

IN THE SUPREME COURT OF OHIO

STATE EX REL. DARRIN MILLER, et al., :
: Case No. 2023-1180
Relators, :
-v- : Original Action in Mandamus
:
UNION COUNTY BOARD OF ELECTIONS : Expedited Election Matter Under
: S.Ct.Prac.R. 12.08
Respondent. :
: Writ of Mandamus/or Alternative Writ
Requested

MEMORANDUM IN RESPONSE TO THE MOTION TO INTERVENE BY RICHARD
WARNER, MARK E. MEYER AND PAMELA E. MEYER, LAPAMA'A, LLC, IRWIN
FARMS, LTD, AND HIGHLAND REALTY

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I. INTRODUCTION

The Proposed Intervenors seek to intervene in Realtor’s appeal of the decertification by the Union County Board of Elections of the ballot issue regarding the Referendum (“Referendum”) of Marysville City Ordinance 55-2022. The Referendum was certified for the ballot on March 3, 2023 and remained so until the Union County Board of Elections sustained the protest by Richard Warner against it on or about September 8, 2023.

II. LAW AND ARGUMENT

Rule 24(C) of the Ohio Rules of Civil Procedure provides that, in order to properly intervene, a non-party must serve a motion to intervene upon the parties, which shall be accompanied by a pleading. The motion must state the non-party’s grounds for intervention, while the pleading must set forth the claim or defense for which intervention is sought. Civ.R. 24(C) works in conjunction with Civ.R. 24(A) and (B), which set forth the allowable bases for intervention as of right and permissive intervention. If a party cannot satisfy any of the criteria within Civ.R. 24(A) or (B), then it cannot state proper grounds for intervention. Civ.R. 24(C) (“[t]he motion and any supporting memorandum shall state the grounds for intervention”).

The Proposed Intervenor's motion to intervene fails to state a basis for intervention that is not already best served by the current Respondent in the case under division (A), (B), or (C) of Civ.R. 24 or any combination of the three. The Proposed Intervenor seeks to prevent the Referendum from going to the ballot and to disallow the voters from weighing in on the issue. The Respondent is already seeking this very same result.

Proposed Intervenor Richard Warner is a local insurance agent and business associate of the real property owners whose land was set to be annexed into the City of Marysville through Ordinance 55-2022. (See Exhibit A, pg. 60.) According to his testimony, Mr. Warner did not sign the petition for Referendum, nor did he read the Petition for Referendum. (See Exhibit A, pgs. 48 and 58.) Mr. Warner does not own the property involved in the Petition for Referendum of Ordinance 55-2022. Intervention by Mr. Warner inappropriate as he has no interest in the matter before the Court.

Proposed Intervenor Mark E. Meyer and Pamela E. Meyer, Lapama's LLC, Irwin Farms LTD, and Highland Realty Development were not parties to the Protest for which this appeal was filed. The Ohio Secretary of State, in his capacity as a voting member of the Union County Board of Elections, stated in his determinations that he was "aware of a first protest that the Board previously heard and denied that was against the same Referendum. However, as the first Protest filed against the Referendum has no bearing on my decision in this current matter, I will consider information from only the current Protest." The Proposed Intervenor's interests and Protests were not heard or considered in the present litigation. A Motion to Intervene is not appropriate where the Proposed Intervenor has no interest in the matter.

Proposed Intervenor Highland Realty Development is using the present action as a second chance to appeal the June 13, 2023 decision by the Respondent Board of Elections which

denied their Protest. This is an inappropriate purpose for intervention and the Motion to Intervene should be denied. In addition, the Proposed Intervenor Highland Realty Development's filing is *not* timely. The Proposed Intervenor were parties to the first Protest filed May 2, 2023. On June 13, 2023, the Respondent Board held a hearing on the matter. The Respondent Board denied the protest and the Referendum of Ordinance No. 55-2022 remained certified for the November 7, 2023 General Election ballot. The Proposed Intervenor failed to appeal their denial for 101 days. Relator's September 18, 2023 Complaint did not include matters from the June 13, 2023 hearing before the Respondent Board. Three months and nine days is not a timely appeal and therefore the Motion to Intervene should be denied.

III. CONCLUSION

In summation, Proposed Intervenor have no interest in this litigation requiring their intervention as their only goal is aligned with the Respondent in this case; to keep the Referendum decertified and away from the voters.

Respectfully submitted,

/s/Shane W. Ewald

Shane W. Ewald (0072336)
Tricia Ann Sprankle (0070971)

Counsel for Relators

Certificate of Service

I hereby certify that a copy of the foregoing was served via email this 25th day of September, 2023, upon *Counsel for Respondent*, Thayne Gray, City Union County Prosecutor's Office, 221 West Fifth Street, Third Floor, Marysville, Ohio 43040 at tgray@co.union.oh.us and Counsel for the Proposed Intervenors, Joseph R. Miller, Vorys, Sater, Seymour and Pease LLP, 52 E. Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008 at jrmiller@vorys.com.

/s/Shane W. Ewald

Shane W. Ewald

Case No. 2023-1180

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Supreme Court of Ohio**

STATE EX REL. DARRIN MILLER, *et al.*,
Relators,

v.

UNION COUNTY BOARD OF ELECTIONS,
Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.Ct.Prac.R. 12.08

EXHIBIT A

THE BOARD OF ELECTIONS OF UNION COUNTY, OHIO

In re:

Protest of the Certification
of the Referendum Petition

TRANSCRIPT OF PROCEEDINGS

Date: August 23, 2023

Time: 9:00 a.m. - 1:57 p.m.

Location: Union County Board of Elections
835 East 5th Street
Marysville, Ohio 43040

Reported By: Belinda M. Wolford
Registered Professional Reporter
and Notary Public,
State of Ohio.

BOARD MEMBERS:

Barbara Luke, Board Member
Dean Cook, Chairman, Union County Board of Elections
William Steele, Board Member
Gary Lee, Board Member

ALSO PRESENT:

Brandon Clay, Director, Union County Board of Elections
Michelle Forrider, Deputy Director
Gretchen Kinney, Election Specialist
Thayne Gray, Union County Assistant Prosecutor
Susie O'Brien, Secretary of State Regional Liaison
Melissa Chase, Union County Assistant Prosecutor

A-P-P-E-A-R-A-N-C-E-S

FOR THE PROTESTORS - Richard Warner, Representative:

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and

Tricia Sprankle, Esquire
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(614) 264-2984

ALSO PRESENT (spelled to the best of ability):

Barb Phillips, Mark Meyer, Donald Gunell, Scott Mallory,
George Twaddle, Denise Twaddle, Doug Bressler, Bob
Hammond, Aaron Stonerock, Mac Cordell, Karen Heflin, Tim
Aslaner, Jennings Hofen III, A Will, Ralph Stonerock,
Chic Sanese, William Verhoff, Peter Mallory.

