

**CORRECTED MINUTES OF THE COOPER CHARTER TOWNSHIP
ZONING BOARD OF APPEALS HELD ON THURSDAY, MAY 10, 2018**

A meeting of the Zoning Board of Appeals for Cooper Charter Township was held on Thursday, May 10, 2018, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Gluchowski, Urban, Magura, Flowers and Reynolds

Members Absent: None.

Also Present: Russ Wicklund, Township Planning Consultant; Applicant, William Moran and his Attorney, Dan Burns; Esquire Deposition Solutions, Margie Covey, Insurance Counsel, Craig Noland, and Township Attorney, Michael Homier.

Chairperson Gluchowski called the meeting to order at 4:30 p.m.

Review and Approval of Minutes

Motion by Comm. Reynolds, supported by Comm. Urban to approve the Minutes of the Zoning Board of Appeals meetings held on November 1, 2017 and May 3, 2018. Motion carried 5-0.

Public Hearing

Interpretation of Cooper Township Ordinance - William Moran, 9489 Douglas Avenue (Parcel No. 08-426-016).

Court reporter Margie Covey from Esquire Deposition Solutions was present and prepared a transcript of the proceedings. The transcript is attached, incorporated by reference and, together with this document, shall constitute the entire minutes of the proceedings.

Public Comment

No public comment.

Adjournment

There being no other business, a motion to adjourn was made by Comm. Reynolds, supported by Comm. Urban. Motion carried 5-0.



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STATE OF MICHIGAN
COUNTY OF KALAMAZOO
COOPER CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

IN RE: JAQUELINE AND WILLIAM MORAN
9489 Douglas Avenue
Plainwell, Michigan
Parcel No. 39-02-08-426-016

ZONING BOARD OF APPEALS
SPECIAL MEETING

Proceedings commenced at 4:30 p.m., on Thursday, May
10, 2018, at the Cooper Charter Township Hall, 1590 West D
Avenue, Kalamazoo, Michigan, held before Marjorie A. Covey,
CSR-2616, Certified Shorthand Reporter and Notary Public.

1 APPEARANCES:

2 COOPER CHARTER TOWNSHIP ZONING BOARD OF APPEALS MEMBERS:

3 Ms. Sheryl Gluchowski, Chairperson

4 Mr. Russ Wicklund, Zoning Administrator

5 Mr. Stephen Magura

6 Mr. Mark Reynolds

7 Mr. Curt Flowers

8 Mr. Keith Urban

9
10 COUNSEL FOR COOPER CHARTER TOWNSHIP:

11 Attorney Michael Homier (P60318)
12 Cooper Charter Township Counsel
13 Foster, Swift, Collins & Smith
14 1700 East Beltline, N.E.
Suite 200
Grand Rapids, Michigan 49503
616-726-2230

15 Attorney Craig Noland (P30717)
16 McGraw Morris, P.C.
17 300 Ottawa Avenue, N.W.
Suite 820
Grand Rapids, Michigan 49503
616-288-3700

18
19 COUNSEL FOR MR. AND MRS. MORAN:

20 Attorney Daniel Burns (P57422)
21 Burns Law Office
22 29 Pearl Street, N.W.
Suite 145
Grand Rapids, Michigan 49503
616-742-1500

23 ALSO PRESENT:

24 Mr. William Moran
25

1 Cooper Township, Michigan

2 May 10, 2018 - 4:30 p.m.

3 PROCEEDINGS

4 CHAIRPERSON MS. GLUCHOWSKI: This meeting is called
5 to order.

6 The first business on our agenda is to approve the
7 minutes of the last two meetings. I had Julie bring those
8 in.

9 Have you all had a chance to look them over?

10 BOARD MEMBER MR. URBAN: Yes.

11 CHAIRPERSON MS. GLUCHOWSKI: Do I hear a motion?

12 BOARD MEMBER MR. REYNOLDS: I'll make a motion to
13 approve the two meeting minutes.

14 CHAIRPERSON MS. GLUCHOWSKI: Support?

15 BOARD MEMBER MR. URBAN: I'll support.

16 BOARD MEMBER MR. FLOWERS: Go ahead.

17 CHAIRPERSON MS. GLUCHOWSKI: All in favor, say aye.

18 (All members said Aye.)

19 CHAIRPERSON MS. GLUCHOWSKI: All opposed, say nay.

20 (No members said Nay.)

21 ZONING ADMINISTRATOR MR. WICKLUND: Are those for
22 both meetings?

23 CHAIRPERSON MS. GLUCHOWSKI: For both meetings, we
24 did them both together.

25 Okay. We are met tonight because the Court has

1 remanded to us a question concerning the interpretation of
2 our zoning ordinance as it applies to the Morans'
3 preexisting, nonconforming use and site over on Douglas
4 Avenue.

5 This is going to be just a little bit different
6 meeting than we usually hold because we have such a narrow
7 scope of what we're going to question.

8 We're going to question the nonconforming,
9 grandfathered-in legal use and site. So I'd ask you to limit
10 your questions to those aspects. And we're going to hear
11 what our Plaintiffs have to say. And we're going to get
12 public comment. We'll hear any comments from our attorney,
13 and then I'll let you ask your questions. So that's our
14 order tonight.

15 And then what we're going to do is we're going to
16 recess and give us time to actually consider and research
17 this question. We're scheduling a meeting in June to come
18 back for a discussion and interpretation.

19 And then Russ will -- or our attorney will write
20 that up and send it in.

21 BOARD MEMBER MR. MAGURA: Could the question be
22 stated?

23 CHAIRPERSON MS. GLUCHOWSKI: The question is --

24 BOARD MEMBER MR. MAGURA: The question is?

25 CHAIRPERSON MS. GLUCHOWSKI: -- we are asked, I'll

1 read this literally.

2 It is to provide an interpretation of the Cooper
3 Township Zoning Ordinance as it applies to Plaintiffs
4 Morans -- how do you say your name?

5 MR. MORAN: Moran.

6 CHAIRPERSON MS. GLUCHOWSKI: Moran preexisting,
7 nonconforming use/aspects. In particular to state whether a
8 change in the use or aspects of the Plaintiffs' property has
9 occurred, and to state the parameters of what is and is not
10 permitted on the Plaintiffs' property under the Cooper
11 Charter Township Zoning Ordinance.

12 This Court retains jurisdiction over the remainder
13 of the case.

14 BOARD MEMBER MR. MAGURA: Okay. So what you read
15 to me is this memorandum from Ms. Janssen, our township
16 clerk, right?

17 CHAIRPERSON MS. GLUCHOWSKI: Well this letter is
18 from Craig Noland from McGraw Morris.

19 BOARD MEMBER MR. MAGURA: Okay. Do we have that
20 letter? Do all of us have --

21 CHAIRPERSON MS. GLUCHOWSKI: I don't believe so. I
22 was given it tonight when I was questioning the phrasing of
23 the petition.

24 BOARD MEMBER MR. MAGURA: But what you read is the
25 same I believe as the text in the e-mail from Ms. Janssen,

1 our clerk.

2 CHAIRPERSON MS. GLUCHOWSKI: Yes.

3 BOARD MEMBER MR. MAGURA: So it's the same text,
4 but what you're saying is it comes from, it comes from a
5 court?

6 CHAIRPERSON MS. GLUCHOWSKI: This question is
7 remanded to us from the Court.

8 BOARD MEMBER MR. MAGURA: Okay. Thank you.

9 CHAIRPERSON MS. GLUCHOWSKI: Okay, having said
10 that, could we get you to tell us --

11 ATTORNEY BURNS: Yes, thank you, Madam Chair.

12 CHAIRPERSON MS. GLUCHOWSKI: Go ahead. I'm sure
13 that you've dealt with this question several times so you
14 know exactly what our questions are.

15 ATTORNEY BURNS: Well you know, we're looking for a
16 description of what you believe that our grandfathered in
17 aspects were.

18 ATTORNEY HOMIER: Sorry, Dan, to interrupt you,
19 would you please just identify yourself?

20 ATTORNEY BURNS: I'm Dan Burns. I'm an attorney
21 from Grand Rapids, and I'm here on behalf of Mr. Moran.

22 Thank you. I apologize for not stating my
23 appearance.

24 Mr. Moran is the property owner on Douglas Avenue.
25 And this is regarding 9489 Douglas Avenue in particular as

1 far as the property in the township.

2 The -- in a nutshell we're looking for an
3 explanation of what we're able to do under the
4 grandfathered-in aspects, and we'd like an explanation of
5 what we've done to fall out of or make the necessity of
6 compliance with the current zoning and filing of a site plan
7 would be. So what did we do to come out of that.

8 To start up, I want to make sure that -- let me
9 give this to -- this is just a copy. I have the original
10 letter that they sent to our tenant, and then just a drawing
11 we provided back in 2007.

12 Madam Chair, I'm handing you a letter from 2015
13 which was sent to our tenant, who we entered the lease with
14 and who has paid a substantial portion towards the lease.
15 But this was issued in August, August 5th of 2015.

16 I want to make sure that that's plain. I know it's
17 already part of the record, but in this letter it states,
18 it's from Russ, and it states that he's writing to advise
19 that the building our tenant, Mr. Bawa, was intending to put
20 a retail outlet in, was never approved or utilized as a
21 retail outlet.

22 That appears to be the only hang up. I've also
23 submitted to you a drawing from Renee Luster, your former
24 counsel back in 2007, when she went and did a sketch of the
25 entire building, and clearly listed all of the retail areas

1 that we were using at that time and had been using all the
2 way since the '90s.

3 This is a retail building that we have been doing
4 retail in. When I was here back in 2006 we were doing --
5 switching ceramic specialty retail to general merchandise
6 retail, literally like similar to A Dollar Store type of full
7 on preschool, school supplies, general merchandise store.
8 But retail to retail.

9 It's our position that we've not changed that.
10 We're just -- we're using the same saleable space, same
11 retail space, and we're switching the items. But we're
12 switching the items from general merchandise this time to
13 liquor and alcohol.

14 We have the approval of the Liquor Control
15 Commission, or at least it's pending application that's
16 awaiting the decision of the township. We believe that we've
17 complied with all the township requirements for liquor
18 control approval as well.

19 So back in '06 and '07, we had some changes that we
20 made to the building. And there was concern by the
21 township -- the townships, not just you, but all townships
22 all across the whole state are looking to eliminate
23 nonconforming uses.

24 This place is no exception to any other place, and
25 it is a straightforwardly stated goal of the community to

1 eliminate those and bring everything into compliance.

2 So I understand why we were back in 2006, they had
3 seen there were changes being made, what they thought were
4 enlargements to the building, but what in fact after
5 explanation and a couple of go rounds with the board and the
6 zoning board, we all agreed that we were not changing or
7 enlarging the footprint, which is what the standard is to
8 have to bring a grandfather clausd-in, nonconforming site
9 into compliance with current zoning.

10 If you expand the physical footprint, or enlarge
11 the physical place itself, that is an event which would bring
12 you out of your grandfathered-in use, and we haven't done
13 that this time.

14 This time it's I believe just alleged that we were
15 not approved for retail use. As I mentioned before, we were
16 approved and continued to do retail both before and after our
17 go around in 2006.

18 When I look back through the minutes from 2006, a
19 couple things jumped out. The letter from Prein & Newhof
20 back then, we're dealing with the same basic issues. They
21 cited an issue about access to the property, an issue of
22 paving, they had issues with inaccuracies in our drawing that
23 we submitted.

