record.

21 A. So you're referring to Duffy's?

22 Q. Yeah, so I'm referring to --

23 A. 465.

24 Q. -- the actual -- the actual administrative  
25 record --

1 A. Okay.

2 Q. Page No. City 465.

3 A. Okay.

4 Q. And you'll recognize this as Ordinance  
5 No. 3719; is that correct?

6 A. Correct.

7 Q. And this ordinance, on page 3, Section 6,  
8 constitutes an amendment to Section 11 of  
9 Chapter 19; is that correct?

10 A. Section 3, amending the use table?

11 Q. No. Section 6 on page 3 --

12 A. Okay.

13 Q. -- deals with medical facilities, correct?

14 A. Correct.

15 Q. And that Section 6 actually amended a  
16 definition in Section 11 of the zoning code,  
17 correct?

18 A. Correct. Yep.

19 Q. And this sets forward -- this sets forward  
20 the characteristics of medical facility accessory  
21 uses, provides some examples and some exceptions; is  
22 that correct?

23 A. Correct.

24 Q. Now, when you get an application in your  
25 capacity as a -- the zoning officer for the City of

1 Beloit, you're obligated to follow all of the City  
2 ordinances; is that correct?

3 A. Correct.

4 Q. And all of the provisions of Chapter 19 of  
5 the City's ordinances, correct?

6 A. Correct.

7 Q. So you're not just bound by this  
8 definition of medical facilities?

9 A. This definition is part of the zoning  
10 ordinance, so yes.

11 Q. Correct. Correct.

12 Now, this zoning ordinance provided  
13 additional definitions for the examples listed in  
14 D-3; is that correct?

15 A. Yes.

16 Q. And do you know why those examples, those  
17 additional examples, were more particularly defined  
18 in this ordinance?

19 MR. DILLON: Objection. You're asking to  
20 give a legal conclusion.

21 MR. FEELEY: I'm asking him if he knows.

22 THE WITNESS: The purpose of this  
23 ordinance was to provide clarity. So as part of  
24 that effort, definitions were provided.

25 BY MR. FEELEY:

1 Q. And it's relevant to your determination,  
2 for example, if OrthoIllinois proposed an ambulatory  
3 surgery center, that you would review and determine  
4 whether or not it met the definition of an  
5 ambulatory surgery center as defined in the  
6 ordinance, correct?

7 A. Correct.

8 Q. And same thing with respect to a nursing  
9 home; is that correct?

10 A. Correct.

11 Q. And you heard OrthoIllinois in their  
12 opening statement indicate that initially  
13 OrthoIllinois' intent with respect to the  
14 application was to build a nursing home attached to  
15 an ambulatory surgery center; is that correct?

16 A. That's what he stated, yeah.

17 Q. And that was also, in fact, on the  
18 applications that were submitted to the City of  
19 Beloit in September of 2021, correct?

20 A. Correct.

21 Q. It listed both of those uses?

22 A. If you want to refer me to the exact  
23 application, I'd be happy to look at it, but I think  
24 more or less, yes.

25 Q. Well, take a look at City 012.

1 A. Okay.

2 Q. Okay. And that should be the City of  
3 Beloit application for an architectural review  
4 application; is that correct?

5 A. Correct.

6 Q. You've seen that document before?

7 A. Yes.

8 Q. And in the description, under five of that  
9 document, it references a 26,571 gross total square  
10 foot ambulatory surgery center. The ambulatory  
11 surgery center is itself 20,426 square feet, and the  
12 remaining square footage is a nursing suite; is that  
13 correct?

14 A. Correct.

15 Q. And if you look at City 014, that's the  
16 site plan review application; is that correct?

17 A. Correct.

18 Q. And that states, in No. 8, a new nursing  
19 home attached to a new ambulatory surgery center,  
20 correct?

21 A. Correct.

22 Q. So it's a true statement that for purposes  
23 of these applications, you needed to review the  
24 ordinance and as well, focus on the definitions of  
25 ambulatory surgery center and nursing home as



1 adopted by the city council; is that correct?

2 A. Correct.

3 Q. So it's not just a matter of looking at  
4 medical facility. You have to apply the additional  
5 definitions in this ordinance if they are relevant  
6 to the application that's being submitted?

7 A. Correct.

8 Q. Now, No. 8 on the site plan review  
9 application requires the Applicant to describe all  
10 of the proposed uses for this property. Are you  
11 aware of any application that was submitted to the  
12 City of Beloit by OrthoIllinois for an accessory use  
13 for six lodging suites?

14 A. Yes. This application is associated with  
15 a set of plans. It's referred to on the  
16 application, the development plans. Their  
17 development plans do reference an accessory use.

18 Q. And are you talking about the development  
19 plans that show a drawing of the building with  
20 ambulatory surgery center and sleeping unit on one  
21 half, and sleeping unit on the other?

22 A. Correct, the site plan.

23 Q. The site plan. So it's not necessary to  
24 include all the uses that are being proposed on an  
25 application; is that correct?

1           A.     Correct.  It wouldn't be practical to list  
2 every possible use.

3           Q.     Can you -- can you point us to any  
4 document in the record that references an accessory  
5 use by name?

6           A.     Sure.  So let's find the site plan, the  
7 approved site plan.

8           Q.     I'm asking if there's specific language  
9 that says accessory use.

10          A.     Yes, the cover sheet for the site plan  
11 used that exact language.

12          Q.     Okay.  So the site plan, I believe --

13                 MR. PETERSEN:  Can we have a pause real  
14 quick, because we're having a problem.

15                 MS. ADAMS:  I can't find -- I mean, it  
16 isn't the same number as it is in the 2,000-page  
17 document.

18                 MR. DILLON:  Tim, if I may help.

19                 MR. FEELEY:  Sure.

20                 MR. DILLON:  The City's Bates' numbered --  
21 the City's Bates' numbered everything in the lower  
22 right-hand corner in the agenda packet.  And those  
23 numbers do not match up necessarily.  Like City's 14  
24 is Bates-numbered 71 in the agenda packet.  So the  
25 members, I'm sure, are looking at the agenda packet

1 to get their pagination. So if you'd refer to those  
2 numbers instead of the Bates' numbers that the  
3 parties supplied, it would help out. That confused  
4 me as well.

5 MS. CHRISTENSEN: Susan, if you open the  
6 official record tab off of the web site --

7 MR. FLEMING: Hold on, please. We're  
8 trying to --

9 MS. ADAMS: I'll find it. Thank you.

10 BY MR. FEELEY:

11 Q. Just to help you out, Mr. Pennington,  
12 there's a set of drawings related to the site plan  
13 at City 061, and the approved site plans, I believe,  
14 are at City 431.

15 A. Okay.

16 THE WITNESS: So, Susan, we're  
17 approximately around page 445.

18 MS. ADAMS: Okay. Thanks.

19 THE WITNESS: All right. So I'm on  
20 City -- I'm on the cover page for the site plan. So  
21 your question is?

22 BY MR. FEELEY:

23 Q. Can you point out to us on that site plan  
24 where it lists an accessory use?

25 A. So this is the cover page for the site

1 plan. It reads, "OrthoWisconsin Medical Facility  
2 With Accessory Use."

3 Q. Okay.

4 A. That is the beginning. That's the cover  
5 sheet of the site plans.

6 Q. And what do you understand to be the  
7 accessory use?

8 A. So I'm going to find the architectural  
9 site plan. So if you're looking at the site plan,  
10 let's take a look at C200, for example. And this is  
11 not the approved site plan, but it's fine for our  
12 purposes. C200 of the civil site plan, the building  
13 is configured in a way where the northern two-thirds  
14 or more is the ASC, and then the southern -- the  
15 southwest third is the -- are the suites. The final  
16 approved site plan, which we should find for the  
17 record, labels these two areas, the ASC and the  
18 sleeping suites.

19 Q. As you understand it, can you point out on  
20 the site plan drawings that portion of the  
21 development that's an accessory use so the board  
22 understands?

23 A. Sure. What's -- I mean, tell me where you  
24 want me to go. I'm your witness. If you can point  
25 me to the approved site plan, I'll show you, but

1 just for our purposes now, this (indicating).

2 Q. And did you understand those lodging  
3 suites to be separate from the ambulatory surgery  
4 center?

5 A. They have doors. They are not able to  
6 stay indoors walking from the ASC into the suites.  
7 There are doors.

8 Q. So explain to the board what were the  
9 lodging suites -- what was the use that was approved  
10 for the lodging suites.

11 A. So it's -- we've got two options. And the  
12 reason I say "options" is because I can't predict  
13 who is going to be receiving surgery in this  
14 facility, but one option is that it's folks who are  
15 in the ASC, discharged, and then remain on-site in  
16 these suites for an overnight. That is a permitted  
17 use. The other alternative is that it's folks who  
18 may just want the convenience of staying there.  
19 Again, staff can't predict which it's going to be.  
20 It's purely hypothetical. So both of those are  
21 evaluated to see if they are permitted uses, which  
22 they are.

23 Q. And with respect to your first example,  
24 permitted use. What is the permitted use?

25 A. The permitted use is an ambulatory surgery

1 center with suites attached to it, either nursing  
2 suites or simply lodging suites.

3 Q. And correct me if I'm wrong, but  
4 presumably you're bound by the use tables, correct?

5 A. Correct.

6 Q. And the use tables set out, in detail, the  
7 types of uses that are permitted in various zoning  
8 districts, correct?

9 A. Mm-hmm.

10 Q. And so my question is, in the use table,  
11 what is -- what is the first option use with respect  
12 to the lodging suites? There's no definition in the  
13 zoning code about nursing suites, correct?

14 A. The principal use is the ambulatory  
15 surgery center.

16 Q. Okay. And so did you approve then the  
17 lodging suites as an accessory use?

18 A. Yes.

19 Q. And define for us what is the accessory  
20 use?

21 A. They are rooms that contribute to the  
22 convenience, comfort, et cetera of people using the  
23 principal use. So it's an approved accessory use to  
24 that principal use.

25 Q. And isn't it true under the City's

1 ordinances that accessory uses have to be detached?

2 A. I would say that that is not accurate. It  
3 is a convoluted definition for sure, but there are  
4 lots of accessory uses that are attached, for  
5 example, garages.

6 Q. You don't have authority in your capacity  
7 to ignore provisions of the zoning ordinance,  
8 correct?

9 A. I'm not suggesting I've ignored anything.

10 Q. Okay. But my question is, you don't have  
11 the authority to ignore any part of the zoning  
12 ordinance?

13 A. No.

14 Q. And could you turn to OrthoIllinois  
15 Exhibit No. 17?

16 A. Well, can you direct me to the page you're  
17 referring to?

18 Q. Sure. Certainly. Certainly, sir. OI  
19 799.

20 A. Okay.

21 Q. Let me know when you have it.

22 MR. FLEMING: If I can, just for purposes  
23 of the record, I mean, are -- we're all going off  
24 some different things, but I think somebody is  
25 always going off of what is the packet, the

1 2,000-page agenda. Could we consistently refer to  
2 that packet, that number as well just so there's  
3 some consistency in the record? And it would make  
4 it easier for me to find --

5 MR. FEELEY: Yeah, so I have to say about  
6 that, that all of these documents were Bates'  
7 stamped when they were submitted, and there was  
8 not -- I mean, I did not check the records to see if  
9 they changed, because there was no notice that they  
10 had.

11 MR. FLEMING: Right. No, the Bates stamps  
12 are still there --

13 MR. FEELEY: Okay.

14 MR. FLEMING: -- but they've been put into  
15 a single document that is being called the record,  
16 and I understand there's stipulations. So we have  
17 one single document set, and so, you know, that is  
18 all put together as a PDF. We're all accessing it  
19 electronically except for the witness. And so I  
20 just think it helps for clarity and everyone  
21 following along if we know where that is in that  
22 document set, because that's what I understand will  
23 be going in in terms of exhibits into the record.

24 MR. FEELEY: And I understand that. I'll  
25 try to do that. I'm just explaining why I'm using



1 the numbers that I'm using.

2 MR. FLEMING: Understood.

3 MR. DILLON: And, Counsel, we're happy to  
4 point out that number if you ask us.

5 MR. FEELEY: Yeah, okay.

6 MR. DILLON: We can do that.

7 MR. FEELEY: Thank you, Duffy. I  
8 appreciate that.

9 BY MR. FEELEY:

10 Q. So you have the page. And it deals with  
11 6.3, accessory uses, buildings and structures. Do  
12 you see that?

13 A. Mm-hmm. Yep.

14 Q. And you're obligated to follow this  
15 ordinance, correct --

16 A. Correct.

17 Q. -- this provision of the ordinance?

18 A. Correct.

19 Q. And you'd agree with me that it says "the  
20 standards of this section shall apply to all  
21 accessory uses, buildings and structures, unless  
22 otherwise expressly stated." Do you see that?

23 A. Correct.

24 Q. And if you go roughly three pages to OI  
25 802, and up at the top "C," you see separation, a

1 minimum distance of six feet shall be separate,  
2 shall separate detached accessory buildings from all  
3 other on-site accessory or principal buildings or  
4 structures. Do you see that?

5 A. Yeah.

6 Q. The accessory use that you just described  
7 in your testimony a couple of minutes ago, is not  
8 consistent with this part of the ordinance, is it?

9 A. If you look at the prior page, it lists  
10 table of accessory uses. So I'm looking at OI 801.  
11 The very first accessory use listed is attached  
12 accessory structure. The most common accessory  
13 structure in the City is a garage. Attached --  
14 accessory uses are allowed to be attached to  
15 principal uses, because the separation of six feet  
16 is referring to a detached accessory building like a  
17 shed.

18 Q. And it says right above that, "accessory  
19 uses in residential PLI or DH zoning districts shall  
20 be subject to the minimum setback standards of the  
21 underlying zoning district except as modified by the  
22 following standards," correct?

23 A. Correct.

24 Q. This is not -- it doesn't have any -- this  
25 development is not in a residential district, is it?

1 A. It's not.

2 Q. It's not in a PLI district, is it?

3 A. It's not.

4 Q. It's not in a DH zoning district, is it?

5 A. I think we all know it's zoned C-3.

6 Q. Okay. That doesn't apply?

7 A. This does not apply. What applies is the  
8 list of accessory uses for a medical facility.

9 Q. Okay. And we'll get to that.

10 Now, if you would, can you go to page  
11 875?

12 A. So OI 875?

13 Q. Yes, sir.

14 THE WITNESS: And, Board Member Adams, I'm  
15 at 1966.

16 MS. ADAMS: Okay. Thank you.

17 BY MR. FEELEY:

18 Q. And this is Section 11.3. It defines  
19 words and terms; is that correct?

20 A. Correct.

21 Q. And you were bound by these general words  
22 and terms in this Section 11.3 as well, correct?

23 A. Correct.

24 Q. And do you see in 11.3.3, accessory  
25 building or use, and then four, A through D, are

1 listed; is that correct?

2 A. Correct.

3 Q. And it's a true statement, is it not, that  
4 to be an accessory building or use under this  
5 definition, you have to meet A, B, C and D, correct?

6 A. For an accessory building, yes.

7 Q. Well, it says "accessory building or use,"  
8 doesn't it?

9 A. It does.

10 Q. So it's for an accessory building or use,  
11 not just an accessory building?

12 A. So going back to my prior example, the  
13 most common accessory use in the City of Beloit is  
14 an attached garage. It would be preposterous to  
15 suggest that you couldn't build an attached garage  
16 in the City of Beloit.

17 Q. And I understand you have an opinion, but  
18 you're bound to follow the ordinance, correct? You  
19 don't have any authority to choose which ordinance  
20 provisions to follow; is that correct?

21 MR. ROTH: I'll object. This is just  
22 augmentative with the witness. I'd ask that we move  
23 on to other factual questions.

24 BY MR. FEELEY:

25 Q. This definition requires --

1           MR. FLEMING: Hold on there's been an  
2 objection. The Chair has to rule. I mean -- could  
3 you restate the objection?

4           MR. ROTH: He's arguing with the witness.  
5 I mean, he hasn't asked a question. It's a point  
6 he's made multiple times. He's just arguing with  
7 the witness.

8           MR. FLEMING: I guess my question would  
9 be, I mean, we've kind of gone on, you know, the  
10 ordinances are what they are. I'm not sure the  
11 degree to which you need witnesses testifying to  
12 what the law says. Do you not -- lawyers argue --  
13 argue the law, and witnesses testify as to facts.

14 BY MR. FEELEY:

15           Q. The lodging suites were not detached.  
16 Let's leave it at that. Is that correct?

17           MR. DILLON: Objection. That calls for a  
18 legal conclusion as to what detached means as used  
19 in this ordinance.

20 BY MR. FEELEY:

21           Q. Did you understand that the lodging suites  
22 were detached from the ambulatory surgery center  
23 when you approved it?

24           A. The lodging suites are attached to the  
25 ASC.

1           Q.    Okay.  Do you recall having communications  
2 with a Lynn Wallace at the Department of Health  
3 Services?

4           A.    Yes.

5           Q.    And what -- can you describe for the board  
6 what was the nature of the communications?

7           A.    Sure.  Ms. Wallace received a plan  
8 submittal from OrthoIllinois and then responded to  
9 that with a letter with questions regarding what  
10 type of license they, in fact, intended to pursue.  
11 I was copied on that correspondence, and I also  
12 separately e-mailed Ms. Wallace for my own  
13 clarification on what exactly the Department of  
14 Health Services needed to review in terms of  
15 building plans versus DSPS.

