

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT

Regular Meeting

August 22, 2023

—MINUTES—

1. CALL MEETING TO REGULAR MEETING ORDER

Chairman Foose called the meeting to order at 7:20 pm

2. ROLL CALL

Jeff Foose-	Present	Andrew Fresco-	Absent
James Weideli -	Present	Gary LaSpisa-	Present
Donald Sweeney-	Present	Jeff Sicat-	Absent
Bruce Bongiorno-	Present	Claudio Vescio-	Present
Pushpavati Amin-	Present	John Gayeski-	Absent
Mr. Kulak-	Present		

Others present: Board Attorney Rich Oller, Esq., Board Planner Ms. Scarlett Doyle, and Zoning Officer Roger Dornbierer.

3. OPEN TO THE PUBLIC

Chairman Foose opened the meeting to the public. With there being no public wishing to speak, the Board closed the public portion.

4. BOARD MINUTES

December 21, 2021 Regular Meeting

On motion by Mr. Weideli, seconded by Mr. Bongiorno, the Board voted to approve the minutes as presented based on the following roll call vote:

Ayes: Mr. Weideli, Mr. Sweeney, Ms. Amin, Mr. Bongiorno & Chairman Foose

Nays:

Ineligible: Mr. LaSpisa

Abstain:

Absent: Mr. Gayeski, Mr. Fresco, Mr. Sicat & Mr. Vescio

January 18, 2022 Reorganization & Regular Meeting

February 1, 2022 Regular Meeting

February 15, 2022 Regular Meeting

March 1, 2022 Regular Meeting

April 5, 2022 Regular Meeting

December 6, 2022 Regular Meeting

January 17, 2023 Reorganization Meeting
January 17, 2023 Regular Meeting

On motion by Mr. Weideli, seconded by Mr. Bongiorno, the Board voted to approve the foregoing minutes with amendments based on the following roll call vote:

Ayes: Mr. Weideli, Mr. Sweeney, Ms. Amin, Mr. Bongiorno, Mr. Kulan
& Chairman Foose

Nays:

Ineligible: Mr. LaSpisa

Abstain:

Absent: Mr. Gayeski, Mr. Fresco, Mr. Sicat & Mr. Vescio

5. RESOLUTIONS

Application No. 23-008-ZB; Vincent J. Carrube III
Block 363, Lot 1 (15 Crest Drive)

On motion by Mr. Weideli, seconded by Mr. LaSpisa, the Board voted to adopt the resolution as amended based on the following roll call vote:

Ayes: Mr. Weideli, Mr. LaSpisa, Mr. Sweeney, Ms. Amin, Mr. Bongiorno,
Mr. Kulak & Chairman Foose

Nays:

Ineligible:

Abstain:

Absent: Mr. Gayeski, Mr. Fresco, Mr. Sicat & Mr. Vescio

6. LAND DEVELOPMENT APPLICATIONS

23-012-ZB; Somerville Lumber Company
1480 Route 22; Block 234, Lot 2, 3 & 4

See attached transcript provided by Devon Gerber, RMR, CRR, CCR of On Q Reporting LLC.

The application was carried to the Tuesday October 12, 2023 Regular Meeting without further notice.

7. OTHER BOARD BUSINESS

#20-011-ZB T-Mobile Northeast, LLC
Block 623, Lot 12 (1222 Washington Valley Road)

Mr. Dornbierer advised the Board that he conducted an inspection of the property and confirmed the work had been completed as required.

8. ADJOURNMENT

The Board unanimously voted to adjourn at approximately 10:02 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jo-Ann M. Ricks", written in a cursive style.

Jo-Ann M. Ricks

Deputy Land Use Administrator/Deputy Zoning Officer

1 TOWNSHIP OF BRIDGEWATER
2 ZONING BOARD OF ADJUSTMENT
3
4
5 IN THE MATTER OF THE :
6 APPLICATION OF: :
7 #23-012-ZS, SOMERVILLE :
8 LUMBER COMPANY, 1480 ROUTE: :
9 22, BRIDGEWATER, Block: :
10 234, Lot: 2, 3 & 4 :
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10 TRANSCRIPT OF PROCEEDINGS
11 TUESDAY, AUGUST 22, 2023
12 COMMENCING AT 7:00 P.M.

13 BOARD MEMBERS PRESENT:
14 JEFFREY FOOSE-Chairman
15 JOHN KULAK
16 GARY LASPISA
17 CLAUDIO VESCIO
18 BRUCE BONGIORNO
19 JAMES WEIDELI
20 PUSHPAVATI AMIN
21 DONALD SWEENEY

22 ALSO PRESENT:
23 SCARLETT DOYLE, Board Planner
24 RICHARD OLLER, ESQUIRE, Board Attorney
25 ROGER DORNBIERER- Zoning Officer

26 STENOGRAPHICALLY REPORTED BY:
27 DEVON GERBER, RMR, CRR, CCR
28 ON Q REPORTING, LLC
29 onqreporting@gmail.com

1 A P P E A R A N C E S:
2
3 DIFRANCESCO, BATEMAN, KUNZMAN, DAVIS, LEHRER &
4 FLAUM, P.C.
5 15 Mountain Boulevard
6 Warren, New Jersey 07059
7 BY: MICHAEL SILBERT, Esq.
8 JEFFREY LEHRERE, Esq.
9 Counsel for the Applicant
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1 I N D E X:
2 WITNESS PAGE
3 Paul J. Pettit 58
4 Examination by Mr. Silbert
5 Dominick Caruso, III 114
6 Examination by Mr. Lehrer
7 Jonathan Glick 134
8 Examination by Mr. Lehrer
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10 PUBLIC COMMENT:
11 NAME ADDRESS PAGE
12
13 (None.)
14

15 E X H I B I T S
16
17 EXHIBIT NO. DESCRIPTION PAGE
18
19 A-1 43 Page Presentation 18
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1 CHAIRMAN FOOSE: All right, good evening,
2 everyone. I am going call to order. Tuesday,
3 August 22nd, 2023, Bridgewater Township Zoning
4 Board of Adjustment, regular meeting. Both
5 adequate and electronic notice of this meeting
6 specifying the time, place, and manner in which
7 such notice was provided in accordance with the
8 Open Public Meetings Act, NJSA 10:4-6.
9 Specifically on April 19th, 2023, proper notice
10 was sent to the Courier News and the Star
11 Ledger and filed with the clerk in the Township
12 of Bridgewater, and posted on the bulletin
13 board in the Municipal Building.
14 Please be aware of the Zoning Board of
15 Adjustment policy for public hearings. No new
16 application will be heard after 9:30 p.m. and
17 no new testimony will be taken after 10:00 p.m.
18 If you are able, please rise for the
19 salute to the flag.
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21
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(Pledge of Allegiance.)

Good evening, Roger, roll call, please.

MR. DORNBIERER: Yes, sir.

Mr. Foose?

CHAIRMAN FOOSE: Here.

MR. DORNBIERER: Mr. Weideli?

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<div data-bbox="203 121 743 974" data-label="Text"> <p>1 MR. WEIDELI: Here.</p> <p>2 MR. DORNBIERER: Mr. LaSpisa?</p> <p>3 MR. LASPISA: Here.</p> <p>4 MR. DORNBIERER: Ms. Amin?</p> <p>5 MS. AMIN: Here.</p> <p>6 MR. DORNBIERER: Mr. Sweeney?</p> <p>7 MR. SWEENEY: Here.</p> <p>8 MR. DORNBIERER: Mr. Fresco? Mr. Fresco,</p> <p>9 absent.</p> <p>10 Mr. Bongiorno?</p> <p>11 MR. BONGIORNO: Here.</p> <p>12 MR. DORNBIERER: Mr. Gayeski? Absent.</p> <p>13 Mr. Sicat? Absent.</p> <p>14 Mr. Kulak?</p> <p>15 MR. KULAK: Here.</p> <p>16 MR. DORNBIERER: Mr. Vescio?</p> <p>17 MR. VESCIO: Here.</p> <p>18 MR. DORNBIERER: Ms. Doyle?</p> <p>19 MS. DOYLE: Here.</p> <p>20 MR. DORNBIERER: Mr. Burr? Absent.</p> <p>21 Mr. Oller?</p> <p>22 MR. OLLER: Here.</p> <p>23 MR. DORNBIERER: We have a quorum.</p> <p>24 (Whereupon, the board continued</p> <p>25 with its agenda and at 7:10 p.m.</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p> </div>	<div data-bbox="873 121 1414 974" data-label="Text"> <p>1 the following application was</p> <p>2 called.)</p> <p>3 CHAIRMAN FOOSE: We're going to move on</p> <p>4 and we're going to have Somerville Lumber</p> <p>5 Company. Mr. Silbert, good evening.</p> <p>6 MR. SILBERT: Good evening, Mr. Chairman.</p> <p>7 CHAIRMAN FOOSE: Oh, and Mr. Lehrer.</p> <p>8 MR. LEHRER: Mr. Chairman, it's time in my</p> <p>9 career for me to pass the baton, but I'm going</p> <p>10 to sit second chair, just to make sure he</p> <p>11 doesn't do anything I wouldn't do.</p> <p>12 CHAIRMAN FOOSE: So like Michael Jordan</p> <p>13 taking the bench.</p> <p>14 MR. LEHRER: Yes.</p> <p>15 CHAIRMAN FOOSE: Fair enough. Good to see</p> <p>16 you.</p> <p>17 MR. OLLER: So, Mr. Silbert, before you</p> <p>18 get too far into doing any opening, I thought I</p> <p>19 would just spend a minute and just talk to the</p> <p>20 board. And section 68 cases isn't the normal</p> <p>21 Planning Board case. Although, as the board</p> <p>22 would remember, we happened to have one about</p> <p>23 two months ago for that used car dealership.</p> <p>24 That was a Section 68 case.</p> <p>25 So, procedurally, it is the same. The</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p> </div>
<div data-bbox="203 1119 743 1971" data-label="Text"> <p>1 applicant is going to put on witnesses and</p> <p>2 establish what they are trying to get you to</p> <p>3 say yes to. So their particular application is</p> <p>4 an appeal of the Zoning Officer's determination</p> <p>5 to deny a zoning permit. Which they</p> <p>6 simultaneously filed for when they filed for a</p> <p>7 Certificate of Nonconformity for this</p> <p>8 particular property.</p> <p>9 The Zoning Officer indicated in his</p> <p>10 opinion that the warehouse use on the property</p> <p>11 was an accessory use to the retail use as a</p> <p>12 lumberyard, in that the retail was primary and</p> <p>13 the warehouse was accessory.</p> <p>14 The applicant is appealing to you saying,</p> <p>15 hey, you know what, the warehousing is really</p> <p>16 the primary use and the driving factor in a</p> <p>17 lumberyard, and the retail just kind of came</p> <p>18 along with it as an accessory use.</p> <p>19 So that's -- they're going to present some</p> <p>20 witnesses today that will sort of backup what</p> <p>21 they're saying. It's a Certificate of</p> <p>22 Nonconformity under Section 68, can be issued</p> <p>23 by this board. It can also be issued by the</p> <p>24 Zoning Officer within the first year of when</p> <p>25 the zoning ordinance was changed to make</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p> </div>	<div data-bbox="873 1119 1414 1971" data-label="Text"> <p>1 something no longer permitted in the zone.</p> <p>2 They did actually make that application</p> <p>3 within the first year and they are entitled to</p> <p>4 a Certificate of Nonconformity as a matter of</p> <p>5 law as to what's legally existing on the</p> <p>6 property at the time the ordinance changed,</p> <p>7 so...</p> <p>8 MR. SILBERT: Appreciate that, Mr. Oller.</p> <p>9 MR. OLLER: I don't want to prove your</p> <p>10 case for you or disprove it.</p> <p>11 MR. SILBERT: You stole my thunder there.</p> <p>12 I was going to go through all that. I still</p> <p>13 might.</p> <p>14 CHAIRMAN FOOSE: Just quick, we all got</p> <p>15 the Doyle Burr memo dated July 28, 2023. We</p> <p>16 got it very late in the day and I'm sure you</p> <p>17 got it even later.</p> <p>18 First, I want to apologize on behalf of</p> <p>19 the board. But, second, I want to give you an</p> <p>20 opportunity, if you want to review it, if you</p> <p>21 want to take a recess, if you want to take some</p> <p>22 time, by all means, you're entitled to it. I</p> <p>23 want to make sure you're comfortable with us</p> <p>24 proceeding, because we got it late, and I know</p> <p>25 you got it late as well.</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p> </div>

<p>1 MR. SILBERT: Yeah, we got it I'm sure the 2 same time you got it. And we reviewed it and I 3 think the presentation we prepared addresses 4 most of the points raised in this memo. 5 CHAIRMAN FOOSE: Okay. 6 MR. SILBERT: So I think we're ready to go 7 forward this evening. 8 CHAIRMAN FOOSE: All right, then we're 9 good. 10 MR. SILBERT: Okay, all right, well, just 11 for the record, I'll just introduce myself to 12 the board. My name is Michael Silbert and I'm 13 an associate attorney at the law firm 14 DiFrancesco Bateman -- 15 MR. OLLER: And, Mr. Silbert, before do 16 you anything further. 17 MR. SILBERT: Sure. 18 MR. OLLER: Let me just confirm with the 19 board that we do have jurisdiction, that the 20 application was properly noticed. 21 MR. SILBERT: Absolutely. 22 MR. OLLER: To homeowners or property 23 owners within 200 feet, and it was published on 24 time and in proper form. So the board has 25 jurisdiction.</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>1 CHAIRMAN FOOSE: Thank you. 2 MR. SILBERT: Thank you. So as the board 3 is aware, I'm an attorney at DiFrancesco 4 Bateman located in Warren Township, New Jersey. 5 And I'm joined by a member of the firm and my 6 colleague Mr. Jeff Lehrer. And we have the 7 responsibility of representing the appellant 8 this evening, Somerville Lumber Company. 9 This is actually an appeal pursuant to 10 section 70a, 72, and 74 of the Municipal Land 11 Use Law for the purpose of appealing a decision 12 issued by the Township's Zoning Officer with 13 respect to an application submitted by the 14 appellant for a Certification of Nonconformity. 15 And as Mr. Oller had stated, this Certificate 16 of Nonconformity is pursuant to Section 68 of 17 the MLUL. I might refer to this also as a 18 Section 68 Certification. 19 So before I get into the specifics of this 20 appeal, I wanted to provide a bit of background 21 information, how we arrived here. So in 22 April 2023, as Mr. Oller had stated, the 23 appellant submitted a nonconformity application 24 to the Township Zoning Officer to certify that 25 the appellant and the property had vested</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>
<p>11</p> <p>1 rights to principal warehouse uses and 2 structures, as well as those uses customarily 3 incidental to warehouse uses on property 4 located at lots two, three, and four in block 5 234. 6 Such rights having preexisted the adoption 7 of the ordinance, which this board knows all 8 too well and is very much familiar with 9 ordinance number 22-30, which amended the 10 Bridgewater Township's land use ordinances. 11 And that amendment resulted in the prohibition 12 of warehouse uses in the M1-C Zone, the zone in 13 which the subject property is located. 14 So, as Mr. Oller stated, it's very rare 15 that a Zoning Board hears a Section 68 16 application, but it does happen. But those 17 usually go directly to the Zoning Board of 18 Adjustment. It's very rare, or even rarer for 19 those types of applications to go to the Zoning 20 Officer, but since the appellant sought a 21 Section 68 Certification within one year of the 22 adoption of that ordinance I had referenced, 23 ordinance 22-30, the appellant was afforded 24 with an opportunity to seek a Certificate of 25 Nonconformity directly from the Township Zoning</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>12</p> <p>1 Officer. 2 The appellant's Section 68 application was 3 also accompanied by zoning permit application 4 for a prospective warehouse tenant that was 5 going to lease a substantial amount of space 6 that was formerly occupied by our client, 7 Somerville Lumber Company. 8 The Section 68 application was denied by 9 the Township Zoning Officer, Mr. Dornbierer, in 10 a letter dated May 11th, 2023, which was then 11 distributed to the appellant the next day on 12 May 12th. 13 And the reason for the denial was that it 14 was determined by the Township Zoning Officer 15 that the principal use on the subject property 16 was not a warehouse use, but instead it was a 17 retail use and the appellant would not be 18 entitled to a Certification of Nonconformity. 19 As a result of the denial, with respect to 20 the Section 68 application, the zoning permit 21 application for the warehouse tenant was also 22 denied since warehousing is no longer a 23 permitted use in the M1-C Zone without a 24 Certificate of Nonconformity, which we're all 25 familiar with this term, would have</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>

<p>1 grandfathered the use in for the appellant's 2 property.</p> <p>3 So, essentially, it was determined that a 4 tenant that principally engages in warehousing 5 would not be permitted as of right to operate 6 on the appellant's property.</p> <p>7 So just a few things with respect to that 8 zoning permit application, just so the board is 9 aware of what we initially came in with. So 10 the tenant that was going to lease the 11 property, the tenant was going to lease it in 12 its current condition, wasn't going to make any 13 improvements to the property that would 14 constitute what is known in the legal land use 15 context, as an intensification of a preexisting 16 nonconforming use.</p> <p>17 So if any tenant in the future wished to 18 make changes to the property that would result 19 in an intensification of the existing warehouse 20 use, for example, the tenant -- for example, a 21 tenant wanted to increase the number of loading 22 docks on the property, the appellant and/or the 23 potential tenant, as a matter of law, would 24 have to return back before this board and seek 25 what is known as D(2) use various relief to</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>1 permit an intensification of the preexisting 2 nonconforming warehouse use. And that is 3 really going towards any improvements that 4 would be characterized as intensification of 5 that use. It wouldn't involve tenant fit ups 6 or your standard type of renovations that are 7 made for a space if a tenant is going to occupy 8 the space.</p> <p>9 But, basically, I'm highlighting this 10 point because I want the board to be aware and 11 feel comfortable in knowing that should the 12 appellant be granted a Section 68 Certification 13 this evening, the appellant must return before 14 this board if they wish to make certain types 15 of changes to the property.</p> <p>16 So this certificate we're seeking is not 17 carte blanche approval for the appellant to 18 then go ahead and do whatever they wish within 19 their property. They still have to work within 20 the confines of the MLUL. And I think this 21 should serve some level of assurance to the 22 board that the appellant is really only seeking 23 certification to permit the type and scope of 24 the use that has always existed on the property 25 and really nothing more. At least this</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>
<p>15</p> <p>1 evening.</p> <p>2 I've prepared, along with Mr. Lehrer, a 3 presentation that I would like to present to 4 the board to just further familiarize the board 5 with the Section 68 Certification process as 6 well as the legal differences between principal 7 uses and accessory uses since that seems to be 8 the point of controversy here.</p> <p>9 But, before I start the presentation -- 10 well, actually I'll just go through -- I also 11 have in addition to the presentation, I have 12 four witnesses that I would like to present to 13 the board. First I intend to call Mr. Paul 14 Pettit, who worked for Somerville Lumber 15 Company for over four decades.</p> <p>16 My second witness, the board is probably 17 familiar with, Mr. Dominick Caruso. Mr. Caruso 18 is a well-known and reputable builder and a 19 lifelong resident of Bridgewater Township and 20 he's going to provide witness testimony with 21 respect to his long lasting business 22 relationship with Somerville Lumber.</p> <p>23 My third witness is Mr. Jonathan Glick, 24 who was retained by Somerville Lumber a number 25 of years ago to lease and market the subject</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>16</p> <p>1 property. And I'll see when we call him, I 2 might ask to qualify him as an expert in the 3 field of real estate broker, specifically 4 related to industrial real estate. But I'm not 5 sure if it's necessary at this moment.</p> <p>6 And my last witness is someone else that 7 the board is familiar with, Mr. Jim Kyle, 8 Professional Planner. I think we felt that it 9 would be helpful for the board and for Mr. Kyle 10 to listen to the testimony presented this 11 evening, and then provide his professional 12 planning perspective to the board in light of 13 the testimony provided by other witnesses.</p> <p>14 So before I go to the presentation, 15 there's one last thing I wanted to say before I 16 begin. So while the appellant respectfully 17 disagrees with Mr. Dornbierer's denial, there's 18 an old adage, which is found in the Cox Book, 19 which is our land use bible, that says: "To 20 doubt, is to deny."</p> <p>21 So, in short, Zoning Officers are expected 22 to refuse to issue any permit or certification 23 where there is any doubt whatsoever for what 24 the applicant is seeking. And this has always 25 been the general rule, that if there's any</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>

1 doubt in the Zoning Officer's mind, that the
2 matter should then proceed forward to the
3 Zoning Board so that the Zoning Board can hear
4 testimony and hear evidence presented at a
5 public hearing to be better informed in order
6 to render a decision..