24 Just like this time, we submitted a drawing because
25 we are trying to, consistent with the township's goal of

1 wanting to know what's going on in all these buildings, we're
2 not looking to hide anything, we want to give you a drawing.
3 We just don't believe it has to comply with site plan muster
4 and site plan standards. We're doing this more as a courtesy
5 and making sure that the township has the information it
6 needs to confirm that we are not actually changing such that
7 -- the footprint, and not changing our use.

8 It also gets into the area for required parking.
9 That was in -- I'm reading from the September 12th, 2006
10 Zoning Board meeting.

11 But moving on to the -- there was a meeting that
12 was held on June 12th of 2007, in which they note in the
13 minutes that the Morans are using the same retail area that
14 they have always used. And they believe that -- the Morans
15 believe that it's just -- I actually am there at this point
16 in 2007, that we are certain it's a very reasonable change in
17 the merchandise, which is the same thing that we're asserting
18 this time.

19 On July 10th of 2000 (sic) we had a meeting with
20 the ZBA, after which they tabled it and we had another
21 meeting then again on July 31st of 2017.

22 And at that meeting we spent quite a bit of time
23 actually going over what the issues were, and the fact that
24 we had made some changes to the loading area, and some
25 changes to the side.

1 But after it was explained that these were repairs
2 and not modifications, and they were not expansions by any
3 stretch, at the end of that meeting, the ZBA took a vote on a
4 motion that -- so they moved that based on the records
5 submitted that they did not find an alteration or other
6 change in the building, or the use that required the
7 submittal of a site plan or a special exception use permit
8 application for approval under the zoning ordinance.

9 There was an issue with the sign at that point and
10 they did limit us to one single sign, and that was an issue
11 that was stated.

12 And that motion passed unanimously, four to nothing
13 by the ZBA. And they did note, however, that if we did end
14 up changing the sign later in the future, that if there was
15 an actual change that occurred in the future, such that it
16 would require a site plan, that we would have to file a site
17 plan.

18 What we really want to know and what the Court
19 wants to know, I believe, is what have we done that would
20 justify requiring us to lose our grandfathered-in aspect and
21 use. In particular is it a change in the -- is there
22 something in the ordinance that separates liquor sales from
23 other retail sales? Or is there an expansion of the
24 footprint, of the physical footprint of the location?

25 These are what would be required in order to

1 require a site plan. It's our position that retail to retail
2 does not require a site plan.

3 This is a highly-regulated area. The Michigan
4 Liquor Control Commission requires substantial vetting for
5 both the tenant and the property itself, and that should at
6 least alleviate some concerns about the actual administration
7 of the retail merchandise.

8 However, if there is another reason, we'd like to
9 know what the reason is, other than the reason that was
10 stated in the letter we just submitted to the Chair, if you'd
11 like to pass that around to the other members.

12 CHAIRPERSON MS. GLUCHOWSKI: It's in their packet.

13 ATTORNEY BURNS: Oh, this letter is?

14 CHAIRPERSON MS. GLUCHOWSKI: Yes.

15 ATTORNEY BURNS: Okay. So we'd like to know in the
16 interpretation the extent of our grandfathered-in aspects,
17 and then what we've done to change our use, or change our
18 footprint that now has required this.

19 So if you could just interpret that and provide
20 that interpretation, that's what we're looking for.

21 I commend and agree with your process that you laid
22 out. I think that it also should -- would require
23 deliberation. And I would ask that you just consider the
24 fact that this was both viewed by other counsel previously,
25 this was also reviewed by a previous board of learned people

1 like yourselves that just have the best interests of the
2 community just like yourselves in mind. Residents, including
3 my client as well though, and I would like to ask you to
4 treat this as though it was your own nonconforming use.

5 And while it's always the goal of the communities
6 and the zoning administrator to get rid of these, we're in a
7 community where there are a number of them that still exist
8 and there is a reality to that.

9 We just ask that the process that is followed --
10 was followed here, be explained. And that's why we asked for
11 the interpretation along with the other, the variance and the
12 other relief we asked for in the process on the way to the
13 Court in this.

14 But the interpretation was really key. And we
15 never have understood what it is that we've done, because we
16 don't understand how -- it does appear in the zoning
17 ordinance that retail is retail and that this is all included
18 in the same zoning, and this is what we've always operated
19 under.

20 So we don't know what we've done for the use. We
21 certainly know we've made no physical changes at this point .
22 So we've been at a loss for what it is we've done to
23 comply -- or that we've done that would make us fall out of
24 our vested rights. These are vested property rights to
25 operate with the nonconforming use.

1 Other than that, I should make it apparent we're
2 contemplating now whether or not we would remove our damages
3 claim also. We haven't made -- we're going to deliberate
4 between now and that date as well.

5 We may remove our damages claim on this because
6 we're not really necessary looking to ring a bell or to -- my
7 client would love to get his lost lease payments back and his
8 attorney fees.

9 At the same time we really just want to be able to
10 operate the property like we've done in the past. And we
11 look forward hopefully to a vote from you all that would be
12 consistent with the vote back in 2007 and 2008 that found no
13 alteration had occurred and that the use remained consistent.
14 That's really all we're looking for.

15 If there is any questions or concerns that any of
16 the board members have, I would happily answer them now. Or
17 if you'd like me to sit down, I would answer them at any
18 point.

19 CHAIRPERSON MS. GLUCHOWSKI: I think we'll have you
20 sit down and let the others that are in attendance speak.
21 Thank you, Mr. Burns.

22 ATTORNEY BURNS: And thank you for your time.

23 CHAIRPERSON MS. GLUCHOWSKI: Mr. Moran, did you
24 have anything you want to say?

25 MR. MORAN: No, I'll keep my mouth shut.

1 CHAIRPERSON MS. GLUCHOWSKI: Is there any one else
2 in our auditorium that would like to speak?

3 Mike, would you like to address this next?

4 ATTORNEY HOMIER: Yes.

5 So you have a copy, or you've heard it read, the
6 Court's order on remand, sort of a limited scope of review.
7 You should also have the record on appeal in this, and it is
8 somewhat voluminous for a ZBA case, and that's why I think
9 it's important for you to understand what you've heard here
10 today in the context of the record that you should review,
11 and then we can reconvene at a meeting in June for your
12 deliberations.

13 But now is also a time where you can ask some
14 questions that you might want answers to that were raised by
15 Mr. Burns during his presentation so that you can consider
16 all of that prior to the June meeting, at which time,
17 presumably, you would deliberate and make some determination.

18 CHAIRPERSON MS. GLUCHOWSKI: Thank you.

19 Mr. Burns?

20 ATTORNEY BURNS: Yes.

21 CHAIRPERSON MS. GLUCHOWSKI: As I recall from
22 previous meetings, you had agreed to submit a site plan?

23 ATTORNEY BURNS: We agreed to submit a drawing. I
24 think it was lost in the mix that when we agreed that if you
25 wanted a drawing -- this happened in 2006 as well.

1 We don't have any problems providing a drawing. We
2 just -- we want to make it known when we submitted the
3 drawing both then in 2006, when we did it earlier in this
4 process, that we wanted to make it open and plain that it
5 would not comply with the requirements of the site plan, and
6 also we did not believe that it was -- nor did we believe
7 that a site plan was required.

8 In the -- in an effort to work with the township,
9 and address the concern of the township, the issue that the
10 township had, which was explained to us, that we want to know
11 what's going on in these buildings.

12 And particularly, not this go around but back in
13 2006 and 2007 they really wanted to know what's going on in
14 the building, what are these changes that have occurred.

15 Both then and now, a drawing -- we don't have any
16 problem being an open book. The problem has always been
17 compliance with the site plan which we do not believe is
18 required. And we'll -- we would submit a drawing, but it
19 would never comply with the site plan requirements.

20 And meeting the ordinance requirements in relation
21 to the site plan too, the site plan wouldn't meet the site
22 plan requirements in that it would not be necessarily to
23 engineering specs. However we did make a couple different
24 attempts this time and we actually did have a drawing put
25 together by an engineer.

1 Even that drawing, however, was not necessarily
2 crossing every T and dotting every I within the requirements
3 of the site plan submission.

4 Separately, we want to make it plain now and have
5 consistently, I believe, stated that our property, as it's
6 shown within the site plan, which would be deficient in the
7 way we just stated, the property itself that would be listed
8 there and shown would fail under the ordinance because of the
9 nonconforming aspects and uses of the property, similar to
10 those listed in the Prein & Newhof letter that I just read
11 from, parking, unpaved, access, proper number of parking.
12 It's a big building on a small lot that's been there a long
13 time.

14 It's awkwardly placed in relation to the
15 right-of-way. We have never had a single letter or any issue
16 with the county road commission. If we did, we would address
17 that with them. Although we've heard a lot of it here, and I
18 know it's a concern to everybody here because the roadways
19 are very important to everyone in the community, and you've
20 always dealt with them very seriously .

21 However, they are the road commission's
22 right-of-way. And we believe that we've, again, not doing
23 anything that would make us lose our ability to park our cars
24 in the front of the store.

25 Those are just a couple of the aspects, a

1 non-exhaustive list.

2 I did put in my petition a list of what we believe
3 are the nonconforming aspects. If there is others, that's
4 part of what we're asking, if there is others that you see,
5 we'd like to make sure what they are.

6 But those will continue until we -- until we come
7 out of our protected nonconforming, preexisting, legal uses
8 of the property.

9 So does that answer your question? If it
10 doesn't --

11 CHAIRPERSON MS. GLUCHOWSKI: It's a good beginning
12 for discussion.

13 Are you aware that the Planning Commission will not
14 necessarily require you to meet every point of every aspect
15 of the long list that they have you fill out, that they are
16 allowed to waive some of those and decide which are important
17 to the nature of the property that they're considering, and
18 then they tell you where the deficiencies are, or the
19 corrections should be made that they feel are important, that
20 are necessary to the -- to protect the public safety, the
21 privacy of your neighbors, the quality of life in the
22 neighborhood? Because you are in a neighborhood, and that's
23 something that you need to be respectful of.

24 ATTORNEY BURNS: It was under that belief that it
25 was not going to meet muster in all the particular details,

1 and the belief that that's what we were submitting our
2 plainly-deficient-in-relation-to-the-standards-set-forth-in-
3 the-site-plans document that we submitted. It's in that
4 spirit that we submitted it.

5 We were not making a concession that, yes, we know
6 we are -- we have to give a site plan. We're saying we'll
7 give you a plan and a drawing. And in that spirit of, you
8 know, you guys will look at it, and you'll review the
9 important things and you'll review the nonconforming aspects,
10 and you'll come back with us and say, you know, we need
11 reasonable improvements here and here. However, we
12 appreciate your nonconforming aspects and we don't need you
13 to comply with those.

14 However, when we submitted it, we were here a few
15 times and each time we were told that our drawings did not
16 meet the site plan requirements. And that we also did not --
17 we were just told both of those things.

18 And that's partly why we're back is because we
19 don't understand where -- what it is that we are actually
20 expected to comply with, what it is that we failed to comply
21 with. That's what this interpretation is about.

22 CHAIRPERSON MS. GLUCHOWSKI: Part of the confusion
23 may be that you are lumping the Planning Commission and the
24 ZBA in together. We have -- we're two different bodies, we
25 have two different functions.

