



**PUBLIC NOTICE & AGENDA
BELOIT BOARD OF APPEALS
City Hall Forum - 100 State Street, Beloit, WI 53511
7:00 PM
Tuesday, December 13, 2022**

1. CALL TO ORDER AND ROLL CALL
2. ELECTION OF OFFICERS
 - 2.a. Nomination and Election of Chair
 - 2.b. Nomination and Election of Vice-Chair
 - 2.c. Nomination and Election of 2nd Vice-Chair
3. APPROVAL OF MINUTES
 - 3.a. Consideration of the Minutes of the April 6 2022 Meeting
[Attachment](#)
 - 3.b. Consideration of the Minutes of the April 12, 2022 Meeting (transcript of April 12, 2022 Contested Case Hearing serving as Minutes)
[Attachment](#)
 - 3.c. Consideration of the Minutes of the April 21, 2022 Meeting
[Attachment](#)
4. PUBLIC HEARINGS (VARIANCE REQUESTS)
 - 4.a. Consideration of an application from Tamara Putnam for an Area Variance to Section 7.3 of the Zoning Ordinance to allow an attached garage within the side and rear setback area in a C-1, Office District for the property located at 417 Liberty Avenue.
[Attachment](#)
5. CONSIDERATION OF PROPOSED CHANGES TO BOARD'S RULES OF PROCEDURE
 - 5.a. Rules of Procedure
[Attachment](#)
6. ADJOURNMENT

** Please note that, upon reasonable notice, at least 24 hours in advance, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information to request this service, please contact the City Clerk's Office at 364-6680, 100 State Street, Beloit, WI 53511.

**MINUTES
CITY OF BELOIT BOARD OF APPEALS
Meeting of April 6, 2022**

A Meeting of the City of Beloit Board of Appeals was held on Wednesday, April 6, 2022, in The Forum of Beloit City Hall, 100 State Street. Chairperson Kara Purviance called the meeting to order at 5:10 PM. All Board members participated virtually.

1. Call to Order and Roll Call

Director of Planning & Building Services Drew Pennington called the roll. Present were: Kara Purviance, Dustin Gronau, John Petersen, David Baker, and Susan Adams. Brooke Joos was absent.

2. Business Items

a. Discussion and possible action on Motion to Stay Further Construction of Medical Facility at 2102 Freeman Pkwy filed by Beloit Health System and Nommo Donald.

Chairperson Purviance acknowledged that each Board member had received the following documents in advance: Appellants' Motion to Stay Further Construction; City of Beloit's Opposition to Motion to Stay Further Construction; City of Beloit's Proposed Findings, Conclusions, and Order to Stay Further Construction; and Orthollinois' Proposed Findings, Conclusions, and Order re: Motion to Stay Further Construction.

Chairperson Purviance stated that oral arguments on items 2a and 2b would be heard together before the Board discussed them together in closed session. Chairperson Purviance announced that presentations would be limited to three minutes per party.

Attorney Colin Roth introduced himself as representing the City of Beloit. Attorney Roth referenced the City's brief and stressed the City's position that the Board does not have authority to halt construction under the circumstances, and that even if the Board does have authority, the City's position is that there are no "proceedings" to be stayed - only construction with an issued permit.

Attorney Duffy Dillon introduced himself as representing Orthollinois. Attorney Dillon stated his agreement with the City's position that there are no legal "proceedings" to be stayed and that physical construction is distinct from legal proceedings. Attorney Dillon stated his agreement with the City's assertion that the Board lack's authority to stop construction. Attorney Dillon noted that the appellant's concerns relate only to the secondary or accessory use and not the principal use of an ambulatory surgery center.

Attorney Tim Feeley introduced himself as representing Beloit Health System. Attorney Feeley stated his position that the State Statutes and City Ordinances grant the Board authority to issue a stay when overriding the Zoning Officer's certification that a stay would cause imminent harm. Attorney Feeley argued that the effect of the Zoning Officer's approvals is a legal proceeding that can be stayed, and that the City's ordinance 2-1004 allows the Board to "stay all proceedings." Attorney Feeley argued that the stay should be automatically granted. Chairperson Purviance reminded Attorney Feeley of the three minute limit and asked him to conclude his remarks. Attorney Feeley referenced Exhibit OI 662-663 relating to Residential Care Apartment Complexes (RCAC) and stated that the City allegedly relied on Orthollinois' plans to construct an RCAC when granting approval. Attorney Feeley argued that the City erred in approving an RCAC without state approval in violation of the Zoning Ordinance.

*Note that the vote on this item (2a) was held after the Board heard oral arguments on item 2b below and went into and out of closed session as described further below.

After emerging from closed session described under item 2b below, Mr. Baker moved to deny the Appellant's Motion to Stay Further Construction (Item 2a), and asked the Board's Attorney Fleming to read the grounds for denial that the Board agreed upon in closed session. Attorney Fleming read the Board's determination that construction activity is not a legal proceeding, and that the Board lacks authority to order a stop to construction. Mr. Baker confirmed that his motion was based upon those grounds. Mr. Petersen seconded the motion. The motion to deny the Appellant's Motion to Stay Further Construction passed (4-1), roll call vote, with Mr. Peterson voting against the motion.

b. Discussion and possible action on Motion to Stay Proceedings on April 12, 2022 filed by Beloit Health System and Nommo Donald.