7 I say this because two things can be true
8 at once. If Mr. Dornbierer, which he clearly
9 did, expressed doubts, he was right to deny the
10 Section 68 Certification and the zoning permit
11 application that accompanied with it. But, at
12 the same time, it can also be true that the
13 principal use on the property was in fact a
14 warehouse use. And as such, that the appellant
15 would be entitled to the certificate of
16 nonconformity. So, if it's okay, I would like
17 to kind of go through this presentation.

18 CHAIRMAN FOOSE: Just, real quick, let me
19 just get on the record now. We're on YouTube
20 so we're broadcasting to the world so people
21 who are bored at home can watch our meetings
22 and enjoy what happens in Bridgewater, New
23 Jersey.

24 But it's important that they're not going
25 to see what's in front of you. But what they

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1 can see on Bridgewaternj.gov, go tonight's
2 agenda, there's a blue link with all the
3 documents. And hopefully everything you'll
4 have here tonight, they'll be able to see via
5 that link. If you can as you go through the
6 presentation, go through each document and give
7 it an identifier marking.

8 MR. SILBERT: Got it.

9 CHAIRMAN FOOSE: So people know when
10 you're switching at home and know what you're
11 talking about. And hopefully they can follow
12 along and understand what you're talking about.

13 MR. SILBERT: Got it. so we can,
14 Mr. Oller, if we want to mark it as A-1.

15 MR. OLLER: It would be A-1 with today's
16 date. Do we have a copy of that already?

17 MR. SILBERT: I sent a copy to Ms. Ritz
18 [ph.] So there should be a copy.

19 MR. OLLER: We have a digital copy?

20 MR. SILBERT: Yes.

21 MR. OLLER: Is there a hard copy we can
22 mark too?

23 MR. SILBERT: We can. I might -- I'll
24 just give you a hard copy that I have here. I
25 printed one. Black and white copy.

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1 MR. OLLER: Thank you.

2 CHAIRMAN FOOSE: And the board is able to
3 see. We have updated screens in front of us so
4 we're able to see as we go through.

5 MR. SILBERT: Great. But for the benefit
6 of the public, I will announce if I'm changing
7 pages.

8 CHAIRMAN FOOSE: Yeah, and I want to thank
9 Ms. Mader [ph.] for getting us online. Looks
10 great.

11 MR. SILBERT: Thank you.

12 CHAIRMAN FOOSE: First time using this
13 technology, so go easy on us.

14 MR. SILBERT: I will. This is the first
15 time as an attorney I'm really making a
16 presentation like this before a board. Usually
17 you have an engineer or architect doing this,
18 so it's a little unorthodox.

19 MR. OLLER: Yeah, I just want to advise
20 the board that this is part of Mr. Silbert's
21 opening to the board. It's not necessarily
22 evidence per se. And he has witnesses that
23 will come after and support his opening
24 statement.

25 MR. SILBERT: Absolutely. So this

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1 presentation is going to include a lot of
2 photographs of the property, for example. And
3 I'm not going to -- I can't testify to the
4 authenticity of the photos, as to what they
5 represent. But when I call my first witness,
6 I'm going to ask that he certify as to the
7 authenticity of the photos. And hopefully can
8 give maybe a timeline perspective on them.
9 Where I know the answer, I'll provide it, but
10 I'll ask our first witness to verify that.

11 CHAIRMAN FOOSE: If your screen is not
12 working, you can grab a seat down here.

13 MR. SILBERT: So this entire presentation
14 has, which I promise it won't take as long as
15 this. But it has 43 pages because a lot of it
16 consists of pictures. I'm on the first page
17 right now.

18 So I wanted to provide the board some
19 legal framework of a Section 68 application.
20 So, in New Jersey, preexisting nonconforming
21 uses refer to land uses or structures that were
22 established lawfully before changes in zoning
23 regulations that would render those uses or
24 structures noncompliant with new zoning
25 requirements.

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<p>1 These uses are considered grandfathered</p> <p>2 in, are allowed to continue even if they do not</p> <p>3 conform to the current zoning standards. So as</p> <p>4 the board can appreciate, property rights are</p> <p>5 perhaps the most fundamental concept of private</p> <p>6 ownership in the country, and they are</p> <p>7 protected in principle by the U.S.</p> <p>8 Constitution, as well as various other legal</p> <p>9 frameworks.</p> <p>10 Section 68 of the MLUL attempts to honor</p> <p>11 this sacred right as it, and its accompanied</p> <p>12 case law strive to recognize that property</p> <p>13 owners are invested in their land and that they</p> <p>14 have the right to continue using it in a way</p> <p>15 that was legally established before zoning</p> <p>16 changes occurred.</p> <p>17 So property owners are essentially</p> <p>18 required to rely upon established zoning laws</p> <p>19 in place before the current zoning law came</p> <p>20 into being. When zoning changes take place, it</p> <p>21 can render previously lawful land use as</p> <p>22 nonconforming, which can lead to loss of</p> <p>23 property value or the ability to use the</p> <p>24 property as originally intended. So there's an</p> <p>25 effort to protect preexisting nonconforming</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>1 uses, to help prevent damage and injury to</p> <p>2 private property owners. The idea is to</p> <p>3 prevent them from unjustly losing their</p> <p>4 investments due to changes in zoning</p> <p>5 regulations.</p> <p>6 So the board has an opportunity tonight to</p> <p>7 ensure that the -- what we consider or perceive</p> <p>8 to be the preexisting nonconforming uses in the</p> <p>9 M1-C manufacturing zone, can continue to</p> <p>10 contribute to the stability of what are and</p> <p>11 were well established neighborhoods.</p> <p>12 Our contention is that the adoption of</p> <p>13 ordinance 22-30 was not to disrupt the</p> <p>14 character and fabric of an established zone,</p> <p>15 such as the M1-C Zone.</p> <p>16 So this evening, I'll ask the board that</p> <p>17 they consider the subject property site layout</p> <p>18 in addition to the testimony regarding the</p> <p>19 historic uses that existed on the property.</p> <p>20 Section 68 applications in order to be</p> <p>21 eligible for them, Somerville Lumber must</p> <p>22 demonstrate that the nonconforming use has been</p> <p>23 in continuous operation since before the zoning</p> <p>24 change, that the use lawfully -- and that the</p> <p>25 use lawfully existed. Substantial continuation</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>
<p>23</p> <p>1 means that the use has been ongoing and hasn't</p> <p>2 been abandoned or discontinued for an extended</p> <p>3 period of time.</p> <p>4 I point that out because I want the board</p> <p>5 to be aware that just because a tenant vacancy</p> <p>6 occurs on a property, does not mean that a</p> <p>7 certain use has been abandoned or discontinued.</p> <p>8 And I don't believe any such argument was</p> <p>9 raised previously. But I just figured I would</p> <p>10 address that on the first slide here.</p> <p>11 So as the board is well aware, the M1-C</p> <p>12 Zone is an industrial manufacturing zone. And</p> <p>13 as will be discussed in greater detail, the</p> <p>14 zone, to my knowledge, really only consists of</p> <p>15 five lots, with Somerville Lumber's three lots,</p> <p>16 and then adjacent to Somerville Lumber, you</p> <p>17 have another industrial property, lot five.</p> <p>18 And the Planning Board actually just recently</p> <p>19 approved a 73,000 square foot new warehouse</p> <p>20 building on adjacent lot five.</p> <p>21 So section -- the reason why I say that is</p> <p>22 because Section 68 was designed to ensure</p> <p>23 community stability. There are also a number</p> <p>24 of comments made by local officials that the</p> <p>25 intent of 22-30, which ordinance 22-30, which</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>24</p> <p>1 prohibited warehousing in the Township, was not</p> <p>2 to interfere with those established warehouse</p> <p>3 industrial uses that already existed in the</p> <p>4 Township. While it was really adopted to</p> <p>5 address an influx of new proposed warehousing</p> <p>6 and industrial uses.</p> <p>7 So I wish to express a perspective that</p> <p>8 goes beyond the immediate matter of this appeal</p> <p>9 that I think we have an opportunity to</p> <p>10 proactively address this concern now or this</p> <p>11 concern that could arise in the future. I</p> <p>12 would like to bring the board's attention to</p> <p>13 the concept of a regulatory taking or inverse</p> <p>14 condemnation which pertains to instances where</p> <p>15 government regulations inadvertently lead to</p> <p>16 the devaluation or excessive restriction of</p> <p>17 private property without just compensation.</p> <p>18 I would be happy to speak about this</p> <p>19 further tonight, but I think it's just</p> <p>20 important that I bring that up and highlight</p> <p>21 Somerville Lumber's concerns about the</p> <p>22 property's marketability or leasability as a</p> <p>23 principal retail use and say that these are</p> <p>24 genuine concerns. So while I recognize that</p> <p>25 this aspect certainly falls beyond the scope of</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>

1 the Zoning Board's responsibilities this
2 evening, I think it's worth considering how a
3 Certificate of Nonconformity regarding
4 principal warehousing use can play a pivotal
5 role in mitigating these concerns. I think
6 this is just a gentle reminder of the
7 interconnectedness of the board's decision this
8 evening for things moving forward.

9 So turning to second page here. We're
10 really here this evening because we're trying
11 to draw a distinction and understand the
12 difference between a principal use and an
13 accessory use.

14 Nobody denies that retail has existed on
15 the subject property. And, similarly, I don't
16 think anyone would deny the fact that
17 industrial uses, such as warehousing, has
18 existed on the property.

19 The Zoning Officer's denial letter does
20 not suggest that these uses do not exist on the
21 property. Rather, the letter's central focus
22 is on the nature of these uses. Specifically
23 whether the retail use on the property is
24 principal or primary on the property, or
25 whether, inversely, the industrial use is

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1 dwellings, commercial zone. Same thing, you
2 would have a principal use and permitted
3 structure as commercial offices. And then
4 typically in industrial manufacturing zones,
5 you have a permitted manufacturing or warehouse
6 industrial use and structure.

7 Accessory uses are secondary or
8 subordinate activities that support or
9 compliment the principal use of a property.
10 They are typically incidental and subordinate
11 to the principal use. And they're usually --
12 they're always directly related to it.

13 Zoning regulations often limit the scale
14 and scope of the accessory use to prevent them
15 from overshadowing the principal use. So in
16 the industrial and warehouse context, what
17 would be some examples of accessory uses?
18 You'd have office space, shipping and receiving
19 space, you might have manufacturing space.
20 This is specifically pertinent to this
21 application. You have outdoor storage space,
22 you may have research and development lab
23 space. You find this in office buildings, but
24 you might find in a warehouse. You could have
25 employee only fitness centers. Or I think on

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1 primary and principal on the property.

2 So we're asking the board to rectify what
3 amounts to just an improper characterization of
4 the operations on the subject property by the
5 Zoning Officer with respect to what constitutes
6 principal and accessory uses. In the land use
7 context, the distinction between those two uses
8 revolves around the significance, purpose, and
9 relationship of those various activities or
10 functions carried out on a property.

11 So now I'm turning to the third page. And
12 on the page, as I previously mentioned, these
13 are photographs of the operations on the
14 property. And as I previously stated, we'll
15 have one of our witnesses authenticate the
16 photographs.

17 Principal uses are the primary, main, or
18 predominant activities for which a property is
19 developed or utilized. They're the core
20 functions that define the primary purpose of
21 the property's existence. Zoning regulations
22 often dictate the permissible principal uses
23 for different zones or districts. So, for
24 example, in a residential zone, a principal use
25 and structure is most commonly residential

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1 this property, for example, I think at some
2 point there was on site what I'll call a
3 cafeteria that provided meals for purchase for
4 employees on the property.

5 And also, in this context, you can have
6 showroom space. You can have retail space
7 within the warehouse or industrial structure.
8 And this would be used to display products that
9 can be sold to customers and clients directly.

10 On this slide here, you see photos of what
11 was The Deck Center, and this consisted of
12 approximately 3,000 square feet of showroom
13 space.

14 Turning to slide five. I might add here
15 also that The Deck Center, for example, has
16 another location in Flemington. So this
17 location is a bit unique because you had --
18 well, I'll get into the percentages, but you
19 had a lot of warehouse and industrial space at
20 this property. Versus the other property, you
21 only had retail and showroom space. So this
22 property was serving the retail and accessory
23 space in Flemington, for example.

24 One of the questions that people might
25 have: Can there be multiple principal uses on

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<p>1 a property? I think that's a really good</p> <p>2 question, because in some cases a property can</p> <p>3 have more than one principal or primary use.</p> <p>4 And, typically, I looked at Bridgewater Zoning</p> <p>5 Regulations, and I didn't see a provision that</p> <p>6 specifically restricted each lot to one</p> <p>7 principal use like I've seen in other</p> <p>8 municipalities. But, typically, zoning</p> <p>9 regulations will layout whether or not more</p> <p>10 than one principal use is permitted on a</p> <p>11 particular lot.</p> <p>12 For example, a lot of zones, not</p> <p>13 necessarily Bridgewater, but a lot of zones</p> <p>14 might allow for mixed use developments where</p> <p>15 both commercial and residential activities are</p> <p>16 considered principal uses. And, usually, the</p> <p>17 regulations will determine the design scale and</p> <p>18 proportion of those uses on the property.</p> <p>19 So in the context of this appeal, it's</p> <p>20 very possible that the property in question</p> <p>21 has, and had, more than one principal use,</p> <p>22 namely retail, which is not permitted in the</p> <p>23 Mi-C Zone. And to my knowledge, was never</p> <p>24 permitted in the zone. And warehousing and</p> <p>25 industrial uses, which before 2022, was</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>1 principally -- were principally permitted uses</p> <p>2 in the zone.</p> <p>3 So I'm now turning to slide six. And I</p> <p>4 would like to just go over the types of factors</p> <p>5 that boards tend to rely on in order to</p> <p>6 determine an accessory use versus a principal</p> <p>7 use.</p> <p>8 So boards are going to consider -- should</p> <p>9 consider the degree of integration. How</p> <p>10 closely is the accessory use connected to the</p> <p>11 principal use in terms of function and purpose?</p> <p>12 And vice versa. How closely is the principal</p> <p>13 use connected to the accessory use in terms of</p> <p>14 function and purpose? And look to see whether</p> <p>15 they're integrated.</p> <p>16 Also, the physical space, so the portion</p> <p>17 of the property that's allocated to the</p> <p>18 principal and accessory uses, and its</p> <p>19 significance in relation to the entire</p> <p>20 property.</p> <p>21 So as I move on in our presentation, and</p> <p>22 as our witnesses will testify to, we kind of</p> <p>23 broke this down in percentages. So what space</p> <p>24 is allocated for what use.</p> <p>25 Next factor to consider is economic</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>
<p>31</p> <p>1 dependency. So what's really driving the</p> <p>2 economic nature of the property? Is it the</p> <p>3 accessory use, or is it the principal use? We</p> <p>4 want to consider whether the accessory use is</p> <p>5 economically dependent on the principal use.</p> <p>6 And sometimes vice versa, the principal use can</p> <p>7 be somewhat dependent on the accessory use.</p> <p>8 But you try to balance the economic dependency</p> <p>9 of those two uses.</p> <p>10 Next, you consider the impact of the use</p> <p>11 to the neighborhood. So you should look at,</p> <p>12 for example, traffic impact. Are there a lot</p> <p>13 of cars coming to a property because it's</p> <p>14 generating a lot of retail customers? Or is</p> <p>15 there a lot of traffic coming to the property</p> <p>16 because you have a high volume of trucks that</p> <p>17 are shipping materials? What constitutes the</p> <p>18 greatest impact to the community of the two</p> <p>19 uses?</p> <p>20 And, lastly, you would look to, if there</p> <p>21 is an ordinance in place, you would look to the</p> <p>22 zoning -- the intent and purpose of the zoning</p> <p>23 regulations, the explicit language of the</p> <p>24 zoning regulations in place, to determine what</p> <p>25 likely are the accessory uses and what likely</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>32</p> <p>1 are the principal uses.</p> <p>2 I just turned to seven, and these are some</p> <p>3 more photographs of some of the uses that</p> <p>4 occurred on Somerville Lumber's property, prior</p> <p>5 to the change in ordinance. And, again, I'll</p> <p>6 have Mr. Pettit talk about these pictures.</p> <p>7 So I wanted to give an overview on page</p> <p>8 eight. I just turned to page eight of the</p> <p>9 subject property map. This is an aerial taken</p> <p>10 from Google Earth. It's taken within the last</p> <p>11 three years and it's superimposed over it is</p> <p>12 kind of -- there are labels that outline where</p> <p>13 specific uses, buildings are located. So if</p> <p>14 you're looking at the property, and you can see</p> <p>15 my cursor, the retail component, which is</p> <p>16 located on lots, predominantly lots three and</p> <p>17 four here. Somerville Lumber's property</p> <p>18 consists of lots two, three, and four. Right</p> <p>19 here. Here's lot five, and this is lot one</p> <p>20 that I think is owned by the DOT. So the</p> <p>21 retail portion of the property is right here</p> <p>22 where my cursor is.</p> <p>23 It's also probably hard to tell from this</p> <p>24 aerial, but I think probably most people are</p> <p>25 familiar with this, that there are actually a</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>

1 train -- there are train tracks located here in
2 this right of way that actually run directly to
3 lot four. I say that because, as the board can
4 appreciate, retail uses typically do not
5 involve trains that ship materials directly to
6 the property in the same way that an industrial
7 warehouse operation would have trains deliver
8 goods to the property.
9 And that train, to my knowledge, has not
10 been in use since 2018. But I think, again, it
11 serves to highlight the historic use for the
12 property.
13 Industrial warehouse operations often deal
14 with raw materials, both bulk goods or products
15 that require storage and distribution, and
16 that's why you typically see trains, for
17 example, delivering those products to the site,
18 where a retail establishment that solely relies
19 upon its store front, you wouldn't see that.
20 Now I'm turning to slides ten through 21.
21 And here's -- I'm sorry, here's slide nine.
22 This is just a tax map. But let me turn to
23 slides ten. Ten through 21 are just pictures
24 of the property. And what I wanted to say is
25 that we're not hiding the ball here. So if I

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1 its principal uses? Well, Somerville Lumber
2 argues that the property primarily served as a
3 warehouse and industrial use. At its core,
4 Somerville Lumber contends that its property
5 served as a facility for the storage,
6 distribution, and handling of lumber and
7 related construction materials.
8 The primary function of the warehouse use
9 was to store goods for a later use or
10 distribution. And that's exactly what
11 Somerville Lumber did with its lumber products
12 and building materials. So looking at
13 Somerville Lumber's historic track record,
14 Somerville Lumber believes that they were
15 crucial for the supply of construction
16 materials to builders, contractors, and
17 homeowners. And we would argue that the
18 company served as a critical component for
19 years and years and years to supply chain and
20 logistics in New Jersey construction. And that
21 the operations on this site, particularly the
22 warehouse operations, were in similar scale and
23 scope and consistent with those of other
24 principal warehouse facilities throughout the
25 Township and state.

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1 go through this, I'm on ten, I'm going to turn
2 to 11, 12.