16          Q.    And you knew, however, though, in  
17 Ordinance No. 3719, and based on the application,  
18 that if OrthoIllinois wanted to construct a nursing  
19 home, the City's definition required that nursing  
20 home to be licensed; is that correct?

21          A.    Correct.

22          Q.    So the City had an interest in knowing  
23 whether or not DHS was going to license the  
24 facility?

25          A.    Correct.

1 Q. And, in fact, until you determined whether  
2 or not that was the case, you did not issue any  
3 approval?

4 A. The site plan review was open and ongoing  
5 during my communication with Ms. Wallace.

6 Q. But you didn't approve the development  
7 until OrthoIllinois withdrew its application to have  
8 a nursing home approved on the property?

9 A. It was not relevant to the timeline. The  
10 site plans weren't approved until much later.

11 Q. You issued the zoning certificate of  
12 compliance on January 14th?

13 A. Correct.

14 Q. 2022?

15 A. Correct.

16 Q. And OrthoIllinois withdrew their  
17 application for a nursing home on December 15, 2021?

18 A. Okay.

19 Q. Is that true?

20 A. Mr. Feeley, you need to direct me to  
21 exhibits if I'm going to answer these questions.

22 Q. This is City Bates-stamped page 417.

23 A. 474.

24 Q. Just so I can help, where does it say 474  
25 on the document?

1                   MR. PETERSEN: Official City record,  
2 right?

3                   THE WITNESS: Lower right corner of what's  
4 posted on the web site.

5                   MR. FEELEY: It's not on the actual --

6                   MR. ROTH: Yeah, because Julie's accessing  
7 the specific record document. We're having some  
8 nomenclature issues here.

9                   MS. CHRISTENSEN: 417 or he's saying 474  
10 of the whole event packet?

11                  MR. ROTH: That's the question.  
12 Mr. Feeley is referring to the City number, whereas  
13 other folks are looking at the entire 2,000-page  
14 exhibit.

15                  MS. CHRISTENSEN: I'm trying to just bring  
16 everything up then.

17                  MR. ROTH: I think that's a conglomeration  
18 of everything, including the DHS, the City, Ortho.  
19 So I don't know if it would be helpful to pull that  
20 up, that 2,000-page document.

21 BY MR. FEELEY:

22                  Q. I'm sorry, Mr. Pennington, do you have  
23 that document?

24                  A. Yes.

25



1 Q. And in that -- that document is a part of  
2 the record that you submitted to the board of  
3 appeals; is that correct?

4 A. Correct.

5 Q. So this would show, and I'm sorry, I was  
6 off by a day. This would show that OrthoIllinois  
7 advised Department of Health Services that it was  
8 withdrawing their application for a skilled nursing  
9 suite home; is that correct?

10 A. Correct.

11 Q. And are you aware at all of any change to  
12 the site plans with respect to the layout of the  
13 lodging rooms that changed as a result of  
14 OrthoIllinois withdrawing their application to have  
15 the lodging suites licensed as a nursing home?

16 A. The layout of the site?

17 Q. No, no, no, the layout, the floor plan of  
18 the -- of the lodging rooms?

19 A. But, Mr. Feeley, that's not my job. My  
20 job is not to review the floor plans. That is what  
21 Mr. Eagon is here to testify about.

22 Q. So you're not aware of anything?

23 A. Correct.

24 Q. Okay. So you mentioned at first it could  
25 be an accessory use, and I've asked you some

1 questions about that. And the other option is that  
2 it is a permitted use; is that correct?

3 A. Correct.

4 Q. And your opinion, so to speak, on that is  
5 that it would be part of the ambulatory surgery  
6 center?

7 A. Correct. Yeah.

8 Q. And does it affect your opinion at all  
9 that the City's definition of ambulatory surgery  
10 center defines an ambulatory surgery center as a  
11 distinct entity?

12 A. No. It's not the City's role to license  
13 ambulatory surgery centers.

14 Q. Okay. And I just wanted to know if it  
15 changed your opinion.

16 A. No.

17 Q. Did you have a conversation with  
18 Mr. Eagon -- first of all, who is -- what is  
19 Mr. Eagon's relationship to the City of Beloit?

20 A. Mr. Eagon is an independent consultant  
21 that is authorized by the State Department of Safety  
22 and Professional Services, DSPS, to do building plan  
23 reviews for the City of Beloit as well as other  
24 municipalities.

25 Q. And under Chapter 19, a building permit

1 cannot be issued until you issue a certificate of  
2 zoning compliance as to the use, correct?

3 A. Correct.

4 Q. And did you have a conversation with  
5 Mr. Eagon about the fact that OrthoIllinois was  
6 proposing to have the six-room lodging -- six  
7 lodging rooms licensed as a nursing home?

8 A. No.

9 Q. Did you have a conversation with Mr. Eagon  
10 about the fact that OrthoIllinois believed the six  
11 lodging rooms should be licensed as a residential  
12 care apartment complex?

13 A. I didn't have any conversations with him  
14 about licensing issues at all.

15 Q. Did you have any conversations with him at  
16 all about this development?

17 A. I did tell him that he would be receiving  
18 a new submittal, and what I mean by new submittal  
19 is, he was familiar with the project from the prior  
20 site on Gateway Boulevard.

21 Q. Do you agree with me that the six lodging  
22 rooms are separate from the ambulatory surgery  
23 center?

24 MR. DILLON: Objection. Vague.

25 MR. FEELEY: Let me restate that.

1           MR. GRONAU: Excuse me -- excuse me -- I'd  
2 like to set a motion to the board to have  
3 Mr. Fleming act as our examiner for us since there  
4 are so many objections.

5           CHAIRPERSON PURVIANCE: I think we have a  
6 motion. Is there a second from another board  
7 member?

8           MR. PETERSEN: I'll go ahead and second  
9 that if you're okay with that.

10          MR. FLEMING: Yes. Does everyone  
11 understand the motion of what's being asked?

12          MS. ADAMS: That you will take over --

13          MR. FLEMING: Well, as I understand, yeah,  
14 the motion is for me to act as hearing examiner,  
15 because I think when objections come up, we all are  
16 kind of looking at each other. Normally, it is the  
17 Chair's obligation, but under the rules of  
18 procedure, you can have -- vote to have somebody  
19 else deal with points of order and things like that,  
20 certainly, I think evidentiary objections and  
21 running the process.

22          MR. PETERSEN: It allows us to focus on  
23 the case.

24          MS. ADAMS: Yeah. That sounds good to me.

25          MR. PETERSEN: We need to vote on it.

1 MR. FLEMING: We have a motion and a  
2 second.

3 CHAIRPERSON PURVIANCE: Okay. All those  
4 in favor, please signify by saying aye.

5 (Whereupon, all the ayes were  
6 heard.)

7 CHAIRPERSON PURVIANCE: Any opposed with  
8 nay.

9 (Whereupon, no nays were heard.)

10 CHAIRPERSON PURVIANCE: All right. The  
11 motion carries.

12 MR. FEELEY: Can you read back the last  
13 question, please?

14 (Whereupon, the record was read  
15 by the reporter.)

16 THE WITNESS: Define "separate."

17 BY MR. FEELEY:

18 Q. Let me clarify. Do you agree that it's a  
19 separate use, a different use than the ambulatory  
20 surgery center?

21 MR. DILLON: Objection. Vague.

22 MR. FLEMING: Do you understand the  
23 question?

24 THE WITNESS: Yes, I do. As I stated  
25 earlier, I don't know who will be in these suites,

1 so I can't tell you if it's -- it depends on whether  
2 they're receiving care. If they are receiving care,  
3 then it's part of the ASC. If they live 500 miles  
4 away and they come to Beloit and want the  
5 convenience of staying overnight before their  
6 procedure, it's an amenity, an accessory. So,  
7 again, I can't predict who is going to be there.  
8 Our review was required to look at the possibilities  
9 of different scenarios and whether they were  
10 permitted in the C-3 district.

11 BY MR. FEELEY:

12 Q. Are you aware of anything under the  
13 definition of medical facility in Ordinance 3719  
14 that allows residential care complexes as an  
15 accessory use?

16 A. No, and that's not what was approved.

17 Q. And are you aware of anything under the  
18 definition of a medical facility under Ordinance  
19 3719 that approves lodging rooms with patients or  
20 their families?

21 A. Yes.

22 Q. Okay. And can you tell me the language in  
23 Ordinance No. 3719 that supports your testimony?

24 A. Sure. So Ordinance No. 3719 provides the  
25 definition of medical facility and then provides

1 accessory uses.

2 Q. And for accessory uses, it states offices,  
3 meeting areas, cafeterias, parking, maintenance  
4 facilities and housing facilities for staff or  
5 trainees?

6 A. Correct. What page are -- what page  
7 number are you on so we're looking at the same  
8 thing?

9 MR. FEELEY: This would be City Exhibit  
10 465.

11 MR. FLEMING: If I may, just for clarity  
12 of the record, this Ordinance 3719, am I correct  
13 that this is an ordinance that hasn't been adopted  
14 and has been made several amendments to the City's  
15 Code of Ordinances; is that correct?

16 MR. ROTH: I believe so, yeah.

17 MR. FLEMING: Okay. So this is -- could  
18 we --

19 MR. FEELEY: Sure. So if it's -- if  
20 it's -- I think I know where you're going with that.  
21 So if it's easier, you can find that definition  
22 also, Mr. Pennington, on OrthoIllinois Exhibit 17,  
23 page OI 867.

24 THE WITNESS: So what we are looking at  
25 here is the definition of a medical facility. I can

1 read the characteristics or the accessory uses or  
2 any of the examples, if you'd like.

3 BY MR. FEELEY:

4 Q. Well, I want you to -- my question was,  
5 can you point to the language that you're relying  
6 upon for your conclusion, if it is, in fact, your  
7 conclusion, that lodging rooms for patients and  
8 their families are an accessory use to an ambulatory  
9 surgery center?

10 A. I would say under D-2, accessory uses, it  
11 lists a number of examples of accessory uses,  
12 including offices, meeting areas, cafeterias,  
13 parking, maintenance and housing facilities for  
14 staff or trainees. That is a list of example  
15 accessory uses. It is not an exhaustive list. In  
16 other words, there are lots of accessory uses in any  
17 given building. They don't all have to be  
18 delineated if they meet the general definition of an  
19 accessory use.

20 Q. Did you read OrthoIllinois' findings of  
21 fact and conclusions of law that were submitted to  
22 the board of appeals in this case?

23 A. Yes.

24 Q. And do you have a copy of that document in  
25 front of you?



1           A.     I'm sure I do.  I've got lots of copies.

2           MR. DILLON:  There is not a copy because  
3     that's the one document I removed as I told you when  
4     we got started.

5           MR. FEELEY:  Okay.  Let me see if I have  
6     copy of you.

7           MR. DILLON:  For the record, it's at  
8     page -- it starts at page 1074 of the packet.

9           MS. ADAMS:  1074?

10          MR. DILLON:  Correct.

11          THE WITNESS:  Are any board members using  
12     the binders that are up there?

13          MR. PETERSEN:  Here, I can give it to him.

14          THE WITNESS:  Thank you.

15          MR. PETERSEN:  That's OrthoIllinois  
16     Exhibit 1076 you said?

17          MR. DILLON:  There is no paper copy for  
18     you, Mr. Pennington.  That's the one document I  
19     removed.

20          THE WITNESS:  Sure.  No problem, I've got  
21     it.  I've got an extra copy here.  Okay.

22          MS. CHRISTENSEN:  1074 in the whole  
23     packet, the 2,000-page document is page 1074.

24     BY MR. FEELEY:

25           Q.     If you would, can you turn to page 9 of

1 that document?

2 A. Okay.

3 MS. CHRISTENSEN: Which number is this?

4 MR. DILLON: That would be 1082 of the  
5 agenda packet.

6 BY MR. FEELEY:

7 Q. And, specifically, I want to draw your  
8 attention to paragraph 34. And this references a  
9 statement of a conversation that occurred with you  
10 and presumably Mr. Don Schriener, Mr. Anthony Brown,  
11 David Mikos and Mike Hunt about OrthoIllinois'  
12 interpretation of the zoning ordinance following  
13 receiving notice from DHS that nursing home beds  
14 were not available. Do you recall a conversation  
15 like that?

16 A. Yes, there was the conversation.

17 Q. And the conversation reflected in  
18 paragraph 32 talks about an analysis of the zoning  
19 ordinance that was discussed with you during that  
20 call. Do you recall that?

21 A. No, the analysis document referred to here  
22 was internal to OrthoIllinois. It was not presented  
23 to me.

24 Q. Okay. Let me do it this way. Paragraph  
25 32, 33, says, "The zoning officer did not disagree

1 with OI's zoning analysis during the above-noted  
2 conference call. The zoning officer also expressed  
3 his view that since the C-3 zoning for the property  
4 permitted medical facility uses, OI's proposed  
5 overnight stay rooms should properly be viewed as an  
6 accessory use to the ASC medical facility, and no  
7 separate zoning analysis for the overnight stay  
8 rooms was therefore necessary." Is that -- does  
9 that accurately reflect --

10 A. That accurately reflects part of our  
11 discussion.

12 Q. And then 34 says, "Because the zoning  
13 officer expressed his view during the above-noted  
14 conference call that the overnight stay rooms would  
15 constitute an allowable accessory use that would be  
16 permitted as part of the principal use of an ASC as  
17 a medical facility, and the materials OI submitted  
18 to the City for further review of the project after  
19 the conference call occurred largely omit any  
20 reference to the overnight stay rooms as being a use  
21 separate from the ASC medical facility component of  
22 the use." Is that an accurate statement?

23 A. It's from their perspective.

24 Q. I understand that, but I'm asking you,  
25 they represent, in this document, that that was your

1 view. Is that a true statement?

2 A. That is one view I have of it, yes.

3 Q. Okay. And what was the other view that  
4 you had of it?

5 A. So, again, we're talking about a property  
6 zoned C-3, community commercial. Whether it's an  
7 ASC alone, an ASC with overnight suites, or an  
8 overnight -- or an ASC with nursing suites, or,  
9 frankly, a hotel, hypothetically, those are all  
10 permitted uses in the C-3 district.

11 Q. Did you approve this as a hotel?

12 A. No, that's why I said "for example" or  
13 "for instance."

14 Q. So is it true -- you approved it as an  
15 accessory use as part of the ASC; is that correct?  
16 I'm just trying to get to the bottom line here.  
17 What did you approve it as?

18 A. It was approved as a medical facility.  
19 That is the term in the certificate of zoning  
20 compliance that we're here about.

21 Q. And I understand that, but medical  
22 facility does not -- six -- a six-room lodging  
23 structure does not fall under the definition of a  
24 medical facility; isn't that correct?

25 A. I think it does.

1 Q. You think it does?

2 A. Or it could depending upon who's there. I  
3 can tell you, if it helps, it was not approved as a  
4 residential care apartment complex.

5 Q. It was not?

6 A. That's what it was not approved as.

7 MR. FEELEY: I have nothing else for  
8 Mr. Pennington.

9 MR. ROTH: As I read the order of  
10 procedure, what we're doing now is  
11 cross-examination, but to the extent I have any  
12 further questions for Mr. Pennington, I don't  
13 believe that comes until later in the order of  
14 presentation. It looks like No. 14. Before that  
15 comes, though --

16 MR. FLEMING: Well, you could present  
17 him -- well, yeah, I think there's questions. This  
18 is cross-examination of the parties. What you would  
19 be doing would be redirect, right?

20 MR. ROTH: Correct. I want to confirm  
21 that's the understanding.

22 MR. FLEMING: That's my -- that's my  
23 reading of the rules and stuff, but Ortho, you can  
24 go ahead and cross-examine.

25 MR. DILLON: Thank you.

1           Mr. Pennington, my questions for you are  
2 going to track with the subject matter of  
3 OrthoIllinois' submitted proposed findings of fact,  
4 my organizing document. I'd like to go through that  
5 as quickly as we can, and see what you agree with  
6 and what you disagree with and get things on the  
7 record and do it as fast as we can.

8           I'm going to start -- on I'm page 1075 of  
9 the agenda packet. I'm going to start at paragraph  
10 11, and I'm going to start asking you some questions  
11 about these things, and since I am adverse to you, I  
12 believe I'm allowed to lead you.

13                           CROSS-EXAMINATION

14 BY MR. DILLON:

15           Q.     Just as a matter of historical fact, you  
16 do understand that OrthoIllinois --

17           MR. FEELEY:   Actually, I object. I don't  
18 think he's adverse to the City, and I think leading  
19 questions are improper.

20           MR. FLEMING:   Your position?

21           MR. DILLON:   Well, I just said that I'm  
22 going to ask leading questions. If we want to be  
23 here all night, that's fine with me. I can ask  
24 non-leading questions, that's fine.

25           MR. FLEMING:   I think -- I don't think

1 it's accurate to say that you're adverse to  
2 Mr. Pennington in which case I don't think the  
3 grounds for leading questions is appropriate.

4 MR. DILLON: Fair enough.

5 BY MR. DILLON:

6 Q. Mr. Pennington, when did OrthoIllinois  
7 first approach the City to seek approval of the  
8 development of an ambulatory surgery center in the  
9 City?