Chairperson Purviance announced that each Board member previously received a copy of the Appellants' Motion to Stay Proceedings on April 12, 2022. Chairperson Purviance asked Attorney Feeley to summarize what records he is waiting for from the State and City and their relevance.

Attorney Feeley stated that Orthollinois has acknowledged that they are seeking approval of an RCAC by the State of Wisconsin, and that he is expecting records related to that submittal. Attorney Feeley announced that he submitted an open records request to the Wisconsin Dept. of Health Services (DHS) that is relevant to the proceedings and that the appellants need to know exactly what type of medical facility is being proposed.

Attorney Feeley argued that the Board needs to know what type of care is to be provided in the overnight suites.

Attorney Dillon asked Chairperson Purviance for an opportunity to respond. Chairperson Purviance asked the Board's Attorney Matt Fleming for his opinion. Attorney Fleming agreed to allow Attorney Dillon to give brief remarks. Attorney Feeley stated his agreement that both parties should be able to respond.

Attorney Roth, representing the City, stated the City's position that the hearing on April 12, 2022 should move forward as the City has released all records on which the decision was made and that records from Wisconsin DHS are irrelevant documents related to licensing decisions by the State. Attorney Roth argued that the only question before the Board is whether the proposed development complies with the City's Zoning Ordinance as a medical facility.

Attorney Dillon agreed with Attorney Roth's comments, and noted that the specific layout of the development in terms of room sizes and features is irrelevant. Attorney Dillon stated that Orthollinois will fully comply with state and local requirements and that Orthollinois cannot be indefinitely delayed by BHS' open records request to Wisconsin DHS.

Chairperson Purviance entertained a motion to go into closed session. Mr. Baker made a motion to go into closed session pursuant to Section 19.85(1)(a) of Wisconsin Statutes, which was seconded by Mr. Petersen. Motion passed (5-0), roll call vote.

The Board returned to open session after approximately one hour.

*The Board made a decision on item 2a as described above and then proceeded to a decision on item 2b as described below.

Mrs. Adams moved to deny the Appellant's Motion to Stay Proceedings on April 12, 2022 (Item 2b), thereby allowing the contested case hearing to proceed with available evidence, with the stipulation that the parties could move for adjournment if they believe that additional evidence is necessary. Mr. Baker seconded the motion. The motion to deny the Appellant's Motion to Stay Proceedings on April 12, 2022 passed (5-0), roll call vote.

c. Discussion of Procedures for upcoming April 12, 2022 Board of Appeals meeting.

Board of Appeals Attorney Fleming noted that the Board will follow the Board's Rules of Procedure for a contested case proceeding, and that Orthollinois will be a party to the proceedings. Attorney Fleming stated

that written findings will be needed, which may not happen during only one meeting and that the Board can hold additional meetings for deliberation. Mrs. Adams asked about the volume of documents and Attorney Fleming asked Mr. Pennington to describe the meeting room technology. Mr. Pennington stated that the meeting room will have I-pads for Board members and that hard copies can be requested.

Attorney Dillon stated that Attorney Feeley filed a motion earlier in the day asking that Attorney Dillon be called as a witness. Attorney Dillon noted that he has no objections to that motion provided he is allowed to continue to represent Orthollinois at the hearing. Attorney Fleming suggested that the attorneys for all parties participate in a witness conference on April 7, 2022. The attorneys for all parties agreed to meet to discuss the specific matter of Attorney Dillon acting as a witness. The parties agreed to bring hard copies of their exhibits for witness use during the hearing on April 12, 2022. Attorney Feeley asked about time limits at the hearing, and Attorney Fleming noted that it was the Board's discretion. Mr. Petersen asked if neighbors can speak at the hearing, and Attorney Fleming stated that the Board's Rules of Procedure allow interested parties to speak.

3. Adjournment

Mr. Baker made a motion to adjourn, which was seconded by Mr. Petersen. The motion passed, voice vote (5-0). The meeting adjourned at 7:13 PM.

Board of Appeals Chair

1 BEFORE THE CITY OF БЕЛОIT 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.

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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 ordinance 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.)

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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

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**MINUTES
CITY OF BELOIT BOARD OF APPEALS
Meeting of April 21, 2022**

A Meeting of the City of Beloit Board of Appeals was held on Thursday, April 21, 2022, in The Forum of Beloit City Hall, 100 State Street. Chairperson Kara Purviance called the meeting to order at 6:31 PM.

1. Call to Order and Roll Call

Community Development Director Julie Christensen called the roll. Present were: Kara Purviance, Dustin Gronau, John Petersen, David Baker, and Susan Adams. Brooke Joos was absent.

2. Continuation of Contested Case Proceedings

a. Deliberation on Contested Case: Beloit Health System and Nommo Donald have filed an Appeal of Administrative Decision of the Director of Planning & Building Services/Zoning Officer's approval of an Architectural Review Certificate and Certificate of Zoning Compliance on January 14, 2022 for a new medical facility in a C-3, Community Commercial District, for the property located at 2102 Freeman Parkway.