3 What you're going to see in these photos
4 are clear industrial and warehousing, but
5 you're also going to see retail. So I didn't
6 want to create a presentation this evening that
7 tries to downplay or hide the fact that there
8 was retail on the property. You're going to
9 see the retail and showrooms. But my -- the
10 point of the presentation is to show that the
11 retail or showroom component pales in
12 comparisons to the gravity of the industrial
13 and warehouse uses that existed on the site.

14 I think I'm on 14. So you'll see here,
15 for example, you have your retail area. And
16 then you also have your office area. You know,
17 there's no contention that this is a principal
18 office use. The photos don't do a great job
19 demonstrating the difference and size and scope
20 of like the retail area here versus the
21 warehouse area. But I have another exhibit
22 that can be used to demonstrate that.

23 Just moved to the next page. Showing some
24 of the photographs on lot four.

25 So what does Somerville Lumber argue are

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1 And I'm just turning to the next page
2 here. Again, highlighting the balance between
3 the warehouse uses and the retail uses.

4 Somerville Lumber contends that the
5 allocation of space dedicated for warehouse
6 uses versus space dedicated for retail uses,
7 again, aligns with the fundamental
8 characteristics of a principal warehouse use.
9 And as Mr. Kyle will testify to later this
10 evening, when one examines the zoning
11 regulations prior to the 2022 amendment, the
12 core components of Somerville Lumber's
13 operations related to Somerville Lumber's
14 contention, such as storage, distribution,
15 handling, warehousing, seems to closely mirror
16 the ordinance that was in existence prior to
17 2022.

18 Somerville Lumber's accessory uses. So
19 Somerville Lumber notes that there are a number
20 of accessory uses on the property. For
21 example, the property was used to store goods,
22 materials, machinery, trucks, and equipment
23 outside of the warehouse structure. So outdoor
24 storage. And this was actually already -- this
25 was already flushed out to a certain degree by

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1 the Township's previous Zoning Officer, that
2 the previous Zoning Officer acknowledged in
3 e-mail correspondence that this use was in fact
4 a preexisting nonconforming use.

5 Accessory manufacturing, for example,
6 Somerville Lumber wants the board to know that
7 a portion of the property, a substantial
8 portion of the property, was used for
9 manufacturing. And Mr. Pettit can speak to
10 this directly in his testimony. But
11 manufacturing uses are the types of uses that
12 are either customarily accessory to
13 warehousing. Or vice versa. Customarily
14 accessory -- warehousing a customarily
15 accessory to manufacturing.

16 While manufacturing in 2022 beyond
17 remained a permitted principal use in the zone,
18 Somerville Lumber concedes that the scale of
19 manufacturing on the property was subordinate
20 to the overall principal use, that being
21 warehousing.

22 So, as the board can appreciate,
23 warehouses are traditionally used for and house
24 manufacturing uses. Whereas, retail showrooms
25 and retail uses, are not customarily associated

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1 So Somerville Lumber argues that the
2 retail showroom component to the property was
3 very closely connected to the principal
4 industrial warehousing use, and vice versa.
5 The showroom was used by Somerville Lumber for
6 years to sell its warehouse materials to
7 consumers. And that's not refuted. Thus,
8 there's no question as to the degree of
9 integration between the two uses. They're
10 clearly integrated with one another. And I
11 don't think the denial letter in anyway
12 suggests that retail is not highly integrated
13 with warehouse use. Or vice versa. Meaning
14 that warehouse use is integrated with retail
15 use.

16 Physical space, the portion of the
17 property allocated to the principal and
18 accessory use and its significance to the
19 entire property. Well, now I'm going to turn
20 to page 22. And this is going -- this is
21 speaking to the east building on lot four. And
22 for purposes of the presentation, I'm going to
23 refer to this as one structure.

24 You can see here I wanted to put in -- I
25 wanted to come up with ratio of uses. So you

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1 with manufacturing uses. They don't normally
2 house manufacturing.

3 Accessory wholesaling. Somerville Lumber
4 and its related entities routinely stored,
5 sold, and distributed goods in bulk quantities
6 to retailers and other businesses or
7 individuals who intended to then resell those
8 goods.

9 And, lastly, of course, there's accessory,
10 showroom, and retail space on the property.
11 Somerville Lumber concedes that it did have a
12 small retail store and showroom within the
13 warehouse to sell products directly to
14 consumers. And that its related entities
15 similarly had showrooms and retail space within
16 its warehouse to sell products directly to
17 consumers. But that's not really what drove
18 the character and nature of this property is
19 what Somerville Lumber is arguing.

20 So I'm going to go back to now sixth
21 slide. So we're supposed to consider, again, I
22 spoke about the degree of integration. How
23 closely the accessory use is connected to the
24 principal use in terms of function and purpose
25 and vice versa.

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1 can see, for example, that it lays out the
2 percentage of space dedicated to office use,
3 the percentage of space dedicated to retail
4 use, the percentage of use dedicated to
5 warehouse use. And this is supposed to
6 demonstrate the maximum capabilities of each.

7 So if it has 21 percent retail on the
8 property, I'm not sure if, for example,
9 Mr. Pettit would say, well, there was always
10 21 percent actually utilized, but the building
11 is setup in a way to accommodate up to
12 21 percent of retail.

13 Now I'm going to turn to the next slide,
14 which is I think 23. That's going to show you
15 a building layout. So you saw a bunch of
16 photos, but the photos didn't do a fantastic
17 job of encapsulating the difference in size and
18 magnitude of the uses. So I thought that a
19 building layout would serve its purpose in the
20 sense that you can see the retail size in
21 comparison to the warehouse size for this
22 building.

23 I'm just going to go to the next building
24 here. So this is the west building, or on
25 Ms. Doyle's report, identified as building two.

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1 Although I'm including everything there.
2 Again, you'll see very similar ratio of uses,
3 where the warehouse use is making up just under
4 75 percent. The retail use is making up
5 23 percent. And the office use is making
6 3 percent. And keep in mind that's only
7 looking at the percentage of use within the
8 structures themselves. That's not taking into
9 account the percentage of use of the entire
10 property. The entire property is over 9 acres.
11 So, as I mentioned previously, a lot of
12 the property was used for outdoor storage to
13 complement the industrial nature of the
14 property.
15 And then --
16 MR. SWEENEY: Mr. Silbert, can I interrupt
17 you for a second?
18 MR. SILBERT: Sure.
19 MR. SWEENEY: Can you go back to the last
20 slide.
21 MR. LEHRER: Sure. Yes.
22 MR. SWEENEY: This is building which?
23 MR. SILBERT: This is building two on lot
24 --
25 MR. SWEENEY: Okay, building two, got it.

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1 Now, is that the building that used to be at
2 one point in time a rental center? Do I
3 remember that correctly?
4 MR. SILBERT: I would ask that that
5 question, I have witnesses that will answer,
6 that will be able to better testify to which
7 tenants over which periods of time occupied
8 spaces.
9 MR. SWEENEY: All right.
10 MR. SILBERT: So this is, again, the
11 building layout for building two, which we had
12 spoke to, which I had spoken about.
13 The last structure on the property is the
14 west rear warehouse building, which is located
15 behind building two. And the buildings are
16 located on lots two and three. So if you look
17 just directly behind building two, you'll see
18 another structure there and that's 100 percent
19 warehouse space. Constructed sometime during
20 the 2000's.
21 So now I'm going back to -- actually, let
22 me just give an overview here of the ratio of
23 uses.
24 Here's a building layout of that west rear
25 warehouse I was speaking about. And then

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1 here's the overall uses on the property
2 relative to the structures. So you see over
3 100,000 square feet of warehouse space, 4,000
4 square feet of office space, and then 27,000
5 square feet of retail and showroom space.
6 Which, Mr. Sweeney, to your point, I'm not
7 denying that there was retail on the property.
8 I'm just asking to consider it based on the
9 ratio of the uses of the property.
10 Going to another factor that the board
11 should take into consideration, back to page
12 six, is economic dependency. So whether the
13 accessory use is economic dependent on the
14 principal use, and vice versa. As we testify
15 to in greater detail this evening, the retail
16 showroom space was important to Somerville
17 Lumber's overall business model for many years.
18 And there's no doubt that Somerville Lumber,
19 for many years, tried to expand this component
20 of their operation. But, with that being said,
21 Somerville Lumber argues that this was
22 absolutely and unequivocally a very small
23 fraction of Somerville Lumber's core business
24 model.
25 Somerville Lumber argues that while retail

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1 and showroom was dependent on the property's
2 principal warehousing use, conversely, the
3 warehousing and storage component of Somerville
4 Lumber's operation was not necessarily
5 dependent on the accessory showroom and retail
6 space. So what I mean by that is that these
7 warehouses, this warehouse use could have
8 functioned independently of the accessory
9 retail and showroom space.
10 So, for example, The Deck Center that's
11 located in Flemington New Jersey, which didn't
12 have any warehouse or -- which didn't have any
13 warehouse space. That operated independently
14 of having no warehouse space. And the
15 warehouse at this property would deliver goods
16 to The Deck Center in Flemington. So that's
17 what I'm trying to highlight. That they could
18 -- that the warehouse could have operated
19 independent of the accessory retail and
20 showroom.
21 So while Somerville Lumber focused on
22 growing the retail and related showroom sector
23 of its business, Somerville Lumber's business
24 was largely dependent upon the industrial
25 nature of the operations of the property.

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<p>1 Specifically as related to its business</p> <p>2 relationships with professional builders who</p> <p>3 needed to purchase materials in bulk, and then</p> <p>4 store those materials on the property while</p> <p>5 they would construct their projects.</p> <p>6 So, really, Somerville Lumber was only</p> <p>7 able to operate on this property due to the</p> <p>8 size and scope of its on-site warehousing</p> <p>9 operation. The retail component, as I</p> <p>10 previously mentioned, could have been located</p> <p>11 anywhere. But the real reason why this</p> <p>12 property was important was because of the</p> <p>13 warehousing and outdoor storage space.</p> <p>14 Again, so Somerville Lumber's business was</p> <p>15 focused on the professional builder, and the</p> <p>16 professional contractor, who would buy and</p> <p>17 store significant materials in bulk to</p> <p>18 construct projects around the state. And while</p> <p>19 Somerville Lumber did attempt to target, and in</p> <p>20 many ways, were successful targeting the</p> <p>21 do-it-yourself home builder, that type of</p> <p>22 customer, that was a very, very small fraction</p> <p>23 of its business.</p> <p>24 As this board can appreciate, this type of</p> <p>25 do-it-yourself home builder that may have</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>1 patronized Somerville Lumber business back in</p> <p>2 1975 or 1980, decreased over the years as it</p> <p>3 was much more likely they would go to a Home</p> <p>4 Depot or Lowe's. So, again, I think as time</p> <p>5 went by, the retail component, although they</p> <p>6 made a lot of attempts to strengthen it, and</p> <p>7 the showroom component, was further diminished</p> <p>8 based upon Home Depot and Lowe's coming into</p> <p>9 the area.</p> <p>10 Let's consider the potential impact of the</p> <p>11 use on the neighborhood traffic, community</p> <p>12 character. So right now I'm turning to the</p> <p>13 subject property map on page eight.</p> <p>14 And Somerville Lumber argues that the M1-C</p> <p>15 Zone and ordinance was specifically crafted</p> <p>16 around Somerville Lumber and the neighboring</p> <p>17 lot's uses. Predating 2022 of course.</p> <p>18 And, again, this zone, to my knowledge,</p> <p>19 only consists of these five lots. Three of</p> <p>20 which are owned by Somerville Lumber. One of</p> <p>21 which is owned by Mr. Denholtz. And lot one,</p> <p>22 which is on the far left of my screen here by</p> <p>23 my cursor, which I believe is owned by the DOT.</p> <p>24 So as the board can appreciate,</p> <p>25 warehousing and manufacturing were both</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>
<p>47</p> <p>1 principally permitted uses in the M1-C Zone</p> <p>2 prior to 2022.</p> <p>3 However, the permitted accessory uses, or</p> <p>4 other uses -- were other uses and structures</p> <p>5 that were customarily incidental to principal</p> <p>6 permitted uses. So the ordinance, for example,</p> <p>7 didn't say that retail was a permitted</p> <p>8 accessory use. It did, for example, suggest</p> <p>9 that if it was being used as an incidental use</p> <p>10 to the principal use, then it would be able to</p> <p>11 be there legally.</p> <p>12 In terms of site layout. Somerville</p> <p>13 Lumber contends that the parking on the</p> <p>14 property is nowhere near the amount required in</p> <p>15 order to serve a principal or primary retail</p> <p>16 operation. Simply put, as far as community</p> <p>17 impact is concerned, Somerville Lumber argues</p> <p>18 that the property is physically unable to</p> <p>19 function as a principal retail operation.</p> <p>20 The types of traffic that would</p> <p>21 predominantly come to the site, for example, as</p> <p>22 will be testified to in greater detail. Were</p> <p>23 there cars coming there for retail purposes?</p> <p>24 Yes. But the predominant bulk of traffic going</p> <p>25 to and from the site, would have been trucks</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>	<p>48</p> <p>1 delivering materials in bulk.</p> <p>2 MR. BONGIORNO: Excuse me, question.</p> <p>3 MR. SILBERT: Sure.</p> <p>4 MR. BONGIORNO: You just say that there</p> <p>5 wasn't enough space for parking for retail?</p> <p>6 MR. SILBERT: I did say that, yes, that's</p> <p>7 correct. There's not enough parking on this</p> <p>8 property to allow the property to serve as a</p> <p>9 primary retail use.</p> <p>10 MR. BONGIORNO: Has the property changed</p> <p>11 in terms of what is considered the parking lot</p> <p>12 now in the last two or three years?</p> <p>13 MR. SILBERT: To my knowledge, it has not</p> <p>14 changed in the last two or three years for</p> <p>15 parking. But I would have to defer to the</p> <p>16 appellant to answer that.</p> <p>17 MR. BONGIORNO: I'm not a real parking</p> <p>18 expert, or a space expert, but about two months</p> <p>19 ago, I drove by and there was a pop-up car show</p> <p>20 there with over 200 cars. That, to me, means</p> <p>21 that there could be a lot of space for retail</p> <p>22 parking.</p> <p>23 MR. SILBERT: I can't speak to that. I</p> <p>24 don't have any knowledge of a car show. But I</p> <p>25 would say that the way the site is currently</p> <p>ON Q REPORTING, LLC onqreporting@gmail.com</p>

1 configured, you might be able to have cars
2 parked in certain areas. But that's not how
3 the site is currently configured.
4 So the appellant is not here seeking site
5 plan review. They're not looking to change the
6 parking on site so that it can accommodate
7 retail. They're in with the existing site plan
8 layout, as it currently exists, and saying what
9 we're, what we're allowed to have right now
10 would not function as a principal retail use.
11 MS. DOYLE: Mr. Chairman?
12 CHAIRMAN FOOSE: Please.
13 MS. DOYLE: Could I get our attorney to
14 weigh in. We've listened, what I consider, to
15 be testimony. Comments are being made without
16 support. Predominant traffic will not support
17 retail. The small area that we have -- the
18 retail in Flemington, and talks about it could
19 function, but it didn't -- it took the -- it
20 took the warehousing in from Bridgewater,
21 furnished Flemington.
22 There are so many comments that are
23 factually based. That it's not the applicant
24 contends that. It's that statements that are
25 being made as fact, that I don't believe that

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1 MR. SILBERT: Okay.
2 CHAIRMAN FOOSE: Thank you, Scarlett.
3 MR. SILBERT: We'll put the parking
4 comment on hold for somebody to come up, one of
5 our witnesses, to address that.
6 Nonetheless, that was and is Somerville
7 Lumber's contention, that there isn't adequate
8 parking on the property to serve a retail use.
9 So I want to go to slides 29 and 30, which
10 are basically the last slides to my
11 presentation here.
12 And what you're seeing here are the zoning
13 regulations in place prior to October 2022.
14 And you'll see the M1-C Zone consists of these
15 -- doesn't have lot one listed here. But
16 consists of four lots that I'm speaking about.
17 The Denholtz property that was just approved
18 for 73,000 square foot new warehouse. And lots
19 two, three, and four, which is the property
20 that is subject to this appeal.
21 So let's look at the ordinance that was in
22 place prior to October 2022.
23 CHAIRMAN FOOSE: Can you just go back and
24 talk about the Planning Board approved.
25 MR. SILBERT: Sure.

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1 an attorney is able to testify to. And it's --
2 I respect him and I'm -- maybe it's all
3 correct, but it's from the wrong mouth.
4 MR. OLLER: Yeah, Mr. Chairman,
5 Mr. Silbert is not offering testimony. And I
6 cleared that --
7 MR. BONGIORNO: Sound like it.
8 MR. OLLER: This is his opening statement.
9 Nothing that he has said is testimony. He
10 needs to bring up his witnesses to verify what
11 he's said. He's trying to put his package
12 together so you hear what they're trying to
13 support with the next four witnesses.
14 CHAIRMAN FOOSE: So we're going to do
15 witnesses tonight, right?
16 MR. SILBERT: We are going to do
17 witnesses. I'm going to finish up as fast as I
18 can here. And my goal here was to layout the
19 arguments that Somerville Lumber is making.
20 And my hope is when you heard the arguments,
21 that the testimony will then be presented to
22 support the arguments that are being made.
23 MS. DOYLE: There are many, many points of
24 fact that I hope we don't lose in the testimony
25 that's forthcoming.

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1 CHAIRMAN FOOSE: Warehouse on that
2 property was an approved use. And that's why
3 it was in front of the Planning Board and not
4 the Zoning Board. Maybe can you clarify that
5 to the board.
6 MR. SILBERT: I absolutely can.
7 So the application for a warehouse use on
8 lot five came in before the change in the
9 ordinance. So while the hearing on the matter
10 was after the adoption of the ordinance that
11 prohibited warehouse use on the property, the
12 applicant in that case was protected by what is
13 known as the time of application rule. Which
14 means that if you submit your application and
15 then there's an ordinance change, as you heard
16 with the Centerpointe application, for example,
17 the zoning that is supposed to be in effect is
18 the zoning in place at the time of the
19 application.
20 So on lot five, for example, the zoning in
21 place at that time was warehousing. It's no
22 longer, but it is now what you would refer to
23 as a preexisting nonconforming use.
24 CHAIRMAN FOOSE: Perfect. Thank you.
25 MS. AMIN: I have a question on this

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1 particular picture that you're showing.
2 MR. SILBERT: Mm-hmm.
3 MS. AMIN: It says prior to October 2022,
4 that's when the M1-C Zone was created. Right?
5 Now I have a question for you.
6 MR. SILBERT: Let me just clarify --
7 MS. AMIN: Any tenants, any tenants on the
8 property still there before -- they were there
9 before 2022?
10 MR. SILBERT: So I'll answer that
11 question. First off, this is the zoning in
12 place prior to the ordinance which amended -- I
13 don't have the exact ordinance written down.
14 But this was the zoning regulations in place
15 prior to 2022. So the M1-C Zone wasn't created
16 in 2022. It was just amended. The permitted
17 uses were amended in the M1-C Zone. So that's
18 the first thing I wanted to say.
19 In terms of tenants on the property that
20 predated the change in ordinance, Somerville
21 Lumber Company closed its doors in 2020. SRS
22 Distribution, which we'll have testimony on
23 this evening, but Somerville Lumber contends is
24 virtually the same use as Somerville Lumber
25 existed in building two. There's a use on the

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1 Now we're going to turn to the permitted
2 accessory uses. Going to B1. Other uses and
3 structures customarily incidental to a
4 principal permitted use. You'll notice there,
5 in 1A, you don't see retail there. At all.
6 What you see, again, is warehousing. However,
7 your permitted accessory uses, which are
8 incidental to that principally permitted use.
9 You'll see in B4, for example, retail is
10 limited as an accessory to the permitted use.
11 But it must be internal to the permitted use
12 and primarily intended to service the needs of
13 the employees. And then you'll see in B1
14 accessory retail services within professional
15 business and research offices.
16 So I think Mr. Kyle will testify to this
17 but it's -- the board should consider whether
18 when they drafted this ordinance, years ago,
19 and I think this was previously the M1-A Zone,
20 whether the Township would intentionally draft
21 an ordinance for five lots, where almost all of
22 the lots would be -- three of five of the lots
23 would be nonconforming.
24 CHAIRMAN FOOSE: This is 22-30 ordinance
25 you're talking about, right?