1 They look at that site plan, they tell you where
2 it's deficient and how you can best comply. And then you
3 take their decisions, and if you can not comply with some of
4 that, you come to us and say, we need to do this, and we
5 can't because, and then we rule on that aspect.

6 BOARD MEMBER MR. URBAN: Or if you don't agree with
7 it.

8 CHAIRPERSON MS. GLUCHOWSKI: Or if you don't agree
9 with what they asked you to do.

10 BOARD MEMBER MR. URBAN: We're an appeal --

11 CHAIRPERSON MS. GLUCHOWSKI: Right. We're an
12 appeals process but you haven't completed the first step.
13 You haven't laid the foundation to put your structure on
14 here.

15 ATTORNEY BURNS: But that's part of what we're
16 taking issue with is the requirement that we do that first
17 step.

18 We submitted a drawing, which we do not believe is
19 required, and we believe is sufficient to allow us to move
20 past that August 5th, 2015 letter, which basically said,
21 there is a problem because this has never been used as
22 retail.

23 We're confused that -- we'll give you a drawing,
24 you say you need a site plan where we come in and said we'll
25 give you a drawing. It's not going to be a site plan.

1 And when we submitted it, they said it wasn't
2 acceptable.

3 So that's why we moved onto the appeal, and
4 actually found ourselves back with the Planning Commission
5 willing to try to work with them and get a better drawing.
6 We actually went to them three times.

7 CHAIRPERSON MS. GLUCHOWSKI: But you said that you
8 did obtain a better drawing.

9 ATTORNEY BURNS: We did.

10 CHAIRPERSON MS. GLUCHOWSKI: Did you then submit
11 that to the Planning Commission for consideration?

12 ATTORNEY BURNS: Yes.

13 MR. MORAN: We did it in 2006 and the township
14 tells that there is no drawings.

15 ATTORNEY BURNS: No, but in this most recent round,
16 you had the engineer submit the drawings and we resubmitted
17 those.

18 CHAIRPERSON MS. GLUCHOWSKI: We have no knowledge
19 that the Planning Commission has received a site plan.

20 ZONING ADMINISTRATOR MR. WICKLUND: They received
21 different copies of a proposed site plan that was never
22 approved by the Planning Commission.

23 ATTORNEY BURNS: That's it.

24 CHAIRPERSON MS. GLUCHOWSKI: Okay.

25 ZONING ADMINISTRATOR MR. WICKLUND: So there is no

1 approved site plan.

2 CHAIRPERSON MS. GLUCHOWSKI: So why isn't the
3 Planning Commission considering it?

4 ZONING ADMINISTRATOR MR. WICKLUND: Because of the
5 number of checklist items that could not be met.

6 MR. MORAN: The township gives the drawings to
7 another firm, who reviews it, based upon what the
8 requirements are. And then they put it in a report that says
9 not compliant, compliant, point by point.

10 Now the thing is there is some problems with that
11 too because they have a different view of what the
12 right-of-way is by feet, as opposed to what the statistics
13 are that shows that.

14 So I put both of them on the drawing one time
15 because I didn't know which one you wanted to go by.

16 We tried being nice about it by telling you that
17 these things are what's not compliant, but they're
18 grandfathered.

19 ATTORNEY BURNS: The issue is so the letter from
20 the engineer comes back and states that the drawings that
21 were submitted, similar to what I just was saying, fail in
22 these particular regards.

23 There is two categories. One, the drawing itself
24 is not up to engineering specifications in the following
25 ways, and they list the number of ways that the drawing is

1 deficient or inaccurate. And he's indicating, Mr. Moran
2 right now is indicating that the right-of-way is one example
3 whereas the township -- there is a 60 foot in one and there
4 is a 50 foot in another. So there is some inconsistencies
5 there.

6 The second category that the engineer then took
7 issue with in his letter is the ways in which the property
8 itself falls short of the ordinance, unpaved parking, the
9 parking itself does not meet the potential required for the
10 business based on the retail footage. Other paved areas --
11 the ones that I just listed, and the ones that are contained
12 in the --

13 CHAIRPERSON MS. GLUCHOWSKI: Here?

14 ATTORNEY BURNS: Yes, in the minutes from 2006.

15 So when we, you know, that's the letter that's
16 comes back from the engineer. That's what the Planning
17 Commission has followed at each turn, and that's why we find
18 ourself with the ZBA each time, including back in 2007.

19 And at that time, the ZBA considered what the
20 Planning Commission was doing, which was, follow the
21 engineer's advice, I get that. They were just following what
22 the engineer said.

23 However they were not taking serious -- or doing
24 correctly what it was supposed to do with regard to our
25 nonconforming aspects and our nonconforming use.

1 That's why with what we've done with the ZBA, we've
2 always asked for this interpretation because we want an
3 explanation as well on why these drawings haven't been
4 accepted.

5 Yes, we plainly know that they don't meet the
6 specifications of what's required in the site plan as far as
7 the engineering and the drawing itself.

8 We also know that secondly, in many ways, the
9 nonconforming aspects do not meet the requirements of the
10 ordinance. We have always wanted to be plain about that, and
11 open and straightforward.

12 We're simply looking to continue the retail use of
13 the property, and we don't know what changed this time around
14 that brought about the need for a site plan.

15 We don't think there is any, and we think that you
16 all have the power to confirm, again, like they did in 2008
17 that the Planning Commission has been over persnickety about
18 this, and has overstepped their authority in requiring us to
19 both submit a completely compliant drawing that meets the
20 specifications of the site plan requirements, and also a
21 drawing then that shows that our site is compliant with
22 current zoning, and current ordinance requirements. Neither
23 of which are required for us.

24 And you know, to tell you the truth, certain
25 townships we work with, this works out fine; other townships,

1 the Planning Commission does not want to, you know, very
2 similar to here, doesn't want to observe the nonconforming
3 use and then the ZBA takes care of it. And that's what
4 happened last time here.

5 So it's not like unique to here, this happens.
6 That's what the ZBA is here for. And last time around they
7 cleaned up what was, we believe, a wrongful requirement by
8 the Planning Commission that time around in 2006 and 2007.

9 This time around again we tried to work with the
10 Planning Commission, we made a number of submissions to them
11 to try to improve the drawings and give them more
12 information.

13 Again, not to in any -- at any point comply with
14 the requirements, nor to show our property in a way that
15 would show the property as compliant with the ordinance.

16 Neither of those are required and we were not
17 prepared to do either of those. And when it became apparent
18 that we were being required to meet both of those standards,
19 and we couldn't get relief from the Planning Commission and
20 we couldn't get the Zoning Board of Appeals to recognize
21 that, that's why we ended up in court.

22 And the Court has recognized at this point that,
23 without deciding the other issues it has retained
24 jurisdiction for, with regard to our request for an
25 interpretation of the zoning ordinance as it relates to our

1 nonconforming aspects, and what we've done to change or bring
2 ourselves out of that vested interest and protection there,
3 that's why we're back here.

4 We just haven't had the straightforward
5 statement -- I mean, to just take us -- if you all are, no,
6 you got to pave that parking, tell us.

7 But we don't know what it is both that brought us
8 out of it -- or you guys expanded your footprint by three
9 feet on your foundation, that would do it. Or something else
10 that brought us out of our retail.

11 But the letter is confusing. The letter says we've
12 never been retail, and everyone here I think knows that
13 that's been retail for as long as anybody can remember.

14 ATTORNEY HOMIER: Well I just want to ask a couple
15 questions because I think maybe we can summarize where we're
16 at.

17 ATTORNEY BURNS: Okay.

18 ATTORNEY HOMIER: And I just want to make sure that
19 I understand it.

20 You're not saying that you cannot comply, you're
21 saying you don't need to comply, correct?

22 ATTORNEY BURNS: We're not required to comply.

23 ATTORNEY HOMIER: Okay. Based on your
24 interpretation of a legal nonconforming use?

25 ATTORNEY BURNS: Yes. I mean to just, for purposes

1 of entertaining the question, can we comply? No. I don't
2 believe without parking agreements that that lot can support
3 that building. I think that building is too big for that
4 lot.

5 This is just me thinking outside of it without
6 trying to -- but is there an ability to comply within that
7 lot? You can pave the whole parking lot, I don't think it's
8 going to be enough. I think you're still going to need
9 parking that's shared somewhere, some sort of agreement.

10 So that's just one of example of, can we?
11 Technically no.

12 But that's why it's so important that we have the
13 nonconforming aspects --

14 ATTORNEY HOMIER: Well let's stop there. Because I
15 don't believe, unless I'm wrong, that you've ever submitted
16 any information to say that you can not comply, other than to
17 say, we're not required to comply.

18 ATTORNEY BURNS: The submissions this time around
19 have been consistent with the last time and we refer to them
20 and incorporate them.

21 And last time we submitted parking studies, we
22 submitted traffic studies, we submitted --

23 ATTORNEY HOMIER: Well because on the site plan
24 that was submitted there was additional parking in the rear.
25 And I remember asking you the question about whether or not

1 you had an easement to use the neighbor's driveway, and your
2 response was, you had a prescriptive easement.

3 ATTORNEY BURNS: It's a shared driveway.

4 ATTORNEY HOMIER: So you do have the authority to
5 access the driveway?

6 ATTORNEY BURNS: Yes.

7 ATTORNEY HOMIER: By an agreement?

8 ATTORNEY BURNS: I don't believe we have an
9 agreement. I don't know that one is written.

10 MR. MORAN: No.

11 ATTORNEY BURNS: And that's why I used the word
12 prescriptive.

13 ATTORNEY HOMIER: Okay. Prescriptive is not
14 necessarily an agreement.

15 ATTORNEY BURNS: No, it's not. In fact it actually
16 states that it's not.

17 ATTORNEY HOMIER: Okay. Well I want to make sure I
18 get this right.

19 Are you saying you have an agreement or not have an
20 agreement?

21 ATTORNEY BURNS: I'm saying we have a shared
22 driveway by prescriptive rights.

23 ATTORNEY HOMIER: And that's why you showed the
24 parking in the back of the building on the prior site plan?

25 ATTORNEY BURNS: I believe so.

1 MR. MORAN: You're going back to 2006.

2 ATTORNEY HOMIER: No, sir, I'm not. I'm going back
3 to the drawing your engineer submitted.

4 MR. MORAN: There is no parking in -- what do you
5 call the back?

6 ATTORNEY BURNS: Yeah, what are you referring to as
7 the back?

8 ATTORNEY HOMIER: It would be on the north side I
9 believe, accessing off of that prescriptive easement or
10 shared driveway, whatever you want to call it.

11 MR. MORAN: There is parking there, but that's not
12 the back of the building.

13 ATTORNEY HOMIER: Listed on the site plan though,
14 that's my point.

15 MR. MORAN: Okay. But I'm -- you're saying there
16 was some parking in the back on the 2006 drawing trying to
17 show that it was not physically possible to make enough
18 parking -- we don't own enough land to abide by the parking
19 requirements for the number of square foot of retail.

20 ATTORNEY BURNS: So that's an answer to your
21 question about whether we can.

22 The documents that were submitted do show the
23 inability of the lot to sustain, or to provide the adequate
24 parking for retail.

25 ATTORNEY HOMIER: I don't want to contradict you

1 here, but my understanding was -- well let me get to it this
2 way. Do you have a current lease for the property?