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

MR. COOK: It's 9:00. I'd like to welcome everybody to the Union County Board of Elections office. I'm going to start out with a little introduction here. We have Vickie -- Vickie. I always call her -- we have a couple staff people. Gretchen Kinney. She's in our office. She's going to be minute taker today. We have Michelle Forrider. Gary Lee. He's a board member. My name is Dean Cook. I'm the chairman. We have Melissa Chase. She's going to run the meeting for us today. Bill Steele, board member. Barbara Luke, board member. And then Thayne Gray. He's from the Union County Prosecutor's Office.

At this time I'll turn the meeting over to Melissa Chase.

MS. CHASE: Good morning. Thank you all for being here today. As Dean Cook said, my name is Melissa Chase. I'm an assistant prosecuting attorney in David Phillips' office. Thayne Gray is my colleague. My role here is simply to kind of run the meeting. We did this at the first hearing that we had. I'm going to assume that same role. Just to give some ground rules -- and one of the things I didn't do the last time I'm going to do

1 this time, I'm going to ask the attorneys to
2 identify themselves, if you don't mind, for the
3 record. And also if you have a rep that lives --
4 that is seated at your table, it can be behind you,
5 let us know if your representative is there as
6 well.

7 Mr. Ewald, I'm going to start with you.

8 MR. EWALD: Shane Ewald, 072336, on behalf of
9 the petitioner. I have my cocounsel.

10 MS. SPRANKLE: Tricia Sprankle, 0070971 for
11 petitioners.

12 MS. CHASE: Welcome.

13 MR. COOK: Also we have Susie O'Brien. She's
14 from the Secretary of State's office. Sorry about
15 that.

16 MR. INGRAM: Chris Ingram on behalf of the
17 protestor, Rick Warner.

18 MS. ABDALLAH: Muna Abdallah on behalf of the
19 protestor Rick Warner.

20 MS. CHASE: Thank you all for the
21 introduction. Like we did the last time -- I'm not
22 going to go through the timeline. We did that the
23 last time about everything that's been filed in
24 this matter. I think the parties and participants
25 are aware of the timeline and everything that has

1 been filed. We are going to conduct this almost as
2 if it is a court hearing. We have a court
3 reporter. Ms. Wolford is with us again. So I just
4 would ask the attorneys -- and I think that wasn't
5 an issue the last time -- because we're trying to
6 make very good record here we ask that you not
7 speak over each other so the court reporter can
8 take down accurately everything that's being said.

9 We are going to go ahead and we're going to
10 start with opening statements and we will proceed
11 from there and the petitioner will call witnesses.
12 The respondents have an opportunity to
13 cross-examine those witnesses and then the board
14 members up here will have an opportunity to talk to
15 the folks. This is not an arena where we're going
16 to be soliciting or asking for any kind of public
17 comment. I just wanted to make that clear before
18 we started. The witnesses who are going to be
19 called by the parties are the only folks that are
20 going to be testifying. If I can ask the
21 attorneys, do you want a separation of witnesses at
22 that point?

23 MR. INGRAM: Yes, Ms. Chase, we do.

24 MS. CHASE: Okay. Mr. Ewald, you as well?

25 MR. EWALD: I'm fine with that.

1 MS. CHASE: Okay. For those folks who you
2 are you calling that's in this room -- are there
3 witnesses that are going to testify today here?

4 MR. INGRAM: Yes. We have four live
5 witnesses that we anticipate at this time.

6 MS. CHASE: If I can have those individuals
7 stand, we're going to show you down the hall.

8 MR. EWALD: Can you identify the witnesses
9 and do you want to swear them in?

10 MS. CHASE: No, I'll swear them in. But,
11 yes, Mr. Ingram, would you let us know who the
12 witnesses are going down the hall.

13 MR. INGRAM: Yes. We have city council
14 member Mark Reams.

15 MS. CHASE: Okay.

16 MR. INGRAM: We have Mr. and Mrs. Gorrell.
17 And then actually the protestor is a party can stay
18 in.

19 MS. CHASE: Correct.

20 MR. INGRAM: That's our four live witnesses.

21 MS. CHASE: Is the protestor the gentleman in
22 the striped shirt?

23 MR. INGRAM: Rick, you can stay in. Yes.

24 MS. CHASE: Okay. Thank you very much.

25 Mr. Ewald, is there anyone you want to identify as

1 witnesses on your behalf that need to leave the
2 room?

3 MR. EWALD: We have two circulators here
4 today in addition to one of the head circulators
5 Bob Hammond, Doug Bressler, and Jason Axe.

6 MS. CHASE: Okay. If you would follow --
7 walk down the corner, there's a room for you to sit
8 until your testimony is called.

9 MR. AXE: This way or are we going out in the
10 hallway like we did last time?

11 MS. CHASE: I think we're going this way.
12 Michelle is heading that way? Gretchen. All
13 right, folks, just for the record, a separation of
14 witnesses is so that the individuals testifying are
15 not seated in here and listening to the testimony
16 of the other witnesses. Obviously, that's
17 something that the board is in favor of, so that's
18 why we've done that. So we'll start with -- I
19 don't know that we have any other business that we
20 need to conduct here with respect to the
21 proceedings. Everybody understand kind of what the
22 process is going to be here today?

23 MR. EWALD: I have one question.

24 MS. CHASE: Sure.

25 MR. EWALD: We received yesterday from

1 counsel -- opposing counsel a full list of
2 exhibits. I assume the board received that as
3 well. And are you going to have any kind of review
4 of whether those are admitted or not or do it as we
5 go?

6 MS. CHASE: Did everybody get the exhibits?

7 MR. STEELE: Yes. As far as I know.

8 MS. ABDALLAH: Those are all printed in
9 everyone's binder and I circulated them by e-mail a
10 few days ago.

11 MR. INGRAM: Just for the record, what's
12 before each member of the board, respondent's
13 counsel, and we'll have available for the witness,
14 there is a binder containing the legal brief that
15 we submitted in advance as well as the evidence
16 that was incorporated into that legal brief, and
17 there are 17 tabbed exhibits that were incorporated
18 into that brief, and that includes not only the --
19 the sworn affidavits and evidence for this protest,
20 we've also incorporated by reference the transcript
21 and sworn testimony from the prior proceeding as
22 well as the briefing and arguments from the prior
23 proceeding.