10 A. For this particular property, I believe  
11 their site plans were submitted on September 30th of  
12 2021.

13 Q. All right. And the record actually shows  
14 in this particular instance, some applications were  
15 submitted by OrthoIllinois prior to that, earlier in  
16 September; is that correct?

17 A. Yes.

18 Q. In fact, Mr. Feeley reviewed a document  
19 with you earlier bearing signatures from  
20 OrthoIllinois showing signatures, I think, in the  
21 first ten days of September, correct?

22 A. I believe that's accurate.

23 Q. The record speaks for itself. I don't  
24 want to pull it back up, but you remember that?

25 A. Correct. They were an incomplete

1 submittal, yes.

2 Q. Throughout OrthoIllinois' interactions  
3 with -- and I'm going back to the Gateway Boulevard  
4 property development as well. Throughout  
5 OrthoIllinois' interactions with City staff with  
6 regard to that property and the subject property  
7 that we're talking about today, has OrthoIllinois  
8 been cooperative with City staff in trying to find  
9 zoning approval for its development?

10 MR. FEELEY: Objection. Irrelevant.

11 MR. FLEMING: I'll allow it.

12 THE WITNESS: Yes.

13 BY MR. DILLON:

14 Q. To the extent that the City has given  
15 feedback to OrthoIllinois on applications that  
16 OrthoIllinois has submitted, has OrthoIllinois been  
17 responsive to issues and concerns raised by the City  
18 staff?

19 A. Yes.

20 Q. When OrthoIllinois -- well, I'll -- the  
21 subject property is zoned C-3, correct?

22 A. Correct.

23 Q. Is there any -- if overnight stay suites  
24 were not a part of OrthoIllinois' application for  
25 use on this property, would there be any basis for



1 City staff to deny OrthoIllinois' application to  
2 construct an ASC on the subject parcel?

3 MR. FEELEY: Objection. Calls for a legal  
4 conclusion.

5 MR. FLEMING: I'll allow it to the extent  
6 he's asking for his own position whether he would,  
7 to his understanding, whether he would deny it.

8 THE WITNESS: I don't think there would be  
9 a basis to deny.

10 BY MR. DILLON:

11 Q. Did you have a conversation with  
12 representatives, well, personnel involved with  
13 OrthoIllinois' application to develop an ASC on the  
14 subject parcel -- strike that.

15 Did you have a conference call with  
16 members of the team involved in developing  
17 OrthoIllinois' subject parcel on or about  
18 November 2, 2021?

19 A. Yes.

20 Q. What was the subject of the -- what was  
21 the topic of the conversation?

22 MR. FEELEY: Objection. Calls for  
23 hearsay.

24 MR. FLEMING: This is a conversation  
25 that --

1 MR. DILLON: The witness was a party to.

2 MR. FLEMING: Overruled.

3 THE WITNESS: The development team, as all  
4 the development teams do, requested a conference  
5 call to talk about a variety of things related to  
6 the review process, one of which was the building  
7 plan submittal to the Department of Health Services.

8 BY MR. DILLON:

9 Q. Do you remember who participated in that  
10 call with you? Names?

11 A. I believe the record accurately reflects  
12 the participants, Mr. Schreiner, Mr. Brown. Let's  
13 see. The architects, so Dave Mikos and Mike Hunt,  
14 were on the call.

15 Q. During the call, did the subject of DHS's  
16 rejection -- or informing OI that nursing home beds  
17 in the state of Wisconsin were not available, did  
18 that topic come up?

19 A. I believe it did.

20 Q. What do you recall, if anything, about  
21 what was discussed?

22 A. The -- at the time of the call, DHS had  
23 responded to the submittal, and it wasn't a denial  
24 as much as it was a letter requesting clarification  
25 on whether this was a nursing home with an ASC

1 attached, or an ASC with nursing suites attached.

2 Q. Did the conversation touch on any bases  
3 upon which OrthoIllinois' overnight stay rooms could  
4 be approved under the zoning ordinance other than as  
5 a nursing home?

6 MR. FEELEY: Objection. Compound. Vague.  
7 Ambiguous.

8 MR. FLEMING: Overruled. You may answer  
9 if you understand the question.

10 THE WITNESS: Well, the development team  
11 wanted to discuss the City's view of the use, so  
12 yes.

13 BY MR. DILLON:

14 Q. All right. And, specifically, did the  
15 development team raise with you the development  
16 team's belief that the overnight care suites could  
17 be registered with the State of Wisconsin as a  
18 residential care apartment complex?

19 MR. FEELEY: Objection. Misstates the  
20 evidence. He's already testified it wasn't approved  
21 as a residential care apartment complex.

22 MR. FLEMING: That wasn't the question.  
23 Overruled.

24 THE WITNESS: My recollection of that call  
25 is that I advised the development team that a

1 residential care apartment complex, an RCAC, as a  
2 principal use, was not permitted in C-3.

3 BY MR. DILLON:

4 Q. That was your position then?

5 A. Yeah.

6 Q. And you advised the development team at  
7 that time of your belief that the use could be  
8 approved as an accessory, that particular part of  
9 it, correct?

10 A. Yes.

11 Q. So then did it surprise you that from that  
12 date forward, submittals that you received from OI's  
13 development team referenced that use as an accessory  
14 use?

15 A. No.

16 Q. Was the -- to the extent you received  
17 subsequent submittals that referred to that use as  
18 an accessory use, was that consistent with the  
19 conversation you had with that development team?

20 MR. FEELEY: Objection. Vague.

21 MR. FLEMING: Answer it if you understand.

22 THE WITNESS: It was not a surprise to me  
23 to see the phrase accessory use used on the site  
24 plans.

25

1 BY MR. DILLON:

2 Q. After that November 2, 2021 phone call  
3 occurred, do you have an understanding about whether  
4 and to what extent OrthoIllinois would have  
5 believed, from things that you told them, that those  
6 overnight stay suites would not be a permitted use  
7 under the zoning ordinance?

8 MR. FEELEY: I'll object. That calls for  
9 speculation. How can he possibly know?

10 MR. DILLON: I asked if he had an  
11 understanding, Counsel.

12 MR. FLEMING: Overruled.

13 THE WITNESS: Could you restate the  
14 question, please?

15 BY MR. DILLON:

16 Q. Following that call --

17 A. Yeah.

18 Q. Essentially what I'm asking is, do you  
19 believe that based on that call, OrthoIllinois had  
20 reason to believe that you were considering the  
21 overnight care suites to be an accessory use?

22 MR. FEELEY: Same objection. Calls for  
23 speculation.

24 MR. DILLON: Well, that's what he told  
25 them, right?

1           MR. FLEMING: Hold on. Sustained, but  
2 I'm -- I think you've already gotten that, haven't  
3 you?

4           MR. DILLON: Yeah, fair enough. Thank  
5 you.

6           MR. FLEMING: We know about the  
7 conversation -- we have the conversation around the  
8 date.

9           MR. DILLON: I'm almost done.

10 BY MR. DILLON:

11         Q. Mr. Pennington, do you remember having  
12 Mr. Feeley reviewing with you the fact that when an  
13 application for approval of a particular use is  
14 filed with the City, the application must list all  
15 the proposed uses at the time the application is  
16 filed. That's a requirement --

17         A. That's correct.

18         Q. And OrthoIllinois did disclose when it  
19 initially filed that it intended, at that time, it  
20 proposed, at that time, to use this property for an  
21 ASC and a nursing home, correct?

22         A. Yeah.

23         Q. Now, is it common, uncommon, never  
24 happens, that when City staff receives zoning --  
25 applications for building permits, that uses that

1 are originally proposed change in the course of the  
2 City's interaction with the Applicant?

3 MR. FEELEY: So let me object. You've  
4 asked three questions, and one question was a yes or  
5 no answer, common, uncommon. The question is vague.

6 MR. FLEMING: I think what you're asking  
7 from him is to characterize how frequently. I  
8 understood the question.

9 THE WITNESS: It is very common during the  
10 site plan review process for both specific uses to  
11 change and the actual plans themselves to change.  
12 For the board's benefit, these site plans changed  
13 considerably throughout that process, because I did  
14 not allow them to put in the driveway they wanted,  
15 for example.

16 BY MR. DILLON:

17 Q. And does the City have -- if a zoning use  
18 is approved based on an Applicant's representation  
19 of what the proposed use is going to be, what, if  
20 anything, does the City do if the use that actually  
21 ensues after the structure is built is inconsistent  
22 with the use upon which the development was  
23 originally approved?

24 MR. FEELEY: Objection. Compound.

25 MR. FLEMING: Overruled.

1           THE WITNESS:  If a violation of the zoning  
2 ordinance comes to light, then we would engage with  
3 the property owner, notify them of the violation,  
4 and ask them to remedy the situation.

5 BY MR. DILLON:

6           Q.    So, for example, if somebody comes to the  
7 City and says "I want to build a house in an R-1  
8 district," and they wind up building a missile silo,  
9 you will take enforcement action?

10          A.    Correct.

11          Q.    But if they build a house, you will take  
12 no enforcement action; is that right?

13          A.    Correct.

14          Q.    And would it be fair to say that you have  
15 no way to know, at the time you're approving a  
16 proposed use, how the use will actually unfold?

17          A.    That's correct.  I mean, the lifespan of a  
18 building is going to be anywhere from 150 to  
19 300 years, so there's no way to predict what all the  
20 uses might be.

21          Q.    You were asked some questions by  
22 Mr. Feeley about what an accessory use is, and  
23 specific questions about the meaning of the word  
24 "attached," and I'm going to ask you some questions  
25 about that.



1                   I think as I understood the  
2 questions, it sounds like if OrthoIllinois were  
3 proposing to build two buildings on this property  
4 separated by six feet, there might not be an  
5 accessory use argument because the detached issue  
6 would come up. But I want to posit a hypothetical  
7 to you. Could two separate buildings be built on  
8 this property?

9           A. Two principal uses would require a plan  
10 unit development zoning. PUD.

11          Q. Okay. When you determined that this  
12 particular accessory use met the definitions that  
13 are in the City's ordinance, did you consider that  
14 word detached at all?

15          A. No, I don't believe it -- I believe there  
16 are inconsistencies throughout the ordinance with  
17 the use of that word.

18          Q. I appreciate, Mr. Pennington, that at the  
19 time of this November 2, 2021 conference call that  
20 we've talked about, that you held the opinion that  
21 this group living use that OI had submitted would  
22 constitute a hotel use as the ordinance was written.  
23 At that time your position was that would not fly  
24 with the City, fair?

25                   MR. FEELEY: Objection. The question is

1 compound. Also, assumes that that conversation even  
2 occurred, which has already been denied by the  
3 witness. It's an improper form.

4 MR. FLEMING: Could you rephrase that?  
5 It's not clear to me what conversation you may be  
6 talking about.

7 MR. DILLON: Let me ask you something  
8 different.

9 BY MR. DILLON:

10 Q. Did you review the City's submitted  
11 proposed findings of fact, conclusion of law and  
12 order regarding this matter before it was submitted?

13 A. Yes.

14 Q. And you are aware that as the City's --  
15 paragraph 8C of that submission states that the  
16 overnight accommodations are approvable as a  
17 stand-alone permitted use, because this proposed  
18 group living use is not a nursing home or hospice  
19 facility, and the lodging would be provided for less  
20 than 30 days, making this a hotel or motel use which  
21 is also a permitted use in the C-3 zoning district.  
22 And I apologize. That's at page 2,004 of the agenda  
23 packet.

24 MR. FEELEY: So, objection. First of all,  
25 the question is leading, but it's also compound.

1           MR. DILLON: I'm directing him to the  
2 subject matter --

3           MR. FLEMING: Overruled.

4           THE WITNESS: Yes, on that page of the  
5 City's legal brief, the notion of these lodging  
6 suites being deemed a hotel or a motel use is the  
7 third example given of possible approval scenarios,  
8 yes.

9 BY MR. DILLON:

10          Q. Okay. So as of today, the City's  
11 submission that you reviewed before it was  
12 submitted, now essentially agrees with the position  
13 OI was taking in that November 2, 2021 conference  
14 call with you, fair?

15          MR. FEELEY: Objection. Calls for  
16 hearsay. Asking for a statement by a person who's  
17 not the declarant and who is not a party opponent.  
18 Calls for hearsay. Also reflects facts not in  
19 evidence.

20          MR. FLEMING: I disagree with the last. I  
21 don't know that it's hearsay either, but in any  
22 event, we're not bound by strict rules of evidence.  
23 I basically understand you to be asking him does he  
24 now hold that opinion reflected in the brief. Is  
25 that the question?

1 MR. DILLON: That's the question.

2 MR. FLEMING: Can you answer that  
3 question?

4 THE WITNESS: I will say that a hotel or a  
5 motel use is permitted by right in the C-3 district.  
6 I think the language in the brief that you've  
7 pointed to is a bit roundabout, but, yes, it gets  
8 there to the point of being a permitted use, the  
9 lodging suites as they will exist.

10 MR. DILLON: Thank you. I have no further  
11 questions.

12 MR. FLEMING: Okay.

13 (Whereupon, Mr. Pennington was  
14 excused.)

15 MR. FLEMING: Does the City have any other  
16 witnesses?

17 MR. ROTH: The City is not going to call  
18 anyone else for its case in chief.

19 MR. FLEMING: It's now time for the  
20 Applicants' case in chief.

21 MR. FEELEY: Appellant?

22 MR. FLEMING: Or, yeah, Appellant.

23 MR. FEELEY: I would call Mr. John Eagon.

24 MR. DILLON: If I may ask, will we be  
25 taking any breaks of any kind?

1                   MR. FLEMING: Do you need a break? Five?  
2 Ten?

3                   MS. ADAMS: Ten minutes.

4                   MR. FLEMING: We'll return at 8:40 then.

5                                   DIRECT EXAMINATION

6 BY MR. FEELEY:

7           Q. Mr. Eagon, can you state your full name,  
8 please, and describe to the board what your  
9 occupation is?

10           A. John Eagon. I'm a registered architect in  
11 the state of Wisconsin.

12                                   (Whereupon, the court reporter  
13                                   asked to swear in the witness.)

14                                   JOHN EAGON,  
15 having been first duly sworn, was examined and  
16 testified as follows:

17                                   DIRECT EXAMINATION

18 BY MR. FEELEY:

19           Q. Okay. Mr. Eagon, you just testified,  
20 before the court reporter reminded us that you  
21 needed to be put under oath, but you did state that  
22 you are a registered architect, licensed architect,  
23 in the state of Wisconsin; is that correct?

24           A. That's correct.

25           Q. And is Premium Planview your business?

1           A.    Yes, that's my business.  It's a sole  
2 proprietorship.

3           Q.    Okay.  And do you -- what, if any,  
4 relationship do you have with the Wisconsin  
5 Department of Health Services?

6           A.    I don't have any relationship with them.

7           Q.    Are you recognized by Department of Health  
8 Services as an authorized or certified reviewer that  
9 DHS can rely upon with respect to building plans?

10          A.    No, not with DHS.

11          Q.    Okay.  How about with Department of Safety  
12 and Professional Services?

13          A.    Yes, they recognize my plan reviews as  
14 basically being equivalent to a state plan review.

15          Q.    Okay.  And, I apologize, I want to refer  
16 him to City Document 418.

17               MR. DILLON:  418 you said, Counsel?

18               MR. FEELEY:  Yes.

19               MR. DILLON:  That's going to be at --

20               THE WITNESS:  Is that going to be in one  
21 of these folders up here?

22               MR. FEELEY:  Yes.

23               MR. DILLON:  For the record, City 418 is  
24 page 475.

25

1           MR. FLEMING: 475 on the official board  
2 record.

3           MS. ADAMS: The big one.

4 BY MR. FEELEY:

5           Q. Do you recognize, Mr. Eagon, using the  
6 Bates-stamp numbers in the lower right-hand corner  
7 of the document that you're looking at, pages --  
8 City 418 through 422, as being an approval letter  
9 that you drafted on December 15, 2021?

10          A. Yes, that's my review report of a plan  
11 review for the project that's referenced.

12          Q. And who engaged you to perform the review  
13 that's listed in this document?

14          A. The way I work, basically the plans are  
15 submitted to me. I do the review. I believe the  
16 designers were the ones who'd submit it to me  
17 directly.

18          Q. The architects and the engineers for  
19 OrthoIllinois?

20          A. Yes.

21          Q. And the plans that you received, did they  
22 include the -- essentially the floor plan of the  
23 premises that were being proposed to be constructed?

24          A. Typically I'll get a site plan, the floor  
25 plan sections telling how the materials go together

1 to construct the building.

2 Q. And do you recall getting a site plan from  
3 either the designer or the engineer? You've been  
4 sitting here, and you've heard the testimony about  
5 the lodging suites, correct?

6 A. Yes.

7 Q. Okay. And I'm looking at a site plan. I  
8 can refer you to the page, and we can find it, but  
9 first I just want to ask you whether or not you  
10 ended up seeing a site plan with the floor plan  
11 layout that described the lodging rooms as having a  
12 nursing suite, patient care rooms, nursing lounge,  
13 things of that nature. Do you recall that?

14 A. I recall a plan referring to nursing  
15 suites, I think. I don't recall a plan with all the  
16 other nursing language. There might have been the,  
17 you know, the room titles, but . . .