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1 property -- a tenant on the property,
2 ironically Peonies Paint Chips, which occupies
3 what was formerly The Deck Center, so a
4 retail -- they occupy what was formerly used as
5 retail space. But they don't have any retail.
6 They only have warehousing and storage in that
7 space. And then the rear portion of the
8 property is leased to UPS. So those, to my
9 knowledge, are the tenants that existed prior
10 to the adoption of ordinance 22-30, which
11 changed the M1-C Zone.
12 MS. AMIN: Okay.
13 MR. SILBERT: So the building one, a lot
14 of building one was vacant, because Somerville
15 Lumber closed its business in 2020. Of course,
16 being actively marketed to be leased to an
17 industrial user. But, yeah, if that answers
18 your question.
19 So just wanted to show the board what
20 existed in the M1-C Zone prior to October 2022.
21 So I'm going to turn to page 30. And you'll
22 see I have highlighted the principal permitted
23 uses in the M1-C Zone. I have highlighted here
24 number two, manufacturing. Number four,
25 warehouses.

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1 MR. SILBERT: This is the ordinance that
2 was in place prior to 22-30.
3 CHAIRMAN FOOSE: But you're referring to
4 the ordinance that changed this?
5 MR. SILBERT: No. I'm actually referring
6 to the ordinance in place that predated 22-30.
7 CHAIRMAN FOOSE: Okay.
8 MR. SILBERT: And what I'm asking the
9 board to consider is whether for all these
10 years in Bridgewater, whether it would make
11 sense that the Township would have zoning
12 regulations in place for the M1-C Zone for a
13 use that's noncompliant with those regulations.
14 I will defer to Mr. Kyle to give his
15 perspective on that.
16 So that's pretty much my background. And
17 I understand that we need some factual
18 witnesses.
19 So, if I can, Mr. Chairman, thank you for
20 indulging me. I do -- actually I do have some
21 pictures that show the historic aerials of the
22 property, which might be helpful to board
23 members at some point. So they're there at the
24 end of my presentation, they're from pages 31
25 to 42.

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1 But I don't know if you want me to go
2 through these, if this would be a benefit to
3 the board to see how the property changed over
4 the years.
5 MR. OLLER: I think you can do that with
6 your planner maybe.
7 MR. SILBERT: That's fine. So I'll call
8 my first witness. Thank you very much for
9 indulging me on this long introduction. But if
10 I could call --
11 CHAIRMAN FOOSE: Let's just make sure all
12 the points that you hit, we have factual
13 background. Scarlett has a very good point.
14 You raised a lot of points. Whether or not we
15 can weigh them, I think has to be supported by
16 evidence by your witnesses.
17 MR. SILBERT: Agreed.
18 CHAIRMAN FOOSE: Thank you.
19 MR. SILBERT: Okay, so, Mr. Chairman, if I
20 could have -- they're going to swear you in one
21 second.
22 Mr. Oller, would you mind swearing in
23 Mr. Pettit.
24 MR. OLLER: Would you raise your right
25 hand please, sir? Do you solemnly swear that

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1 the testimony you're going to give to this
2 board will be the truth, the whole truth,
3 nothing but the truth, so help you God?
4 MR. PETTIT: Yes, I do.
5 MR. OLLER: Your full name, please.
6 MR. PETTIT: Paul J. Pettit.
7 MR. OLLER: Would you spell your last name
8 please.
9 MR. PETTIT: P-E-T-T-I-T.
10 MR. OLLER: Thank you, Mr. Pettit. You
11 can put your hand down please and consider
12 yourself to be under oath.
13 MR. PETTIT: Thank you.
14 MR. SILBERT: So, Mr. Pettit, I would just
15 ask that you just speak into this so that we
16 can all hear.
17 TECHNICAL ASSISTANCE: Hold on a second.
18 MR. SILBERT: Perfect, thank you.
19 TECHNICAL ASSISTANCE: Of course.
20 MR. PETTIT: Yeah, my voice isn't that
21 loud.
22 TECHNICAL ASSISTANCE: As close as you can
23 to the mics, gentlemen.
24 EXAMINATION BY MR. SILBERT:
25 Q So, Mr. Pettit, you've had quite a long

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1 lasting relationship with this property in question;
2 is that correct?
3 A That is correct. I started there
4 July 11th, 1974. And when they closed -- well, I
5 worked until January the 12th, 2020.
6 Q Great, thank you.
7 So you were there for over 45 years
8 it sounds like.
9 A Correct.
10 Q And can you tell us a little about your
11 job or your former job title at the property?
12 A When I started there in '74, I was working
13 in the service department. You know, taking care of
14 the customers when they came in. And that lasted
15 three years. And then I went onto receiving, to the
16 receiving department, and I worked -- that was
17 primary my job for, I don't know, 25 years, as I
18 received all the products coming in. And I became
19 foreman. And then from there, I went to the
20 shipping department until the end pretty much.
21 Q Okay, and obviously you listened to my
22 presentation. How would you describe the primary
23 use for the Somerville Lumber site? In other words,
24 what operations during your employment there did you
25 observe over 45 years?

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1 A Well, most of it was all storage because
2 the material would come in, and you would have to
3 keep it there until the customer is ready to take
4 it. You know, like all the windows and doors and
5 stuff like that. And jobs get delayed and it could
6 be sitting there for months, some of it even a year
7 or so.
8 And then naturally the lumber just
9 keeps turning over. That was the outside storage.
10 Q So how would, how would you say orders
11 were normally placed for materials, for example, how
12 were they purchased?
13 A Well, it was salesman would order the
14 stuff. And it would come in by trucks, and you
15 would have to unload it. And, you know, until the
16 customer called and said he wanted the material, it
17 would sit there.
18 Q So would you say builders would typically
19 call and place orders, and is that typically how it
20 would work?
21 A Yes, builder would call and order the
22 stuff. And say you got a house of windows in, which
23 could be 30 windows, 40, you have to put them
24 somewhere. So you're storing them in the warehouse
25 in the back until they're ready. And a lot of

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1 times, they didn't want -- they wanted you to get it
2 there months in advance. So when they were ready to
3 put them in, they would be on site so they can get
4 them immediately.

5 Q Okay, and then there was a retail
6 component to the Somerville Lumber's operation for
7 example. So what percentage would you say would
8 be -- I would refer to it as daily on-site purchases
9 versus what percentage of purchases would be where
10 materials would be stored on the site for X number
11 of days or months at a time. How would you
12 differentiate between those two types of purchases?

13 A Well, you always had the customer that
14 would come in right away. But I would think, I was
15 more 90 percent of the big builder, and you were
16 holding material for them. And maybe 10 percent of
17 the people walking in.

18 Q So I represented to the board that there
19 were three main structures on the property. Would
20 you say that's accurate?

21 A Correct. You had the old Deck Center and
22 you had the main warehouse with the showroom and the
23 store, which was very small compared to everything
24 else. And then off of the office, you had the big
25 warehouse with the storage. And then you had the

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1 building across the way, which we called the mill
2 building. Where the mill work went. And that's
3 where we started with our receiving. And then I
4 guess it's 2004 put another building up. And that's
5 where the main receiving went after that.

6 Q Okay.

7 A But then that wasn't big enough. So you
8 had to take the stuff out and store it in the other
9 building in the back. So there was a lot of
10 forklift use with all that stuff.

11 Q And you keep referencing storage, so let's
12 talk about that a little bit.

13 So was there outdoor storage on the
14 property?

15 A Yeah, the outdoor storage is where we kept
16 all the trucks and the lumber naturally.

17 Q Mm-hmm.

18 A And the decking, that there was a lot of
19 decking that we stored out there. And massive
20 amounts of lumber. And the beams were there, which
21 I guess you could call lumber. I mean, some of
22 those beams are 48 feet long. So you need a large
23 area for them.

24 Q And you mentioned trucks, equipment. So
25 let's talk about some of the trucks that were on the

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1 property.

2 First of all, you had stated there
3 were trucks on the property. What were they used
4 for?

5 A Well, you had three trucks that had
6 forklifts on the back, call them moffetts. So they
7 could unload the load when they got there. And
8 those trucks were 24-foot long. There was three of
9 those. And then you had two trucks the same size
10 that would, if you wanted to dump loads, you had the
11 back of the truck raised up to dump it off. You had
12 two of those. And then you had like four smaller
13 flat beds, the single axle ones, which they were all
14 CDL drivers that operate them.

15 And then you had four box trucks that
16 handled the windows and all the doors. And then you
17 had a boom truck that, you know, if you were in a
18 tight spot, you had to -- or they wanted stuff
19 raised up to the second floor. We would have a boom
20 truck for that, one boom truck. And then we had a
21 couple pickup trucks. And a rag truck.

22 Q So with all those trucks there, would you
23 say that any of those trucks would ever be used for
24 delivering materials to construction projects?

25 A Oh, all the trucks were delivering

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1 material for construction projects.

2 Q So, routinely, trucks would -- Somerville
3 Lumber's own truck would routinely leave the site
4 and deliver materials to different construction
5 projects?

6 A Yes. Every day.

7 Q Okay.

8 A You could have between 10 and 20 loads
9 going out every day.

10 Q Okay, and then, let's talk about
11 receiving.

12 Somerville Lumber also received huge
13 shipments of materials on a daily basis, correct?

14 A Correct. Sometimes, sometimes you can get
15 ten tractor trailers in there. And you could have
16 decking, could have lumber on it, could have
17 plywood, you know, could have anything. And then
18 the tractor trailers would come in with the doors
19 and the windows or 24-foot box trucks would come in
20 with the windows, and that was my primary job.

21 Q Okay.

22 A Unloading them.

23 Q So it sounds like you would have trucks,
24 not owned by Somerville Lumber, you had estimated at
25 least ten tractor trailers a day. I mentioned in my

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1 presentation about the train.

2 A Oh, yeah, and there was times when you

3 would have come in in the morning, and there would

4 be three trains sitting out there full of lumber.

5 And you had a day to unload them. And that could

6 happen, some weeks you could get like say six trains

7 a week, and then you could get maybe one train a

8 week, and there would be weeks you didn't get any

9 trains.

10 Q So it fluctuated?

11 A Right. But it was a lot of lumber coming

12 on a train.

13 Q Right.

14 A You know, maybe, I'm trying to think how

15 many. 30, 40 units could be on one.

16 Q And did I accurately describe it when I

17 said it went right to the property, right to the

18 site?

19 A Oh, yeah. Came -- they were parked

20 outside because we didn't want them having keys to

21 the gate. And then we would pull them in with the

22 trucks. We would pull the one train at a time into

23 the middle of the yard and unload it. And big

24 problem is when there was three of them. Because

25 you had to unload the one, and then push it up to

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1 the other end. And then you had to get one out of

2 there, so.

3 Q Okay, and at what point did the train

4 operations cease? Because it's my understanding

5 that it no longer exists.

6 A Yeah. There was a problem with the rail.

7 So the rail wouldn't come back. In 2018 I believe

8 it was.

9 Q Okay, all right.

10 A So then the lumber just came in by the

11 tractor trailer.

12 Q Okay, I showed a number of photos during

13 my presentation, which I thought it would be useful

14 at this time to go back and see if you recognize

15 them and if you could authenticate them to the board

16 as accurate representations as to what the property

17 looks like.

18 All right, so starting on page five

19 right here, would you say these aerials accurately

20 represent the property? And how would you estimate

21 when that existed? It looks like the service road

22 isn't there.

23 CHAIRMAN FOOSE: Which page are you on?

24 MR. SILBERT: I'm on page five.

25 CHAIRMAN FOOSE: Thanks.

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1 A I can't even hardly see that. There's a

2 glare.

3 Q Is that any better?

4 A Boy, it's really hard to make out which

5 buildings are which on that.

6 Q All right, let's go to a picture that's a

7 little more clear. I'm turning to page seven. Can

8 you describe to the board what these pictures are

9 displaying, and whether this is in fact the

10 property?

11 A Okay, as a matter of fact --

12 Q Just into the microphone.

13 A That looks, the one looks like we're

14 unloading a train, because that's got plies on it.

15 And you have to put the two units of lumber so you

16 can come out of the train and set them down. So

17 that's actually a train right there.

18 Q This picture right here, this top left

19 corner?

20 A No, no, the one in the middle with the

21 forklift.

22 Q Oh, okay, I'm sorry. Oh, okay, I see.

23 A Right.

24 Q Mm-hmm.

25 A That's what I can see. There's only a

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1 little piece of it. But that's the way we used to

2 unload the trains with plywood and precuts. Because

3 you couldn't go to the ground. You had to set them

4 on something.

5 Q Okay.

6 A And the one on the left, that's just where

7 they're outside storage.

8 Q Okay.

9 A Where we used to store the lumber.

10 Q But this is -- these are definitely

11 pictures of Somerville Lumber's property?

12 A Absolutely. That's the back of the yard

13 right there. For sure.

14 Q And then --

15 A Like I said, that's the train that came

16 in. And, as a matter of fact, I used to drive that

17 lift too. That exact forklift.

18 Q And if there's a train there, these photos

19 must predate 2018?

20 A Yeah. I can't see the buildings. Because

21 when I first started there, there was, there was

22 only the main building in the back. The one that

23 comes off of the store. Because it wasn't until

24 1982 when the building, the mill building, when BWI

25 came in. That was in 1982. And then 2004, the new

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1 building we called it was -- that's when that went
2 up.
3 Q Okay.
4 A And that's all the buildings that were
5 permitted on that amount of acreage.
6 So that, with that forklift unloading
7 that, that had to be back in the 80's.
8 Q Okay, would you say, so if you're putting
9 a time period on these photos back to the 80's,
10 would you say absent the train picture, which is
11 this picture here, the middle picture on the right.
12 A Right.
13 Q Would you say that this accurately
14 represents what happened and what existed on the
15 property up until Somerville Lumber's closing of
16 business in 2020?
17 A Oh, absolutely. That's, that's what you
18 did. You got stuff in and you shipped it out. It
19 was just a rotating, you know, rotating thing.
20 Everything came and everything went.
21 Q And you don't have to talk to specifics
22 here. I'm on page eight right now, which is labeled
23 subject property map. But would you say that this
24 generally looks like this site as it looks today?
25 That's obviously -- there's a bunch of labels on

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1 there but...
2 A Yes. That was the layout of it. That's
3 the shape, which you couldn't even tell if you were
4 on Route 22.
5 Q Mm-hmm.
6 A I had customers used to come in and say we
7 didn't even know this stuff existed back here, so.
8 Until they went back there and saw everything.
9 Because we were pretty secluded.
10 Q Meaning, you say that because you're
11 saying there was visibility to the front retail
12 portion, but there was very limited visibility to
13 the outdoor storage and warehousing?
14 A Right. Because it went from 22 all the
15 way to 287.
16 Q Right.
17 A And from 22, you couldn't see back there.
18 The building blocked everything.
19 Q Okay, so now I'm on page ten. And I have
20 these identified as photographs lot four, east
21 building. And what I had said to the board, I
22 believe that all of these photos were taken on --
23 anything you see on the white page, were taken
24 between the years, between 2017 and 2021; would you
25 say that that accurately reflects what the property

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1 looks like today, or a more modern current
2 representation of the current property?
3 A You got to bring that a little closer to
4 me.
5 Q Let me see if I can zoom in a little bit.
6 I am zooming in on page ten.
7 A Okay, so that's, right, that's the mill
8 and then the new building is way in the back.
9 That's the back of the yard.
10 Q Okay.
11 A See, I couldn't see that before.
12 Q We have -- I should have done that a long
13 time ago. We have --
14 MS. AMIN: How many years ago was this
15 picture taken?
16 MR. SILBERT: These pictures were taken
17 between 2017 and 2021. I don't know who took
18 them so I'm asking Mr. Pettit to verify that
19 sounds to be an approximate date and time in
20 which these photos were taken.
21 A Yes.
22 Q Do you know what we're looking at here?
23 A What...
24 Q It's okay if you -- there's a million
25 photos to go through, so.

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1 A Yeah, I'm not sure on that one.
2 Q Okay, let's go to the next.
3 Can you see this better now though
4 that? It's blown up. Or do you need to --
5 A Yeah, I'm just trying to think.
6 I mean, we parked our cars way in the
7 back. But I'm trying to think what building that
8 is.
9 Q It's okay.
10 A Or is that the...
11 Q It's okay. We're going to the next slide
12 here. It's okay.
13 How about this here?
14 A That's the front.
15 Q I'm on page 11 showing pictures of the
16 east building.
17 A Right. That's the front of the main
18 store.
19 Q Okay, and what store? What's depicted
20 here? What tenant is here?
21 A That's over where the showroom is.
22 Q So which tenant occupied this space? Just
23 because the board was asking questions about certain
24 tenants. So I don't know if you can tell from this
25 picture.

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1 A Well, that's where Cornerstone was up in
2 that part of the building.
3 Q Okay, Cornerstone was there.
4 A Right.
5 MR. SWEENEY: What's Cornerstone? What
6 was Cornerstone?
7 MR. PETTIT: Cornerstone was -- they were
8 sort of like a builder. You know, they bidded
9 on jobs and everything, but they were just
10 through Somerville Lumber.
11 MR. SWEENEY: So that wasn't the rental
12 business that I was asking about earlier?
13 MR. PETTIT: No, that was not rental.
14 That's where the showroom is. That's in the
15 main --
16 MR. SWEENEY: Where's the rental business
17 in this photo, or is it not in the photo?
18 MR. PETTIT: That would be the old Deck
19 Center.
20 MR. SILBERT: Which is not this?
21 MR. PETTIT: Which is to the right of
22 that.
23 BY MR. SILBERT:
24 Q Right, so we'll get there.
25 So Cornerstone was a related entity

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1 MR. LASPISA: Is the building in the
2 distance the back of the one we were just
3 looking at?
4 MR. SILBERT: This building here?
5 MR. LASPISA: Is the building in the
6 distance the back of what we were just looking
7 at?
8 MR. SILBERT: Board Member Laspisa, are
9 you talking about this building here?
10 MR. LASPISA: Yes.
11 A No. That's the building -- that's
12 actually where we first started to do our receiving
13 out of. You can see there's a dock there. So that
14 was just a building we used for storage. That is
15 actually off of the main building. That building
16 there. That's -- this is the far side of the main
17 building.
18 Q Let's refer to it as building one,
19 building two, and then that warehouse in the rear
20 portion as building three.
21 A Okay, so this would be building one would
22 be the main building?
23 Q The main building, which you identified as
24 this structure.
25 A As this one.

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1 to Somerville Lumber?
2 A It was.
3 Q Okay.
4 A That was Grand Rental.
5 Q Okay, so now I'm looking at the bottom
6 image on page 11 here.
7 A Right. Now that's the back of the yard.
8 Behind that wall is where -- that's the shipping
9 shack, that little red building where we shipped
10 everything. That's where we had the computers --
11 Q This one here?
12 A Yes. And that's where all the loaders
13 would come in and get their orders in there.
14 And behind that on that wall there,
15 that's where we kept all the precuts and plywood,
16 which could be 50 units of precuts and up to 100
17 units of plywood in that building behind that.
18 Q This building? This blue?
19 A Yes, the one that's all rusty.
20 Q All right, I'm going to go to --
21 A And you can see we had to park in the back
22 because there wasn't enough parking out front. So
23 all the yard employees had to park in the back.
24 There's behind that other building. Not that
25 building.