3 MR. MORAN: Yes.

4 ATTORNEY HOMIER: Okay. Have you provided that
5 lease agreement?

6 MR. MORAN: Yes.

7 ATTORNEY HOMIER: Okay. Do you know when?

8 MR. MORAN: When you took the deposition in Mr.
9 Burns' office.

10 ATTORNEY HOMIER: Okay. And the tenant is whom?

11 ATTORNEY BURNS: The person who sent the letter in,
12 the person that was sent the August 5th, 2015 letter, Vikrant
13 S. Bawa.

14 ATTORNEY HOMIER: He's not occupying the building
15 now?

16 MR. MORAN: No.

17 ATTORNEY BURNS: He's paying, but he's not
18 occupying unless he has permission. He has a letter from the
19 zoning administrator from August 5th of last year that says
20 it's not allowed to have retail in there, and it's never been
21 approved or utilized as a retail outlet.

22 ATTORNEY HOMIER: And is that lease for the entire
23 building?

24 MR. MORAN: No.

25 ATTORNEY HOMIER: How many square feet is it for?

1 MR. MORAN: I'd say roughly 2000. It's the front
2 two rooms.

3 ATTORNEY HOMIER: Okay.

4 ATTORNEY BURNS: The same place that was being used
5 for the general merchandise store. It's the same area.

6 ATTORNEY HOMIER: And have you determined how many
7 parking spaces are needed for 2000 square feet?

8 MR. MORAN: No, I didn't.

9 ATTORNEY HOMIER: Okay.

10 ATTORNEY BURNS: There is also still a residential
11 unit, apartment unit there. And there is also still --
12 they're still leasing and have available for lease the entire
13 basement which is used for retail, and a back area which is
14 available for retail. But this would fill the front.

15 We're not abandoning the other areas of retail is
16 all I'm saying, and those would potentially be areas that
17 would require parking, which we will never be able to supply
18 based on the size of the lot in relation to the size of the
19 building.

20 ATTORNEY HOMIER: But as it pertains to this
21 current matter, none of that information has ever been
22 submitted about a calculation of the square footage and the
23 number of parking spaces that are necessary?

24 ATTORNEY BURNS: We believe that Prein & Newhof did
25 that number.

1 ATTORNEY HOMIER: Okay. But you haven't submitted
2 anything?

3 ATTORNEY BURNS: We've taken issue with their
4 number. But, no, we have not -- we have not made --

5 ATTORNEY HOMIER: I'm just trying to get the scope
6 of what is in or not in the information that the ZBA has in
7 front of them which consists of the record on appeal.

8 ATTORNEY BURNS: We did not make a submission, I
9 don't believe our engineer submitted what would be --

10 MR. MORAN: When I drew it up, I drew it up with
11 the number of possible parking spots according to the rules
12 in the front.

13 ATTORNEY HOMIER: Okay. And I just want to make
14 sure that -- I thought I heard you say, retail -- retail is
15 retail, and therefore retains the legal nonconforming use.
16 Is that --

17 ATTORNEY BURNS: Well we haven't increased our
18 footprint. The letter from the township said you are
19 proposing to put a liquor retail, liquor store there, it's
20 not approved for retail. We've always done retail there. It
21 wasn't retail liquor but it's retail.

22 That's acknowledged by the zoning administrator,
23 it's retail.

24 So that's why we're saying retail to retail, we
25 don't believe there is a change in the zoning classification,

1 and we don't believe there is a change in the use.

2 ATTORNEY HOMIER: There is -- is there a provision
3 under the zoning ordinance that you can point to that says
4 retail is retail, the change of use doesn't depend in any
5 shape or form on the product being sold?

6 Because that's were you're saying, right? I don't
7 want to mischaracterize what you're saying.

8 ATTORNEY BURNS: I don't know that that's -- I
9 don't know if the ordinance, if it does say that at some
10 point that retail is retail. I'm not familiar enough with
11 the ordinance to know exactly where that is.

12 I'm just saying that your ordinance defines what is
13 allowed under certain zone classifications, and lists retail
14 among the ones that are allowed where we are. And if it does
15 not, it has always allowed retail where we are.

16 And consistent with what the zoning administrator
17 wrote to our tenant, he considers it retail still, and what
18 we're proposing is retail.

19 So what we're really looking for is how -- we're
20 looking for an elucidation or clarification on how is what
21 we're talking about not retail?

22 So to ask us, do we know where under the ordinance
23 it says retail is retail is retail, that's really what we're
24 trying to get at.

25 Where do you see it saying something that says

1 because we switched the items on the shelf, that it's from a
2 retail from one thing to retail of another, that it's now
3 different.

4 ATTORNEY HOMIER: I understand. What I'm getting
5 at is it's your burden of proof to show that it retains its
6 legal nonconforming status.

7 And what I want to make sure is that the ZBA
8 understands that what you're saying is that regardless of the
9 product being sold, you can sell any product there, and it
10 does not constitute a change of use.

11 ATTORNEY BURNS: I think certain products would
12 fall us into industrial, I think certain products would fall
13 us into other things.

14 I think that what we are -- if I'm selling pipes or
15 installation services along with underground water pipe or if
16 we're building roads there, or if I'm producing something
17 that I'm also selling, there are a number of ways it could be
18 that we're selling things that pull us out of retail.

19 However, retail products, that's the ones we're
20 talking about, I believe, yes. That retail liquor is a
21 retail store. Retail clothing is a retail store. Retail
22 general merchandise or ceramics, those are retail -- that's
23 what we're doing, we're getting it wholesale, we're selling
24 it retail.

25 Item by item on shelves, that people will walk in,

1 pick up, look at, go to the front door, purchase and leave.
2 It is a typical retail operation.

3 There is a -- there is a distinction with these
4 particular products and that is that they involve a highly
5 regulated substance, and because of that, there is additional
6 regulation.

7 However, the regulation that you set forth we
8 believe we've complied with as far as the difference on
9 the -- of the merchandise, we've complied with that. We
10 don't think there -- and so you all feel better about the
11 notion that we're selling these products that are highly
12 regulated within your community, the state also regulates it
13 with the Michigan Liquor Control Commission. And we believe
14 that we are compliant with what they require as well, as well
15 as our tenant. And they will vet both the property site and
16 they'll vet the tenant to make sure that it's not
17 inappropriate.

18 BOARD MEMBER MR. MAGURA: May I ask a question or
19 are we still --

20 ATTORNEY HOMIER: I just have a couple more because
21 I just want to make sure that --

22 MR. MORAN: I couldn't hear what you said.

23 ATTORNEY BURNS: He's just asking for the chance to
24 speak yet, and he's saying I have more questions.

25 MR. MORAN: Okay.

1 ATTORNEY HOMIER: Are you aware that the zoning
2 ordinance has been amended? I'm just asking if you're aware.

3 MR. MORAN: Amended when?

4 ATTORNEY HOMIER: I don't recall off the top of my
5 head, but it would now require liquor stores be a special
6 use.

7 ATTORNEY BURNS: Since our tenant was notified that
8 the township knows that --

9 ATTORNEY HOMIER: I don't know what the exact date
10 was, but I'm sure it was in the interim sometime, yes.

11 MR. MORAN: Why --

12 ATTORNEY BURNS: We were ready, we're turn-key, and
13 ready to go, if it weren't for that letter from the township.
14 We were ready in August of 2015.

15 ATTORNEY HOMIER: I know. I just wondered if you
16 are aware that it's now a special use permit.

17 ATTORNEY BURNS: If there is new things, they don't
18 apply to us because we made our application and were ready to
19 go prior to that.

20 I think that that's one of the issues you raised in
21 your motion for summary disposition.

22 MR. MORAN: When I brought that up on the website,
23 that's where I was sent by the front office, it listed like
24 15, 20 types of businesses that could be in there, and
25 packaged liquor was one of them.

1 That's one of the reasons why I told Vik, yes, I
2 can rent to you.

3 ATTORNEY BURNS: So we were all set to go and we
4 signed the lease and he paid thousands of dollars for the
5 lease, and then he received a letter from the township that
6 said, you don't get to do retail there, there is an issue,
7 there has never been a proper authorization and there has
8 never been a prior use of retail. Both of which we take
9 exception to because that's not the case. It was approved in
10 2007 and we've used it since the '90s as retail.

11 ATTORNEY HOMIER: I suspect you wouldn't disagree
12 with the statement that if the Court were to find that there
13 was a change in use, you would not have a legal nonconforming
14 use/aspect to the site, is that true?

15 ATTORNEY BURNS: Actually, the way the legal
16 standard states it is it would have to fall out of its
17 classification entirely, or it would have to be enlarged,
18 there would have to be an enlargement of the use.

19 ATTORNEY HOMIER: Well let me go back then to my
20 question which was, you -- and I tried to summarize this in
21 what your position was. Because you're saying retail is
22 retail is retail, and then yet you carved out some exceptions
23 where you may be selling retail.

24 ATTORNEY BURNS: I'm not understanding what you
25 just said.

1 ATTORNEY HOMIER: So you say it doesn't matter what
2 the product you're selling, as long as it's retail.

3 Hang on. That was your argument.

4 And then you said, no, no, there might be some that
5 are different.

6 ATTORNEY BURNS: Again, you have listed in your
7 ordinance a number of different permitted uses within retail.
8 I'm not saying retail is retail is retail.

9 I'm saying that I understand why you have those
10 things listed because they're all very similar. They're walk
11 in, look at the shelves, pick out your merchandise, that was
12 purchased wholesale, being sold retail, walk up to the front
13 counter, purchase it and walk out. I get that.

14 You have a number of things listed, packaged liquor
15 is one of them. So for those things listed in your
16 ordinance, retail is retail is retail is retail, yes. That
17 applies to those.

18 I gave a number of examples of items that might be
19 considered industrial and put us in a different
20 classification of zoning, if it was manufacturing, if it was
21 also incorporated into something that was industrial.

22 None of which apply to us, and would be examples of
23 technical sales that don't actually, if it's commercial on a
24 certain scale, it may fall out of that. That's right off the
25 top of my head. I don't know that.

1 But I'm not saying every retail is every retail.
2 You may have some that are treated differently.

3 This retail however, ceramics to general
4 merchandise to packaged liquor, retail to retail to retail.

5 ATTORNEY HOMIER: But that is not stated in the
6 ordinance anywhere, is that right?

7 MR. MORAN: Not that I can think of.

8 ATTORNEY HOMIER: Okay.

9 MR. MORAN: I can tell you a retail that probably
10 would not fit in that category anywhere in this township and
11 that's selling porn star movies and stuff like that.

12 I'm sure in the ordinance it says you can't do
13 that. But it's retail.

14 ATTORNEY BURNS: Anyway, what we're -- there are a
15 number of things that are listed. And packaged liquor --
16 where did you say that you saw that, on the website?

17 MR. MORAN: Yes. That's where they sent me.

18 BOARD MEMBER MR. URBAN: I need to get some
19 clarification because my mind is kind of being preoccupied
20 with a question in my head.

21 The property as has been stated, the property has
22 been operating as retail for quite some time, but it's a
23 legal nonconforming use.

24 At some point in time, the property wasn't
25 operating as retail, and by what means did the property

1 originally become --

2 ATTORNEY BURNS: Nonconforming?

3 BOARD MEMBER MR. URBAN: Correct.

4 ATTORNEY BURNS: Okay. And that's a good one
5 because actually I researched this, and if you go far enough
6 back, it used to be a restaurant.

