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January 23, 2023

City of Phoenix Mayor and City Council Members
200 W. Washington Street
Phoenix, Arizona 85003

Re: ACMNA Petition to City Council for Board of Adjustment Training Reform

Dear Mayor and City Council Members:

The Arcadia Camelback Mountain Neighborhood Association formally petitions the Phoenix City Council to introduce New Board of Adjustment Member Training and Annual Mandatory Refresher training for existing members on Board of Adjustment Policy and Procedures with the details listed below.

One year ago, a Maricopa County Superior Court Lawsuit involving ACMNA, The City of Phoenix and The Camelback Church of Christ was dismissed. In our settlement discussions, Phoenix Assistant City Attorney Daniel Inglese stated that the deposition of Jonathan Ammon unearthed significant concerns regarding the need for proper policy and procedural training. At that time, he was working directly with the Planning and Zoning department to implement changes. No changes were made. ACMNA has been told several times by Councilman Kevin Robinson's office that staff has responded to these requests and training is being provided. No changes have been made and no training has occurred.

As of today, new members to your Board of Adjustment Wallace Graham and Michelle Dodds have not received any formal training and have requested formal training of Planning and Development. During a deposition of Jonathan Ammon on 9/9/22 he stated he had only received training once in 2018 and nothing else in the past 4 years. After admitting to wrongdoing, Ammon was asked if he felt there were ways the city could improve its support of him in the role as a Board of Adjustment member, Ammon replied "YES", "Refreshers of rules to follow, clarifications on what is and is not permitted." These statements and requests are coming from three current Board of Adjustment members and the city fails to supply them the training needed to do their jobs.

ACMNA requests the following

- 1 – Stop all BOA Actions and Decisions until immediate mandatory training on Policies and Procedures for their role as Board of Adjustment Members is completed.
- 2 – Institute a formal on-boarding training program for new members which teaches the Policies and Procedures for the role and assigns a BOA staff mentor for the first 6 months.
- 3 – Institute Mandatory Annual Refresher Training for all existing Board Members and make it an open meeting, in compliance with state statutes, and open to the public.
- 4 – Decisions made by the Board must address Section 307 of the Zoning ordinance which includes the 4-Tests for a Variance and 2-Factors for Use Permit criteria and these decisions must be done so in proper procedural form.
- 5 – When overturning a ZHO's decision, the member presenting the motion must clearly state why (based on Sec 307 criteria) the ZHO decided incorrectly.

Thank you for your immediate attention to this matter.

Sincerely,

Tristahn Schaub
VP, ACMNA
4340 E Indian School Rd #21-293
Phoenix, AZ 85018
www.acmna.org



23 January 2024

Mayor Gallego, Vice Mayor Stark and City Council members
City of Phoenix
200 W. Washington, 11th floor
Phoenix, AZ 85003

RE: Petition to City Council for Board of Adjustment Training Reform

Mayor, Vice Mayor and Council members:

Arcadia Osborn Neighborhood Association (AONA) agrees with and supports Arcadia Camelback Mountain Neighborhood Association's formal petition of Phoenix City Council to introduce Board of Adjustment new member training and annual mandatory refresher training for current members on Board of Adjustment Policy and Procedures with the details listed in ACMNA's letter to Council.

The Board of Adjustment is an important and vital arm of city government. Because the board acts in a quasi-judicial capacity within legal parameters, it is of paramount importance to educate and train its members. We also believe that by conducting the annual refresher training in an open meeting setting, the City of Phoenix would continue to provide transparency to its processes with its citizens.

The next step beyond the Board of Adjustment for Phoenix citizens is Maricopa County Superior Court. Citizens should not have to bear the costly burden of going to court to challenge or defend actions by the board. Education and training will minimize the frequency of those challenges.

Thank you for reviewing and acting positively on ACMNA's petition.

Respectfully submitted,

/s/

Neal Haddad
President, Arcadia Osborn Neighborhood Association

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

ARCADIA CAMELBACK MOUNTAIN)
NEIGHBORHOOD ASSOCIATION, an)
Arizona non-profit)
corporation,)

Plaintiff,)

v.)

CITY OF PHOENIX, an Arizona)
municipal corporation; and)
CITY OF PHOENIX BOARD OF)
ADJUSTMENT, an official body)
of the City of Phoenix,)

Defendants.)

BOOTZ & DUKE SIGN CO., an)
Arizona corporation; CAMELBACK)
CHURCH OF CHRIST, an Arizona)
non-profit corporation,)

Real Parties in Interest.)

No. CV2022-004359

DEPOSITION OF JONATHAN AMMON

Phoenix, Arizona

September 9, 2022

Prepared by:
CINDY MAHONEY, RPR, RMR
Certified Court Reporter
Certificate No. 50680

**CERTIFIED
TRANSCRIPT**

I N D E X

WITNESS PAGE

JONATHAN AMMON

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FURTHER EXAMINATION BY MR. DEWULF 72

EXHIBITS MARKED

EXHIBITS DESCRIPTION PAGE

Exhibit 1 City of Phoenix Application No: 4
ZA-454-21

Exhibit 2 Rules of Procedure of the Board of 4
Adjustment, City of Phoenix,
Arizona

Exhibit 3 Board of Adjustment Training, 11
August 30, 2018

Exhibit 4 Zone Adjustment hearing, October 23
14, 2021, document

Exhibit 5 February 3, 2022, Reporter's 29
Transcript of Audio-recorded
Proceedings

Exhibit 6 City of Phoenix Planning and 58
Development Services document

1 THE DEPOSITION OF JONATHAN AMMON commenced at
2 9:19 a.m. on September 9, 2022, at the law offices of
3 Coppersmith Brockelman PLC, 2800 North Central Avenue,
4 Suite 1900, Phoenix, Arizona, before Cindy Mahoney, RPR,
5 RMR, Arizona Certified Court Reporter No. 50680.

6
7 * * *

8 APPEARANCES:

9 For the Plaintiff:

10 COPPERSMITH BROCKELMAN PLC
11 By: John E. DeWulf, Esq.
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14 For the Defendants:

15 OFFICE OF THE PHOENIX CITY ATTORNEY
16 CRIS MEYER, CITY ATTORNEY
17 By: Daniel Inglese, Esq.
18 Assistant City Attorney
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19 Suite 1300
Phoenix, Arizona 85003
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Daniel.inglese@phoenix.gov

1 (The documents were as marked as Exhibits 1 and 2
2 for identification.)
3

4 JONATHAN AMMON,
5 the witness herein, being first duly sworn,
6 was examined and testified as follows:
7

8 EXAMINATION

9 BY MR. DEWULF:

09:19:34 10 Q. Would you please state your name for the record.

11 A. My name is Jonathan Ammon.

12 Q. Mr. Ammon, have you been deposed before?

13 A. No, sir.

14 Q. So let me go through with you -- and maybe your
09:19:44 15 counsel has spoken to you about this as well. If we get
16 some ground rules in place and some understandings, it will
17 cause us to be more efficient.

18 So I represent the Arcadia Camelback Mountain
19 Neighborhood Association. I'm going to be referring to
09:20:01 20 them as the Arcadia homeowners. Is that okay for you?

21 A. Yes.

22 Q. And the deposition today arises out of a public
23 use -- a public use application by Bootz & Duke Sign
24 Company. Do you recall that?

09:20:23 25 A. Yes.

1 Q. Now, if -- so you're under oath to tell the truth.
2 You understand that; right?

3 A. I do.

09:20:32

4 Q. And so my goal is to ask you questions regarding
5 the subject matter of that. And I want my questions to be
6 clear and understood. So if you don't understand my
7 questions, will you let me know?

8 A. Yes.

09:20:47

9 Q. And if you answer the question I ask you, I'm
10 going to assume you understood the question. Is that fair?

11 A. Yes.

12 Q. I generally go about an hour and then take a
13 break. But if there's any point in time where you need to
14 take a break, will you let us know?

09:21:01

15 A. Yes.

16 Q. And we'll stop. Is that fair?

17 A. Yes.

09:21:11

18 Q. We need to extend the courtesy to one another to
19 allow the other to complete speaking before the other
20 speaks, because it's very difficult for the court reporter
21 to take down two people speaking at the same time. Is that
22 understood?

23 A. Yes.

09:21:22

24 Q. And your answers will need to be audible so she
25 can type them and verbal so that it can be understood in

1 the record. So uh-huh, huh-uh, those kinds of things don't
2 work well. I'll try to remember if that happens.

3 I don't think that's going to happen with
4 you. And if there are times when the question confuses
09:21:42 5 you, please ask me. I'll rephrase it. Okay?

6 A. I will.

7 Q. Did you do anything to prepare for today's
8 deposition?

9 A. Yes.

09:21:49 10 Q. What did you do?

11 A. I spoke -- read through the minutes and spoke with
12 my attorney.

13 Q. And your attorney is Mr. Inglese?

14 A. That's correct. Yes, sir.

09:22:12 15 Q. Did you review anything else other than the
16 minutes?

17 A. No.

18 Q. How long did you meet?

19 A. 45 minutes.

09:22:27 20 Q. I'm going to go through some background
21 information, if I could.

22 Where do you currently reside?

23 A. 17613 North 56th Place.

24 Q. Is that Phoenix?

09:22:46 25 A. Yes, sir. It has a Scottsdale area, but the ZIP

1 code is in Phoenix, 85254.

2 Q. Now, I've looked at your background, but I may not
3 precisely know all the details, so I'm going to ask you
4 some questions just for background purposes.

09:23:07 5 My understanding is that you got a BA from
6 Trinity in 2004?

7 A. I did. Yes, sir.

8 Q. Then you also got advanced degrees from Washington
9 University; correct?

09:23:17 10 A. In St. Louis. Yes, sir.

11 Q. You got a master's in architecture and a master's
12 in construction management?

13 A. That's correct, sir.

14 Q. You attended Washington University from 2007 to
09:23:28 15 2011?

16 A. Western University?

17 Q. No. Washington University.

18 A. Yes, sir.

19 Q. Then upon graduation, did you work at Gilbane or
09:23:40 20 Gilbane construction?

21 A. Gilbane Building Company.

22 Q. And the description I saw was virtual construction
23 engineer. Was that the title?

24 A. Yes, sir.

09:23:49 25 Q. What did that entail?

1 A. The coordination of multiple architectural,
2 structural, mechanical, electrical, plumbing, fire
3 protection systems for buildings over \$25 million in
4 construction cost in Arizona and Massachusetts.

09:24:11 5 Q. And you left that entity in 2015?

6 A. I did.

7 Q. And you became a cofounder of Devco Development
8 Collaborative?

9 A. Yes, sir.

09:24:21 10 Q. And who are you a cofounder with?

11 A. A gentleman by the name of Adam, last name
12 Eggebrecht, E-g-g-e-b-r-e-c-h-t. Very minimal work.
13 Nothing ever really became of that group.

14 Q. It lasted about a year or so?

09:24:40 15 A. About that, yes, sir.

16 Q. What was its business?

17 A. To identify and possibly acquire land to develop
18 buildings.

19 Q. And then you joined Sundt Construction?

09:24:51 20 A. Correct, sir.

21 Q. As an engineer?

22 A. As a similar job to what I did at Gilbane.

23 Q. Construction management?

24 A. Yes, sir.

09:24:58 25 Q. You were there from 2016 to 2018?

1 A. I was.

2 Q. Now, it appears that you founded Jammon Studios.
3 Am I pronouncing that correctly?

4 A. Jammon Studios. Close enough. Yes, sir.

09:25:13 5 Q. Okay. And you founded that in 2018?

