

# Transcript of the Testimony of

**NLR**

**Date:** April 24, 2019

**Case:**

**Bushman Court Reporting**

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NORTH LITTLE ROCK BOARD OF ZONING ADJUSTMENT

March 28, 2019

1 (Recording Begins)

2 UNIDENTIFIED SPEAKER: Roll call.

3 MS. JONES: Mike Abel.

4 MR. ABELE: Here.

5 MS. JONES: Tom Brown.

6 MR. BROWN: Here.

7 MS. JONES: Tim Giattina.

8 MR. GIATTINA: Here.

9 MS. JONES: Paul Jackson.

10 CHAIRMAN JACKSON: Here.

11 MS. JONES: Steve Sparr.

12 MR. SPARR: Here.

13 CHAIRMAN JACKSON: Okay. All right.

14 Administrative first thing --

15 MR. SPARR: You say the minutes?

16 UNIDENTIFIED SPEAKER: We do.

17 CHAIRMAN JACKSON: Yeah.

18 MR. SPARR: I make a motion they be

19 approved.

20 CHAIRMAN JACKSON: Thank you.

21 MR. GIATTINA: Second.

22 CHAIRMAN JACKSON: All in favor say aye.

23 (Aye by all members.)

24 CHAIRMAN JACKSON: So approved.

25 Okay. All right. So we're going to wait

1 on --

2 MR. SPENCER: (Inaudible) two (inaudible)

3 --

4 CHAIRMAN JACKSON: Yeah, we could do that.

5 (Indiscernible Crosstalk)

6 CHAIRMAN JACKSON: How about Board of  
7 Adjustments Case No. 2019-05, 3421 North Pine  
8 Street.

9 Sir?

10 MR. STEEN: Yes.

11 CHAIRMAN JACKSON: You come forward here,  
12 please.

13 Is there anyone else that'd want to give  
14 testimony during this?

15 UNIDENTIFIED SPEAKER: Not in this case.

16 CHAIRMAN JACKSON: Okay. Okay.

17 All right. Well, in fact, I'll just swear  
18 everybody then. Everybody that's going to give  
19 testimony, if you'll raise your right hand.

20 Okay. All right. The testimony you're  
21 about to give in the hearing is true and  
22 correct so help you God?

23 MR. BROWN: I need to say something.

24 CHAIRMAN JACKSON: Okay. Please recognize  
25 that you have been sworn in pursuant to the

1 laws of the State of Arkansas and subject to  
2 perjury.

3 MR. BROWN: That gentleman there did not  
4 get sworn in; so, sir, you can not talk.

5 MR. SPARR: Do you know sign language?

6 (Indiscernible Crosstalk)

7 CHAIRMAN JACKSON: Okay. All right. I  
8 still have people to swear --

9 MR. BROWN: Have a seat, sir.

10 (Indiscernible Crosstalk)

11 MR. BROWN: You gentleman that just walked  
12 in, you need to sign in, please.

13 UNIDENTIFIED SPEAKER: Oh, no.

14 MR. BROWN: Why not?

15 UNIDENTIFIED SPEAKER: I just don't.

16 MR. BROWN: Okay.

17 CHAIRMAN JACKSON: All right.

18 UNIDENTIFIED SPEAKER: Unless you believe  
19 I'm a threat. Do you believe I'm a threat?

20 (Indiscernible Crosstalk)

21 MR. BROWN: I'm just ignoring you.

22 UNIDENTIFIED SPEAKER: Sir, you asked me  
23 the question.

24 MR. BROWN: You're out of order.

25 UNIDENTIFIED SPEAKER: No, sir, I'm not.

1 CHAIRMAN JACKSON: Okay. All right. What  
2 do we have on this first case?

3 MS. JONES: The case is -- so the case is  
4 at 3421 North Pine Street and 116 East E  
5 Avenue. It's a 50 by 150 lot and contains a  
6 single family residence, a garage, detached  
7 garage for the residence, a storage building,  
8 and a commercial business which is Steen  
9 Hardwoods.

10 And what Mr. Steve is, Steen, I'm sorry,  
11 is proposing to do is to remove the detached  
12 garage and construct a new garage.

13 The existing garage is 10 feet by 16 feet  
14 and the new garage is a purposed 12 by 20.

15 CHAIRMAN JACKSON: Okay.

16 All right. Mr. Steen, we need to be sure  
17 we have your correct address.

18 MR. STEEN: Yes. Where I reside?

19 CHAIRMAN JACKSON: Yes, sir. Where you  
20 reside.

21 MS. JONES: He actually reside -- his --  
22 his home is in Maumelle.

23 CHAIRMAN JACKSON: Okay.

24 MS. JONES: And I think he can probably  
25 give you a little bit more history on what he's

1           proposing to do but he -- in summary, he's  
2           proposing to sell his home in Maumelle and move  
3           back to his home in North Little Rock.

4           CHAIRMAN JACKSON: Okay.

5           (Indiscernible Crosstalk)

6           CHAIRMAN JACKSON: We have the address;  
7           right?

8           MR. STEEN: Yes, sir.

9           CHAIRMAN JACKSON: Okay. That's -- always  
10          -- we need to hear what you consider to be your  
11          hardship.

12          MR. STEEN: Okay. Well, living in  
13          Maumelle, live in a large home that -- I'm by  
14          myself now and it's a larger home than I need.  
15          This is my family's home. It was built in 1940  
16          by my mother and my dad. And then have some  
17          health issues and I wanted to be closer to the  
18          store also; which is right next door.

19          So I don't know your -- at my age, I'm 76.  
20          I'm thinking about the future. I don't know  
21          what it's going to bring; but, at some event,  
22          I'm going to have to -- the home is large and  
23          it's just more than I need to be living in  
24          right now.

25          And I -- and the situation with the

1 garage, the garage is in pretty bad repair.  
2 And that's a picture of it. I don't -- it's  
3 got a dirt floor.

4 CHAIRMAN JACKSON: Yes, sir.

5 MR. STEEN: And what I want to do, I just  
6 want to -- it's 10 foot 3 inches. I just need  
7 to make it 12 foot. And it's 18; I want to put  
8 two more feet on the back where you can get a  
9 car in there, a truck in there.

10 And I did -- when I -- in, probably 19 --  
11 maybe (inaudible) more information than you  
12 need. But, in '96, I put a storage building  
13 over there. And, when I did that, when I got  
14 the permit, I put -- the people that issued the  
15 permit said, on that metal building, if you  
16 will put a fire wall or put plywood in there  
17 that has fire resistance, he said if you'll do  
18 that, that helps the situation.

19 So I did that and I'll do that on the  
20 garage also, on that. The plywood on the  
21 inside there to have some -- and I'm going to  
22 use vinyl eight-inch lap siding. And the  
23 garage will have the same profile and look just  
24 the same but it will -- it's going to be,  
25 instead, ten inches, three inches; ten foot,

1 three inches. It's going to be 12 foot wide.

2 MR. BROWN: So are you going to move in  
3 that house that's got the fireplace there?

4 MR. STEEN: Yes, sir.

5 MR. BROWN: Okay.

6 MR. STEEN: I'm not moving tomorrow but I

7 --

8 (Indiscernible Crosstalk)

9 MR. STEEN: That's not my future -- I'm  
10 not just -- when I'll be able to move but I'm  
11 not --

12 CHAIRMAN JACKSON: Okay.

13 Staff? You got -- you're going to --

14 (Indiscernible Crosstalk)

15 MS. JONES: Are you asking for a  
16 recommendation?

17 UNIDENTIFIED SPEAKER: Yes. Correct.

18 (Indiscernible Crosstalk)

19 MS. JONES: Yeah. Staff really doesn't  
20 see any issue with it as long as, you know, he  
21 does set it back at least five feet from the  
22 right-of-way of East Avenue and he pulls the  
23 permit within the timeframe.

24 CHAIRMAN JACKSON: Okay. Yes, sir.

25 MR. BROWN: I've got a question for

1 (inaudible). Could he not -- I don't mind him  
2 building it where it is. But could he not  
3 attach it to the house and come out a little  
4 bit longer or wider?