24 MS. CHASE: Okay. What's counsel's
25 preference? In a trial you typically would address

1 exhibits at the end or the conclusion of each
2 party's case. What's your preference, either one
3 of you?

4 MR. INGRAM: On behalf of the protestor,
5 we've shared our brief and evidence with the
6 respondents. We've not received anything from the
7 respondents with respect to their evidence or
8 arguments.

9 MR. EWALD: Correct. We plan to present that
10 through live testimony today.

11 MS. CHASE: Okay.

12 MR. EWALD: As far as addressing those, I
13 would like to address them as they -- I'm assuming
14 they're going to introduce them through a witness,
15 and we can address it at the time if we have
16 objections.

17 MS. CHASE: That's fine. Any other
18 procedural questions you want to talk about?

19 MR. EWALD: No, thank you.

20 MS. CHASE: We can take a midmorning break if
21 everybody needs to have -- wants to use the
22 restroom, take a breather for a minute, take a
23 drink of water, we'll kind of keep an eye on that
24 but we will go ahead and get started then. And I'm
25 going to call for opening statements. And

1 protestor goes first.

2 MR. INGRAM: Good morning. Ms. Chase,
3 members of the board of elections, thank you very
4 much for your time and attention in this matter. I
5 recognize that -- and we recognize that on behalf
6 of the protestor this board's already received some
7 evidence and argument with respect to this
8 particular referendum, and so we're not going to
9 regurgitate or re-plow that ground. As I said
10 earlier, we've incorporated those materials for
11 your review, particularly when you're in your
12 deliberations later this morning.

13 And instead you're going to hear this morning
14 evidence and testimony from four witnesses
15 regarding the misleading nature that this
16 referendum has been proposed to the electors; that
17 is, you know, this entire referendum is about a
18 rezoning. It's about the Stillwater Farms
19 residential subdivision, except that that's not the
20 ordinance that is being put to referendum. As set
21 forth on the petition, there's an annexation
22 petition or annexation ordinance. That's the
23 ordinance subject to this petition, and yet that is
24 not what is being discussed with -- by the
25 circulators, by the petitioners.

1 Frankly, everyone in the community thinks
2 this referendum concerns a development, but that's
3 just not the case. And we will present argument to
4 you in closing as well as the testimony of these
5 witnesses to establish that evidence, and as a
6 result and as a result of Ohio election law, this
7 board must strictly apply the election law and the
8 election procedures and decertify this issue from
9 the ballot. Thank you.

10 MS. CHASE: Thank you, Mr. Ingram. Attorney
11 Ewald.

12 MR. EWALD: Thank you. I'm a pretty
13 plain-spoken person. I'm going to attack it
14 straight on. There nothing on this petition on its
15 face that is invalid. You can read the petition,
16 you can, you know, recite it, do whatever you want
17 with it. At the end of the day this petition on
18 its face is valid. That's why we're attacking this
19 collaterally with, quite honestly, he said/she
20 said. So at the end of this trial or hearing, I
21 think that you will come to our point of the view,
22 which is the petition is valid. These individuals
23 went out, they went in the community, they're your
24 neighbors, they're your friends, they knocked on
25 doors, they got twice the amount of signatures they

1 needed. This thing is headed for the ballot. This
2 is the second time that it's been attempted to
3 derail this process. And let the voters at the end
4 of the day have a say what their town looks like.
5 Today through live testimony and evidence presented
6 by opposing counsel, we will show the confusion in
7 the community is not perpetrated by my clients, it
8 was actually put forth by the developer and by
9 confusing this issue at the city council level.

10 The community is well aware of this. They
11 interpose -- they -- I'm trying to think of the
12 correct word. They basically translate this
13 development into the annexation and vice versa. We
14 will show today that is the developer's
15 responsibility that they put that forward and my
16 client's have just went door to door, followed the
17 process under Ohio Revised Code and submitted
18 information and followed the process. Thank you
19 for your time.

20 MS. CHASE: Thank you very much. Attorney
21 Ingram, do you want to call your first witness?

22 MR. INGRAM: Yes. At this time protestor
23 would call Councilman Mark Reams.

24 MS. CHASE: That's where you're going to
25 testify. I'm going to have you remain standing.

1 I'm going to administer the oath to you. If you
2 would raise your right hand, please. Mr. Reams, do
3 you swear or affirm that the evidence you shall
4 give in this case now in this hearing shall be the
5 truth, the whole truth, and nothing but the truth
6 so help you God?

7 THE WITNESS: Yes, I do.

8 MS. CHASE: Please have a seat. Counsel, you
9 may inquire.

10 COUNCILMAN MARK REAMS,
11 Having been first duly sworn, testifies as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. INGRAM:

15 Q. Please state your name for the record.

16 A. Mark Reams.

17 Q. And where do you live?

18 A. 354 Restoration Drive.

19 Q. How long have you lived at 354 Restoration
20 Drive?

21 A. Since 2000.

22 Q. And can you please tell the board what your
23 current position is?

24 A. I'm on Marysville City Council.

25 Q. How long have you served on the city council?

1 A. 26 years.

2 Q. And you were the president of Marysville City
3 Council in 2022, correct?

4 A. Yes.

5 Q. Obviously, but for purpose of the record, are
6 you registered voter, city of Marysville, Councilman
7 Reams?

8 A. Yes.

9 (Protestor Exhibit 4, Annexation Ordinance, identified.)

10 Q. Okay. Sitting next to you is a binder to
11 your left. There's a black binder of exhibits, and I
12 would like to draw your attention to Exhibit 4, so that's
13 tab four in the binder, Councilman Reams.

14 A. Mine came unsnapped. Let me put it back
15 together.

16 MS. O'BRIEN: I can give you mine.

17 BY MR. INGRAM:

18 Q. Take your time.

19 A. There we go.

20 Q. Okay. So do you recognize Exhibit 4,
21 Councilman Reams?

22 A. Yes. It's the annexation ordinance.

23 Q. Okay. And so for purposes of the record,
24 Exhibit 4 is Marysville City Council Ordinance Number
25 55-2022, correct?