6 A. Yes, sir.

7 Q. And you were with that entity as an architect and
8 founder for how long?

9 A. Still to this day.

09:25:27 10 Q. So starting in 2018 and still there?

11 A. Uh-huh.

12 Q. How would you describe Jammon's business?

13 A. Architectural practice.

14 Q. Designing what?

09:25:40 15 A. Residential, commercial, ground-up, and tenant
16 improvement projects.

17 Q. In your work for any of these entities, have you
18 had to appear before either a zoning administrator or the
19 Board of Adjustment?

09:26:16 20 A. Yes.

21 Q. Let's just limit it to Jammon Studios. How many
22 times have you appeared either before the zoning adjustment
23 administrator or the Board of Adjustment?

24 A. Immediate recollection is twice.

09:26:32 25 Q. Do you remember what it involved?

1 A. A variance for a height of a concrete masonry wall
2 to go from six feet to seven feet, along with the reduction
3 in open space of a property from five percent to three
4 percent. That was one.

09:26:55 5 And if I may please have a moment, I can give
6 you the information on the other.

7 The other variance was for the increased
8 square footage of a residential property to allow for, I
9 believe, a two or a five percent increase in lot coverage.

09:27:34 10 Q. How long have you been on the Board of Adjustment?

11 A. I believe since the very beginning of 2018, the
12 last part of 2017. I believe it was August or September of
13 2017.

14 Q. And that's a four-year term; right?

09:27:53 15 A. No, sir. I do not believe it is.

16 Q. Okay. So you still serve?

17 A. Yes, sir.

18 Q. Do you believe that you -- that you'll be serving
19 for some time in the future?

09:28:06 20 A. Yes.

21 Q. That's a voluntary position; right?

22 A. I was appointed, and I accepted.

23 Q. Who appointed you?

24 A. Thelda Williams. Councilmember -- Councilwoman
09:28:31 25 Thelda Williams at the time.

1 Q. Was it a position you sought out with her?

2 A. No, sir.

3 Q. Total surprise?

4 A. One that was -- yes.

09:28:45 5 Q. Why did you say yes?

6 A. I was flattered to have an opportunity to serve
7 the community and sit on this board.

8 Q. So we're here regarding a use permit for a digital
9 sign at 5225 East Camelback Road for the Camelback Church
09:29:23 10 of Christ. You understand that; right?

11 A. I do, yes, sir.

12 Q. Okay. I've shown you Exhibit 1. And is that one
13 of the documents relating to that permit -- use permit
14 application?

09:29:43 15 A. Yes.

16 Q. In connection with serving on the Board of
17 Adjustment, Mr. Ammon, what kind of education or training
18 did you receive?

19 A. I believe it was a few hours of training with the
09:30:18 20 zoning administrator, Tricia Gomes, alongside legal
21 counsel, Paul Li, City of Phoenix, as a legal
22 orientation -- an orientation to the legal proceedings and
23 the processes of the work that we will do.

24 (The document was marked as Exhibit 3 for
09:30:59 25 identification.)

1 BY MR. DEWULF:

2 Q. Let me ask you to look at Exhibit 2.

3 A. Uh-huh.

09:31:17

4 Q. These are the rules of procedure of the Board of
5 Adjustment, City of Phoenix, Arizona. You're familiar with
6 these rules?

7 A. Yes, sir, I am.

09:31:29

8 Q. As part of your training and education provided to
9 you by the city, they would have discussed with you these
10 rules?

11 A. Yes.

12 Q. The rules would govern how the board goes about
13 doing its business?

14 A. Yes.

09:31:42

15 Q. The training that you received from Tricia Gomes
16 and legal counsel, was it -- did it consist, among other
17 things, of PowerPoint presentations or written materials
18 provided to you?

19 A. I would like to better understand the question.

09:32:04

20 Q. Okay.

21 A. May I ask you a question? Or do you ask --

22 Q. Let me ask a better question. And if I still
23 fail, then we can go back and forth.

09:32:16

24 So in terms of what was provided to you in
25 connection with the training or education, do you recall?

1 A. Yes.

2 Q. What were you provided?

3 A. The explanation of the type of materials that
4 could be presented to us by appellant opposition or the
09:32:31 5 people that will be presenting to the Board of Adjustments,
6 understanding that there would be oral presentations by
7 people, along with visual documents that could be in the
8 form of a PowerPoint presentation, a PDF or a video. It
9 was explained to us that that's the information we should
09:32:49 10 anticipate to receive during our board process.

11 Q. Okay. So my question was really going at a
12 different angle.

13 In the form that was provided to you by the
14 city to educate you or train you to serve in the role on
09:33:08 15 the Board of Adjustment, do you remember what form that
16 took?

17 A. I do.

18 Q. What do you remember?

19 A. A binder in which we walked through the types of
09:33:19 20 presentations that we would see, documentation that would
21 be provided to us, and examples of.

22 Q. So let's look at Exhibit 2. And if you could go
23 to the second page, Roman numeral IV. It talks about the
24 information to be provided, evidence, legal memoranda, and
09:33:47 25 other statements to be provided by the parties to the

1 proceeding to you.

2 Now, at the -- it's at the bottom of that
3 second page. It's called evidence. Do you see it?

4 A. Yes. Sorry.

09:33:59 5 Q. That's all right.

6 A. Okay.

7 Q. So this talks about the -- you talked a moment
8 ago, Mr. Ammon, about what the city staff anticipated with
9 you as to the kinds of things you would be provided.

09:34:14 10 And the Roman numeral IV talks about the
11 evidence. You understood the evidence to include legal
12 memoranda, written statements, other evidence; true?

13 A. Yes.

14 Q. And you understood that the evidence that would be
09:34:27 15 provided to you by the parties to the proceeding would need
16 to be provided ten days in advance of the scheduled
17 hearing; correct?

18 A. Yes, sir.

19 Q. And did you also understand that the decision to
09:34:41 20 be made by the board would be limited to the evidence
21 provided to you by the applicants and the opposition to the
22 applicant?

23 A. I did.

24 Q. Okay. Let me take you to the next page. Roman
09:35:01 25 numeral V, Hearings and decisions. A little over halfway

1 down that page.

2 A. Yes, sir.

3 Q. There's a hearing appeal by applicant. Now, in
4 this instance, Bootz & Duke Sign Company was appealing the
09:35:20 5 decision by the zoning adjustment administrator; right? Or
6 hearing officer; right?

7 A. Yes, sir.

8 Q. And so you would have, based on your understanding
9 of how these proceedings were to work, anticipated that
09:35:38 10 whatever evidence the board was to consider would be
11 provided to you either by Bootz & Duke, in this case the
12 appellant, or by the Arcadia homeowners who were opposing
13 the application?

14 A. That is correct.

09:35:56 15 Q. Let's look at Exhibit 3. Did this document -- or
16 does this document look familiar to you as a form of a
17 presentation that would have been provided to you by the
18 city in terms of training you and other board members?

19 A. It does.

09:36:20 20 Q. Okay. And the date of this document is August 30,
21 2018.

22 For the record, my client obtained this
23 through a public records request. And I believe it to be
24 an authentic document and record from the City of Phoenix.
09:36:42 25 It's dated August 30, 2018, which I think would be in the

1 time frame when you were a member of the Board of
2 Adjustment. Would that be fair?

3 A. Yes, sir.

4 Q. So is it likely that the presentation embodied in
09:36:58 5 Exhibit 3 would be an accurate representation of what you
6 were being told, educated about, trained to do as a member
7 of the Board of Adjustment?

8 A. Yes.

9 Q. If we go to the -- these pages aren't numbered, so
09:37:20 10 let's go to the fourth page of the document.

11 So the top, it says, Legislative versus
12 quasi-judicial. Do you see that?

13 A. Yes, sir.

14 Q. And you understood that you, as a board member,
09:37:39 15 might be engaged in your formal or official duties both in
16 dealing with legislative issues and dealing with
17 quasi-judicial issues; correct?

18 A. Yes, sir.

19 Q. And the hearing that we're here today about would
09:37:53 20 be a quasi-judicial proceeding; correct?

21 A. Yes.

22 Q. What do you understand that to mean, something
23 being quasi-judicial?

24 A. Something that was similar to a judgment and a
09:38:08 25 ruling that would be enforced or carried out by the group

1 that would receive that ruling.

2 Q. Like a legal proceeding?

3 A. Yes, sir.

4 Q. And you and the other members of the board would
09:38:27 5 be serving as decision-makers or judges for that
6 proceeding?

7 A. That is correct. Yes, sir.

8 Q. If you look at the next page, Mr. Ammon, under the
9 column quasi-judicial, it says that ex parte communications
09:38:43 10 are not allowed. Do you see that?

11 A. I do.

12 Q. You understood that that was something that was
13 prohibited; that is, ex parte communications with
14 participants in a hearing before you?

09:38:56 15 A. Yes.

16 Q. What do you understand ex parte to mean?

17 A. To be -- not to be looking and using information
18 outside of what has been provided.

19 Q. If it were to relate to a communication between
09:39:22 20 you and an individual, would ex parte capture this idea
21 that the communication would be about the subject matter of
22 a proceeding but outside the actual proceeding?

23 A. Most respectfully, I don't fully understand the
24 question. I apologize.

09:39:42 25 Q. That's all right.

1 We, as lawyers, run into this concept, but
2 it's probably foreign to non-lawyers. But frequently ex
3 parte means kind of outside the proceedings, outside the
4 formal legal proceedings.

09:39:59

5 So did you understand that you were not to
6 engage in communications outside of the formal proceedings
7 with folks who were involved in the proceedings?

8 A. Absolutely. Yes.

09:40:16

9 Q. Now, going farther down on that page, the heading,
10 Evidence and testimony, I'll read the bullet point.

11 [Reading] Decisions are based only on the
12 testimony and evidence presented at the hearing.

13 Did you understand that to be the case?

14 A. Yes.

09:40:26

15 Q. And that's what you had been taught by legal
16 counsel and Ms. Gomes?

17 A. Yes, sir.

18 Q. If we could go a few pages back. I think it's
19 three pages back. There's a heading, Use permit criteria.

09:40:51

20 Do you see that?

21 A. Yes, sir.

22 Q. All right. Take a moment and look at that.

23 Is this generally what you understand to be
24 the criteria that the Board of Adjustment was to apply in
25 the case where someone is seeking a use permit?

09:41:06

1 A. Yes.

2 Q. Okay. And you knew that this was the criteria
3 that would be applied in this instance where Bootz & Duke,
4 as an appellant, were challenging the zoning
09:41:21 5 administrator's decision?

6 A. I did, yes.

7 Q. Do you have to take any refresher courses or any
8 updating of training or educating as it relates to your
9 responsibility as a Board of Adjustment member?

09:41:46 10 A. At this time, no.

11 Q. So would the only training you have had relative
12 to serving in that role be what training you got in 2018?

13 A. Yes.

14 Q. And do you think that the training you got is
09:42:00 15 embodied in Exhibit 3?

16 A. Yes.

17 Q. Do you think there was anything else beyond
18 Exhibit 3 that would have been shared with you either by
19 Ms. Gomes or counsel?

09:42:08 20 MR. INGLESE: I would advise the witness not
21 to reveal any attorney-client privileged communications in
22 answering that question.

