



**BOARD OF BUILDING APPEALS  
MINUTES OF THE PROCEEDINGS OF THE PUBLIC HEARING  
AUGUST 23, 2017**

The hearing was called to order at 6:30 P.M. by Clerk of Commissions Sackman

PRESENT: Board Members Marie Albano, Chris Pastel, Michael Lamb, Tim Coyne  
ABSENT: Craig Catanzarite  
ALSO PRESENT: Clerk of Commissions Nicolette Sackman and Asst. Law Director Robin Leasure

**ELECTION OF OFFICERS**

Mr. Coyne moved, second by Mr. Pastel to elect Dr. Albano Chairman.

ROLL CALL:

Yeas: Albano, Pastel, Lamb, Coyne

Nays: None, motion carried

Dr. Albano moved, seconded by Mr. Lamb to elect Mr. Coyne Vice Chairman

ROLL CALL:

Yeas: Albano, Pastel, Lamb, Coyne

Nays: None, motion carried

**SELECTED CORRESPONDENCE** - None

**CALENDARS**

Calendar 2017-01

Applicant: Andrea Kimmel – On Demand Childcare LLC

Premises: 2211 Crocker Road, P.P.#211-29-009

Applicant appeals decision of the Director of Inspections regarding: Westlake Codified Ordinance Section 1303.06 contains amendments to the Ohio Building Code deleting the exception of OBC 308.5.2 and 305.2, therefore classifying the facility as I-4 use group. The corrective actions mandated are: 1. Install a fire wall to divide the existing structure into two separate buildings, or 2. Install an automatic fire suppression system in the entire building.

*See the attached verbatim transcription.*

**Motion:** Based upon the findings of fact Mr. Lamb moved, seconded by Mr. Coyne to affirm the Adjudication Order No, 2017-001 dated July 20, 2017 as to Sweet Kiddles Day Care.

ROLL CALL:

Yeas: Albano, Lamb, Coyne, Pastel

Nays: None, motion carried

**MISCELLANEOUS**

None

**APPROVAL OF MINUTES**

None

**ADJOURNMENT**

Chairman Albano adjourned the meeting at 9:10 P.M.

Marie Albano  
Marie Albano, Chairman

Nicolette Sackman  
Nicolette Sackman MMC, Clerk of Commissions

Approved: September 11, 2017

BEFORE THE  
WESTLAKE BOARD OF BUILDING APPEALS

- - -

RE: APPLICATION BY )  
ANDREA KIMMEL OF ON DEMAND )  
CHILDCARE, LLC, d/b/a ) Calender No.  
SWEET KIDDLES ) 2017-001

- - -

Transcript of proceedings in the above-  
entitled matter on Wednesday, August 23rd, 2017,  
before George J. Staiduhar, Court Reporter and  
Notary Public, in and for the State of Ohio, held  
at Westlake City Hall Council Chambers, 27700  
Hilliard Boulevard, Westlake, Ohio, commencing at  
6:15 p.m.

- - -

1 PARTIES PRESENT:

2 On behalf of the Board:

- 3 Marie Albano, Chairperson
- Robin Leasure, Attorney
- 4 Nicolette Sackman, Clerk of Commissions
- Michael Lamb, Member
- 5 Chris Pastel, Member
- Tim Coyne, Member

6  
7 On behalf of the Applicant:

- 8 CALFEE, HALTER & GRISWOLD, LLP
- BY: SEAN S. SUDER, ESQ.,
- 9 2800 First Financial Center
- 255 East Fifth Street
- 10 Cincinnati, OH 45202

11 and

- 12 RSA ARCHITECTS, LLC
- BY: RICHARD E. SIEGFRIED, AIA, NCARB
- 13 10 North Main Street
- Chagrin Falls, OH 44022

14  
15 On behalf of City of Westlake Representatives:

- 16 DONALD P. GRAYEM, DIRECTOR OF INSPECTIONS
- 27700 Hilliard Blvd.
- 17 Westlake, OH 44145

18 and

- 19 JAMES HUGHES, FIRE CHIEF
- 3200 Crocker Road
- 20 Westlake, OH 44145

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I N D E X

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WITNESS:	EXAMINATION
Sean S. Suder, Attorney	9
Richard E. Siegfried, Architect	27, 123
Andrea Kimmel, Applicant	17, 63
Donald P. Grayem, Direct of Inspections	67
Cross examination by Mr. Suder	80
James Hughes, Fire Chief	89
Cross examination by Mr. Suder	104

1 P R O C E E D I N G S

2 CLERK OF COMMISSIONS: The  
3 Board of Building Appeals on August  
4 23rd called to order.

5 On the roll call:

6 Albano?

7 MS. ALBANO: Present.

8 CLERK OF COMMISSIONS: Pastel?

9 MR. PASTEL: Present.

10 CLERK OF COMMISSIONS: Lamb?

11 MR. LAMB: Here.

12 CLERK OF COMMISSIONS: Coyne?

13 MR. COYNE: Present.

14 CLERK OF COMMISSIONS: Mr.

15 Catanzarite not present, but we do  
16 have a quorum.

17 First item on the agenda is the  
18 election of officers. Do I have a  
19 motion for chairman? Somebody needs  
20 to be chair.

21 MS. ALBANO: I will be chair.

22 ATTORNEY LEASURE: Somebody has  
23 to make a motion then.

24 MR. COYNE: Motion.

25 MR. PASTEL: Marie for chair.

1 CLERK OF COMMISSIONS: And  
2 second?

3 MR. COYNE: Second.

4 CLERK OF COMMISSIONS: We have a  
5 first and second, Marie for chair.  
6 Albano?

7 MS. ALBANO: Yes.

8 CLERK OF COMMISSIONS: Pastel?

9 MR. PASTEL: Yes.

10 COURT REPORTER: Lamb?

11 MR. LAMB: Yes.

12 CLERK OF COMMISSIONS: Coyne?

13 MR. COYNE: Yes.

14 CLERK OF COMMISSIONS: Motion  
15 carries.

16 I need for vice chair.

17 CHAIRPERSON ALBANO: Coyne?

18 MR. LAMB: I second it.

19 CLERK OF COMMISSIONS: Who did  
20 the second, please?

21 MR. LAMB: Lamb.

22 CLERK OF COMMISSIONS: I will  
23 take the roll call.

24 Albano?

25 CHAIRPERSON ALBANO: Yes.

1 CLERK OF COMMISSIONS: Pastel?

2 MR. PASTEL: Yes.

3 CLERK OF COMMISSIONS: Lamb?

4 MR. LAMB: Yes.

5 CLERK OF COMMISSIONS: Coyne?

6 MR. COYNE: Yes.

7 CLERK OF COMMISSIONS: Motion  
8 carries.

9 I will turn over the gravel to  
10 you. There you go.

11 Before we start, I do have some  
12 introductions to read. The Board of  
13 Building Appeals complies with the  
14 Ohio Sunshine Laws and is a  
15 quasi-judicial board.

16 Everyone will have an  
17 opportunity to give testimony. The  
18 Board exists for the purpose of  
19 hearing appeals regarding matters  
20 relating to buildings and materials.  
21 The Board shall exercise its powers  
22 and perform its duties for the  
23 accomplishment of such purposes of  
24 zoning.

25 The procedure: The applicant



1 or representative making request  
2 will be sworn in and sign the tablet  
3 on the table. The person will then  
4 present his request. The testimony  
5 will be heard under oath. The City  
6 representative will have the  
7 opportunity to be sworn in and  
8 testify under oath.

9 After the presentation, Board  
10 members may then ask questions or  
11 comment. When the Board has  
12 concluded its questions and  
13 comments, the public will have the  
14 opportunity to be sworn in and  
15 testify under oath.

16 Per the Ohio Sunshine Laws and  
17 the Ohio Supreme Court, public  
18 bodies who are considered  
19 quasi-judicial may require privacy  
20 to deliberate. Quasi-judicial  
21 proceedings and deliberations of  
22 public bodies, when acting in their  
23 quasi-judicial capacities, are not  
24 meetings and are not subject to Open  
25 Meetings Act.

1                   We have one item on the agenda  
2                   today. There is no selected  
3                   correspondence. Calendar: 2017-01,  
4                   Andrea Kimmel, On Demand Childcare,  
5                   LLC.

6                   CHAIRPERSON ALBANO: I would  
7                   like the applicant representative to  
8                   come forward, please.

9                   MR. SUDER: Good evening.

10                  CHAIRPERSON ALBANO: Could you  
11                  please state your name, spell your  
12                  last name, your address?

13                  MR. SUDER: Yes. And I am  
14                  going to go ahead and give my card  
15                  to the stenographer, the court  
16                  reporter here today.

17                  My name is Sean Suder. It is  
18                  S-e-a-n, Suder, S-u-d-e-r. I am  
19                  with the law firm of Calfee, Halter  
20                  & Griswold. I am out of the  
21                  Cincinnati, Ohio, office for Calfee,  
22                  which is 255 East Fifth Street, 28th  
23                  floor, Cincinnati 45202, although  
24                  today I came from the Cleveland  
25                  office.

1                   ATTORNEY LEASURE: I am going  
2                   to swear you in. Would you raise  
3                   your right hand?

4                   MR. SUDER: Sure. I am not  
5                   testifying, but I am making  
6                   argument. So I don't know if I  
7                   necessarily need to do that, but I  
8                   am happy to, if you want me to.

9                   SEAN S. SUDER  
10                  being first duly sworn, and testified as follows  
11                  on behalf of the Applicant:

12                  MR. SUDER: To the extent I am  
13                  testifying, yes. Thank you.

14                  May I proceed?

15                  ATTORNEY LEASURE: Yes.

16                  MR. SUDER: Okay. Well, thank  
17                  you for having us out today. I know  
18                  this is the first time the Board has  
19                  convened in a while, and this is an  
20                  important matter for my client. So  
21                  I appreciate you spending your time  
22                  with us here this evening.

23                  I am here on behalf of On  
24                  Demand, LLC, which is doing business  
25                  as Sweet Kiddles Daycare.

1                   On appeal from the City's July  
2                   20th, 2017, adjudication order, you  
3                   should have the appeal documents and  
4                   the adjudication letter in your  
5                   packet. We are here today to state  
6                   the facts and provide evidence to  
7                   justify relief from the City's  
8                   requirement for my client to have an  
9                   automatic fire suppression system  
10                  installed in the entire building.

11                  I am here with Andrea Kimmel,  
12                  who is the owner of On Demand, LLC  
13                  and the operator of Sweet Kiddles  
14                  Daycare. She is going to testify  
15                  before you this evening about her  
16                  current and proposed location and  
17                  operations and to the numerous  
18                  safety measures her company takes  
19                  that nullify any need for a full  
20                  building fire suppression system.

21                  So you will hear from her about  
22                  her operations. I think you will be  
23                  impressed. She just did a fire test  
24                  yesterday or on Monday, so I think  
25                  you will find that compelling.

1                   Also with me today is Rick  
2                   Siegfried, principal with RSA  
3                   Architects, who filed the appeal on  
4                   behalf of my client. Rick will  
5                   provide substantial technical  
6                   evidence to justify relief from the  
7                   whole building fire suppression  
8                   requirement.

9                   First, it is important for me,  
10                  since this is a record hearing, to  
11                  place on the record a legal argument  
12                  before you this evening. It is  
13                  without dispute that the City of  
14                  Westlake treats a child daycare  
15                  facility differently than the State  
16                  of Ohio, than the Board of Building  
17                  Standards. It treats it differently  
18                  than any other community in the  
19                  State of Ohio that we are aware of.

20                  In 2003, the City of Westlake  
21                  passed an ordinance removing the  
22                  exception in Ohio Building Code  
23                  308.5.2, "which provides that a  
24                  child daycare facility must --  
25                  "shall" it says -- "must be

1 classified as Group E, educational,  
2 rather than I-4, institutional."

3 When this ordinance was  
4 challenged by the Board of Building  
5 Standards back then, the City  
6 prevailed on appeal before the  
7 Common Pleas Court in Franklin  
8 County, Ohio, the court that had the  
9 jurisdiction. So the State of Ohio  
10 tried to take away the City  
11 certification for this very  
12 exception that was passed by  
13 ordinance.

14 The City appealed that, went  
15 before Franklin County Court of  
16 Common Pleas and prevailed. And  
17 they did so based on the Ohio  
18 Supreme Court's reading of  
19 Middleburg Heights versus the Ohio  
20 Board of Building Standards.

21 It is a Supreme Court of Ohio  
22 case, which stands for the  
23 proposition that cities may make  
24 further and additional stricter  
25 regulations that are not in conflict

1 with the Ohio Building Code, and the  
2 City of Westlake argued that's  
3 exactly what they were doing by  
4 deleting the exception in the Ohio  
5 Building Code, Section 308.5.2.

6 But in that case, the State  
7 only argued that the local ordinance  
8 could not conflict with the Ohio  
9 Building Code. The State simply  
10 said "look, this conflicts with the  
11 Ohio Building Code. It is contrary  
12 to Ohio Building Code. Therefore,  
13 it must be struck down."

14 The court did not agree that  
15 the simple fact that the provision  
16 in the City of Westlake code  
17 differed from the Ohio Building Code  
18 was enough to nullify it. The rule  
19 is that a local ordinance cannot  
20 conflict with the Ohio Building  
21 Code, but a city can pass rules that  
22 are stricter than the minimum  
23 standards set forth in the Ohio  
24 Building Code.

25 And the test for determining

1                   whether a local law conflicts with a  
2                   general law, which was never  
3                   addressed in this case itself,  
4                   because the State only argued simply  
5                   that there was a difference and,  
6                   therefore, it was illegal, and  
7                   that's not the case, the fact is,  
8                   the question is whether the City  
9                   ordinance, the local ordinance  
10                  conflicts with the general laws of  
11                  the State.

12                   And that test is set forth in  
13                   that Middleburge Heights versus the  
14                   Ohio Board and Building Standards  
15                   case, and the test is whether the  
16                   ordinance permits or licenses that  
17                   which the statute forbids or  
18                   prohibits and visa versa.

19                   In other words, if the statute  
20                   forbids, prohibits or forbids  
21                   something the Ohio statute, forbids  
22                   or prohibits something, then the  
23                   local statute cannot conflict with  
24                   that. The corollary is, if it  
25                   disallows something that the State



1 allows, then that's also a conflict.

2 The Franklin County Court of  
3 Common Pleas did not employ that  
4 test in the Westlake case back in  
5 2004 and 2005. For whatever reason,  
6 we don't know. We think it is  
7 probably because the State did not  
8 argue the test, but applying that  
9 test to the instant facts, the City  
10 of Westlake is not simply requiring  
11 something greater or stricter than  
12 the minimum standards; it is  
13 forbidding the treatment of the  
14 child daycare facility as an E  
15 occupancy and requiring it be  
16 considered as an I-4 institutional  
17 occupancy.

18 Not only does this directly  
19 contradict and conflict with the  
20 state's building code mandate, the  
21 childcare facilities be considered E  
22 everywhere else in the state, but as  
23 a wholesale elimination of an  
24 exception in an OBC 308.5.2, it  
25 essentially amends and refuses to

1 follow Ohio law.