5 I'm -- I'm just asking. I -- I don't --  
6 I'm going to vote for it, but --

7 MR. SPENCER: He can have that option to  
8 attach it to the house.

9 MR. BROWN: Yes, sir. Okay.

10 MR. SPENCER: But I think he -- you've got  
11 -- you're wanting to put it right back --

12 MR. BROWN: Where it was. That's fine.

13 MR. STEEN: Right.

14 (Indiscernible Crosstalk)

15 MR. STEEN: Same profile and same  
16 architecture and design.

17 MR. BROWN: Okay.

18 CHAIRMAN JACKSON: Okay.

19 Any other questions?

20 MR. SPARR: Move to approve.

21 CHAIRMAN JACKSON: Okay. I have a motion.

22 MR. ABELE: I second it.

23 CHAIRMAN JACKSON: Second. Any other --  
24 sensing no further discussion, we call for a  
25 vote.

1 MS. JONES: Mike Abele.

2 MR. ABELE: Yes.

3 MS. JONES: Tom Brown.

4 MR. BROWN: Yes.

5 MS. JONES: Tim Giattina.

6 MR. GIATTINA: Yes.

7 MS. JONES: Paul Jackson.

8 MR. JACKSON: Yes.

9 MS. JONES: Steve Sparr.

10 MR. SPARR: Yes.

11 CHAIRMAN JACKSON: All right.

12 (Indiscernible Crosstalk)

13 CHAIRMAN JACKSON: You bet. Welcome back

14 to North Little Rock.

15 MR. STEEN: Thank you, sir.

16 CHAIRMAN JACKSON: You bet.

17 UNIDENTIFIED SPEAKER: Did your daddy

18 teach you how to work on sewing machines?

19 MR. STEEN: A little. I couldn't make a

20 living of it though.

21 CHAIRMAN JACKSON: Thank you, Mr. Steen.

22 All right. We'll go back to Board of

23 Adjustments Case No. 2019-04.

24 And who's here to discuss that?

25 MR. MARKHAM: Myself.

1 CHAIRMAN JACKSON: Okay.

2 MR. SWINDOLL: I'm counsel.

3 CHAIRMAN JACKSON: Okay. You're counsel;  
4 okay. Both of you come up then; and your  
5 counsel.

6 MR. BROWN: Now I know why you didn't get  
7 sworn in.

8 CHAIRMAN JACKSON: There you go. See?

9 MR. GIATTINA: Can't be having the lawyer  
10 swear. That'd be --

11 (Indiscernible Crosstalk)

12 UNIDENTIFIED SPEAKER: -- (inaudible).

13 CHAIRMAN JACKSON: All right. Let's be  
14 sure we have everybody's name and address for  
15 the record there, please.

16 MR. MARKHAM: I'm George Markham; P.O. Box  
17 251511 Little Rock 72225.

18 MS. JONES: Did y'all sign in?

19 MR. MARKHAM: Yes, ma'am.

20 CHAIRMAN JACKSON: And mister attorney?

21 MR. SWINDOLL: James Swindoll.

22 CHAIRMAN JACKSON: And you want to give  
23 her your legal address or whatever?

24 MR. SWINDOLL: It's 212 Center, Suite 300,  
25 Little Rock 72201.

1           CHAIRMAN JACKSON: Okay. So we're looking  
2           at 304 Wisteria Drive. If we can take a look  
3           at a picture here and then we'll ask you for  
4           your hardship.

5           MR. MARKHAM: All right. That's pretty  
6           fair.

7           (Indiscernible Crosstalk)

8           CHAIRMAN JACKSON: It is in the -- okay.  
9           And we're appealing --

10          MR. BROWN:           The code officer's (inaudible)  
11          --

12          MS. MILLER: The code offices have  
13          determined that --

14          MR. BROWN: That's right.

15          MS. MILLER: -- deemed this a public  
16          nuisance and --

17          MR. BROWN: Yes, ma'am.

18          MS. MILLER: -- so, consequently, Mr.  
19          Swindoll's client is here appealing that  
20          determination on the part of the code office.  
21          And that's the reason why he's here. He's  
22          appealing that determination.

23          CHAIRMAN JACKSON: Okay. And this has  
24          already been acted on once?

25          MR. BROWN: Last month.

1 MS. MILLER: Well, we did not act on it,  
2 meaning we. We --

3 CHAIRMAN JACKSON: Okay. We just  
4 accepted --

5 MS. MILLER: You all did not act on it  
6 last month because Mr. Swindoll was not  
7 present. And it's because of the notice issue,  
8 not knowing that the hearing was taking place  
9 last month; and so we informed -- city  
10 attorney's office informed Mr. Swindoll that  
11 the -- it would be put on the agenda again this  
12 month in order for the parties to be present.

13 MR. BROWN: But, now, we did hear it last  
14 month.

15 (Indiscernible Crosstalk)

16 MS. MILLER: That's true. There was a --  
17 there was --

18 MR. BROWN: That's right.

19 MS. MILLER: -- a decision made and we  
20 probably -- what you need to do is you're going  
21 to have to rescind that decision in order to --

22 MR. BROWN: Of last month to start over?

23 MS. MILLER: To start over, yes.

24 MR. MARKHAM: May I offer a little  
25 information?

1 CHAIRMAN JACKSON: Not yet. Excuse me.

2 MS. MILLER: Okay. Fine.

3 CHAIRMAN JACKSON: Okay. So you're  
4 telling us that we need to vote to either  
5 recall it or not? Is that --

6 MS. MILLER: Yes.

7 CHAIRMAN JACKSON: Okay.

8 MR. ABELE: What was the issue with the  
9 notification?

10 MS. MILLER: I don't believe that Mr.  
11 Swindoll ever received -- did you receive a  
12 notification of the hearing?

13 MR. MARKHAM: That's what I would like to  
14 offer. I actually have information he doesn't  
15 have.

16 MS. MILLER: Okay.

17 MR. GIATTINA: Okay. Well, you can speak  
18 --

19 MR. MARKHAM: If I may --

20 MR. GIATTINA: You can speak to the notice  
21 issue?

22 MR. MARKHAM: Yes, ma'am. Yes, sir.

23 The original information was transmitted  
24 to R. David Lewis, another attorney who has had  
25 a health crisis and has had to cease practice.

1 MR. GIATTINA: Okay.

2 MR. MARKHAM: Okay? And so he had filed,  
3 originally filed an appeal which went to nod, I  
4 guess. I don't know. There may not be  
5 anything in the record further that I'm aware  
6 of.

7 I haven't gotten anything from him, so I  
8 don't know what actions, if any, he took on it.  
9 But there was an appeal filed by R. David  
10 Lewis.

11 I was contacted by Mr. Spencer by e-mail  
12 at some point and he asked me what was going on  
13 with it. I said, well, you know, as far as I'm  
14 concerned, nothing; everything is good. The  
15 house is secured, I don't have any problems if  
16 you don't.

17 And that's where that matter lay until we  
18 got the --

19 MR. GIATTINA: When did Mr. Lewis stop  
20 representing you?

21 MR. MARKHAM: Well, that's hard to say.  
22 You know, he's representing us, me, in another  
23 case also. And that just changed a couple of  
24 weeks ago.

25 As far as the trust goes, when I got the

1 notice in January is when Mr. Swindoll was  
2 brought into it; because it actually affects  
3 property that he --

4 MR. GIATTINA: Starting the trust?

5 MR. MARKHAM: -- yes, that he's now  
6 handling against the fire insurance company.  
7 So it -- it was more properly his anyway.

8 David was there before we retained Mr.  
9 Swindoll for the insurance money, if that makes  
10 any sense. I -- I can do a timeline if it  
11 would help, but --

12 MR. GIATTINA: That kind of did. Maybe  
13 (inaudible) --

14 MR. MARKHAM: It's kind of in a mess and I  
15 apologize for that.

16 MR. SPENCER: This was like a year ago.

17 MR. MARKHAM: Yes, sir.

18 MR. SPENCER: Not last month; a year ago.

19 MR. MARKHAM: Right. Right.

20 MR. SPENCER: So they appealed a year ago.  
21 I -- and it could be 14 months or whatever,  
22 awhile back, and then withdrew the appeal. So  
23 whoever that attorney was that withdrew  
24 (inaudible) time, he didn't understand. He  
25 thought that this board had a power over to --

1 the question before the board was (inaudible).  
2 And, at that point in time, he is not here to  
3 say yes or no but he seemed to agree that it  
4 wasn't (inaudible).