23 THE WITNESS: Would you ask -- please ask the
24 question one more time?

09:42:18 25 ///

1 BY MR. DEWULF:

2 Q. Sure.

3 In connection with the training or education
4 you received from the city; that is, legal counsel and
09:42:29 5 Ms. Gomes, in connection with your role on the Board of
6 Adjustment, do you think that there were any other
7 materials or information provided to you outside of what's
8 in Exhibit 3?

9 A. No.

09:42:41 10 Q. At one point in the record -- and when you say
11 minutes, you're talking about the formal written record of
12 what occurred at the proceeding?

13 A. That is correct. Yes, sir.

14 Q. We're going to look at that in a moment.

09:43:00 15 You indicate, and the statements you made on
16 the record is that you were very familiar with that section
17 of Camelback Road. Would that be a true statement?

18 A. Yes, sir.

19 Q. There were -- also, are you familiar with the
09:43:17 20 Arcadia neighborhood both south and north of Camelback
21 Road?

22 A. Yes.

23 Q. And how do you have that familiarity?

24 A. Moved to Phoenix when I was ten, started driving
09:43:30 25 when I was 16. I grew up in the north central area.

1 Friends of mine lived in the Arcadia area. To this day,
2 colleagues and friends live in the Arcadia area. And I
3 commute up and down Camelback.

4 And over the course of years, you get quite
09:43:49 5 exposed to both the residential and the commercial area
6 specifically. And there's a number of discussions I've had
7 with clients and potential clients around that area as
8 well.

9 Q. Okay. Are you familiar with where Hopi primary
09:44:07 10 school is?

11 A. Not the specific street address and the
12 intersection, but yes, I have driven by it a number of
13 times.

14 Q. There were some references in the record,
09:44:18 15 specifically by Bootz & Duke, to the signage that appears
16 at Hopi Elementary School. Did you review that signage
17 before the formal hearing?

18 A. Yes, sir. I did.

19 Q. Okay. Did you have any impressions based on your
09:44:32 20 review of that sign?

21 A. I did.

22 Q. What were the impression?

23 A. That that sign for Hopi is a larger, higher
24 profile sign than the one that was part of the appellant's
09:44:46 25 presentation and proposal.

1 Q. So you know this, and this became an issue in the
2 public record. When we talk about high profile and low
3 profile, it can be kind of an ambiguous term, so let me try
4 to explore that with you.

09:45:00 5 A. Sure.

6 Q. Did you look at the size of what would be called
7 the digital display on that sign?

8 A. Yes.

9 Q. Okay. And did you compare the size of that
09:45:12 10 digital display on the Hopi sign to what was being
11 presented as an application by the church, the Camelback
12 Church of Christ?

13 A. I did.

14 Q. What were your conclusions based on that?

09:45:27 15 A. That one was -- one was that Hopi was larger and
16 taller than the other and that -- perhaps I didn't answer
17 the question as well as I could have. Excuse me.

18 My conclusion was that the Hopi sign in total
19 was larger and of a, quote/unquote, higher profile than
09:45:50 20 what was being presented at the Camelback sign, not
21 specific to the digital sign and its relationship in its
22 dimensions and measurement.

23 Q. I understand, I think. Let me make sure.

24 You're saying you really didn't compare the
09:46:08 25 size of the digital display at Hopi to what was being

1 presented by Bootz & Duke in the hearing?

2 A. That is correct.

3 Q. So when you talk about profile, you're really
4 talking about the monument that existed in which the
09:46:24 5 digital display was housed?

6 A. Yes, sir. That is correct.

7 Q. And so that monument at Hopi is taller than what
8 was contemplated by the application?

9 A. Yes, sir.

09:46:39 10 Q. Okay. Do you think that a signage for a public
11 entity like a primary school is comparable to what a church
12 would be seeking from the Board of Adjustment?

13 A. Depending on the size of the church and size of
14 the school, I do believe that they can be comparable. And
09:47:13 15 by size of church, I mean number of congregants, attendees.

16 Q. Does the amount of street-front footage matter in
17 your analysis?

18 A. If it is in line with the laws and the codes --
19 zoning codes of the City of Phoenix, then I would follow
09:47:35 20 what the City of Phoenix allows.

21 (The document was marked as Exhibit 4 for
22 identification.)

23 BY MR. DEWULF:

24 Q. Showing you Exhibit 4 to your deposition,
09:48:05 25 Mr. Ammon.

1 A. Yes, sir.

2 Q. This is the zoning adjustment hearing officer's
3 decision. You've seen it before?

4 A. Yes, sir.

09:48:15 5 Q. And did you review this document before the public
6 hearing on the application which is embodied in Exhibit 1?

7 A. Yes, sir. I did.

8 Q. And you understood that the zoning adjustment
9 hearing officer had denied the application by Bootz & Duke?

09:48:37 10 A. I did.

11 Q. You understood, among other things, that part of
12 the reason for the denial was -- well, in fact, we can look
13 at it together.

14 If you look on the first page, paragraph 3,
09:48:53 15 it reads, Granting of the use permits may have a negative
16 impact on the surrounding area and will not contribute in a
17 measurable way the downgrading of property values.

18 Then the next sentence, Although similar,
19 generally smaller electronic message displays have been
09:49:09 20 approved at churches in less character-driven parts of
21 Phoenix. The proposed sign is not compatible at this
22 location within the Arizona Camelback Special District
23 (ACSD) adopted in 1999.

24 Do you agree or disagree with that statement?

09:49:27 25 A. I disagree with that statement.

1 Q. Why?

2 A. Because I do not believe it has a negative impact
3 on the surrounding area, because I do not believe that the
4 amount of light emitted exceeds that of ambient conditions
09:49:45 5 and therefore qualifies for the granting of the use permit.

6 Q. Are you aware of any other digital signs or signs
7 that produce the amount of light that this sign would
8 between 44th Street and 68th Street on Camelback Road --

9 MR. INGLESE: Foundation.

09:50:07 10 BY MR. DEWULF:

11 Q. -- if you know?

12 A. I do not believe there are any.

13 Q. The next -- let's go to the next page.

14 Go down about nine lines. There's a sentence
09:50:29 15 that begins, All signage.

16 A. This is off of that first paragraph?

17 Q. This is on the first paragraph.

18 A. Uh-huh.

19 Q. Are you there?

09:50:38 20 A. Yes, sir.

21 Q. Okay. It reads, All signage should be "low
22 profile and in keeping with the character of the Arcadia
23 area." At eight feet high by ten feet wide, the sign
24 cannot be considered "low profile." It is larger than
09:50:57 25 other EMD signs approved for churches recently at zoning

1 adjustment hearings. Its location, electronic message
2 display, and gray and white design (plus message display)
3 are not inconsistent with area character.

4 Did I read that correctly?

09:51:13 5 A. Yes, sir.

6 Q. Do you agree or disagree with that statement?

7 A. I disagree.

8 Q. Why?

9 A. The design review that occurred at the City of
09:51:23 10 Phoenix with this project in order for it to get its permit
11 beforehand was reviewed by the city and moved forward and
12 approved. And I felt as though that the design was in
13 keeping with what was reviewed by the city.

14 Q. But your determination on a use permit included
09:51:42 15 this concept of whether it was consistent with the
16 character of the area; correct?

17 A. Yes, sir.

18 Q. That really goes beyond what the sign permit was
19 about; right?

09:51:50 20 A. It does.

21 Q. So you understood that was -- part of your
22 responsibility was to evaluate how this fits or does not
23 fit within the character of the Arcadia area?

24 A. Yes, sir.

09:52:00 25 Q. Do you understand what the term extra record

1 means?

2 A. At this time, no.

3 Q. Okay. You've never heard the term extra record
4 relating to, in terms of a legal proceeding or a hearing
09:52:24 5 such as the one we're here about today, where evidence or
6 information is provided that's outside of the record
7 developed by the parties? You never heard that term?

8 A. I have heard that term, yes.

9 Q. Okay. Do you understand the term extra record as
09:52:43 10 it relates to these proceedings we're here about today?

11 A. I'm still a little confused, respectfully.

12 Q. Okay. What are you confused about?

13 A. Whether or not this is -- if extra record has to
14 do with additional information that was provided by either
09:53:01 15 party or if extra record is something that someone on the
16 board looks up or drives by or looks at Google Earth. I
17 don't understand extra record in terms of this
18 conversation.

19 Q. All right. So we looked a moment ago at
09:53:22 20 Exhibit 2, which is the rules of procedure of the Board of
21 Adjustment, which provides that the parties are to provide
22 ten days in advance the evidence that they intend to use at
23 the hearing; right?

24 A. Yes, sir.

09:53:38 25 Q. Would -- in your view, evidence that's first

1 provided at the hearing that is not ten days before the
2 hearing, would that be extra record?

3 A. I believe that to be extra record.

09:53:58

4 Q. When we use the word evidence, we're talking about
5 factual information that would be presented to and reviewed
6 by the board in its determining whether or not to grant the
7 relief requested?

8 A. Yes.

09:54:35

9 Q. When the zoning adjustment hearing officer talked
10 about high profile versus low profile as it relates to
11 signage, in your definition, how would you distinguish high
12 profile from low profile?

13 A. A size of monument and height comparison of two
14 separate signs.

09:54:56

15 Q. Not the size or luminescence or glare of the
16 digital portion of that sign?

17 A. Yes.

18 Q. Did you say yes?

19 A. Would you please ask that one more time?

09:55:16

20 Q. Let me back up, because I just want to be clear
21 about this.

22 A. Yes.

09:55:30

23 Q. When you're talking about high profile versus low
24 profile, in your view, that's a function of how big the
25 monument of the sign is, the size of the overall structure;

1 correct?

2 A. Yes.

3 Q. High profile or low profile, in your view, does
4 not relate to the amount of luminescence or glow of a
09:55:46 5 digital sign or the size of that digital sign?

6 A. Although I could be wrong, that is correct.

7 Q. Why do you say you could be wrong?

8 A. There could be a definition -- standard definition
9 of industry signage companies that qualify what constitutes
09:56:09 10 a high-profile versus a low-profile sign that could be more
11 than monument size and might very well include
12 luminescence, other numbers.

13 Q. So I'm going to show you the reporter's transcript
14 of the Board of Adjustment hearing.

09:56:26 15 (The document was marked as Exhibit 5 for
16 identification.)

17 BY MR. DEWULF:

18 Q. So let me ask you, Mr. Ammon, before the hearing
19 on -- let me back up.

09:56:51 20 Exhibit Number 5 is the reporter's
21 transcript. Earlier in your testimony you talked about
22 having reviewed the minutes of the meeting. And this is
23 what you were referring to; right?

24 A. Yes.

09:57:04 25 Q. Exhibit 5.

1 And you understood that this was a
2 transcription of what occurred at the hearing?

3 A. Yes.

09:57:23

4 Q. Why did you review Exhibit 5 before you came to
5 your deposition?

6 A. Seemed like a prudent direction to familiarize
7 myself with what was communicated during the time of this
8 hearing.

09:57:56

9 Q. Let me ask you to go to page 24. This begins
10 line 10 on page 24. Are you there?

11 A. Yes, sir.

12 Q. Board Member Ammon -- that's you -- says, For the
13 gentleman that just spoke, everybody, thank you again for
14 all your presentations and points.

09:58:17

15 Do you recall that when you spoke, both
16 parties; that is, Bootz & Duke and the Arcadia homeowners,
17 had both made their presentations?

18 A. Yes.

09:58:33

19 Q. And by that, the process is one where the
20 appellant, in this case Bootz & Duke, is provided a certain
21 amount of time to present its case; and then the opposition
22 in this case, the Arcadia homeowners, had an opportunity to
23 present their view; and then Bootz & Duke then has a
24 rebuttal opportunity; correct?