2 So this decision is not  
3 overburdensome to my client but is  
4 also an unlawful ordinance that  
5 should not be given any force or  
6 effect when viewed under the  
7 conflict test in the Middleburg  
8 Heights case, which was not reviewed  
9 in the case in Franklin County back  
10 in 2004-5.

11 As such, we believe that my  
12 client's appeal should be granted as  
13 a matter of law and on the facts,  
14 which even if the City insists on  
15 reviewing I-4 institutional  
16 occupancy, which we believe to be  
17 improper, it justifies relief from  
18 the requirement that the building be  
19 sprinkled in its entirety.

20 So with that, putting that  
21 legal argument on the record, I  
22 would ask Andrea Kimmel to come  
23 forward to present and to testify in  
24 front of you today.

25 And then, Mr. Siegfried will

1                   come up, and then we will be open to  
2                   questions and answers. Thank you  
3                   for your time.

4                   MS. KIMMEL: Stand right here?

5                   ATTORNEY LEASURE: Yes, you are  
6                   on the right side.

7                   Can you state your name, spell  
8                   your last name, and state your  
9                   address for the record, please?

10                  MS. KIMMEL: Andrea Kimmel,  
11                  K-i-m-m-e-l, 504 Beachcliff Road  
12                  Drive, Rocky River, Ohio 44116.

13                  ATTORNEY LEASURE: Could you  
14                  raise your right hand, please?

15                  ANDREA KIMMEL

16                  the Applicant herein, being first duly sworn, and  
17                  testified as follows:

18                  MS. KIMMEL: I have got a few  
19                  slides to put down. Do I just place  
20                  them on the table?

21                  CLERK OF COMMISSIONS: Yeah.  
22                  Place them faceup facing you. And  
23                  you can go ahead and sign in first  
24                  if you need to. Take your time  
25                  there.

1 (Pause.)

2 MS. KIMMEL: I just thought I  
3 would start. I haven't met any of  
4 you in the past, so I thought I  
5 would just give you a -- just a  
6 quick introduction to what we do at  
7 Sweet Kiddles.

8 We are, as you know and  
9 suspected by now, childcare centers.  
10 We have a slightly different model  
11 than many other childcare centers,  
12 but at the end of the day, we are  
13 flexible, which really isn't  
14 pertinent to the case here, but we  
15 are open six days a week.

16 We operate "high quality step  
17 up to quality-rated centers."  
18 That's the State's designation for  
19 centers who provide high quality  
20 curriculum and childcare above and  
21 beyond what the licensing at ODC  
22 requires.

23 So we take -- I think that's a  
24 symbol to the world that we take  
25 what we do very seriously, and we

1 are very good at what we do. Today  
2 we have three centers open and in  
3 operation in Strongsville, then  
4 Medina, and last week we opened in  
5 Avon Lake. All facilities follow  
6 the Ohio Building Code and are  
7 designated as E use.

8 Returning to the fact that we  
9 take what we do very seriously,  
10 obviously, a big element of that is  
11 that the safety of the children in  
12 our care is first and foremost of  
13 importance. When we bring on a new  
14 team member, they are oriented and  
15 trained extensively in everything  
16 that we do, most importantly, about  
17 our monthly fire drills, the process  
18 for what they are supposed to do  
19 during a fire drill.

20 You can see here a diagram that  
21 is hanging in every single  
22 classroom. They are required to  
23 review and know like the back of  
24 their hand, no matter what classroom  
25 they are in, what their primary exit

1                   it, what the secondary exit is and  
2                   also, of course, what to do in the  
3                   case of severe weather and lockdown  
4                   drills. So we review that  
5                   extensively and train them during  
6                   orientation, and we review monthly  
7                   and quarterly at our staff meetings.

8                   And as you know or maybe not,  
9                   the State of Ohio requires all  
10                  childcare centers to do a real fire  
11                  drill on a monthly basis. What  
12                  "real" means is that nobody, other  
13                  than the director, knows that it is  
14                  fire drill day. They call into the  
15                  monitoring company and ask them to  
16                  put the system in test so that fire  
17                  won't be dispatched, but we then  
18                  pull at the pull station as if it  
19                  were a real fire, and then we time  
20                  how long it takes to get out.

21                  We record the date, the weather  
22                  conditions, how many children and  
23                  adults are in the building. And  
24                  obviously, should anything not go  
25                  smoothly in that process, we

1 practice and practice and practice.  
2 We are so good at what we do, we  
3 have -- I mean, we have it down pat,  
4 so we don't really have to go back  
5 and do it again, except until the  
6 next month comes around.

7 So knowing that I was coming  
8 here tonight, I asked my  
9 Strongsville center director to do  
10 our monthly drill this week so that  
11 I could share with you the results  
12 of that drill. So as always, she  
13 pulled the lever -- oh, I should  
14 mention the Strongsville location is  
15 exactly just about the same size of  
16 the center we will operate here in  
17 Westlake. It has all the same  
18 classrooms and will be exactly the  
19 same as our Strongsville center.

20 It took one minute and 32  
21 seconds to evacuate the entire  
22 building, just get out the doors,  
23 but to get to their designated spot  
24 of safety with all of their  
25 children, with everything, with all

1 of the children's files and  
2 everything, we need to then notify  
3 parents. So it was as real as it  
4 gets.

5 We were very busy on Monday.  
6 We had eight of our possible ten  
7 infants in our infant room plus two  
8 teachers. We had 13 of our 14  
9 toddlers in attendance with two  
10 teachers. We had 16 out of a  
11 potential 24 in our preschool  
12 classroom with two teachers, and we  
13 had 13 school age children in  
14 attendance with one teacher, two  
15 administrators and a cook were also  
16 in the building; took one minute and  
17 32 seconds to evacuate to safety 50  
18 children and ten adults. I think  
19 that's pretty good.

20 We were outside and in position  
21 before the Strongsville Fire  
22 Department would have been able to  
23 even arrive on the scene. So I  
24 would like you to take into  
25 consideration that, as a need, we



1 are still, you know, have extensive  
2 fire alarms, are held to, you know,  
3 having pull stations at every door  
4 and strobes and, you know, with E --  
5 and Rick will address that -- with E  
6 because a hundred or less children  
7 don't need to be sprinkled.

8 The requirements of that fire  
9 system and what we do every month is  
10 extensive and appropriate. With  
11 that, I would like to hand things  
12 over to our architect.

13 MR. COYNE: Question for you,  
14 please:

15 Are your teachers state  
16 certified licensed educators?

17 MS. KIMMEL: Some are; some  
18 aren't. The minimum requirement in  
19 the State of Ohio to work in a  
20 childcare facility is a minimum of a  
21 high school diploma. I don't know  
22 the breakdown at every center and  
23 certainly what it will be in  
24 Westlake.

25 We do our best to hire you know

1                   those who have a full four-year  
2                   Bachelors Degree in early childhood  
3                   education, but it is across the  
4                   board. I have two teachers in  
5                   Strongsville who have Master's  
6                   degrees in Education; let's see,  
7                   maybe one or two teachers with just  
8                   an associate's degree, but they are  
9                   highly educated individuals.

10                   CHAIRPERSON ALBANO: Before you  
11                   leave, I have a question or two.

12                   When you have these number of  
13                   children and number of adults in  
14                   comparison, obviously, a teacher  
15                   can take out 20 toddlers at a time  
16                   but --

17                   MS. KIMMEL: No, they actually  
18                   can't because the largest size  
19                   for -- to do less is 14.

20                   CHAIRPERSON ALBANO: Okay. But  
21                   when the babies are taken out, is it  
22                   taken two at a time, three at a  
23                   time?

24                   MS. KIMMEL: They are taken in  
25                   evacuation cribs. The State

1 requires two evacuation cribs to  
2 transport 12 infants. We don't even  
3 allow the State's 12 infants. We  
4 have always had it under ten.

5 CHAIRPERSON ALBANO: Are you  
6 putting like 12 kids, you know, 12  
7 babies in one crib and taking them  
8 out?

9 MS. KIMMEL: We have two  
10 evacuation cribs as required by the  
11 State.

12 CHAIRPERSON ALBANO: Right.

13 MS. KIMMEL: So there are six  
14 in each.

15 CHAIRPERSON ALBANO: Six in  
16 each?

17 MS. KIMMEL: Five in each, five  
18 in each.

19 CHAIRPERSON ALBANO: Okay.

20 MS. KIMMEL: Because we only  
21 max out at ten.

22 CHAIRPERSON ALBANO: Okay.

23 MS. KIMMEL: We don't allow 12  
24 in a room.

25 CHAIRPERSON ALBANO: And so

1                   that item is then taken out, so the  
2                   babies are put into this, and one  
3                   adult takes those out?

4                   MS. KIMMEL: Two adults take  
5                   them out.

6                   CHAIRPERSON ALBANO: Correct.  
7                   Okay.

8                   MS. KIMMEL: Yeah, because you  
9                   must have two teachers with ten  
10                  infants.

11                  CHAIRPERSON ALBANO: Correct.  
12                  I am saying --

13                  MS. KIMMEL: One adult pushes,  
14                  correct, removes each, correct.

15                  CHAIRPERSON ALBANO: Correct.  
16                  Okay. Thank you.

17                  ATTORNEY LEASURE: I just want  
18                  to note since we have a court  
19                  reporter here, it is way easier for  
20                  him --

21                  COURT REPORTER: Don't talk  
22                  over each other.

23                  ATTORNEY LEASURE: -- a little  
24                  bit, I mean, talking over each  
25                  other. It makes it very hard for

1 him.

2 COURT REPORTER: Thank you.

3 ATTORNEY LEASURE: But he got  
4 it all.

5 MR. SIEGFRIED: Good evening,  
6 everyone. I am Rick Siegfried.  
7 That's S-i-e-g-f-r-i-e-d, 10 North  
8 Main Street, Chagrin Falls, Ohio  
9 44022. I will also hand you a card.

10 ATTORNEY LEASURE: Would you  
11 raise your right hand?

12 RICHARD E. SIEGFRIED  
13 being first duly sworn, and testified as follows  
14 on behalf of the Applicant:

15 MR. SIEGFRIED: So I brought  
16 some of these to pass out if you  
17 would like to have your own  
18 individual copy to look at as we go  
19 through there.

20 CLERK OF COMMISSIONS: Are  
21 these the same as what you provided  
22 in your packets?

23 MR. SIEGFRIED: No. This is a  
24 little different. Right there,  
25 these are different. These are

1 updated so --

2 (Pause.)

3 MR. SIEGFRIED: I am pretty  
4 sure you are mostly familiar with  
5 the situation here, but this is one  
6 of two office buildings that have  
7 previously been occupied mostly by  
8 office space at 2211 Crocker Road,  
9 and the area shaded in gray is the  
10 area that we are proposing to turn  
11 into the daycare center.

12 So you can kind of see that it  
13 wraps around the corner. It has got  
14 good access out the back door where  
15 the playground is going to be, and  
16 it works well. And from what we  
17 understand, there is a demand in the  
18 area.

19 But on the next sheet, just to  
20 sort of simplify things, we have  
21 blown it up and have given you this  
22 red line to delineate our space from  
23 the rest of the tenants in the  
24 building, which are also kind of  
25 laid out.

1                   It is not unusual for daycare  
2                   centers to co-exist with office  
3                   space. Office space is one of the  
4                   things that drives the demand for  
5                   daycare centers. So the fact that  
6                   these things are existing in the  
7                   building wouldn't be the first time  
8                   this has ever happened, and I am  
9                   sure it won't be the last.

10                  One of the things to point out  
11                  is that while this was being done,  
12                  even though it was not a code  
13                  requirement at the time, has been  
14                  confirmed to us by the gentleman who  
15                  built the building and built all  
16                  these phases, that there is a  
17                  one-hour tenant separation wall in  
18                  existence between this space and the  
19                  rest of the tenants, and that will  
20                  come into play later, but I wanted  
21                  to point that out.

22                  So this next drawing is a  
23                  little more complicated, and we can  
24                  take as much time as you want, or I  
25                  can take it kind of quickly, and we

1 can go back to it. This is where we  
2 refer to as a life-safety plan, and  
3 it shows how the distance to exits  
4 are developed and what's allowable  
5 per the code and what isn't.

6 One of the requirements in the  
7 Ohio Building Code, if when you take  
8 the exemption to go from an I-4 to  
9 an E, is essentially what we are  
10 going to be asking you for, but it  
11 will take a few minutes to develop  
12 the whole argument, is that the  
13 facility has to be on the ground  
14 floor, and that any child that is  
15 two and-a-half years or younger has  
16 to be in a room that has a direct  
17 exit to the outside. They can't go  
18 down a bunch of hallways or up and  
19 down stairways or things like that.

20 So in this particular case, we  
21 have got the infant rooms, and you  
22 will see what are little gates.  
23 They are not doors. We talked to  
24 the plans examiner at Six Mode to  
25 make sure that this gate would not



1                   be construed as a door or cause that  
2                   to be an issue, and she agreed with  
3                   us that those were okay. So you  
4                   have got these infant rooms come  
5                   straight out this door.

6                   (Indicating.)

7                   The toddlers come through and  
8                   out this door. (Indicating.) The  
9                   toddlers have a second way out to  
10                  come over here, but then they do go  
11                  out in the hallway. Then you can  
12                  see the rest. When the kids get  
13                  older, they have ways -- we have got  
14                  a door here, we have got a door  
15                  here, and we have a door in the  
16                  back.

17                  So unlike the facility that  
18                  Andrea showed you in Strongsville,  
19                  basically got a door in the front,  
20                  got a door in the back, we have got  
21                  five ways out of this particular  
22                  space, which I think helps our  
23                  argument a little bit. The travel  
24                  distances are all very reasonable.

25                  So kind of like how did we get

1 here is that when we have done these  
2 in the past, we have used this E  
3 exemption. I will fall right my --  
4 we didn't find it in the ordinances.  
5 It is kind of a strange thing to  
6 have in there from our point of  
7 view. You guys can do it, but so we  
8 submitted a set of plans that asks  
9 for an E use, and the red flags went  
10 up and said "nope, nope. Got to be  
11 I-4. You are in Westlake now."

12 We can't get to I-4, but we  
13 will spend a minute or two talking  
14 about this E exemption, and then I  
15 guess Sean has already talked about  
16 it. So I won't belabor it, but then  
17 there is the part in the Westlake  
18 code that says you don't get to do  
19 that. You got to be an I-4.

20 So we looked at our building as  
21 an E building or an I-4 in a couple  
22 different ways, and I don't want to  
23 get too deep into this unless you  
24 want me to, but there is the size of  
25 the building as relates to the

1 construction type, the way the  
2 building is built because we don't  
3 allow any type 5 wood construction.  
4 This isn't that. This is 3 B  
5 construction, so it has got a fire  
6 rated exterior wall.

7 When we do, our area increases  
8 for the open perimeter, for the open  
9 perimeter of the building,  
10 technically qualifies as a  
11 non separated mixed use. In other  
12 words, you could put all these  
13 different tenants in there and not  
14 have to put fire separated  
15 assemblies, fire-rated assemblies  
16 between the tenants. That's true  
17 for an I-4 as well.