18 Q. Okay. Well, let me just -- just so the  
19 record is clear, I want to refer to City's -- City's  
20 record, page 063.

21 MR. FEELEY: 063. Slow down a little bit,  
22 Julie. There it is right there. Can you shrink  
23 that?

24 MS. CHRISTENSEN: I can.

25



1           MR. DILLON: Okay. For the record, this  
2 is agenda packet page 120.

3 BY MR. FEELEY:

4           Q. And on this -- on this exhibit, do you see  
5 that wing kind of off to the left-hand side?

6           A. Yes.

7           MR. FEELEY: And, Ms. Christensen, if you  
8 could, could you blow up that wing a little bit and  
9 then scroll up a little bit?

10           MS. CHRISTENSEN: Right like that?

11           MR. FEELEY: Yeah.

12 BY MR. FEELEY:

13           Q. I don't know if you can read that, but can  
14 you see there, right here where it says "Nursing  
15 Station. Nurse Station"?

16           A. Yes.

17           Q. And "Nursing Patient No. 2"?

18           A. Yes, I don't -- I don't recall seeing that  
19 floor plan.

20           Q. Okay. The floor plan that you did see, do  
21 you know -- can you -- do you recollect when you  
22 received it?

23           A. I received it with the package of all the  
24 other plans that were submitted for review.

25           Q. Okay. And did the plans that you

1 received, did they actually show the floor plan of  
2 this --

3 A. Yes.

4 Q. -- kind of building jutting out there to  
5 the left, or did it just have something like --

6 A. No, it was very similar to that floor  
7 plan.

8 Q. Okay. But you don't remember if it said  
9 "nursing station" or --

10 A. I believe it probably -- I think it said  
11 "lodging."

12 Q. Okay. Now, in your opinion that you've  
13 issued, I think you mentioned that the building  
14 plans were originally submitted for a location at  
15 1315 Gateway Boulevard. You'll see that on the  
16 second page of your letter under "General Comments"?

17 A. Yes, I -- yes, that's a paragraph in this  
18 letter.

19 Q. So you were involved in the review that  
20 initially happened back in January of 2021?

21 A. Yes.

22 Q. And were you involved in that review as a  
23 certified or authorized reviewer by DSPS as well?

24 A. Yes, I -- basically my function is, I'm a  
25 substitute for DSPS in Beloit, and the DSPS have an

1 agreement that if I review the plans, they can  
2 accept them just as if they came from DSPS.

3 Q. Okay. And when you issued this opinion,  
4 this letter dated December 15, 2021, did you  
5 understand that that portion of the building that's  
6 jutting out to the left was actually part of the  
7 ambulatory surgery center that you were reviewing?

8 A. It was part of the plan package that I was  
9 submitted, and I was reviewing the package, yes.

10 Q. Okay. And did you have an understanding  
11 whether or not that portion of the building that had  
12 the jut out to the left was part of the ambulatory  
13 surgery center?

14 A. The way the code is set up, it was  
15 submitted as part of the building. I think there's  
16 some staff areas for the ambulatory service in that  
17 wing, so it's, you know, they work together.

18 Q. Okay. Are you familiar with the federal  
19 regulations that apply or the state rules that apply  
20 to ambulatory surgery centers?

21 A. Yes.

22 Q. Okay. And let's do it this way. I think  
23 your approval and/or comments with respect to this  
24 facility state that this project is for a building  
25 that will be a Group B ambulatory care facility,

1 correct?

2 MR. DILLON: What page are you  
3 referencing, Counsel?

4 MR. FEELEY: I'm sorry. City 419, second  
5 page of his letter.

6 THE WITNESS: Yes.

7 BY MR. FEELEY:

8 Q. And then it says, "With a Group R-1  
9 occupancy used for overnight lodging by patients and  
10 families being served."

11 A. Yes, that's -- generally I put that in my  
12 letters to summarize in a sentence or two what the  
13 project's actually going to be.

14 Q. Okay. And are you describing there two  
15 types of uses?

16 A. There's two types of occupancies under the  
17 building code that would apply.

18 Q. Okay. And under the International  
19 Building Code that you apply, those two occupancies  
20 need to be separated; is that correct?

21 A. It depends how the designer does the  
22 building. The code does not require them to be  
23 separated. One of the options that's available to  
24 the designer, they get some advantages, they are  
25 separated. So it's up to the designer how they

1 submit the plans.

2 Q. Okay. And I'm trying to understand that  
3 last sentence under that same paragraph that says,  
4 "The Group B and Group R-1 occupancies will be  
5 separated as required by IBC Section 422, which has  
6 detailed requirements for ambulatory care  
7 facilities."

8 A. That's correct. A Group B occupancy is  
9 typically your office building, and then there's  
10 some additional requirements if your business --  
11 Group B is a business occupancy, but if you're an  
12 ambulatory care facility, you have some additional  
13 requirements that have to be met.

14 Q. Okay. And looking at those plans, do  
15 you -- do you have an understanding of what portion  
16 of that building was the ambulatory care facility?

17 A. The way the designer designed the  
18 building, it didn't really matter because it met --  
19 the whole building met the ambulatory, and the R-2  
20 also met the, you know, R-2 or the -- I'm sorry --  
21 the R-1 requirements of the occupancy.

22 Q. Okay. And if you would have understood  
23 that, for example, nursing services were going to be  
24 occurring in the -- that portion of the building  
25 that jutted out to the left, that would have

1 required DHS licensing; is that correct?

2 A. The way the state is set up, DSPS and  
3 health and social services, health and social  
4 services reviews the plans for the building code  
5 that normally would be looked at DSPS. Because they  
6 have the funding sources, also they have some  
7 additional requirements, so it didn't make sense for  
8 both agencies to review the plan. And so DHS does  
9 the whole -- the whole thing. So they cover their  
10 requirements, plus the building code requirements.

11 Q. Okay. So there would have been some  
12 licensing review required by DHS if you would have  
13 learned there was going to be nursing services, for  
14 example, being provided in that?

15 A. Yes, I believe they require to license  
16 something if it's -- especially a new building, they  
17 require the plans to be approved.

18 Q. Did you -- with respect to the plans that  
19 you reviewed, did you -- do you know what a  
20 residential care apartment complex is?

21 A. I'm familiar with it, yes.

22 Q. Okay. And that's a state licensed  
23 facility by DHS, correct?

24 A. They have different levels. I think for  
25 funding, it's licensed by DH -- DHS, but the plans

1 are reviewed through -- because they don't have any  
2 special requirements for that type of license or for  
3 the building to meet to get that license, the plans  
4 are reviewed by DSPS.

5 Q. Okay. Did you see -- did you see anything  
6 on the plans or drawings that you reviewed that  
7 suggested to you that that portion of the building  
8 that jutted out was a residential care apartment  
9 complex?

10 A. I wouldn't have been looking. It's the  
11 same requirements, so I wouldn't be looking, and I  
12 don't recall seeing anything, though, that  
13 specifically called that out as a residential care  
14 facility.

15 Q. Okay. And I'm sure you know what a hotel  
16 or a motel is, correct?

17 A. Yes.

18 Q. Okay. And did you see anything on those  
19 plans that suggested to you that it was going to be  
20 a hotel or a motel licensed by Rock County?

21 A. No, not -- not that it was going to be a  
22 hotel/motel, no.

23 Q. Okay. And when you -- I see that you  
24 submitted this letter to Mr. Mikos, who was the  
25 designer; Mr. Schreiner, who is listed as the

1 owner/agent for Rockford Orthopedic Associates.

2 Does this get sent to DSPS too?

3 A. No. And, in fact, my letter I submit to  
4 the City of Beloit, because they do the building  
5 permit, and their agreement with the State is they  
6 issue the permit. The State does not get a copy of  
7 these. They come in and monitor every once in a  
8 while.

9 Q. So are you -- if you -- and --

10 MR. FEELEY: I'm sorry, gentlemen, I'll  
11 need the -- I'll need page City 423, which is a  
12 letter right after your letter.

13 MR. DILLON: That would be board packet --  
14 or agenda packet page 480.

15 THE WITNESS: Yes, I have 423 and 424.

16 BY MR. FEELEY:

17 Q. Okay. And I believe I know the answer to  
18 this question, but I just want to be certain. The  
19 review you did didn't have anything to do with this  
20 conditional approval starting on page City 423 and  
21 going to City 424; is that correct?

22 A. Right. This approval is for the plumbing  
23 system that goes into the building.

24 Q. Okay. And same question with respect to  
25 the document that occurs thereafter, City 425 to



1 City 426. It's another conditional approval by  
2 DSPS?

3 A. Yes, that's also through their plumbing  
4 department.

5 Q. Okay. That doesn't have anything to do  
6 with the use of the building or whatnot?

7 A. Well, the plumbing code, depending on the  
8 use, it would have some.

9 Q. I'm talking about nursing or care being  
10 provided in any parts of the building.

11 A. I guess I'm -- I'm not quite clear how  
12 they would identify occupancies for their plumbing  
13 code. It'd be dictated by the plumbing code, not  
14 necessarily the building code.

15 MR. FEELEY: Okay. I don't have anything  
16 else for Mr. Eagon.

17 MR. ROTH: Nothing from the City.

18 MR. FLEMING: Anything from OrthoIllinois?

19 MR. DILLON: No questions.

20 MR. FLEMING: Okay. You're free to go.

21 (Whereupon, Mr. Eagon was  
22 excused.)

23 MR. FEELEY: Julie Christensen, please.

24 JULIE CHRISTENSEN,

25 having been first duly sworn, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FEELEY:

4 Q. Your title is Director of Community  
5 Development; is that correct?

6 A. Community Development Director.

7 Q. Community Development Director. Thank  
8 you.

9 And in terms of your position level,  
10 are you above Mr. Pennington or below him?

11 A. I am his supervisor, so I'm above him.

12 Q. And for purposes of community development,  
13 is there anybody who holds a position higher than  
14 you in the building and services division?

15 A. No.

16 Q. Okay.

17 A. I'm not in the building and services  
18 division, though.

19 Q. You're in community development.

20 A. I am Drew's supervisor.

21 Q. Okay. You were the staff member, the  
22 agent for the City that proposed the medical  
23 facility ordinance that we've been talking about  
24 this evening, Ordinance No. 3719, to the plan  
25 commission in August of 2021, correct?

1           A.    I'm the staff person who worked with the  
2 attorney's office to draft it and outside counsel,  
3 and I'm the person who presented the staff report,  
4 because I present all staff reports to plan  
5 commission and city council on behalf of my  
6 department.

7           Q.    And you actually prepared reports to the  
8 plan commission; is that correct?

9           A.    I did for the ordinance.  I don't usually,  
10 but I did for that particular item.

11          Q.    I'm sorry, you did or you didn't?

12          A.    I did for the ordinance, but I don't  
13 typically prepare plan commission reports, but I did  
14 for the ordinance.

15                   MR. FEELEY:  Okay.  Beloit Health  
16 System 7.

17                   MR. DILLON:  That's agenda packet page  
18 number 539.

19 BY MR. FEELEY:

20          Q.    This is a report that you drafted?

21          A.    Yes.

22          Q.    And the purpose of this report was to  
23 describe to the plan commission the medical facility  
24 ordinance that was being proposed for a  
25 recommendation by the plan commission to the city

1 council?

2 A. Correct.

3 Q. And the staff analysis there, that's your  
4 staff analysis?

5 A. It's the City's staff analysis.

6 Q. Okay. And true statement that with  
7 respect to this ordinance, it proposed a definition  
8 of ambulatory surgery center; is that correct?

9 A. It did.

10 Q. And that definition used in the ordinance  
11 basically copied the federal definition; is that  
12 correct?

13 A. My understanding is it's similar. I  
14 couldn't tell you for sure if it copied it. It  
15 wasn't drafted by me, so . . .

16 Q. It was drafted by the City attorney?

17 A. It was drafted by outside counsel.

18 Q. By outside counsel.

19 MR. FEELEY: So this is not an exhibit,  
20 it's just a federal regulation which Counsel can  
21 take judicial notice of. I have more copies. Do  
22 you think everybody wants one?

23 MR. FLEMING: Well, you're asking us about  
24 it, so, yeah, everyone needs to see it.

25 MR. FEELEY: Can we share maybe?

1 MR. PETERSEN: We can share.

2 MR. FEELEY: You can share?

3 MR. PETERSEN: Yeah.

4 MR. FEELEY: Here's another one.

5 MR. PETERSEN: Thank you.

6 MR. FEELEY: Yep.

7 BY MR. FEELEY:

8 Q. Do you have a copy of the ordinance in  
9 front of you?

10 A. I do.

11 Q. And could you turn to the page of the  
12 ordinance that defines ambulatory surgery center?

13 A. I'm already there.

14 Q. Thank you.

15 So we're looking at page 4,  
16 Section 9, correct?

17 A. Mm-hmm. Correct.

18 Q. And it says "An ambulatory surgery center  
19 is a distinct entity that operates exclusively for  
20 the purpose of providing surgical services to  
21 patients not requiring hospitalization and in which  
22 the expected duration of services would not exceed  
23 24 hours following an admission."

24 MR. DILLON: Objection. This document  
25 speaks for itself.

1 MR. FEELEY: I'm sorry, what?

2 MR. DILLON: This documents speaks for  
3 itself. Is there a question?

4 MS. ADAMS: What page are we on? I'm  
5 sorry.

6 MR. DILLON: This isn't a page.

7 MR. FEELEY: We're on --

8 MR. DILLON: We're on page BHS 13,  
9 Counsel, is that right? That would be agenda 545.

10 MS. ADAMS: 545. Okay. Thank you.

11 BY MR. FEELEY:

12 Q. I've handed you what I'll represent is a  
13 copy of Federal Regulation 42 CFR Section 416.2. Do  
14 you see that?

15 A. I do.

16 Q. And would you agree with me that up until  
17 the word "hospitalization," the definition under  
18 federal law is identical to the definition in the  
19 ordinance?

20 A. It uses the same language.

21 Q. Okay. So you would agree with me, it  
22 appears that, like you advised the plan commission,  
23 that the ordinance was drafted to closely align with  
24 federal definition for that type facility; is that  
25 correct?

1           A.     Yeah --

2           MR. DILLON:  Objection.  Vague.

3           MR. FEELEY:  Is that correct?  I think she  
4 already answered the question.

5           THE WITNESS:  I just -- he objected, so I  
6 was waiting to see.

7           MR. FLEMING:  And I didn't hear the  
8 objection.

9           MR. DILLON:  The objection is it's vague.  
10 "Closely aligned with."  I have no idea what that  
11 means.

12          MR. FLEMING:  Well, I'm wondering why we  
13 are asking somebody to testify as to what two laws  
14 say?  We're going to be here all night if we have  
15 witnesses talking about what the law says.  The  
16 lawyers can say what the law says.  The time for --  
17 witnesses are here to testify about facts.  Could we  
18 get to relevant facts, please?

19 BY MR. FEELEY:

20          Q.     When you proposed the ordinance to the  
21 plan commission, your understanding was that all of  
22 the definitions of different medical facilities  
23 would apply; is that correct?

24          MR. DILLON:  Objection.  Relevance and  
25 foundation.  This witness does not set the

1 ordinances for the City of Beloit.

2 MR. FLEMING: Counsel, I'll hear from you.

3 MR. FEELEY: She drafted the report to the  
4 plan commission describing what the ordinance is.

5 MR. FLEMING: Well, right, but, I mean,  
6 this is not typically competent evidence for what  
7 ordinances mean. I mean, there's been no argument  
8 at any point so far that the ordinance is ambiguous.  
9 So, you know, a staff report, you know, legislative  
10 council reports, none of those things are typically  
11 admissible unless or until we have an issue of  
12 ambiguity, and I have not heard that yet.

13 MR. FEELEY: Well, it seems to me the  
14 City's and OrthoIllinois' position is that any type  
15 of use, as long as it meets the characteristics of a  
16 medical facility without regard to the other  
17 specified definitions in the ordinance, can be  
18 approved just as a medical facility. And so --

19 MR. FLEMING: Yeah.

20 MR. FEELEY: -- it's relevant as to what  
21 this witness understood the ordinance meant and what  
22 the recommendation was to the plan commission and  
23 the city council.

24 MR. FLEMING: But how does this -- how  
25 does this witness's understanding of what it meant



1 translate to what the council, the actual body that  
2 adopted this, what they thought it meant other than,  
3 you know, maybe they've read this document? Maybe  
4 they thought it meant something different. That's  
5 why -- that's why we interpret ordinances by using  
6 the plain language of the ordinance itself. Are  
7 we -- is there an issue of ambiguity that we are  
8 here -- that we need to decide?

9 MR. FEELEY: I would argue there -- well,  
10 let me complete my statement. I would argue there  
11 is no ambiguity with respect to City Ordinance 3719,  
12 and it needs to be read as a whole.

13 MR. FLEMING: Okay. Well, again -- if we  
14 could, let's refer to the code. Ordinance 3719 is  
15 the number given to a document that the council  
16 adopted to adopt amendments to the code. So now all  
17 of these things at the time of this decision that's  
18 being appealed was made, all the provisions that  
19 were adopted as part of Ordinance 3719 are now in  
20 the Code of Ordinances, and there are other things  
21 that exist in the code, and so just for the record,  
22 I would prefer if we would refer to the code rather  
23 than 3719, because, I mean, 3719 isn't a federal  
24 act, like, you know, Americans With Disabilities  
25 Act.