1 A. Yes.

2 Q. And you referred to that, Councilman Reams,
3 as the annexation ordinance, so if either one of us
4 refers to the annexation ordinance, for purposes of the
5 record we're referring to Ordinance Number 55-2022; is
6 that fair?

7 A. Yes.

8 Q. Could you please turn to page two of the
9 annexation ordinance. And is that your signature as the
10 president of council, Mr. Reams?

11 A. Yes.

12 Q. So you've obviously reviewed the annexation
13 ordinance before, correct?

14 A. Yes.

15 Q. And as I look here at this ordinance, there
16 are only three sections to the annexation ordinance; is
17 that correct?

18 A. Oh, yes, that's correct.

19 Q. So, I just want to briefly look at Section 1
20 of the annexation ordinance where it says -- essentially
21 Section 1 just accepts the proposed annexation that was
22 approved by the board of county commissioners into
23 Marysville; is that fair?

24 A. Yes.

25 Q. Let's move to Section 2. Section 2 simply

1 authorizes and directs the clerk of city council to
2 perform certain ministerial actions such as making copies
3 of the applicable paperwork and delivering that paperwork
4 to certain county and city officials; is that correct?

5 A. Section 3.

6 Q. Section 2?

7 A. The clerk of the board; is that right?

8 Q. If you're looking at tab four --

9 MS. ABDALLAH: It's actually the first page.

10 One more. There you go.

11 THE WITNESS: Oh, yes, correct.

12 BY MR. INGRAM:

13 Q. Okay. And you referred to a Section 3. Can
14 you tell the board what Section 3 --

15 A. Yes. Section 3 is that it will take effect
16 and be enforced at the earliest date permitted by law.

17 Q. Councilman Reams, from your review and
18 consideration of the annexation ordinance, does the
19 annexation ordinance contain any provisions that pertain
20 to the zoning of the land being annexed at all?

21 A. No. There's a separate ordinance for the
22 zoning.

23 Q. So that separate ordinance that you're
24 referring to, that would rezone the land that's being
25 annexed?

1 A. That's right.

2 Q. Okay. Does the annexation ordinance there in
3 Exhibit 4 contain any provisions that concern the
4 approval of any development of the land to be annexed at
5 all?

6 A. No. It's just annexation.

7 Q. So there's no reference whatsoever to the
8 Stillwater Farms development in the annexation ordinance,
9 is there?

10 A. No.

11 (Protestor Exhibit 5, Zoning Ordinance, identified.)

12 Q. Okay. I would like to direct your attention
13 to Exhibit 5, which is tab five in everyone's binders.
14 Let me know when you get to Exhibit 5 --

15 A. I'm there.

16 Q. -- Councilman Reams. Okay. Do you recognize
17 Exhibit 5?

18 A. Yes.

19 Q. Can you tell the board members what this is?

20 A. This is the rezoning of the proposed annexed
21 property.

22 Q. For purposes of the record, Exhibit 5 rezones
23 seven parcels of land from the township to a planned unit
24 development for Stillwater Farms; is that fair?

25 A. That's right.

Q. And we can go back and look, but the annexation actual concerned nine parcels of land, correct?

A. Right.

Q. Okay. For clarity of the record, I'm going to refer to Ordinance 56-2022 as the rezoning ordinance. If you could do the same to keep these straight, I would appreciate it.

A. Okay.

Q. Okay. So if you turn to page two of the rezoning ordinance, is that your signature there as the president of Marysville City Council?

A. Yes.

Q. And, obviously, Councilman Reams, you reviewed and are familiar with the rezoning ordinance in connection with council's consideration of that, correct?

A. Yes.

Q. Fair to say that the rezoning ordinance is the ordinance that approves the Stillwater Farms' planned residential development?

A. Yes, that's right.

(Protestor's Exhibit 7, Part Petition signatures,
identified.)

Q. Okay. Let's now turn to Exhibit 7, which is tab seven in your binder. Councilman Reams, are you

1 familiar with Exhibit 7?

2 A. I've heard of this, of the referendum
3 process. I think it's the first time we've seen it used,
4 but, yes, these are the petitions for the referendum.

5 MR. EWALD: I object.

6 MS. CHASE: Basis?

7 MR. EWALD: The basis is that he asked if he
8 recognized it. Apparently hadn't seen a petition.
9 I would ask --

10 MS. CHASE: I will -- can you lay some
11 additional foundation about his knowledge and
12 background?

13 MR. INGRAM: Counsel is going to have the
14 opportunity to ask that question.

15 MS. CHASE: I understand. Find out what his
16 familiarity is with it.

17 BY MR. INGRAM:

18 Q. That actually was going to be my next
19 question. So Councilman Reams, has anyone -- have any
20 circulators approached you to sign one of the part
21 petitions?

22 A. Yes.

23 Q. And in connection with you being approached
24 to sign one of the part petitions, are you -- have you
25 seen one of these part petitions before?

1 A. Oh, yes.

2 Q. And for purpose of the record, Exhibit 7
3 consists of all the part petitions that were provided to
4 the protestor in connection with this referendum, and
5 when I refer to a part petition, I'm merely referring to
6 each separate part that one individual circulator
7 circulated throughout Marysville, okay? So Councilman
8 Reams, who asked you to sign the referendum petition, if
9 you know?

10 A. Dawn Golla.

11 Q. Okay. And was Ms. Golla by herself, was
12 there anyone with her?

13 A. Her husband was there with her for part of
14 the time, William Golla.

15 Q. Okay. And do you know -- and I want you to
16 please describe to the members of the board your
17 experience with Mr. and Mrs. Golla as they -- as they
18 presented one of these petitions to you.

19 A. Okay. Dawn Golla approached me. I was I
20 think in front of my porch. I think I was already
21 outside at the time. She approached me and asked me to
22 sign the petition to stop the Stillwater Farms
23 development. She said it was bad for the schools, it was
24 bad for the city, it was going to cause traffic problems.
25 She went on to describe the number of homes and the

1 number of apartments that were going to be put in here.
2 And I had seen the development plan in the past and I
3 compared it to the neighborhood where I live, Green
4 Pastures. It's -- it's similar in scope to the size and
5 the number of apartments and homes as Green Pastures, so
6 when she went into this description about the number of
7 homes and apartments, I said to her, I said, well, what
8 you're describing sounds like my neighborhood, the
9 neighborhood you're walking through. I said what's so
10 wrong with my neighborhood? And I think that kind of
11 caught her by surprise. She hesitated, but right then
12 William Golla walked up and said, Don't bother wasting
13 your time talking to him. He's on city council. So they
14 walked off.