Mr. Petersen made a motion to go into closed session pursuant to Section 19.85(1)(a) of Wisconsin Statutes. Mr. Baker seconded the motion. The motion passed (5-0), roll call vote.

At approximately 8:50 PM, Mrs. Adams made a motion to return to open session. Mr. Petersen seconded the motion. The motion passed (5-0), roll call vote.

b. **Determination of the Board on the Beloit Health System and Nommo Donald Appeal.**

Mr. Baker made a motion to approve the attached Findings of Fact, Conclusions of Law and Determination affirming the Zoning Officer's decision. Mr. Gronau seconded the motion. The motion passed (4-1), roll call vote, with Mr. Petersen voting against the motion.

3. Adjournment

Mr. Baker made a motion to adjourn, which was seconded by Mrs. Adams. The motion passed, voice vote (5-0). The meeting adjourned at 8:52 PM.

Board of Appeals Chair



REPORT TO THE BELOIT BOARD OF APPEALS

Meeting Date: December 13, 2022 **Agenda Item:** 4(a) **File Number:** BOA-2022-02
Applicant: Tamara Putnam **Owner:** Kitelinger Properties, LLC **Location:** 417 Liberty Avenue
Existing Zoning: C-1, Office District **Existing Land Use:** Contractor Office **Parcel Size:** 0.09 Acre

Request:

Tamara Putnam has filed an application requesting an Area Variance to Section 7.3 of the City of Beloit Zoning Ordinance to allow an attached garage within the side and rear setback area in a C-1, Office District, for the property located at 417 Liberty Avenue.

Request Overview/Background Information:

The applicant has proposed the construction of a 21-foot x 23-foot attached garage addition to the east side of the existing building. The subject property is a small square parcel with frontage along Liberty Avenue.

Key Issues:

- Section 7.3 of the Zoning Ordinance establishes a minimum interior side setback of 6 feet and rear setback of 30 feet in the C-1 district. All existing setbacks are nonconforming.
- The proposed addition would leave a setback of approximately 10 feet from the rear property line and 3 feet from the side yard setback as shown on the attached site plan.
- The exiting building is 1,409 square feet in area and was constructed in 1910. The zoning lot is substandard.
- The attached Public Notice was sent to 14 nearby property owners. As of this writing, Planning staff has not received any comments or concerns.
- **Wisconsin Supreme Court Standards for Area Variances**
 The Wisconsin Supreme Court has established a standard for granting variances to zoning regulations. For “area” variances, the property owner and/or applicant has the burden of proving that the standard for granting an area variance has been met. In order to grant an area variance, the Board of Appeals must determine that **all of the following criteria** of section 2-903 are satisfied:
 - (a) Compliance with the strict letter of the Zoning Ordinance regulating area, setbacks, frontage, height, bulk or density would create a hardship by either:
 - (1) unreasonably preventing the owner from using the property for a permitted purpose; or
 - (2) rendering conformity with such regulations unnecessarily burdensome.
 - (b) The hardship is unique to the property.
 - (c) The hardship is not self-created.
 - (d) The variance will not undermine the purpose of the ordinance or the public interest.
 - (e) The variance will not permit a use of land that substantially changes the character of the neighborhood.
- The attached Findings of Fact evaluate this application against the above standards.

Consistency with Comprehensive Plan:

- The Comprehensive Plan recommends Neighborhood Commercial and a zoning district classification of C-1 for the subject property.

Sustainability:

- **Reduce dependence upon fossil fuels – N/A**
- **Reduce dependence on chemicals and other manufacturing substances that accumulate in nature – N/A**
- **Reduce dependence on activities that harm life sustaining eco-systems – N/A**
- **Meet the hierarchy of present and future human needs fairly and efficiently – N/A**

Staff Recommendation:

The Planning & Building Services Division recommends **approval** of the requested Area Variance to Section 7.3 of the City of Beloit Zoning Ordinance to allow an attached garage within the side and rear setback area in a C-1, Office District, for the property located at 417 Liberty Avenue, based upon the established criteria of Section 2-903 of the Zoning Ordinance and the attached Findings of Fact.

Fiscal Note/Budget Impact: N/A

Attachments: Findings of Fact, Location Map, Photos, Application, Sketch, Public Notice, and Mailing List.

CITY OF BELOIT

FINDINGS OF FACT

Area Variance to Section 7.3 of the City of Beloit Zoning Ordinance to allow a building addition within the rear and side yard setback area in a C-1, Office District, for the property located at 417 Liberty Avenue.

Under the standards for Area Variances in Section 2-903 of the Zoning Ordinance, Planning staff finds:

- (a) Compliance with the strict letter of the Zoning Ordinance regulating area, setbacks, frontage, height, bulk or density **would** create a hardship by either:
- (1) Unreasonably preventing the owner from using the property for a permitted purpose; or
 - (2) Rendering conformity with such regulations unnecessarily burdensome.

Compliance with the strict letter of the Zoning Ordinance regulating setbacks would be unnecessarily burdensome for the property owner because both the existing structure and lot do not comply with the current development standards. The substandard size of the lot does not prevent the property from being used for permitted purposes, but prevents the construction of an attached garage.