1           MR. FEELEY: Yeah. And I'm not trying to  
2 be difficult, but I will tell you when this was  
3 appealed, the ordinance on the City's web site did  
4 not include all of these provisions. Do you  
5 understand what I'm saying? So when it was  
6 appealed, all the amendments to the various  
7 provisions in 3719 were not reflected in the code on  
8 the City's web site.

9           MR. FLEMING: So you're saying that the  
10 City and the code --

11          MR. FEELEY: They are now. They are now,  
12 but you just -- you just told me why are we  
13 referring to 3719 when all of these provisions were  
14 referenced in the code when the Appellant appealed,  
15 and they were not.

16          MR. FLEMING: Well, whether they were  
17 actually in -- I mean, they were officially in the  
18 code, whether it's reflected on the web site. What  
19 I'm saying is, all the things in 3719 are a part of  
20 the Code of Ordinances as of the date of this  
21 decision. They have references within -- within the  
22 code, Section 11.3, 4 and 5. And I expect there's  
23 going to be a lot of different things referred to.  
24 Some stuff that existed before 3719 was adopted.  
25 And if we're going to -- I just think we should be

1 referring to all the ordinances by their code  
2 reference. But back to the issue at hand. What I'm  
3 trying to get at is competency of a witness to  
4 testify as to what an ordinance means when we have  
5 no issue of ambiguity.

6 MR. FEELEY: She was writing reports to  
7 the plan commission and the city council  
8 explaining -- well, and, again, this goes to if the  
9 City's position is that the only thing that matters  
10 is medical facility, and you can -- it doesn't have  
11 to meet the definition of the ambulatory. It  
12 doesn't have to meet the definition of a nursing  
13 home if that's what is. It doesn't have to meet the  
14 definition of a residential care apartment complex,  
15 then I'm seeking to ask her questions about why  
16 those provisions weren't included in the ordinance  
17 for purposes of clarification. If the City is  
18 willing to stipulate and OrthoIllinois are willing  
19 to stipulate that the medical facility provisions,  
20 as well as all the other definitions that were  
21 amended or created by 3719 applied to the  
22 OrthoIllinois development, then I can streamline my  
23 questions significantly.

24 MR. FLEMING: I mean, that's kind of a --  
25 what is -- what does that mean that they applied?

1 But, I mean, the ordinances are what they are.  
2 There are rules of statutory ordinance construction  
3 that apply, and I don't think a witness -- a  
4 witness's testimony about what that witness thinks  
5 it all means controls. That's typically not  
6 competent evidence for ordinance interpretation.  
7 So, I mean, you can argue, I mean, there are  
8 principle laws that you don't have things in  
9 ordinances that are superfluous. That might be part  
10 of your argument, you know, things have to have  
11 meaning. You argue that words mean certain things  
12 in relation to the document as a whole, to the  
13 ordinance as a whole. All those tools of statutory  
14 construction are available to you. My concern is  
15 parading witnesses up and giving testimony about  
16 what they think the ordinance means. And I don't  
17 believe that's relevant to a statutory  
18 interpretation question. In fact, even if it's  
19 ambiguous, witness testimony about what ordinances  
20 mean typically is not -- is not competent evidence.

21 MR. FEELEY: Okay. And I will accept  
22 that. I assume for purposes of the board's  
23 deliberation, that same explanation will apply to  
24 Mr. Pennington's testimony about what he thought the  
25 ordinance meant.

1           MR. FLEMING: Well, yeah. I mean, his  
2 testimony is a little bit mixed, because he's --  
3 you're talking about the process of why he did  
4 certain things. But, no, the board is not bound by  
5 Mr. Pennington's testimony about whatever his  
6 interpretation of what the ordinance is either.  
7 There weren't any objections. There was a bit more  
8 leeway. It's tougher when you're trying to do one  
9 of these hearings where a lot of it is ordinance  
10 interpretation, but yet you have to ask the staff  
11 member why did you do this and what was the  
12 background. But as a matter of law, no, we  
13 aren't -- we aren't bound by the legal  
14 interpretations from Mr. Pennington either.

15 BY MR. FEELEY:

16           Q. Okay. So let me -- let me ask this. Do  
17 you know why Ordinance No. 3719 amended Section  
18 6.1.1 of the Zoning Ordinance, Chapter 19?

19           MR. ROTH: Same objection. He's asking  
20 the same question in just a slightly different way.

21           MR. FLEMING: They did it because whatever  
22 language is there --

23           MR. FEELEY: Okay.

24           MR. FLEMING: It is the same issue.

25

1           MR. FEELEY: Okay. So I understand your  
2 explanation that I should stop that line of  
3 questioning.

4           MR. FLEMING: Please.

5           MR. FEELEY: Okay. City Document 144.

6           MR. DILLON: That is agenda packet  
7 number 201.

8 BY MR. FEELEY:

9           Q. Did you have any involvement with the  
10 submissions of OrthoIllinois related to their  
11 proposed development at 2102 Freeman Parkway?

12          A. This document is an engineering document,  
13 so -- am I on the right page?

14          Q. Yes. And my question is whether or not  
15 you -- this would have been a document that you may  
16 have received?

17          A. I wouldn't have.

18          Q. Okay.

19          A. I don't do any kind of site plan review.

20          Q. Okay. And you see that this was included  
21 in the City's record for this proceeding. Do you  
22 see the date on the document of May 21, 2021?

23          A. I do.

24          Q. Okay. And when was the medical facility  
25 ordinance first proposed to the plan commission?

1           MR. DILLON:  Objection.  The record speaks  
2 for itself on that issue.

3           THE WITNESS:  I think you said August.  I  
4 don't recall.  I mean, I didn't -- I mean, I think  
5 that was already talked about earlier tonight.

6 BY MR. FEELEY:

7           Q.  Was it the intent of Ordinance 3719 to  
8 take away the permitted uses of 265 properties?

9           MR. FLEMING:  Attorney Feeley, that is  
10 directly, again, the same thing that I just got done  
11 talking about.  I think you know that.

12           MR. FEELEY:  So you're -- just so the  
13 record is clear, you're forbidding me from --

14           MR. FLEMING:  Yes, I'm forbidding you from  
15 asking questions about the intent of the ordinance.

16           MR. FEELEY:  Okay.

17 BY MR. FEELEY:

18           Q.  Do you recall back in 2020 considering  
19 whether or not a motel use for the six-room suites  
20 was appropriate under City ordinances?

21           MR. DILLON:  Objection.  Relevance.

22           MR. FLEMING:  Sustained.

23 BY MR. FEELEY:

24           Q.  Isn't this one of the options  
25 Mr. Pennington mentioned that he may have approved

1 this portion of the building as a hotel or a motel?

2 MR. FLEMING: I don't -- I heard his  
3 testimony being that he approved it as accessory to  
4 the -- to the main -- to the ambulatory surgery  
5 center.

6 MR. FEELEY: And that's my question for  
7 clarification. Accessory as what? A hotel or what?  
8 It has to be something. What is the accessory use?

9 MR. FLEMING: I understood it to be  
10 sleeping -- sleeping quarters for people staying  
11 either that had been treated overnight or that  
12 wanted to stay --

13 MR. FEELEY: Okay.

14 MR. FLEMING: -- was the testimony.

15 BY MR. FEELEY:

16 Q. You're familiar with the comprehensive  
17 plan?

18 A. Yes.

19 Q. Is it a true statement -- or it is a true  
20 statement, is it not, that the comprehensive  
21 planning document provides that the plans should  
22 apply to all private and public developments in the  
23 City of Beloit?

24 MR. DILLON: Objection, relevance to the  
25 comprehensive plan and any questions about it.



1           MR. FLEMING: Yeah, I would tend to  
2 sustain that as well. Mr. Feeley, you, in your  
3 opening, you gave this line in the comprehensive  
4 plan as the sole reason why the comprehensive plan  
5 needed to be considered. But it's pretty clear  
6 black letter law, you cannot amend the zoning  
7 ordinances except by the methods set forth in  
8 Chapter -- or in Section 6223, and simply including  
9 this line in the comprehensive plan, whatever  
10 anyone's intent, does not amend the zoning  
11 ordinance. That's --

12           MR. FEELEY: Yeah, just so the record is  
13 clear --

14           MR. FLEMING: I mean, that's black letter  
15 zoning law.

16           MR. FEELEY: But the argument is not that  
17 it amends the zoning ordinance. The argument is  
18 that the City -- the City's comprehensive plan  
19 requires the plan to be applied to all public and  
20 private developments, regardless of whether or not  
21 there is a zoning change. And it was not applied to  
22 this developed -- proposed development by  
23 OrthoIllinois.

24           MR. FLEMING: Well, I don't believe that's  
25 what the ordinance says, you know, and, again, are

1 we back into the same issue of asking witnesses to  
2 interpret the law? I mean, either a phrase in the  
3 comprehensive plan is something that somebody is  
4 bound to rely upon in making a zoning decision or it  
5 is not. Isn't that an issue of a law, not an issue  
6 of fact for a witness to testify to?

7 BY MR. FEELEY:

8 Q. Let me ask this question. You understand  
9 what a conditional use permit is?

10 A. Yes.

11 Q. And you agree with me that a conditional  
12 use permit, application or approval of a conditional  
13 use permit, does not constitute an amendment of the  
14 zoning ordinance?

15 A. Conditional use is not an amendment to the  
16 zoning ordinance.

17 Q. Correct. And you, as an agent of the  
18 City, have considered the requirements and/or goals  
19 and policies of the comprehensive plan in  
20 determining whether or not to recommend to the plan  
21 commission and city council to approve a conditional  
22 use permit?

23 A. No.

24 MR. DILLON: Same objection. Relevance.

25

1 BY MR. FEELEY:

2 Q. You have not?

3 MR. FLEMING: There's an objection.

4 Mr. Feeley, what is the relevance of what  
5 somebody would do for a comprehensive plan? What  
6 relevance is that to this matter?

7 MR. FEELEY: Well, again, the City and  
8 OrthoIllinois' argument is that the comprehensive  
9 plan does not apply at all because this was zoned  
10 C-3, and no rezoning occurred. And what I believe  
11 the comprehensive plan says is it's not limited in  
12 its application to rezoning. And I have examples of  
13 where, during the conditional use process, the  
14 comprehensive plan was considered for purposes of  
15 making a recommendation with regard to the  
16 conditional use permit being issued, which  
17 establishes -- and there's a legal conclusion to be  
18 drawn as to whether or not the plan should have been  
19 considered with respect to this development like  
20 I've argued in my appeal, and it wasn't.

21 MR. FLEMING: I'm not following why --  
22 why, though, does the consideration of the  
23 comprehensive plan with respect to a conditional use  
24 permit mean that a comprehensive plan has to be  
25 considered with respect to determining whether

1 something is a permitted use in a C-3 district?

2 MR. FEELEY: You're not -- let me see if I  
3 can explain, okay? A conditional use permit, the  
4 witness just testified, does not involve a change to  
5 the zoning ordinance or the zoning map.

6 MR. FLEMING: I understand what a  
7 conditional use permit is.

8 MR. FEELEY: Okay. All right. However,  
9 the City -- the City and OrthoIllinois' argument is  
10 that the Appellants' argument doesn't make sense  
11 because the only time the comprehensive plan needs  
12 to be applied is if there's an enactment or  
13 amendment to the zoning ordinance. And what I've  
14 argued in my opening is that, yes, that's what the  
15 state statute says, however, the City, under its  
16 local powers, can choose to be more strict and can  
17 require the application of the comprehensive plan to  
18 all zoning decisions. And if the practice is to  
19 apply it to all zoning decisions and it's been  
20 applied to all zoning decisions but for some reason  
21 it wasn't applied to OrthoIllinois' development,  
22 that's an appealable issue.

23 MR. FLEMING: Okay. But you're not asking  
24 her if -- you didn't ask her if it applies to all  
25 zoning issues. You asked her if she has applied it

1 to --

2 MR. FEELEY: A conditional use permit is  
3 one example of an instance that doesn't involve a  
4 rezoning or amendment to the zoning.

5 MR. FLEMING: Well, right, but conditional  
6 use permits are a different process than -- than is  
7 asking to do something that is a permitted use in a  
8 zoning district. Those two aren't the same thing.

9 MR. FEELEY: Okay. So I think I know  
10 where you're going with this, and I don't want to,  
11 but I made my record as to what I believe the  
12 evidence would show and this witness would testify  
13 to. If you're not going to permit me to ask her  
14 those questions, then I will rely on the record I  
15 just made as to the relevance of that testimony.

16 MR. FLEMING: I guess I'll let you go into  
17 this, but keep it -- keep it brief. I'll allow you  
18 to make your record, but I still don't believe this  
19 line of questioning is relevant. If you can get  
20 there and show some relevance pretty quickly, but I  
21 think we're spending a lot of time on something that  
22 is not relevant.

23 BY MR. FEELEY:

24 Q. You've applied the policies in the  
25 comprehensive plan to consideration of whether or

1 not to recommend approval of a certified survey map;  
2 is that correct?

3 MR. DILLON: Objection. Relevance, for  
4 the record.

5 MR. FLEMING: I'm going to allow it based  
6 on what I just --

7 THE WITNESS: I don't understand what  
8 you're asking. I mean, basically we put the  
9 consistency section to the comp plan is on every  
10 staff report. It's background information, just  
11 like surrounding land use. I mean, we just -- we  
12 have a summary of the entire site, adjacent  
13 properties, adjacent land uses. We provide the  
14 consistency to the comp plan as part of that. But  
15 we're not applying that consistency standard with  
16 everything. I mean, it's just part of our staff  
17 reports.

18 BY MR. FEELEY:

19 Q. Okay. But you have applied it with  
20 respect to certified survey maps, correct?

21 A. I'm not drafting those reports, so, I  
22 mean, I'm just at plan commission. They don't  
23 usually discuss the consistency requirement. It's  
24 in the staff report. It's in all the staff reports.

25 Q. And all I can ask you is you're not aware

1 of any instance where staff has applied the  
2 consistency requirements in the comprehensive plan  
3 to recommendations related to approvals of certified  
4 survey maps?

5 A. I just don't recall.

6 Q. Okay. And how about with respect to  
7 conditional use permits?

8 A. With conditional uses, I don't believe  
9 they've applied the consistency standard, because  
10 the conditional law changed, and so they rely on the  
11 finding -- I think it's called findings of fact and  
12 that decision use form that was -- basically we kind  
13 of stole from UWSP's Land Use Center. So they focus  
14 usually, the plan commission does and council on, I  
15 think -- I don't know if it's called findings of  
16 fact. I'm doing it from memory. And then there's a  
17 conditional use decision form that they base it on.  
18 And I honestly can't speak to whether the  
19 recommendation has consistency language in it,  
20 because I -- I mean, don't draft those. I'm just  
21 the staff liaison to the plan commission. I just  
22 don't -- I mean, I don't have it in front of me,  
23 so . . .

24 MR. FEELEY: All right. I have nothing  
25 else then from the witness.

1 MR. FLEMING: Any examination?

2 MR. ROTH: No questions.

3 MR. DILLON: No questions.

4 MR. FLEMING: Okay. You can go.

5 (Whereupon, Ms. Christensen was  
6 excused.)

7 MR. FLEMING: Any other witnesses?

8 MR. FEELEY: Not -- not from the  
9 Appellant.

10 MR. FLEMING: Well, we didn't ask, we  
11 probably should have -- wait. Hold on, sir.

12 Do any board members have questions? We  
13 skipped over that with Mr. Eagon. Does anybody have  
14 any questions of Mr. Eagon from the board?

15 MR. EAGON: I'll be back. I'm just going  
16 to move my car. There's a ballgame.

17 MR. FLEMING: Actually, if they have no  
18 other questions --

19 MR. PETERSEN: I don't have any questions  
20 for him.

21 MR. FLEMING: Does anybody require  
22 Mr. Eagon to stay?

23 MS. ADAMS: I don't have any questions.

24 MR. FLEMING: Then you are free to go.

25 MR. EAGON: Am I free to come back?



1 MR. FLEMING: You're free to come back as  
2 well.

3 Does the board have questions of  
4 Mrs. Christensen?

5 (No questions asked.)

6 MR. FLEMING: Okay. Seeing none --

7 MR. PETERSEN: Let me ask --

8 MR. FLEMING: Actually, could we bring her  
9 back up to the witness stand? I'm sorry.

10 MS. CHRISTENSEN: I need to get my steps  
11 in anyway.

12 MR. PETERSEN: I'm sorry.

13 MR. FLEMING: You're fine.

14 MR. PETERSEN: We, as the board, have  
15 heard about the two ordinances, the zoning  
16 ordinances, of course, and then the plan, okay? So  
17 does the -- does one take precedence over the other?  
18 I mean, I've read them both, and the plan seems kind  
19 of vague to me.

20 MS. CHRISTENSEN: It's a plan, so, yeah.

21 MR. PETERSEN: It's a plan --

22 MS. CHRISTENSEN: It's a plan, so -- it's  
23 a guide.

24 MR. PETERSEN: But under the state  
25 statute, does it hold any power over the zoning of

1 the area of what we see in Beloit?