15 Q. Okay. So in your entire interaction with
16 Mrs. Golla and then Mr. Golla, did -- did either one of
17 them ever refer to the annexation ordinance?

18 A. No.

19 Q. Were -- were all of their comments directed
20 at the Stillwater Farms development and what would --
21 what would go on the land?

22 A. Yes.

23 Q. Did the referendum petition circulators talk
24 about the public benefits the Stillwater Farms
25 development would bring to the city?

1 A. No.

2 Q. So, the referendum petition circulators, they
3 didn't -- they omitted the fact that the Stillwater Farms
4 developer committed over \$3 million to offsite road
5 improvements; is that correct?

6 A. They did not bring that up.

7 Q. Did they mention or otherwise make any
8 comment about the approximately \$8 million in utility tap
9 and capacity fees that would be recovered from the
10 Stillwater Farms development?

11 A. No.

12 Q. Did they in any way talk about the land that
13 would be donated for a school in connection with the
14 Stillwater Farms development?

15 A. No.

16 Q. Did they in any way reference or refer to the
17 million dollars per year in income taxes the city will
18 receive in connection with the build-out of the
19 Stillwater Farms development?

20 A. No.

21 Q. Did the referendum petition circulators show
22 you any documents other than the referendum petition
23 itself?

24 A. No.

25 Q. Now, Councilman Reams, in connection with

1 your role on city council and an elector in the city,
2 have you had any other interactions concerning this
3 referendum?

4 A. Not -- no.

5 Q. Okay. Have you reviewed any information on
6 social media or information put forth by the referendum
7 proponents?

8 A. I mean, I've seen the posts and comments on
9 FaceBook and Nextdoor. I don't think I engaged in any of
10 those, but I definitely saw them.

11 Q. So you're familiar with those posts?

12 A. Yeah.

13 Q. And please tell the members, based on your
14 review and your opinion, how has this referendum been
15 characterized?

16 A. It's to stop the Stillwater Farms
17 development. They talked about the traffic problems that
18 it will create and the burden to the community.

19 Q. So fair to say it's about the development?

20 A. That's how they talked about it on social
21 media.

22 Q. Have you reviewed or seen anything that
23 concerns the Marysville city boundary and whether or not
24 the boundary should be changed?

25 A. No.

1 Q. Have you reviewed or seen anything from the
2 referendum proponents that concerns which government gets
3 to control the development of that land; whether it's the
4 township or the city of Marysville?

5 A. No.

6 Q. Have any of the materials you've reviewed and
7 the discussions that you've had with referendum petition
8 circulators, has anyone ever said to you that Ordinance
9 55-2022 only concerns the annexation ordinance?

10 A. No.

11 Q. I'm sorry. That the referendum petition only
12 concerns the annexation ordinance?

13 A. No. They talked about how the land would be
14 used and the problems it would cause.

15 Q. In your mind, based on these interactions,
16 Councilman Reams, which ordinance is being portrayed to
17 be the subject of the referendum, the annexation
18 ordinance that addresses nine parcels of land to the city
19 of Marysville or the rezoning ordinance that approved the
20 Stillwater Farms development?

21 MR. EWALD: I object.

22 MS. CHASE: Basis?

23 MR. EWALD: Calls for speculation and also
24 doesn't underline all the requirements under a
25 zoning application. If you look at zoning, it

1 equals setbacks, it equals how many houses. None
2 of that testimony has been exhibited here today.
3 We haven't gotten into any of the details of what
4 kind of construction materials are used, any of
5 that stuff that would be covered under sign review
6 outside of the purview of counsel, and none of that
7 testimony has been exhibited today.

8 THE WITNESS: Actually, that was ordinance
9 56-2022. It's a planned unit development. It
10 defines all of those aspects. It defines the
11 number of lots, the sizes, the materials. All of
12 that is in tab five.

13 MR. EWALD: If I can follow up. Does that
14 include design review? Because it was my
15 understanding that was done ahead of time before
16 the annexation was even brought.

17 THE WITNESS: The PUD --

18 MR. EWALD: The design review.

19 THE WITNESS: The PUD defines all of those
20 characteristics. It's separate -- it is different
21 from regular zoning, and we approved all of those
22 characteristics at the same time.

23 MR. EWALD: So -- I'll follow up on
24 cross-examination.

25 MS. CHASE: I appreciate it. I think that --

1 my understanding, Mr. Ingram, of your question was
2 what was his understanding of what this referendum
3 was about. I think he can answer that.

4 MR. EWALD: I understand.

5 THE WITNESS: The only thing they talked
6 about was how the land would be used and what they
7 thought were the problems that that would create,
8 the number of homes and apartments.

9 BY MR. INGRAM:

10 Q. So, Councilman Reams, which ordinance
11 approved or in other words considered or is relevant to
12 those issues you just described?

13 A. The rezoning ordinance.

14 Q. So for purposes of the record, that would be
15 Ordinance 56-2022, correct?

16 A. Yes.

17 MR. INGRAM: Thank you. I have no further
18 questions at this time.

19 MS. CHASE: Counsel, cross-examination.

20 MR. EWALD: Thank you.

21 CROSS-EXAMINATION

22 BY MR. EWALD:

23 Q. Good morning.

24 A. Good morning.

25 Q. I wanted to follow up on a couple of the

1 items. You're a current city council member?

2 A. That's right.

3 Q. Were you a member at the time that the
4 ordinance -- the annexation ordinance was brought before
5 council?

6 A. Yes. I was president.

7 Q. You were also the president. The ordinance
8 55-2022, your understanding is that the difference
9 between that and Ordinance 56, one is an annexation
10 ordinance, one is a zoning ordinance?

11 A. That's correct.

12 Q. And it is council's job to separate those off
13 because they accomplish two very different things; is
14 that correct?

15 A. That's right. We had two separate -- there
16 were two separate items on the agenda, and comments
17 were -- we kept comments limited to the topic.

18 Q. All right. You do you recall what date you
19 approved the 55-2022?

20 A. It's -- it's on page two. September 26th was
21 the first reading and it was passed on November 14th.

22 Q. How did you vote on that ordinance?

23 A. I voted for the ordinance.

24 Q. You voted for the annexation?

25 A. Yes.

1 Q. And then how did you vote on Ordinance
2 56-2022?

3 A. I voted also for that.

4 Q. So you voted in favor of both.

5 A. Yes.

6 Q. The follow-up question I have is what is your
7 understanding of rezoning? What does it accomplish? In
8 your experience as council member, what do you do? What
9 do you discuss during a rezoning process?