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1 Q Okay.
2 A That's the back of it. And I think --
3 that's we call the leg.
4 Q Okay.
5 A It goes around to the left. And then you
6 got all warehouse space in there and then you go
7 into the store. There's a back way in.
8 Q Mm-hmm.
9 A And the back offices are back there too.
10 That's back in that section.
11 Q So this here is building two?
12 A No, no. That's all part of this.
13 Q Oh, that's all part there, okay. That's
14 the leg?
15 A Building two is to the left. This is the
16 leg right here.
17 Q Okay, this is the leg.
18 A It looks like a leg of that big building.
19 See, you're only seeing the back of that building.
20 Q So if you reference Ms. Doyle's report --
21 A In between -- you see in that gap there
22 there's a driveway which goes into the main
23 building, which that picture does not show that.
24 MR. LASPISA: Okay, I think -- yeah.
25 MR. SILBERT: If you look on page two,

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1 building one.
2 MR. PETTIT: That's all building one, all
3 that.
4 MR. LASPISA: Right.
5 MR. SILBERT: The portion furthest away is
6 what Mr. Pettit is referring to is the leg,
7 which appears to be the front of building one
8 located closest to the service road.
9 MR. LASPISA: Mm-hmm.
10 MR. SILBERT: Okay, and then --
11 A Right, that's close to the Railroad.
12 Because you can actually see the Railroad right
13 where those puddles were. Those where the Railroad
14 came in. You see those puddles? That's -- there's
15 a Railroad right there.
16 Q Came in over -- okay.
17 A You see that -- you can probably see that
18 one puddle. You can see part of the rail actually.
19 Q Referring to page 12, again that was still
20 on the east building.
21 A You can see -- see, there's the entrance
22 and that's where the saw is in that little building.
23 And see that's where we kept our decking in that
24 whole center part.
25 Right, and that's the backside of

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1 Q And would you say the retail area, for
2 example, the showroom area, how does it compare in
3 size and intensity and scope to what you look at
4 below here, which you'll see the warehouse?
5 A Right. That's the -- that's the inside of
6 that main building. I think the showroom and all is
7 maybe 10 percent. If that. I don't -- that's,
8 that's the warehouse.
9 Q So it's hard to assess the size of the
10 uses based upon the photographs; would you agree
11 with that statement?
12 A Yes.
13 Q So if you look at this, for example, this
14 is the office space?
15 A That's the back office, yes.
16 Q And this made up of a very small
17 percentage of the space in the building one; is that
18 correct?
19 A Yes. That was the inside of building one
20 next to the store.
21 Q All right, so now we're moving to -- still
22 on lot four. Still in building one; is that
23 correct?
24 A Yes, that's, that's the offices. No,
25 that's an old picture too it looks like.

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1 that same building.
2 Q And just so we're on the same page --
3 A This is all building one still. This
4 whole, everything you're showing me here.
5 See, now I can see it.
6 Q So we're on page 12, I'm looking at the
7 bottom photograph entitled north view, northwest
8 side of the warehouse.
9 So you saying that's all part of
10 building one, right?
11 A Yes. That's back where we had our molding
12 standing up and all the pine was in that second
13 doorway.
14 Q Okay, now I'm going to page 12. And now
15 we're going to look at some photographs of the east
16 building or what is still building one.
17 A Right, that's still -- that's the showroom
18 that's on the far side of that building.
19 Q Okay, so what we're looking at here is a
20 very, very front portion --
21 A Way up here.
22 Q -- of building one?
23 A Yes. Yeah. We -- so far that's all we
24 saw was that one building. That's how big that
25 building is.

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1 Q This is page 14. And it's the top
2 photographs here. So what do you see here?
3 A That just looks like all the offices in
4 the back.
5 Q And this, how about here?
6 If you can't see, it's okay to say
7 you can't see.
8 A Oh, that's where the store was on the left
9 because that's just empty.
10 Q Okay.
11 Now we're looking at what's
12 identified as first floor retail area. Second floor
13 on page 14.
14 What do you see there?
15 A The second floor, that was the offices
16 where the main guy that did all the orders for the
17 salesman, he was up there.
18 Q And then the photograph to the left of it,
19 where it does -- it's labeled retail area. What
20 building is that?
21 A That's got all -- boy, it's hard to tell
22 from that picture.
23 Q I'm going to make it...
24 A But that could even be Deck Center. I see
25 there's a deck there.

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1 Q Okay, but definitely, it's definitely
2 retail though, right?
3 A Yes.
4 Q Okay.
5 MR. OLLER: Mr. Silbert?
6 MR. SILBERT: Mm-hmm.
7 MR. OLLER: Can we just ask Mr. Pettit to,
8 if he hasn't already, look at all the
9 photographs, and just verify for the board that
10 they are true accurate representations of the
11 building.
12 MR. SILBERT: So, Mr. Pettit, do you want
13 me to go through -- well, I don't know --
14 MR. OLLER: Want him to see all the
15 pictures, notice he saw them all, and tell us
16 that they're all accurate representations.
17 MR. PETTIT: Yeah. Those are definitely
18 the lumberyard. That's the inside of the main
19 building. That's the outside.
20 MR. SILBERT: Okay, but the photographs,
21 I'm going to quickly go through them. We don't
22 have to go through each photo. What Mr. Oller
23 is saying so that we can speed things along
24 here, is that we authenticate all of these
25 photos as being authentic representations of

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1 the property. So if you're able to do that --
2 MR. PETTIT: Yes, they are.
3 MR. SILBERT: Okay.
4 MR. OLLER: So, Mr. Pettit, you can
5 testify that you've seen all the photographs
6 that Mr. Silbert has presented?
7 MR. PETTIT: Yes, they are all part of --
8 MR. OLLER: And they accurately represent
9 the condition of the property when you worked
10 there?
11 MR. PETTIT: Yes. Absolutely.
12 MR. OLLER: I have a couple of questions
13 for you. Couple things.
14 Did you deal with retail customers also?
15 MR. PETTIT: Only if they were picking up
16 a special order. They would, you know, they
17 would come to the building and we would give it
18 to them.
19 MR. OLLER: Okay, because you testified
20 that you took orders. So did you only take
21 orders from builder customers?
22 MR. PETTIT: Well, the builders would talk
23 to the salesmen, and then there was people that
24 would walk in, there was counter guys up in the
25 store.

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1 MR. OLLER: Right.
2 MR. PETTIT: Counter men.
3 MR. OLLER: I thought you testified that
4 you also took some orders from builders; is
5 that --
6 MR. PETTIT: No, I didn't take orders. I
7 brought in special, special orders I brought
8 in.
9 MR. SILBERT: What about when you first --
10 MR. PETTIT: You know, the trucks
11 delivering to us. I didn't take orders.
12 MR. OLLER: I got you. Okay, so as things
13 delivered --
14 MR. PETTIT: I accepted special orders
15 into the building.
16 MR. OLLER: Into the building, okay.
17 MR. PETTIT: Yeah, I didn't take orders.
18 MR. OLLER: You didn't deal with the
19 retail side of the property?
20 MR. PETTIT: No. I was strictly storage
21 and receiving material.
22 MR. OLLER: Can you represent to us how
23 many employees were involved with the retail
24 side of the property, and how many were
25 involved with the warehouse side?

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1 MR. PETTIT: Well, the warehouse out in
2 the back, we would have say 15 people working
3 there. And inside, they would have three
4 counter guys. And then up in the showroom,
5 there was three other people I believe.
6 MR. OLLER: Okay, and did -- so did most
7 of the work generated at the facility come from
8 the warehouse portion of the property or the
9 retail?
10 MR. PETTIT: No. Most of the work came
11 from the warehouse. Absolutely. Because
12 that's where everything came in and everything
13 was stored.
14 MR. OLLER: Okay.
15 MR. PETTIT: So and that's where mostly
16 everything was, was in the storage section.
17 MR. OLLER: When you say storage, you mean
18 inside in the building?
19 MR. PETTIT: Inside and outside. Because
20 you had to store the lumber outside.
21 MR. OLLER: Mm-hmm.
22 MR. PETTIT: And the trucks outside. And
23 inside we kept all the plywoods and the
24 molding. And the windows and the doors.
25 MR. OLLER: So if weather wouldn't impact

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1 it, it could stay outside, but everything was
2 inside the building?
3 MR. PETTIT: Yeah, well, the decking was
4 outside too. Anything that was okay to be out
5 in the weather, was outside.
6 MR. OLLER: Treated woods would be
7 outside.
8 MR. PETTIT: Treated wood was outside in
9 the beginning until the sun like destroyed it.
10 MR. OLLER: Okay.
11 MR. PETTIT: So towards the end, we moved
12 it into the light. Because we had room. And
13 that like saved it because the sun is really
14 bad on treated. But there was a time when it
15 was stored outside, yes.
16 MR. OLLER: Okay, and was there ever a
17 time where a retail customer could just walk
18 through the warehouse section?
19 MR. PETTIT: They would drive in with
20 their cars. They didn't really walk through.
21 MR. OLLER: Okay.
22 MR. PETTIT: You know, didn't want people
23 wandering around, so they didn't get hit.
24 MR. OLLER: And could you, Mr. Silbert,
25 just show him the floor plan on the building

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1 pick something up, you would drive in there.
2 MR. OLLER: To go around and pick it up
3 elsewhere?
4 MR. PETTIT: Right. And then there was a
5 gate guy would stop you and direct you to where
6 you had to go.
7 MR. OLLER: Okay, and what about the other
8 buildings, did they have any retail sections?
9 MR. PETTIT: No, the other buildings were
10 all for storage.
11 MR. SILBERT: Well, how about the front of
12 what's shown as building two on page two.
13 MR. PETTIT: That was where The Deck
14 Center was over here. Building two.
15 MR. OLLER: So building two showing The-
16 Deck Center and that 12,000 square feet. I am
17 sorry, go back to building one.
18 What was in that 16,000 square feet then?
19 15,660 square feet retail showroom. What was
20 the showroom showing?
21 MR. PETTIT: The showroom was just that
22 little square right there.
23 MR. OLLER: Yeah. What was in it?
24 MR. SILBERT: What tenants?
25 MR. PETTIT: Oh, that was where

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1 where there was retail section. Just want to
2 be sure that you can represent to the board
3 that that's an accurate representation of the
4 floor plan when you worked there.
5 MR. SILBERT: You got it.
6 So now I'm looking at building layout on
7 the 23rd page of the east building located on
8 building one.
9 MR. PETTIT: Right. That's the main,
10 that's the main building.
11 MR. SILBERT: Would you say that the
12 layout that's shown on the screen is an
13 accurate representation of what you believe to
14 be the values of square footage designated for
15 retail showroom space versus the square footage
16 designated for warehouse space?
17 MR. PETTIT: Absolutely. Because where
18 you see where that says retail showroom, that's
19 a small area. The rest of all that is all
20 warehouse.
21 MR. OLLER: So if I came in to look at a
22 deck or bathroom fixtures or something, I'm
23 limited to that 15,000 square foot area?
24 MR. PETTIT: To that front area, yes. And
25 orders were to be given out, if you were to

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1 Cornerstone was up in the showroom. That was
2 more the cabinet division was Cornerstone.
3 MR. OLLER: Okay.
4 MR. PETTIT: Doing kitchens --
5 MR. OLLER: So more kitchen materials were
6 in that building --
7 MR. PETTIT: No, kitchen materials were
8 stored in the back building.
9 MR. OLLER: I'm sorry, say again.
10 MR. PETTIT: The kitchen materials, I'm
11 talking about cabinets and stuff, were all
12 stored out in the back. There wasn't much
13 storage up in there. That was just showing.
14 MR. OLLER: Okay, so I'm looking at what I
15 think is building one. Is that what we're on
16 this?
17 MR. SILBERT: Yes.
18 MR. OLLER: So building one showing the
19 retail showroom of 15,660 square feet, that's
20 where Cornerstone was?
21 MR. PETTIT: Yes.
22 MR. OLLER: They would do the building --
23 they were the building arm, let's call it; is
24 that fair to say for Somerville Lumber?
25 MR. PETTIT: Well, they would do more

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1 Kitchens and stuff, more custom.
 2 BY MR. SILBERT:
 3 Q Cornerstone didn't utilize all this
 4 warehouse space; is that correct?
 5 A No. That was all our space. That wasn't
 6 Cornerstone space.
 7 Q Right.
 8 A Cornerstone was only up in that little
 9 showroom.
 10 Q So what was the majority of the warehouse
 11 space in this building used for?
 12 A That was for storing pine, PVC, plywood,
 13 precuts, and then the untreated. Sheetrock was
 14 there one time. I mean, it all varied over the
 15 year.
 16 Q So would the client or the customer that
 17 would walk into the retail showroom be very
 18 different than the type of person that would store
 19 their materials in the warehouse section?
 20 A Yeah, the people storing in the warehouse
 21 were the -- more the contractors and the builders.
 22 Q So is it fair to label this as different
 23 businesses, or different components to the overall
 24 Somerville Lumber business?
 25 A They are different components, yes.

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1 want to rent a party tent. Would they go drive
 2 their car to the warehouse and pick up the
 3 party tent?
 4 MR. PETTIT: No. They had, they had like
 5 trailers, they were like hanging over the hill.
 6 They were like 40-foot trailers.
 7 CHAIRMAN FOOSE: Let me ask the question
 8 again.
 9 Did the warehouse space support Grand
 10 Rentals retail operation?
 11 MR. PETTIT: They had their own space in
 12 those trailers in the back of the --
 13 CHAIRMAN FOOSE: Did the warehouse space
 14 that you referenced support Grand Rentals
 15 retail operation? It's just yes or no.
 16 MR. PETTIT: It did at one time, yes.
 17 CHAIRMAN FOOSE: So a customer would come
 18 in, rent a party tent, and then go to your
 19 warehouse to pick it up?
 20 MR. PETTIT: Well, Grand Rentals started
 21 where The Deck Center, and then it moved to the
 22 mill building years later. And then they would
 23 go pick it up there because they had to store
 24 it in the warehouse, yes. All the material was
 25 stored there.

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1 Q Okay.
 2 MR. OLLER: So, and, Mr. Pettit, what was
 3 Grand Rental?
 4 MR. PETTIT: That was just a rental
 5 company that they had where they would -- like
 6 if you wanted to come in and rent a machine,
 7 you know, like a bobcat or tents and stuff like
 8 that.
 9 MR. OLLER: Okay, did that have a
 10 designated area in one of the buildings also
 11 then?
 12 MR. PETTIT: That actually started out
 13 where The Deck Center was.
 14 MR. SILBERT: So is that --
 15 MR. PETTIT: That was in building two.
 16 MR. SILBERT: Building two. So what I
 17 have here on the 25th page is a layout of
 18 building two.
 19 Would you agree that that accurately
 20 reflects the building layout of building two as
 21 shown on the screen here?
 22 MR. PETTIT: Yes.
 23 MR. SILBERT: Okay.
 24 CHAIRMAN FOOSE: Did you store things for
 25 Grand Rentals? The customers would come in, I

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1 CHAIRMAN FOOSE: So sometimes? So in the
 2 first location, Grand Rentals stored items in
 3 the warehouse space. When they moved
 4 locations, they did not use the warehouse space
 5 to store --
 6 MR. PETTIT: No, they used the warehouse
 7 space all the time because they had to put
 8 their materials somewhere. So their machines
 9 were all stored outside in the warehouse, yes.
 10 You know, outside of the warehouse. Because
 11 they didn't need to be inside.
 12 CHAIRMAN FOOSE: Okay.
 13 MR. SILBERT: But if we're looking at --
 14 MS. AMIN: I have a question.
 15 MR. SILBERT: Go ahead, I'm sorry.
 16 MS. AMIN: The customers, the type of
 17 customers that you have is mostly contractors.
 18 So they already know what they want to buy. So
 19 usually they would not even come to the office.
 20 They would go to the warehousing, pick up the
 21 stuff. Is that how it works? Or did you have
 22 customers who are like modifying their house or
 23 something like that?
 24 MR. PETTIT: No, they would come back in
 25 the warehouse and pick it up, or we would

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1 deliver it. A lot of our -- most of our
2 business was delivering. You know, because we
3 had our box trucks. So we would deliver most
4 of the material. It wasn't a really lot of
5 material picked up. A lot of it was delivered.

6 MR. SILBERT: If I can just --

7 MR. BONGIORNO: Are you done?

8 MS. AMIN: Yeah, actually I was wondering
9 if people, lot of people, come in and go out,
10 or is it just contractor coming to pick up the
11 stuff? That's -- because traffic wise.

12 MR. PETTIT: I mean, there was people that
13 came in, yes. But a lot of it was contractors
14 ordering and us delivering. So it was both.

15 MR. SILBERT: Going back to the comment on
16 Grand Rental. You see 38,000 square feet of
17 warehouse space. You're saying that Grand
18 Rental operated either all or a portion of this
19 retail showroom.

20 Of this 38,000 square feet of warehouse
21 space, I am looking at building two, page 25.
22 What percentage would you say was utilized by
23 Grand Rental? Was all of it used by it? Was
24 only a certain percentage used by Grand Rental?

25 MR. PETTIT: Well, at one time Grand

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1 simple. But what's retail versus what's a
2 wholesale sale?

3 In other words, if I want 10 windows, is
4 that a retail sale? And if I want 30 windows,
5 is that considered a wholesale warehouse sale?

6 MR. PETTIT: If you got it in, like on our
7 Anderson van, we call them vans, you would
8 order them that way for a special price. And
9 that wouldn't come in under a wholesale I would
10 believe.

11 MR. SILBERT: Well, but I think we're
12 trying to draw a distinction between when a
13 professional builder purchases materials from
14 Somerville Lumber, versus a daily customer. Is
15 that --

16 MR. BONGIORNO: I'm trying to understand
17 that what a warehouse is versus what retail is.
18 Is retail only if I walk in and I pick it off
19 the shelf? Because you can't pick windows off
20 the shelf. I'm trying to understand, as part
21 of a warehouse really support a lot of retail.

22 MR. PETTIT: The warehouse is just where
23 we stored everything.

24 MR. SILBERT: But the --

25 MR. SWEENEY: Can I interrupt one second?

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1 Rental had that whole building, but the back
2 part was all that storage.

3 MR. SILBERT: Okay.

4 MR. PETTIT: That only had a small
5 showroom in the front where that square is.

6 MR. SILBERT: Okay, so what you're saying
7 is they occupied this retail showroom here,
8 they used the entire warehouse space here at
9 one point?

10 MR. PETTIT: For storage.

11 MR. SILBERT: Okay.

12 MR. PETTIT: Had to store it. And then
13 they had those four trailers in the back that
14 they stored their stuff.

15 MR. BONGIORNO: I have a question. If a
16 client calls and says I want ten windows, is
17 that a retail sale? And if a client say calls
18 and says I want 30 windows, is that a warehouse
19 sale? And are all warehouse sales taxed --
20 nontaxable because...

21 MR. PETTIT: In our warehouse, we store
22 the stuff until they were ready to come. So
23 I...

24 MR. BONGIORNO: I'm trying to get a better
25 definition in terms of -- I know it sounds

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1 I think when we were looking at, I think
2 that's building two, at one point, you
3 acknowledged that the retail showroom is where
4 the rental business showed their stuff or did
5 business with customers that came in.

6 And the warehouse behind that was where
7 the rental business stored their materials. In
8 other words, that warehouse existed in support
9 of the rental business; is that correct?

10 MR. PETTIT: For maybe two years they were
11 there. And then it -- and then they were gone.
12 And then they actually had another rental
13 company that was in the back of the other
14 warehouse. But they had to store their
15 materials somewhere.

16 MR. SWEENEY: Right. So they stored their
17 rental materials in the warehouse in support of
18 the rental business, correct?

19 MR. PETTIT: In support of, but, but if
20 you're going to, if you're going to have stuff
21 that you want to rent, you have to have a place
22 to put it.