5 So he withdrew it because he thought this  
6 was (inaudible) argue (inaudible). Withdrew  
7 it, (inaudible) letter was mailed --

8 (Indiscernible Crosstalk)

9 MR. SPENCER: -- two months ago.

10 MS. PETTY: (Inaudible.) I sent my  
11 letter, my letter, on January the 14th, which  
12 was --

13 MR. GIATTINA: In 2019 or 2018 --

14 MS. PETTY: Yes. Which was to give them a  
15 city council date.

16 MR. SPENCER: That's what they're  
17 appealing.

18 MR. GIATTINA: Okay.

19 MR. SPENCER: That's the timeline that  
20 they're appealing, is that --

21 MR. GIATTINA: Okay.

22 MR. SPENCER: -- is that second letter  
23 that was e-mailed.

24 MR. GIATTINA: So if it was called  
25 nuisance way back in 2018, how -- how long do

1 they have to appeal that initial decision?

2 MR. SPENCER: They have 30 days from that  
3 initial one but this now -- a second letter  
4 came out --

5 MR. GIATTINA: From the city.

6 MR. SPENCER: -- that was not --

7 MS. MILLER: So that's what (inaudible)  
8 being operated on, is the second letter.

9 MR. SPENCER: The second letter?

10 MS. MILLER: Correct.

11 MR. SPENCER: Okay.

12 MS. MILLER: And the -- so they've  
13 received the notice of public nuisance, they  
14 have a right to appeal --

15 MR. SPENCER: Sure.

16 MS. MILLER: -- that decision to the Board  
17 of Adjustments. Once the Board of Adjustments  
18 hears that appeal, if it is denied, then they  
19 may go on to the city council.

20 MR. ABELE: And what was the date of our  
21 meeting last time?

22 MS. JONES: The 28th.

23 (Indiscernible Crosstalk)

24 MS. MILLER: If --

25 MR. BROWN: The last Thursday of the

1 month.

2 MR. ABELE: The 27th.

3 MS. MILLER: And we did discuss this  
4 because there was a belief that notice had been  
5 received for this --

6 MR. BROWN: Yes, ma'am.

7 MS. MILLER: -- for the hearing.

8 MR. BROWN: Yes, ma'am.

9 MS. MILLER: It's my understanding, when I  
10 returned to the office, that there -- there was  
11 some question as to whether any notice was  
12 sent.

13 Ms. Petty did not notify anyone. Mike  
14 Mosley, who is the -- who is an attorney in the  
15 office, said that he had not sent in anything.

16 And so we determined that, because no one  
17 could definitively say that notice had been  
18 given, that we needed to have Donna put that  
19 back on the agenda; again, make sure Mr.  
20 Swindoll received notice, because he's counsel,  
21 and have the hearing again.

22 So what needs to happen today is a  
23 recision of last month's decision denying it in  
24 order, now, to actually hear the appeal that  
25 Mr. Swindoll's client wants to bring.

1           Last month, it was denied because no one  
2           appeared and there was a belief that sufficient  
3           notice had been given. That was the reason.

4           CHAIRMAN JACKSON: Okay.

5           Members, do I have -- I'm listening.

6           MR. SPENCER: There'd be a motion to  
7           rescind.

8           MS. JONES: Yep.

9           (Indiscernible Crosstalk)

10          MS. MILLER: And, once again, it's a  
11          decision that the -- that is up to the board.  
12          Clearly, I'm not telling you what you have to  
13          do. I'm telling you that that was --

14          MR. GIATTINA: (Inaudible.)

15          MS. MILLER: -- the reason why you made  
16          your decision last month and --

17          MR. GIATTINA: I understand that. If  
18          notice wasn't provided for this second one,  
19          then I think that the proper thing to do would  
20          be to hear it. But I'm still confused is if  
21          this was named a nuisance over a year ago, why  
22          are -- I mean -- and I guess we'll get into  
23          that.

24          But, I mean, I -- I have an issue with  
25          that. If -- if there was a decision made in

1 2018 or even before that, that this thing was a  
2 nuisance, a decision was made then, nothing was  
3 appealed back then.

4 MR. SPENCER: It was withdrawn.

5 MR. GIATTINA: Okay.

6 MR. SPENCER: The attorney at that time  
7 had withdrew it.

8 MR. MARKHAM: Did Mr. Lewis actually  
9 withdraw it? Is there a file notice for that  
10 or was that just an informal thing you and I  
11 talked about?

12 MR. SPENCER: It was taken off of the  
13 agenda.

14 MR. MARKHAM: Because I -- I can't really  
15 represent it directly. That's why he's here  
16 and why David was here. I can't speak for the  
17 trust. I'd be practicing law and that'd be  
18 illegal.

19 MR. SPENCER: So the file never got  
20 started, I mean, because it never got to you.  
21 We show, you know, there was a request and that  
22 was withdrawn. So that's the file and there --  
23 there was no discussion on it or anything. A  
24 year ago.

25 MR. GIATTINA: It was withdrawn before --

1 MR. SPENCER: A year ago.

2 MR. GIATTINA: -- before the hearing?

3 MR. SPENCER: Yes.

4 MR. GIATTINA: Withdrawn before the  
5 hearing?

6 MR. SPENCER: Yes. You guys never --  
7 there was no discussion, no minutes, no --

8 MR. GIATTINA: And you weren't involved at  
9 that point?

10 MR. SWINDOLL: Correct, sir.

11 MR. ABELE: Aside from what we did last  
12 month, nothing's ever been done on any --

13 MR. SPENCER: Well, they -- they sent out  
14 a report with the city on this.

15 MR. BROWN: You mean code court?

16 MR. SPENCER: Code court. Yeah.

17 MR. GIATTINA: Okay.

18 MR. BROWN: Now, we haven't. She's  
19 shaking her head.

20 MS. MILLER: No.

21 (Indiscernible Crosstalk)

22 MR. SPENCER: Sorry.

23 MR. SWINDOLL: (Inaudible.) I'm sorry  
24 too.

25 MS. PETTY: She had spoke with Cedric and

1 so we were allowing time and it's still set.

2 So --

3 MS. MILLER: You're allowing time  
4 (inaudible).

5 MS. PETTY: To repair and do what needs to  
6 be done.

7 MS. MILLER: There's an insurance issue  
8 here --

9 MS. PETTY: Right.

10 MS. MILLER: -- (inaudible) --

11 MR. MARKHAM: There's a lawsuit. Yes.

12 MS. MILLER: -- and it's taking for -- a  
13 -- an inordinate amount of time to -- to -- I  
14 probably shouldn't say inordinate because I  
15 don't know exactly is inordinate. But it is  
16 taking a long time for this matter to be  
17 settled with the insurance company.

18 And so somehow, in the code court, this  
19 has been allowed to be delayed.

20 MS. PETTY: We haven't -- we haven't  
21 served him with a citation. So him -- we have  
22 the leniency to work with people. But it's --  
23 it's like there's a never ending to this. And  
24 it was a public nuisance back in 2018. That  
25 status has not changed.

1           And, when I issued the notice to go to  
2           city council, which it's going to city council  
3           in April, that's when the appeal came up here.

4           (Indiscernible Crosstalk)

5           MR. ABELE: I make a motion that we --

6           MS. MILLER: Before you make the -- before  
7           you make the motion, just as a guidance here,  
8           last month, you denied the appeal because --  
9           for the reasons that have been set forth.

10          The board could --

11          MR. BROWN: I -- I don't think that's  
12          right. I -- I -- correct me if I'm wrong. But  
13          --

14          UNIDENTIFIED SPEAKER: We didn't hear the  
15          other (inaudible).

16          MR. BROWN: -- we did not -- but -- but we  
17          didn't because they didn't show up --

18          MS. MILLER: That's why it was denied.

19          It's --

20          MR. BROWN: -- and --

21          MR. SPENCER: That's why it was denied;  
22          because of failure to appear.

23          MS. MILLER: Yes.

24          MR. BROWN: Plus -- plus that we did not  
25          deny it, we -- we upheld the code officer's

1 decision is -- correct?

2 MS. MILLER: Well, which is --

3 (Indiscernible Crosstalk)

4 MS. MILLER: -- a denial of his appeal by  
5 upholding the --

6 (Indiscernible Crosstalk)

7 MS. MILLER: -- code officer's decision.

8 You've --

9 MR. BROWN: Okay. Well --

10 MS. MILLER: -- denied the appeal. And --

11 MR. BROWN: Okay. Well, you -- yeah.

12 MS. MILLER: Yes.

13 MR. BROWN: That -- that's the same thing  
14 as long as --

15 MS. MILLER: Yes.

16 MR. BROWN: -- as -- because we -- we  
17 upheld her decision.

18 MS. MILLER: Yes. They did not appear.

19 MR. BROWN: Okay. Okay.

20 MS. MILLER: The decision was upheld.

21 And, consequently, the next step would be to go  
22 to the city council and plead your position  
23 there. Or to rescind --

24 MR. SPENCER: And hear it.

25 MS. MILLER: -- and hear it, whatever the

1 decision is of the board at that time, will  
2 then --

3 MR. BROWN: -- will then --

4 MS. MILLER: -- determine whether you're  
5 going to need to go to the city council or that  
6 the matter is resolved.