10 A. So, I -- prior to city council, I served for
11 two years on the planning and zoning board, so I
12 understand the rezoning process. What came to us is a
13 recommendation from the planning commissioners, and it's
14 our job to review that recommendation and approve those
15 recommendations.

16 Q. And what is -- what's brought to you? You
17 had mentioned earlier a PUD.

18 A. Yeah.

19 Q. What did that package include? What did this
20 include?

21 A. That package includes the layout, it includes
22 the number of homes, the roads, the infrastructure, and
23 the characteristics of the building materials. Because
24 it's a PUD, it's got more detail than a regular zoning
25 would.

1 Q. The -- on the day that the circulators
2 stopped by your house, was that the first time you had
3 seen circulators for the annexation petition?

4 A. Yes.

5 Q. Had you seen any after that?

6 A. No.

7 Q. So your single focus is the instance on that
8 day that they came and talked to you.

9 A. Those two that I talked to that day and then
10 just what I've seen on social media.

11 Q. Okay. Let me ask a really blunt question.
12 Do you believe everything you read on line?

13 A. Absolutely not.

14 Q. Okay. You had mentioned it was Miss Golla,
15 Dawn Golla and her husband Mr. Golla. Do you happen to
16 know his first name?

17 A. William.

18 Q. William. And you were outside when they
19 approached you?

20 A. I believe so. I don't -- I don't remember
21 them knocking on the door. I remember having the
22 conversation on the sidewalk near my front steps.

23 Q. How did they introduce themselves?

24 A. She said that she was there to -- and asked
25 me to sign a petition to stop the development. I don't

1 remember them saying where they lived or anything like
2 that.

3 Q. Did they say what development?

4 A. Stillwater Farms.

5 Q. So she mentioned by name Stillwater Farms?

6 A. I believe so.

7 Q. That's what you recall?

8 A. That's what I recall.

9 Q. Okay. The -- when she came to you, did she
10 have a clipboard or anything in her hands?

11 A. Yes.

12 Q. Okay. Did she hand the clipboard to you?

13 A. I don't -- I don't recall that.

14 Q. Okay. So you don't recall whether or not
15 they handed the clipboard to you to read.

16 A. No.

17 Q. Okay. Did you read -- have you read the
18 petition prior to that point or after that point?

19 A. After that point.

20 Q. Okay. So you have read the petition.

21 A. Yeah.

22 Q. And let's see if I have a copy. I apologize.
23 I have a copy with me of the petition. That's Exhibit 7.
24 If you could turn to page seven in the binder that's
25 provided to you.

1 MS. SPRANKLE: Exhibit 7.

2 BY MR. EWALD:

3 Q. Exhibit 7, I'm sorry. It's titled Referendum
4 Petition Municipality or Home Rule Township.

5 A. Yes.

6 Q. Can you show me on here -- can you look
7 through and find where it says the word rezoning?

8 A. Oh, no. This referendum says it's to accept
9 the annexation. To overturn that.

10 Q. Do you recognize the ordinance or resolution
11 title? Does that seem familiar to you?

12 A. Yes.

13 Q. And where have you seen that before?

14 A. That's the title of the ordinance passed by
15 the Marysville City Council.

16 Q. I want to take you back -- you mentioned that
17 you were present for the annexation and that you were on
18 City Council and you signed documents. Where you at the
19 meeting October 22nd -- I'm sorry, October 24, 2022?

20 A. Yes.

21 Q. And why do you remember that day
22 specifically?

23 A. I believe that was the public hearing.

24 Q. If you can turn to page six?

25 MS. SPRANKLE: Exhibit 6.

1 (Protestor Exhibit 6, agenda, identified.)

2 BY MR. EWALD:

3 Q. Exhibit 6. I'm sorry. Exhibit 6, can you
4 tell me what this appears to be to you?

5 A. The agenda from November 14th.

6 Q. For?

7 A. For city council.

8 Q. So this is -- is this the agenda that was
9 published by the city for that meeting?

10 A. To the best of my knowledge.

11 Q. Okay. On page three of that agenda you had
12 an item to address the annexation; is that correct?

13 A. Could you repeat that? I didn't hear you.

14 Q. Sorry. On page three of that agenda, second
15 paragraph down, Ordinance G, does that appear to be the
16 annexation ordinance in question here today?

17 A. Yes.

18 Q. So it is the topic for that evening
19 discussion.

20 A. That's right.

21 Q. All right. If you could turn to the next
22 page, it appears to be the meeting minutes for that
23 hearing?

24 A. The next page are the meeting minutes for
25 October 24th.

1 MR. INGRAM: Objection.

2 MS. CHASE: Basis?

3 MR. EWALD: The witness clarified it. He
4 corrected that meeting. It's a different date.

5 MS. CHASE: Okay. Thank you.

6 MR. EWALD: Clarification of the objection?
7 It is October 24th, correct?

8 MR. INGRAM: Yes. You referred to the
9 November 14 meeting.

10 MR. EWALD: I apologize. It is
11 November 14th.

12 BY MR. EWALD:

13 Q. So the agenda was published out of time. If
14 you turn to the next page you'll see what appears to be
15 October 24, 2022 meeting minutes. Does that appear
16 familiar to you?

17 A. Yes.

18 Q. Okay. And who puts those minutes together?

19 A. Our clerk.

20 Q. Okay. Does council adopt and approve those
21 minutes?

22 A. Yes.

23 Q. Okay. And did you adopt and approve those
24 minutes?

25 A. Yes.

1 Q. Okay. If you turn to -- in that meeting
2 minutes -- to section -- let me give you a page number.
3 It would be page seven where there is the hearing minutes
4 on Ordinance G. Does that appear to be the annexation
5 ordinance that was discussed that evening?

6 A. That's correct.

7 Q. Did you guys take action on it that evening?

8 A. No. It was postponed.

9 Q. Okay. Can you review -- and you might recall
10 from memory -- how did that meeting proceed?

11 A. This was the third reading, and normally the
12 third reading is when we vote and take action. The
13 developer and the city were working on some issues with
14 the traffic concerns and trying to finalize all the
15 details related to that, and so until those details were
16 determined it was suggested that we postpone both the
17 rezoning and the annexation until all of the details were
18 worked out.