09:58:50

25 A. Yes.

1 Q. Do you know that after those presentations are
2 made, the microphones are muted; that is, those folks can
3 no longer speak unless given the opportunity by the city?

4 A. Yes.

09:59:02

5 Q. So do you know that after the Arcadia homeowners
6 association's representative, Tristahn Schaub, did his
7 presentation for ten minutes, then the city muted his
8 microphone?

9 A. Yes.

09:59:20

10 Q. And page 24, you say, Everybody, thank you again
11 for all of your presentations and points. I'm looking at
12 the Bootz & Duke -- Bootz & Duke website, and I know it's
13 not -- I can't bring it up on this page or anything like
14 that, but I'm looking at some of your other church signs
15 and things like that. It looks like the St. Luke's
16 Catholic Church, that one was done. That was a digital
17 sign that was a little smaller. It certainly would have
18 been nice to see some church signs up in comparison.

09:59:43

19 Did I read that correctly?

10:00:02

20 A. Yes, sir.

21 Q. And so you're reflecting at this point in the
22 hearing that you are actually doing a search of the Bootz &
23 Duke website?

24 A. Yes.

10:00:11

25 Q. Let me ask you: Before the hearing on February 3,

1 2022, for which these minutes were generated, did you
2 review any other information that was extra record or
3 outside of the record presented by the parties?

4 A. No, I did not.

10:00:36 5 Q. Okay. Did you look at the Bootz & Duke website
6 before the hearing?

7 A. No, I did not.

8 Q. And when you looked at the Bootz & Duke website --
9 let me rephrase that.

10:00:49 10 Why did you look at the Bootz & Duke website?

11 A. Because I was looking -- let's see, how do I say
12 this?

13 As I have had stated on the record, it
14 certainly would have been nice to see some church signs up
10:01:17 15 in comparison. To best -- to come to the most prudent
16 decision, I wanted to see other signs completed by -- other
17 church signs that are digital, as I did not see them in
18 either presentations.

19 Q. Did you know by doing so you would be favoring the
10:02:01 20 Bootz & Duke efforts to get the sign approved?

21 MR. INGLESE: Object to the form. You can
22 answer.

23 THE WITNESS: I did not know.

24 BY MR. DEWULF:

10:02:09 25 Q. But in your judgment, you had determined that

1 Bootz & Duke had fallen short of fully informing you as to
2 what a church sign would look like that was the subject of
3 the application?

4 MR. INGLESE: Object to the form.

10:02:23 5 THE WITNESS: I did. And I also did not see
6 that in opposition's view -- in opposition's presentation
7 either.

8 BY MR. DEWULF:

9 Q. Do you recall that the opposition, Arcadia
10:02:34 10 homeowners, did provide some examples of signage that were
11 created by Bootz & Duke?

12 A. Yes, sir.

13 Q. Okay. You're just saying you didn't see something
14 for a church? Is that the distinction you're drawing?

10:02:45 15 A. Of a similar size, a similar height sign of a
16 similar low-profile sign, per my understanding of the
17 definition of low profile.

18 Q. So you're at that point supplementing the
19 information provided to the board by the Bootz & Duke
10:03:05 20 party?

21 MR. INGLESE: Object to the form.

22 THE WITNESS: I was, yes.

23 BY MR. DEWULF:

24 Q. Okay. Because you felt that the record that they
10:03:11 25 were creating by their presentation was inadequate for the

1 board to make a decision?

2 A. Even though I would have come to the same
3 conclusion based off of the information that was provided
4 to us, I did want to see additional information.

10:03:30 5 Q. Because you still had questions as to what this
6 sign would actually look like in this location on Camelback
7 Road?

8 A. I wanted to get a better understanding of the
9 scale and scope of what the image would look like in real
10:03:49 10 life as opposed to a computer rendering that was seen on a
11 screen as a drawing in comparison to a real example in an
12 image or a drive-by or something like that.

13 Q. Because you thought that that would help inform or
14 educate you in making your decision regarding the
10:04:12 15 application?

16 A. Supplementally. But as I said very candidly, I
17 do -- I would still have come to the same conclusion.

18 Q. You say that now, frankly, but you felt the need
19 to do this notwithstanding the fact that you knew that that
10:04:30 20 was outside of the record; right?

21 MR. INGLESE: Object to the form.

22 THE WITNESS: Yes.

23 BY MR. DEWULF:

24 Q. So you say you would have made the same decision,
10:04:44 25 yet you felt compelled to do this extra research as related

1 to the decision so you would feel comfortable about the
2 decision; fair?

3 A. Yes.

4 Q. But the information that you found -- let me back
10:04:57 5 up.

6 When you went on the website, Mr. Ammon, did
7 the digital sign for the church appear immediately upon
8 getting to the website or did you have to search for
9 something like the St. Luke's sign?

10:05:11 10 A. Click church signs, up came images. It did not
11 appear immediately.

12 Q. So you think it was church signs versus digital
13 display signs?

14 A. From what I remember, I had to search.

10:05:23 15 Q. Okay. Do you remember how -- how many times you
16 had to click in order to get from first arriving at the
17 Bootz & Duke website to the point of locating the specific
18 example of the St. Luke's sign?

19 A. To the best of my knowledge, two clicks.

10:05:45 20 Q. You felt that this information was valuable to
21 your determination as to whether to grant the use permit or
22 not; true?

23 A. No, sir. Not particularly.

24 Q. I keep coming back -- why go through the exercise
10:06:06 25 if you don't think it's helpful?

1 A. Much of my job and my responsibilities is to be
2 detail-oriented and, out of curiosity, to get an
3 understanding of what the sign could look like in its
4 visual real form in the real world.

10:06:35 5 Q. So being detail-oriented, you felt that this was
6 detail that was important in you making your decision; that
7 is, the detail from the example of a sign on Bootz & Duke's
8 website?

9 A. Yes.

10:06:53 10 Q. All right. Now, if you need to refer back to
11 Exhibit 3, you understood that the decisions by the Board
12 of Adjustment were, specifically by rule and procedure, to
13 be based only on the testimony and the evidence presented
14 at the hearing; correct?

10:07:09 15 MR. INGLESE: Object to the form.

16 THE WITNESS: That's correct.

17 BY MR. DEWULF:

18 Q. And did you understand by going onto the Bootz &
19 Duke website and introducing that information about the
10:07:19 20 sign, you were bringing in evidence outside of the
21 testimony and evidence presented at the hearing?

22 MR. INGLESE: Object to the form.

23 THE WITNESS: As a lapse in judgment and
24 error, yes.

10:07:36 25 ///

1 BY MR. DEWULF:

2 Q. Sitting here today, do you think you violated the
3 rules and procedures of the City of Phoenix as it relates
4 to the process and procedure for the Board of Adjustment?

10:07:47 5 MR. INGLESE: Object to the form.

6 THE WITNESS: By the strict letter of the
7 law, yes.

8 BY MR. DEWULF:

9 Q. So the information that you did locate that you
10:08:00 10 thought was helpful to you; that is, an actual digital sign
11 being utilized by a church, did you share that information
12 with the other board members?

13 A. No, I did not.

14 Q. You didn't do it even after the hearing?

10:08:13 15 A. No.

16 Q. And you didn't share it with the Arcadia
17 homeowners; right?

18 A. Correct.

19 Q. There's a point in the minutes or -- or the
10:08:25 20 transcript of the proceedings where you conclude -- the
21 part that I read is on page 24, and you can go back and
22 look at it.

23 Lines 10 through 20, you say, It looks like
24 the St. Luke's Catholic Church, that one was done. That
10:08:45 25 was a digital sign that was a little smaller.

1 Then you go on.

2 [Reading] It certainly would have been nice
3 to see some church signs up in comparison.

4 Let me break that down into two parts. The
10:09:00 5 first part is, you concluded on your own review of this
6 website information that no one else in the room was seeing
7 that the St. Luke's digital sign was smaller than the one
8 that was the subject of the application by the Camelback
9 church; correct?

10:09:18 10 A. Yes.

11 Q. Were you able to discern that just by looking at
12 the website?

13 A. I believe I was.

14 Q. But wasn't it just a picture?

10:09:30 15 A. Yes.

16 Q. Did it have the dimensions of the sign?

17 A. No, sir.

18 Q. Did it have the surrounding area so you can check
19 proportion or dimensions vis-a-vis the surrounding area?

10:09:41 20 A. From what I recall with the sidewalk, plants in
21 front, some detail from what I recall, my estimate is that
22 I was able to get an idea of the size of the scale, being
23 that much of what I do on a day-to-day basis is individual
24 feel.

10:10:04 25 Q. So you saw a visual image on the Bootz & Duke

1 website of a church sign, and based on your sense of scale,
2 concluded that it was smaller than the applicant's or
3 the -- the church that was -- I'm sorry. Let me rephrase
4 that.

10:10:24 5 You concluded, upon your visual review of the
6 sign, the picture of the St. Luke's sign contained on the
7 Bootz & Duke website, that looking at the picture, it was
8 smaller than the sign that was the subject of the hearing?

9 A. Yes. And even though the -- there was not a
10:10:53 10 question noted in my record, Mr. Gibson's response had
11 communicated that height of the board as well.

12 Q. So let me just ask you: The introduction of this
13 evidence that was outside of the record, do you think that
14 was fair to the Arcadia homeowners?

10:11:18 15 MR. INGLESE: Object to the form.

16 THE WITNESS: No, I do not.

17 BY MR. DEWULF:

18 Q. And when it becomes a situation where you're
19 bringing in new evidence, then the parties ought to have an
10:11:33 20 opportunity to respond to that, don't you think?

21 A. Absolutely. Yes, sir.

22 Q. But the Arcadia homeowners didn't have an
23 opportunity to respond to this new evidence, did it?

24 A. Regrettably, no. They did not.

10:11:45 25 Q. But Bootz & Duke did have an opportunity because

1 their mic was still on, and then you allowed them to talk
2 specifically about this extra-record evidence; right?

3 A. Yes, sir.

4 Q. And I don't recall the gentleman's name, but the
10:11:59 5 individual from Bootz & Duke who was a presenter -- I think
6 it's Mr. Gibson -- talked about the fact that he was
7 familiar with this sign; right?

8 A. Yes.

9 Q. But we don't today even know whether he was
10:12:14 10 telling the truth or whether the two signs were similar or
11 not, do we?

12 MR. INGLESE: Object to the form.

13 THE WITNESS: As he was under oath, I would
14 hope that he would be speaking the truth.

10:12:24 15 BY MR. DEWULF:

16 Q. We both know that people being under oath don't
17 always tell the truth; right, unfortunately?

18 A. Unfortunately.

19 Q. So not only were you introducing extra-record
10:12:35 20 evidence that Arcadia homeowners didn't get an opportunity
21 to review or respond to, but you also were giving the sign
22 company an opportunity to talk extemporaneously about that
23 extra-record evidence; right?

24 A. Yes, sir.

10:12:48 25 MR. INGLESE: Object to the form.

1 BY MR. DEWULF:

2 Q. So the information that you gathered from the
3 Bootz & Duke website, was that ever shared with the other
4 members of the board?

10:12:59 5 A. No, it was not.

6 Q. Could you have -- if you talked to Ms. Gomes or
7 the people in the room, could you have taken a break or
8 taken an opportunity to share that information so that it
9 formally became a part of the record so the parties could
10:13:16 10 address it?