18 CHAIRPERSON ALBANO: Can I ask  
19 a question?

20 MR. SIEGFRIED: Absolutely.

21 CHAIRPERSON ALBANO: The  
22 tenant, Kurt R. Thomas, DDS, and the  
23 tenant in his space, does he have  
24 nitrous oxide, oxygen in there? Is  
25 it essentially lined in the walls,

1 or is it portable units? And where  
2 are they stored, or do you know  
3 that?

4 MR. SIEGFRIED: I really don't  
5 know. I am sure we could find out.  
6 I think most dentists today -- we  
7 have worked on a couple recently --  
8 are doing that as portable. They  
9 are not put in the --

10 CHAIRPERSON ALBANO: Where are  
11 the portable units and extra tanks  
12 stored because that has to be  
13 designated. You don't know?

14 MR. SIEGFRIED: I don't know.  
15 I don't know. We would have to find  
16 out.

17 CHAIRPERSON ALBANO: Okay.

18 MR. SIEGFRIED: I assume they  
19 are doing it correctly, but I really  
20 don't know so --

21 CHAIRPERSON ALBANO: Okay.

22 MR. SIEGFRIED: At any rate, so  
23 we go back, allowable height and  
24 area of the building, and we qualify  
25 as a non separated mixed use, but

1                   again, we have got our one-hour fire  
2                   separation that separates this  
3                   facility from the rest of the  
4                   tenants in the building. But when  
5                   we -- so we go through the process,  
6                   and we submit the drawings to  
7                   Westlake.

8                   And you guys come back and say,  
9                   no, you got to look at it as an I-4.  
10                  So we looked at it as an I-4, and we  
11                  had a lot of conversations. We  
12                  can't build a firewall around -- the  
13                  way the building is built, it is  
14                  just technically infeasible to  
15                  construct two walls that will render  
16                  the building structurally stable in  
17                  the event that one of them burns and  
18                  falls down.

19                  I don't know if I've made that  
20                  clear, but a firewall means you have  
21                  one wall here and one wall here.  
22                  This side is on fire. The guy with  
23                  the flame thrower is over here, and  
24                  he burns that wall down, it falls,  
25                  this side still stays there. The

1 way the wood trusses are constructed  
2 and the way this L-shaped space  
3 occurs in that building, it is just  
4 not -- no way it is going to happen.

5 So we started looking at  
6 some different things and asked  
7 ourselves some questions, and I  
8 asked Mr. Grayem some questions, you  
9 know, is there a record? When this  
10 was passed, why? Why? Was there  
11 like a specific instance of  
12 something that went wrong or  
13 somebody concerned, and we never  
14 really got to an answer.

15 So since then, our team has  
16 been assuming that what we are  
17 dealing with is the safety of the  
18 children that are in the facility.  
19 That's only going to make sense as  
20 to why Westlake would have said no,  
21 you can't exempt that. We want you  
22 to step it up to I-4 and treat it  
23 like a facility that has more than a  
24 hundred children.

25 So what is entailed in that I-4

1                   versus an E? The E doesn't require  
2                   fire suppression at all, and again,  
3                   with a non separated mixed use, you  
4                   wouldn't even be required to have  
5                   tenant separation in between, for  
6                   instance, the dentist office and the  
7                   daycare.

8                   So we said what can we do? We  
9                   can't create a firewall. The  
10                  landlord -- and we can give you some  
11                  documents to support our testimony  
12                  -- that the landlord has basically  
13                  said we are not going to let you  
14                  fire suppress the entire building.

15                 First of all, depending on how  
16                 you do it, it is financially  
17                 infeasible, and they are just saying  
18                 it is too big of a disruption and  
19                 inconvenience for the rest of our  
20                 tenants, and o, you can't do it, and  
21                 it is a non starter and have been  
22                 very matter-of-fact about it. And  
23                 again, we have got some e-mail  
24                 chains supporting the evidence if  
25                 you want a copy of that.

1                   But we can fire suppress our  
2                   side, and in the code for the I-4  
3                   use, it says the fire suppression  
4                   that is required is a 13 R, which is  
5                   a little bit of a stepdown version  
6                   of a fire suppression system. It  
7                   still has got coverage with all the  
8                   heads, and it is there so we can put  
9                   that on our side, so that in the  
10                  event a fire breaks out here, it is  
11                  immediately being suppressed.

12                  And the intent is, you know, to  
13                  spend that one minute and 32 seconds  
14                  to get those kids out of the  
15                  building, and maybe it is a minute  
16                  40, maybe it is a minute 20, I don't  
17                  know. If there is a real fire, I  
18                  don't know if they move faster or  
19                  slower. My guess is they move a  
20                  little quicker if they really know  
21                  something is going wrong. So we can  
22                  put fire suppression on our side of  
23                  the building, and we are willing to  
24                  do that.

25                  The other thing that we have



1                   that, again, isn't required but we  
2                   have got this one-hour separation  
3                   between our two spaces, and then  
4                   the other thing we looked at -- and  
5                   this came from a conversation with  
6                   Mr. Grayem, said, well, what happens  
7                   if the fire starts on the other side  
8                   of the wall? How do teachers and  
9                   Sweet Kiddles know that there is a  
10                  fire on the other guy's side because  
11                  they don't have fire alarms, and  
12                  they don't have fire suppression  
13                  because in a fire suppression  
14                  system, when the sprinklers go off,  
15                  the alarms go off, and everybody  
16                  knows. And the fire department  
17                  shows up, and hopefully, everything  
18                  goes well.

19                  So what we looked at as well,  
20                  there is a system called a linear  
21                  heat detection cable that we want to  
22                  run around the perimeter of our  
23                  space inside those other guys, and  
24                  there is a brochure in here on it,  
25                  and it is a pretty clever system.

1                   I don't know it has been used  
2                   here, but it is all UL rated and  
3                   approved and everything, and what  
4                   happens is they take two pair of  
5                   twisted wire, has a little coating  
6                   on it, and they wrap it in one wire,  
7                   and you put it above the ceiling on  
8                   that common wall, and there is  
9                   different temperature ratings that  
10                  it goes off at, anywhere from 155 to  
11                  365.

12                  We would defer to the fire  
13                  department to tell us what  
14                  temperature they want us to buy it  
15                  at. Spontaneous combustion happens  
16                  somewhere around 900 to a thousand  
17                  degrees, so if this wire melts at  
18                  190 degrees -- I will pick the one  
19                  in the middle -- and when the alarm  
20                  goes off, that's going to actually  
21                  talk to the fire alarm system in  
22                  Sweet Kiddles and say "hey, get the  
23                  kids out, something bad is happening  
24                  bad next door."

25                  So we have got heat detection,

1 so we know if there is a problem in  
2 any of the adjacent tenant spaces.  
3 We have got a one-hour fire  
4 separation assembly between those  
5 spaces and us, and we have got fire  
6 separation, and these are things  
7 above and beyond what the Ohio Code  
8 would require.

9 So what are we not doing that  
10 the Westlake Code requires?

11 Essentially, we are not fire  
12 suppressing the whole building,  
13 which is why Mr. Suder in his  
14 earlier discussion said what we are  
15 asking you for, we don't want to --  
16 we can't fire suppress the whole  
17 building.

18 I think the mechanism is you've  
19 got to give us relief under this  
20 I-4, only I-4, and let us say "yeah,  
21 you can be at E use and E occupancy,  
22 but you got to do these other things  
23 to make the building safe," which I  
24 hope we are interpreting your  
25 actions whenever you did this

1                   however many years ago, that that's  
2                   what it was all about, because we  
3                   want to make sure that in Westlake,  
4                   when kids go to childcare center, we  
5                   are doing whatever we can to make  
6                   them safe. That's basically what we  
7                   are doing here.

8                   So I guess without reading a  
9                   bunch of code to you because I don't  
10                  think that gets us anywhere, I would  
11                  open it up to any questions of  
12                  anyone in the group and see where we  
13                  can go with this thing.

14                 MR. LAMB: The first question  
15                 is: Does the one-hour fire wall go  
16                 all the way up into the rafters, or  
17                 does it end at the rafters?

18                 MR. SIEGFRIED: Up to the  
19                 bottom of the deck. It is a  
20                 separation wall just to be, you know  
21                 -- you know how the codes are. It  
22                 is a tenant separation assembly, but  
23                 it does not -- I haven't personally  
24                 gone up there -- but that's what I  
25                 have been told by the guy who built

1                   it. He went up there, and he was  
2                   there when it happened. He said  
3                   "yes, Rick, it goes right up to the  
4                   bottom of the deck."

5                   MR. LAMB: And is part of your  
6                   argument -- and this might be a  
7                   better question for the attorney --  
8                   that the City of Westlake should not  
9                   be able to enhance the State's  
10                  requirement?

11                  MR. SUDER: Mr. Lamb, Sean  
12                  Suder here on behalf of the  
13                  Applicant.

14                  No, they may enhance, but they  
15                  cannot conflict. There is a  
16                  difference. The Ohio Supreme Court  
17                  in that Middleburg Heights case said  
18                  that a city, local government like  
19                  the City of Westlake can pass  
20                  stricter laws.

21                  So, for example -- and I am  
22                  just going to make this up -- number  
23                  of sprinkler heads per square feet,  
24                  let's say the Ohio Building Code  
25                  says one every 20 square feet,

1 Westlake could say one every ten.  
2 That's stricter.

3 But what our argument is -- and  
4 we believe is correct -- under Ohio  
5 law is not that the City can't pass  
6 a stricter law than the minimum  
7 standards set by the Ohio Building  
8 Code, but that the City cannot pass  
9 a law that conflicts, that either  
10 allows or disallows something that  
11 is allowed or disallowed by the Ohio  
12 Building Code.

13 And what Westlake has done is,  
14 they have literally obliterated,  
15 deleted out an exception that the  
16 State of Ohio, Board of Building  
17 Standards determined was appropriate  
18 for everyone in the State of Ohio,  
19 and that is, for these types of  
20 facilities, the kind that we are  
21 proposing, they are treated, it says  
22 "shall be treated as an E,  
23 educational occupancy."

24 And what the City of Westlake  
25 has done is said, no, we are going

1 to amend that. We are going to  
2 change that. We are going to delete  
3 that exception from the code, which  
4 is essentially a clear conflict with  
5 Ohio law. Ohio creates the general  
6 laws of the State.

7 Cities with home rule authority  
8 may pass their own laws, as long as  
9 they don't conflict with the general  
10 laws of the State, and so under that  
11 Middleburg case, which the court,  
12 the first time it looked at this for  
13 the City of Westlake and the first  
14 time Westlake won, didn't look at  
15 that test for conflict because the  
16 State simply argued, hey, it is  
17 different. Therefore, it is not  
18 allowed, which we know is not the  
19 case. It is only not allowed if it  
20 conflicts with the general law of  
21 the case, which we are arguing it  
22 does.

23 Now, that aside -- and I wanted  
24 to make that argument for the record  
25 because I think it is important in

1 case we have to appeal this  
2 matter -- as Mr. Siegfried just  
3 said, it may not even matter really  
4 because your job, how you classify  
5 it, practically speaking, if the  
6 City wants to classify it I-4, then  
7 we are seeking relief from the  
8 requirement that the entire building  
9 be suppressed.

10 And what Mr. Siegfried has done  
11 is offered you functional  
12 equivalencies, safety equivalencies  
13 to allow you to decide that it will  
14 be just as safe without the whole  
15 building being suppressed, and he  
16 offered one-hour separation wall,  
17 fire suppression in the space, and a  
18 linear heat detection cable, which  
19 is above -- well, is above and  
20 beyond what would be required in E.

21 So if you don't want to say E  
22 and if you want to classify it as an  
23 I-4, then we have offered some  
24 functional equivalencies to allow  
25 you to give us a variance from the



1 whole building suppression  
2 requirement.

3 Now, if you agree with our  
4 argument that it should be  
5 classified as an E, then he has  
6 offered these additional life safety  
7 measures that can get you to the  
8 same place essentially.

9 MR. SIEGFRIED: Right. And  
10 Sean is the attorney, but I am  
11 thinking that Westlake is the one  
12 that said it can't be an E; it has  
13 to be an I-4, so I think it is  
14 easier for you to say, okay, we will  
15 give you relief under our code than  
16 for you to give us relief under  
17 Ohio's code and say you can have an  
18 I-4 but not fire suppress the whole  
19 building. It is going the same  
20 place.

21 MR. SUDER: Yeah.

22 MR. SIEGFRIED: It is just how,  
23 I think, that technically or -- and  
24 I am not practicing law -- but  
25 legally, it works better, if you

1 give us relief under your code --

2 MR. SUDER: Like I said --

3 MR. SIEGFRIED: -- and we still  
4 do all these other things --

5 MR. SUDER: We don't have to  
6 argue about whether it is I-4 or E;  
7 what we need to get to is, is what  
8 we are offering functionally  
9 equivalent to, from a life safety  
10 standpoint, to what's required under  
11 however you want to classify it,  
12 I-4, for example.

13 So what we are offering with  
14 the one-hour separation, the fire  
15 suppression in the space, and the  
16 linear heat detection cable, is that  
17 equivalent to sprinkling the whole  
18 building?

19 MR. COYNE: For the record,  
20 please, I would just like to  
21 clarify, your offer is to do all of  
22 these, or are you looking for  
23 guidance from us on what you might  
24 do?

25 MR. SIEGFRIED: You don't want

1 us to do all of it, we will talk.

2 MR. COYNE: Okay. But you are  
3 offering your office?

4 MR. SIEGFRIED: We are offering  
5 to do the fire suppression, to  
6 maintain the one-hour tenant  
7 separation, and to install the  
8 linear heat detection cable.

9 MR. COYNE: Thank you.

10 MR. SIEGFRIED: And there is  
11 one other thing: My last piece of  
12 paper there I forgot to mention  
13 because it is an appeal -- and these  
14 are usually based on special  
15 circumstances -- I understand we are  
16 not trying to set a precedent here;  
17 we are looking at our particular  
18 situation, this building in this  
19 case, in this location, with these  
20 circumstances, and it will be pretty  
21 hard for someone to come back and  
22 argue precedent to have these  
23 conditions again.

24 But one other thing is that  
25 Station No. 1, the Westlake Fire

1 Department, I think, is a mile or  
2 just slightly less than a mile away.  
3 So we think that plays pretty heavy  
4 in our favor, and I will defer to  
5 you guys how fast you move.

6 I will bet you move pretty  
7 fast, and I also think that one  
8 minute 32 seconds, those kids are  
9 out when the trucks are rolling in,  
10 so we think from the standpoint of  
11 safety we have covered it at a lot  
12 of additional cost that our tenant  
13 wasn't anticipating.

14 But based on the discussions  
15 we've had and what you guys require,  
16 she is willing to do it. We think  
17 it is reasonable. We think it is  
18 safe. Sean's word "functional  
19 equivalency" are great. We think  
20 that it does those things.

21 MR. LAMB: How does the linear  
22 heat detection cable system work?  
23 Is it powered by an outside  
24 electrical source?