23 MR. SWEENEY: Right.

24 MR. PETTIT: And you have to store it
25 somewhere, so that would be stored.

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1 MR. SWEENEY: Right.
2 MR. PETTIT: In their warehouse.
3 MR. SWEENEY: Right. In support of the
4 rental business, correct?
5 MR. PETTIT: Right. If it was rental
6 stuff, yes.
7 MR. SWEENEY: Okay, thank you.
8 MR. SILBERT: What time period did that,
9 if you remember, what time period was Grand
10 Rental located in that building? Approximately
11 you said about two years you said?
12 MR. PETTIT: Yeah, before The Deck Center.
13 I don't know. I'm not sure exactly.
14 MR. SILBERT: How about decade. Was it
15 90's, 2000's, approximately?
16 MR. PETTIT: So The Deck Center was there
17 in the 2010's time period I guess.
18 MR. SILBERT: So --
19 MR. PETTIT: So it had to be in the late
20 90's, early 2000's.
21 MR. SWEENEY: Where was The Deck Center?
22 Building one or building two?
23 MR. PETTIT: Building two.
24 MR. SWEENEY: And the material.
25 MR. PETTIT: Was stored in the back

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1 warehouse.
2 MR. SWEENEY: Okay, so even when -- even
3 prior to the rental business, when that was a
4 deck center --
5 MR. SILBERT: After?
6 MR. SWEENEY: Before, after, whatever.
7 When that was a Deck Center, the warehouse
8 behind it had material that was stored in
9 support of The Deck Center?
10 MR. PETTIT: No, there was no materials
11 stored in that building for The Deck Center.
12 Just their showroom. We stored it all in the
13 main building. Outside actually.
14 MR. SILBERT: So saying it was stored on
15 the adjacent property?
16 MR. PETTIT: Right. Of building one
17 property.
18 The Deck Center did not store any material
19 in there.
20 MR. SWEENEY: So The Deck Center had no
21 storage anywhere on site?
22 MR. PETTIT: No. The only stuff in their
23 showroom, they might have had screws, and, you
24 know, caps and stuff like that. But, no, no
25 decking material.

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1 MR. SWEENEY: Okay.
2 MR. PETTIT: There wasn't enough room to
3 put that there.
4 MR. SILBERT: Well, if I'm understanding
5 correctly, and, Mr. Pettit, correct me if I'm
6 wrong, you're saying storage for building two,
7 which was located on lot two and three, when it
8 was Deck Center, was located on lot four in
9 building one?
10 MR. PETTIT: But -- yes, we unloaded
11 everything for The Deck Center in the back.
12 You know, all the decking that would come off
13 the tractor trailers was unloaded in the back
14 of Somerville Lumber. And then we stored it
15 there until it was ready to be shipped. And
16 then we shipped it on the trucks with the
17 moffetts.
18 MR. SWEENEY: So this, this material that
19 you're just now describing for The Deck Center,
20 it was stored somewhere on site, and then you
21 would ship it to wherever it was required,
22 correct?
23 MR. PETTIT: Right, it was stored back in
24 the warehouse in the back, yes.
25 MR. SWEENEY: So some of the warehouse

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1 space that was used to support the decking
2 material was to support the decking business,
3 correct?
4 MR. PETTIT: But then that was Somerville
5 Lumber had their decking business, yes.
6 MR. SWEENEY: Okay, thank you.
7 MR. LASPISA: So to kind of take Don or
8 Mr. Sweeney's inquiry one step further.
9 For the cabinets and, you know, kitchen
10 stuff business in the other building, how much
11 of that was stored on site? So between these
12 two ware -- these two retail operations, what
13 percentage of the space are we storing their
14 equipment that's backing up those retail
15 operations? Compared to the contractor orders.
16 MR. PETTIT: Well, the contractor orders
17 were stored in the warehouses. And that was a
18 big amount of space. I mean --
19 MR. LASPISA: What about the cabinets and
20 all the stuff, Cornerstone?
21 MR. PETTIT: The cabinets back in that far
22 warehouse, stored upstairs.
23 MR. LASPISA: So we have space for
24 Cornerstone, and we have space for the rental
25 company/the decking company depending on the

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1 timeframe.

2 MR. PETTIT: Well, the cabinets weren't

3 only bought. The cabinets were bought by

4 contractors too. It wasn't only Cornerstone.

5 MR. LASPISA: Right, okay.

6 MR. PETTIT: So Cornerstone didn't have

7 100 percent of all its cabinets there.

8 MR. SILBERT: The decks -- sorry, go ahead

9 I didn't want to interrupt you.

10 MR. PETTIT: Maybe 10 percent. Most of it

11 was contractors and all buying the cabinets.

12 BY MR. SILBERT:

13 Q The Deck Center had an alternative

14 location; is that correct?

15 A In Flemington, yes.

16 Q Did that location have a warehouse or any

17 storage?

18 A No. We stored all that stuff. They

19 didn't have storage there.

20 Q So you stored all of Deck Center's

21 materials on the subject property?

22 A Right.

23 Q So I'm going to ask you another question.

24 So the retail showroom of The Deck

25 Center, for example, knowing that there's another

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1 location in Flemington, do you think that the retail

2 showroom component was necessary to be on this

3 subject property, or could it have been located

4 anywhere in New Jersey?

5 A Could have been located anywhere. They

6 would put their orders in, and we would unload them

7 and ship them.

8 Q So why is this property special? Why

9 would The Deck Center want to be in this property?

10 A Probably because it was next to Somerville

11 Lumber.

12 Q How about the warehouse space? Do you

13 think that was a reason why somebody would want to

14 be on this property?

15 In other words, would you say --

16 would you say that the exceptional street visibility

17 or the site was conducive for a retailer? Or would

18 you say the site was conducive for a business that

19 wanted to store materials on the property?

20 A A business that wanted to store things.

21 Because you can't even see it from the highway. So

22 you wouldn't really want retail.

23 Q So like, so like Deck Center, if not all,

24 most of the tenants on the property could have had

25 their retail showrooms elsewhere in the Township,

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1 elsewhere in the state; is that correct?

2 A Yes.

3 Q Okay.

4 MR. KULAK: I just wanted to follow up on

5 your line of questioning if I may.

6 Some of the earlier questions were trying

7 to establish that the -- whether it was the

8 Deck Center or perhaps the showrooms with the

9 cabinets, alternately the bath fixtures,

10 whatever the people would walk into and be

11 exposed to this material, the warehouse space

12 was used in support of those businesses.

13 And for you to say that the showrooms

14 could be anywhere, would separate them in a way

15 that's -- that just doesn't exist.

16 So I'm trying to see what your point is.

17 Because I can have a business anywhere and

18 contractor with a warehouse to store it. But

19 if I'm operating a business as Somerville

20 Lumber and I have in addition to all of the

21 things we talked about, showrooms or cabinets

22 and decks and bathrooms and flooring and tile,

23 and all those kinds of things, I also have the

24 warehouse to support those businesses that are

25 in the front end.

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1 And, admittedly, contractors may have gone

2 into the showrooms just as retail, walk-in

3 off-the-street people went in the showrooms.

4 But I'm not trying -- I'm trying to

5 understand what your point is. That the

6 warehouse would exist without the retail

7 component? Or the retail component could exist

8 without the warehouse? But it's better

9 together? I'm all confused.

10 MR. SILBERT: Okay.

11 MR. KULAK: I don't think you've made a

12 compelling case. With all due respect to

13 Mr. Pettit, I think some of the questions we're

14 answering -- asking him, he's just not

15 qualified to answer.

16 He can validate the operations of shipping

17 and receiving and working with the contractors

18 as he had done and managing special orders.

19 But when we start to get into the questions

20 about the retail and the percentage of sales, I

21 don't think that's his level of expertise. And

22 I think it's unfair to have him try to answer

23 questions.

24 MR. SILBERT: Understood. And what my

25 goal was with asking those questions towards

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1 the end was to demonstrate that there are
2 retail uses throughout the country, that cannot
3 function without warehousing. Right? And some
4 retailers have warehousing on site and some
5 retailers don't.

6 So I don't mean for this to confuse you.
7 But if I think of Amazon, for example, I go to
8 the online website and place an order. And
9 Amazon owns their warehouses and facilitate the
10 shipment there. And there's not a brick and
11 mortar location.

12 Somerville Lumber goes all the way back to
13 the late 1940s. So there is a brick and mortar
14 location there. But what I was trying to
15 convey to the board, that the predominant
16 function of this property, which I hope that my
17 witnesses after will attest to, is that orders
18 would be purchased on the phone. Similarly to
19 going on Amazon.com and ordering your materials
20 through Amazon.

21 Somerville Lumber needed a site to store
22 their materials for these professional
23 builders. That for a year at a time, the
24 materials would be purchased, and stored there
25 for a year while these major projects were

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1 developed. But it's almost like -- I'm trying
2 to use the Amazon model in my example and
3 comparing it to a time period that goes back,
4 obviously predates the internet. That the real
5 purpose of this property was so that builders
6 could store their materials here. Yes,
7 purchase from Somerville Lumber, but store it
8 on the property while their projects were
9 underway, under construction. Not trying to
10 discount the fact that there was retail on the
11 property.

12 MR. KULAK: At the same time, you have
13 contractors who purchase materials and need
14 them delivered within short order. And by
15 Somerville Lumber maintaining inventory,
16 they're able to accommodate those sales. So
17 not all sales were done a year in advance or
18 six months in advance, where Somerville Lumber
19 is storing it for them. But a combination of
20 those things, which led to this business.

21 MR. SILBERT: I would let Mr. Pettit on
22 that.

23 MR. PETTIT: There was a good percentage
24 of stuff that did sit there a very long time
25 waiting for contractors.

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1 MR. KULAK: I understand. But that's not
2 all you had?

3 MR. PETTIT: No, that's not all we had,
4 no.

5 CHAIRMAN FOOSE: I'm going to -- if we can
6 take a break. Let's take ten minutes. The
7 time is 9 o'clock. Why don't we call it 9:10
8 reconvene and continue on.

9 MR. SILBERT: Okay.

10 CHAIRMAN FOOSE: Thank you.

11 (Whereupon, a brief break was
12 taken.)

13 CHAIRMAN FOOSE: I'm not sure Mr. Kulak is
14 finished, so let's finish.

15 All right, we're back in session. It's
16 9:11 p.m. and we're going to pick up Mr. Kulak
17 questions for Mr. Pettit. Make sure you were
18 finished, sir.

19 Why don't we do a quick roll call.

20 MR. DORNBIERER: Mr. Foose?

21 CHAIRMAN FOOSE: Yes, here.

22 MR. DORNBIERER: Mr. Weideli?

23 MR. WEIDELI: Here.

24 MR. DORNBIERER: Mr. Laspisa?

25 MR. LASPISA: Here.

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1 MR. DORNBIERER: Ms. Amin?

2 MS. AMIN: Here.

3 MR. DORNBIERER: Mr. Sweeney?

4 MR. SWEENEY: Here.

5 MR. DORNBIERER: Mr. Bongiorno?

6 MR. BONGIORNO: Here.

7 MR. DORNBIERER: Mr. Kulak?

8 MR. KULAK: Here.

9 MR. DORNBIERER: Thank you.

10 MR. VESCIO: Mr. Vescio, here.

11 CHAIRMAN FOOSE: All right, Mr. Kulak, the
12 floor is yours.

13 MR. KULAK: I don't believe I had any
14 further questions. I just wanted to establish
15 in the questioning that there was certain areas
16 beyond Mr. Pettit's expertise. And others that
17 were within his area that he validated. For
18 example, the pictures of the warehouse and his
19 understanding of the business from his end on
20 the shipping, receiving, and special orders
21 part. Beyond that, I don't think -- I think we
22 put him in an unfair position.

23 MR. LEHRER: I agree 100 percent with what
24 your saying.

25 MR. KULAK: Thank you.

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1 CHAIRMAN FOOSE: Board questions from Mr.
2 Pettit's testimony?
3 MR. OLLER: Well, actually, I think I had
4 one other question.
5 So, Mr. Pettit, in your experience working
6 there, were there areas in the warehouse that
7 were used for warehousing that had nothing to
8 do with any of the walk up retail areas?
9 MR. PETTIT: The warehouse was set up for
10 anyone that bought stuff.
11 MR. OLLER: Right.
12 MR. PETTIT: Which was mostly contractors
13 because, you know, they needed a large amount
14 of stuff so that they could do their job.
15 MR. OLLER: And they would order how?
16 MR. PETTIT: The contractors would order
17 through their salesman.
18 MR. OLLER: Okay.
19 MR. PETTIT: See, they would order all
20 that because we had the material there.
21 MR. LEHRER: Can I ask the question in a
22 different way?
23 MR. OLLER: Yeah.
24 MR. LEHRER: So I understand what
25 Mr. Oller's question is. So that the

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1 into that space or they drove in to pick up
2 materials; is that a fair statement to make,
3 Mr. Pettit?
4 MR. PETTIT: Yes, it is.
5 MR. KULAK: Thank you.
6 CHAIRMAN FOOSE: Good? Thank you.
7 MR. LEHRER: Thank you.
8 CHAIRMAN FOOSE: Members of the public?
9 I'm sorry, Scarlett, by all means.
10 MS. DOYLE: Mr. Pettit, if you feel
11 comfortable answering these questions, please
12 do. If not, let us know.
13 There was some discussion about the
14 Flemington deck store. You seemed to have some
15 familiarity with that. I have a couple of
16 questions.
17 Were you familiar with the fact that the
18 Flemington deck store sold things such as lawn
19 equipment, chairs, tables, grills, for the
20 outside patio area? Were you familiar with
21 that?
22 MR. PETTIT: I was not familiar with that
23 stuff. I didn't have anything really to do
24 with that.
25 MS. DOYLE: Okay.

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1 predominant way, manor, and you correct me if
2 I'm wrong, the predominant manner in which the
3 business was done was that orders were taken by
4 sales people, sent to you, you fulfill the
5 orders. But all the inventory was warehoused
6 in your site, by train or by truck, it was
7 sitting there waiting, and then the orders came
8 in, correct?
9 MR. PETTIT: That is correct. It would
10 come in and we would take it off the trucks or
11 the train and store it. Or the lumber
12 naturally would be for people coming, for us to
13 make our orders out of.
14 MR. LEHRER: And it would be the rare
15 occasion that a customer would even be able to
16 come into the warehouse portion of the site; is
17 that correct?
18 MR. PETTIT: That's correct.
19 MR. KULAK: I just want some further
20 clarification on that because a retail customer
21 might come into the retail space and be looking
22 for items that would be fulfilled by the
23 warehouse. Could be mill work, could be some
24 special cuts or something. And they were --
25 and my understanding was, they were allowed

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1 MR. PETTIT: So I am not familiar with
2 that.
3 MS. DOYLE: You're not familiar with that.
4 Okay, that's a good -- that's what I'm looking
5 for.
6 The next thing is there was a deck store
7 in the Somerville Lumber site in Bridgewater,
8 they had a deck area.
9 MR. PETTIT: Correct.
10 MS. DOYLE: How many years did that store
11 exist as the deck store?
12 MR. PETTIT: The deck store had to be, I
13 don't know, three years, four years. I'm not
14 exactly sure on the exact amount of time that
15 it was there.
16 MS. DOYLE: Okay, we have the Flemington
17 deck store also. And I don't know if you ever
18 went there. But I frequently went there. How
19 long -- that didn't seem to be operational very
20 long. Can you estimate that or are you
21 unfamiliar with that?
22 MR. PETTIT: I'm unfamiliar with
23 Flemington. I was -- did everything I did was
24 in Bridgewater.
25 MS. DOYLE: Okay. Thank you very much,

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1 sir.
2 CHAIRMAN FOOSE: Members of the public,
3 any questions of Mr. Pettit's testimony?
4 All right, seeing none.
5 MR. LEHRER: Thank you, thank you,
6 Mr. Chairman.
7 Thank you, Paul. Appreciate your time.
8 We call him Pauly.
9 Mr. Caruso, Dominick Caruso, please.
10 MR. OLLER: Mr. Caruso, raise your right
11 hand please.
12 Do you solemnly swear that the testimony
13 will you give to this board will be the truth,
14 the whole truth, nothing but the truth, so help
15 you God?
16 MR. CARUSO: Yes.
17 MR. OLLER: State your full name for the
18 record.
19 MR. CARUSO: Dominick Caruso, III.
20 MR. OLLER: C-A-R-U-S-O?
21 MR. CARUSO: Correct.
22 MR. OLLER: Thank you, Mr. Caruso.
23 EXAMINATION BY MR. LEHRER:
24 Q Mr. Caruso, in addition to being a
25 developer, you're also a resident of Bridgewater; is

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1 changed the name to business park.
2 And my primary dealings and business
3 with Somerville Lumber was that Somerville Lumber is
4 basically a big supply house, a warehouse that
5 supplies builders. And I've always known them to be
6 primarily servicing builders and developers that are
7 building tracks of homes.
8 Q So how do you -- let's say you had, I
9 don't know, 50 houses that you were building in the
10 area, how would you order from Somerville Lumber?
11 A Well, the first thing we would do is
12 contact our salesman, and he would come to my office
13 and we would give him the different various plans
14 and types of houses that we wanted to build.
15 And then we would also supply him
16 with take offs of lumbers that we had our framers
17 do. And then they would take the plans back to
18 their, to their shop, and they would have guys up on
19 the second floor that would go through and do take
20 offs on all the windows and the cabinets and the
21 trim and the doors and things of that nature.
22 Q And as far as you know, those materials
23 were already stored on the property, correct?
24 A No.
25 Q On Somerville Lumber?

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1 that correct?
2 A Correct.
3 Q How long have you been a resident of
4 Bridgewater?
5 A My family moved to Bridgewater in about
6 1972.
7 Q All right, and you've been in the building
8 business for about how long?
9 A Since I can remember. Basically it's
10 generational. My dad actually built his house and
11 he bought all the lumber from Somerville Lumber, at
12 that time, 1972.
13 Q And have you had any business dealings in
14 the past with the Somerville Lumber site?
15 A Yes, lots of dealings.
16 Q And, in fact, your father started there?
17 A Yes. 1972.
18 Q Can you provide any details about your
19 experiences with this property and essentially what
20 its historical uses have been?
21 A This property, since I can remember, has
22 been located within the Bridgewater Industrial Park.
23 And that area has been considered and known as an
24 industrial area since I can remember. It's still
25 considered to be an industrial park even though they

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1 A Not -- some, some were there I guess as we
2 needed. But then we would put orders through say
3 for five houses, and then they would have the
4 materials delivered there. But we would take it as
5 we needed onto our site. Because we had no room on
6 the construction sites.
7 Q Do you have any sense of how long some
8 lumber would be in that site? In other words, was
9 lumber there and then you'd come and say I want a
10 hundred pieces of two by four, and it would be
11 there, it would be stored, correct?
12 A Once we placed the orders and we priced
13 out that job, yes, as we needed the material, we
14 would give them our anticipated start dates, and we
15 would start processing orders.
16 Q But you knew those goods would be
17 available for you?
18 A Yes.
19 Q Okay, based upon your dealings with the
20 property, how would you describe its primary
21 function?
22 A Its primary function, from my perspective
23 as a builder, was basically a warehouse supply house
24 type of facility.
25 Q And is it your opinion, as a professional

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1 developer, builder, that warehousing was a primary
2 and an integral component of the property
3 historically at this site?

4 A Yes. Since I can remember and since I've
5 done business with them over the decades, it's
6 always been primarily a warehouse and a supply house
7 for builders.

8 Q And did you personally witness activities,
9 like storage, distribution, loading, unloading of
10 goods on the property?

11 A I've personally seen those operations over
12 the years. For the most part, when we required
13 material to be shipped to our jobs, whether it was
14 lumber, whether it was windows, whether it was
15 cabinets or trim or whatnot. We would put the order
16 -- call them up, call our salesman, I need you to
17 release, you know, house number three with all of
18 the, you know, the lumber or the windows or
19 whatever.

20 Q And there's been some discussion about the
21 showroom component of this. How would you describe
22 your experience with the showroom?