- (b) The hardship **is** unique to the property.

The existing conditions created by the size of the lot and location of the building are unique to the property. There are very few properties in the city that have similar circumstances. An addition to an existing neighborhood-scale commercial building presents unique challenges. The northeast corner is the only viable area for an addition on the lot.

- (c) The hardship **is not** self-created.

Both the lot and building were created well before the current ownership and Zoning Ordinance was enacted.

- (d) The variance **will not** undermine the purpose of the ordinance or the public interest.

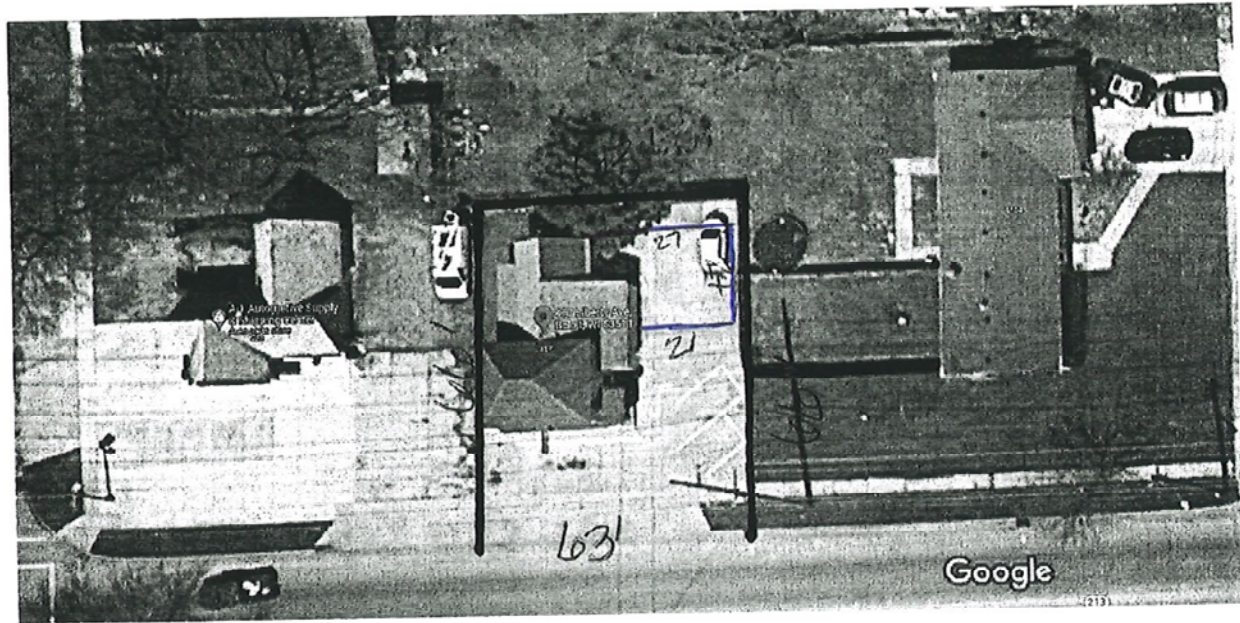
The variance will allow a small business owner the ability to house and secure equipment. Granting of the variance will not impact the continued use and enjoyment of the adjacent properties.

- (e) The variance **will not** permit a use of land that substantially changes the character of the neighborhood.

The applicant is not proposing a change in land use.

Location Map





Map data ©2022, Map data ©2022 20 ft



GARAGE to Attach across
REAR 27 FT
EAST Side 24 FT
FRONT SIDE 21 FT
WITH 10' W X 10' FT
GARAGE DOOR
ALL ROOF LINES
Attached.
4/12 PITCH

Work

Dock

Building



Directions



Save



Nearby



Send to phone



Share

417 Liberty Ave, Beloit, WI 53511

Photos

CITY of BELOIT

Planning & Building Services Division

100 State Street, Beloit, WI 53511 Phone: (608) 364-6700 Fax: (608) 364-6609

Board of Appeals Application Form

(Please Type or Print)

File Number: BOA 2022-02

1. Property Address: 417 LIBERTY AVE, BELDIT WI

2. Tax Parcel Number(s): 206 12150705

3. Legal description: Lot: 1&12 Block: 12 Subdivision: ROCK-WELLS ADD

If property has not been subdivided, attach a copy of the complete legal description.

4. Owner of record: KITELINDER PROPERTIES Phone: 608 362 8532

417 LIBERTY AVE BELDIT WI 53511
(Address) (City) (State) (Zip)

5. Applicant's Name: TAMARA PUTNAM

1455 MCKINLEY AVE BELDIT WI 53511
(Address) (City) (State) (Zip)

608 362 8532 / 608 346 4036 / tammy@aaronslock.net
(Office Phone #) (Cell Phone #) (E-mail Address)

6. Present zoning: R1 Present use: LOCKSMITH SHQ

7. Proposed use (if different): _____

8. Purpose of application: () "Area" Variance (X) "Use" Variance

() Administrative Appeal () Administrative Appeal – Contested Case Proceedings

9. Code from which relief is sought or appeal is taken:

(X) Zoning Ordinance () Floodplain Ordinance

10. State specific sections of code and Variance(s) requested: (Use separate sheet if necessary)

Please see sheet attached.