25 MR. SIEGFRIED: So there is a

1           little bit of current, and you can  
2           read about it. A little bit of  
3           current runs through these two  
4           wires, and there is a battery backup  
5           on it and all that stuff.

6                     When the temperature rises, the  
7           coating on the twisted pair of wires  
8           melts or dissolves or whatever word  
9           you want to use, and then when that  
10          shorts off, it sets off the alarm.  
11          And again, if you look at the second  
12          page, we can set it anywhere from  
13          155 to 365.

14                    CHAIRPERSON ALBANO: So even if  
15          there is a general power outage to  
16          the building --

17                    MR. SIEGFRIED: It still works.

18                    CHAIRPERSON ALBANO: -- it can  
19          still function? I mean, the  
20          batteries in this system that is  
21          working, is it checked on a regular  
22          basis like with -- like a -- because  
23          this is a building, and the fire  
24          department comes in to certain  
25          specific buildings at times and

1 checks they have the correct number  
2 of fire extinguishers, et cetera.

3 Will they check and make sure  
4 that the batteries are all up to  
5 date and those things as well?

6 MR. SIEGFRIED: Okay. So  
7 again, I am not the fire alarm guy,  
8 but my understanding of the system  
9 is that the fire alarm system that  
10 is also going to be in this building  
11 as part of the requirement, to go  
12 along with the fire suppression  
13 system is to maintain it is battery  
14 operated, that there is a battery  
15 backup, okay, that this linear heat  
16 detection cable will be tied into  
17 that battery backup.

18 And that's all going to be in  
19 the Sweet Kiddles space, and it is  
20 all going to be part of what I  
21 assume the City of Westlake Fire  
22 Department does on their regular  
23 inspections and checkups, to make  
24 sure that all the occupants and  
25 tenants and businesses and

1 establishments in Westlake are  
2 conforming to your fire codes, and  
3 it just has to be -- that has just  
4 got to be the way it works. So it  
5 is part of their backup system. It  
6 is part of their system.

7 It is not really going to  
8 notify the guy in the dentist's  
9 office that his oxygen tank is  
10 burning; it is going to tell the  
11 daycare center that the guy next  
12 door has a problem, get the kids out  
13 because there is no code requirement  
14 for those guys to have those alarm  
15 systems, but there are little  
16 spaces, and I guess if the guy's  
17 oxygen tank starts burning, you will  
18 know it.

19 CHAIRPERSON ALBANO: Say that  
20 again, please?

21 MR. SIEGFRIED: I said, they  
22 are small spaces. If the dentist  
23 has a fire in his office, I think he  
24 is going to know it. These are  
25 spaces. No one is sleeping in them.

1                   They are not occupied that, you know  
2                   -- but we don't know, but that's why  
3                   we are doing all this --

4                   CHAIRPERSON ALBANO: Correct.

5                   MR. SIEGFRIED: -- to protect  
6                   the childcare center.

7                   CHAIRPERSON ALBANO: I  
8                   understand.

9                   MR. SIEGFRIED: Because that's  
10                  my job, is to meet those  
11                  requirements, protect that center,  
12                  and hopefully, satisfy this Board  
13                  that we have done appropriate  
14                  measures to meet with the intent of  
15                  your ordinance.

16                  CHAIRPERSON ALBANO: See, my  
17                  concern is, if this building was  
18                  built and it has wood walls in  
19                  there, it is not just all metal,  
20                  correct?

21                  MR. SIEGFRIED: It is all  
22                  steel.

23                  CHAIRPERSON ALBANO: It is all  
24                  steel. Okay. But if there are  
25                  central lines in there for oxygen



1 and/or nitrous that come through the  
2 walls like that, the law changed in  
3 the State of Ohio about 20 years  
4 ago.

5 MR. SIEGFRIED: Okay.

6 CHAIRPERSON ALBANO: And  
7 how old is this building?

8 MR. SIEGFRIED: I don't really  
9 know. I don't know that it is 20  
10 years old. It doesn't feel that  
11 old.

12 CHAIRPERSON ALBANO: There is  
13 still the central lines in the  
14 building, and if there is emergency  
15 oxygen still in the walls, if that  
16 is run through walls, that can be a  
17 problem because it is very  
18 explosive.

19 We have another item that is of  
20 concern now: That when you have  
21 oxygen for emergencies, which are  
22 required in the State of Ohio to  
23 have, that people using E-cigarettes  
24 that are explosive, it is a problem.

25 MR. SIEGFRIED: Yeah.

1 CHAIRPERSON ALBANO: I know  
2 because I read the literature.

3 MR. SIEGFRIED: Okay.

4 CHAIRPERSON ALBANO: So --

5 MR. SIEGFRIED: I am pretty  
6 sure the daycare center is a  
7 non smoking facility.

8 CHAIRPERSON ALBANO: But  
9 E-cigarettes are not -- that's  
10 another legal guideline.

11 MR. SIEGFRIED: Okay. And I  
12 don't know. She can answer that  
13 question.

14 CHAIRPERSON ALBANO: She needs  
15 to answer that, right.

16 MR. SIEGFRIED: I am pretty  
17 sure that those oxygen lines aren't  
18 allowed to run through those tenant  
19 separation walls, so I don't -- if  
20 you wanted to give us that approval  
21 conditioned upon the fact that those  
22 aren't there or we deal with it if  
23 they are there --

24 CHAIRPERSON ALBANO: Correct.  
25 And he may not.

1                   MR. SIEGFRIED:  -- we would be  
2                   more than -- I think that would be a  
3                   reasonable stipulation to add.

4                   I will be honest, we didn't go  
5                   down that road.  We didn't think  
6                   about the oxygen or the nitrous or  
7                   any of the gases in the dentist's  
8                   office.

9                   MR. LAMB:  Have you done any  
10                  research into how long it would take  
11                  a fire fueled by pure oxygen to go  
12                  from a dentist's space, which is  
13                  right by the infants' and toddlers'  
14                  location, if it traveled through the  
15                  rafters and through to the upper  
16                  space?

17                  MR. SIEGFRIED:  Well, again,  
18                  the wall goes all the way up to the  
19                  bottom of the roof.  That fire is  
20                  down low.  Fire typically goes up.  
21                  It doesn't go sideways until it has  
22                  to or it can as long as the barrier  
23                  is there, and again, you have got a  
24                  gentleman here that probably can  
25                  answer these questions better than

1 me.

2 But I do know whether UL and  
3 Factory Mutual and those guys test  
4 these assemblies. They are  
5 generally pointing a fire right at  
6 the wall, and they are waiting to  
7 see how long it goes. They are the  
8 ones that do that testing.

9 When they say it has a one-hour  
10 -- the assembly is rated for  
11 one-hour, then I have to take them  
12 on their word that it is a one-hour  
13 rated assembly and will withstand,  
14 again, not a bomb blast, but we are  
15 talking about a fire pointing at the  
16 wall, so that's how they test them.

17 MR. LAMB: I understand your  
18 concern about the fire going through  
19 the wall, but my concern is up and  
20 over through the rafter system --

21 MR. SIEGFRIED: Right.

22 MR. LAMB: -- which I have seen  
23 quite a few fires, and I have been  
24 on those scenes.

25 MR. SIEGFRIED: Yeah.

1                   MR. LAMB:  Where it has done  
2                   that and traveled very fast.

3                   MR. SIEGFRIED:  Yeah.  So the  
4                   wall goes -- the fire separation is  
5                   something that goes from the floor  
6                   to the bottom side of the roof deck.  
7                   So now it has to burn through the  
8                   roof and then go up and over and  
9                   back down again.  I am hoping they  
10                  are there by then.  I am pretty sure  
11                  they will be.

12                  CHAIRPERSON ALBANO:  One other  
13                  question, and this can be -- I am  
14                  not stretching this because I  
15                  understand this.  Okay.

16                  There is gas lines that have  
17                  nitrous or oxygen, other gas lines,  
18                  because as a dentist, you run Bunsen  
19                  burners, and a lot of time we use  
20                  portable units, small little things  
21                  that we can control, but sometimes  
22                  there is actually gas lines so we  
23                  can run Bunsen burners.  So we are  
24                  melting wax and things like that.

25                  Are there any gas lines in

1                   those walls because, again, that can  
2                   be a problem.

3                   Don't know?

4                   MR. SIEGFRIED: I would have to  
5                   find out.

6                   CHAIRPERSON ALBANO: Okay.

7                   MR. SIEGFRIED: I don't know.

8                   CHAIRPERSON ALBANO: I mean,  
9                   that's very important to know.

10                  MR. LAMB: And your main  
11                  concern about the construction of a  
12                  double wall is that you say it can't  
13                  be done. If it is -- say it is  
14                  done, how much actual space in  
15                  the current location would it take  
16                  up?

17                  MR. SIEGFRIED: Here is what  
18                  happens: This drawing, there are  
19                  wood trusses on the roof that go  
20                  this way, and every one of those has  
21                  to basically be turned into two  
22                  trusses and a wall built on either  
23                  side of it. So this one burns and  
24                  falls down, that wall goes with it.  
25                  There is another wall holding the

1 other one up, and they are just not  
2 made to do that.

3 It is -- you know, had everyone  
4 known this was going to happen way  
5 back down the road and they built a  
6 fire wall here, said this space --  
7 you know, it didn't happen when the  
8 building was built. It wasn't  
9 anticipated.

10 So to come in and make that  
11 kind of a change after the fact is  
12 just prohibitive. You are going to  
13 tear all the drywall, and the  
14 cost -- you are really going to go  
15 in and tear down the middle of --  
16 this space is going to get torn  
17 apart anyway.

18 But over here, you are going to  
19 tear all this apart, and it would be  
20 weeks of work that would be  
21 extremely disruptive and expensive,  
22 and the trusses aren't made to do  
23 that.

24 CHAIRPERSON ALBANO: Have you  
25 estimated the cost, how to do this

1 other linear heat detection cable,  
2 would be?

3 MR. SIEGFRIED: The linear  
4 detection system?

5 CHAIRPERSON ALBANO: Uh-huh.

6 MR. SIEGFRIED: Between \$8 and  
7 \$12,000.

8 So the truss, Mr. Lamb,  
9 typically, those things, you know,  
10 have those kind of cords in them.  
11 There is not usually a vertical --  
12 you know, it doesn't lend itself to  
13 being separated. You can do an  
14 analysis on them.

15 From an engineering point, you  
16 just -- they don't even like you to  
17 cut them let alone turn them into  
18 two.

19 Question came up while you  
20 stepped out: Is there smoking or  
21 E-cigarettes allowed in your space?

22 MS. KIMMEL: Absolutely not.

23 CHAIRPERSON ALBANO: What about  
24 the neighbor next door?

25 MR. SIEGFRIED: Again, I can't



1 control his space. I can control --  
2 we can keep it from happening in our  
3 space --

4 CHAIRPERSON ALBANO: Yeah.

5 MR. SIEGFRIED: -- where we  
6 have the fire suppression. I  
7 can't --

8 CHAIRPERSON ALBANO: Okay.

9 MR. SIEGFRIED: That's why we  
10 have the one-hour wall. We think  
11 the one-hour wall does justice to  
12 that.

13 (Pause.)

14 MR. SIEGFRIED: Comments,  
15 questions, concerns?

16 MR. SUDER: Are you done?

17 MR. SIEGFRIED: Yes.

18 MR. SUDER: Andrea, would like  
19 to say a couple more things for  
20 clarification?

21 MS. KIMMEL: So the contractor  
22 who has done all the spaces has  
23 confirmed that there are no oxygen  
24 or nitrous oxide lines in the  
25 dentist's office. He is working on

1 getting the day it was built. He  
2 remembers his earliest work right  
3 after it was built being right  
4 before 911, but he is calling  
5 somebody who knows exactly when it  
6 was built.

7 So I may have that tonight, and  
8 I am going to look up the Ohio  
9 Revised Code regarding E-cigarettes  
10 because I believe they are  
11 classified under the part of the  
12 code that restricts you from smoking  
13 in buildings, and for us, it is 50  
14 feet from the building. So I will  
15 look that up.

16 MR. SUDER: Andrea, if you  
17 could just testify or reiterate to  
18 your conversations with the owner of  
19 the building about sprinkling the  
20 whole building and your offers  
21 you've made?

22 MS. KIMMEL: Oh, yes. So it  
23 has been a very long process with  
24 Mr. Weiss and his partners. Under  
25 no circumstance will he allow it,

1                   and he is speaking to my attorney  
2                   through his attorney with multiple  
3                   iterations. I most recently -- and  
4                   here, why don't you put this up on  
5                   the --

6                   MR. SUDER: Sure. Do you want  
7                   to introduce a copy as evidence,  
8                   also?

9                   MS. KIMMEL: When -- this was  
10                  after we had a few go-arounds of  
11                  asking him and really trying hard to  
12                  persuade him -- I got this e-mail,  
13                  and most recently, two weeks ago I  
14                  offered him a thousand dollars a day  
15                  and each tenant a thousand dollars a  
16                  day as compensation and to work  
17                  nights and weekends, so no  
18                  disruption to the tenants, to work  
19                  nights and weekends, to give them a  
20                  thousand dollars everyday we are in  
21                  their space, give him a thousand  
22                  dollars a day for the whole project,  
23                  and he rejected that offer today  
24                  because of the ongoing maintenance  
25                  cost that he would have to face in

1 keeping the system up to date in the  
2 building.

3 So I can't think of any other  
4 creative ways to get him to come  
5 around. The e-mail today I think  
6 put a nail in the coffin because I  
7 will honestly do anything to be able  
8 to do that, and he is just not  
9 budging.

10 CHAIRPERSON ALBANO: Any other  
11 questions for the Board or from the  
12 audience?

13 ATTORNEY LEASURE: Any other  
14 questions the Board members have for  
15 that?

16 (No response.)

17 ATTORNEY LEASURE: No. Okay.  
18 Okay.

19 MR. SUDER: All right. Thank  
20 you.

21 MR. SIEGFRIED: Thank you very  
22 much.

23 CHAIRPERSON ALBANO: Any City  
24 representatives like to present?

25 MR. GRAYEM: Donald Grayem,

1 G-r-a-y-e-m, and I am the Director  
2 Inspections for the city of  
3 Westlake.

4 ATTORNEY LEASURE: Would you  
5 raise your right hand?

6 DONALD P. GRAYEM  
7 being first duly sworn, and testified as follows  
8 on behalf of the City of Westlake:

9 MR. GRAYEM: Before I get  
10 started, I would like to make one  
11 clarification or at least bring  
12 something to light regarding the  
13 one-hour tenant separation wall. I  
14 think, Mr. Lamb, you had asked about  
15 and there was some discussion back  
16 and forth, I do not know, we do not  
17 know and the architect admitted he  
18 did not know the status of the  
19 height of that wall.

20 We talk about up to the deck  
21 and so forth, so I want to clarify  
22 when the word "deck" is used, it  
23 could be to the bottom of the  
24 trusses, not to the roof deck, and I  
25 guess I would just like to put that

1 out there; that until we know for  
2 sure if there was going to be a  
3 variance entertained, that there be  
4 a condition that we all figure out  
5 the construction extent of that wall  
6 because it seems to be playing a  
7 major role in these discussions.