23 A I felt that the showroom was an ancillary
24 use to the building supply warehouse. And as we
25 would design houses and pick out the types of

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1 materials we would need, they would have their
2 showroom full of different types of trim, which we
3 would decide which type of trim we would want to
4 use, different windows that we would want to use, or
5 different types of cabinets that we wanted to use.
6 Because we would give allowances to our buyers. And
7 those buyers would have those allowances that were
8 all the materials that were stored at the Somerville
9 Lumber building.

10 Q Based upon your decades of experience in
11 dealing with Somerville Lumber, would you say that
12 -- could you put an approximate percentage on what
13 was retail and what was warehouse?

14 A My guesstimation would be that 85 to
15 90 percent of the business was warehouse. And the
16 retail, as I stated, was an ancillary type use.

17 Q Okay, as a professional builder, were you
18 familiar with the property's reputation as a
19 lumberyard and warehousing facility?

20 A Absolutely, yes.

21 Q And was the property known for its role in
22 the community as supplying construction materials
23 and accommodating a warehouse function?

24 A Yes. Myself and other competitors and
25 friends and other builders all around pretty much

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1 the tri-county area, Somerville Lumber was
2 considered to be a main supplier for builders and
3 contractors.

4 Q Can you share instances, any instances or
5 projects, where you or your development company
6 relied on the property for its warehousing services
7 and materials?

8 A In some cases we're building houses.
9 Sometimes they would go faster, which is the way we
10 wanted it. But sometimes if sales were not moving
11 as quickly, or if the houses would slow down, we
12 would have materials that were purchased on a bulk
13 order, that would have to stay there for, for, for
14 you know, many months at a time.

15 Q So, in that regard, you routinely sourced
16 your construction materials from the property's
17 warehousing operations, correct?

18 A Absolutely, yes.

19 Q Okay, were you aware of the change in the
20 zoning in 2022?

21 A Yes. I was very aware of it.

22 Q Okay, and is it your understanding that
23 the 2022 zoning change that would not impact the
24 industrial uses that historically occurred at this
25 property, correct?

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1 A I didn't believe that it should or it
2 would, because that has been a consistent use going
3 back decades.

4 Q Okay, and that the primary use, I'm going
5 to return to this, the primary use of this property
6 was warehousing and industrial with accessory
7 retail, correct?

8 A Correct, yes.

9 Q And to conclude your testimony, based upon
10 your reputation in the development business in this
11 community for decades and your interaction with the
12 property, do you believe that this property was
13 historically principally used as a warehouse and
14 industrial operation?

15 A Absolutely, yes.

16 MR. LEHRER: I have nothing further,
17 Mr. Chairman.

18 CHAIRMAN FOOSE: Thank you, Mr. Lehrer.
19 Board questions for Mr. Caruso? Please, Gary.

20 MR. LASPISA: Mr. Caruso, when you
21 purchased the materials say for five or six
22 houses at a time like you described, was
23 storage of the materials until you needed them
24 a factor in those pricing negotiations up
25 front? Or was it a per diem or monthly cost

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1 depending on how long your materials were
2 taking up space in their warehouse?
3 MR. CARUSO: No, it didn't cost us more if
4 they sat there longer if that's what you're
5 getting at. We would just put an order through
6 for say five houses, and then as we would need
7 that material, it would be readily available to
8 us.
9 MR. LASPISA: So in that way then could
10 the warehousing have been a support function
11 for the sale of those materials if it wasn't a
12 factor in -- you weren't paying a per diem for
13 the storage. So was the storage just basically
14 a courtesy part of the sale? It was part of
15 the retail operation of you purchasing those
16 materials.
17 MR. CARUSO: I never really dealt with the
18 retail operation. We dealt with a salesman and
19 the salesman would place our orders. And as
20 far as I know, all the material was coming and
21 being stored and supplied through the
22 warehouse.
23 MR. LASPISA: Okay, thank you.
24 MR. SWEENEY: Mr. Caruso, you said you
25 were unfamiliar with the retail operation. Did
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1 would sign an order for ten two by fours under
2 North Bridge Properties, and then he would back
3 into the warehouse and pick them up.
4 MR. SWEENEY: Thank you.
5 CHAIRMAN FOOSE: Go ahead.
6 MR. VESCIO: You mentioned that Somerville
7 Lumber would provide -- takeoffs, the drawings,
8 and provide them, the drawings and identify
9 what size windows you need; is that correct?
10 MR. CARUSO: Yeah, they would look at the
11 drawings and then they would give me a window
12 list. And then they would give me a price for
13 the windows. Or they would do a door list and
14 they would give me pricing for the doors in the
15 housing.
16 MR. VESCIO: Okay, so is it accurate to
17 say really they're providing additional service
18 to warehousing, since really they're kind of --
19 they're really identifying the materials you
20 need based upon a set of plans? Providing
21 almost a professional service.
22 MR. CARUSO: Yeah, I would consider that
23 like a professional, ancillary type service,
24 yes.
25 MR. VESCIO: Okay, you also mentioned --

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1 you do --
2 MR. CARUSO: Well, no, I was familiar with
3 it -- I'm sorry, I was familiar with it from
4 going in the store. Yes. Yes, I was familiar
5 with it.
6 MR. SWEENEY: So did you do some shopping
7 there, personal?
8 MR. CARUSO: Not really. It wasn't like a
9 Home Depot type of store where, you know, on a
10 Saturday I got a little project around the
11 house and I run down to Somerville Lumber to go
12 pickup my needs. I would go to Home Depot for
13 that.
14 MR. SWEENEY: Okay.
15 MR. CARUSO: And most people would. My
16 experience going in and out of the retail,
17 which I consider to be ancillary, was that
18 builders such as myself or contractors that
19 would work for us, if let's say, for example,
20 we were on the job site and my framer was short
21 ten two by fours or something. He would say,
22 hey, I need more two by fours. And I would
23 call my salesman, he would say we have no
24 trucks available. I'd send one of my guys down
25 to the ware -- down to the retail store. He
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1 excuse me.
2 You would send your homebuyers there for
3 final selection of materials?
4 MR. CARUSO: Well, like, for example, our
5 contracts would provide for Wolf Cabinetry.
6 Wolf Cabinetry had let's say six different
7 colors, or had like six different styles.
8 So they had their ancillary use as a
9 showroom, and I would take the buyer there and
10 I would, okay, this is the Wolf cabinets. This
11 is the book. This is what it's going to look
12 like.
13 And then they'd say, okay, I want this
14 color or that shape. So it was pretty much
15 just like a place to go as a secondary type use
16 for our buyers.
17 MR. VESCIO: Understood. But if that, the
18 showroom was not available, how could your
19 buyers, homebuyers, kind of make their final
20 selections? Was that kind of a requirement or
21 reason why you're doing business with
22 Somerville Lumber because they had that? Like
23 could you do that in a different way?
24 MR. CARUSO: We've dealt with other lumbar
25 yards throughout the state. And a majority

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1 have a small showroom type of thing to sample
2 some of their materials. They would have a
3 section that would have all different types of
4 trim, and moldings, crown moldings, base
5 moldings, trim moldings with different styles.

6 So I've always found that whatever
7 lumberyard we dealt with, they always had some
8 type of showroom, where they could -- where we
9 could take our buyers to.

10 MR. LEHRER: To pick up on the question
11 that's being asked by the board member.

12 But the -- the kitchen cabinets, they were
13 there. They were, they were stored on site.
14 They were inventory on the site. Your customer
15 would just go in and say, I want yellow or I
16 want --

17 MR. CARUSO: Right, right.

18 MR. LEHRER: Or I want brown, or I want
19 this color --

20 MR. CARUSO: Gold, or I want this design
21 or I want that color.

22 MR. LEHRER: Correct?

23 MR. CARUSO: Yes.

24 MR. VESCIO: My final question, did you
25 ever store other material purchased somewhere

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1 MR. KULAK: But your primary experience
2 with Somerville Lumber is as a, what I'll call
3 a commercial developer or somebody who was in
4 the business of professionally developing
5 homes.

6 MR. CARUSO: Right.

7 MR. KULAK: So on.

8 So your view of the business would
9 naturally be skewed by your experience with
10 them?

11 MR. CARUSO: My personal interaction with
12 that business is based on being a builder and
13 buying in bulk.

14 MR. KULAK: Sure. I appreciate that.
15 Thank you.

16 MR. CARUSO: Okay.

17 MR. LEHRER: In your experience, picking
18 up on the question asked, most of your -- you
19 have been in the development community a long
20 time in this area.

21 MR. CARUSO: Correct.

22 MR. LEHRER: And you know quite a few
23 developers.

24 MR. CARUSO: Correct.

25 MR. LEHRER: They all went to Somerville

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1 else there? As like on off-site storage
2 location?

3 MR. CARUSO: No.

4 MR. VESCIO: Thank you.

5 MR. KULAK: I just wanted to follow up on
6 the kitchen cabinet questions and so on.

7 So rather than, as Mr. Lehrer described,
8 somebody going and saying I want yellow or
9 brown. They might say that's the model that my
10 builder recommended. And the people in the
11 showroom would be able to show it to them
12 physically or a catalog that represented
13 perhaps the other color.

14 So interaction there between hopefully the
15 homebuyer, maybe you as the developer, or an
16 agent of yours, or a contractor, would allow
17 that exchange to take place. In your knowledge
18 though, could you walk in as a consumer and buy
19 the cabinets yourself?

20 MR. CARUSO: I would think so, yeah. If I
21 wanted to do my kitchen over myself and do the
22 labor myself, I could go in there and say, hey,
23 I like that cabinet, can you order that for me,
24 and I'm sure they would order it for you, of
25 course.

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1 Lumber and did the same thing?

2 MR. CARUSO: Yes, absolutely.

3 MR. LEHRER: Was that the predominant use,
4 was that developers would come in, order in
5 bulk, the product would be, would be then
6 shipped to your site. You would -- they would
7 contact the salesman, the salesman would go
8 through the same process you went through?

9 MR. CARUSO: Yes. Absolutely, yes.

10 MR. LEHRER: So your experience is the
11 same with all the developers that you have
12 known?

13 MR. CARUSO: Yes. It was considered to be
14 a builders supply house basically.

15 MR. LEHRER: Okay.

16 CHAIRMAN FOOSE: I just have a quick
17 question about what Mr. Silbert referenced in
18 his opening arguments or opening statement.

19 Basically citing homes -- Lowe's and Home
20 Depot as a contributing factor why Somerville
21 Lumber went out of business.

22 So it sounds like, Mr. Caruso, you're
23 testifying all your business went through at a
24 wholesale level, used the warehouse. What I'm
25 trying to reconcile back is did the eventual

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1 closing of Somerville Lumber -- Mr. Silbert
2 cited two large box retailers. So I'm kind of
3 confused.
4 If this was such a critical service that
5 was, you know, really cornerstone of commercial
6 development, why did Lowe's and Home Depot even
7 impact that? I'm a little confused by that.
8 MR. CARUSO: Are you going to say
9 something, Mr. Lehrer?
10 MR. LEHRER: No, no.
11 MR. CARUSO: Oh, I'm sorry. You started
12 leaning forward.
13 Can you repeat the question please?
14 CHAIRMAN FOOSE: It's a hard question.
15 Maybe it's something I should ask one of the
16 owners. But what Mr. Silbert said about Lowe's
17 and Home Depot, you know, they contributed to
18 the reason why Somerville Lumber ultimately
19 closed.
20 Do they provide similar services as
21 Somerville Lumber did? I mean, and I'm
22 confused how to reconcile that statement versus
23 your statement.
24 MR. CARUSO: I've never purchased any bulk
25 houses or projects or material from Home Depot.

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1 You mentioned that in your opinion that
2 Somerville Lumber's primary function was as a
3 warehouse and retail ancillary to that, right?
4 MR. CARUSO: That's my opinion, yes.
5 MR. OLLER: What's your definition of
6 warehouse?
7 MR. CARUSO: A warehouse is a place to
8 either store materials or to do some type of
9 manufacturing or something of that nature.
10 MR. OLLER: So your definition does not
11 include any retail use at all for a warehouse;
12 is that right?
13 MR. CARUSO: No.
14 MR. OLLER: So do you think, and what you
15 witnessed there as a customer, that Somerville
16 Lumber could have survived without any retail
17 component?
18 MR. CARUSO: I think so, yeah.
19 MR. OLLER: And I'm talking about if you
20 look at the square footage on the floor plans,
21 you know, those areas where people could come
22 and your customers would go to to look at
23 product, whatever. You know, if they didn't
24 have that, they would have still function?
25 MR. CARUSO: I believe so, yeah.

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1 Home Depot to me has always been more of a
2 retail type operation. Where subcontractors,
3 whether drywall contractor, framing contractor,
4 they'll go there and come out with, you know, a
5 truckload of material.
6 Builders that I know and in my industry
7 have never really purchased bulk from --
8 CHAIRMAN FOOSE: So if Home Depot and
9 Lowe's didn't do those services, why would them
10 proliferating our area contribute to Somerville
11 Lumber closing?
12 MR. CARUSO: I don't know about that. I
13 don't know why it would. I know that it's
14 created a big hole and a big vacuum for myself
15 and other people. Because now we're going to
16 other lumbar lands up in Hunterdon County or
17 down in Monmouth County, you know.
18 CHAIRMAN FOOSE: All right, I'll ask that
19 question of the next witness perhaps.
20 MR. LEHRER: Yeah, and, Mr. Chairman,
21 that's a really good question, and we're going
22 to pull that all together.
23 CHAIRMAN FOOSE: Great. Thank you.
24 MR. CARUSO: Welcome.
25 MR. OLLER: So just one I think.

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1 MR. OLLER: You would still make use of
2 their service?
3 MR. CARUSO: When my dad purchased his
4 material for his house in 1972, they didn't
5 have a showroom there. It was warehouse and a
6 lumberyard.
7 MR. OLLER: Oh, that's interesting. So
8 back in 1972, there was absolutely no retail
9 component?
10 MR. CARUSO: Not that I was aware of, no.
11 I was very young at the time, but not that I
12 knew of.
13 MR. OLLER: Okay, okay, thanks.
14 CHAIRMAN FOOSE: Questions, Scarlett? Any
15 other questions on the board?
16 All right, members of the public,
17 questions on Mr. Caruso's testimony? All
18 right, seeing none.
19 Back to you, Mr. Lehrer.
20 MR. LEHRER: Thank you, Mr. Chairman.
21 I have one last witness and then what I'm
22 going to do is let you go home because it's
23 late. And all I really want to do is call my
24 commercial real estate broker. Then I'm going
25 to bring my planner back at the next available

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1 meeting if you don't mind. Because we want to
2 pull everything together for you. And I don't
3 think it would be helpful to start another
4 witness then.

5 MR. OLLER: But what would be helpful is
6 if we had the transcript before that.

7 MR. LEHRER: Of course, sure.

8 MR. OLLER: Are you able to do that?

9 MR. LEHRER: Sure.

10 MS. DOYLE: Mr. Chairman?

11 CHAIRMAN FOOSE: Yes.

12 MS. DOYLE: Since many representations
13 were made, I would assume that all of the
14 witnesses would be available to fill in the
15 gaps that are necessary from...

16 MR. LEHRER: Indeed, yes. Thank you.

17 CHAIRMAN FOOSE: All right, so going to do
18 a broker and then witness number four, the
19 planner, we'll do at the next available
20 meeting.

21 MR. LEHRER: Correct.

22 CHAIRMAN FOOSE: Which we'll decide when
23 we wrap up tonight.

24 MR. CARUSO: Thank you.

25 MR. LEHRER: Thank you, Dominick.

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1 MR. CARUSO: Have a good night.

2 MR. LEHRER: Mr. Glick?

3 MR. OLLER: Raise your right hand please.

4 Do you solemnly swear that the testimony you
5 give to this board will be the truth, the whole
6 truth, nothing but the truth, so help you God?

7 MR. GLICK: I do.

8 MR. OLLER: Would you state your full name
9 please and spell your last name.

10 MR. GLICK: Jonathan Glick.

11 MR. OLLER: G-L-I-C-K? Thank you,
12 Mr. Glick.

13 I think your best seat is next to counsel.

14 EXAMINATION BY MR. LEHRER:

15 Q Hello, Mr. Glick. Good evening.

16 A Good evening.

17 Q You've already stated your name. What I'd
18 like you to do is provide your experience in
19 commercial and industrial real estate transactions
20 and marketing.

21 A Okay, I am a licensed real estate broker
22 with Sheldon Gross Realty. I'm a principal there
23 I've been working there for over -- I've been
24 specializing in commercial and industrial real
25 estate transactions for over 40 years. I am a

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1 member of Society of Industrial and Office Realtors,
2 which is known as SIOR, which is it's a global
3 organization, about 3,700 members in 45 countries
4 and 722 cities.

5 I was also -- I'm a member and a past
6 President of the Industrial and Office Brokers
7 Association in New Jersey.

8 Q Were you or your firm retained by
9 Somerville Lumber to market, lease, and/or list its
10 property located at 1468-1480 Route 22?

11 A Yes.

12 Q When were you retained?

13 A October 31st, 2019.

14 Q And so have you listed other industrial
15 properties in your career?

16 A Yes.

17 Q And how did these compare to Somerville
18 Lumber's property? In other words, did any of those
19 industrial properties contain retail as an accessory
20 use, similar to the accessory uses on Somerville
21 Lumber's property?

22 A Yes.

23 Q And can you give us an idea, maybe you
24 have one or two examples?

25 A In Old Bridge, New Jersey, I recently

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1 signed a ten year lease with a company that used to
2 make, you know, the portable office trailers, and
3 they had some component, like a 10 percent of
4 accessories for servicing whatever trailers that
5 they did. So it was on 10 acres. It had outside
6 storage and a large warehouse.

7 Q Okay, dealing with the Somerville Lumber
8 site, can you tell us what you were responsible for
9 bringing to this site as a broker, what tenants you
10 were responsible for bringing?