11. State specific hardship experienced by the applicant: (Use separate sheet if necessary)

Please see sheet attached.

(Continued on back)

12. In order for this application to be considered complete, the applicant must attach a scale drawing (1" = 20' usually works best) showing the location of property lines and their dimensions, existing buildings and improvements, all abutting properties and improvements thereon, and the proposed changes or additions. You are required to furnish a legible drawing with enough detail that will adequately advise and inform the Board.

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

Jamara Putnam TAMARA PUTNAM 7/19/2022
(Signature of Applicant) (Print name) (Date)

The owner's signature below grants permission for the applicant to apply for the variance and permission for the Board of Appeals and City staff to inspect the subject building(s) and/or property.

Jamara Putnam TAMARA PUTNAM 7/19/2022
(Signature of Owner) (Print name) (Date)

The applicant acknowledges that this application is not deemed filed until dated and receipt acknowledged by a person authorized to receive the application. The applicant is entitled to receive a copy of the acknowledged application once it is officially reviewed and accepted.

Hearings are usually held in City Hall Forum, City Hall, 100 State Street at 7:00 P.M.

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Planning & Building Services Division for acceptance by the filing deadline date prior to a scheduled Board of Appeals meeting. This application must be submitted with the \$300.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, which is typically between \$5.00 and \$20.00.

To be completed by Planning Staff:
Filing fee: \$300.00 Amount paid: 300.00 Meeting date: 11/8/22
Application accepted by: Anthony Kaufmann Date:
No. of notices: X mailing cost (\$0.50) = cost of mailing notices: \$
Date Notice Published: Date Notice Mailed:

CKH 8742

Tuesday, July 19, 2022

To Whom it May Concern:

We are asking for a use variance for our current location at 417 Liberty Ave, Beloit, WI. We are trying to build an attached garage for our vehicles to be stored in at night. The proposed building will be attached to our current building with a door installed for access from inside.

The measurement of the building is 27' across the rear, 24' on the east side from rear to front, 22' across the front with a 10X18' garage door installed for the oversized vehicles. If we are forced to go to 24' across the rear and the 19' across the front, then both of the vehicles will not fit in a 10X16' garage door, and it would defeat the whole purpose of building a garage. The east side of the lot is where the variance is needed. We will be within 3 feet of the neighbors' lot line. We have been trying to contact the neighbor, but they have not been home, we are hoping they will be okay with the proposed building.

In the past 3 years we have had a few instances of vehicle damage and burglary. The first instance was when my pro-master van was vandalized. There was a baseball bat thru the windshield and derogatory words written in black spray paint down the side of the van. This cost \$500.00 dollars to replace the windshield and to have the paint removed, plus we lost two days of lost income from the truck, which is about another \$1000.00 lost. The next instance was a slashed tire on the pro-master, which cost \$250.00 to have replaced, mounted and balanced, and a ½ day of work. This past April was the worst.

Someone broke into my Chevy van and stole 2 key cutting machines. They punched out the passenger side door lock and used my tools to take my machines. They even broke the wrench trying to get them out. This time it cost me over \$5000.00 to replace the two machines, the 4 cutting wheels they took, the wrench they broke trying to free my machines, the door cylinder that they punched out to gain access to the rear of the van and the damage done to the workbench trying to get the machines out. I also lost one week of income from the truck because we had to wait for the door cylinder to be delivered. One week of lost time and wages equals about \$3000.00. We simply can't afford not to have a garage.

A garage would go a long way to solving our problems. Please consider this a hardship because of our tiny lot and the vehicle issues we have been enduring. The lot is too small to add a detached garage that will accommodate both vehicles. Thank you for your time and consideration, it is appreciated.

CDC BUILDERS

W 1037 HWY 11
WI 53520

Estimate

Date	Estimate #
5/13/2022	672

Name / Address
ARRON LOCK & SAFE 417 LIBERTY AVE BELOIT WIS 53511


Project

Description	Qty	Rate	Total
BUILD 21X23 GARAGE ADDITION 2X4 WALLS 12 FT TALL 4/12 PITCH ROOF SHINGLED ROOF VINYL SIDING ALUMINUM SOFFITS AND GUTTERS 10X16 OVERHEAD DOOR BASIC ELECTRICAL FOR LIGHTS AND DOOR OPENER INSTALL SERVICE DOOR ON BACK WALL OF BUILDING IN PLACE OF WINDOW CLOSE OFF 1 WINDOW			
Total			

CDC BUILDERS
BUILDING, REMODELING, GENERAL
CONTRACTING
TIM SEICHTER
OWNER

BRODHEAD WISCONSIN
608-289-6374
21 YEARS EXPERIENCE

LICENSED
FULLY INSURED



COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE TO THE PUBLIC

December 6, 2022

To Whom It May Concern:

Tamara Putnam has filed an application requesting an Area Variance to Section 7.3 Commercial and Industrial District Standards of the City of Beloit Zoning Ordinance to allow an attached garage within the side and rear setback area in a C-1, Office District, for the property located at:

417 Liberty Avenue.

The following public hearing will be held regarding this requested Variance:

Board of Appeals: Tuesday, December 13, 2022, at 7:00 PM or as soon thereafter as the matter can be heard in the City Hall Forum, 100 State Street.