2 MS. CHRISTENSEN: Well, if you were  
3 rezoning a property, then it needs to be consistent  
4 with the comp plan. So if you're doing a zoning  
5 ordinance amendment, it needs to be consistent with  
6 the comp plan.

7 MR. PETERSEN: Okay. Well, then I ask you  
8 this question in reverse. If the comp plan is  
9 inconsistent with the zoning, does it nullify the  
10 other side?

11 MS. CHRISTENSEN: So you're saying if the  
12 zoning is already in place?

13 MR. PETERSEN: Yes.

14 MS. CHRISTENSEN: Well, I'm not going  
15 to -- I guess, I guess, I'm not --

16 MR. FLEMING: So these are, again, legal  
17 questions, and you'll have the opportunity to ask  
18 them, but these are things that ultimately I think  
19 you'll have to ask me. These are strictly legal  
20 conclusions.

21 MR. PETERSEN: Okay. Okay.

22 MR. FEELEY: And, Matt, I'll just voice an  
23 objection that the board is entitled, under the  
24 rules of procedure, to ask questions, and if this  
25 board member has a question, he should be entitled

1 to ask it.

2 MR. FLEMING: Well, I -- thank you. Your  
3 objection is taken --

4 MR. FEELEY: Okay.

5 MR. FLEMING: -- but that's what -- the  
6 witnesses should be asked factual things. Right now  
7 we are getting to a core legal issue. We'll discuss  
8 it as a board, and, you know, I think I can give you  
9 a full, complete response. But is there any  
10 questions of fact that you have for her?

11 MR. PETERSEN: No, that's it then.

12 MR. FLEMING: Okay.

13 MS. CHRISTENSEN: Anything else before I  
14 go back?

15 MR. PETERSEN: No, thank you.

16 MR. FLEMING: All right. No other  
17 witnesses from the Applicant. Questions by the  
18 board members?

19 (No questions asked.)

20 MR. FLEMING: The case in chief of other  
21 parties.

22 MR. DILLON: Excuse me?

23 MR. FLEMING: Case in chief,  
24 OrthoIllinois.

25 MR. DILLON: What I would propose as a

1 timesaving measure, I would be calling Mr. Brown to  
2 testify as to several proposed findings in our  
3 submission. I am prepared to not call him if we can  
4 reach a stipulation as to some of these things,  
5 because they're already in the record.

6 MR. FLEMING: Do you need a moment to  
7 discuss this with opposing counsel? Do you want to  
8 take a quick break or do you want to --

9 MR. DILLON: I would propose we do that,  
10 and if we don't get a stipulation, then --

11 MR. FLEMING: All right. Let's take ten  
12 minutes. Come back at 10 to 10:00. Off the record.

13 (Whereupon, a brief recess was  
14 had.)

15 MR. FLEMING: Okay. Is our board all  
16 back? We can go back on the record.

17 If OrthoIllinois is ready --

18 MR. DILLON: We're ready. And as a point  
19 of order first, I'd ask the Chair and ask you,  
20 Mr. Fleming, at this point, the two Appellants in  
21 this matter are Beloit Health System and Ms. Nommo  
22 Donald. I apologize if I mispronounced your name.  
23 I don't believe there's any testimony in this record  
24 from anybody associated with speaking on behalf of  
25 Beloit Health System establishing that they're an

1 aggrieved party, and, therefore, I think their part  
2 of this deal ought to be dismissed.

3 MR. FEELEY: There's never been any motion  
4 filed, which should have been filed when motions  
5 were requested before this body weeks ago, and their  
6 status as an aggrieved party has never been  
7 challenged. There's no motion, and for that reason,  
8 I did not call those witnesses. And, at any rate,  
9 Ms. Nommo, without objection, did provide testimony  
10 with respect to her interests and why she believed  
11 the development affected her legal rights as a  
12 property owner.

13 MR. FLEMING: Yeah, I think, you know, we  
14 did all try to discuss parties to narrow down the  
15 issues, and my understanding was no one was  
16 challenging whether anyone was an aggrieved party.  
17 I think we would have taken those motions up  
18 preliminary. So I don't think that's timely.

19 MR. DILLON: That's fine, because I  
20 anticipate this is going up on cert no matter what  
21 we decide here. I'm noting for the record that  
22 there's a distinction to be drawn between what the  
23 prehearing filings are, saying these are the facts I  
24 intend to prove and what you actually prove at the  
25 hearing to establish the party is aggrieved. So I

1 understand -- I understand the ruling and argument  
2 then. I appreciate you allowing me to make that  
3 record.

4 MR. FLEMING: Yep.

5 MR. DILLON: OrthoIllinois calls Anthony  
6 Brown.

7 ANTHONY BROWN,  
8 having been first duly sworn, was examined and  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DILLON:

12 Q. Could you please state your name for the  
13 record?

14 A. Yep, Anthony Brown.

15 Q. Mr. Brown, how are you employed?

16 A. I'm CEO of OrthoIllinois.

17 Q. What does that mean you do on a day-to-day  
18 basis for the company?

19 A. So I oversee all of the operations of our  
20 corporation.

21 Q. How long have you been employed by  
22 OrthoIllinois?

23 A. Just under two years.

24 Q. Are you familiar with Ortho- -- well,  
25 strike that.

1                   Are you authorized on behalf of  
2 OrthoIllinois to testify as OrthoIllinois in these  
3 proceedings here today?

4           A.    I am.

5           Q.    And will that be true with respect to all  
6 the questions I ask you here today?  In other words,  
7 if I ask you a question here today, and you answer  
8 it, are you authorized on behalf of OrthoIllinois to  
9 speak for OrthoIllinois?

10          A.    I am.

11          Q.    And prior to coming here today, did you do  
12 anything to prepare to testify on behalf of  
13 OrthoIllinois?  In other words, did you bring all  
14 the information that OrthoIllinois has at its  
15 disposal to bear in these proceedings?

16          A.    I did.

17          Q.    And what did you do?

18          A.    Spoke to our shareholders.  I spoke to our  
19 surgery center, our medical director to understand  
20 about the facts of that center, and I spoke to our  
21 architect and development team.

22          Q.    Have you been involved personally at all  
23 in OrthoIllinois' efforts to develop an ambulatory  
24 surgery center here in Beloit?

25          A.    Yes.

1 Q. Can you describe for the board what your  
2 involvement has been, please?

3 A. Yeah, so prior, I took over from Don  
4 Schreiner. He retired this January, so I took over  
5 from him in January. Prior to that, I was the  
6 strategy officer for the group. And I've been  
7 involved, since I joined OrthoIllinois, on  
8 developing our surgery center footprint. So we're  
9 obviously opening one in Beloit. We're also opening  
10 one in Elgin, Illinois, and so I've been involved in  
11 that as well as a lot of other mergers and  
12 acquisitions.

13 Q. Does OrthoIllinois operate any ambulatory  
14 surgery centers anywhere today?

15 A. We do.

16 Q. Where?

17 A. Rockford.

18 Q. How long has OrthoIllinois operated that  
19 facility?

20 A. 17 years.

21 Q. Do you have an understanding of what that  
22 facility's performance has been over time?

23 A. Yeah.

24 MR. FEELEY: I'm going to object to  
25 relevancy.



1                   MR. DILLON: That's fine. Fair. I'll  
2 move on.

3 BY MR. DILLON:

4           Q.     When did OrthoIllinois first submit its  
5 applications for approval for the subject  
6 development that we're here to talk about?

7           A.     On Freeman Parkway or on Gateway?

8           Q.     Freeman Parkway.

9           A.     Sometime in fall. August, September. I  
10 don't remember when.

11          Q.     All right. Are you familiar with the  
12 reasons why OrthoIllinois chose that particular  
13 parcel?

14          A.     I am.

15          Q.     And what are they?

16          A.     We were looking for a property that was  
17 zoned C-3, because in our previous property that we  
18 chose, the argument was that we were hospital use,  
19 so, therefore, we went and found a parcel in Beloit  
20 that was zoned hospital use, because that was the  
21 argument that we previously faced.

22          Q.     Do you have an understanding as to what  
23 the City staff's response was to OrthoIllinois when  
24 OrthoIllinois first submitted plans to the City for  
25 review with regard to the subject parcel?

1 MR. FEELEY: Objection. Foundation.

2 MR. DILLON: I asked if he had an  
3 understanding.

4 MR. FLEMING: Yeah, overruled.

5 THE WITNESS: I do.

6 BY MR. DILLON:

7 Q. What is your understanding?

8 A. That when we first submitted, that it  
9 would be approved based off of the original zoning,  
10 because we submitted prior to the zoning ordinance  
11 being updated or amended, and that it would be  
12 approved based off of hospital use in C-3, however,  
13 based off of what their -- when we looked at what  
14 the proposal was, that it would also be approved  
15 under the proposed amendments that were going to be  
16 suggested.

17 Q. Well, I didn't ask my question very well,  
18 so forgive me.

19 OrthoIllinois submitted -- first  
20 submitted applications with regard to the subject  
21 parcel in early September, correct?

22 A. Correct.

23 Q. And do you have a recollection or an  
24 understanding as to how City staff responded to the  
25 initial submission in terms of whether that

1 submission was complete or not?

2 A. Yes, so they -- they had questions. So  
3 they had questions about our application which is  
4 why we had a follow-up phone call with Drew to  
5 address those with the development team.

6 Q. Okay. And when did that call occur?

7 A. It was November 2nd.

8 Q. What do you remember about that call? Who  
9 said what to whom?

10 A. So it was myself. It was Don Schreiner,  
11 who was there at the time. We had Dave Mikos and  
12 Mike Hurt from our architect team, and we started  
13 off with there was a series of building questions  
14 that our architects reviewed with Drew after which  
15 we brought up the fact that the department of health  
16 let us know that there's no nursing beds available,  
17 therefore, we followed the logic, which has been  
18 discussed today, of our intent to seek RCAC  
19 registration so that we can provide overnight care  
20 for the patients in our care suites. That was the  
21 gist of the conversation.

22 Q. Okay. So let me back up and review some  
23 of the testimony that we've heard already today and  
24 make sure whether you share the understanding that  
25 other people have given or not.

1                   You don't dispute that when  
2 OrthoIllinois initially submitted plans for approval  
3 for this subject parcel, those plans indicated that  
4 the uses would be an ASC, coupled with nursing home  
5 uses?

6                   MR. FEELEY: Objection. Leading.  
7 Compound.

8                   MR. FLEMING: I don't know about compound,  
9 but it is -- it is leading.

10 BY MR. DILLON:

11           Q.     Do you remember what the initial proposed  
12 uses were with OrthoIllinois' first submitted plans?

13           A.     ASC and nursing home.

14           Q.     Did there come a point in time when that  
15 changed?

16           A.     That did.

17           Q.     Why did it change and when did it change?

18           A.     It changed around the time when the  
19 department of health sent a letter and let us know  
20 that there's no nursing beds available.

21           Q.     Okay. What, if anything, did the OI --  
22 strike that.

23                   Do you -- does OrthoIllinois consider  
24 any group of people to be involved in a development  
25 team on this project?

1           A.     We do.  We have a large development team.  
2     So we've engaged a consultant named Revo Health  
3     since the beginning.  They're helping us with both  
4     of our surgery centers, and we've been following  
5     their recommendation on how to license both the ASC,  
6     as well as the care suite entity.  Revo Health, just  
7     for context, that's Twin City Orthopedics, a group  
8     out of Minnesota.  They manage and operate multiple  
9     surgery centers with care suites attached.

10          Q.     And with regard to interactions with the  
11     City of Beloit, who are the members of the OI  
12     development team who have interacted with the City  
13     of Beloit, to your knowledge?

14          A.     So myself and Don on that call; our  
15     architects; Rebecca Wilkins, who's on Revo Health,  
16     interacted with the City.

17          Q.     Okay.  So following your being advised by  
18     DHS that there are no nursing home beds available,  
19     what happened next?

20          A.     So when that notice came, we worked with  
21     our consultants, and they were the ones who  
22     recommended RCAC, and so we started going that path.  
23     We had the call with Drew.  We explained that.  
24     There was no concern from the City's perspective,  
25     and so we proceeded in that manner.

1 Q. And during the call that you had with  
2 Mr. Pennington, who attended the call on behalf of  
3 OI's development team?

4 A. Myself, Don Schreiner and then our  
5 architects.

6 Q. And who were they?

7 A. Dave Mikos and Mike Hurt.

8 Q. And prior to the call, did you or anybody  
9 else on the development team prepare any documents  
10 relating to the zoning analysis?

11 A. Of the development team? Yeah, so Revo  
12 Health did. So Revo Health, they engaged. There  
13 was an analysis put together on RCAC and how that  
14 fits with the proposed zoning.

15 Q. Okay. And what, if anything, do you  
16 recall about whether and to what extent you or  
17 anybody else on the OI development team who was  
18 approaching Mr. Pennington this fall had any  
19 analysis in hand to reference during the call?

20 A. We did have that analysis in hand and  
21 walked Mr. Pennington through that analysis.

22 Q. What do you recall that analysis  
23 consisting of when you're talking about you  
24 referring to it?

25 A. It was a logic of how patients who stay

1 less than 30 days, they're classified under group  
2 living as a hotel/motel use, and that's permitted in  
3 C-3 zoning.

4 Q. I didn't ask my question very well, but  
5 what I'm driving at, and I apologize, was it in the  
6 form of a memo? Was it just a discussion that you  
7 had? Was it something else that you had that you  
8 were referring to?

9 A. It was an e-mail communication.

10 Q. All right. I want to direct your  
11 attention to our Exhibit 11, which is at 660 which  
12 I'm looking up now. You should be able to find it  
13 in front of you.

14 A. Yep. 660?

15 Q. Yes, sir.

16 A. Okay.

17 Q. Do you recognize that document?

18 A. If I'm looking at the correct one, it's a  
19 location map, 1650 --

20 Q. I'm sorry, I gave you our OI Bates number.  
21 I made the same mistake. I meant to say or direct  
22 your attention to agenda packet page number 1751.

23 A. What page is that on?

24 Q. 1,751.

25 A. Okay. Let me -- got it.

1 Q. Do you recognize that document?

2 A. I do.

3 Q. What is it?

4 A. This is the analysis that was put together  
5 on the RCAC.

6 Q. Okay. And to what extent, if any, was the  
7 content of that e-mail reviewed with Mr. -- let me  
8 ask this question first.

9 Did you ever provide a copy of that  
10 e-mail to Mr. Pennington?

11 A. No.

12 Q. During your call with Mr. Pennington on  
13 November 2, to what extent, if any, was the  
14 substance of that e-mail discussed with  
15 Mr. Pennington?

16 MR. FEELEY: Objection. The e-mail is  
17 hearsay.

18 MR. FLEMING: Well, we're not bound by the  
19 rules of evidence. You can answer.

20 THE WITNESS: So this was not shared, and  
21 if my memory serves, one of our architects walked  
22 through the logic that's found in this e-mail with  
23 Mr. Pennington.

24 BY MR. DILLON:

25 Q. Did Mr. Pennington express to OI's



1 development team during that call any viewpoints  
2 about what he thought the overnight stay rooms  
3 would -- strike that.

4                   During your call, did Mr. Pennington  
5 express any opinions as to whether and to what  
6 extent those overnight stay rooms could be permitted  
7 under the zoning ordinance?

8                   MR. FEELEY: Objection. Calls for  
9 hearsay.

10                   MR. FLEMING: Same ruling.

11                   MR. DILLON: You can answer the question.

12                   THE WITNESS: Yeah, deemed accessory use  
13 was the word that was used on the call.

14 BY MR. DILLON:

15           Q.     And then following that call, did you  
16 personally have occasion to review any of the  
17 documents that OI's development team submitted to  
18 the City in furtherance of your application to  
19 develop this project?

20           A.     Yes, I saw the documents when they were  
21 submitted.

22           Q.     Okay. And as you sit here today, do you  
23 recall whether or to what extent the use for the  
24 overnight care suites, the description of that use  
25 was changed?

1 A. I don't recall, no.

2 Q. Let's talk about how the ASC use and the  
3 overnight stay use, to the extent that that actually  
4 unfolds, will actually be conducted by  
5 OrthoIllinois. First of all, with regard to the  
6 ASC --

7 A. Yep.

8 Q. -- what entity will be operating the ASC?

9 A. OrthoWisconsin Surgery Center, LLC.

10 Q. Okay. And is that a Wisconsin entity?  
11 Illinois entity?

12 A. It's a Wisconsin entity.

13 Q. And will that same entity be operating the  
14 overnight care rooms?

15 A. No.

16 Q. What entity will operate the overnight  
17 care rooms?

18 A. Beloit Care Suites, LLC.

19 Q. Has that entity been formed?

20 A. It has.

21 Q. And where is that entity formed?

22 A. Wisconsin.

23 Q. And why is that? Why would -- why would  
24 the overnight care suites be operated by a separate  
25 entity?

1           A.    You can't have the same entity operate  
2 both, so we have two separate entities operating  
3 each facility.

4           Q.    And when you say you can't have the same  
5 entity do that, what is your understanding when you  
6 say that based upon?

7           A.    Regulation from how Medicare and how ASCs  
8 are regulated, also how RCACs are regulated.  You  
9 can't have another entity operate them.

10          Q.    Do you have an understanding about whether  
11 it is possible, putting aside for the moment what is  
12 desirable, is it possible for an entity to operate a  
13 ambulatory surgery center that does not accept  
14 Medicare payments?