11 A. No, I do not believe we could have.

12 Q. Okay. So let's go to -- let me ask a question,
13 because you just mentioned Mr. Gibson's comments a moment
14 ago.

10:13:40 15 When you raised this issue of St. Luke's sign
16 being similar but smaller on the record, you recall that
17 testimony; right?

18 A. Yes, I do.

19 Q. He -- Mr. Gibson shared with you that he knew that
10:13:55 20 sign and then talked about it; correct?

21 A. Yes.

22 Q. Have you ever independently, up to today, ever
23 determined whether the signs were similar in size?

24 A. No.

10:14:13 25 Q. You know that the sign, the St. Luke's Catholic

1 Church sign was located on 7th Avenue? Do you know that?

2 A. South of the 101, yes, sir.

3 Q. Have you ever driven by or looked at that?

4 A. Yes, I have.

10:14:24 5 Q. Did you do that after the hearing or before the
6 hearing?

7 A. After the hearing.

8 Q. Okay. To the extent that context, character of
9 neighborhood, those kinds of things were issues before the
10:14:39 10 board -- and we know that they were; right?

11 A. Yes.

12 Q. Giving Arcadia homeowners and the other board
13 members an opportunity to review the St. Luke's Catholic
14 Church environment, street, traffic, surrounding area would
10:14:58 15 have been helpful in the deliberation process; fair?

16 A. Yes, sir.

17 Q. Okay. So let's look at page 30 of the Exhibit 5.

18 I'm kind of summarizing here, but in these

19 proceedings involving the sign at Camelback Church of
10:15:37 20 Christ, the appellant, Bootz & Duke Sign Company, gave its
21 presentation after it had, prior to the hearing, provided
22 all the evidence and its written materials to the city;
23 right?

24 A. Yes.

10:15:53 25 Q. And then the Arcadia homeowners had also presented

1 their evidence and their arguments on the record, and then
2 Bootz & Duke then provided rebuttal presentations; correct?

3 A. Yes.

4 Q. And then you engaged -- after all the parties had
10:16:19 5 closed their presentations, then you engaged in what was
6 basically a dialogue between you and Mr. Gibson from Bootz
7 & Duke about this sign at St. Luke's Catholic; correct?

8 A. Yes.

9 Q. And then based on all that information -- and I --
10:16:50 10 let me step back a minute.

11 You work with these board members all the
12 time in the context of handling these kinds of matters
13 where you're addressing hearings by applicants, community
14 citizens, organizations; fair?

10:17:06 15 A. Yes.

16 Q. So you've gained a level of trust and respect
17 between the board members; fair?

18 MR. INGLESE: Object to the form.

19 THE WITNESS: Yes.

10:17:19 20 BY MR. DEWULF:

21 Q. And would you agree with me that you would have
22 credibility with the rest of the board if you are
23 presenting information based on your own work?

24 A. Not particularly, no, sir.

10:17:32 25 Q. Do you think you would not be credible with the

1 other board members?

2 A. If it's outside the rules of the -- of what we're
3 allowed to do at the Board of Adjustment in terms of
4 gathering additional information outside of what's been
10:17:46 5 provided to us, and I'm making an error, my assumption is
6 that someone that recognizes my error would know that I was
7 making an error.

8 Q. So that assumption is not borne out by the record,
9 is it?

10:18:05 10 MR. INGLESE: Object to the form.

11 THE WITNESS: I don't quite know.

12 BY MR. DEWULF:

13 Q. Do you recall any board member -- after hearing
14 your observations about what was contained on the Bootz &
10:18:16 15 Duke website, did any board member say within the context
16 of the hearing, that's improper; we can't consider that;
17 you shouldn't be doing that?

18 A. There is one area. If I may, I would like to
19 check in the record before a vote was cast, if I may.

10:18:32 20 Q. Okay. Sure.

21 A. I'm looking for -- it's possible on page 32 on
22 line 20, Board Member Cole. This is just from my
23 recollection. This could be completely an error and not
24 specific to your question, sir.

10:19:28 25 Q. Aren't these comments by Mr. Cole more relating to

1 when the sign would come on and go off?

2 A. I believe so. That was my recollection.

3 And so in error, if I may, would you please
4 repeat the question.

10:19:40 5 Q. Sure.

6 You said that you, in effect, made an
7 assumption that if someone disagreed with your having
8 brought in extra-record evidence, they would have said
9 something or observed that it was improper. Is that your
10:19:56 10 testimony?

11 A. It is possible that is the case.

12 Q. But my -- my follow-up question was: But the
13 record doesn't bear that out; that is, no member of the
14 board ever called you out on the fact you were bringing in
10:20:09 15 improper evidence to the proceedings; correct?

16 MR. INGLESE: Object to the form.

17 THE WITNESS: That's correct.

18 BY MR. DEWULF:

19 Q. Now, Ms. Gomes was in attendance at the hearing;
10:20:21 20 correct?

21 A. Yes.

22 Q. Did she make any objection or raise any issues
23 with respect to this activity where you were bringing in
24 extra-record evidence?

10:20:28 25 A. No, she did not.

1 Q. Was counsel present? Were there lawyers present
2 from the city there for this hearing?

3 A. Yes, sir.

4 Q. Who was there?

10:20:35 5 A. To my knowledge, Mr. Danny Inglese was there and
6 possibly Mr. Paul Li. But respectfully, I do not recollect
7 if he was or was not there at that time.

8 Q. Mr. Paul Li is also a city attorney?

9 A. Yes, sir.

10:20:53 10 Q. Did either Mr. Inglese or Mr. Li, if he was there,
11 raise any objections, either substantive or procedural,
12 about you bringing in this outside evidence?

13 A. As the record states, no. They did not.

14 MR. INGLESE: I'd just like to clarify for
10:21:09 15 the court reporter it's Li, L-i.

16 BY MR. DEWULF:

17 Q. So I'm going to go back to the original. You said
18 you made an assumption, but there really is nothing in the
19 record that supports the assumption. Let me go back to the
10:21:25 20 earlier question I asked.

21 You having credibility with the other board
22 members, sitting here today, do you believe that they would
23 trust and respect you if you were to present evidence to
24 them about a matter that's the subject of their review?

10:21:43 25 A. Yes, I do.

1 Q. So do you think that the evidence you were
2 providing from the Bootz & Duke website; that is, the
3 evidence regarding the St. Luke's Catholic sign, was a part
4 of their decision-making process?

10:22:04 5 A. Could have been.

6 Q. It may have affected their decision?

7 MR. INGLESE: Object to form and foundation.

8 THE WITNESS: It may have.

9 BY MR. DEWULF:

10:22:12 10 Q. Okay. It's hard to reconstruct that now; right?

11 A. Yes.

12 Q. And it would be fair to say that they like and
13 respect you, so they're not looking to make things
14 difficult for you; fair, the other board members?

10:22:30 15 MR. INGLESE: Foundation.

16 THE WITNESS: Yes.

17 BY MR. DEWULF:

18 Q. So is it possible that this review you did of the
19 Bootz & Duke website affected your decision-making process?

10:22:53 20 A. It is possible.

21 Q. Okay. Now, if we go to then page 30, line 8,
22 you -- you can review if you need to, Mr. Ammon. But at
23 this point, basically all the discussion has occurred?

24 A. Uh-huh.

10:23:14 25 Q. And I think under normal proceedings then, one of

1 the board members would move for a particular result; is
2 that fair, in the proceedings?

3 A. Yes.

4 Q. In this case -- I'm reading from the transcript of
10:23:28 5 your testimony. You're being asked by the chairman if you
6 have a motion or comments or questions or -- I'm sorry.

7 He says, I will entertain a motion.

8 Then you say, I do certainly, in respecting
9 everybody's opinion in the matter, and certainly the zoning
10:23:49 10 adjustment hearing officer, but seeing some of the other
11 work that's been done, I -- I do actually make a motion to
12 overturn the zoning adjustment hearing officer's take on
13 this so as to approve the sign. I approve this to be
14 transition, and that is -- that is my motion based off of
10:24:09 15 the points that we have heard, and that I do think it meets
16 the needs, and it's certainly not detrimental.

17 Did I read that correctly?

18 A. Yes, sir.

19 Q. So when you say "but seeing some of the other work
10:24:18 20 that's been done," you're referring to the St. Luke's
21 Catholic Church sign?

22 A. No, sir. I'm not.

23 Q. Are you looking at the signage that's been done by
24 Bootz & Duke?

10:24:31 25 A. I'm looking at information that was presented to

1 us, along with experience with the city and having grown up
2 here and seeing signs and just personal experience and
3 personal knowledge of the -- personal knowledge.

4 And respectfully, this was made clear at the
10:24:53 5 following Board of Adjustment meeting where I clarified
6 that statement on the record.

7 Q. So let's go back to this statement.

8 It says, But seeing some of the other work
9 that's been done.

10:25:08 10 What other work are you referring to?

11 A. The work throughout the city that I had seen that
12 I had driven by, and including the work that was seen on
13 the Bootz & Duke website.

14 Q. Okay. So when you're talking about the other work
10:25:24 15 that's been done, it includes the work that you viewed on
16 the Bootz & Duke website?

17 A. And it -- and it includes additional --
18 additional -- it also includes the presentation that was
19 given to us by Bootz & Duke.

10:25:44 20 Q. When you say other work, wouldn't you be saying --
21 if you're just talking about the presentations by the
22 parties at the hearing, wouldn't you be saying this work?

23 A. Most respectfully, as you can see, I am quite
24 wordy in my explanations, and there's a much more pithy way
10:26:00 25 to communicate much of what I say.

1 Q. Okay. So you're saying -- but some of the other
2 work that's been done, you're talking about other signs
3 you've seen in the city and the information you got on the
4 Bootz & Duke website?

10:26:15 5 A. And the Hopi Elementary presentation and the Hopi
6 Elementary documentation that was shown to us in our
7 presentation. And to answer your question, yes.

8 Q. Have you ever seen this happen -- well, let me ask
9 you: Have you ever engaged in this process of bringing in
10:26:37 10 extra-record evidence to a hearing before the Board of
11 Adjustment --

12 MR. INGLESE: Object to the form.

13 BY MR. DEWULF:

14 Q. -- other than this instance?

10:26:44 15 A. No.

16 Q. Do you know whether any other board member, in
17 your experience, has ever brought in extra-record evidence
18 during the hearing -- an ongoing hearing by an applicant?

19 A. No.

10:27:03 20 Q. Do you ever do any texting during hearings when
21 you're a decision-maker?

22 A. No.

23 Q. And do you know whether any of the other board
24 members ever do any texting during the board proceedings?

10:27:19 25 A. No.

1 Q. So the -- are you familiar with the hearing that
2 occurred regarding a marijuana dispensary at 4456 East
3 Thomas Road?

4 MR. INGLESSE: Object to the form.

10:27:38 5 THE WITNESS: I believe so, yes.

6 BY MR. DEWULF:

7 Q. And were you one of the members of the Board of
8 Adjustment that was reviewing the application by the
9 dispensary?

10:27:48 10 A. Yes.

11 Q. Do you remember what they were seeking to do?

12 A. If I am thinking of the correct case, I believe
13 they were requesting a variance for a hardship -- due to a
14 hardship based off of specific -- searching a hardship --
10:28:12 15 for a hardship to get a variance, if I'm thinking of the
16 right case.

17 Q. Okay. So the date of the hearing was January 8,
18 2021. So it wasn't that long ago.

19 A. Uh-huh.

10:28:22 20 Q. And it's ZA-324-20. And this may refresh your
21 memory.