We are interested in your opinion. You may mail your comments to the attention of Hilary Rottmann at 100 State Street, Beloit, Wisconsin 53511 or via email to Rottmannh@beloitwi.gov. You may also call (608) 364-6708 to provide your comments over the phone.

You may submit a letter to the Board of Appeals, 100 State Street, Beloit, Wisconsin 53511, to either support or oppose the applicant's request. The Board of Appeals may grant an "Area" Variance **only** if it finds that all of the following facts are true:

- a. Compliance with the strict letter of the Zoning Ordinance regulating area, setbacks, frontage, height, bulk or density would create a hardship by either:
 1. unreasonably preventing the owner from using the property for a permitted purpose;
 - or
 2. rendering conformity with such regulations unnecessarily burdensome.
- b. The hardship is unique to the property.
- c. The hardship is not self-created.
- d. The variance will not undermine the purpose of the ordinance or the public interest.
- e. The variance will not permit a use of land that substantially changes the character of the neighborhood.

For more information, contact Hilary Rottmann at Rottmannh@beloitwi.gov or (608) 364-6708.

GH LLC
9812 FALLS RD #114-194
POTOMAC, MD 20854

PAMELA & RAGAN WHITMORE
1051 OAK ST
BELOIT, WI 53511

GARY & ASHLEY WRIGHT
1115 OAK ST
BELOIT, WI 53511

BILLY WILMER
1050 VINE ST
BELOIT, WI 53511

DONNA GROVER
1237 TENTH ST
BELOIT, WI 53511

RODNEY & TARI BACH
1223 W BIG HILL RD
BELOIT, WI 53511

JOAN RICE
12039 GALLOWAY LN
CALEDONIA, IL 61011

JACQUELYN JACKSON
1112 VINE ST
BELOIT, WI 53511

MARIA SANCHEZ
1116 VINE ST
BELOIT, WI 53511

JAMIE RATH
1122 VINE ST
BELOIT, WI 53511

NANCY TOUBL
1102 OAK ST
BELOIT, WI 53511

JOSE RAMIREZ RAMOS
1041 OAK ST
BELOIT, WI 53511

AZR FINANCIAL
616 S MAIN ST
JANESVILLE, WI 53545

WEP ENTERPRISE LLC
1313 ELEVENTH ST
BELOIT, WI 53511

CITY OF BELOIT, WISCONSIN**ARTICLE I GENERAL GOVERNING RULES**

1. The board shall be governed by the following laws and ordinances:
 - a. The zoning law of the State of Wisconsin, Section 62.23, Wisconsin Statutes.
 - b. Section 1.77 of the Code of General Ordinance relating to the creation of the Board of Appeals.
 - c. The City of Beloit Building Code, Chapter 9 of the Code of General Ordinances.
 - d. Section 19-2-1200 of the Code of General Ordinances relating to the Land Management Plan.
 - e. The City of Beloit Zoning Ordinance, Chapter 19 of the Code of General Ordinances.
 - f. The City of Beloit Floodplain District of the Zoning Ordinance, Chapter 19 of the Code of General Ordinances.
 - g. The Rules of Procedure hereinafter set forth and such other codes as may be authorized by law.
2. Whenever any conflict exists between these Rules of Procedure and the laws of the State or City, State laws and local ordinances shall prevail in that order.
3. All references are to the current Wisconsin State Statutes and City of Beloit municipal ordinances.

ARTICLE II MEMBERSHIP

1. The Board shall consist of seven members appointed by the President of the City Council, subject to the confirmation of the City Council. The members term shall be for a period of three years, except that of those first appointed, two shall serve for one year, two for two years, and three for three years. The members shall serve without compensation.
2. Officers and Duties: The board shall elect a chair, a vice chair and second vice chair annually at the board's first meeting in June. The board shall submit the chair's name to the City Clerk immediately after selection. The chair shall preside over all meetings of the board. The vice chair shall preside over the meetings in the chair's absence and the second vice chair shall preside in the absence of both the chair and vice chair. In the absence of the chair, vice chair and second vice chair, a president pro tem shall be chosen from those present and shall preside. The presiding officer may compel the attendance of witnesses and administer oaths.
3. Ex-officio members of the Board are as follows:
 - a. Secretary: Shall be the Director of Community Development or his/her designee. The Secretary shall attend to all clerical work of the Board including but not limited to the following:
 1. Receive, file, and docket all appeals and applications.
 2. Receive and file all papers and records plus conduct all correspondence for the Board.
 3. Prepare, publish, and mail all notices required.
 4. Prepare and keep all minutes and records of the Board's proceedings.
 5. Prepare and keep the Board's calendar.
 - b. The Planning Director or his/her Designee: Shall attend all meetings for the purpose of providing technical assistance when requested by the Board. Such technical assistance shall include a staff report setting forth the position of the Planning Director or his/her designee in relation to each appeal or application listed on the agenda for consideration by the Board. Said staff report shall be available for the examination of the appellant or applicant and all interested parties.
4. Official oaths shall be taken by all members in accordance with Section 19.01 of Wisconsin Statutes. A Statement of Economic Interest must be filed in accordance with Section 1.46(3) City of Beloit Code of General Ordinances.
5. Vacancies shall be filled for the unexpired term of a former member of the Board the same as appointments for a full term.