7 MR. SPENCER: Right.

8 MR. BROWN: If we rescind it and start all  
9 over --

10 MS. MILLER: Uh-huh.

11 MR. BROWN: -- and hear it --

12 MS. MILLER: Uh-huh.

13 MR. BROWN: -- we can either agree or  
14 disagree with her decision. That's it;  
15 correct?

16 MR. SPENCER: Correct.

17 MR. BROWN: Okay. Does that not go to  
18 code court then or does it go to city council?

19 MS. MILLER: Goes to the city council.

20 MR. SPENCER: City council.

21 MS. MILLER: On -- let me see the date  
22 here.

23 MR. BROWN: I -- I --

24 MS. MILLER: On April the 22nd.

25 MR. BROWN: Okay. I thought --

1 MS. MILLER: For the city council to  
2 determine to find that it is -- either is or is  
3 not a public nuisance.

4 MR. BROWN: Okay. And the reason it's  
5 going to city council is because she hadn't  
6 written them a citation yet.

7 MS. MILLER: Well, because it hasn't been  
8 determined to be a public nuisance yet. The  
9 city council is the one who determines that.

10 MR. BROWN: Okay.

11 MS. MILLER: Yeah.

12 They've just -- they've just done the  
13 preliminary work of bringing this to the  
14 attention of the city council, that there is a  
15 structure here that they believe to be a public  
16 nuisance.

17 Now, the city council will have to -- if  
18 it's not resolved here today, will have to make  
19 that determination at the city council meeting  
20 on April the 22nd.

21 MR. BROWN: Do we have the authority to  
22 decide whether it's a public nuisance or not or  
23 do we -- the only authority we have is to  
24 uphold --

25 MS. MILLER: Correct.

1 MR. BROWN: -- her decision --

2 MS. MILLER: Correct.

3 MR. BROWN: -- that she's already decided  
4 it's a public nuisance.

5 MS. MILLER: The code has decided --

6 MR. BROWN: Code. Well, and she --

7 MS. MILLER: -- (inaudible). Well yes.  
8 But she's not alone. So I didn't want it to be  
9 completely that she was -- she was out there  
10 (inaudible) to be a public nuisance.

11 But the code enforcement agency has  
12 determined that it is a public nuisance.  
13 That's -- and -- and that will have to be  
14 (inaudible) --

15 MR. BROWN: So we need to agree or  
16 disagree with her?

17 MS. MILLER: Correct.

18 MR. GIATTINA: If there's nothing in the  
19 file that shows the notice is effectuated, I  
20 think the only thing to do is to rescind the  
21 decision from last week, I mean --

22 MR. BROWN: Last month.

23 MR. GIATTINA: -- from last month, and  
24 hear it. Okay? If the city can't show that  
25 there's notice, then I'm not comfortable --

1 MS. MILLER: And we can't.

2 MR. GIATTINA: Well, then -- you made a  
3 motion?

4 MR. ABELE: I make a motion we rescind it.

5 MR. GIATTINA: And I second it.

6 MR. BROWN: Our decision from last month  
7 on this particular case.

8 (Indiscernible Crosstalk)

9 MR. GIATTINA: And to hear this now.

10 MR. BROWN: And to hear it now. And they  
11 have been notified because both of them are  
12 here.

13 MR. GIATTINA: They're here. Yeah.

14 MR. BROWN: They can't say they haven't  
15 been notified.

16 MR. SPENCER: They're here ready to go,  
17 sir.

18 (Indiscernible Crosstalk)

19 MR. GIATTINA: Are you all testifying?

20 UNIDENTIFIED SPEAKER: No.

21 CHAIRMAN JACKSON: They have not been --  
22 can't speak. You're looking at me.

23 All right. So I have -- we have --

24 (Indiscernible Crosstalk)

25 CHAIRMAN JACKSON: We have a motion. I

1 hope everyone understands it. If you don't,  
2 does it need to be restated?

3 MR. BROWN: You don't have a second yet.

4 (Indiscernible Crosstalk)

5 MR. GIATTINA: I second it.

6 MR. BROWN: Oh, I'm sorry, Timbo. I  
7 didn't hear you.

8 (Indiscernible Crosstalk)

9 CHAIRMAN JACKSON: All right. So anybody  
10 -- everybody's clear.

11 All right. All those in -- roll call.  
12 I'm sorry.

13 MS. JONES: Mike Abele.

14 MR. ABELE: Yes.

15 MS. JONES: Tom Brown.

16 MR. BROWN: Yes.

17 MS. JONES: Tim Giattina.

18 MR. GIATTINA: Yes.

19 MS. JONES: Carl Jackson.

20 CHAIRMAN JACKSON: Yes.

21 MS. JONES: Steve Sparr.

22 MR. SPARR: Yes.

23 CHAIRMAN JACKSON: Okay. All right, guys.  
24 What's going on here?

25 MR. SWINDOLL: I can tell you generally

1 and then he can back it up with testimony.

2 The insurance for this house was fully  
3 paid for since 1961. His parents had it and  
4 he's had it since then. I don't think there's  
5 been any code activity before the fire.

6 The fire occurred, the insurance company  
7 was notified. It was fully insured.

8 MR. GIATTINA: When did the fire occur?

9 MR. MARKHAM: February 24th, 2018, at  
10 approximately one o'clock in the morning.

11 MR. SWINDOLL: A claim was presented to  
12 the insurance company, Great Lakes Insurance  
13 Company, and there are -- Lloyd's of London  
14 Company. And notoriously hard to litigate  
15 with. They don't have people here locally.  
16 They don't even have -- they don't even sell  
17 this insurance in Little Rock anymore; in  
18 Arkansas, I think. So we've had to file suit.

19 We filed suit. It's been moved to federal  
20 court. We have a jury trial set January 21st.

21 MR. GIATTINA: Hold on a second. The jury  
22 trial is not set until when?

23 MR. SWINDOLL: January 21st.

24 MR. GIATTINA: I'm an attorney, too, so --

25 MR. SWINDOLL: Okay.

1 MR. GIATTINA: I think that -- just so  
2 we're clear here, I used to do work for Lloyd's  
3 of London and for these types of policies as an  
4 adjustor; so I think I have to recuse myself  
5 and not -- and not vote on this.

6 MR. SPARR: You do any work for them now?

7 MR. GIATTINA: No. I'm not doing it now.

8 MR. BROWN: How long ago has it been?

9 MR. GIATTINA: It was --

10 MR. BROWN: A year or two or three?

11 MR. GIATTINA: After law school; so --  
12 let's see. Like four or five years, like that.  
13 I don't do any work for them now.

14 MR. BROWN: What's your opinion, counsel?

15 MS. MILLER: Well, I'm not -- I'm not  
16 going to make, give you any determination as to  
17 whether he should recuse because that's within  
18 -- you need to -- you need to know whether you  
19 should recuse or not.

20 If you feel that you should recuse because  
21 you think that you can not hear this case --

22 MR. GIATTINA: No, I can hear it --

23 MS. MILLER: -- impartially --

24 MR. GIATTINA: -- impartially. But --

25 MS. MILLER: -- then you should do so.

1 But I'm not --

2 MR. GIATTINA: But --

3 MS. MILLER: I don't think it's my -- it's  
4 not my job --

5 MR. BROWN: Okay.

6 MS. MILLER: -- to say to him --

7 MR. GIATTINA: I -- listen.

8 MS. MILLER: -- you don't need to recuse.

9 MR. GIATTINA: Listen. I can -- I can  
10 hear it impartially and unbiased. But I think,  
11 as attorneys, so as to always avoid any  
12 appearance of impropriety, I need to recuse.

13 So I'm not trying to be difficult --

14 MR. SWINDOLL: Sure.

15 MR. GIATTINA: -- but I'm doing what I  
16 think, as an attorney, is the ethical thing to  
17 do.

18 MR. BROWN: That's fine.

19 CHAIRMAN JACKSON: That's what you should  
20 do; okay?

21 MR. GIATTINA: Okay. I apologize. But I  
22 wanted -- when he said that policy, I -- I'm  
23 going to be open and honest.