22 Do you remember there being an issue that
23 arose in the hearing regarding a gate on the dispensary?

24 A. I do remember there being a gate associated with
10:28:41 25 the presentation.

1 Q. Do you recall you, during the hearing, doing a
2 Google Earth search to determine what the gate looked like
3 and where it was located on the property?

4 A. I do. Yes, sir, I do.

10:28:55 5 Q. Do you recall that you used that information to
6 support your vote in favor of the variance or whatever they
7 were seeking?

8 A. I do.

9 Q. Okay. And that was because you felt that the
10:29:07 10 presence of the gate then prevented dispensary customers or
11 traffic from interfering with the adjacent residential
12 parties?

13 A. I believe so.

14 Q. Do you remember that there was a condo complex
10:29:21 15 adjacent to the dispensary?

16 A. If it is the condo complex to the north of the
17 dispensary, then yes. The answer to the question is yes.

18 Q. So your Google Earth search played a role in your
19 decision to grant the variance or grant whatever the relief
10:29:37 20 being requested was?

21 MR. INGLESE: Object to the form.

22 THE WITNESS: Yes.

23 BY MR. DEWULF:

24 Q. Did you share that information with the other
10:29:43 25 board members in connection with this application by the

1 dispensary?

2 A. If -- not having the minutes in front of me and
3 not knowing what was communicated, by sharing,
4 communicating that I had looked and was looking on Google
10:29:57 5 Earth so as to make the statement, then the answer is yes,
6 I shared information verbally based on what I was looking
7 at.

8 But in terms of sharing via any digital or
9 face-to-face, then the answer to that question is no.

10:30:11 10 BY MR. DEWULF:

11 Q. So you again, in that instance, were verbally
12 providing information to the other board members regarding
13 a -- in a hearing for an active application without sharing
14 the information with the participants in the hearing?

10:30:29 15 MR. INGLESE: Object to the form.

16 THE WITNESS: I drive many of the sites
17 before the cases. Google Earth takes you there as well. I
18 drove that site. I know that site. I -- so I guess the
19 answer to your question is yes.

10:30:42 20 BY MR. DEWULF:

21 Q. Well, you drove the site, but did you notice where
22 the gate was located?

23 A. Respectfully, I do not recall.

24 Q. Probably didn't need -- well, do you typically
10:30:53 25 drive by the sites that are the subject of the decisions

1 that the board has to make?

2 A. More than 50 percent of them, yes.

3 Q. Okay. But you felt the need in this case; that
4 is, the marijuana dispensary case, to do a Google Earth

10:31:10 5 review because you did not know whether there was a gate or
6 not on the property?

7 A. That is correct.

8 Q. Okay. And so once you discovered there was a gate
9 on the property, then you assumed that there would not be
10:31:23 10 an adverse impact on the neighbors?

11 A. That is correct.

12 Q. Did you know that the neighbors that were impacted
13 by this, that residential building contained a business
14 office as well?

10:31:35 15 A. No, I did not know that.

16 Q. Did you ever learn that the business office
17 required the gate to be open during the daylight hours?

18 A. No, sir.

19 Q. Would that change your view about whether the
10:31:45 20 variance ought to have been granted if you learned that
21 that gate wasn't kept closed during the daylight hours?

22 MR. INGLESE: Object to form.

23 THE WITNESS: In hindsight, it could have.

24 BY MR. DEWULF:

10:31:56 25 Q. But sitting here today, that's news to you?

1 A. Yes.

2 Q. Okay.

3 MR. DEWULF: Go off the record.

4 (An off-the-record discussion ensued.)

10:32:28 5 BY MR. DEWULF:

6 Q. Do you think, sitting here today, after having
7 served on the Board of Adjustment for four years, that
8 there are ways that the city could improve its support of
9 you in the role as a Board of Adjustment member?

10:32:55 10 A. Yes.

11 MR. INGLESE: Object to the form.

12 BY MR. DEWULF:

13 Q. How?

14 A. Sorry. Yes.

10:32:58 15 Q. How?

16 A. Refreshers of rules to follow, clarifications on
17 what is and is not permitted, especially in relation to --
18 and I say this as clearly as possible -- software that
19 virtually immerses us in the location so as to physically
20 be present in those spaces. It's a very important point.

10:33:36 21 Q. So are you saying that you think a way that the
22 city could support you is to provide you such software in
23 connection with the performance of your duties?

24 A. No. It would be to give us guidance on what is
10:33:52 25 and isn't allowed in the use of the software so as to come

1 to prudent conclusions for the betterment of the community.

2 Q. So you're saying that in connection with the city
3 supporting the Board of Adjustment in its performance of
4 its duties, they could use more clarity in terms of what
10:34:16 5 can or can't be brought in as evidence and refreshers
6 periodically about that?

7 A. Yes.

8 Q. In your view, as a member of the Board of
9 Adjustment, what is required to uphold a hearing officer's
10:34:38 10 decision?

11 A. To uphold a hearing -- zoning adjustment hearing
12 officer's decision is to -- may I look at an exhibit?

13 Q. You can look at anything you want.

14 A. I'll be quick with my time here.

10:35:04 15 Q. You're fine.

16 A. The question is specific to upholding ZAH0's
17 decision?

18 Q. Yes.

19 A. Is to either confirm or deny that their decision
10:35:18 20 is in line with the granting of the use permit or the
21 variances, and to decide whether or not the ZAH0's decision
22 is in line with the requirements that need to be met for
23 the granting of the use permit variances.

24 Q. When you say ZAH0 --

10:35:39 25 A. Zoning adjustment hearing officer. I apologize

1 for interrupting you. Excuse me.

2 Q. That's okay. Most people won't be familiar with
3 that term.

4 A. Pardon me. ZAHO, as I'm referring to, is the
10:35:50 5 zoning adjustment hearing officer. I will use zoning
6 adjustment hearing officer from here on out.

7 MR. DEWULF: Could you go back and read the
8 answer that he gave? The lengthy one before the last back
9 and forth.

10 (The record was read by the reporter as
11 follows:

12 A. Is to either confirm or deny that their
13 decision is in line with the granting of the use permit or
14 the variances, and to decide whether or not the ZAHO's
15 decision is in line with the requirements that need to be
16 met for the granting of the use permit variances.)

17 BY MR. DEWULF:

18 Q. Let me ask a related question, which is: What do
19 you think is required to overturn a hearing officer's
10:36:36 20 decision?

21 A. To disagree with a zoning adjustment hearing
22 officer's decision is to decide whether or not the
23 application to overturn -- whether or not to decide that
24 the zoning adjustment hearing officer's decision did or did
10:37:15 25 not meet the requirements for a variance or a use permit to

1 be granted.

2 (The document was marked as Exhibit 6 for
3 identification.)

4 BY MR. DEWULF:

10:37:52 5 Q. I'm showing you Exhibit 6, Mr. Ammon. And there
6 are two items addressed here. The first one is,
7 Requirements for granting use permits. Do you see that?

8 A. Yes, sir.

9 Q. And in this case, the Bootz & Duke folks were
10:38:10 10 seeking a use permit for Camelback Church of Christ;
11 correct?

12 A. Yes.

13 Q. And when you talked a moment ago in your testimony
14 about the requirements for use permit, are these the
10:38:23 15 requirements you're referring to? This would guide the
16 decision by you and the other members of the board as to
17 whether or not to grant a use permit?

18 A. Yes.

19 Q. And then I guess drawing from that, this would
10:38:42 20 also guide whether or not you would affirm the decision by
21 the zoning adjustment administrator -- administrative
22 officer?

23 A. That's correct.

24 Q. Okay.

10:38:58 25 MR. DEWULF: Let's take a five-minute break.

1 Let me look at my notes. I think I'm close to being done.

2 (A recess ensued.)

3 BY MR. DEWULF:

4 Q. So I wanted to clarify something.

10:51:49 5 At the time of the hearing that is
6 transcribed in Exhibit 5, which is the February 3, 2022,
7 hearing, you did not know anything about the St. Luke's
8 Catholic Church sign other than what you visually saw on
9 the Bootz & Duke website?

10:52:12 10 A. Correct.

11 Q. So you really didn't know anything about its
12 location, the surrounding environment, the area, anything
13 like that; fair?

14 A. Correct.

10:52:20 15 Q. So in terms of whether it was an analogous
16 situation; that is, the sign at St. Luke's Catholic Church
17 on 7th Avenue versus the sign being contemplated for the
18 Camelback Church of Christ, you didn't know one way or the
19 other?

10:52:35 20 A. Correct.

21 Q. Okay. You indicated in your testimony, Mr. Ammon,
22 that one of the ways that the city could better support you
23 would be, among other things, to refresh you and your
24 knowledge and to clarify approaches to things like evidence
10:52:55 25 and procedural issues in your performance as a member of

1 the Board of Adjustment; correct?

2 A. Yes.

3 Q. Have you gotten any sort of additional training,
4 refreshers, updates after the training that you got, which
10:53:14 5 is reflected in the PowerPoint in Exhibit 3 on August 30,
6 2018?

7 MR. INGLESE: I would caution the witness not
8 to reveal any private conversations with counsel.

9 THE WITNESS: The only additional guidance --
10:53:28 10 and I will call it guidance as opposed to training -- was
11 as we were transitioning into remote work due to COVID.

12 So getting used to the remote sessions
13 included a few conversations with the -- with the zoning
14 administrator and Paul Li communicating to us that we would
10:53:53 15 be transitioning to remote work. The details of those
16 conversations and what was refreshed and trained,
17 respectfully, I do not recall.

18 BY MR. DEWULF:

19 Q. Whatever training that you received in connection
10:54:06 20 with working remotely would not have been addressing issues
21 of evidence, legal procedure, testimony, those kinds of
22 things?

23 A. That is correct.

24 Q. All right. After the events that occurred on
10:54:22 25 February 3 in the aftermath of the vote by the board, other

1 than communications with counsel, did you talk to anyone
2 else about that hearing?

3 A. No, I did not.

4 Q. Okay. There was a follow-up vote, I guess, in
10:54:40 5 response to a motion for reconsideration; correct?

6 A. Yes.

7 Q. Did you talk to any other board members in the
8 context of making a decision on the motion for
9 reconsideration?

10:54:53 10 A. No.

11 Q. So when you came -- when you had the vote and the
12 motion for reconsideration, the board members did not speak
13 among themselves about that decision, but rather each just
14 voted separately as to whether they favored or did not
10:55:10 15 favor the motion for reconsideration?

16 A. Correct.

17 Q. So you never, after the hearing that was
18 February 3, 2022, ever spoke to any other board member as
19 to the substance of the hearing?

10:55:25 20 MR. INGLESE: Object to the form.

21 THE WITNESS: Correct.

22 BY MR. DEWULF:

23 Q. Sitting here today, and looking back on the
24 situation, the hearing and what transpired, do you think
10:55:40 25 you would do anything differently?

1 A. Yes.

2 Q. What would you have done? Or what would you do?

3 A. What I would do is allow for questions of the
4 opposition as opposed to moving right into a motion.

10:56:00 5 Q. Would it have been prudent or fair to perhaps
6 provide a delay or a continuance to allow the parties to
7 specifically address this issue of the Bootz & Duke website
8 and the St. Luke's sign?

9 MR. INGLESE: Object to form.

10:56:20 10 THE WITNESS: No, I don't believe it would
11 be. I can't state the specific ones because I do not
12 recall. We have not had many continuances for reasons
13 specific to what you have addressed.