ARTICLE III MEETINGS

1. Regular Meetings: Regular meetings of the Board shall be held on the second Tuesday of each month and at times as the Board may determine.
2. Special Meetings: Special meetings may be called by the Chair, or by the Secretary at the

request of two members. Notice of a special meeting must be mailed to each member at least 48 hours prior to the time set for the meeting, or announcement of the meeting must be made at any meeting at which all members are present.

3. **Annual Meeting:** The first regular meeting in June shall be the Board's annual meeting at which its officers shall be elected.
 4. **Minutes:** The Secretary shall record the minutes of each meeting, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Department of Community Development. The Secretary shall transmit a written copy of the minutes and records of the board to the City Clerk. The City Clerk shall be the custodian of the records of the board.
 5. **Open to the Public:** All meetings of the Board shall be open to the public, except that the Board may go into closed session, pursuant to Section 19.85(l)(a), Wisconsin Statutes, to discuss cases and arrive at its decision. The decision and vote shall be announced in open session.
 6. **Cancellation of Regular Meetings:** Whenever there are no cases or other business to be considered at any regular meeting, other than the annual meeting, the Secretary may cancel such meeting by notifying each member by mail after the deadline to file for the meeting.
 7. **Hearings:** Hearings may be held at any regular or special meeting, at any time set by the Chair.
 8. **Quorum:** A quorum for any meeting shall consist of five members, including alternates empowered to act in the absence of regular members.
 9. **Order of Business:** The order of business at regular meetings shall be substantially as follows:
 - a. Roll call and declaration of a quorum.
 - b. Consideration and approval of minutes from the previous meeting.
 - c. Unfinished cases or business.
 - d. Hearing of new cases.
 - e. Previously noticed closed session to deliberate on cases heard by the Board.
 - f. Previously noticed reconvened open session to vote on cases considered in closed session.
 - g. New business.
 - h. Cmmunications and miscellaneous business.
 - i. Adjournment.
 10. **Voting:**
 - a. **Personal Interest:** No Board member shall participate in the decision of, or vote upon, any case in which the member is financially interested, directly or indirectly. Disqualification of a member for interest shall not decrease the number of votes required for action upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business.
 - b. **Record of Vote:** The Secretary shall record the vote of each member on every question in the minutes, or, if the member is absent or fails to vote, shall indicate such fact in the record of the proceedings.
-

ARTICLE IV APPEALS AND APPLICATIONS

1. **Time of Appeal:** Appeals shall be filed within 30 days after the date of receipt of the written decision or order from which the appeal is taken, except in the case of appeals from the Housing- Property Maintenance Code in which case the appeal must be filed within 10 days after date of receipt. The appeal shall be filed with the Secretary. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Saturdays, Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
2. **Who May Appeal:** Appeals or applications to the Board may be made by:
 - a. Any officer, department, board, or bureau of the City affected by a decision of the administrative official.
 - b. Any person aggrieved and whose use and enjoyment of property within the city is directly and adversely affected by a decision or order of the administrative official.
3. **Appeal and Application Forms:** Every appeal or application shall be made upon forms furnished by the Secretary and available from the City Building Inspections Division, which have been approved by the Board. A scale drawing shall accompany each form showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested. The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the Chair or Secretary which is necessary to inform the Board of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application. The Board may waive these requirements where it is felt that such information is not necessary in order to reach a determination.
4. **Filing Appeal or Application:** The appellant or applicant shall file the required appeal form with the Building Inspections Division. Upon receipt of an appeal form, the Planning & Building Services Division shall transmit to the Secretary of the Board all papers constituting the record upon which the appeal is being taken.
5. **Fee:** All appeals and applications filed with the Secretary shall be accompanied by a receipt from the City treasurer showing payment of the filing fee. If the appellant or applicant asks the Chair to compel the attendance of witnesses, he/she shall also pay the amount determined by the Board to cover the additional administrative costs involved, including but not limited to witness fees, hearing examiner fees, and professional court reporter/transcript fees.
6. **Insufficient Notice:** No appeal or application shall be considered by the Board unless it is made on the required form. Upon receipt of any communication purporting to be an appeal or application, the Building Inspections Division shall supply the applicant with the proper forms, which must be filed within 10 days in addition to the time for appeals in order to be considered by the Board.