15          A.    It is possible.  I mean, you can operate  
16 that with just commercial patients for cash pay.

17          Q.    Does OrthoIllinois do that?

18          A.    No.

19          Q.    Why not?

20          A.    Medicare is a big portion of our business.

21          Q.    Okay.  So with regard to the ASC that  
22 you're proposing to develop here in Beloit --

23          A.    Yeah.

24          Q.    -- do you have any plans with regard to --  
25 well, strike that.



1 from?

2 A. What we've done with our center in  
3 Rockford.

4 Q. Okay. And what is your understanding?

5 A. It's a lengthy process to get Medicare  
6 accreditation. So once the center is open, there's  
7 a lengthy building, like, science, actual prevention  
8 review. We have to treat ten patients, and then  
9 after that, then Medicare has an accrediting body.  
10 We use AAAHC. They'll come in, and they do a very  
11 thorough review of our facility, our protocols, our  
12 processes, how we operate, and how we tend to  
13 operate. And then depending on the outcome of that  
14 survey, we will receive accreditation from Medicare  
15 so that we can treat Medicare patients and bill  
16 Medicare patients.

17 Q. All right. And with respect to the Beloit  
18 facility, do you have a plan for how you will seek  
19 accreditation?

20 A. Yes.

21 Q. What is that plan?

22 A. Similar to what I offered. So once we  
23 open, we need to treat ten patients first, which we  
24 will do. After we treat ten patients, we will give  
25 notification to AAAHC, which is Medicare's

1 organization. They will schedule an on-site visit,  
2 and they will bring a team of surveyors. They will  
3 come and survey our facility, go through all of our  
4 books, look at our policies, protocols, how we built  
5 the building and its specifications, and depending  
6 on how that survey goes and if we meet their  
7 approval, then we will get Medicare accreditation.

8 Q. Is your project to build an ASC here in  
9 Beloit in OrthoIllinois' opinion, fiscally possible  
10 if you do not secure Medicare accreditation?

11 A. No. No.

12 Q. Why not?

13 A. Medicare -- so that center is going to be  
14 solely for total joint and spine procedures, and  
15 it's going to be a single specialty procedure. All  
16 of our procedures in Illinois will be brought to  
17 that facility to have those procedures done, and  
18 that demographic, I mean we're talking maybe 50, 60  
19 higher percentage of those patients are Medicare  
20 age. So it would just not be viable to operate a  
21 center without Medicare.

22 Q. All right. So then as part of your plans,  
23 do you have any -- is there any element of your plan  
24 that focuses on not just getting accredited through  
25 Medicare, but continued compliance with Medicare

1 requirements?

2 A. Absolutely. We have a whole team  
3 dedicated that we're -- I mean, it's an ongoing  
4 accreditation where we make sure that we're always  
5 in rules -- in line with Medicare accreditation, and  
6 we can meet that survey.

7 Q. Do you have an understanding about what  
8 happens to a Medicare approved or certified ASC  
9 if -- well, strike that.

10 Once it's approved, are there  
11 reaccreditation processes?

12 A. There are.

13 Q. And what do those consist of?

14 MR. FEELEY: Same objection. Relevance.

15 MR. FLEMING: Overruled.

16 THE WITNESS: Every three years there's  
17 that same survey where they come through, and they  
18 look at everything, our policies, our procedures.  
19 They do surveys of patients to make sure that  
20 everything that we're doing is in line with Medicare  
21 regulations and rules.

22 BY MR. DILLON:

23 Q. Do you have an understanding what can  
24 happen to an accredited -- a Medicare accredited ASC  
25 if upon a review or upon a complaint it is

1 determined that the ASC is treating patients for  
2 more than 24 hours?

3 MR. FEELEY: Objection. Relevance.  
4 Sounds like this is the same call for a legal  
5 conclusion that should be found in the regulations.

6 MR. FLEMING: How much more of this --

7 MR. DILLON: I'm basically almost done.

8 MR. FLEMING: You know, these seem to be  
9 similar questions to what you were asking about just  
10 how the -- how the use is going, so I'm considering  
11 these to be questions about understanding about how  
12 the property is going to be used. I understand they  
13 reference regulations, but let's -- let's wrap this  
14 up.

15 MR. DILLON: Agreed.

16 THE WITNESS: Yes, we could lose our  
17 license to treat Medicare patients.

18 BY MR. DILLON:

19 Q. With regard to the theory that the  
20 overnight care suites will be -- could be registered  
21 as a residential care apartment complex or RCAC, do  
22 you have an understanding of what OI has to do to  
23 secure that?

24 A. Yes.

25 Q. What is your understanding?



1           A.     There's an application that we file with  
2 the department of health, and they have certain  
3 requirements to have an RCAC that is registered, so  
4 we have to file those requirements. It goes to  
5 them, they review them, and then they approve them.

6           Q.     And do you have a -- I presume that if you  
7 get approved, you will operate this is as an RCAC,  
8 true?

9           A.     Correct.

10          Q.     And what happens if you apply for that  
11 registration or accreditation and the State turns  
12 you down? What will you do then?

13          A.     We won't operate it as an RCAC, so those  
14 rooms will stay vacant.

15                 MR. DILLON: Thank you. No further  
16 questions.

17                 MR. ROTH: I have no questions.

18                 MR. FLEMING: Cross-examination?

19                 MR. FEELEY: I have a couple.

20                         CROSS-EXAMINATION

21 BY MR. FEELEY:

22           Q.     Thank you, Mr. Brown.

23                         So if I understand you correctly,  
24 the -- we've been calling the six-room lodging  
25 suites, do you understand what I'm talking about?

1 A. I do.

2 Q. Is a separate LLC from the ambulatory  
3 surgery center?

4 A. Correct.

5 Q. And it will also be operated by an entity  
6 different than OrthoIllinois or Rockford Orthopedic  
7 Associates?

8 A. Correct.

9 Q. So you agree with me that the six room --  
10 six rooms is a separate use from the ambulatory  
11 surgery center; is that correct?

12 A. Correct.

13 MR. DILLON: Objection. Vague.

14 MR. FEELEY: Is that correct?

15 MR. FLEMING: Did you understand the  
16 question?

17 THE WITNESS: Yeah, I did. I think what  
18 you're getting at, yeah, I mean, we have the surgery  
19 center on one side, and then the patients that  
20 require an overnight stay will have that at the  
21 other side.

22 BY MR. FEELEY:

23 Q. And that would occur when they're  
24 discharged, when the physician signs the discharge  
25 order to leave the ASC and go into this separate

1 use, correct?

2 A. Correct.

3 MR. FEELEY: Nothing else.

4 MR. FLEMING: Any questions from the  
5 board?

6 (No questions asked by the  
7 board.)

8 THE WITNESS: Thank you.

9 (Mr. Brown excused.)

10 MR. FLEMING: Any rebuttal witnesses?

11 MR. ROTH: The City doesn't intend to call  
12 anyone on rebuttal. I do have some closing  
13 arguments.

14 MR. FLEMING: Yeah, closing arguments is  
15 the last.

16 Any other witnesses, rebuttal witnesses,  
17 from any party?

18 (No witnesses called.)

19 MR. FLEMING: Seeing none, we've already  
20 done the statements of opinion neighbors, so right  
21 now we've got closing statements, and I guess maybe  
22 first I'll broach this to the board. Do we want to  
23 take opening (sic) statements now or will the board  
24 maybe want to hear and see a more detailed argument  
25 from the parties in writing? We can take closing --

1 we can basically take closing arguments now, but  
2 we've heard a lot of evidence. We've heard a lot of  
3 legal conclusions and everything. This may be a  
4 case where you might want to consider instead of  
5 hearing oral arguments, would you prefer to see  
6 written arguments from the parties? We can hear  
7 oral arguments as well, but this is a little more  
8 complicated case that's why I'm suggesting it, that  
9 that is an option to the board.

10 MR. BAKER: I think I'd prefer the oral.

11 MR. PETERSEN: I agree.

12 MR. FLEMING: That's set then. Let's hear  
13 closing statements. We'll start with the City.

14 MR. ROTH: Thank you. We've been here for  
15 a long time, so I will do my best to be brief and to  
16 the point.

17 I want to -- I want to end where I started  
18 with reemphasizing what we're here to do tonight and  
19 what the board's role is. The board's role is to  
20 sit in the zoning officer's shoes, and you are  
21 essentially making the decision in the first  
22 instance, is this property approvable under the  
23 current zoning.

24 MR. FEELEY: Actually, yeah, I have to  
25 object, for the record, because they are not to sit

1 in the zoning officer's shoes. They are to  
2 determine whether or not the zoning officer  
3 followed --

4 MR. FLEMING: The board has -- the board  
5 has all the same powers to do what it wishes to do  
6 as the zoning administrator. So it can affirm,  
7 reverse or modify. So I think that's an accurate  
8 statement that they have pretty broad discretion.

9 MR. ROTH: It's this board's job to  
10 determine whether the property as -- or whether the  
11 project, as proposed, fits within the current  
12 zoning, which is C-3. And so what I submit to you  
13 is that we heard some testimony about the  
14 decision-making process that the City made, decided  
15 this was a medical facility with an accessory use  
16 involving these overnight suites. But this board  
17 can take any number of approaches to get to that  
18 result. It is not limited to the single route that  
19 you heard tonight that the City actually took. So I  
20 just, I want to frame that for you right up front.

21 I'll move on very briefly to the  
22 comprehensive plan issue that we've been discussing.  
23 I think it's very clear as a matter of state law  
24 that when the City enacts a comprehensive plan, it  
25 does not automatically rezone the entire City, which

1 is essentially the thrust of BHS's argument here,  
2 that when the City enacted the comp plan, every  
3 single parcel was rezoned immediately based on the  
4 future use map in the comp plan. That's -- frankly,  
5 it's absurd. I mean, if you look at the comp plan,  
6 it's very, very clear that the future land uses are  
7 just that. They're recommendations for how, as the  
8 City develops its zoning as time goes on when it  
9 rezones properties, that that must be done in  
10 conformance with the comprehensive plan. But state  
11 law is very, very clear that when a comprehensive  
12 plan is enacted, all the existing zoning remains the  
13 same. And so the argument that somehow when the  
14 City evaluated this specific proposal, that it had  
15 to conform to the comp plan is just completely  
16 unsupported in state law. And I'll move on to the  
17 final topic.

18           We've heard a lot here tonight about the  
19 housing component of this project, and, again, I  
20 think it's very important to emphasize there's been  
21 absolutely no argument that I've heard or any  
22 testimony that casts any doubt on the ambulatory  
23 surgery center part of this project, that it's very,  
24 very clear a permitted use in C-3. There's not been  
25 a single argument that it's not. So just to be very

1 clear, really the only thing in dispute here is the  
2 six lodging suites that are part of this project.  
3 And so as the City has explained in its papers, we  
4 think there are three different routes that this  
5 board can take to approve the entire project, the  
6 ASC and the accompanying lodging suites.

7           The first route is to consider the entire  
8 project as a medical facility. And if you look at  
9 the ordinance, how it defines medical facility,  
10 that's the use that's permitted in a C-3 zone, among  
11 many others, but that's one of them. A medical  
12 facility has a certain set of defined  
13 characteristics, and I read them to you. I won't  
14 bore you again with the details. But the only thing  
15 that matters is does the proposed project fit within  
16 that set of characteristics? And I think it's clear  
17 that it does. BHS's argument is, well, you know,  
18 one of the examples of a medical facility is an  
19 ambulatory surgery center, and you can't have an  
20 ambulatory surgery center along with anything else,  
21 for example, lodging suites.

22           Even if you grant that that's true, we  
23 disagree with it, but even if you grant that that's  
24 true, an ambulatory surgery center is simply one  
25 kind of a medical facility that you can build on a

1 C-3 zone. It's just an example. There's a list of  
2 examples. It's not an exhaustive list. The only  
3 material question is does the project fit within the  
4 set of characteristics set forth in the ordinance.  
5 I think it clearly does.

6           Moving on to the second route that this  
7 board can take is the accessory use route. Again,  
8 accessory uses are listed in the ordinance. There's  
9 a set of examples that explore certain kinds of  
10 accessory uses that can accompany the primary use.  
11 If you look at the ordinance again, it mentions  
12 lodging. It's very clear that's what's going on  
13 here. The only other argument that we heard from  
14 BHS is that accessory uses must be detached from the  
15 primary use. I think it's very, very clear, if you  
16 look through the zoning ordinance, there are many,  
17 many, many examples of accessory uses that simply  
18 could not be detached from the primary use. It just  
19 inherently cannot be the case. I'll give you one  
20 example, and you can look this up on your own time.  
21 One of the use categories is household living. A  
22 house, right? One of the accessory uses is, I  
23 believe it's pets. You can have pets. Clearly the  
24 rule isn't that your doghouse needs to be separate,  
25 and you can only keep your dog in a separate



1 facility from your main house. I mean, clearly that  
2 accessory use is going to be in the same structure  
3 as the primary use. And so I think if you look at  
4 the zoning ordinance as a whole, it's very clear  
5 that accessory uses do not need to be physically  
6 detached from the primary structure. And -- so  
7 that's route two. So route one was the whole thing  
8 with the medical facility. Route two is that  
9 there's a permitted accessory use for these  
10 overnight suites.

11 And route three is the group living  
12 provision that explains if tenancy is less than  
13 30 days, that it is automatically deemed a hotel or  
14 motel use, which is yet another permitted use in a  
15 C-3 zone. So I think there are three independent  
16 routes that this board can take to get to approval  
17 of the entire project, including the lodging suites.

18 So that's all I have. I'm happy to answer  
19 questions, but if not, thank you for your time.

20 MR. BAKER: Thank you.

21 MR. FEELEY: So let me address the  
22 comprehensive plan issue first.

23 The Appellants have not argued that the  
24 comprehensive plan rezones everything. The  
25 argument, and the record will bear this out, is that

1 the statute says one thing, the City of Beloit has  
2 the authority and power to make the comprehensive  
3 plan applicable in additional circumstances than as  
4 required by the statute. That has been the  
5 argument, and the plan language bears that out.  
6 Now, you can read the plan language. Like I  
7 mentioned before, it says it applies to all private  
8 and public developments, and when you think about  
9 this, you had neighbors that voiced an opinion  
10 tonight. All the City had to do was reach out to  
11 the neighbors and say our future land use plan calls  
12 for this to be a mixed residential use. There's a  
13 developer that wants to come in and build a large  
14 26,000 square foot medical facility that's going to  
15 be potentially operating 24/7, do you have a problem  
16 with that, the lighting, the parking lot, the  
17 additional traffic. There was no effort made to do  
18 that whatsoever. And that would have been  
19 consistent with one of the policies of the  
20 comprehensive plan. Ultimately, the City may have  
21 concluded, after doing that, that they were going to  
22 permit the development anyway. But that doesn't  
23 mean they could bypass that step, not if the plan  
24 required them to take that type of action.

25 The other issue I want to talk about is

1 you were all present when Drew Pennington testified.  
2 You've heard the board's attorney confirm that what  
3 he heard Mr. Pennington testify was that it was  
4 approved as an accessory use. What you can't do, no  
5 disrespect, but the board doesn't have authority to  
6 come up with some other solution to this and say,  
7 well, he could have approved it as this, even though  
8 he didn't consider it at the time. He could have  
9 approved it as this option if he didn't, even though  
10 he didn't consider it at the time. He approved it  
11 as an accessory use. So the option -- the other two  
12 options that are being proposed by the City attorney  
13 or counsel for the city, sorry, are not applicable.  
14 That's what I meant when I objected and said the  
15 board cannot stand in the shoes of Mr. Pennington  
16 and come up with solutions to this that  
17 Mr. Pennington did not make and did not consider and  
18 did not base his approval on when he issued his  
19 approval on January 14th. He said it was an  
20 accessory use. He's bound by the ordinances. The  
21 ordinance say specific provisions control over the  
22 general. There is no listed accessory use to  
23 cover -- what Mr. Brown talked about is a separate  
24 use. I just asked him that question. It's going to  
25 be operated by a separate entity. It's separate.

1 He agreed with that.

2           You heard Mr. Pennington say he wasn't  
3 going to approve this as a residential care  
4 apartment complex and told OrthoIllinois that,  
5 because a residential care apartment complex is a  
6 principal use. If it's an accessory use, it has to  
7 meet the requirements of the ordinance. The  
8 requirements of the ordinance, as written,  
9 regardless of whether or not Mr. Pennington says it  
10 doesn't make sense, there's other solutions.

11           And then, finally, the reference to the  
12 pets has to do with a home occupation where the home  
13 occupation is considered to be an animal care or  
14 boarding facility. That's something you don't put  
15 in your home. Thank you.

16           MR. DILLON: I will try to keep my  
17 comments as brief as possible.

18           We have submitted to the board proposed  
19 findings of fact and conclusions of law, which you  
20 will have to issue a written decision and go into  
21 closed session anyway. That is in the record. As  
22 my closing argument, I would adopt, by reference,  
23 paragraphs 39 through 59 of our submission, and I  
24 will not read that to you because you can read that  
25 yourself and understand what it says. But what I

1 would also do -- but to be clear, that would be our  
2 argument if I were to verbalize it and just dispense  
3 with saying all that, I would just refer you to that  
4 instead.