24 (Indiscernible Crosstalk)

25 MR. GIATTINA: So I guess I'm just sitting

1 here as a fly on the wall.

2 (Indiscernible Crosstalk)

3 CHAIRMAN JACKSON: So where are we at?

4 MR. ABELE: We're starting over.

5 MS. MILLER: Where we are is Mr. Swindoll  
6 was giving a timeline of --

7 UNIDENTIFIED SPEAKER: Okay.

8 MS. MILLER: -- what had occurred.

9 (Indiscernible Crosstalk)

10 MR. SWINDOLL: So it's in federal court  
11 set for July -- June (inaudible) -- and it  
12 could settle before then.

13 This is a meritorious case. They had --  
14 there's a wrongful denial. And these people's  
15 property is at risk because they did not --  
16 they paid the surance, they should have gotten  
17 the benefit of that insurance when the fire  
18 happened and they did not.

19 And so they're -- put them into a position  
20 where they're in opposition now to this board  
21 but only because the insurance company didn't  
22 act appropriately in the case. And I believe  
23 we clearly show at the end of the time that  
24 they'll have -- they'll have to make it right  
25 and this house will be repaired and become

1 another wonderful place in North Little Rock to  
2 live.

3 I mean, this -- this is a nice  
4 neighborhood. These people don't have any  
5 intention of moving out of this house at the  
6 time of the fire. They've been living there  
7 continuously and had been without trouble.

8 So I brought George today so that he can  
9 explain the history of the house and the  
10 situation that exists right now.

11 There's a \$130,000 estimate on the house  
12 to repair it. There's coverage to pay all the  
13 lost -- everything was lost in the house as  
14 well.

15 Now, the structure of the house, you saw  
16 from the pictures, is not bad on the outside;  
17 but the inside of the house is toast, and so  
18 it's going to require all the remodeling that  
19 I'm mentioned --

20 MR. BROWN: You're not living there now?

21 MR. MARKHAM: No, sir. It's been posted  
22 against occupancy. We're certainly not going  
23 to ignore that.

24 MR. ABELE: When did you file the lawsuit?

25 MR. MARKHAM: I filed a lawsuit in

1           September or August of this year in federal  
2           court. It was moved to federal court, so that  
3           alone gave it a period of time in which to  
4           responses -- but the discovery rule has been  
5           instituted by Judge Baker, Karen Baker, in  
6           federal court. And we're set to go to trial in  
7           this case.

8           MR. ABELE: So 130,000 would cover the --

9           MR. SWINDOLL: The structure.

10          UNIDENTIFIED SPEAKER: The structure, yes.  
11          What happened to contents --

12                   (Indiscernible Crosstalk)

13          MR. MARKHAM: And so we're stuck to a  
14          place where our property, if it's condemned and  
15          taken from us during the period of time, we had  
16          insurance. It's not like we were living there  
17          without insurance or not trying to be a member  
18          of the community out there.

19                 And so we're just stuck in a hard place  
20          and we're asking for this court for a hardship.

21          MR. SPARR: What's the insurance company's  
22          justification for not paying in an expedient  
23          manner?

24          MR. SWINDOLL: They say arson. The people  
25          were living at the house at the time. And, at

1 the fire, the lady is in the house when the  
2 house burns down.

3 And she's -- when they come out there,  
4 she's trying to move her stuff out of the  
5 house. This is not a situation where they're  
6 off on vacation and the house burns and there's  
7 a big mortgage to pay.

8 MR. SPARR: They lady that was living  
9 there, was she a renter?

10 MR. SWINDOLL: No.

11 MR. MARKHAM: She's my wife.

12 MR. SWINDOLL: It was his wife.

13 (Indiscernible Crosstalk)

14 MR. MARKHAM: I have a list. I pulled a  
15 litigation history for this insurance company.  
16 It shows that -- and I'd like to introduce this  
17 into the -- for each of y'all to look at.

18 It shows that, from 1991 to 2016, they  
19 averaged one or two lawsuits a year in federal  
20 courts throughout the country.

21 In 2016, they reorganized from being in  
22 Britain to Munich, Germany. And, in 2017, they  
23 had 25 lawsuits filed against them in federal  
24 court or filed -- they filed for declaratory  
25 actions against others. The next year, 52,

1 including this one.

2 So they have a business model that is  
3 predicated, I think, on this. The insurance  
4 adjustment firm, Affirmative Risk Management,  
5 is actually also a foreign company. It was  
6 bought by a Canadian firm, SCM Insurance, that  
7 does Lloyd's of London specific market  
8 adjusting.

9 So I've got an adjustor predisposed  
10 defiant against me, I've got an insurance  
11 company from Munich, Germany that, with  
12 (inaudible) efficiency would rather let my  
13 house go to haities than to pay a claim after  
14 we paid insurance for it in good faith.

15 And, anyway, I don't want to take your  
16 time but I'd like to introduce this at some  
17 point if it's agreeable to council.

18 MR. SWINDOLL: If y'all (inaudible).

19 MR. MARKHAM: I also have a video with  
20 interviews of four neighbors in immediate  
21 proximity of my house. Mirchi May, who some of  
22 you may know, Doris Aldridge, Leonbris Kitchen,  
23 and Jeff Swain, the man who, thank god,  
24 reported the fire.

25 My silly wife would have probably run in

1           there one more time and died. All asking for  
2           forbearance so that we can rebuild this house  
3           and return to our home.

4           But, if you want to see it, I can play it.  
5           If you want to put it in the file, I'll offer  
6           it. I don't want to waste a lot of your time.  
7           I know you're busy folks. But we have that.  
8           So that's what I know.

9           Questions for me?

10          MR. SWINDOLL: Or me.

11          CHAIRMAN JACKSON: Any questions from the  
12          board?

13          (Indiscernible Crosstalk)

14          MR. SPENCER: The question for you guys  
15          is, on the day of the -- that the ticket was  
16          originally given or --

17          MR. MARKHAM: There's been no ticket.

18          MS. MILLER: Notice.

19          (Indiscernible Crosstalk)

20          MR. SPENCER: The notice. I'm sorry. The  
21          notice from city council.

22          MR. MARKHAM: Uh-huh.

23          MR. SPENCER: Is it a nuisance on that  
24          day?

25          MR. MARKHAM: On 3/8/2018?

1 MS. JONES: That was the original notice  
2 that gave him 30 days to reply.

3 (Indiscernible Crosstalk)

4 MR. SPENCER: So is that -- so -- that --  
5 there -- what you need to be responding to is  
6 --

7 MR. MARKHAM: Is that --

8 MR. SPENCER: -- is it a nuisance on that  
9 day?

10 MR. MARKHAM: I -- I would -- I would say  
11 that -- of course, nuisance is a term of art  
12 that's very unique and defined in the code, I'm  
13 sure.

14 But I will say this. The house was secure  
15 before I left it the morning after the fire.  
16 It's been boarded up. It has had the lawn  
17 maintained. It is posted against trespass and  
18 visited at least twice a week, sometimes more  
19 than that. We plant flowers in the spring and  
20 intend to do so again.

21 If it is truly a nuisance, I'm not sure to  
22 who. The neighbors are very pleased with what  
23 we've done.

24 MR. SPARR: That's what I was ask  
25 (inaudible). What prompted --

1 MR. MARKHAM: Yeah.

2 MR. SPARR: -- the nuisance?

3 MR. MARKHAM: I got a notice taped to my  
4 door. I don't know what -- if there was a  
5 complaint --

6 MR. SPARR: Somebody normally says  
7 something --

8 MR. MARKHAM: I'm -- I'm aware that the  
9 city is using a software package, which I  
10 mention here, called Comcate. I recovered meta  
11 data off of your website. Ms. Petty has been  
12 generating a lot of documents for  
13 condemnations. I guess that's her primary  
14 pass.

15 But Comcate, on its front page, says  
16 Comcate demonstrates importance and  
17 effectiveness of performance based government,  
18 accurate information sharing rapid deployment  
19 resource, effective tactics, and strategies and  
20 relentless followup.

21 Now, I'll grant you that I don't like  
22 rotten property around me. But I've done  
23 everything a human being can do to keep that  
24 house safe, secure. No one's getting in it.  
25 If they do, I'm aware of it pretty quick.