14 BY MR. DEWULF:

10:56:35 15 Q. So I'm thinking about from a fairness standpoint,
16 you have the Arcadia homeowners who were caught flatfooted
17 regarding this evidence they've never seen or heard about;
18 right?

19 A. Uh-huh.

10:56:45 20 Q. Yes?

21 A. Yes.

22 Q. And you have the appellant, Bootz & Duke, who at
23 least purport to know a lot about the St. Luke's Catholic
24 sign; correct?

10:56:57 25 A. Yes.

1 Q. So even if you were to allow on-the-record
2 responses to questions or statements relating to the
3 signage that you introduced into the hearing from the Bootz
4 & Duke website, the Arcadia homeowners would still be at a
10:57:12 5 disadvantage because they wouldn't have had an opportunity
6 to research whether in fact the sign that you're referring
7 to, the St. Luke's Catholic Church, is analogous to the
8 situation before the board and its decision --

9 MR. INGLESE: Object to form.

10:57:25 10 BY MR. DEWULF:

11 Q. -- right?

12 A. Based off of the presentation that the Arcadia
13 homeowners association gave, they referenced images from
14 Bootz & Duke that did not represent other church signs.
10:57:44 15 From my recollection, there was a Botox sign, hair removal
16 sign, and I believe an image of Kramer getting roasted in
17 one of the Seinfeld episodes. Those are the three images I
18 remember from that presentation.

19 It could have been prudent for them to
10:58:05 20 include other church signs, as it would have been prudent
21 for Bootz & Duke to include additional church signs. To
22 answer your question -- I believe the answer to your
23 question is yes.

24 Q. Yes what?

10:58:23 25 A. You asked about the fairness. If you could please

1 restate the question.

2 Q. Well, what I'm asking you is: Would you agree with
3 me that it was not fair to the Arcadia homeowners to spring
4 this new evidence upon them regarding a sign that has
10:58:41 5 never -- that isn't in the record when Bootz & Duke
6 purports to know that sign and its history and its detail
7 and Arcadia has no familiarity with it?

8 A. That is correct. That is unfair.

9 Q. Okay. Now, but you wouldn't be willing -- looking
10:58:59 10 back on it now, and if you had your druthers and you could
11 redo all of this, you don't think that a continuance or
12 some sort of an opportunity to research and determine
13 whether that sign, which played a role in the decision of
14 the board, could be evaluated on whether it was analogous
10:59:18 15 to the sign that was the subject of the application by the
16 Camelback Church of Christ?

17 MR. INGLESE: Object to the form.

18 THE WITNESS: I think that would have been a
19 very -- I think that would have been a prudent direction to
10:59:30 20 go with the introduction of additional material based off
21 of a board member communicating to both parties stating
22 that some additional communication could be had based off
23 of additional evidence that could be introduced.

24 BY MR. DEWULF:

10:59:47 25 Q. So in looking at the proceedings, it was Bootz &

1 Duke's burden of proof to -- as the applicant/appellant to
2 persuade the Board of Adjustment to overturn the decision
3 by the zoning adjustment hearing officer; right?

4 A. Yes.

11:00:17 5 Q. So if they were interested in presenting to the
6 board analogous church signs, they could have done that;
7 right?

8 A. Yes.

9 Q. And in your view, it would have been prudent for
11:00:29 10 them to do so; right?

11 A. Yes.

12 Q. And because they failed to make that presentation;
13 that is, there is a gap in the presentation, you felt the
14 need to do the additional research to answer for your own
11:00:41 15 purposes whether there were church signs that they had done
16 that could be analogous to the one that was the subject of
17 the application?

18 MR. INGLESE: Object to the form.

19 THE WITNESS: Yes.

11:00:51 20 MR. DEWULF: No further questions.

21

22 EXAMINATION

23 BY MR. INGLESE:

24 Q. I have a few questions.

11:00:56 25 Mr. Ammon, are you familiar with the factors

1 that the board is supposed to assess when granting or
2 denying a use permit?

3 A. Yes.

4 Q. And do you recall any discussion today about glare
11:01:12 5 exceeding ambient conditions?

6 A. Yes.

7 Q. Did Bootz & Duke submit any evidence regarding the
8 glare that would be emitted by the sign?

9 A. Yes.

11:01:21 10 Q. What did that evidence consist of?

11 A. I believe it was light studies of how far -- of
12 how the intensity of the glare at specific distances in
13 plan view or bird's eye view of what the glare would be
14 after a specific distance and showing that it decreased
11:01:45 15 over a period of -- over distance.

16 Q. Did you find that evidence credible?

17 A. I did.

18 Q. Did you find that evidence persuasive?

19 A. I did.

11:01:52 20 Q. Did you believe that this sign would cause a
21 significant increase in vehicular or pedestrian traffic in
22 any adjacent residential areas?

23 A. No, I did not.

24 Q. Did you believe this sign would emit odor, dust,
11:02:05 25 gas, noise, vibration, smoke, heat, or glare at levels

1 exceeding ambient levels?

2 A. No.

3 Q. Did you believe that this sign would contribute in
4 a measurable way to the deterioration of the area or the
11:02:17 5 lowering of property values?

6 A. No, I did not.

7 Q. And why not?

8 A. Because based off of the material that was

9 presented to us with the lighting conditions, I decided

11:02:33 10 that the glare or the light levels of that area are below
11 that of ambient conditions based off of the studies that
12 were shown to us.

13 Q. And did you believe that the sign would comply
14 with all relevant zoning laws?

11:02:51 15 A. Yes, I did. And I believe there is information in
16 the minutes that support that.

17 Q. Do you recall discussion today about the term low
18 profile?

19 A. I do.

11:03:03 20 Q. Are you aware of any industry standard or other
21 standardized meaning of that term?

22 A. No, I'm not.

23 Q. Do you remember any discussion today about the
24 term extra record?

11:03:17 25 A. About today?

1 Q. Today.

2 A. Yes.

3 Q. To the best of your knowledge, does that term
4 appear anywhere in the Board of Adjustment's rules of
11:03:27 5 procedure?

6 A. Yes.

7 Q. The term extra record?

8 A. Oh, no, it does not. Excuse me. I misunderstood
9 that.

11:03:35 10 Q. Do you recall discussing use of Google Earth and
11 Google Maps today?

12 A. I do.

13 Q. In your service as a member of the Board of
14 Adjustment, do you frequently look at Google Earth or
11:03:48 15 Google Maps either during hearings or in preparation for
16 hearings?

17 A. Yes.

18 Q. Has anybody ever advised you that it would be
19 improper to look at Google Earth or Google Maps?

11:03:58 20 A. No, they have not.

21 Q. Do you believe that other members of the Board of
22 Adjustment also use those tools?

23 A. I do.

24 Q. Remind me how -- how long have you lived in the
11:04:11 25 city of Phoenix?

1 A. On and off, 32 years.

2 Q. Do you have knowledge of the various neighborhoods
3 within the city?

11:04:36

4 A. Yes. Based off of timeframe and knowledge of
5 living here, but also as a practicing architect who has a
6 passion for the built environment, yes.

7 Q. Do you rely on that knowledge as a member of the
8 Board of Adjustment?

9 A. Yes.

11:04:47

10 Q. Has anybody ever advised you that it is improper
11 to rely on that knowledge?

12 A. No.

13 Q. Do you believe that knowledge helps you in service
14 of your duties as a member of the Board of Adjustment?

11:04:55

15 A. Yes.

16 Q. I'd like to briefly -- do you recall Mr. DeWulf
17 asking you questions about the Bootz & Duke website today?

18 A. Yes.

11:05:11

19 Q. When you said -- did you say that you had to
20 search the website?

21 A. I did.

22 Q. Do you recall -- when you use the word "search,"
23 did you mean searching on a search bar or just clicking
24 through the website?

11:05:21

25 A. Clicking through the website.

1 Q. Do you believe that decisions of the Board of
2 Adjustment are precedential?

3 MR. DEWULF: I'll object. Vague and
4 ambiguous.

11:05:39 5 MR. INGLESE: I'll retract the question.

6 BY MR. INGLESE:

7 Q. In discussing cases before the Board of
8 Adjustment, do you ever discuss previous cases that the
9 board has heard?

11:05:52 10 A. Would you ask the question one more time?

11 Q. Sorry. It was not well-worded.

12 A. It's fine.

13 Q. At Board of Adjustment hearings, do you and your
14 fellow members of the Board of Adjustment ever make

11:06:02 15 reference to or discuss other cases that you've decided
16 previously in the context of deciding a case before you?

17 A. I believe so, yes.

18 Q. And finally, do you remember Mr. DeWulf asking you
19 questions about your preparation for today's deposition?

11:06:18 20 A. I do.

21 Q. You said that you reviewed the minutes of the
22 Board of Adjustment, but did you -- what did you mean when
23 you used the word "minutes"?

24 A. I read through the reporter's transcript of the
11:06:42 25 audio recordings.

1 Q. Okay. Did you also read the record that was
2 submitted to the Board of Adjustment?

3 A. Yes.

4 Q. Okay. So we -- and you said you and I met for
11:06:56 5 45 minutes this morning; is that correct?

6 A. Yes.

7 Q. Did we meet at any other time before today?

8 A. Yes.

9 Q. How long did we meet for?

11:07:04 10 A. I believe around 30 to 45 minutes, maybe an hour.

11 Q. Okay. Do you recall when that was?

12 A. I believe it was the week before last.

13 Q. Okay. Let me just review my notes really quickly.

14 Are there signs similar to the one at issue
11:07:29 15 in this hearing in your neighborhood?

16 A. Yes.

17 Q. And do you believe, as a member of the Board of
18 Adjustment, you are permitted to rely on your knowledge of
19 those signs in cases you hear before the Board of
11:07:44 20 Adjustment?

21 A. Yes.

22 MR. INGLESE: No further questions.

23 ///

24 ///

11:07:48 25 ///

FURTHER EXAMINATION

BY MR. DEWULF:

Q. I have a couple of questions to follow up and clarify.

Would you agree with me that the Arcadia neighborhood is unique?

A. I would.

Q. And we know that it is -- it was the subject of -- I'm trying to get the name of the plan.

There was a master plan for that area; correct?

A. Is this in reference to the Frank Lloyd Wright house?

Q. No. The actual neighborhood was the subject of a study by the city and came up with recommendations on how the city ought to be mindful of the kinds of things that made it unique, and to try to be consistent with the character of the neighborhood.

A. Is this in their 1999 submittal that was approved by city council of the Arcadia board or the Arcadia design committee?

Q. I don't know the answer to that. There is the Arcadia Camelback Special District adopted in 1999.

A. Yes, sir.

Q. Are you familiar with that?

1 A. I am. Yes, sir.

2 Q. Have you read it?

3 A. I have not perused it. I have skimmed it.

4 Q. Would you agree with me that that is a reflection
11:09:29 5 at least to the fact that Arcadia is a unique neighborhood
6 whose character needs to be preserved and protected?

7 A. Yes.

8 Q. And you understood that that fact; that is, the
9 unique character and traits of the Arcadia neighborhood,
11:09:48 10 was an important part of the decision made by the zoning
11 adjustment hearing officer in originally denying the sign
12 application; correct?

13 A. Yes.

14 Q. So when you talk about -- or counsel asked you
11:10:09 15 about discussing previous cases relating to signage, every
16 case is unique because your decision is going to be a
17 function of all of those kinds of things that bear on the
18 analysis of how it impacts the neighboring area; correct?