19 Q. There's -- and it says in here that
20 manager -- I'm assuming it is the city manager; is that
21 correct?

22 A. Yes.

23 Q. He introduced the very developer and deferred
24 to the developer to cover the topics under item G,
25 Ordinance G, to accept the annexation; is that -- is that

1 accurate?

2 A. Yeah.

3 Q. Okay. I would like to call your attention
4 to -- let's see -- two pages back. I'll show you mine.
5 There's a presentation here that says Stillwater Farms.

6 A. Yes.

7 Q. Earlier testimony was that these type items
8 aren't covered under annexation, they're covered under
9 zoning?

10 A. That's correct.

11 Q. Right here in the middle of the annexation
12 discussion, you have a full-blown presentation of
13 Stillwater Farms and there's even layouts, house design,
14 all kinds of stuff that should be covered here in zoning;
15 does that sound correct?

16 A. We had the two items on the agenda one right
17 after the other, and he covered those items in the first
18 part of the annexation part just because we didn't want
19 to make a decision on the one without making a decision
20 on the other, so this was the reason for postponing it.

21 Q. So you -- you put them together.

22 A. We did not put them together, but there was a
23 discussion on -- on the reasoning why this was being
24 asked to be postponed.

25 Q. Okay. Let me reiterate and ask again. This

1 is covered in the annexation discussion at the city
2 council meeting, correct?

3 A. That's correct.

4 Q. Okay. How many people do you recall in
5 attendance at that meeting that night?

6 A. I don't recall.

7 Q. Was it a small crowd?

8 A. I don't think so, but I don't remember. It
9 wasn't the public hearing. I know we had a number of
10 people who spoke at the public hearing. I don't remember
11 on this night.

12 Q. How many people usually attend your city
13 council meetings?

14 A. Six or ten.

15 Q. On a good night?

16 A. On a -- on a regular night when there's
17 routine discussion, ordinances. Sometimes it gets more.
18 Sometimes the room is full and we've got 30 or 40 people.

19 Q. So on the night that you have a contentious
20 item, would more people -- would it be normal for more
21 people to show up?

22 A. Yeah.

23 Q. During that process was this a contentious
24 item?

25 A. There were people who spoke at the public

1 hearing against it.

2 Q. All right. More against than for?

3 A. Yeah.

4 MR. INGRAM: Objection, relevance.

5 MR. EWALD: I'm just asking the witness.

6 MS. CHASE: I'll overrule it.

7 BY MR. EWALD:

8 Q. Is it your sense or based on attendance that
9 people were interested in this topic?

10 MR. INGRAM: Objection. Calls for
11 speculation.

12 MS. CHASE: I think -- I think he can answer
13 that based on his own experience at these meetings
14 the number of folks that spoke about it.

15 THE WITNESS: Yeah, there were -- there were
16 a fair number of people mostly from outside the
17 city who came and spoke.

18 BY MR. EWALD:

19 Q. Did they cover -- was there any press
20 coverage, local paper coverage of this particular
21 development and annexation?

22 A. Yes. Yes.

23 Q. Was that newspaper channel -- whatever the
24 local channel is up here, news stations?

25 A. The newspaper.

1 Q. The newspaper. Typically city council
2 members receive correspondence. Did you receive
3 correspondence about this annexation?

4 A. I don't remember. I might have.

5 Q. Would you say that this development was a
6 pretty large development, 260, I think, acres?

7 A. Like I said, it's similar in scope to my
8 neighborhood, Green Pastures, so I don't consider that a
9 large development.

10 Q. You mentioned earlier you served on the
11 planning commission. Are you familiar with -- are you
12 familiar with the annexation process?

13 A. Yes.

14 Q. Okay. And is there a certain percentage of
15 land that has to touch or connect to the city in order to
16 be annexed?

17 A. It has to be contiguous. I don't know of any
18 percentage or the amount that has to touch, but there has
19 to be a connecting point.

20 MR. EWALD: All right. No further questions
21 at this time.

22 MS. CHASE: Redirect?

23 MR. INGRAM: Yes, please.

24 REDIRECT EXAMINATION

25 BY MR. INGRAM:

1 Q. Just a few questions, Councilman Reams. You
2 were asked about city council's consideration on -- of
3 the annexation and rezoning, both issues during your
4 October 24, 2022 public hearing. Do you recall that?

5 A. Yes.

6 Q. And while the meeting minutes assign certain
7 discussion here, did city council separately deliberate
8 on either the rezoning ordinance or the annexation
9 ordinance during that hearing on October 24th?

10 A. They were separate discussions, yes.

11 Q. Okay. And then when city council met on
12 November 14th during the meeting at which both the
13 annexation ordinance and the rezoning ordinances were
14 approved, were those items separately discussed on
15 November 14th?

16 A. Yes.

17 Q. So city council separately --

18 MR. EWALD: Clarification. I think did you
19 mean the 24th? I think you said the 14th.

20 MR. INGRAM: The 14th.

21 MR. EWALD: I just want to make sure.

22 BY MR. INGRAM:

23 Q. And during this -- those deliberations,
24 Councilman Reams, with respect to the Annexation
25 Ordinance Number 55-2022, did city council discuss or

1 consider the number of homes with respect to the
2 annexation?

3 A. On the annexation ordinance, no.

4 Q. Did city council discuss during its
5 November 14th deliberations on the annexation ordinance
6 the availability of any utilities?

7 A. I believe we did. At some point during the
8 discussions there had been a comment that the city
9 utilities are available in the area.

10 Q. Sure. And there was sufficient capacity for
11 water and wastewater services; is that fair?

12 A. That's fair.

13 Q. And did city council in its deliberations on
14 the annexation ordinance discuss or consider any impact
15 on the school system?

16 A. No.

17 Q. Okay. And you were asked, Councilman Reams,
18 whether you thought 263 acres was a big development.

19 A. Yes.

20 Q. Do you recall that? Now, if we look at
21 Exhibit 4, the annexation only concerns 200 -- concerns
22 263.25 acres; is that right?

23 A. Yes.

24 Q. Okay. And if we look at Exhibit 5, Exhibit 5
25 does not cover 235 acres, correct, the actual rezoning?

1 A. The actual rezoning only covers seven of the
2 properties.

3 Q. And we could add up the acreage, but fair to
4 say the Stillwater Farms development only covers
5 195 acres?

6 A. That sounds about right.

7 MR. INGRAM: I have no further questions at
8 this time.

9 MS. CHASE: Recross based on what came
10 before?

11 MR. EWALD: Yes.

12 RECROSS-EXAMINATION

13 BY MR. EWALD:

14 Q. The topic of utilities came up in your recent
15 testimony. Do you know how those units are coming into
16 the property for Stillwater development?