1           We saw the notice, we contacted city  
2 council. I got three one-line responses from  
3 city code when I reached out --

4           MR. SPENCER: Sir, this is a -- sir.

5           (Indiscernible Crosstalk)

6           MR. MARKHAM: -- attempting to make  
7 contact --

8           (Indiscernible Crosstalk)

9           MR. SPENCER: You're not to -- you're not  
10 to address the DS without being recognized.

11          (Indiscernible Crosstalk)

12          MR. SPENCER: Please sit down.

13          (Indiscernible Crosstalk)

14          MR. SPENCER: Please sit down.

15          (Indiscernible Crosstalk)

16          MR. SPENCER: When you sit down, please --  
17 you -- you are not to address --

18          MR. SUTTER: I'm not addressing anybody.

19          MR. SPENCER: You've addressed the whole  
20 board and interrupt the meeting.

21          MR. SUTTER: No, sir. No, sir. I was  
22 talking to a cocounsel. My client has a right  
23 to counsel.

24          MS. MILLER: Is he your client, Luther?

25          MR. SUTTER: Yes, he is.

1 MR. MARKHAM: He is representing us.

2 MS. MILLER: Okay. Well, have you --

3 (Indiscernible Crosstalk)

4 MR. SUTTER: But I'm not -- I'm not  
5 appearing in this proceeding yet --

6 MS. MILLER: Yeah. Yeah.

7 MR. SUTTER: -- because there may be  
8 something else. Now, all I'm trying to do is  
9 talk to my cocounsel about a federal court  
10 issue.

11 Now, sir, if you touch me again, that's  
12 going to be a problem; so please don't do that.  
13 Okay?

14 MR. SPENCER: You don't need to threaten  
15 me.

16 MR. SUTTER: No, sir, that's not a threat.

17 MR. SPENCER: Please -- okay.

18 MR. SUTTER: I just (inaudible) --

19 MR. SPENCER: (Inaudible) has to be  
20 recognized to come up to (inaudible).

21 MR. SUTTER: No, sir, I don't have to do  
22 that. I --

23 (Indiscernible Crosstalk)

24 MR. SPARR: Can we get back to this case?

25 (Indiscernible Crosstalk)

1 CHAIRMAN JACKSON: Sir, please take a  
2 seat.

3 MR. SPARR: We're inundated with lawyers.

4 MS. MILLER: Okay. Guys, excuse me just  
5 one second so we can get order in here.

6 MR. SPENCER: (Inaudible) sworn in and  
7 told who you were, we would recognize you were  
8 an attorney and part of cocounsel.

9 MS. MILLER: Jim, why don't you  
10 (inaudible) --

11 MR. SPENCER: So that was your mistake by  
12 not telling us who you were.

13 MR. SWINDOLL: Can I have just a second?

14 MS. MILLER: Yes.

15 (Indiscernible Crosstalk)

16 MS. MILLER: Let's -- as lawyers, we  
17 approach each other and we do speak to each  
18 other --

19 (Indiscernible Crosstalk)

20 MS. MILLER: -- but -- yes. I understand  
21 that. Thanks. That's why I'm saying --

22 MR. BROWN: And we're not mind readers.  
23 We didn't know that.

24 MS. MILLER: I understand.

25 MR. BROWN: Had he signed in, we would

1 have known that.

2 MS. MILLER: I understand that. So that's  
3 why I'm --

4 MR. BROWN: Our mind reading skills are  
5 not --

6 MS. MILLER: -- saying let's get --

7 MR. BROWN: -- real good.

8 MS. MILLER: Let's -- (inaudible).

9 (Indiscernible Crosstalk)

10 MR. BROWN: No. He said he would not sign  
11 in.

12 MR. SPENCER: He said he didn't need to.

13 MR. BROWN: He said he didn't have to.

14 MR. MARKHAM: There is one other issue --

15 MR. SPARR: So what I had asked was --

16 MR. SWINDOLL: We'll talk about that.

17 MR. BROWN: It's his turn.

18 MR. SPARR: -- we don't know -- we don't  
19 know what prompted this property to be cited?  
20 You did?

21 MS. PETTY: Yes.

22 MR. SPARR: I'm just curious. I mean,  
23 what -- I mean, after -- after so long after  
24 the fire, what all the sudden --

25 MS. PETTY: Any -- any property that burns

1 in the City of North Little Rock, the fire  
2 department forwards our department a report of  
3 that and we're to go inspect the properties.

4 Fire properties are red tagged and we get  
5 the owners to make repairs or to demolish the  
6 properties for, you know, the neighborhood and  
7 the neighbors and anything else. I mean, we  
8 don't try to let them set (inaudible).

9 But we got a report. We got a fax from  
10 the fire department which --

11 CHAIRMAN JACKSON: All right. Sir, what  
12 was you wanting to say --

13 MR. SWINDOLL: I have one more point to  
14 make, as that the house is evidence for use;  
15 right? This -- this is a claim where the  
16 insurance company is denying if the house is  
17 destroyed.

18 We've left the house like it is on the  
19 interior because there are forensic issues that  
20 involve the defiant. And, if it is destroyed  
21 or moved or changed because of the order of  
22 this board, we -- it can be a -- it can destroy  
23 our case or hurt us.

24 The evidence is spoiled, as it were. And  
25 so that would change, perhaps -- defense has

1 always argued that, if you destroy the evidence  
2 in any way, you haven't given them full access,  
3 then you've destroyed their right to defend  
4 their case. And so that's one other issue that  
5 I just didn't mention and I wanted the board to  
6 have the advantage of that.

7 MR. SPARR: Can I ask another question?

8 CHAIRMAN JACKSON: Sure.

9 MR. SPARR: What would have to be done for  
10 it not to be a nuisance?

11 MS. PETTY: Be repaired.

12 MR. SPARR: No, the entire residence?

13 MS. PETTY: Yes. And that will --

14 MR. SPARR: To include the inside?

15 MS. PETTY: That was for city council to  
16 determine, if they were going to condemn the  
17 property.

18 But that's what brings it out, if it  
19 should be demolished or repaired, what brings  
20 it out of a public nuisance status. And that's  
21 city wide for any structure.

22 MS. MILLER: I think for the -- I think,  
23 in your consideration of this, there -- we have  
24 ordinances, regulations, that determine or at  
25 least set the guidance for what a nuisance is

1 for city council in order to -- for city  
2 council to make a decision on that when it is  
3 brought before the -- so the issue here is  
4 whether you agree with the code enforcement  
5 agency, that it meets the requirements for --  
6 under the ordinance under the regulations or a  
7 property that is a nuisance, and whether you  
8 are going to uphold that finding by them or --  
9 or you're not.

10 But, if you are, then the city council  
11 will, in the end, make the decision as to  
12 whether it is a nuisance or not, whether it  
13 meets their understanding of the law as to  
14 whether it is a nuisance.

15 Now, what I hear Mr. Swindoll asking is,  
16 because there's an appeal and then there's the  
17 -- a variance is being requested in terms of  
18 saying that -- I'm sorry. I can't remember --

19 MR. MARKHAM: George Markham.

20 MS. MILLER: Mr. Markham. That there is a  
21 -- that there's a hardship here. And we have  
22 regulations related to that as well.

23 And so, you know, what -- what I think the  
24 city would be saying is, is that you all have  
25 to apply those regulations in making the

1 decision regarding whether to uphold the  
2 decision of the code enforcement agency or not.

3 The fact is that -- what I'm hearing is  
4 that this property was deemed a nuisance. No  
5 one is denying that it is, in fact, a house  
6 that has been burned out and is still sitting  
7 there. It has not been repaired and the issue  
8 seems to be that you're waiting for the  
9 insurance company to get you the monies that  
10 you believe are due in order for you to repair  
11 it. Is that correct?

12 MR. MARKHAM: That's a pretty fair  
13 statement. I --

14 MS. MILLER: Okay.

15 MR. SWINDOLL: (Inaudible.)

16 (Indiscernible Crosstalk)

17 MS. MILLER: I mean, you're not waiting --

18 MR. MARKHAM: We're aggressively moving --

19 MS. MILLER: You're aggressively pursuing  
20 it but --

21 MR. MARKHAM: Absolutely.

22 MS. MILLER: -- I'm still -- I'm saying  
23 that, if it could be resolved, it would -- you  
24 would get the money and you'd repair the house  
25 because it hasn't been resolved --

1 MR. MARKHAM: Yes.

2 MS. MILLER: -- and the case is not over  
3 yet, you are --

4 MR. MARKHAM: That's -- that's --

5 MS. MILLER: -- not repairing it.

6 MR. MARKHAM: That's about right.

7 MR. SPARR: As a nuisance, has anybody  
8 been hurt on this property? Been any injuries  
9 on it or people coming in later in the evening  
10 and using it for ill-gotten gains?