7 And what happens is it's a restaurant, and then
8 that restaurant goes under and it goes sold to the next guy
9 who uses it as a dog kennel, and a feed store, then a
10 ceramics store.

11 All of these changes and different uses occurred
12 before a zoning ordinance, some of them before a zoning
13 ordinance existed, but are you --

14 ATTORNEY HOMIER: Do you know when, what time
15 period? Because the township has had zoning since 1943.

16 ATTORNEY BURNS: I thought it was back in the '40s
17 when that restaurant was there.

18 But whatever it is, these aspects to it, I don't
19 believe they actually -- what I understood was the change was
20 back in the '50s and the ordinance was in the '50s, and that
21 the restaurant was in the '40s. But it could have been in
22 the early '40s when the restaurant was there.

23 I was told that, I didn't actually ever find a
24 document that said that.

25 The way it became nonconforming is a zoning

1 ordinance change that changed the parking requirements or
2 changed these elements on there that wasn't there prior.

3 And before that it was allowed, before it was
4 allowed under the ordinance, and then after it got changed,
5 the people who were doing business there, as long as they
6 didn't expand the business and lose their ability to still
7 operate like they used to, it still continues.

8 BOARD MEMBER MR. URBAN: Can I expand on that a
9 little bit then?

10 ATTORNEY BURNS: Yes.

11 BOARD MEMBER MR. URBAN: I'm not stating, I'm
12 asking, so please correct me immediately if I'm
13 misunderstanding some things here.

14 If you have a legal nonconforming property use, and
15 you also -- and acknowledging that a township has a
16 responsibility to the community to reduce legal nonconforming
17 properties --

18 ATTORNEY BURNS: Yes.

19 BOARD MEMBER MR. URBAN: -- I think we have an
20 obligation to look at everything that comes before us with
21 the understanding that we have an obligation to reduce those,
22 the amount of unconformity, or the nonconforming altogether.

23 ATTORNEY BURNS: I wouldn't call it --

24 MR. MORAN: With one additional phrase to that,
25 without taking away the rights and hurting the property

1 owner.

2 BOARD MEMBER MR. URBAN: I'm not disputing that
3 sir, at all.

4 I'm merely an engineer who is trying to get data
5 into his head. That's all I'm trying to do.

6 ATTORNEY BURNS: I'm hearing what you said.

7 BOARD MEMBER MR. URBAN: Please, I listened to you
8 talk for quite some time.

9 ATTORNEY BURNS: I'm not trying to interrupt you.
10 I'm just trying to explain.

11 BOARD MEMBER MR. URBAN: I need to get up to speed.

12 So if we understand the spirit of the Zoning Board,
13 and, yes, we're not here to take away people's rights and
14 prosperity. That's not what I would want someone to do to
15 me, okay, and I'm a citizen here too just like you.

16 But trying to follow the line of what's put in
17 front of us, how could we expect as a board to ever have a
18 chance of doing that if, by some reason, we're not supposed
19 to have a review of all of these changes of circumstance over
20 time? And I know you want to address this, but you brought
21 up a restaurant and a couple other things. Put that on pause
22 for a minute.

23 As a ZBA member -- and I've been on the board for
24 awhile now, not quite as long as some other people, I think,
25 but pretty close now. I have always personally, rightly or

1 wrongly, taken into account the total circumstances, the
2 totality of the circumstances of what the request is put in
3 front of us, before me.

4 Now I heard retail is retail is retail, and I
5 understand that argument, and it's a wonderful argument. I
6 get it, it follows a great logical path.

7 However, I would submit that retail is retail is
8 retail except when the retail you're selling draws a
9 different form of business, or requires to be -- or has a
10 different set of operating methods or standards or times, or
11 different traffic patterns, or anything else that would
12 directly or even to some extent indirectly affect the
13 neighboring properties. Because in my mind, again rightly or
14 wrongly, those things contribute to increasing the
15 non-conformanality or reducing.

16 So if you take a business that used to be a
17 restaurant and cars are coming in and out, and now you take
18 it and you put it into a pottery business and the traffic
19 patterns go down, by the nature of the business, then that's
20 less conforming.

21 Now you do the reverse, and we don't have -- and
22 there is no, at least not before me, any form of a site plan,
23 I'm confused, because I don't have anything to go on.

24 So I know I said a lot. So please.

25 ATTORNEY BURNS: So a couple of different things.

1 To address your first question, the example that's
2 used in a lot of the cases are junkyards that are, that find
3 themselves right downtown. And it's been there forever. The
4 guy who owns it, his great-great grandfather owned it and
5 they've always maintained it and it's right downtown and
6 nobody wants it there.

7 BOARD MEMBER MR. URBAN: No, it gives me a flat
8 tire every time.

9 ATTORNEY BURNS: Or there is a pig farm downtown.

10 So in these cases though, where these junkyards
11 have gotten into trouble, if they were to get into trouble or
12 were to lose their nonconforming, is when they're expanding.

13 There is one that's a premier example, one of the
14 premier cases was a junkyard and they went gangbusters and
15 started using other areas of the lot where they weren't
16 before and the building got bigger.

17 And in that case, and in other cases, the courts
18 have stated what it takes in order for you to lose your
19 grandfather clausd-in nonconforming.

20 And the only exception -- and you're an engineer so
21 you'll appreciate what I'm getting at here, to what you're
22 saying about it's the duty of the township to eliminate the
23 nonconforming. Its not the duty, it's the goal.

24 And it's a goal because it's appreciated both by
25 the court and all communities that these older businesses

1 that existed at a time when it was perfectly appropriate for
2 them to operate in a manner, if they stay consistent to their
3 load, and their grandfathered-in aspects and their
4 grandfathered-in uses, and they don't expand, we're kind of
5 stuck with them.

6 And if the pig farm or the junk yard that's
7 downtown or the grocery store or whoever it may be, or the
8 old muffler shop who used to sell gas, or whatever it might
9 be, if they're still selling gas, and now it's not allowed
10 under the new ordinance, they can still sell gas.

11 They add another pump, they just made a mistake,
12 now they have to comply with zoning.

13 We've done nothing to add to ours is our point.
14 We've stayed nestled within our footprint. We've done
15 nothing to increase or change our use in such a manner --
16 there are certain changes of use, I don't know if a
17 restaurant change would do it, but let's use that as an
18 example.

19 We change to a restaurant. You show up one day and
20 we're operating as a restaurant. Maybe that would be a
21 change, but it's actually very clear in the case law that if
22 you stay within your zone classification, and you don't
23 expand your footprint, you're pretty safe that you can
24 continue to operate within your grandfathered-in use.

25 It's when you expand your footprint, enlarge your

1 business, that's where the problem is.

2 BOARD MEMBER MR. URBAN: So you would not consider
3 hours of operation an expansion?

4 ATTORNEY BURNS: No. In fact you listed a bunch of
5 things earlier that would be a concern to you that would
6 factor into if you were trying to get rid of nonconforming
7 aspects, or if somebody was changing from ceramics to general
8 merchandise, hey, it's general merchandise. There is going
9 to be a lot more people that are interested in general
10 merchandise than just the speciality of ceramics. And
11 they're probably not going to spend as much time there so
12 it's going to be in and out and in and out, so you got a lot
13 of back-up traffic and we've got frontage parking into the
14 roadway right-of-way. There is a lot of potential areas to
15 be concerned with.

16 That is what the case law sets the standard for.
17 Depending on the board, maybe they have an engineer or not,
18 they might find two or three things they're concerned with.
19 The next board might find 16 things.

20 We get into an arbitrary or -- depending on the
21 people you're dealing with, their particular concerns are the
22 concerns you have to deal with.

23 And the community and the board itself needs more
24 consistency than that.

25 So the ordinance itself lays out standards. And

1 that's what Prein & Newhof was consult with, those are the
2 issues that we always deal with, water runoff, storm
3 detention, paved parking, these elements that they dealt with
4 in ours.

5 But these are also elements that we know that as
6 long as -- that we've dealt with these in the past. And you
7 have to trust the former boards and their decisions that we
8 were within that to carry some of the load here.

9 And as far as coming up with new concerns, it's not
10 fair. You can put any of those new concerns you like and
11 encode them and make those the new rules, the new guidelines
12 for at any point that you as a board decide to do that, or
13 completely redraft the ordinance.

14 But what this does is it allows you the flexibility
15 to do that for the future, and to mark a line in the sand,
16 and it also allows those owners that have their business
17 running and operating before that to continue and have
18 security in the knowledge that as long as we do this, not
19 only can we do this, I can sell to somebody, and I can let
20 them know by law, you can come in and you can do this.

21 When he bought this property, Mr. Moran, he came to
22 the board -- or he came to the commission and spoke to the
23 people on staff and made -- asked, you know, can I do what
24 we're planning on doing here? And they all let him know it
25 should be fine.

1 And it was years later that we ran into a
2 difficulty when we switched the merchandise on the shelves.

3 BOARD MEMBER MR. URBAN: So, Mr. Burns, your
4 fundamental -- or not fundamental, but a contention that you
5 have is that the ZBA should not have, nor -- should not have
6 the right or the obligation to understand what is being sold?
7 Your argument is that our considerations for appeal should
8 not involve understanding the nature of a retail business
9 because the retail business is already legal nonconforming as
10 a retail business?

11 ATTORNEY BURNS: It was a retail business, it was
12 legal. Ours is retail, it was a legally nonconforming and
13 preexisted as a retail store prior to the changes in the
14 zoning ordinance that make it now nonconforming. It was
15 legal before that.

16 ATTORNEY HOMIER: Sorry just to interrupt, I want
17 to make sure we're clear for the ZBA.

18 We're not necessarily talking about the -- when we
19 say nonconforming use, we're using that term generally. It
20 really refers to the site itself.

21 ATTORNEY BURNS: I myself have been saying both
22 aspects and use generally, because I think there is aspects
23 of it that are the site itself, and I think there are parts
24 that one could consider a use.

25 It's inclusive. What we are doing with retail is

1 consistent -- you may be right. I don't really understand
2 what you're saying. But that's why I used both terms aspects
3 and use because I think it might be either.

4 ATTORNEY HOMIER: And one point real quick, you
5 mentioned a number of times what case law does or does not
6 provide. Do you have any citations to any particular cases?

7 ATTORNEY BURNS: I was just using the junk yard
8 example. And there is, probably either of you guys might
9 know the case. I don't have the cite, no, I don't.

10 ATTORNEY HOMIER: Okay.

11 ATTORNEY BURNS: I was using the example of a
12 downtown junk yard that was grandfather clausd in. There is
13 an example of a case in Michigan where they expanded their
14 physical footprint and that's used as an example of how you
15 can use it.

16 And also I think as a good example of what
17 communities have as a goal. Do you want the junk yard in the
18 downtown area? Maybe not. And if it's nonconforming, that
19 makes sense.

20 BOARD MEMBER MR. URBAN: So -- and I'll let someone
21 else talk with one more thing on my mind taken care of.

22 I understand everything you're saying. And to be
23 very honest with you I'm weighing it very objectively,
24 believe it or not.

25 One of the challenges that I personally have, and I

1 think maybe others have, is that I'm not sure I agree with
2 your retail is retail is retail, I will say that. But I'm
3 still objectively trying to understand that argument.

4 If I was to try and entertain that though, I kind
5 of would need to have some form of something in front of me
6 that says how you're going to address any changes in the
7 site's use, considering it's nonconforming, I need something
8 in front of me.