8 It would be highly unlikely, in  
9 my opinion, that that wall would  
10 have been built to the roof deck  
11 because of the reasons that were  
12 talked about of -- it goes through  
13 the trusses, too, so it is highly  
14 unlikely that that wall goes to the  
15 roof deck.

16 So what I would like to do  
17 is -- you've heard a lot of  
18 testimony. You are going to hear,  
19 in my preparation, I will touch on a  
20 lot of the same things, maybe give  
21 you a little more information, but I  
22 want to go back. I want to go back  
23 to the very beginning.

24 I want to explain, you know,  
25 the Ohio Building Code -- there are

1 two codes basically in the State of  
2 Ohio: The Ohio Building Code and  
3 the Residential Code of Ohio. The  
4 Ohio Building Code regulates all  
5 commercial construction in the State  
6 of Ohio.

7 Westlake has a very unique  
8 situation in the state, and that is  
9 that we have currently nine  
10 amendments that are amendments to  
11 the Ohio Building Code. Some of  
12 them are subtle; other ones are not  
13 so subtle. As I said, that's a very  
14 unique situation to be in.

15 All of those amendments have  
16 one thing in common, and that is  
17 they either make the occupants of  
18 the building much safer, or they  
19 enhance the performance of the  
20 firefighters during an emergency  
21 situation, every one of them.

22 So someone asked, you know,  
23 what was Westlake thinking? Safety  
24 of occupants is paramount.

25 I read through minutes from

1 meetings in 1997, '98, '99 where  
2 there was a committee meeting of  
3 Council, where all these things were  
4 talked about and hashed out, and it  
5 all boils down to safety. Okay?

6 So again, 1997, City Council  
7 administration were asked or got  
8 together and question was asked:  
9 How can Westlake make their building  
10 safer?

11 Around that same time, there  
12 were three catastrophic large fires,  
13 one in Westlake, two in North  
14 Olmsted all involving apartment  
15 buildings.

16 Just as an aside, two of them  
17 were older buildings built out of  
18 masonry, a lot of masonry. One of  
19 them was a newer building, basically  
20 wood frame, kind of the variety of  
21 what we have on Detroit Road with  
22 the Remington and Hunter's Chase and  
23 those types of things.

24 The two that were masonry fared  
25 very, very well. Sure, there was



1 damage, but it was contained. The  
2 one that was wood, it was  
3 catastrophic. It lost, you know,  
4 many, many square feet, hundreds or  
5 thousands of square feet. So there  
6 were, again, lots of committee  
7 meetings, lots of discussions, but  
8 needless to say, an ordinance was  
9 adopted back in, I believe it was,  
10 2003.

11 And subsequently, the State of  
12 Ohio, Board of Building Standards  
13 learned of the ordinance and made a  
14 case to have the City -- the  
15 building department decertified.  
16 The case went to Franklin County  
17 Court of Common Pleas in 2005. The  
18 State's position was that the  
19 amendments were in conflict with the  
20 state code. I will read to you some  
21 portions actually from the decision  
22 not in whole but, you know, in part.  
23 So you heard about the Middleburg  
24 Heights case. That was discussed in  
25 the City of Westlake case.

1                   It says "the Ohio Supreme Court  
2                   noted that the rules adopted by the  
3                   Board were the lawful minimum" --  
4                   the word "minimum" is in bold, and  
5                   it even goes on to say "emphasis  
6                   added," so it is key to understand  
7                   that the building code is a minimum  
8                   code. Okay?

9                   And it says that "the statute  
10                  does not prevent the legislative  
11                  authority of a municipality from  
12                  making further and additional  
13                  regulations not in conflict with the  
14                  rules of the Board."

15                  It goes on to say "the court  
16                  found that the City's structural and  
17                  fire safety construction standards  
18                  exceeding those of the OBC were not  
19                  in conflict with the OBC and were  
20                  enforceable. The court finds that  
21                  the ordinances adopted by the City  
22                  of Westlake exceed the minimum  
23                  requirements of the OBC and,  
24                  therefore, are enforceable. The  
25                  court finds that the Board's order

1 is not supported by reliable,  
2 probated, and substantial evidence  
3 or in accordance with the law. The  
4 Board's order to decertify is  
5 reversed."

6 So that, you know, the legal  
7 aspect of this may be for another  
8 day. My job is to enforce the codes  
9 and ordinances of the City of  
10 Westlake and State of Ohio. I guess  
11 we can talk about, you know, now  
12 let's go to the use group, which  
13 would be the E and the I-4.

14 Basically, as you heard, there  
15 were certain sections that were  
16 deleted in whole, which dealt with  
17 how you classify this use. So when  
18 the E use group was deleted, it  
19 kicks you to the I-4, which is a  
20 more stringent use group.

21 Now, you have to -- so that's  
22 what determines the use. And then,  
23 you have to go back to the Ohio  
24 Building Code to determine the  
25 requirements for the I-4 use group,

1                   and that's where we find that an  
2                   automatic fire suppression system is  
3                   required, and it needs to be  
4                   installed in the entire building  
5                   containing the use group I.

6                   So -- and actually, I would  
7                   like to acknowledge that there were  
8                   many, many conversations between  
9                   myself and Mr. Siegfried and also  
10                  the fire chief to weigh in and tried  
11                  to come up with, you know, a  
12                  workable solution.

13                  At one point, I even said,  
14                  "hey, you know, why don't you  
15                  approach the landlord? See if you  
16                  can move some of these tenants  
17                  around and get that fire wall?" And  
18                  that came back that that could not  
19                  be done.

20                  So in my formal adjudication  
21                  order, which you have a copy of, my  
22                  first order -- my first option or  
23                  corrective action I should say was  
24                  to construct a fire wall, and you  
25                  have heard again what a fire wall is

1 and what it does.

2 A fire wall, if you had a  
3 building and you put a fire wall in  
4 the middle of it, a fire wall allows  
5 you to create, that would create two  
6 separate buildings. Okay. That's a  
7 key word is "building."

8 So the installation, if that  
9 were to be possible, what they are  
10 presenting as a remedy would be  
11 accepted because the building, the  
12 one half now is a separate building,  
13 and if it was suppressed, it would  
14 comply with the requirements of an  
15 I-4.

16 Since -- now that that's not  
17 able to be done, now we are back to  
18 the whole building, and that's the  
19 sticking point here. I understand  
20 this is probably confusing. This is  
21 not an easy topic by the way, so I  
22 hope, you know, we are giving you  
23 enough information, especially going  
24 back and forth between the two codes  
25 because one code says you can do it,

1 and then we have amendments that  
2 says you can't.

3 But the real issue really is a  
4 very simple one: We have all kinds  
5 of proposals and ideas and things  
6 like that, but really what we are  
7 here for is that the Westlake code,  
8 right now the code on the books,  
9 says that our code supersedes the  
10 Ohio Building Code, and it is not an  
11 E, but it is an I-4, and that is  
12 plain and simple. That is the fact.

13 So I guess, you know, in  
14 closing, I would just like to say  
15 any variance that is granted to  
16 these amendments would open the door  
17 contrary to what you heard earlier  
18 to future variance requests, any  
19 road, the high standards that these  
20 amendments have provided for the  
21 last 20 years.

22 Think of all the buildings that  
23 have been built, commercial  
24 buildings in Westlake in the last 20  
25 years. Think about the last five.

1                   They've, indeed, made Westlake  
2                   safer, and I am also not aware of a  
3                   developer that learned of our  
4                   amendments and chose to take their  
5                   development or their building out of  
6                   the City and go build it somewhere  
7                   else. They complied.

8                   There are daycares in the City  
9                   that followed this and that were  
10                  built and fully sprinklered. It  
11                  happens. So that's where we are at.

12                 I mean, we are stuck on this  
13                 sprinkler issue. The building does  
14                 not adapt itself to allow the  
15                 installation of a fire wall. In my  
16                 opinion, the only option to conform  
17                 to the I-4 requirement is to fully  
18                 suppress the entire building for  
19                 this use group.

20                 COURT REPORTER: Would you  
21                 spell your name one more time?

22                 MR. GRAYEM: Sure. It is  
23                 G-r-a-y-e-m.

24                 COURT REPORTER: Oh, e-m.  
25                 Okay. Got you. Thank you, sir.

1                   CHAIRPERSON ALBANO: Does the  
2                   Board have any other questions for  
3                   Don?

4                   MR. LAMB: Is the linear heat  
5                   detection cable a new system?

6                   MR. GRAYEM: I have not heard  
7                   of it, and that would be something  
8                   that we would have to -- I mean, I  
9                   saw it was UL approved, but I don't  
10                  know the limits. I don't know  
11                  anything about it.

12                  MR. LAMB: So the City and the  
13                  building department has not studied  
14                  the system to see how it works, how  
15                  it functions, or the fire department  
16                  for that matter?

17                  MR. GRAYEM: I have not seen  
18                  it. I have no experience with  
19                  that.

20                  CHAIRPERSON ALBANO: Any other  
21                  questions?

22                  MR. PASTEL: I have a question:  
23                  Is there any way inside of their  
24                  space that it can be almost  
25                  encapsulated to kind of create an



1 internal fire wall or cocoon, if you  
2 will?

3 MR. GRAYEM: Not when you --  
4 when you look at the definition of  
5 what a fire wall is and what it  
6 does.

7 And actually, Mr. Siegfried  
8 explained it perfectly. It is a  
9 free-standing wall. In this case,  
10 it would be three hour so possibly  
11 masonry, and in the event of a fire,  
12 one half of the building burns to  
13 the ground. The fire wall stands,  
14 and the rest of the building is  
15 basically untouched.

16 MR. PASTEL: Okay. So there is  
17 no way feasible to build a fire wall  
18 inside of this space?

19 MR. GRAYEM: Well, it would  
20 have to go --

21 MR. PASTEL: I would say  
22 internally, almost like a bunker  
23 type scenario?

24 MR. GRAYEM: I don't believe  
25 so. I don't believe so because,

1                   again, it is saying that the entire  
2                   building --

3                   MR. PASTEL:   Okay.

4                   MR. GRAYEM:   So I am just not  
5                   sure that that's able to be done.  I  
6                   know what you are getting at.  I  
7                   just don't see how that could be  
8                   done.

9                   MR. PASTEL:   Okay.  Thank you.

10                  CHAIRPERSON ALBANO:  Mr. Suder,  
11                  do you have any questions for Don?

12                  MR. SUDER:   Where shall I  
13                  stand?  Here?  Yes.  Just a couple  
14                  here.

15                  CROSS-EXAMINATION

16  BY MR. SUDER:

17  Q.            Good afternoon, Mr. Grayem.

18  A.            Hello.

19  Q.            You are a certified building official.  Is  
20                that correct?

21  A.            Correct.

22  Q.            And the City Building Department is  
23                certified by the State of Ohio?

24  A.            Correct.

25  Q.            And as a certified building official, you

1           are sworn to uphold the laws of the State of  
2           Ohio. Is that right?

3    A.       Correct.

4    Q.       Okay. And you are familiar with the Ohio  
5           Building Code?

6    A.       Uh-huh, yes.

7    Q.       Now, have you been to the property?

8    A.       No, I have not.

9    Q.       You have not.

10                                Looked at the wall, the fire  
11           wall, the one-hour fire separation wall?

12   A.       I have not.

13   Q.       So you don't know whether it goes to the  
14           roof deck or not?

15   A.       I testified that I did not.

16   Q.       Okay. But you testified it was highly  
17           unlikely?

18   A.       Yes.

19   Q.       Based on --

20   A.       Based on my experience.

21   Q.       But you had never been to that building,  
22           right?

23   A.       No, I had not.

24   Q.       You said that Westlake is unique from all  
25           other cities in the State of Ohio. Is that

1 correct?

2 A. Yes.

3 Q. How so? How is Westlake and the buildings  
4 in Westlake different than the rest of the  
5 State of Ohio?

6 A. I said we are unique because we have these  
7 amendments to the Ohio Building Code.

8 Q. You have nine amendments to the Ohio  
9 Building Code?

10 A. Yes.

11 Q. And when you say "amendments to the Ohio  
12 Building Code," is it your understanding  
13 that the City of Westlake has the right to  
14 amend the State's laws?

15 A. Yes.

16 Q. In what instances?

17 A. Because I've been told by the law department  
18 that these had been on the books for 20  
19 years or thereabouts, and that -- and by the  
20 way, they are challenged -- I am glad you  
21 brought that up. So this one is rather  
22 unique.

23 This I-4 use group, this  
24 amendment to use group E is -- I don't think  
25 that we've actually dealt with that one

1           before.  However, we have another one that  
2           is basically a type 5 prohibition, which  
3           means what you all would equate to house  
4           construction, wood frame construction.  That  
5           one we deal with probably a half dozen times  
6           a year.

7                           And what that says is, we took  
8           the table out of the Ohio Building Code that  
9           allows different construction types -- and  
10          again, I don't want to get too codey on you  
11          -- but different buildings, you know, a  
12          hospital is going to be built different than  
13          a strip center, that type of thing, and  
14          basically eliminated type 5 construction  
15          from every one of those use groups.  Okay?

16                           I know for a fact that the  
17          State of Ohio, Board of Building Standards  
18          has been contacted more than a few times by  
19          future -- by developers and/or architects  
20          questioning the validity and legality of  
21          that, and guess what?  It stands and most  
22          recently about five months ago.

23    Q.       And Mr. Grayem, that's the Residential Code  
24              of Ohio, right?

25    A.       Absolutely not.  That's the Ohio Building

1 Code.

2 Q. That's the Ohio Building Code?

3 A. Absolutely.

4 Q. For commercial structures?

5 A. For commercial structures.

6 Q. So the Board of Building Standards has  
7 approved that change?

8 A. The Board of Building Standards has never in  
9 20 years since -- well, since 2005 -- since  
10 the court case has never made any effort to  
11 contact the City of Westlake or make changes  
12 or take us back to court or anything to --  
13 because of these amendments

14 Q. But that's a construction type you are  
15 referring to?

16 A. The type 5 was, yes.

17 Q. But it is not a use classification or  
18 occupancy classification like the E or the  
19 I-4, right?

20 A. But it is no different. It is just -- we  
21 have other ones, too. Sprinklers, the  
22 actual building code caught up to one of  
23 these amendments for ours in an A 2 use  
24 group.

25 We, back in 2005, we had it at

1 a hundred, which was an amendment to the  
2 building code that required sprinklers. The  
3 Building Code, the Ohio State Code back then  
4 was probably 2 or 300. Today it is 100. So  
5 the State raised their level to our  
6 standard.

7 So what -- in other words, it  
8 shows up as an amendment to the Ohio  
9 Building Code, but it is not any more. It  
10 equals the State code.

11 Q. But that's stricter. That's a stricter  
12 standard than the Ohio Building Code, right,  
13 in that example?

14 A. Well, that's one -- it is equal now.

15 Q. But it was -- you guys were stricter, the  
16 State -- the City of Westlake was stricter  
17 than the State?

18 A. But it is no different than the E to an  
19 I-4.

20 Q. That's a different -- what the City of  
21 Westlake has essentially done, has  
22 eliminated an exception, specifically put in  
23 by the State of Ohio that says "you shall  
24 review this under a certain classification,"  
25 right?