11 MR. MARKHAM: No, sir. It's boarded up.  
12 Like I said, it's visited at least twice a  
13 week. The yard's mowed.

14 We plan on going over there -- I -- you  
15 know, before the fire, we had -- were going to  
16 try to take down an old shed in the back and  
17 turn it into a green house. That probably is  
18 something that needs to be addressed  
19 separately.

20 I -- you know, I've -- I did some  
21 analysis. I've lived there all my life off and  
22 on. Over the hill, there's a street called  
23 Summerset that looks out over Camp Robinson and  
24 Remount's intersection.

25 In 1974, as I relate in this document, a

1       tornado took out a three-bedroom home that had  
2       just been built there. I put a pencil to it  
3       the other night trying to figure out, what is  
4       an economic cost of a weed lot to a city.

5               And I got to looking at things and I  
6       thought, well, now, if you had a couple in  
7       there making 30 grand a year a piece in today's  
8       money, how much sales tax would they pay, how  
9       much income tax would they pay, how much  
10      economic enterprise would they generate.

11             You know, we've got a banking system  
12      where, if you put a hundred dollars in, they  
13      can lend a thousand out. I came up with \$6.2  
14      million that that weed lot could have generated  
15      and didn't because it didn't get rebuilt  
16      because someone walked off from that property.

17             I don't propose to leave a black hole in  
18      this city. I propose to rebuild that thing.  
19      And I've come here to ask -- I've got a simple  
20      plan. I want to get that insured in front of a  
21      jury. That foreign company that cares not what  
22      happens to us, I want to get them in front of a  
23      jury of my peers and make them do right. If I  
24      can't do that, I'm going to look for grants,  
25      I'm going to look to guidance and I -- part of

1 the reason I came here today was to see if  
2 you've got any ideas or experience in these  
3 matters. I am open to it.

4 CHAIRMAN JACKSON: Okay. Thank you.  
5 Mike?

6 MR. ABELE: If we say that the enforcement  
7 is not proper or -- what's the timeline?  
8 You're going to court in June. Could it be --

9 MR. BROWN: January.

10 (Indiscernible Crosstalk)

11 MR. ABELE: -- after that? Or what would  
12 happen? I mean, you -- if you -- okay. You  
13 win and god knows how long it'd take to get  
14 your money, but if --

15 MR. MARKHAM: Not long if they don't  
16 appeal.

17 MR. ABELE: And what happens to the --  
18 could the city come back in and -- after three  
19 months, and say --

20 MR. MARKHAM: We would immediately --

21 MR. ABELE: I mean, what -- you understand  
22 what I'm saying?

23 MS. MILLER: No.

24 MR. ABELE: Well, you wrote up a code  
25 enforcement -- whatever you call it.

1 (Indiscernible Crosstalk)

2 MS. MILLER: There's not been a code  
3 enforcement ticket written up. There is a --  
4 there is a notice posted that there -- that  
5 this property is considered a public nuisance.

6 MR. ABELE: Okay. If we say that we're  
7 going to let that go, can the city come back  
8 and redo that?

9 I mean, my point is -- okay. We let it  
10 go. We let it solve your court case, what  
11 happens? I mean, we -- is that nuisance stamp  
12 gone forever from this property? What happens?

13 MS. MILLER: Well, I think, obviously,  
14 what has occurred is that it was determined to  
15 be a nuisance back in February of 2018 and then  
16 it was withdrawn and it's still sitting there.  
17 And now the code enforcement agency has, once  
18 again, given notice that it's a public  
19 nuisance.

20 And so here we are again, still --

21 MR. ABELE: My question (inaudible) --

22 MS. MILLER: -- dealing with it.

23 MR. ABELE: -- not a nuisance, can the  
24 city come back --

25 MS. MILLER: You can't --

1 MR. ABELE: -- later?

2 MS. MILLER: -- say that it's not a  
3 nuisance because that's not within your  
4 purview. It's the city council who has to make  
5 that decision.

6 You are either upholding or at least  
7 upholding the decision of code enforcement  
8 agency or --

9 MR. BROWN: We either agree or --

10 MS. MILLER: -- not --

11 MR. BROWN: -- disagree with the code  
12 officer's --

13 MS. MILLER: Right.

14 MR. BROWN: -- decision.

15 (Indiscernible Crosstalk)

16 CHAIRMAN JACKSON: Just a minute, folks.

17 MR. SPARR: It's not that simple to me.

18 CHAIRMAN JACKSON: Mike, finish what  
19 you're saying. And Steve, you're next.

20 MR. ABELE: If we disagree, does that  
21 annul whatever else would happen to this  
22 property in the future? I mean, code  
23 enforcement can't come back in four months  
24 because nothing happened and do it again?

25 MR. SPARR: It's going to go to the city

1 council.

2 MS. MILLER: Well, if -- the issue of  
3 whether it's resolved or not, I'm not -- I  
4 don't know that, if the city itself, the  
5 planning --

6 (Indiscernible Crosstalk)

7 MS. MILLER: No, I'm looking at you.

8 UNIDENTIFIED SPEAKER: Okay.

9 MS. MILLER: You would go on and it would  
10 be brought up again before the city council if  
11 -- if, on appeal, (inaudible).

12 (Indiscernible Crosstalk)

13 MR. BROWN: That's it. That's it.

14 (Indiscernible Crosstalk)

15 CHAIRMAN JACKSON: Here -- here -- I know  
16 we've got a lot of things going on here all of  
17 the sudden. But, really, our point, as a  
18 board, is to agree or disagree with the code  
19 officer.

20 MR. BROWN: And that's it.

21 CHAIRMAN JACKSON: Period. That's it.

22 MS. MILLER: Yeah. Correct.

23 CHAIRMAN JACKSON: So any other appeals or  
24 either through the judicial system or whatever  
25 the city council officers. Okay?

1           So all this other discussion, we  
2           appreciate it, we understand, but our decision,  
3           as a board, is to decide or not to decide to  
4           uphold the code officer. That's it.

5           MR. BROWN: Do we agree with it or not  
6           agree with it.

7           MR. SPENCER: Exactly.

8           MR. SPARR: To me, it doesn't seem that  
9           simple.

10          MR. BROWN: Okay.

11          MR. SPARR: For some reason. Maybe I've  
12          heard too much. But it's not that I disagree  
13          with the code officer. It's that I don't want  
14          to stand in the way of destroying evidence, not  
15          allowing them to pursue a matter that  
16          absolutely needs to be pursued to the end, and  
17          it's not their fault that it's taken this long  
18          to get something done.

19          It's not that it's -- and if I saw it  
20          being a nuisance, it was being used by somebody  
21          for improper reasons or kids were coming in and  
22          doing stuff they shouldn't be or kids even got  
23          hurt on there, that would be different.

24          But, for me personally, I don't want to  
25          stand in the way of them being able to pursue

1 what they need to do.

2 And most people, maybe they could come in  
3 and just pay the \$130,000 and get it fixed but  
4 they choose to wait on the insurance money --

5 MR. MARKHAM: As to the nuisance --

6 CHAIRMAN JACKSON: Out of order. Out of  
7 order.

8 MR. MARKHAM: Sorry.

9 CHAIRMAN JACKSON: Back to what Steve was  
10 just saying then, so -- if it goes, as you say,  
11 it's going to the council from here?

12 MS. PETTY: Yes, sir.

13 CHAIRMAN JACKSON: Okay. If it goes to  
14 the council from here, they still have the  
15 right of appeal to the council.