11 A Tenants that could find value in using the
12 building.

13 Q And such as?

14 A Well, because of what -- how the building
15 was made and designed, it led to an industrial
16 application. The outside storage component had a
17 variety of different companies that would come
18 through. And we have I guess basically three
19 different types of buildings. We have a
20 manufacturing building, where they used to do the
21 manufacturing of the doors. And they have -- we
22 have where the Peonies and Paint Chips are, more of
23 a flex type building, that can be office and/or
24 warehouse. And then we have the building, that's
25 the east building. That building is more of a large

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1 storage area. Doesn't have any heat, doesn't have
2 level floors. It doesn't -- it has very poor
3 lighting, but it's great for keeping product that
4 can't be stored outside covered and secured.
5 Q What about United Parcel, UPS?
6 A Yeah. They, they are on the site. They
7 are using parking there.
8 Q Okay, and can you provide an overview of
9 your understanding of the historical use of the
10 property up until the 2022 change in zoning?
11 A Oh, through my 40 years in the business,
12 that section of town has always been industrial. I
13 mean, I believe that that -- it was one of the first
14 planned industrial parks across the street.
15 Q You're aware that there's a rail spur that
16 traverses the property, correct?
17 A Correct.
18 Q And you are also aware that rail, that
19 rail -- that trains would unload and load at that
20 location, at the Somerville Lumber location,
21 correct?
22 A Oh, yes.
23 Q You were familiar with the entire history?
24 A Mm-hmm.
25 Q And how would you describe the primary

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1 uses of the property during that period of time?
2 A Industrial.
3 Q Okay.
4 A I don't know many retailers that have a
5 freight train going through the middle of the back
6 there.
7 Q And is that how you advertised this
8 property?
9 A As an industrial application, yes.
10 Q Okay, -- was warehousing the principal
11 component of the property's historical use?
12 A I believe so.
13 Q Can you describe the strategies you
14 employed as a broker to market the property to
15 potential tenants?
16 A I advertise with signs. Today's world,
17 it's all internet listing services. There's quite a
18 few of those. And we still do a lot of direct mail
19 campaigns to companies that are in surrounding
20 buildings or close enough by that they might
21 reconsider moving to this location.
22 Q Did you emphasize any specific aspects of
23 the property's features?
24 A Yes.
25 Q Its layout or its facilities in your

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1 marketing materials.
2 A Yes.
3 Q Were the terms warehouse, industrial, or
4 related terms used in the property's marketing to
5 describe its potential uses?
6 A Yes.
7 Q Did you receive inquiries from potential
8 tenant interested in use using the property for
9 warehousing or industrial?
10 A Yes.
11 Q Could you share any specific examples of
12 these inquiries?
13 A Yeah. Most recent, we had a rigging
14 company that found great value in the remaining
15 parcel of land that they could use for parking their
16 trucks and some outside equipment. And they thought
17 that this large storage area that didn't have any
18 heat, or, you know, good lighting and uneven floors
19 would be ideal for some of their equipment that
20 couldn't necessarily be directly exposed to the
21 elements of weather.
22 MR. OLLER: I'm sorry, Mr. Glick, what
23 company did you say?
24 MR. GLICK: A rigging company. Well, a
25 rigging company and a trucking company, so --

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1 MR. OLLER: What was the first word?
2 MR. GLICK: Rigging, R-I-G-G-I-N-G.
3 MR. OLLER: Oh, rigging. I'm sorry. I
4 kept hearing reading. Reading with bad
5 lighting.
6 MR. GLICK: I'm sorry.
7 MR. OLLER: That's usually me.
8 BY MR. LEHRER:
9 Q So I'm going to ask you a question that
10 goes to the value. In other words, if -- how does
11 the inability to lease this property to a
12 warehousing tenant, affect the property's
13 marketability and potential revenue?
14 In other words, did Somerville Lumber
15 suffer any harm as a result of not being able to
16 lease the property for warehouse user?
17 A We got -- so typically what I'll do is we
18 setup our business terms and then we get to the
19 lawyers. Because, you know the hourly rate.
20 Q Sure.
21 A So when you have the business terms all
22 setup, which we did. And we even went to I think we
23 got the leases prepared. But then we had it
24 predicated on the zoning, and the deal got shut
25 down. And this was a three year lease at \$45,000 a

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1 month net. I think it came out to something like
2 \$1,620,000 of revenue that would have been. Plus,
3 remember, they would also pick up the expenses of
4 the real estate taxes and maintenance of the
5 property. So I consider that a pretty big loss for
6 them.

7 Q If not for the principal warehousing and
8 industrial uses, what can this property be leased
9 for?

10 A I think it could be unleaseable.

11 Q So, in your opinion, this property,
12 without warehouse, the primary use being warehousing
13 and industrial, it's your opinion it would be
14 unleaseable?

15 A Very few uses would fit in there for let's
16 say a retail use. The only thing that comes to mind
17 is, I'm probably older than everyone in the room.
18 Red Eastern {ph.} turned into a flea market. I
19 think a flea market could work there. That might be
20 a retail use.

21 Q In your experience, have you ever come
22 across a property with a similar layout as this, and
23 it is different. And it's in this configuration.
24 That was not intended to be primarily housing,
25 warehouse and industrial uses?

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1 A I'm sorry, I lost you on that question.

2 Q In other words, have you ever come across
3 a property like this that was not intended primarily
4 to house warehousing?

5 A No.

6 Q Okay, can you provide an estimate of how
7 much property was allocated for warehousing in
8 relation to the entire property as part of your
9 marketing?

10 A Oh, I feel as though that property,
11 90 percent of it is an industrial application with
12 office for supporting it. And the remaining amount
13 could be accessory retail or showroom.

14 Q At any time in your experience did the
15 property lease over 20 percent of its space for
16 retail?

17 A No.

18 Q Okay, based upon your experience and the
19 evidence presented, do you believe that the property
20 was historically marketed for principal warehousing
21 and industrial use?

22 A Yes.

23 Q And in your professional opinion, based
24 upon the historical use and your interactions with
25 potential tenants, it was all warehousing?

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1 A Yes.

2 Q In your professional opinion, should the
3 property's historical use be considered as principal
4 warehousing?

5 A Yes.

6 Q Based upon your experience, do the
7 definitions, and I'm going to read them to you,
8 accurately describe the operations that existed on
9 this property.

10 Number one, distribution center with
11 on-site retail. Which is a distribution center that
12 primarily functions as a hub for storing, sorting,
13 and shipping goods. The facility may have a small
14 retail store or showroom where customers can
15 purchase products. That's identified as a
16 distribution center with on-site retail.

17 A Yes.

18 Q How about, storage warehouse with retail
19 sample showroom. Which is a storage warehouse use
20 for temporary storage of goods or materials and a
21 small retail showroom with warehouse where customers
22 can view products samples and place orders?

23 A Yes.

24 MR. LEHRER: I have nothing further,
25 Mr. Chairman.

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1 CHAIRMAN FOOSE: Mr. Lehrer, I have a
2 question of those definitions you just asked.
3 Are they from some legal book that has an
4 authority on this?

5 MR. LEHRER: It came from a definition of
6 it -- the -- there's a book by Harvey
7 Moskowitz.

8 CHAIRMAN FOOSE: Moskowitz.

9 MR. LEHRER: On development definitions.
10 And you may have heard of it.

11 CHAIRMAN FOOSE: Scarlett talked to me
12 today.

13 MR. LEHRER: Yeah, I read those
14 definitions directly from that book.

15 CHAIRMAN FOOSE: Got you. That was my
16 question. Thank you very much.

17 Members of the board, questions?

18 MR. KULAK: I just have a quick question.

19 When you describe the potential tenant and
20 we're trying to quantify the financial loss to
21 the appellant, are you suggesting that for some
22 reason this procedure has caused them some
23 financial harm? Or we're the cause of that
24 tenant walking away -- I'm not sure what you're
25 trying to tell us.

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1 MR. GLICK: Well, he asked me the
2 question. I didn't offer it.
3 MR. KULAK: Right.
4 MR. GLICK: So I can tell you that, you
5 know, I do this a lot. I do this in a lot of
6 different towns. And we're constantly trying
7 to keep these buildings leased and rented for
8 anything, any type of, you now, type of
9 property, whether it's retail or. And I think
10 what happens is if you have somebody who you
11 think fits the bill, and we go through all the
12 effort to do it, you go to town, say, hey, it
13 looks just like the other lease that we had.
14 And they say no, it's a big blow to the owner.
15 MR. KULAK: That's why we're here.
16 MR. GLICK: Yes.
17 MR. KULAK: Discussing this and
18 potentiality looking to render an opinion one
19 way or the other. But I was not clear if you
20 were saying because at this moment in time, no
21 decision has been made that that cost your
22 clients some money.
23 MR. GLICK: It definitely cost them that
24 amount of money that I said.
25 MR. KULAK: So are you then representing
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1 MR. GLICK: So when we get to the point
2 where I mentioned that we had offer and
3 acceptance letter. We had all the business
4 terms down, lease prepared. And the reason it
5 didn't move forward in this case is because the
6 town wouldn't permit their use.
7 CHAIRMAN FOOSE: I didn't ask about.
8 MR. GLICK: No, but you're right. The
9 answer is you're right. They don't always make
10 every deal.
11 CHAIRMAN FOOSE: Thank you.
12 MR. KULAK: I have one other question for
13 Mr. Lehrer.
14 Were there any other definitions in this
15 Moskowitz book that perhaps describe the
16 property differently than the two you chose?
17 MR. LEHRER: No, sir.
18 MR. KULAK: Thank you.
19 CHAIRMAN FOOSE: Scarlett, please.
20 MS. DOYLE: Yes, I have two questions.
21 You indicated that the zone was changed
22 and the removal of the warehouse use affected
23 your ability to lease this property, rent this
24 property, sell this property.
25 Did you look at all of the options for
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1 that we're somehow liable for damages to that
2 effect --
3 MR. GLICK: I'm a real estate broker. I'm
4 not --
5 MR. LEHRER: No, if I meant that, I
6 apologize. There is no liability whatsoever
7 that I am suggesting is on the Township, on the
8 Zoning Board. There's just factual loss based
9 upon the fact that a decision has been
10 rendered. That tenant walked away. But I'm
11 not in any way accusing, blaming, suggesting
12 that the Township is any way liable. No.
13 MR. KULAK: Thank you.
14 CHAIRMAN FOOSE: Mr. Glick, is it common
15 tenants are interested in a property and they
16 end up walking away or not closing on a
17 transaction?
18 MR. GLICK: Well, I can go one by one by
19 one.
20 CHAIRMAN FOOSE: I'm not asking --
21 generally does it happen that you have tenants
22 that look at property, like it, maybe have
23 potential want to enter into a lease, and for
24 whatever reason, they don't. Does that happen
25 in your industry?
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1 zoning? You made a very strong statement, but
2 did you explore the zoning ordinance to see
3 whether or not there were other options, and
4 explore those options before testifying that
5 that was the issue that you had to overcome?
6 MR. GLICK: No.
7 MS. DOYLE: Why not?
8 MR. GLICK: Because I didn't.
9 MS. DOYLE: Would it be a better
10 alternative to go back to the ordinance and see
11 whether there is a particular option for the
12 Somerville Lumber lots and the one next door
13 for Bridgewater Accessory Associates, that
14 would have greatly enhanced the development
15 should an effort have been made to attempt and
16 fail, or attempt and succeed, in a negotiation?
17 Would that be something that you should have
18 looked at?
19 MR. GLICK: So there was a lot of parts to
20 that statement that I want to make sure that I
21 don't go off the rails on that. Right. So
22 you'll help me with it.
23 So, you know, you work every day, work in
24 a lot of towns, I don't have everybody, every
25 town's zoning ordinances memorized.
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1 And, quite honestly, this was really a
2 shock to me that it even happened with the idea
3 that we had a press release about the new
4 warehouse going up right next door, and it
5 didn't say, and, wow, were we lucky that we got
6 our paperwork in before everyone else.

7 You know, to me that was like, you know,
8 and sort of like got the wind out of my sails.
9 Because I'm out there trying to get them
10 tenants, and the new warehouse is going up.
11 And now I'm going to go back and study your new
12 zoning quotes. So I didn't do that. I want to
13 tell you that --

14 MS. DOYLE: I would suggest that it's not
15 new zoning. It's been in the ordinance book
16 for probably about eight years, five years.
17 And it's an option that does, that does require
18 negotiations. I'm sure that --

19 MR. GLICK: I'm not familiar with what
20 you're saying.

21 MR. LEHRER: Let me ask the question a
22 different way, if I might.

23 MS. DOYLE: Go ahead, sure.

24 MR. GLICK: I'm not answering this right.

25 MR. LEHRER: So I know what the zoning

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1 ordinance says is permitted use prior to
2 October of 2022. A trucking terminal?

3 MR. GLICK: I market to them.

4 MR. LEHRER: A manufacturing facility?

5 MR. GLICK: I market to that.

6 MR. LEHRER: Would it lend itself to a
7 professional service office?

8 MR. GLICK: Yeah, a small portion of it
9 because we do have offices.

10 MR. LEHRER: How about a multimedia
11 production, such as graphic design and web
12 based services?

13 MR. GLICK: I don't see why not.

14 MR. LEHRER: How about research
15 laboratories and research facilities?

16 MR. GLICK: That would require a great
17 deal of capital from what existing there
18 because the building was not set up for that.

19 MR. LEHRER: How about an adult medical
20 daycare facility?

21 MR. GLICK: Again, we don't have the
22 infrastructure for that, but I haven't, you
23 know.

24 MR. LEHRER: Based upon what you've seen
25 in these pictures, and these board members have

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1 seen, a nursing home?

2 MR. GLICK: Never.

3 MR. LEHRER: Assisted living facility?

4 MR. GLICK: Never.

5 MR. LEHRER: An indoor commercial
6 recreation facility.?

7 MR. GLICK: A lot of pickleball inquiries,
8 let me tell you. But we don't have a level
9 floor. We don't have good lighting. We don't
10 have heat. We don't have a sprinkler system in
11 that building.

12 MR. LEHRER: That's all.

13 MR. GLICK: So I do go through that list.
14 So I don't understand your questions--

15 MS. DOYLE: How about restaurants and
16 hotels?

17 MR. LEHRER: That, Ms. Doyle, you know
18 that that is only allowed as a conditional use
19 if we combine the property with the Denholtz
20 site.

21 MS. DOYLE: And I did say it would require
22 negotiations and an attempt with a failure or a
23 success. What is --

24 MR. LEHRER: Those negotiations did take
25 place.

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1 MS. DOYLE: And it may fail, but the point
2 is that it was not mentioned as an option that
3 it was accepted and rejected or whatever. It
4 -- you encapsulated it only to serve your
5 application here.

6 There is another option that the board may
7 not even know about, because it hasn't been
8 brought up at the meeting and saying we
9 attempted to negotiate and failed.

10 MR. LEHRER: Mr. Chairman, I'm going to
11 tell you what that, what she's talking about.
12 There is an option. It's a -- it's a -- what I
13 would call an overlay zone, an overlay zone.
14 Where if my client negotiated with
15 Mr. Denholtz, and they all got together and
16 they built ---

17 CHAIRMAN FOOSE: And that's the property,
18 they went to the Planning Board, that's most to
19 the east?

20 MR. LEHRER: Right. And if he came
21 together with them, and they were able to come
22 up with some deal, they could put a convention
23 center there with restaurants and retail. But
24 that's a pipe dream. That is ancient history.

25 MS. DOYLE: Well, and that is what I would

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1 have liked to have given to the board, so
2 that -- in testimony. Because it's a pipe
3 dream from, from -- and he's very well aware of
4 the client. But it's a pipe dream that he
5 says, but he doesn't given you proof of such a
6 thing. You didn't even know that it was
7 possible. You didn't know what efforts have
8 been made to talk to Denholtz. You didn't know
9 whether or not Denholtz had ever approached.

10 MR. LEHRER: Why would that even be
11 relevant to a Section 68 case?

12 MS. DOYLE: The reason that I'm bringing
13 it up is because it was mentioned that this is
14 the zone that we're dealing with. And it is
15 the zone we're dealing with except there's an
16 option that you didn't, you didn't divulge.

17 MR. LEHRER: It's no longer viable as an
18 option because Mr. Denholtz got an approval
19 and -- for his property. And those, there were
20 negotiations. I was part of those
21 negotiations.

22 MS. DOYLE: Well, now you're --

23 MR. LEHRER: Maybe I should be a fact
24 witness.

25 MS. DOYLE: Now you're providing the

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1 AUDIENCE MEMBER: It was. It was
2 customarily accessory -- some --

3 MS. DOYLE: It was? So it was cabinetry
4 and doors, mill type of work.

5 Thank you. I don't know that the board
6 got that earlier.

7 MR. OLLER: I don't know and I don't care
8 because people from the audience can't answer a
9 question.

10 MS. DOYLE: Well, he testified that was --

11 MR. OLLER: We need someone who is
12 qualified to answer the question if we want to
13 answer it.

14 MS. DOYLE: Well, I think it's up to the
15 board, but I think the board would like to know
16 if there was manufacturing going on in the
17 building. For what? And it was for the
18 woodworking.

19 CHAIRMAN FOOSE: I didn't hear an answer
20 because we didn't have a witness that testified
21 to that.

22 MR. LEHRER: Yeah, I may have to bring up
23 --

24 MR. OLLER: Well, we had the original
25 witness that indicating milling going on.

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1 information that they don't have, except it's
2 just coming out now. That's all I'm asking.

3 MR. OLLER: Scarlett.

4 MR. LEHRER: I'm just not sure what it has
5 to do --

6 MR. OLLER: I think we should just move to
7 the next topic. It's not relevant.

8 MS. DOYLE: Okay, the next question I
9 have, sir, is you mentioned a bit of the
10 history, and you talked about a manufacturing
11 building.

12 Would you explain in the history what do
13 they do? How long ago was it? If you're
14 aware.

15 MR. GLICK: Okay, so the little that I
16 know is that building two, which is the west
17 building, in the back, when I got the listing,
18 there were still manufacturing equipment there
19 to work on doors.

20 MS. DOYLE: Doors.

21 MR. GLICK: And create doors. So they
22 made doors back there that I know of. And I
23 might be misspoke -- but that was my --

24 MS. DOYLE: It wasn't for cabinetry or any
25 of that to your knowledge?

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1 CHAIRMAN FOOSE: Mr. Pettit did mention
2 it. I don't want to speak for him.

3 MR. LEHRER: There was milling.
4 Mr. Pettit did indicate there was milling and
5 manufacturing going on at the site.

6 MS. DOYLE: Oh, he used the word
7 manufacturing? Okay, I just didn't know that.
8 Thank you.

9 CHAIRMAN FOOSE: Mentioned molding as
10 well?

11 MR. LEHRER: That's correct.

12 MS. DOYLE: And I have no other questions.

13 CHAIRMAN FOOSE: Thank you very much,
14 Scarlett.

15 If there is no other board questions, I
16 would like to open up to members of the public
17 for Mr. Glick's testimony.

18 Seeing none, Mr. Lehrer, we have
19 10 o'clock.

20 MR. LEHRER: I know.

21 CHAIRMAN FOOSE: So our next meeting for
22 the board's information is September 12th. For
23 you, unfortunately, the next available spot is
24 not until October 24th. I know you're a busy
25 man.

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1 Is that going to work for you and your
2 client to continue your case, bring back the
3 planner, and wrap up your testimony?
4 MR. LEHRER: Mr. Chairman, I just want to
5 make sure that's the only available date you
6 have, right?
7 CHAIRMAN FOOSE: Oh, we can go after.
8 MR. LEHRER: No, no, earlier.
9 CHAIRMAN FOOSE: Yeah, we have a full
10 docket unfortunately.
11 MR. LEHRER: You know, Chairman, I've been
12 doing this for a long time, and when the
13 chairman says that's the best we can do, I'm
14 not going to challenge it.
15 CHAIRMAN FOOSE: Scarlett is my rock. She
16 keeps in her planner. She showed me her
17 planner. Both of the meetings subsequent to
18 this, there's two cases.
19 MR. LEHRER: Can I ask my witnesses if
20 they'll all be here?
21 CHAIRMAN FOOSE: Take your time.
22 MR. LEHRER: Yes, that's fine
23 Mr. Chairman. So we're going to continue this
24 case.
25 MR. OLLER: So for members of the public,

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1 this case is being adjourned and will continue
2 on October 24th, 2023 at 7:00 p.m. in this room
3 with no further notice.
4 MS. DOYLE: And, Mr. Chairman, just for
5 the advice of the applicant, because this is a
6 -- we're going to do an accounting of the
7 escrow, there might be a slight request for
8 money.
9 MR. LEHRER: Yeah, you can be in touch
10 with me. That's no problem.
11 MS. DOYLE: Thank you very much,
12 Mr. Lehrer.
13 CHAIRMAN FOOSE: Thank you, Mr. Lehrer.
14 Good seeing you.
15 MR. OLLER: And the transcript, Jeff, if
16 you would.
17 MR. LEHRER: Yes.

(Whereupon, the application was
concluded for the evening at
10:02 p.m.)

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1 C E R T I F I C A T E
2 I, DEVON GERBER, a Certified
3 Court Reporter, Registered Merit Reporter, Certified
4 Realtime Reporter, do hereby certify that prior to
5 the commencement of the examination, the witness was
6 duly sworn by me to testify the truth, the whole
7 truth, and nothing but the truth.
8 I FURTHER CERTIFY that the
9 foregoing is a true and accurate transcript of the
10 testimony as taken stenographically by and before me
11 at the time, place, and on the date hereinbefore set
12 forth, to the best of my ability.
13 I FURTHER CERTIFY that I am
14 neither a relative nor employee nor attorney nor
15 counsel of any of the parties to this action, and
16 that I am neither a relative nor employee of such
17 attorney or counsel, and that I am not financially
18 interested in this action.

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