1 A. But every one of these amendments, what your  
2 crux of your argument is is that these  
3 amendments are in conflict with the State of  
4 Ohio. Every one of them you could say with  
5 your argument they are in conflict with the  
6 state.

7 Q. We haven't reviewed every single one of  
8 them.

9 A. The court ruled that they are not.

10 Q. The court did not rule on all of them, did  
11 they?

12 A. My law director tells -- yes, they did.

13 Q. Maybe they did. I don't know. I wasn't  
14 around.

15 A. They went line item by line item.

16 Q. So with respect to E and I, though, that's  
17 what we are here on, not the other  
18 amendments and the Westlake code, we are not  
19 talking about the other amendments in the  
20 Westlake code, do any of the other  
21 amendments eliminate an exception for use  
22 classification?

23 A. They changed the code. They changed the  
24 Ohio Building Code.

25 Q. Which they can do, the City of Westlake can



1           enact ordinances that are stricter than the  
2           minimum standards of the Ohio Building Code.  
3           That is absolutely correct, but can it  
4           change a use classification?

5                           That's essentially -- that is  
6           what Westlake has done. The State of Ohio  
7           says in every place in Ohio this is E; that  
8           there is a specific exception, E. Westlake  
9           decided, no, it is I.

10                           Have you done that anywhere  
11           else in your code?

12   A.       No.

13   Q.       And the State of Ohio never challenged any  
14           of the -- well, the State of Ohio challenged  
15           this one. They did not prevail because, in  
16           my opinion, they didn't argue the current  
17           standards, but that's like you said, neither  
18           here nor there.

19                           You did testify about the case.  
20           Are you an attorney?

21   A.       I am not.

22   Q.       And you testified about the law. Are you an  
23           attorney?

24   A.       Pardon me?

25   Q.       You are not an attorney, and you testified

1 about the law and your interpretation.

2 A. I read the decision.

3 Q. Okay.

4 MR. SUDER: That's all I have  
5 for now. Thank you.

6 ATTORNEY LEASURE: Does the  
7 Board have any additional questions  
8 in regards to this?

9 (No response.)

10 ATTORNEY LEASURE: No.

11 May we have the next City  
12 representative, please?

13 FIRE CHIEF HUGHES: Do you want  
14 me to sign in? Hi, James Hughes. I  
15 am the Fire Chief for the City of  
16 Westlake Fire Department.

17 Do you need an address?

18 COURT REPORTER: No. Go ahead.

19 FIRE CHIEF HUGHES: I am not  
20 sure what you want.

21 ATTORNEY LEASURE: Would you  
22 spell your last name?

23 FIRE CHIEF HUGHES: Hughes,  
24 H-u-g-h-e-s.

25 ATTORNEY LEASURE: Raise your

1 right hand.

2 JAMES HUGHES

3 being first duly sworn, and testified as follows  
4 on behalf of the City of Westlake:

5 FIRE CHIEF HUGHES: Okay. So I  
6 have been listening to a lot of the  
7 discussion going on, and I really  
8 didn't prepare anything as far as,  
9 you know, an opening statement to  
10 the Board, simply because I knew a  
11 lot of my job would be to kind of  
12 answer some of those questions that  
13 you all have in regards to this,  
14 that, and the other within the realm  
15 of the fire service.

16 But listening to the  
17 discussion, I just want to regain a  
18 little bit of the focus on safety.  
19 It is not only safety of, you know,  
20 children. I mean, if that were the  
21 only issue here, we wouldn't even  
22 have this discussion.

23 It is safety of children; it is  
24 safety of other occupants; it is  
25 safety of firefighters. You know,

1           it is safety.

2                   So -- and we are not saying  
3           that the Applicant hasn't had an eye  
4           on safety. They have, but I would  
5           like to drill down just a little bit  
6           on some of things that I have been  
7           hearing tonight, and let me just  
8           start off, sounds like that Sweet  
9           Kiddles runs a business, a child  
10          daycare center that is completely in  
11          line with all the codes.

12                   Everything she is telling you  
13          is exactly what the code tells her  
14          to do. She probably has an annual  
15          fire inspection from Strongsville  
16          and Avon Lake and Medina Fire  
17          Departments as required by law. So  
18          we are not saying any of that is  
19          inaccurate.

20                   You know, the exit drills, it  
21          is the same thing as when we were  
22          kids in school, and they are doing  
23          an admirable job at performing fire  
24          safety drills.

25                   But there are some misnomers.

1 I would love to take credit for  
2 being, you know, having the S on my  
3 chest and being able to rush to  
4 everybody's fire and put it out  
5 quickly. Unfortunately, that  
6 doesn't happen.

7 The fact is that Station 1 is  
8 right up the street. It is also our  
9 busiest station. We have, you know,  
10 three or four -- we do have a quick  
11 response to there, but there is a  
12 lot of things that are built into  
13 that.

14 They get an allowance on their  
15 alarm system for it contacting their  
16 central monitoring station, then  
17 contacting our dispatch at a  
18 four-minute time frame. So that's  
19 what the standard is. Alarm time  
20 alone is four minutes, and we can  
21 drill all the way down to that.

22 You know, then we got to get it  
23 from our dispatch center to our  
24 guys, to the guys on the truck, to  
25 get dressed, to pull up, maintain a

1 water supply. So these things start  
2 to expand out. So there are some  
3 little misnomers in there, and I  
4 would love to take credit for saving  
5 everybody. It is just the fact is  
6 these systems are built into these  
7 facilities to mitigate some of those  
8 things.

9 Further, we go into the  
10 building itself. I have been in the  
11 building. I was the fire prevention  
12 lieutenant in the City for four  
13 years. I have been in that  
14 structure. However, I have not been  
15 into that roof space.

16 But I have been doing this for  
17 27 years, and I can tell you that  
18 just in simple building  
19 construction, that even if that  
20 drywall goes to the roof deck, we  
21 are talking about wood that goes  
22 through there, we need to verify  
23 what wire, you know, DSL and routers  
24 and all kinds of wires that have  
25 gone through your house over the

1 last 20 years, have also gone  
2 through that drywall or potentially  
3 have gone through that drywall.

4 The other part of that  
5 component is that wood is still  
6 going through just like the  
7 architect told you, that those  
8 trusses run this way, and the wall  
9 runs this way. Well, that wood has  
10 to go through there somewhere, and  
11 wood is a combustible substance so  
12 it is going to burn.

13 So, you know, when UL and  
14 FM Global and everybody does their  
15 testing on wall assemblies, they are  
16 putting a blow torch to the side and  
17 seeing how long it takes drywall to  
18 burn through, but they are also  
19 doing the whole assembly in putting  
20 a hole through the wall and seeing  
21 how quickly does fire propagate  
22 through there.

23 Now, when you look at smoke,  
24 you think, oh, that's something  
25 nasty that I don't want to breathe

1 in. When I look at smoke, I see  
2 fuel. Okay? So smoke to me, you  
3 know, I don't know if there is any  
4 dampers in that wall.

5 It is a whole -- even if we  
6 grant the variance, we just open up  
7 a whole other problem set on how we  
8 are going to mitigate all of these  
9 hazards. So just going down some of  
10 the list that I've jotted down here,  
11 we like to think that all of our  
12 neighbors are good neighbors.

13 I am sure the dentists are  
14 great people. My brother is a  
15 dentist, and you know, he does his  
16 best to maintain his -- but we don't  
17 know -- we know there is a dentist  
18 in that occupancy today, and we  
19 don't know what the occupancy is  
20 going to be tomorrow.

21 I know that shouldn't influence  
22 us right now, but I look at every  
23 building and structure under an all  
24 hazards view. Okay? So I do  
25 appreciate the gases. I also



1 appreciate, is the mulch going to  
2 catch on fire? Is the gas going to  
3 leak? I am responsible for all the  
4 lives that are here in the City of  
5 Westlake 24 hours a day, seven days  
6 a week, and a lot of that thought  
7 process keeps me up at night, but --

8 So we do -- I don't know,  
9 looking at the plans, how we are  
10 going to make sure that no matter  
11 what moves into those adjacent  
12 structures, that this will then meet  
13 the code. Drilling down on some of  
14 the other things that were sent out  
15 there, I don't know how NFPA 72 --  
16 so Don lives in the building code.  
17 I live in the fire code and the  
18 building codes, and I don't deal in  
19 residences; I deal with commercial  
20 structures and the fire code.

21 So the assistant chief and I --  
22 if you want to ask him, he is much  
23 more adept at code than I am, and if  
24 he needs to be sworn in, we can do  
25 that, but those would be extremely

1 rare in the City of Westlake. I do  
2 not know of any other structure that  
3 is in here that has any sort of wire  
4 heat detector, but there are new  
5 things coming on the market all the  
6 time.

7 So I don't know what the  
8 national code NFPA -- they are the  
9 agency that gives us our fire alarm  
10 signal code. It is a reference  
11 standard within our code, and I  
12 don't know what it says about wire  
13 detection, but I can also say if it  
14 is not set -- if it is only within  
15 that structure, it is going to have  
16 a barrier around the structure.  
17 That wire is going to have to reach  
18 a set temperature, probably  
19 somewhere between 160 and 320  
20 degrees before it goes off, and a  
21 lot of bad things can happen in a  
22 confined space, an attic, or what  
23 have you at 300 degrees.

24 You know, wood is going to  
25 disintegrate long before the alarm

1 goes off, so I don't know what those  
2 would be. Typically, what we see  
3 are a fixed rate temperature or rate  
4 of rise temperature detector. You  
5 know, smoke detectors are much  
6 quicker than heat detectors to  
7 react, so there is a lot of opinion  
8 I could give you on detection  
9 system, but that would be until  
10 tomorrow morning.

11 The proposed 13 R for their  
12 space, I haven't seen any kind of  
13 water flow calculations. Certainly,  
14 they have probably that amount of  
15 water on Crocker Road to support  
16 that system, but we haven't seen any  
17 calculations on bringing that water  
18 back into the building.

19 The exits out that were  
20 proposed, that were shown in the  
21 sketch where they said are gates,  
22 not doors, I would beg to differ.  
23 Gates, if they are not doors, they  
24 are obstacles to me, but the way the  
25 code looks at those is that they are

1 not doors, but they are a  
2 hinderance.

3 And we are probably at --  
4 probably at the minimum on the doors  
5 out, but that would be something  
6 that the plans examiner has already  
7 looked at and factored out.

8 If you have any questions for  
9 the Fire Department, I would be more  
10 than happy to see if I can answer  
11 them. I don't know everything about  
12 this, and I am sure their attorney  
13 is going to show you how little I  
14 know.

15 (Laughter.)

16 MR. LAMB: Chief, does the City  
17 of Westlake have mutual aid  
18 agreements with the surrounding  
19 communities and specifically mutual  
20 aid that you respond to fires or  
21 emergencies in their City?

22 FIRE CHIEF HUGHES: Yeah,  
23 absolutely.

24 MR. LAMB: And reciprocal that  
25 they respond.

1                   FIRE CHIEF HUGHES: Absolutely.  
2                   A typical station in the City of  
3                   Westlake has nine to ten  
4                   firefighters on duty. We run full  
5                   ALS, which is advanced life support,  
6                   as well as full fire suppression for  
7                   the entire City as well as all  
8                   hazard mitigation, trench and  
9                   Hazmet, and you name it.

10                  In this day and age -- you  
11                  know, my dad's day and age, there  
12                  was quite a bit more people, but in  
13                  this day and age, an average working  
14                  house fire, just one bedroom, one  
15                  kitchen house fire takes anywhere  
16                  from 15 to 21 people to mitigate.  
17                  So we can't do it alone, and we  
18                  don't do it alone.

19                  We help all of our mutual aid  
20                  partners, everybody from the City of  
21                  Cleveland all the way to the City of  
22                  Lorain we have helped out before.  
23                  We have gone to Painesville. We  
24                  have had -- so there is also a  
25                  county plan that we are a part of.

1           There is a state plan that we are a  
2           part of and a federal plan that we  
3           are a part of.

4                       So for example, 2011 Crocker  
5           Road had a fire, you are going to  
6           get the City automatically through  
7           our dispatch center, you are going  
8           to get everybody who is working in  
9           the City of Westlake, who is not  
10          committed at the time, as well as  
11          the City of Bay Village, Avon, North  
12          Olmsted, Fairview Park, and  
13          Rocky River automatically so on the  
14          first call of, "hey, there is smoke  
15          in this building."

16                      MR. LAMB: Do you know how  
17          often we, Westlake Fire, is called  
18          out to the surrounding City to  
19          provide mutual aid?

20                      FIRE CHIEF HUGHES: I mean, I  
21          can give you percentages for each  
22          City, but it varies, and then it  
23          also varies for medical to fire. So  
24          if the City of Bay Village with  
25          their six people are all -- that

1 gives them enough to handle two  
2 squad calls. So on their third  
3 squad call, we are going to help  
4 them.

5 So we request about as much as  
6 we get, and I could ballpark a  
7 number for you, Mr. Lamb, but I  
8 would be guessing right now because  
9 it is so variable, and it is kind of  
10 cyclical.

11 MR. LAMB: Let me be a little  
12 clearer:

13 If our squads are busy and they  
14 would call for a squad run, mutual  
15 aid, you know, nobody else can send  
16 a squad, could potentially a truck  
17 from Westlake, first responder,  
18 respond as a first responder to a  
19 medical emergency in another  
20 community?

21 FIRE CHIEF HUGHES: Yes, yes,  
22 absolutely. And it happens a lot.  
23 It happens the other way as well.  
24 You know, the fire suppression,  
25 which -- excuse me -- I am assuming

1           you are going here -- but there are  
2           times when we can be out of the  
3           building. There is also -- or out  
4           of the City -- there is also times  
5           when all of our fire suppression  
6           equipment may be sitting in the  
7           building with nobody to bring it to  
8           you because we are out on medical  
9           calls or in another community. We  
10          call back, we try and mitigate those  
11          problems, but --

12                   CHAIRPERSON ALBANO: Have there  
13           been any other daycares built in  
14           this area that are in similar  
15           circumstances or you know in  
16           the last ten years and how they  
17           handled --

18                   FIRE CHIEF HUGHES: In other  
19           areas or other cities?

20                   CHAIRPERSON ALBANO: In  
21           Westlake, have they put in  
22           sprinklers, or what do they do? Is  
23           there any --

24                   FIRE CHIEF HUGHES: The ones  
25           that I am familiar with have been



1 built as standalone buildings. I  
2 know that in the recent past this  
3 issue was brought up to the City of  
4 Westlake City Council to bring a  
5 daycare into a strip center, and  
6 that was refused based on the type  
7 of businesses that were around and  
8 matters with the police department  
9 and things of that nature.