16 MS. MILLER: Correct.

17 MR. MARKHAM: May I --

18 CHAIRMAN JACKSON: No, sir.

19 Okay. Any other --

20 MR. SPARR: That's for me. And I don't  
21 really know how to vote on it. It's not that I  
22 disagree with the code officer but I also agree  
23 that they need to be able to pursue --

24 MR. MARKHAM: I would like to introduce  
25 evidence to the issue of nuisance then.

1 CHAIRMAN JACKSON: Sir.

2 MR. MARKHAM: Yes, sir.

3 CHAIRMAN JACKSON: You're out of order.

4 (Indiscernible Crosstalk)

5 MR. BROWN: I have -- I have a question.  
6 Let's say that we agree with the code officer  
7 that it's a nuisance, they go to court in  
8 January, and one of those slick attorneys for  
9 the insurance company says, well, your city  
10 code -- your city board of adjustment  
11 commissioners said that it was a nuisance so  
12 why should we pay money --

13 MR. SPENCER: No.

14 MS. MILLER: No. That -- I mean, those  
15 are just two different -- separate. Separate  
16 things.

17 MR. BROWN: So -- so by us voting --

18 MS. MILLER: You're not having anything to  
19 do with what's going on in the civil course --

20 MR. BROWN: Okay. Well, I do not want him  
21 to lose because of our vote.

22 MS. MILLER: This doesn't have anything to  
23 do with that. This is -- the city has an  
24 ordinance that says --

25 MR. BROWN: Yes, ma'am. Okay.

1 MS. MILLER: -- whether it's a nuisance.

2 MR. BROWN: Okay. You -- do you --

3 MS. MILLER: The city is simply --

4 MR. BROWN: -- understand where I'm coming  
5 from?

6 MS. MILLER: Yes. The city simply --

7 MR. BROWN: All right.

8 MS. MILLER: -- made -- making -- engaging  
9 in enforcing --

10 MR. BROWN: Okay.

11 MS. MILLER: -- its code. That's all.

12 MR. BROWN: Okay. So -- all right.

13 MS. MILLER: It doesn't mean that the  
14 insurance company is not --

15 MR. BROWN: Are you ready for a motion?

16 MS. MILLER: -- liable for payment under  
17 the policy at all. It has nothing to do with  
18 that.

19 So I don't think that should be something  
20 that you are --

21 MR. BROWN: Okay. All right. Well, I  
22 just --

23 MS. MILLER: -- concerned about.

24 MR. BROWN: I'm just looking out for one  
25 of our --

1 MS. MILLER: The issue before you --

2 MR. BROWN: -- citizens.

3 MS. MILLER: -- is exactly the issue that  
4 you all said --

5 MR. BROWN: Don't you agree, Shawn?

6 MS. MILLER: -- that --

7 MR. SPENCER: Correct. Yeah.

8 MR. BROWN: Okay.

9 MR. SPENCER: This -- I'm sorry.

10 MS. MILLER: That's okay.

11 MR. SPENCER: You're -- you're not saying  
12 it's a nuisance. You're agreeing or  
13 disagreeing. So it --

14 MR. BROWN: They're the ones that said it.  
15 Not us.

16 MR. SPENCER: (Inaudible.) And no way is  
17 anybody else saying (inaudible) --

18 MR. BROWN: Okay.

19 MR. SPENCER: -- (inaudible) board of  
20 adjustment --

21 MR. BROWN: Okay. All right.

22 MR. SPENCER: -- (inaudible) --

23 MR. BROWN: Good.

24 MR. SPARR: And even if it's got --

25 MR. SPENCER: This goes to the city

1 council next and then the arguments here is --  
2 you know --

3 MR. BROWN: It's out of our hands when --  
4 when we vote on it.

5 MR. SPENCER: You know, it makes city  
6 council say, well --

7 MR. BROWN: And lets it --

8 MR. SPENCER: -- you know -- and city  
9 council can say we'll postpone this until after  
10 January --

11 MR. BROWN: After the lawsuit.

12 MR. SPENCER: Yeah. After the lawsuit.

13 MR. BROWN: Whatever.

14 Okay. I'm ready to make a motion.

15 MR. SPARR: Well, even if it's called a  
16 nuisance, it's not their fault. It's the  
17 insurance company's fault for waiting this long  
18 that's caused it to be a nuisance.

19 (Indiscernible Crosstalk)

20 MS. MILLER: It's exactly as I'm saying.  
21 That it has nothing to do with the  
22 determination of a civil court as to whether  
23 Lloyd's of London owes Mr. Markham money under  
24 his policy or not. It's just --

25 MR. MARKHAM: (inaudible) of insurance --

1 MR. BROWN: We don't -- we don't need to  
2 listen to any of that, sir.

3 MS. MILLER: Well, this decision here is  
4 not going to cause any type of spoliation of  
5 evidence at all because you're going to go to  
6 the city council after this and (inaudible) --

7 MR. MARKHAM: Three minutes they'll give  
8 me. Three minutes, that's what I'll get.

9 MS. MILLER: And, consequently, that  
10 decision will be made at the city council. And  
11 the arguments that you're making here would be  
12 the arguments that you would make before the  
13 city council.

14 MR. MARKHAM: In three minutes.

15 MS. MILLER: Well, I don't have anything  
16 to do with the --

17 MR. MARKHAM: I've read the minutes.

18 MS. MILLER: -- time period. Yeah.

19 MR. MARKHAM: You've read the minutes.

20 CHAIRMAN JACKSON: All right. I'm ready  
21 for a motion.

22 MR. BROWN: I make a motion to uphold the  
23 code officer's decision.

24 CHAIRMAN JACKSON: Do I have a second?

25 MR. SPARR: Is that what's going to allow

1           them to go to the city council?

2           MR. BROWN: Yes, sir.

3           MR. SPARR: Okay. That's the progression  
4           (inaudible). I'll second.

5           CHAIRMAN JACKSON: Okay. So I have a  
6           motion and a second.

7           (Indiscernible Crosstalk)

8           CHAIRMAN JACKSON: Discussion of the board  
9           members only.

10          MR. BROWN: What this means is -- there's  
11          four people here. If two of us vote against  
12          it, two of us vote for it, it's voted down.

13          CHAIRMAN JACKSON: Thank you. We  
14          appreciate your time.

15          MR. MARKHAM: Okay.

16          CHAIRMAN JACKSON: Any other -- from the  
17          board members, any other discussion?

18          (Indiscernible Crosstalk)

19          UNIDENTIFIED SPEAKER: It's got to be  
20          three to one (inaudible).

21          CHAIRMAN JACKSON: Okay. All right.

22          MR. BROWN: What'd you say? All four?

23          (Indiscernible Crosstalk)

24          MS. MILLER: It can be -- in order for it  
25          -- the three to one (inaudible) to one.

1 MR. BROWN: Three to two. Except he's --  
2 he recused himself.

3 UNIDENTIFIED SPEAKER: So we're going to  
4 uphold the (inaudible)?

5 MR. BROWN: Yeah. We have a motion --

6 CHAIRMAN JACKSON: That's the motion --

7 MR. BROWN: -- and a second.

8 CHAIRMAN JACKSON: Yes. That is -- no,  
9 you're fine. That's the motion.

10 Okay. Sensing no further discussion, call  
11 for the vote.

12 MS. JONES: Mike Abele.

13 MR. ABELE: No.

14 MS. JONES: Tom Brown.

15 MR. BROWN: Yes.

16 MS. JONES: Tim Giattina. He recused.

17 CHAIRMAN JACKSON: Recused.

18 MS. JONES: Carl Jackson.

19 CHAIRMAN JACKSON: Yes.

20 MS. JONES: Steve Sparr.

21 MR. SPARR: Yes.

22 CHAIRMAN JACKSON: Motion carries.

23 MR. BROWN: So we have upheld the city  
24 code officer's decision.

25 CHAIRMAN JACKSON: City code officer.

1           Okay. I appreciate everyone being here  
2           and everyone's patients, you know. Thank you  
3           much.

4           MR. MARKHAM: Thank you for your service.

5           CHAIRMAN JACKSON: You bet.

6           Can we accept a motion to adjourn?

7           (Indiscernible Crosstalk)

8           MS. MILLER: Can we move for an  
9           adjournment or (inaudible) --

10          CHAIRMAN JACKSON: I'm trying.

11          MR. SPARR: Move to adjourn.

12          CHAIRMAN JACKSON: Okay. Thank you.

13          MR. BROWN: Who is that?

14          CHAIRMAN JACKSON: All if favor say aye.

15          (Aye by most members.)

16          CHAIRMAN JACKSON: Thank you, everybody.

17          (Indiscernible Crosstalk)

18          MR. BROWN: What's his name?

19          MS. JONES: Mr. Brown?

20          MR. BROWN: What's his name?

21          MS. JONES: And Mr. Jackson.

22          MS. MILLER: Luther Sutter.

23          MR. BROWN: Oh, is that that guy --

24          (Indiscernible Crosstalk)

25          MR. BROWN: He came from us -- he came