ARTICLE V HEARINGS

1. Notice of Hearing: Notice of the time, date and place of the hearing of an appeal or application shall be given in the following manner:
 - a. The appellant or applicant shall receive a copy of the completed application, which they are required to submit. The application shall contain a listing of the date, time, and place of the hearing. Also, a second notice of the meeting and copy of the City's staff report shall be mailed to the appellant or applicant at least five days prior to the date of the hearing.
 - b. In every case involving an appeal, the Secretary shall mail notice to the owners of record of all land within 150 feet of any part of the proposed building or premises not less than 7 days prior to the date of the hearing.
 - c. A Class I notice of the hearing shall be published in the official newspaper not less than seven days prior thereto. The Beloit Daily News shall be considered the official newspaper.
 - d. Notice of all appeals and petitions for variances under the Flood Plain District of the Zoning Ordinance and a copy of all decisions by the Board of Appeals shall be mailed to the Southern District office of the Wisconsin Department of Natural Resources at least 10 days in advance of the hearing and within 10 days after the decision.
2. Time of Hearing, Docketing: Each appeal or application properly filed shall be numbered serially, docketed in a special book provided therefor and placed upon the calendar by the Secretary. Cases docketed 21 or more days preceding a regular meeting shall be set for hearing at such meeting. Cases docketed less than 21 days prior to a regular meeting shall be set for hearing on the next regular meeting day thereafter.
3. Appearance: The appellant or applicant may appear in person or by his or her agent or attorney. In the absence of an appearance for or against an application, the Board may dismiss the appeal or may dispose of the matter on the records before it.
4. Oath: Witnesses may be sworn before testifying at the direction of the Chair or Vice-Chair.
5. Compelling Attendance of Witnesses: The Chair may compel the attendance of witnesses by subpoena. Written request for subpoenas must be filed with the Secretary not less than 2 days prior to the hearing, except by special permission of the Chair.
6. Order of Hearing: Appeals and applications shall be heard in numerical order, except by order of the Board on good cause shown.
7. Order of Business:
 - a. General Hearing: At a general hearing, the order of business shall be as follows:
 1. Calling of the case by the Chair.
 2. Statement of the case and presentation of the City's side of the case by the staff.
 3. Questions by Board members.
 4. Applicant's side of the case.
 5. Questions by Board members.
 6. Statements by interested persons.

7. Questions by Board members.
8. Applicant's, staff, and interested persons rebuttal.
8. Evidence and Official Notice: The Board shall not be bound by strict rules of evidence, not limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The Chair shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the Board members present. Written and oral testimony will be received. The Chair shall rule on cross-examination of any witnesses.
9. Adjournments: When all appeals cannot be disposed of on the day set, the Board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board.
10. Withdrawal: An appellant may withdraw an appeal at any time prior to decision thereon, but if a motion is pending to grant or dismiss the appeal, such motion shall have precedence. Withdrawal of the appeal shall not entitle the applicant or appellant to remission of the filing fee.

ARTICLE VI DECISION AND DISPOSITION OF CASES

1. Time of Decision: The Board shall render its decision either at the termination of the hearing or within 30 days thereafter. The Secretary shall notify the parties in interest in writing of the Board's decision.
2. Form of Decision: The final disposition of an appeal or application shall be in the form of a written decision or order signed by the Chairman and Secretary. Such decision shall state the reasons for the Board's determination, with findings of fact and conclusions of law, and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal or grant or deny the variance requested.
3. Vote Required: All orders or decisions of the Board granting a variance or reversing or affirming any action or order of an administrative officer shall require the affirmative vote of the majority of members present, including alternates empowered to act in the absence of regular members.
4. Conditions: Conditions imposed as part of approval of any application considered by the Board shall be stated in the decision or order embodying the Board's decision and shall be set forth in the applicable permit issued. A permit shall be valid only as long as the conditions upon which it is granted are observed. Appeals or applications approved by the Board shall expire 6 months after issuance if the performance of work is required and substantial work has not commenced.
5. Filing of Decision: Every order or decision of the Board shall be immediately filed with and maintained in the Planning and Building Services Division. The Secretary shall mail a copy of the decision to the applicant or appellant and to the applicable administrative official. Copies of decision granting variances in a floodplain ordinance shall be mailed to the Southern District office of the Wisconsin Department of Natural Resources.
6. Appeal From Decision of the Board: Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the City may within 30 days after the filing of the decision in the office of the

Board of Appeals commence an action seeking to remedy available by certiorari as provided by Wisconsin Statutes.

ARTICLE VII RECONSIDERATION AND REHEARING

1. **Resubmission:** No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision within one year of the Board's decision except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided in subparagraph (2).
2. **Rehearing:** No rehearing shall be held except upon the affirmative vote of 4 or more members of the Board upon finding that substantial, new evidence is submitted which could not reasonably have been presented at the previous hearing. Requests for a rehearing shall be in writing, shall state the reasons for the request and shall be accompanied by necessary data and diagrams. Any rehearing shall be subject to the same notice requirements as original hearings.
3. **Notice:** Any resubmission or rehearing shall be subject to the same notice requirements as original hearings.
4. **Fees:** In the event that the request for resubmission or rehearing shall come from a member of the Board, there shall be no filing fee required. In the event the request for resubmission or rehearing shall come from any other person, not a member of the Board, a filing fee as required for original applications shall accompany the request.

ARTICLE VIII AMENDMENTS

These rules may be amended or revoked by a majority vote of the Board at any meeting, provided written notice of the proposed amendment or change is given to each member at least 10 days before such meeting. Suspension of the rules may be ordered at any meeting by a majority vote of members present, including alternates empowered to act in the absence of regular members.