10 So as far as new daycares going  
11 into an existing structure, the only  
12 example that I can give you is Our  
13 Lady of the Wayside went into a  
14 building on Center Ridge Road, which  
15 is part of the King James property.  
16 We call it King James One. That's  
17 not quite the official name of it,  
18 but they had a building that was  
19 actually a separate -- separated  
20 building.

21 It was kind of an open walkway  
22 between the two. But the building  
23 was separate, and they had a partial  
24 sprinkler in the building, but they  
25 ended up sprinkling the entire

1 building as well as bringing in a  
2 fire department connection to  
3 support that system as well as a  
4 hydrant. They didn't have a hydrant  
5 close enough so they were able to  
6 bring in all those fire suppressive  
7 elements.

8 CHAIRPERSON ALBANO: Mr. Suder,  
9 do you have any questions for him?  
10 Yes?

11 MR. SUDER: Yes, Madam Chair,  
12 thank you.

13 CROSS EXAMINATION

14 BY MR. SUDER:

15 Q. Good evening.

16 A. Good evening.

17 Q. Just curious: How often is the City of  
18 Westlake without fire protection?

19 A. Well, it is always protected, but sometimes  
20 it is not protected by City of Westlake Fire  
21 Department. So with our mutual aid  
22 agreements, our mutual aid partners are  
23 there to protect us. So.

24 Q. So it is your --

25 A. I would say never.

- 1 Q. Okay. So if your guys are out helping some  
2 other town --
- 3 A. Uh-huh.
- 4 Q. -- then one of the other nearby Cityies has  
5 to come help you?
- 6 A. Right.
- 7 Q. Correct. So never would there be a scenario  
8 where there would be no fire protection, the  
9 wood would just burn and burn and Westlake  
10 just -- no firefighter was anywhere to be  
11 found?
- 12 A. I would hate to think of that scenario.
- 13 Q. But that's never going to happen,  
14 right?
- 15 A. Well, see, you are asking a fire chief who  
16 deals with all hazards, mitigation, and I am  
17 going to tell you that I can envision  
18 scenarios, but I don't want to.
- 19 Q. But highly unlikely.
- 20 A. It would be highly unlikely.
- 21 Q. Okay. And are there other buildings in  
22 Westlake that have the E use occupancy  
23 or that are occupied under the E use  
24 occupancy?
- 25 A. Yes.

1 Q. And are those buildings unsafe in your  
2 opinion?

3 A. So just --

4 Q. Let me give you some examples.

5 A. -- just on the E use occupancy, and E is  
6 basically denoting educational, I don't say  
7 group occupancy, so there are a multitude of  
8 different age groups, you know, with the  
9 high schools and with the E use occupancy.  
10 The middle school is an E use occupancy.

11 So each one of those has its  
12 own classifications of hazard. There are  
13 hazards within them and dangers within them,  
14 but whether you are asking me if any  
15 structure was built in the last so many  
16 years that are dangerous, it is not the  
17 building itself, but there are other --

18 Q. Are those buildings fully sprinklered?

19 A. Some are; some aren't.

20 Q. So some of the educational buildings with  
21 kids in them are not sprinklered?

22 A. That's correct.

23 Q. I want to ask you about -- we talked a lot  
24 tonight about the adjacent uses, the  
25 dentist.

1                   Are you familiar with the other  
2                   uses in the building?

3    A.            I am not familiar, or if any of them have  
4                   changed, so I --

5    Q.            Do you know who is in there, like roughly  
6                   what kind of uses generally?

7    A.            I know that there are business occupancies  
8                   at this time. It has been sometime since I  
9                   have been in the building.

10   Q.            Okay. It is my understanding --

11                   MR. SUDER: And I can ask  
12                   Ms. Kimmel to speak about this if  
13                   you want her to testify to it -- do  
14                   you know who else is in the  
15                   building, Ms. Kimmel?

16                   MS. KIMMEL: Charles Schwab is  
17                   the largest --

18                   CHAIRPERSON ALBANO: Can she --

19                   MR. SUDER: Come up and speak  
20                   in the microphone for the record.

21                   MS. KIMMEL: Charles Schwab is  
22                   the largest tenant in the building,  
23                   the dentist, which we just  
24                   discussed, and a small fitness  
25                   consultancy where you go in and get

1 a fitness program.

2 MR. SUDER: Do you know the  
3 length of their leases?

4 MS. KIMMEL: I do not.

5 May I ask a question while I am  
6 here?

7 ATTORNEY LEASURE: To the  
8 Board?

9 MS. KIMMEL: To the fire chief.

10 ATTORNEY LEASURE: Yes.

11 MS. KIMMEL: Does any of what  
12 you discussed about mutual aid and  
13 time and the fact that it might take  
14 you longer one day than another to  
15 get to the building change the fact  
16 that it takes me one minute and 32  
17 seconds to get all of my teachers  
18 and all of my children to safety?

19 FIRE CHIEF HUGHES: None of --  
20 you are comparing an apple to an  
21 orange. I would say today you have  
22 a one minute and 30 second success  
23 rate -- and I don't know that that  
24 would be accurate in January, and I  
25 am not disputing that you probably

1                   comply with the code, your  
2                   evacuation code and your fire drill  
3                   time -- but the two are not mutually  
4                   exclusive. I don't understand the  
5                   correlation that you are trying to  
6                   draw.

7                   MS. KIMMEL: Whether it is  
8                   sunny and in August or it is snowing  
9                   in January, we have never had a fire  
10                  evacuation that has taken more than  
11                  two minutes max.

12                 FIRE CHIEF HUGHES: So -- I  
13                  don't want to get into a debate with  
14                  you, Ma'am, but I would also say  
15                  that you've never had a fire in  
16                  which you don't know how the person  
17                  is going to react. You don't know  
18                  how the people are going to react.  
19                  You don't know how the children are  
20                  going to react.

21                 So I would say, again, I have  
22                  been doing this a long time, and I  
23                  understand the human animal when it  
24                  comes to emergency situations, and I  
25                  don't know that you are accurately

1 -- what you are accurately  
2 describing what would happen.

3 What you are doing is, you are  
4 hitting a target benchmark on a  
5 piece of paper that the State  
6 provided you, and I applaud you for  
7 that, but I don't see that the two  
8 are correlated.

9 MS. KIMMEL: The teachers and  
10 children in the building have no  
11 idea when an unannounced drill is a  
12 fire or not.

13 FIRE CHIEF HUGHES: I  
14 understand that.

15 MS. KIMMEL: And they do the  
16 same thing every time. They assess  
17 their primary exit.

18 FIRE CHIEF HUGHES: Yeah, and  
19 --

20 MS. KIMMEL: And if it is  
21 clear, they go. If they do not,  
22 they go to the second exit.

23 FIRE CHIEF HUGHES: And they  
24 also don't know what happens when  
25 the microwave catches on fire, so I



1 just can't correlate the two. You  
2 know, you don't know --

3 MS. KIMMEL: They exit the  
4 buildings as they have practiced.

5 FIRE CHIEF HUGHES: I  
6 understand that.

7 MS. KIMMEL: And there are  
8 plenty of studies that show why they  
9 do monthly drills, why they do  
10 quarterly lockdown drills, why we do  
11 severe weather drills.

12 FIRE CHIEF HUGHES: Right.

13 MS. KIMMEL: Which we have  
14 actually done in Strongsville.

15 ATTORNEY LEASURE: I am sorry.  
16 You have to either have to ask him a  
17 question or provide testimony to the  
18 board, but you are kind of doing a  
19 little bit of both.

20 FIRE CHIEF HUGHES: Sorry.

21 ATTORNEY LEASURE: Not you.

22 MR. SUDER: I want to --

23 FIRE CHIEF HUGHES: I would  
24 just say that the standards that she  
25 is meeting, the standards that have

1           been set forth by the fire code, by  
2           her governing bodies with the health  
3           department, a lot of those are  
4           because of emergencies that have  
5           happened somewhere, either in the  
6           continental United States or in the  
7           State of Ohio.

8                    Nothing gets into the fire code  
9                    or into these standards codes  
10                   without a history behind them. I  
11                   could show you, you know, probably  
12                   30, 40, 50 percent of, you know, why  
13                   the flambo wall finishes are the way  
14                   they are, is because of this fire or  
15                   what happened here is because of  
16                   that fire.

17                   So, again, I don't see how the  
18                   two or how a performance on a calm  
19                   day in August is going to -- and you  
20                   are -- I pray that your staff  
21                   performs admirable.

22   BY MR. SUDER:

23   Q.       Having a microwave in a building, does that  
24           require the whole building to be  
25           sprinklered?

1 A. In an I-4, it does not require the building  
2 to be sprinklered, but again, you know, if  
3 -- I will just leave it at that.

4 Q. Let's talk about the other uses.

5 We talked a lot about the risks  
6 of the other spaces catching on fire and  
7 making their way through the one-hour  
8 separated wall and creating a life safety  
9 hazard for the occupants of Ms. Kimmel's  
10 space.

11 Do you know what the occupancy  
12 classifications are for Charles Schwab?

13 A. It would be a B use group, but --

14 Q. That doesn't require a sprinkler, does it?

15 A. No. Nor does a residential occupancy, and I  
16 can tell you that --

17 Q. Doesn't require a sprinkler because it is a  
18 low fire hazards?

19 A. Yes.

20 Q. Right?

21 A. Correct.

22 Q. Okay. So the uses in this building are low  
23 fire hazards, right?

24 A. As long as they stay as their current  
25 assignmentment.

- 1 Q. What if a new use -- if a new high hazard  
2 use were proposed, wouldn't they have to  
3 comply with the occupancy requirements with  
4 respect to the sprinkler?
- 5 A. That's not my argument. Right now you have  
6 good neighbors in the building, and we don't  
7 know what their lease is going to be, and we  
8 don't know who is going to move into there,  
9 and the next tenant -- that's not what I am  
10 trying to debate. I am not saying that.
- 11 Q. But the fire code is not based on who; it is  
12 based on what type of use, right?
- 13 A. Right. And I agree with --
- 14 Q. So an office is a low fire hazard. A  
15 dentist is a low fire hazard. This wellness  
16 place is a low fire hazard. So the real  
17 risks here are not --
- 18 A. Are the children in the building.
- 19 Q. No. The real risks here are not that there  
20 is going to be a fire created on the other  
21 side of that wall.
- 22 A. But it is always a risk.
- 23 Q. And if a new use comes in that is a high  
24 hazardous, they would have to sprinkler it,  
25 right?

1 A. Yeah. It would not be allowed.

2 Q. Right. But so there is no chance that  
3 that's going to happen.

4 A. That's. I don't --

5 Q. It is highly unlikely.

6 A. I --

7 ATTORNEY LEASURE: You guys are  
8 talking over each other.

9 FIRE CHIEF HUGHES: I'm sorry.

10 MR. SUDER: Sorry.

11 ATTORNEY LEASURE: It is too  
12 hard for the court reporter.

13 BY MR. SUDER:

14 Q. For the members of the Board, we keep  
15 talking about these risks on the other side  
16 of the wall.

17 A. The problem is -- and excuse me -- the  
18 problem is that the risk is there. There is  
19 never a -- if there was never a risk, I  
20 would be out of a job. The risk, there is  
21 always a potential for the fire. There is  
22 always a potential --

23 Q. But the State of Ohio --

24 A. -- for a risk, and there is always a fire  
25 chief who is going to tell you that you can

- 1 never be too safe.
- 2 Q. But --
- 3 A. I can tell you that your home should be  
4 sprinkled, and I believe that.
- 5 Q. But neither the State of Ohio nor the City  
6 of Westlake requires every building to be  
7 sprinklered. It doesn't.
- 8 A. I didn't say that, no.
- 9 Q. It doesn't.
- 10 A. It does not.
- 11 Q. So they are unsafe in your opinion?  
12 Everyone is unsafe?
- 13 A. No. I am saying that the potential for a  
14 problem, a catastrophic problem exists in  
15 every structure in the City of Westlake.
- 16 Q. So should every building be sprinklered in  
17 the State of Ohio?
- 18 A. In my opinion, yes.
- 19 Q. And as the fire chief, you probably would  
20 say yes, right?
- 21 A. I would absolutely say yes.
- 22 Q. But that's not the current state of the law.
- 23 A. That is not the current building code for --
- 24 Q. For either Westlake or the State.
- 25 A. For -- well -- let me clarify that.

1 Q. Okay.

2 A. For an I-4, it is.

3 Q. Oh, for an I-4, but you said every building.

4 Every building is not an I-4.

5 A. Correct.

6 Q. So what I am trying to figure out is, we are  
7 trying to get to a compromise into a  
8 functional equivalence. You have heard  
9 testimony -- you have been here the entire  
10 time -- and have heard the testimony of  
11 Mr. Siegfried and Ms. Kimmel, correct?

12 A. Uh-huh.

13 Q. And you've heard them testify under oath  
14 that they cannot put in a whole building  
15 sprinkler because the owner of the building  
16 will not allow them to, so that is off the  
17 table. That's an impossibility. You heard  
18 them testify to that.

19 And you heard the architect  
20 testify that we cannot put in --

21 MR. SUDER: Is it a two-hour  
22 separated wall that would be  
23 required, or is it something more?

24 MR. SIEGFRIED: A fire wall.

25 MR. SUDER: Fire wall.

1 BY MR. SUDER:

2 Q. Cannot put in a fire wall. Okay.

3 So assuming all that to be true  
4 since it was stated under oath, what, then,  
5 would be a functional equivalence to  
6 sprinkling the whole building or putting in  
7 this fire wall?

8 A. There wouldn't.

9 Q. There is no sub -- so adding a sprinkler to  
10 our space, doesn't that --

11 A. No.

12 Q. -- make it safer?

13 A. Safer, but it is not to code. It is not  
14 what the I-4 requires, and I just am dealing  
15 with the building -- I am not arguing  
16 whether this -- what Mr. Grayem argued, but  
17 the I-4 requirement is not met if you only  
18 sprinkle your tenant space because it is not  
19 the building, and then you still have a wood  
20 attic area that would not be protected.

21 Q. So you are maintaining there is absolutely  
22 nothing that can be done to make this space  
23 safer?

24 A. That's what I said.

25 Q. Nothing can be done to make it equivalent?



- 1 A. To make it compliant.
- 2 Q. So --
- 3 A. I don't see how you would be able to make it  
4 code. You may be able to build a three-hour  
5 fire wall. You may be able to talk to the  
6 building owner to building a masonry wall.  
7 I don't know.
- 8 Q. But the sprinkler in the space would make it  
9 safe, would give the occupants additional  
10 time to evacuate, correct?
- 11 A. It would give them additional time to  
12 evacuate.
- 13 Q. And the building --
- 14 A. With all the caveats that were discussed.
- 15 Q. And you heard the testimony earlier that the  
16 building has five means of egress, not the  
17 building, the space has five means of  
18 egress?
- 19 A. And I would have to look or talk to my plans  
20 examiner to see if that's the correct travel  
21 distance, number of exits.
- 22 Q. Are there any -- there hasn't been any  
23 questions about travel distance to your  
24 knowledge, right?
- 25 A. Not to my knowledge. I would have to defer

1           that.