19 A. Yes.

11:10:27 20 Q. And we looked at the use permit analysis that is
21 in Exhibit 6, and it does talk about things like vehicular
22 and pedestrian traffic, odor, dust, gas, noise, vibration,
23 smoke, heat, and glare; correct?

24 A. Yes.

11:10:48 25 Q. Ambient conditions, in your vernacular, does that

1 just mean surrounding conditions?

2 A. Yes.

3 Q. And the former sign that existed on this property
4 for the Camelback church was a backlit, low-profile sign;
11:11:15 5 correct?

6 A. Yes.

7 Q. And the new sign that was the subject of their
8 application was larger and was a digital display; right?

9 A. Yes.

11:11:27 10 Q. And so clearly, visually it's a very different
11 presentation to a person who's driving down Camelback or
12 walking by the church; true?

13 A. Yes.

14 Q. Okay. So it would -- that is, the presence of a
11:11:43 15 digital sign compared to a small backlit sign would
16 increase the level of glare as a part of the ambient
17 conditions; true?

18 A. Yes.

19 MR. INGLESE: Object to the form.

11:11:59 20 BY MR. DEWULF:

21 Q. So your counsel asked you about looking at Google
22 Maps and Google Earth. Do you recall those questions?

23 A. I do.

24 Q. In terms of fairness to the parties in the Board
11:12:12 25 of Adjustment hearings, if you are bringing in evidence

1 that is not being presented by the parties, do you feel an
2 obligation to share that with the parties?

3 MR. INGLESE: Object to the form.

4 THE WITNESS: Yes.

11:12:26 5 BY MR. DEWULF:

6 Q. Okay. And so while most of us might have the
7 ability to go on Google Earth and check, for example, what
8 the view was of the marijuana dispensary on 44th Street, in
9 order to be fair to the parties, they would have had --
11:12:49 10 they should be given notice ahead of time so they could
11 prepare for analyzing and responding to that evidence;
12 correct?

13 A. Yes.

14 Q. And similarly, in our case, if we're going to
11:13:01 15 bring in evidence that relates to something that's not a
16 part of the presentations by the parties that's evidence
17 that could relate to the decision by the board, you ought
18 to be giving notice and an opportunity to respond by the
19 participants --

11:13:19 20 MR. INGLESE: Object to form.

21 BY MR. DEWULF:

22 Q. -- in the hearing?

23 A. Yes.

24 Q. Counsel asked you whether the word "extra record"
11:13:28 25 was a part of the presentations or preparation materials

1 that the city had provided to you, and you said, no, it
2 wasn't; right?

3 MR. INGLESE: Object to the form.

4 THE WITNESS: That's correct.

11:13:41 5 BY MR. DEWULF:

6 Q. But when we talked about -- in my questioning of
7 you in your deposition, when we talked about extra record,
8 you understood that to be evidence or testimony that was
9 outside of the evidence being provided by the parties at
11:13:54 10 the hearing; right?

11 A. Yes.

12 Q. And so in the way we commonly understand this
13 term, the introduction of evidence from the Bootz & Duke
14 website, including specifically information regarding the
11:14:10 15 St. Luke's Catholic Church sign, was extra-record evidence
16 or evidence outside of the -- of that which is presented by
17 the parties at the hearing; right?

18 MR. INGLESE: Object to the form.

19 THE WITNESS: Yes.

11:14:22 20 BY MR. DEWULF:

21 Q. There were questions asked by your counsel about
22 the impact on traffic. But you understood that part of the
23 reason the church wanted the sign is to draw more people to
24 their church; right?

11:14:43 25 MR. INGLESE: Object to the form.

1 THE WITNESS: Yes.

2 BY MR. DEWULF:

3 Q. Save a few souls if they could?

4 A. If they could.

11:14:48 5 Q. All right. So that -- to the extent that we're
6 talking about traffic or traffic congestion, either
7 pedestrian or vehicular, clearly that would be a change in
8 the traffic; that is, that would result from the sign
9 change; right?

11:15:06 10 MR. INGLESE: Object to the form.

11 THE WITNESS: Most respectfully, yes.
12 Although there are -- I'm going to throw out a random
13 number here. Let's say there are 75 parking spaces in that
14 area and currently the church has zero cars parked.
11:15:21 15 Ambient conditions of parking is not zero. It's 75. And
16 they have an allowance to meet 75 parking spaces in that
17 area.

18 And if they have a sign that is pulling
19 people in, it's increasing vehicular traffic, but it's also
11:15:35 20 filling an allowable amount of parking spaces on that site.
21 So it's not necessarily breaking ambient condition.

22 BY MR. DEWULF:

23 Q. Did you ever do a traffic study of what would
24 happen before and after the introduction of this sign at
11:15:47 25 this location?

1 A. Not personally, no.

2 Q. Did anyone?

3 A. No.

4 Q. Did Bootz & Duke ever do a traffic study?

11:15:52 5 A. They did not.

6 Q. So you don't know one way or the other whether
7 folks are filling those 75 spots of parking in that lot or
8 not; right?

9 A. No, sir.

11:16:02 10 Q. But it would be fair to say that the whole purpose
11 of spending the money on the sign is to draw people into
12 that location so they can park their cars in that lot;
13 right?

14 A. Correct. Yes, sir.

11:16:14 15 Q. Okay. So you've driven -- I think you testified
16 earlier you've driven Camelback Road many, many times?

17 A. Yes, sir.

18 Q. And I think you said that you lived here since you
19 were ten or something; right?

11:16:44 20 A. Correct.

21 Q. So in that span between 44th Street and Scottsdale
22 Road, this digital sign will be unique, a one-and-only type
23 of sign like that for that entire span of Camelback Road;
24 correct?

11:17:02 25 A. I believe there are a few digital signs just west

1 of Scottsdale Road on Camelback, but yes, up through --
2 getting close to Camelback -- getting close to Scottsdale
3 Road and Camelback from 44th Street, the answer is yes.

4 MR. DEWULF: No further questions. Thanks.

11:17:16 5 MR. INGLESE: I'm good.

6 THE COURT REPORTER: Daniel, do you want a
7 copy of the transcript?

8 MR. INGLESE: That would be great.

9 THE COURT REPORTER: E-tran only? Electronic
11:17:28 10 only with exhibits?

11 MR. INGLESE: That's fine.

12 (The deposition concluded at 11:17 a.m.)

13 (Signature not requested)

14
15 _____
JONATHAN AMMON
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1 STATE OF ARIZONA)

2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings
4 were taken before me; that the witness before testifying
5 was duly sworn by me to testify to the whole truth; that
6 the foregoing pages are a full, true, and accurate record
7 of the proceedings all done to the best of my skill and
8 ability; that the proceedings were taken down by me in
9 shorthand and thereafter reduced to print under my
10 direction.

11 I CERTIFY that I am in no way related to
12 any of the parties hereto; nor am I in any way
13 interested in the outcome hereof.

14 [] Review and signature was requested.

15 [] Review and signature was waived.

16 [X] Review and signature was not requested.

17 I CERTIFY that I have complied with the
18 ethical obligations set forth in ACJA 7-206(F)(3) and
19 ACJA 7-206(J)(1)(g)(1) and (2). Dated at Phoenix,
20 Arizona, this 23rd day of September, 2022.

21
22 
23

24 CINDY MAHONEY
25 Certified Reporter
Arizona CR No. 50680

1 I CERTIFY that Coash & Coash, Inc., has
2 complied with the ethical obligations set forth in ACJA
3 7-206(J)(1)(g)(1) through (6).

4 
5 _____

6 COASH & COASH, INC.

7 Registered Reporting Firm

8 Arizona RRF No. R1036
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A large, stylized, light blue phoenix logo is positioned on the left side of the slide, set against a darker blue background. The phoenix is depicted in profile, facing right, with its wings spread and its tail feathers forming a large, circular, swirling shape.

Board of Adjustment Training

August 30, 2018

Planning & Development Department

City of Phoenix



Agenda

- Types of Regulations
- Legislative vs. Quasi-Judicial
- Common Terms
- Types of Cases
- Review Criteria
- General Process
- Q & A



Zoning Ordinance

- Types of Regulations
 - Land Use
 - Uses are permitted in each district
 - Use Permit
 - Development Standards
 - Numerical Standard (Setback, Lot Coverage)
 - Variances



Legislative vs. Quasi-Judicial

- Legislative
 - Lawmaking
 - Rezoning
 - Text Amendments
 - Adopting Plans
- Quasi-Judicial
 - Similar to a Judge
 - Enforce/carry out/interpret existing rules
 - Apply legal standards to the facts and circumstances of a specific case



Legislative vs. Quasi-Judicial

- Legislative

- Ex Parte Communication
 - Allowed
- Evidence and Testimony
 - Decisions based on everything that is known in addition to what is presented at the hearing

- Quasi-Judicial

- Ex Parte Communication
 - Not Allowed
- Evidence and Testimony
 - Decisions are based only on the testimony and evidence presented at the hearing



Common Terms

- **Applicant**
 - Submitted application
- **Appellant**
 - Appealed ZAHO decision
- **Uphold**
 - Agree with ZAHO decision
- **Overturn**
 - Disagree with ZAHO decision
- **Findings**
 - Rationale for decision
- **ZAHO**
 - Zoning Adjustment Hearing Officer



Types of Cases

- Variances
 - Relief on development standards
 - Setbacks, Lot Coverage, Spacing, etc.
- Use Permits
 - Uses generally compatible
 - Case by case analysis
 - Secondhand Sales, Outdoor Dining, etc.
- Interpretations
 - Ambiguous, vague, unclear
 - Application in particular situations



Use Permit Criteria

- The use will not:
 - cause a significant increase in vehicular or pedestrian traffic in adjacent residential area
 - emit odor, dust, gas, noise, vibration, smoke, heat or glare at levels exceeding ambient levels
 - contribute in a measureable way to the deterioration of the area or the lowering of property values
 - comply with all relevant laws



Variance Criteria

- Special Circumstance or Property Hardship
- Cannot be self imposed
- Necessary to enjoy reasonable and substantial property rights
- Cannot have a harmful impact on adjoining properties or the area in general



General Process - Meetings

- Provide clear explanation of request or process in terms that the average citizen can understand
- Direct staff to explain further
- Be nice and fair to both sides (i.e. time to speak)
- Perception is everything
 - *Be cautious of appearing too comfortable with applicants/appellants or other hearing attendees*
- If ZAHO decision is overturned, findings should be stated after the motion and second
 - *“There is/is not special circumstance or hardship”*
 - *“The hardship is/is not self-imposed”*
 - *It is/is not necessary to enjoy reasonable and substantial property rights”*
 - *“It will/will not have a detrimental impact”*



Meeting Outline

- Chair Calls the Case
- Zoning Administrator Presents ZAHO decision
- Swear in all speakers for specific case
- Appellant – 10 Minutes
- Opposing Side – 10 Minutes
- Appellant Rebuttal – 5 Minutes
- Board Discussion/Questions
- Render Decision



De Novo Hearing

- New Hearing
 - New evidence can be presented
 - i.e., Revised Site Plan
 - Request can be modified to an extent
 - i.e., Scope of Project
 - i.e., Variance to reduce setback to 10-feet. Minimum 15-feet required.
 - Modified to reduce setback to 12-feet.
 - Could not modify request to reduce setback to 9-feet.



Enforceable Stipulations

- Relevant to request
 - Legal
 - Clearly Understandable
 - Proportionate
- State what you want and staff can recommend specific language



Questions