9 ATTORNEY BURNS: See what you're landing on right
10 now is what has turned into quite a dilemma in this
11 situation.

12 I am also hearing your dilemma. You're hearing
13 ours in that we'd like to continue to use our property in a
14 consistent yahda yahda yahda manner, and yet you're concerned
15 with how do we know what's going on there.

16 BOARD MEMBER MR. URBAN: Trust but verify.

17 ATTORNEY BURNS: Right. Right.

18 But you can see from our records both in 2006 and
19 this time around, and it's candidly bitten us, our
20 willingness to engage in a process that tries to address that
21 issue.

22 We have always had an ear for your wanting to know
23 what's going on over there. That's why we've been willing to
24 submit drawings that are noncompliant quote, unquote, site
25 plans, and that's now been interpreted as us relenting.

1 And we say, yes, we'll admit that we are required
2 to do a site plan. We never made such an admission.

3 On the other hand, we always had an ear for the
4 township's dilemma on you want to know what's going on over
5 there. We don't have anything to hide.

6 The last time, the document we submitted here, the
7 second document was the attorney for the township. We walked
8 her through, she drew out certain aspects of it. We showed
9 retail here, retail there. She's got them all indicated on
10 the drawing.

11 CHAIRPERSON MS. GLUCHOWSKI: I think you mean
12 assessor instead of attorney.

13 ATTORNEY BURNS: It was actually Renee Luster, the
14 attorney who was there, wasn't it?

15 CHAIRPERSON MS. GLUCHOWSKI: She's not an attorney,
16 she's an assessor.

17 MR. MORAN: She came to the building --

18 ATTORNEY BURNS: Oh, I was thinking of Roxanne
19 Seeber who was the attorney. I'm confusing it.

20 MR. MORAN: She came to the building with one of
21 her associates and asked if she could measure the building.

22 I said, sure.

23 She said, I want you to walk with me.

24 I said, no problem.

25 We walked all the way around the building and she

1 drew that up and give me a copy of it.

2 I didn't make that up, she did.

3 CHAIRPERSON MS. GLUCHOWSKI: We have a copy of that
4 here in our packet.

5 ATTORNEY BURNS: But what we're using that as a
6 example of is Mr. Moran's willingness to be an open book, and
7 to address that concern that you just very rightly stated,
8 which is we have to verify what's going on over there.

9 That's also why we were willing to submit
10 additional drawings to the Planning Commission this time
11 because we felt that in good faith, if we did that and
12 address that concern, we want to know what's going on over
13 there, and we showed them. And we showed them we didn't
14 expand anything, come in and look, our footprint is the same
15 size.

16 BOARD MEMBER MR. URBAN: So you -- great.

17 ATTORNEY BURNS: But now it's come back to be taken
18 as an admission against us.

19 BOARD MEMBER MR. URBAN: I don't want -- no, I'm
20 not personally thinking that.

21 MR. MORAN: To answer one of your questions --

22 MR. BURNS: Let him --

23 BOARD MEMBER MR. URBAN: No, he's fine.

24 MR. MORAN: To answer one of your questions, I may
25 not use the exact correct terms, but under Code 201.C or

1 whatever it is, there is a listing of like 15 different kinds
2 of businesses that can be there, and I think a dentist office
3 might be one of them. But a packaged liquor store is one of
4 them.

5 BOARD MEMBER MR. URBAN: For a legal -- the
6 confusion for me is it's a legal nonconforming.

7 ATTORNEY BURNS: Legal.

8 BOARD MEMBER MR. URBAN: Legal nonconforming.

9 MR. MORAN: But that's my classification of sole
10 retail, that is considered retail, and I told him yes, I can
11 rent to you.

12 I knew the township would be notified of it,
13 because he side, it will take months for the Liquor Control
14 Commission to approve it. They came and visited the facility
15 three times before they gave him the license.

16 They gave him the license and that's when they sent
17 the letter to the township.

18 The township sent the letter to Vik, never notified
19 me that my tenant was being told he couldn't go there.
20 Naturally he called me up and said, what's this all about?

21 And I said, well that's wrong, that's a
22 misunderstanding.

23 ATTORNEY BURNS: And that's where we found ourself.

24 And when we came back to the commission, we tried
25 to comply with what your issue exactly I think succinctly

1 stated was. You've got concerns and you want to know what's
2 going on there. And we did try a number of times to do that
3 before we took it up to where we are now.

4 And we've been attempting to give you what you
5 need, and yet hold our line on we're not required to meet
6 zoning, and we're actually not even required to give you this
7 drawing that we just gave you. And it's not going to meet
8 the requirements because we're not required to do it in the
9 first place. But we also know that you want to see it, and
10 we don't have anything to hide. So here it is.

11 MR. MORAN: Does the township want to get rid of
12 the building? I'll sell it to you.

13 ATTORNEY BURNS: All right. All right.

14 CHAIRPERSON MS. GLUCHOWSKI: When was the last time
15 that you had a tenant in there, that it was used
16 commercially? Not your renter, your residential area, but
17 your commercial area.

18 MR. MORAN: I think my last year was 2011.

19 ATTORNEY BURNS: We've marketed it since then.

20 MR. MORAN: I've had three or four people come to
21 rent it but they couldn't come up with the money.

22 CHAIRPERSON MS. GLUCHOWSKI: That was your Rent a
23 Dollar?

24 ATTORNEY BURNS: That was Stretch a Dollar.

25 MR. MORAN: Yes.

1 CHAIRPERSON MS. GLUCHOWSKI: Oh, Stretch a Dollar,
2 I'm sorry, instead of Rent a Dollar.

3 And that was 2011 you said?

4 MR. MORAN: I think that's when he gave up the
5 license.

6 CHAIRPERSON MS. GLUCHOWSKI: Okay. One of the
7 things I'd like to clarify for the board is this commercial
8 -- or this property is zoned commercial. The liquor store is
9 a commercial use, it's the site that's nonconforming.

10 BOARD MEMBER MR. URBAN: Okay, thank you.

11 CHAIRPERSON MS. GLUCHOWSKI: But that is the reason
12 why we are struggling because you're going from -- I'm going
13 to reveal my age, I used to go to Fran's Ceramics. I used to
14 help her clean her house. She lived there, she taught there,
15 sold there.

16 It was an owner-occupied split building with her
17 home in one side and her building in the rest.

18 And after that it remained a ceramics store, which
19 combined teaching and sales. And went to another, you
20 know -- basically the same type of low-key family friendly
21 businesses have continued there all this time.

22 But we've come to a point here where to me we are
23 looking at a change in the business to something that is not
24 a small, family operation, addressing other families on
25 limited hours, and limited days.

1 We are now looking at something that's going to be
2 probably seven days a week, pulling in a very adult group of
3 customers. And this is one little spot in a residential
4 neighborhood.

5 Our concern is not you having the liquor -- my
6 concern is not you having the liquor store. My concern is
7 how are you going to protect the neighbors from the impact of
8 the change? Because you're going to have more days, you're
9 going to have a lot more hours at the very least. You will
10 probably have a lot more traffic. Because when you come in
11 for ceramics, especially a lot of them were there for the
12 classes. They're there for two hours, three hours at a time.

13 Now you are talking a lot of in and out traffic,
14 you're going to be talking a lot of headlights, taillights,
15 people maneuvering. Potentially, maybe not.

16 But I hope that you succeed, I hope that you have
17 these issues. But I think that what we need to do is have
18 you take that site plan into the Planning Commission. I
19 think the Planning Commission needs to review it and see what
20 they can live with and what they need to, feel needs to be
21 done --

22 BOARD MEMBER MR. URBAN: To address that.

23 CHAIRPERSON MS. GLUCHOWSKI: -- to address the
24 issues of protecting the neighbors from the impact so that
25 they do not lose their quality of living. I'm just saying --

1 ATTORNEY HOMIER: That is the proper function of
2 the Planning Commission.

3 But by Court order, this board has to decide
4 whether or not there was a change in use for purposes of a
5 legal nonconforming use status. That's what you've been
6 asked to decide.

7 ATTORNEY BURNS: And if I may --

8 CHAIRPERSON MS. GLUCHOWSKI: Please.

9 ATTORNEY BURNS: You have listed a bunch of your
10 personal concerns, they make a lot of sense to me.

11 Mr. Urban has also stated a number of things that,
12 from the engineer's perspective, make a lot of sense to him.
13 Mr. Flowers and Mr. Reynolds may also have their own personal
14 angles on these. And you bring those all eclectically and as
15 a unit to the board. And these are all things that shape in
16 your abilities as a board.

17 However, we're limited to the rules and the
18 guidelines that have been set out there.

19 These are all wonderful concerns that could be
20 incorporated into a new ordinance, or could be made
21 requirements for anybody in the future. But what we have to
22 have is a fair and consistent lens that we all look through
23 both before a zoning ordinance changes, and then once it's
24 changed, how we look back at it.

25 Because that's where we are now, we're in a new

1 zoning era. We're dealing with a property that's still in an
2 old zoning era. And how does the business owner know what is
3 going to be the concern of the zoning board when it's not in
4 writing?

5 CHAIRPERSON MS. GLUCHOWSKI: Because usually he
6 would submit to the Planning Commission, they make their
7 decisions, and then we hear it on appeal.

8 But one of the things that has gone back eons is
9 how are you going to buffer your neighbors from a negative
10 impact? How are you going to keep their property values from
11 dropping?

12 ATTORNEY BURNS: Yes, but that's not one of the
13 issues listed in Prein & Newhof's letters. And it's not one
14 of the issues that when we look through the ordinance you
15 required us to consider.

16 I understand absolutely that. And there may be
17 noise regulations. There may be any number of berms or
18 different types of things that you would require.

19 I think there was just a truck --

20 CHAIRPERSON MS. GLUCHOWSKI: Or a simple fence.

21 ATTORNEY BURNS: There was a truck place that was
22 approved and they had to put up some barriers in order to
23 approve things for neighbors.

24 But my point is this, this is an older site. It
25 has to do something that requires it now to meet the new

1 standards.

2 The question is did we do something, or does this
3 change, which is within the commercial, commercially allowed
4 -- we're in a commercial area. The use is consistent, it's
5 within another commercial use, that's why we're talking
6 retail to retail.

7 But that's all we're jumping -- not even from
8 office to retail, which is also in commercial, but we're
9 within our zoning classification and we're sticking with
10 retail.

11 There is another side to the things that you're
12 saying, yes, there is potentially more traffic, but the
13 traffic is quick, it's in and out. There is not necessarily
14 as much lingering traffic. It's not like it would be a bar,
15 it's not like it's dangerous traffic --

16 CHAIRPERSON MS. GLUCHOWSKI: But that's part of the
17 issue is the headlights will be flashing there after the
18 dark.

19 ATTORNEY BURNS: But see these are very good
20 concerns for the future board and future sites.

21 But when we put in our tenant, we used the rules
22 that were in place then that applied to our site. And they
23 didn't require us to consider those things to make changes.