2    Q.       So the additional sprinkler, the five means  
3           of egress, the fact that we have low risk  
4           fire tenants in the rest of the building,  
5           the early heat detection system, wouldn't  
6           that help buy some time?

7    A.       I don't know anything about that brand of  
8           heat detection system.

9    Q.       But --

10   A.       Well, to answer your question, I don't know  
11           that that's an accurate statement.

12   Q.       But generally wouldn't early detection buy  
13           extra time for evacuation?

14   A.       If it were in an appropriate early  
15           detection. Again, I don't know anything  
16           about what you propose.

17   Q.       And the one-hour separated wall, that  
18           provides one-hour of fire separation,  
19           correct?

20   A.       I don't know that to be accurate nor do  
21           you.

22   Q.       You don't know it to be inaccurate.

23   A.       Well, I can tell you in 27 years of doing  
24           this that those wood trusses would have to  
25           go through that wall, thus making it not a

1           one-hour wall.

2    Q.       How long would that take?

3    A.       I don't know. I would have to look up how  
4           it was built. We would have to get in  
5           there.

6    Q.       You haven't been in the truss space you  
7           testified, right? So you don't know.

8    A.       I have not been in the truss space.

9                   MR. SUDER: I think that's all  
10                  I have at the moment. Thank you.

11                  FIRE CHIEF HUGHES: Anything  
12                  else?

13                  CHAIRPERSON ALBANO: Any  
14                  questions from the Board?

15                  MR. LAMB: Chief, will a fire  
16                  suppression system, sprinkler system  
17                  work if the fire comes from above?

18                  FIRE CHIEF HUGHES: It would  
19                  depend on how it came from above,  
20                  but when we are talking about  
21                  sprinklering the entire building,  
22                  that would include that attic space.

23                  So typically, you would have --  
24                  so what you are seeing here in these  
25                  concealed heads in the ceiling here,

1                   there are also heads that go up into  
2                   the void space above us. So with a  
3                   fully suppressed building, you would  
4                   enjoy suppression from above as well  
5                   as from below. I don't know if that  
6                   accurately answers your question.

7                   MR. LAMB: Yes, it does.

8                   And also, is there a difference  
9                   in the schools in Westlake between  
10                  the old buildings, the Dovers, the  
11                  Holly Lanes, and the newer  
12                  buildings, the high school, the  
13                  redone Venison and how their  
14                  sprinkling systems are set up in  
15                  those?

16                 FIRE CHIEF HUGHES: Yes. As  
17                 well as how they have fire stopping,  
18                 the alarm systems, doors to cut off,  
19                 and they actually have some rolling  
20                 doors to make increased separations,  
21                 so they are brought up to the  
22                 current code.

23                 CHAIRPERSON ALBANO: Any other  
24                 questions?

25                 No.

1 FIRE CHIEF HUGHES: Thanks.

2 CHAIRPERSON ALBANO: Next  
3 representative for the City, if  
4 anyone? No.

5 (No response.)

6 MR. GRAYEM: No one else.

7 (Pause.)

8 MR. SIEGFRIED: I just want to  
9 make sure I am following the right  
10 procedure, but I have been listening  
11 for a while, and I want to make a  
12 couple real quick comments. I know  
13 it is late, and we are all getting  
14 tired.

15 But one observation I just want  
16 to make sure that I drive home  
17 because I would be remiss if I  
18 didn't, is that when we do these  
19 things in this building and we put  
20 this daycare center in there as  
21 opposed to the Acme Widget Company  
22 putting their offices there, we are  
23 enhancing the safety in the building  
24 because if the Acme Company goes in  
25 there, they are not going to do any

1 of this. So if our objective is to  
2 make the place safer, we are doing  
3 that.

4 Now, strict conformance with  
5 the I-4 thing, my guess, that's what  
6 the discussion is really all about,  
7 and if there was never an  
8 opportunity to appeal, then we  
9 wouldn't be here in the first place,  
10 and I am always fearful because I  
11 think we have a rare set of  
12 circumstances, and we are not  
13 setting a precedent.

14 Mr. Grayem is afraid we are,  
15 and I get that. You know, well,  
16 they got a variance, I want a  
17 variance, but they got to come to  
18 you guys with the right set of  
19 circumstances, too.

20 So a process is in place I  
21 think for issues just like we are  
22 talking about. So I guess, please,  
23 I am asking, just don't cast us off  
24 because we don't grant variances in  
25 Westlake. I mean, we really are

1 making a sincere effort to make this  
2 right. It sounds like there are  
3 some questions.

4 You know, we picked this linear  
5 detection system because the fire  
6 alarm guy was the consultant on the  
7 job, who was going to do all this  
8 work, so this is a really good way  
9 to do this. If they are not  
10 familiar with it, then we understand  
11 they need time to get comfortable  
12 with it.

13 So I don't know how you deal  
14 with that in making a decision  
15 tonight, but we are totally willing.  
16 If the idea is to put smoke  
17 detectors in the attic -- there is  
18 more, I mean, we are all creative  
19 people here, so you know, I think we  
20 can get there, but we got to go --  
21 there has to be some gray.

22 It is not just black and white,  
23 and part of what I am hearing is,  
24 one side of this, it is very black  
25 and very white, and we think there

1 is some gray in the middle there  
2 where we can put this facility and  
3 enhance the City of Westlake with  
4 another really nice facility.

5 You know, it helps commerce, it  
6 helps new office space. It is going  
7 to do good things. We just have to  
8 find a way to not diminish the  
9 safety for the children that are  
10 going to be here, the teachers that  
11 are going to be there, the tenants  
12 in the other space, the firemen that  
13 are going to have to respond to the  
14 fire if something does go crazy.

15 But I think we are doing that,  
16 and I guess -- I hope you give us --  
17 take all this into consideration and  
18 give us a shot.

19 Thank you.

20 CHAIRPERSON ALBANO: Before the  
21 committee deliberates on this, does  
22 Mr. Suder have anything else he  
23 would like to add?

24 MR. SUDER: Yes. Thank you for  
25 the opportunity just to make a final



1 closing remarks.

2 ATTORNEY LEASURE: If I may,  
3 too, so we don't forget, when you  
4 are done, if you have any additional  
5 evidence at any time you want to  
6 submit to the Board, you can do that  
7 when you are done speaking.

8 MR. SUDER: Thank you.

9 I think we would add the e-mail  
10 that was handed out to you.

11 ATTORNEY LEASURE: She actually  
12 got this.

13 MR. SUDER: Offer that as  
14 additional evidence. I don't  
15 think -- is there anything else? I  
16 think that's it.

17 I just want to be clear why we  
18 are here. We are trying to find a  
19 compromise. We are trying to find a  
20 solution to the problem, and that's  
21 what this Board is all about.

22 There is a strict set of  
23 requirements. Westlake has adopted  
24 a contrary provision to the Ohio  
25 Building Code, the results of which

1 are even more stringent than what  
2 would be required by the State, and  
3 that's I-4.

4 Arguably, we don't have to  
5 comply with I-4, but putting that  
6 issue aside, we are trying to find a  
7 way to get to a functional  
8 equivalence of safety for the  
9 children and the occupants of our  
10 space.

11 Essentially, you have heard the  
12 testimony that we cannot comply  
13 because of the circumstances, the  
14 particular circumstances. This  
15 building owner will not allow us to  
16 go in. We have offered. You heard  
17 that -- Ms. Kimmel testify to that,  
18 to sprinkle the whole building. She  
19 is willing to do that, to pay the  
20 money to do that. The owner said  
21 no, shut the door on that.

22 The construction you have heard  
23 from the architect under oath, the  
24 construction of putting up that fire  
25 wall, it is impractical.

1                   So we are trying to find  
2                   practical and reasonable solutions,  
3                   and the standard of review for your  
4                   decision is going to be whether --  
5                   one of the standards is going to be  
6                   whether it was reasonable.

7                   So we have come up with a lot  
8                   of hypotheticals about E-cigarettes  
9                   and exploding canisters and all  
10                  kinds of things that are  
11                  hypotheticals that are so far out  
12                  there -- I mean, the building could  
13                  be hit by a meteor. What are we  
14                  going to do about that?

15                 You know, yeah, anything can  
16                 happen, but what's likely to happen?  
17                 A Charles Schwab office, a wellness  
18                 center, and the third use, the  
19                 dentist, yeah, the dentist, these  
20                 are low fire hazards. If they were  
21                 high fire hazards, the building  
22                 code, including Westlake's Building  
23                 Code, would require those spaces to  
24                 be sprinklered. It doesn't even  
25                 require them to be sprinklered.

1                   So the risk is so low that they  
2                   can simply have fire-rated walls of  
3                   one-hour between them, and they can  
4                   have smoke detectors. That's  
5                   essentially what those spaces have  
6                   on there for life safety and means  
7                   of egress, right?

8                   We have five means of egress,  
9                   sprinkler throughout our space, an  
10                  early heat detection system that  
11                  goes all around the space, and a  
12                  one-hour fire rated wall in between,  
13                  and you heard testimony from  
14                  Ms. Kimmel that, as recent as  
15                  Monday, she ran a test and got  
16                  everybody out in a minute and 32  
17                  seconds or 23 seconds -- 32 seconds.

18                  So would it be reasonable to  
19                  tell Sweet Kiddles go away, you  
20                  cannot lease this space? Is that  
21                  reasonable? No, you cannot operate  
22                  in this building. Find another  
23                  building. Go to another City. Go  
24                  to another City by the way that will  
25                  allow you to do exactly this without

1 the sprinkler, every other City in  
2 the State of Ohio, but not Westlake.  
3 You got to go. That's not  
4 reasonable. The hypotheticals are  
5 not reasonable that we have come up  
6 with here today.

7 So I am asking you to come to a  
8 reasonable resolution with  
9 Ms. Kimmel. She is willing to  
10 spend, \$50, \$60,000 on a sprinkler,  
11 on this heat detection system,  
12 making all kinds of concessions to  
13 try to get to a functional  
14 equivalence, and we believe we have  
15 gotten there.

16 We appreciate your help in  
17 offering some relief because of the  
18 circumstances here and to help  
19 Sweet Kiddles open and operate for  
20 business safely.

21 Thank you very much for your  
22 time tonight.

23 CHAIRPERSON ALBANO: Thank you.

24 To the audience we are going to  
25 -- the committee is going to go into

1 the caucus room and deliberate, and  
2 we will be back.

3 (Recess had.)

4 CHAIRPERSON ALBANO: After the  
5 deliberation we are now going to go  
6 over the findings of fact, the Sweet  
7 Kiddles Daycare:

8 Number 1. The Applicant has  
9 submitted plans to the building  
10 department for a building permit for  
11 a child daycare at 2211 Crocker  
12 Road.

13 Number 2. The director of  
14 inspections, Don Grayem, issued an  
15 adjudication order, No. 2017-001, to  
16 Applicant on July 20th, 2017,  
17 stating as follows:

18 "Item No. 1. WCOD 1303.06  
19 contains amendments to the Ohio  
20 Building Code deleting the exception  
21 to OBC 308.5.2 and 305.2, therefore  
22 classifying this facility as I-4 use  
23 group.

24 "Corrective action No. 1,  
25 install a fire wall to divide the

1 existing structure into two separate  
2 buildings or

3 "No. 2, install an automatic  
4 fire suppression system in the  
5 entire building."

6 Under Item 1, under the action  
7 assumes the installation of the fire  
8 suppression system in the daycare  
9 use as proposed by the Applicant.

10 Number 3. The Applicant has  
11 stated that the occupancy load will  
12 be 100 or less children.

13 Number 4. The building is  
14 currently in non separated mixed  
15 use, and per the Ohio Building Code,  
16 sprinklers are currently not  
17 required as the building is 20,000  
18 square feet or less, and there is no  
19 level below the lowest level of  
20 exit. Current tenant separation  
21 walls are one hour.

22 Number 5. WCOD Section 1303.06  
23 contains an amendment to the Ohio  
24 Building Code deleting the exception  
25 to OBC 308.5.2 and 305.2, which

1 results in classifying this daycare  
2 as an I-4 use group and not an E use  
3 group.

4 Number 6. I-4 use group  
5 regulations require an NFPA 13 R  
6 sprinkler system to be installed  
7 throughout all tenant spaces of the  
8 building.

9 Number 7. E use group  
10 regulations only require the  
11 installation of a manual fire alarm  
12 system, which is an emergency  
13 voice/alarm in the daycare space.

14 Number 8. Applicant requests  
15 the Board to waive the requirements  
16 of WCOD 1303.06 and be classified as  
17 an E use group under the Ohio State  
18 building code. Applicant will then  
19 install an NFPA 134 sprinkler system  
20 in only the daycare tenant space and  
21 linear fire detectors in adjacent  
22 tenant spaces to be supervised by  
23 the Applicant's daycare fire alarm  
24 system. Direct exterior exit  
25 locations will exist in rooms with



1 children 2 and-a-half and under.

2 Number 9. Applicant is not  
3 able to install a fire wall or a  
4 fire suppression system throughout  
5 the building per the landlord.  
6 Applicant finds the installation of  
7 the fire suppression system to be  
8 not economically feasible.

9 And Number 10. WCOD Section  
10 1303.06 amendments to the OBC  
11 deleting the exceptions to OBC  
12 308.5.2 and 305.2 and requiring that  
13 buildings with a daycare use be  
14 equipped with an automatic fire  
15 suppression system were enacted for  
16 the protection of the health,  
17 safety, and welfare of the children  
18 who attend daycare establishments in  
19 the City of Westlake.

20 Varying the application of the  
21 Building Code is contrary to the  
22 purpose and the spirit of this  
23 Building Code and of public  
24 interest.

25 Is there a motion? Is there a

1 motion to --

2 MR. LAMB: Based on the finding  
3 of facts presented, I move to affirm  
4 the adjudication order No. 2017-001,  
5 dated July 20, 2017, as to Sweet  
6 Kiddles Daycare.

7 MR. COYNE: I second the  
8 motion.

9 CLERK OF COMMISSIONS: Second  
10 was --

11 MR. COYNE: (Mr. Coyne raises  
12 his hand.)

13 ATTORNEY LEASURE: Roll call.

14 CLERK OF COMMISSIONS: Roll  
15 call, please.

16 Albano?

17 CHAIRPERSON ALBANO: Yes.

18 CLERK OF COMMISSIONS: Lamb?

19 MR. LAMB: Yes.

20 CLERK OF COMMISSIONS: Coyne?

21 MR. COYNE: Yes.

22 CLERK OF COMMISSIONS: Pastel?

23 MR. PASTEL: Yes.

24 CLERK OF COMMISSIONS: Motion  
25 carries.

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CHAIRPERSON ALBANO: Okay.

Thank you, everyone. The meeting is  
adjourned.

(Meeting closed at 9:15 p.m.)

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C E R T I F I C A T E

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I, George J. Staiduhar, Stenotype Reporter,  
do hereby certify that I attended the taking  
of the foregoing hearing, wrote the same in  
stenotype, and that this is a true and correct  
transcript of my notes in their entirety.

s/George J. Staiduhar  
George J. Staiduhar, Notary Public  
within and for the State of Ohio

My Commission expires August 1, 2022.

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