5           But I would note a couple of points of  
6 emphasis. And I don't often make these kinds of  
7 statements in filings that I file with courts or  
8 bodies like you, but I want to focus on what I've  
9 pointed out in paragraph -- we have the burden of  
10 proof in this case. We agree with everything  
11 counsel for the City said, and our submissions say  
12 the same thing. We are in agreement on that, so we  
13 adopt the City's arguments as well. We stand  
14 together on this.

15           What I want to address is why this appeal  
16 lacked merit and has always lacked merit. I think  
17 the record already shows we have met the burden  
18 here. First, as we note in paragraph 58, and as  
19 this record shows, BHS's appeal documents, if you  
20 look at what they've submitted, over and over and  
21 over again talk about what your comprehensive plan  
22 says. And there is black letter statutory law that  
23 says that comprehensive plan has no bearing on what  
24 you folks decide. It is irrelevant. To the extent  
25 that it's in their paperwork, to the extent that

1 we've talked about it, it is irrelevant.

2           This body -- and I need -- in our view, I  
3 won't correct what I think was a misstatement. I  
4 will say what our statement of the law is. We rely  
5 on Wis. Stat Section 62.23, Subsection 8 which  
6 states "In exercising the powers that are afforded  
7 to you as a body, as a zoning board of appeals, you  
8 may, in conformity with the provisions of such  
9 section," which is referring to your ordinance,  
10 "reverse or affirm wholly or partly or may modify  
11 the order, requirement, decision or determination  
12 appealed from," which in this case would be  
13 Mr. Pennington's decision, "and you may make such  
14 order, requirement, decision or determination as  
15 ought to be made, and to that end shall have all the  
16 powers of the officer from whom the appeal is taken  
17 and may issue or direct the issue of a permit." And  
18 the reason that I chose to read that to you, despite  
19 the fact that I just told you I wasn't going to read  
20 you everything, is because you just heard from BHS's  
21 counsel, that that is not the law. Even now, we are  
22 here after hours of hearing, we have 2,000 pages of  
23 documents in this record, and BHS's counsel is  
24 arguing that you should ignore this law. This  
25 doesn't apply to you. It does apply to you. This

1 is a body of conscientious citizens who are only --  
2 you only have the power the statute and the  
3 ordinance gives you. The statute says what it says.  
4 The ordinance says what it says, and it is  
5 astonishing after all the trees that were killed in  
6 furtherance of this record, that BHS's counsel is  
7 still not acknowledging what the law says. That  
8 said -- and we've emphasized that in other findings  
9 here, but what's notable is despite getting here to  
10 the end of the line, BHS is still not acknowledging  
11 that. I think you should take that into account in  
12 assessing the rest of their arguments.

13           The other arguments that we make here,  
14 BHS's appeal -- BHS has appealed to you and said  
15 this is not somehow a use that you can allow, but  
16 they have offered you no analysis of the use table  
17 that says that a medical facility is a permitted use  
18 in C-3 zones. They have -- they acknowledge in  
19 their filings that this is zoned C-3, and yet  
20 somehow argue that the ASC is not a permitted use.  
21 It is a permitted use full stop. There's no further  
22 analysis to be had there. The argument doesn't  
23 compute. The argument doesn't track. The argument  
24 has no basis in fact. The argument has no basis in  
25 law.

1           As I mentioned in my opening, the thrust  
2 of BHS's appeal relates to these overnight care  
3 suites. I think we all understand that now. And  
4 you heard from Mr. Brown of what the plan is for  
5 those, and you heard that OI will not be operating  
6 those unless they are licensed or registered as an  
7 RCAC. And you've seen in the paperwork, and the  
8 City staff, although Mr. Pennington testified he  
9 didn't agree with it initially, the City's  
10 submission to this body now does agree with the  
11 analysis that Beloit Health System's -- or not  
12 Beloit Health System's, forgive me -- that OI's  
13 development team gave to Mr. Pennington in this  
14 November 2, 2021 discussion.

15           So the record shows OI has never played  
16 games with the zoning ordinance. OI filed its  
17 application, engaged in a consultive process with  
18 Mr. Pennington, surfaced this notion of how zoning  
19 would be approved as an RCAC, and that analysis was  
20 laid out in his paperwork. It was never hidden from  
21 Mr. Pennington. Mr. Pennington decided and advised  
22 them in that meeting that he was taking the view  
23 that this was an accessory use, which we think is  
24 supportable. And for that reason, the paperwork  
25 changed. The submissions changed after that.



1     However, whether you get there with -- Mr. Roth --  
2     the City's counsel has already explained the  
3     different paths you can get there. You can get  
4     there multiple different ways. And you have not  
5     heard any argument from BHS as to why you can't.  
6     What you've heard is speculation about what this use  
7     might be, and you've heard legal argument that it  
8     does not meet these requirements, but it does.

9             It's for all those reasons we would ask  
10    you to please approve this use and allow us to go  
11    forward and sustain Mr. Pennington's decision on all  
12    of the basis -- all of the bases that have been  
13    cited by the City and by us. Thank you.

14            MR. FLEMING: That concludes the hearing  
15    portion of this. It is now almost 20 to 11:00. We  
16    move on to the deliberation portion. So as I think  
17    all the counsel have been advised, ultimately this  
18    body is going to have to produce a written  
19    determination, and that's not likely to happen  
20    tonight. We can certainly begin the deliberations  
21    tonight, if you want, but another option, you know,  
22    given that we're going to have to have another --  
23    another meeting to at least approve some findings,  
24    and I think there are probably a number of facts and  
25    things that were done where I can begin to prepare

1 some alternatives that we can discuss and maybe  
2 still produce a written document. What I'm getting  
3 at is does the board want to begin doing some  
4 deliberations tonight and get some direction, or  
5 given the hour, would you prefer to adjourn for  
6 another time to conduct deliberations and  
7 potentially make a decision?

8 CHAIRPERSON PURVIANCE: Adjourn at this  
9 time and then come back later?

10 MR. FLEMING: Is the idea to adjourn then  
11 to your next regularly scheduled meeting or would  
12 you want to set --

13 MR. PETERSEN: We should set a date to go  
14 over this before our next meeting at least.

15 MR. FLEMING: Well, certainly. I mean, in  
16 the interim, I mean, you have the materials. The  
17 record is before you. You have the arguments and  
18 your notes. You can begin considering those, and I  
19 think you should, in the interim, begin thinking  
20 about things, develop your ideas and be prepared to  
21 discuss them, but, you know, our next meeting will  
22 be a deliberation where we will go into closed  
23 session and see where all of this goes. And, like I  
24 said, I will do my best to be sort of prepared to  
25 hopefully be able to produce a written document

1 after that. We'll be in a better position to do  
2 that. So the only real question is whether you want  
3 to be looking at your next regularly scheduled  
4 meeting or if we want to pull out our calendars and  
5 find a special date. I don't know what -- if  
6 anybody has any idea about what might be on or  
7 needed of you at your regular meeting. I understand  
8 the next regular meeting would be May 10th.

9           Drew, do you have anything that you know  
10 of on the horizon?

11           MR. PENNINGTON: Nothing has been filed,  
12 and the deadline is the 14th.

13           MR. FLEMING: Okay. So if we're fairly  
14 comfortable in two more days that no one is going to  
15 file anything, it seems like you have some room on  
16 the 10th without having to schedule anything  
17 special. I'll have to find somebody to cover my  
18 other meeting that night, but that shouldn't be a  
19 problem.

20           MR. FEELEY: How do you want to handle  
21 exhibits in terms of moving them into evidence?

22           MR. ROTH: Well, my view is, the board is  
23 not bound by strict rules of evidence. It's not  
24 limited to consideration such as would be admissible  
25 in a court of law. I mean, if you stipulate to the

1 authenticity of everything, I mean, I'm not really  
2 sure what more there is to do in reference to  
3 tonight. I don't know. I mean, what do you think  
4 needs to be done?

5 MR. FEELEY: Yeah, no, I mean, I'm talking  
6 about the rules also state that you can't rely upon  
7 hearsay solely for a finding.

8 MR. FLEMING: Right.

9 MR. FEELEY: And, I mean, if an exhibit  
10 wasn't introduced, I mean, the record is separate,  
11 the administrative record is one thing, but if  
12 somebody produced an exhibit that wasn't used during  
13 the hearing --

14 MR. FLEMING: Well, I would suggest that  
15 anything outside of what is the administrative  
16 record that an exhibit that was not brought up at  
17 the hearing that nobody testified to, probably  
18 should not be -- should not be relied upon.

19 MR. ROTH: I think his point is when he  
20 says "the record," he means the documents that are  
21 the City's Bates-stamped documents that he provided  
22 to the board.

23 MR. FLEMING: Right.

24 MR. ROTH: And I think he's distinguishing  
25 that from the other exhibits that Ortho offered and

1 that BHS offered. And I think the objection could  
2 potentially be if any of those exhibits were not  
3 used at the hearing, that the board shouldn't rely  
4 on them in making its decision. Is that the idea?

5 MR. FEELEY: Yes.

6 MR. FLEMING: That was my understanding.

7 MR. ROTH: The City certainly didn't rely  
8 on anything other than what was in the records,  
9 so -- or, you know, ordinances and the like --

10 MR. FLEMING: Right. Yeah, I don't feel  
11 constrained by these documents for what the law is.  
12 We can refer to ordinances and statutes. That's not  
13 a concern of mine. So if I understand right,  
14 everything that was the City's Bates stamped, that  
15 was intended to be the administrative record that is  
16 all in evidence can be relied upon. Any other  
17 documents that were not testified to tonight, will  
18 not be considered in evidence.

19 MR. DILLON: And, for the record, we've  
20 Bates stamped anything that our witnesses discussed.

21 MR. FLEMING: I will consider anything --  
22 I didn't hear any objections to the documents, so I  
23 will consider anything that was testified to to be  
24 moved into evidence. Thanks for the clarification.

25 So did we -- does May 10th look --

1 MR. PETERSEN: I'll make it work.

2 MR. FLEMING: Okay.

3 CHAIRPERSON PURVIANCE: Regular time? At  
4 7:00?

5 MR. PETERSEN: I think we should be fine.

6 MR. BAKER: I may not be able to be here  
7 on the 10th. If we're planting corn, I won't be  
8 here.

9 MS. ADAMS: Can we meet another date?

10 MR. PETERSEN: You mean before that time?  
11 Do you have a time frame that you're open?

12 MR. BAKER: Within the next week,  
13 certainly.

14 MR. FLEMING: So if we're looking --

15 MR. PETERSEN: I'd prefer it after the  
16 19th.

17 MS. ADAMS: After Easter then?

18 MR. PETERSEN: Yeah.

19 MS. ADAMS: You said you're going to be  
20 gone when?

21 MR. PETERSEN: He's got his planting  
22 season coming up. You're working 18, 20-hour days.

23 MR. BAKER: We work until it gets too dark  
24 to see.

25 MR. FLEMING: So the week -- the week of

1 the 18th I am available the 20th, 21st and 22nd.

2 MR. PETERSEN: The 20th looks good to me.

3 MS. ADAMS: The 21st is better for me.

4 MR. BAKER: Next week on the 21st?

5 MR. FLEMING: I'm open on the 21st.

6 MR. PETERSEN: Are you open on the 21st?

7 CHAIRPERSON PURVIANCE: What time? 6:00?

8 MR. FLEMING: 6:00 p.m.

9 MR. BAKER: Is there another baseball  
10 game?

11 MR. PETERSEN: Yeah, is that a baseball  
12 game day?

13 MR. PENNINGTON: I'd have to look.

14 MS. ADAMS: We have a ticket we can put on  
15 the cars.

16 MR. PENNINGTON: So just to clarify, we're  
17 talking about next --

18 MR. FLEMING: April 21st.

19 MR. PENNINGTON: -- reconvening next week?

20 MR. FLEMING: Yes.

21 MS. CHRISTENSEN: On which day?

22 MR. PETERSEN: Thursday, the 21st.

23 MS. CHRISTENSEN: We can't count on these  
24 rooms. There's municipal court.

25 MR. PENNINGTON: At 6:00 p.m.?

1 MS. CHRISTENSEN: I'd have to check with  
2 the court to see if there's any files from traffic.

3 MS. ADAMS: What did she say?

4 MR. PETERSEN: Trial with the court.

5 MR. FLEMING: We have to check with the  
6 court to see if there are any municipal court  
7 trials.

8 MS. CHRISTENSEN: Municipal court is on  
9 Thursday, and if there's a trial at the end of the  
10 day, these rooms aren't available, so I have to  
11 check with municipal court to see if they have  
12 anything scheduled.

13 MS. ADAMS: Can we meet in the library?

14 MR. PETERSEN: Are you flexible on the  
15 21st?

16 MS. ADAMS: I'm supposed to be helping  
17 lead something at 7:00, but if we did it early  
18 enough and got done by 7:00, I'd be okay.

19 MR. PENNINGTON: If this room is not  
20 available, we have other alternatives, the public  
21 library.

22 MR. FLEMING: Okay. Yeah, clearly we're  
23 meeting in closed session, so we need a place that  
24 is accessible so if people want to see us go into  
25 closed session, they can, but, otherwise, we don't



1 need to host an audience, so I suggest we set --  
2 look for a motion to adjourn to April 21st at 6:00  
3 o'clock p.m. at a location to be determined.

4 MS. ADAMS: I so move.

5 MR. PETERSEN: I'll second that.

6 MR. FLEMING: All in favor.

7 (Whereupon, all the ayes were  
8 heard.)

9 MR. ROTH: Just so I'm clear, maybe it's  
10 obvious to everyone else. Do the attorneys need to  
11 show up to that closed session?

12 MR. FLEMING: No. It's just going to be  
13 closed session deliberation.

14 MR. ROTH: That was my understanding, but  
15 I just wasn't sure. If you need us --

16 MR. FLEMING: Yeah, we'll -- presumably  
17 we'll either have a written decision that's ready  
18 and we'll send it out immediately or we won't, but,  
19 yeah. We won't be taking any other argument.

20 MR. DILLON: Exhibits, typical handling of  
21 the record? I don't have any problem leaving my set  
22 of documents here. So how do you want to handle  
23 that? Do you want to keep these?

24 MR. FLEMING: Anybody have a preference as  
25 to what constitutes the official copy of the record

1 of this hearing?

2 MR. FEELEY: So what actually happened,  
3 all of the exhibits were essentially Bates stamped  
4 in some order?

5 MR. FLEMING: Right.

6 MR. FEELEY: Okay.

7 MR. ROTH: Everything was combined into a  
8 single PDF and uploaded.

9 MR. FEELEY: Okay.

10 MR. ROTH: And all those, you see those  
11 10, 15 separate documents --

12 MR. FEELEY: Yeah.

13 MR. ROTH: -- those were all combined into  
14 one and given a running -- another running footer,  
15 and that's what was going on. That's why there was  
16 confusion.

17 MR. DILLON: And because it includes the  
18 Bates number from page 1 --

19 MR. ROTH: Obviously the 1 to 2,000  
20 differed from the internal system we used.

21 MR. FEELEY: Okay. I mean, if it's all in  
22 one set of books, that's fine. I mean, my binder is  
23 over there, I, you know --

24 MR. DILLON: My point, Tim, is that it's  
25 all in -- it's all in the City's public record

1 already --

2 MR. FEELEY: Yeah, no, okay. That's fine.

3 MR. DILLON: -- so I would just go to the  
4 electronic is what I --

5 MR. FLEMING: That's kind of where I was  
6 hoping we were going.

7 MR. ROTH: Yeah, I'm fine with the  
8 electronic.

9 MR. FEELEY: Yeah. And I'm fine with  
10 that, too.

11 MR. FLEMING: Okay. Thank you.

12 Any other issues we need to take care of?

13 MR. PETERSEN: Do you think I can get a --  
14 you could send me a -- either give me a flash drive,  
15 and I can take it home and that way I can write some  
16 stuff up while I'm gone? Could I get a copy so I  
17 could write some notes and stuff before we come  
18 back?

19 MR. PENNINGTON: A copy of?

20 MS. ADAMS: The flash drive that you gave  
21 me.

22 MR. PENNINGTON: Oh. Yes.

23 MS. ADAMS: Can I keep this for -- until  
24 next week or do you need it?

25 MR. PENNINGTON: I'll help you -- I'll

1 help you copy those on to your --

2 MS. ADAMS: Okay.

3 MR. FLEMING: Can we do 6:30 on the 21st,  
4 Thursday? Does that work for everyone rather than  
5 6:00?

6 MR. PETERSEN: Yeah, I can make that work.

7 MR. FLEMING: Thank you. I appreciate it.

8 (Whereupon, at 10:50 p.m, the  
9 meeting was adjourned.)

10 \* \* \*

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF WISCONSIN )  
 ) SS  
2 COUNTY OF ROCK )

3

4 I, Margaret Ciembronowicz, Certified Shorthand  
5 Reporter, do hereby certify that on April 12, 2022; I  
6 reported the proceedings had in the above-entitled matter to  
7 the best of my ability, and that the same is a true,  
8 correct, and complete transcription of said proceedings held  
9 on said date.

10 Dated this 12th day of May, 2022.

11

12

13 MARGARET CIEMBRONOWICZ  
14 Certified Shorthand Reporter  
License No. 084-003833

15

16

17

18

19

20 David H Baker  
21

22 Board of Appeals Chair

23

24

25