24 CHAIRPERSON MS. GLUCHOWSKI: But your retail
25 businesses have not had evening hours.

1 BOARD MEMBER MR. URBAN: There has been a change of
2 use by the --

3 CHAIRPERSON MS. GLUCHOWSKI: The use, the very
4 nature of how people come and go is changing.

5 MR. MORAN: I have two corrections to what you were
6 originally saying.

7 CHAIRPERSON MS. GLUCHOWSKI: Okay.

8 MR. MORAN: One is you were talking about the
9 ceramic business, how it was a friend of yours that ran it.

10 My wife's business was not like that at all. We
11 got it back up and running, it was a mess when we bought it.
12 She added a lot of different products to it that was all
13 retail. We bought it in, we put it on the shelf and sold it.
14 It wasn't the old -- all the old ceramic stuff was there, but
15 we added a lot to it.

16 My wife worked her little off and she deserves
17 getting something back on that.

18 The second thing is when we put the Stretch a
19 Dollar in there, everybody was concerned about all the
20 traffic. We kept records on traffic hourly for months,
21 turned it in, and it was nothing like what they expected. We
22 wish it would have been, because that would have been the
23 business to keep it going.

24 So everybody is so upset about this. They don't
25 know if there is going to be any problems at all. The odds

1 are there will not.

2 CHAIRPERSON MS. GLUCHOWSKI: But the odds are that
3 they will be operating at night, and that's why they have an
4 obligation to the people that surround them.

5 ATTORNEY BURNS: Hang on.

6 CHAIRPERSON MS. GLUCHOWSKI: Go ahead.

7 ATTORNEY BURNS: This is a good example. You are
8 empowered, and what we're here for is for you all to decide
9 if that, for example, might be one of the ways you could
10 decide that, because there is evening hours they've changed
11 their use, and now they have to submit a -- that could be the
12 basis. I'm not sure what you're going to decide.

13 There are some differences retail to retail, our
14 merchandise is different, we'll be regulated by the LCC, the
15 previous one wasn't. You can put your hat on any of these.

16 What I'm telling you is from our position, and what
17 we've taken into the Court is these were not required from
18 us. These are great examples of things that would be
19 concerns for the neighbors and that the board in the future
20 may be concerned with and maybe make requirements.

21 However, we're just looking for what it is we did
22 to lose our ability to switch the merchandise on the shelves.

23 And if that's it, that's it, then we need to know.

24 CHAIRPERSON MS. GLUCHOWSKI: For me, you have gone
25 from a general merchandise to a highly regulated and

1 restricted product.

2 The State of Michigan is making you jump through
3 extra hoops because they feel this is a product that needs to
4 be regulated.

5 MR. MORAN: And they approved it.

6 CHAIRPERSON MS. GLUCHOWSKI: And a site that needs
7 to be regulated.

8 ATTORNEY BURNS: Yes.

9 CHAIRPERSON MS. GLUCHOWSKI: And I think that we
10 can do no less diligence than the State of Michigan.

11 ATTORNEY BURNS: Which is they followed their
12 rules.

13 CHAIRPERSON MS. GLUCHOWSKI: Right.

14 ATTORNEY BURNS: And if we had a -- and that's what
15 we've asked for in this case, is there were rules in place,
16 certain ones that apply to us and certain ones that don't.

17 And the ones that don't, we would ask not be
18 applied to us. We have not been made aware of any new
19 requirements regarding the lighting that applies to packaged
20 liquor stores.

21 Packaged liquor stores fall within commercial and
22 there is no additional zoning requirements other than what's
23 listed within the --

24 CHAIRPERSON MS. GLUCHOWSKI: And that's one of the
25 things we need time to look at. And we need time to figure

1 out just how much is impacted, we need to figure out if the
2 township has regulations that --

3 MR. MORAN: Most of the problems that I have in
4 complying with the site plans was created by Cooper Township
5 when they allowed that property to be divided the way it was
6 divided.

7 I wasn't anywhere near this township when that
8 happened. That was originally taken out of the big lot
9 behind it, and there is only 1.4 acres there that this
10 building is sitting on.

11 Some of that is not usable for parking. So I can't
12 meet the requirements for parking.

13 But when I can't rent my property for three years,
14 I'm losing money in order to do some of the things to make
15 you guys happy.

16 BOARD MEMBER MR. URBAN: So I'm trying --

17 CHAIRPERSON MS. GLUCHOWSKI: Keith, can I speak?

18 BOARD MEMBER MR. URBAN: Go ahead. I'm sorry.

19 CHAIRPERSON MS. GLUCHOWSKI: Okay, you broke my
20 chain of thought here.

21 BOARD MEMBER MR. URBAN: Sorry.

22 CHAIRPERSON MS. GLUCHOWSKI: Go ahead, I'll get it
23 back.

24 BOARD MEMBER MR. URBAN: My only position right
25 now, honestly, from this point is I'm trying to wrap my head

1 around what was asked of me to wrap my head around, which is
2 what is the interpretation.

3 And honestly I'm trying to interpret in my head
4 what is our interpretation of the use, in my mind.

5 And that's really -- all the things that we've
6 talked about are all consequences of use. So in my mind, my
7 interpretation as of now is leaning towards, yes, how you
8 sell retail and what retail you sell is a form of the use.

9 And because it's those -- it's the consequences of
10 those things that impact the community, and that's the
11 responsibility of the Zoning Board of Appeals to make
12 judgement on whether a disagreement at the lower level is
13 something that can be allowed because it doesn't impact the
14 community and there was a misinterpretation, or it does
15 impact.

16 ATTORNEY BURNS: So what you're stating -- I
17 understand that.

18 However, this isn't a moving object. We've got a
19 real clear indication of what this is.

20 The lower level is the Planning Commission, and
21 before that, it was the zoning administrator. That's why I
22 submitted you that letter. This all starts when the zoning
23 administrator took the unilateral step of interjecting
24 himself into what are -- we already had approval of the
25 Liquor Control, we already had our lease, we had everything

1 in place. We were just looking to go forward.

2 But the township zoning administrator sent a
3 letter, and I think you're stuck with the letter. It doesn't
4 say all those things.

5 It doesn't say the lighting and the buffering is
6 bad with the neighbors. It doesn't say the issues that you
7 just raised are bad.

8 It says, that site is not approved for retail, it's
9 never been approved for retail and it's never been utilized
10 as retail. And I think that you guys are looking to support
11 that. Not come up with new things. Maybe, you may, you can
12 do what you want.

13 But I'm saying that I believe that that's what the
14 Planning Commission was presented, and we've asked them
15 that -- we've tried to convince them that, no, we've always
16 been retail and we are consistently being retail. And we're
17 going through all the required steps to switch to these
18 merchandise -- this merchandise.

19 And when they didn't accept it, then we went to the
20 Zoning Board of Appeals to try to let you know -- actually we
21 tried a couple of times with the Planning Commission, and
22 then eventually worked our way to the Zoning Board of Appeals
23 to either have them allow a variance or acknowledge our
24 nonconforming aspects. And support the fact that the letter
25 from the administrator was incorrect, that this has been used

1 as retail, it's continuing to be used as retail. It has been
2 both approved in the past, and utilized in the past and
3 continued to be utilized this way.

4 These are good points and these should also inform
5 your deliberation, and you may want to also ask your counsel,
6 you know, vet what I'm saying to you.

7 But I think that what we're here on is the bases
8 that have already been laid out for what we have a problem
9 with, not new ones. Maybe there are new ones.

10 CHAIRPERSON MS. GLUCHOWSKI: One think I want to
11 say is to Mr. Moran. And I want you to understand is the
12 reason that there is a Zoning Board of Appeals is because
13 there are often sites -- there are frequently sites that do
14 not meet and cannot comply with township ordinances.

15 And that is where they go to the Planning
16 Commission, and they get that decision that you don't comply.
17 And then they just come to us and say, you know, we're
18 supposed to have this, we can't have this, can we have the
19 variance.

20 ATTORNEY BURNS: But a variance is typically
21 nonconforming --

22 CHAIRPERSON MS. GLUCHOWSKI: Please. Your answers
23 are very long, and I want to keep this simple for just a
24 little bit. Go ahead.

25 BOARD MEMBER MR. REYNOLDS: Thank you.

1 As a way to maintain some zoning flexibility in our
2 township, all the while protecting property value and
3 ensuring safety and security for our residents, we have
4 created special exception use, okay, legal uses.

5 And by virtue of liquor being one of those, and
6 ceramics not being on the list, speaks very clearly to me
7 that they're very different kinds of commercial enterprises.

8 That's why we take great care in establishing
9 numbers of feet away from liquor stores to the closest
10 residential property. That's why we take great care as a
11 Planning Commission, I am also a member of the Planning
12 Commission, to look at site plans, particularly for special
13 exception uses, because they're different.

14 So if we're trying to find out if there is a
15 difference between a commercial ceramic enterprise and a
16 liquor sales store, I don't think we need to look any further
17 than a list of special exception uses permitted in our zoning
18 ordinance.

19 ATTORNEY BURNS: However, within the same
20 commercial uses, packaged liquor is listed in there.

21 BOARD MEMBER MR. REYNOLDS: It is.

22 ATTORNEY BURNS: We don't need a special exception
23 is what I'm saying.

24 CHAIRPERSON MS. GLUCHOWSKI: Right.

25 BOARD MEMBER MR. REYNOLDS: Yes, you do. It's on

1 the special exception list. Special exception use, adult
2 foster care, agricultural crop farming, asphalt and concrete
3 ready mix, you know --

4 CHAIRPERSON MS. GLUCHOWSKI: Mr. Magura, you had a
5 question?

6 BOARD MEMBER MR. REYNOLDS: I'm done.

7 BOARD MEMBER MR. MAGURA: Well, look, this isn't a
8 matter of what does the current -- what's the current zoning
9 regulations. It's a matter of are they in conformity with
10 the zoning regulations that were in effect previously, right?

11 ATTORNEY HOMIER: No, actually that's not the
12 question.

13 BOARD MEMBER MR. MAGURA: Okay. So do they need to
14 be in conformity with the current zoning regulations?

15 ATTORNEY HOMIER: The scope of the order on remand
16 from the Court is for the ZBA to determine whether or not
17 they have retained their legal nonconforming status, in which
18 case they would not have to meet site plan review
19 requirements; or in the alternative, that there has been a
20 change of use or other circumstances where the legal
21 nonconforming use is now gone, and they would have to meet
22 the requirements of site plan review.

23 BOARD MEMBER MR. MAGURA: Well I've heard that now
24 a number of times and I think I understand it, but perhaps
25 I'll never understand it since it keeps being read.

1 ATTORNEY BURNS: Can I --

2 BOARD MEMBER MR. MAGURA: No, no. I want to say
3 something here.

4 ATTORNEY BURNS: Sure.

5 BOARD MEMBER MR. MAGURA: Use, right? I mean you
6 can write something in the ordinance now which defines, you
7 know, a particular use in such a way that they would not
8 conform, but isn't the issue of whether they're grandfathered
9 in based on prior definitions?

10 ATTORNEY HOMIER: Not necessarily prior
11 definitions, but rather actual uses. So the question really,
12 and I think Mr. --

13 BOARD MEMBER MR. MAGURA: But a user --

14 ATTORNEY HOMIER: Hang on a second. Let me finish.

15 BOARD MEMBER MR. MAGURA: Sure.

16 ATTORNEY HOMIER: I think Mr. Reynolds summed it up
17 correctly, and that is this board has to determine whether a
18 Stretch a Dollar is the same as a liquor store.

19 And if it's not, then there is no legal
20 nonconforming use. They would have to comply with site
21 planning.

22 If, however, the ZBA says, Stretch a Dollar is the
23 same sort of retail as a retail packaged liquor store, and
24 there has been no change of use, then they've retained their
25 legal nonconforming status and would not have to meet site

1 plan review.

2 ATTORNEY BURNS: But it's not just any change.
3 It's an expansion --

4 ATTORNEY HOMIER: No, I'm sorry, you're not -- Mr.
5 Burns, you're not --

6 ATTORNEY BURNS: Let me --

7 ATTORNEY HOMIER: No, your time is finished. I'm
8 talking to my client. Your time is done. Don't interrupt
9 me.

10 Listen, the issue is as I stated earlier, if Mr.
11 Burns has something to say, I'm sure he will say it, or
12 already has.

13 We differ on the scope of the law when it comes to
14 nonconforming uses and what it means. But the board will
15 have a chance to deliberate those issues at the meeting in
16 June.

17 This really was the applicant's opportunity to
18 present what they wanted to present. I think they've been
19 given a full and fair opportunity to do so.

20 I think this board needs to consider the record on
21 appeal, what's been presented by the applicant, and then we
22 will reconvene in June where you can deliberate these issues,
23 and come to a conclusion within the scope of the Court's
24 order.

25 BOARD MEMBER MR. MAGURA: Right, well I obviously

1 started to try to analyze this situation. But I'm satisfied
2 that I understand the position of the applicants.

3 So if our job here was to try to understand the
4 position of the applicants, for myself, I think I understand
5 the position of the applicants.

6 If someone else wants to analyze it here and start
7 to try to come to some kind of closure, is that the idea?

8 CHAIRPERSON MS. GLUCHOWSKI: We will do that in
9 June.

10 ATTORNEY BURNS: Mr. Magura, one note on what you
11 were saying though.

12 It is not whether or not we are, the issue is
13 whether we complied with the old zoning, it's whether we have
14 changed in such a manner, and to finish what I was saying
15 before, changed in such a way that it actually either expands
16 our footprint, or is such a distinct change in the
17 business -- there are certain changes that would actually
18 like blow you out of the zoning classification --

19 BOARD MEMBER MR. MAGURA: Okay, let me ask you
20 this.

21 ATTORNEY BURNS: Okay.

22 BOARD MEMBER MR. MAGURA: Let me ask you something,
23 what's the criterion of change?

24 ATTORNEY BURNS: Well generally it's the zoning
25 ordinance, in our opinion. And we've taken the position that

1 we are under commercial, these uses are all allowed --

2 BOARD MEMBER MR. MAGURA: So you're taking the
3 current -- you're looking at the current zoning ordinances,
4 and you're saying, have we changed, according to the
5 criterion of the current zoning ordinance?

6 ATTORNEY BURNS: Yes.

7 BOARD MEMBER MR. MAGURA: So if the current zoning
8 ordinance, which let's say previously never made any mention
9 of packaged store, now says, a packaged store is a change
10 from another retail, then you feel that we need to comply
11 with that?

12 ATTORNEY BURNS: Actually what we're asking is what
13 have we done? Our question is much more open ended.

14 We don't -- because what we have consulted with
15 both previous and the current zoning, under the commercial
16 listing of what you can do in an area that's zoned like ours,
17 it says you can do general merchandise, and you can do
18 packaged liquor.

19 That's what we've used as the standard to believe
20 that we have not changed our use. Counsel --

21 BOARD MEMBER MR. MAGURA: Well --

22 CHAIRPERSON MS. GLUCHOWSKI: I think we've debated
23 this enough tonight.

24 ATTORNEY BURNS: Okay, but then --

25 CHAIRPERSON MS. GLUCHOWSKI: I would like to --

1 ATTORNEY BURNS: I just have one last issue --

2 CHAIRPERSON MS. GLUCHOWSKI: I would like to --

3 ATTORNEY BURNS: I have to state this for the
4 record. I just need to make a record on this. Your counsel
5 will just -- I'll state it really quickly.

6 It is a conflict of interest, there is an attorney
7 general's opinion on conflict of interest, and for a Zoning
8 Board of Appeals to operate without a conflict of interest,
9 they shouldn't have members of the board that they're
10 reviewing as a part of the deliberating body.

11 It's unfortunate, but --

12 CHAIRPERSON MS. GLUCHOWSKI: Are you talking about
13 a member of the Planning Commission?

14 BOARD MEMBER MR. REYNOLDS: It's required by state
15 law.

16 CHAIRPERSON MS. GLUCHOWSKI: It's required by state
17 law to have one member of the Planning Commission on the
18 Zoning Board of Appeals.

19 ATTORNEY BURNS: Again, on a deliberation, I
20 believe that it's Frank Kelley's position, maybe that's
21 changed, but when I last checked it said it's a conflict of
22 interest to be on the appeals board for your own decision.

23 ATTORNEY HOMIER: I'll look at that issue. Mr.
24 Burns is right that there is an attorney general opinion
25 dealing with conflicts of interest that may preclude a member

1 of the Planning Commission voting on the same issue in which
2 he voted as a planning commissioner.

3 But here the issues may be different.

4 ATTORNEY BURNS: I'll just leave it at that.
5 Really you can sluice this out or advise them anyway you
6 want. I just wanted to make sure I stated it on the record.

7 The last time I had it it was a horse farm.

8 ATTORNEY HOMIER: I appreciate that.

9 BOARD MEMBER MR. MAGURA: May I ask Mr. Burns
10 another question, because I got confused?

11 CHAIRPERSON MS. GLUCHOWSKI: If it is something
12 fresh.

13 BOARD MEMBER MR. MAGURA: Well I got confused as to
14 his last answer, and then some other things intervened,
15 right?

16 The current zoning ordinance apparently makes a
17 distinction between retail use when you sell ceramics and
18 retail use when you sell packaged goods, okay? So it makes a
19 distinction if you go from ceramics to packaged goods, you
20 have a change of use.

21 So you're conceding that you do have a change of
22 use?

23 ATTORNEY BURNS: We are, and have been, operating
24 within our commercially classified zoning use. It's been
25 retail. We believe that what we've done in going from

1 general merchandise to packaged liquor retail is not such a
2 change as -- regardless of what the zoning ordinance says, we
3 just used the old zoning ordinance as an example of, within
4 your own commercially -- the definitions of what was
5 underneath there, when we submitted our plan, it was one of
6 the ones listed.

7 That's why we didn't ask for any permission and
8 that's why we were planning on going forth with it until Mr.
9 Wicklund wrote the letter to our tenant and interfered with
10 our relationship.

11 BOARD MEMBER MR. MAGURA: When you said you
12 submitted your plan, what plan are you referring to?

13 ATTORNEY BURNS: No. Our plan -- not submitted.
14 Our plan to have a new tenant that was selling new
15 merchandise. We didn't believe we had to submit anything,
16 it's allowed under the ordinance. It was.

17 BOARD MEMBER MR. MAGURA: What's this plan? A plan
18 for a tenant? You have to submit a plan to somebody?

19 ATTORNEY BURNS: No. We actually got a tenant who
20 was planning on selling packaged liquor.

21 BOARD MEMBER MR. MAGURA: Yes.

22 ATTORNEY BURNS: We entered into a lease with them.

23 BOARD MEMBER MR. MAGURA: Yes.

24 ATTORNEY BURNS: They then went about and made a
25 significant down payment to us on the lease.

1 BOARD MEMBER MR. MAGURA: Yes.

2 ATTORNEY BURNS: They then went about their
3 approvals with the Liquor Control Commission and invested
4 money there. Got their approvals. The last step was
5 notification to the township.

6 BOARD MEMBER MR. URBAN: Why notify?

7 ATTORNEY BURNS: I don't know. The Liquor Control
8 Commission did. But for whatever reason your zoning
9 administrator on his own wrote our tenant a letter and said
10 you, tenant, can't do what you're planning on doing at Mr.
11 Moran's site because that's never been retail.

12 That's how we know what it is your problem is. He
13 defined your problem.

14 Now all these new ones -- that's why I said, these
15 are really interesting issues, but I don't believe that
16 that's where we are because that's not what the issue that's
17 already been stated is.

18 BOARD MEMBER MR. MAGURA: So that's how it came
19 about, okay. All right.

20 ATTORNEY BURNS: As far as the new zoning, that's
21 -- we just feel it's a good example to show that when we did
22 this, the reason we went about it that way is because we were
23 within commercial and it was just within another acceptable
24 use within commercial.

25 Now they have changed. And I'm not saying that we

1 always have to adhere to the first, or whatever the most
2 current one is. And I think that's what you were trying to
3 get me to concede.

4 BOARD MEMBER MR. MAGURA: So when you say you
5 applied, you applied --

6 ATTORNEY BURNS: In the generic term of the word
7 application.

8 BOARD MEMBER MR. REYNOLDS: This is deteriorating
9 into a very unproductive conversation.

10 CHAIRPERSON MS. GLUCHOWSKI: Okay. I would
11 entertain a motion to adjourn.

12 BOARD MEMBER MR. REYNOLDS: I agree.

13 ATTORNEY HOMIER: Hang on, hang on.

14 So this will be set for a special meeting, as all
15 the ZBA meetings are, in June.

16 But before you adjourn you have to hold public
17 comment which we did not do.

18 CHAIRPERSON MS. GLUCHOWSKI: Okay. My apologies to
19 everyone.

20 BOARD MEMBER MR. FLOWERS: I thought we did.

21 ATTORNEY HOMIER: No, there was a public hearing
22 portion, but just generally public comment --

23 CHAIRPERSON MS. GLUCHOWSKI: General public
24 comment. Would our general public like to comment?

25 MR. MORAN: I'm still willing to sell it to you.

1 ATTORNEY BURNS: I really appreciate the time and
2 concern you're all putting into this. You can tell you're
3 taking this very seriously.

4 And thanks for your patience today, I didn't intend
5 to go on.

6 CHAIRPERSON MS. GLUCHOWSKI: I think it's just
7 becoming repetitive. At this time we need to --

8 ATTORNEY BURNS: Be productive.

9 CHAIRPERSON MS. GLUCHOWSKI: We need to be
10 productive and we need to reflect.

11 ATTORNEY HOMIER: And we'll notify you of the date,
12 of course.

13 CHAIRPERSON MS. GLUCHOWSKI: The meeting is not set
14 yet. It's just June.

15 ATTORNEY BURN: Thank you.

16 CHAIRPERSON MS. GLUCHOWSKI: I have a motion on the
17 floor to adjourn.

18 BOARD MEMBER MR. URBAN: I second it.

19 CHAIRPERSON MS. GLUCHOWSKI: All in favor, say aye.

20 (All members said Aye.)

21 CHAIRPERSON MS. GLUCHOWSKI: All opposed, say nay.

22 (No members said Nay.)

23 (Meeting adjourned at 6:10 p.m.)
24
25

CERTIFICATION OF COURT REPORTER AND NOTARY PUBLIC

STATE OF MICHIGAN)

) SS

COUNTY OF MUSKEGON)

I certify that this transcript, consisting of 79 pages, is a complete, true and correct record of the Cooper Charter Township Zoning Board of Appeals held on May 10, 2018.

DATE: May 15, 2018



MARJORIE A. COVEY, CSR-2616
141 East Michigan Avenue, Suite 206
Kalamazoo, MI 49007
1.800.878.8750

Notary Public Expires: October 14, 2021, Muskegon County, Michigan/Acting in the State of Michigan.





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