17 A. No.

18 Q. Would you be shocked if I told you they are
19 coming across the parcels that weren't included in the
20 rezoning?

21 A. No. We've got utilities that run all the way
22 out to Jerome Village.

23 Q. So that wouldn't surprise you if they had to
24 cross those other parcels --

25 A. No.

1 Q. -- in order for the development to be built.

2 A. No.

3 MR. EWALD: Nothing further at this time.

4 MS. CHASE: Thank you.

5 MR. INGRAM: One question.

6 MS. CHASE: I'm sorry?

7 MR. INGRAM: I have one question.

8 MS. CHASE: Okay.

9 FURTHER DIRECT EXAMINATION

10 BY MR. INGRAM:

11 Q. With respect to the discussion on the
12 utilities concerning these properties, Councilman Reams,
13 those utility discussions concerned service to the
14 Stillwater Farms development, correct?

15 A. That's correct.

16 Q. Not -- not the farmland that sits there
17 today, fair?

18 A. That's fair.

19 MR. INGRAM: Thank you.

20 MS. CHASE: Anything based on that?

21 MR. EWALD: Not at this time.

22 MS. CHASE: Thank you. Do the board members
23 have any questions for the witness? Okay. Does
24 anybody expect to re-call Councilman Reams?

25 MR. EWALD: Yes.

1 MS. CHASE: Councilman Reams, thank you. If
2 you'll wait in the room down the hall for us,
3 please. Attorneys -- counsel, who is the next
4 witness?

5 MR. INGRAM: At this time the protestor would
6 call protestor Rick Warner.

7 MS. CHASE: Okay. If you'll remain standing.
8 Do you want to wait for Gretchen? No? All right.
9 Very good. Sir, would you raise your right hand,
10 please. Do you swear or affirm that the evidence
11 that you shall give in this case now in this
12 hearing shall be the truth, the whole truth, and
13 nothing but the truth so help you God or under
14 penalty of perjury?

15 THE WITNESS: So help me God.

16 MS. CHASE: Thank you. Have a seat, please.
17 Counsel, you may inquire.

18 RICHARD WARNER,

19 Having been first duly sworn, testifies as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. ABDALLAH:

23 Q. Good morning. Please state your name for the
24 record.

25 A. Richard Warner. I go by Rick.

1 Q. Good morning, Rick. Where do you live?

2 A. 353 Eagle Court, Marysville, Ohio.

3 Q. That's in Marysville?

4 A. It's in Green Pastures.

5 Q. Okay. And how long have you lived there?

6 A. Three years. And prior I was -- I was in
7 Mill Valley.

8 Q. Are you a registered voter?

9 A. Yes.

10 Q. If you could turn to that exhibit binder,
11 please. Turn to tab seven. Do you recognize Exhibit 7
12 as a referendum petition concerning the annexation of
13 certain territory into the city of Marysville, Ohio?

14 A. I saw it from a distance, you know, with
15 the -- more of the signatures, but other than that, I
16 didn't bother to read it and I just listened to the
17 person that came to my door.

18 Q. Were you asked to sign the petition?

19 A. Yes.

20 Q. And were you asked to sign a petition more
21 than once?

22 A. Once and then go to a meeting. That's it.

23 Q. Where were you approached to sign the
24 petition?

25 A. My front door.

1 Q. Did you have conversations with the petition
2 circulators?

3 A. More of a discussion about it, yeah.

4 Q. And when did that discussion occur?

5 A. Oh, gosh. December, somewhere in there.

6 Q. Okay.

7 A. I don't know the exact date in December.

8 Q. Fair enough.

9 A. It was cold.

10 Q. Sure. And what did the referendum proponents
11 or circulators say to you about the contents of the
12 referendum petition?

13 A. Well, the biggest thing was they were talking
14 about going to raise my taxes, bring in tiffs, road
15 congestion, you know, crowd the schools.

16 Q. How did they explain that the referendum
17 petition would stop an increase in taxes?

18 A. Well, I didn't let them get that far because
19 I knew it was kind of not true, but, so...

20 Q. And why do you say that?

21 A. Well, I looked at it as going to be a tax
22 windfall for the city, you know. You know, you add 600
23 homes to the city, it is going to be a good thing I
24 thought.

25 Q. Can you speak up a little bit? I think

1 they're struggling to hear you down there.

2 A. I just felt like the taxes would be a good
3 thing for the city, and I don't know that would affect my
4 taxes other than, you know, not have -- having enough tax
5 base to pay for other items in the city going on right
6 now, but --

7 Q. So during your conversations with the
8 referendum circulator, did any of them tell you that the
9 ordinance being put up to referendum only concerned the
10 city of Marysville's acceptance of annexation into the
11 city?

12 A. It was about Stillwater Farms.

13 Q. And did you sign the petition?

14 A. Nope.

15 Q. And why not?

16 A. For the following reason. A, I thought it
17 was all -- I didn't think it was genuine. I didn't feel
18 like it was genuine. That about the tiffs, I didn't
19 think it was genuine. About the traffic, I didn't think
20 it was genuine. About the -- my taxes especially and
21 then also school crowding.

22 Q. So fair to say you didn't believe the
23 circulator's characterization of the referendum petition?

24 A. Yes.

25 Q. So you mentioned that you didn't believe the

1 purported concerns about the development. What are some
2 of the benefits in your mind of the Stillwater Farms
3 development?

4 A. As I said before, I think it will be a tax
5 windfall for the city. I think it's going to -- it's
6 going to add much needed homes to the community. We're
7 really short in homes right now. If you have talked to
8 realtors, I think there could be some help with --

9 MR. EWALD: Objection.

10 THE WITNESS: -- you know, jobs.

11 MS. CHASE: Basis?

12 MR. EWALD: Speculation. There's no
13 foundation for this testimony at all.

14 MS. CHASE: He -- he's asking for his
15 opinion. Explore -- if you would, explore a little
16 bit about what he -- where his knowledge about this
17 development comes from.

18 MS. ABDALLAH: Sure.

19 BY MS. ABDALLAH:

20 Q. Did you -- have you seen posts on line about
21 the development?

22 A. Oh, yeah. It's there all the time.

23 Q. Have you seen ads in the newspapers about the
24 development?

25 A. What do you mean by ads?

1 Q. Have you seen notices or advertisements and
2 broadcast in the local newspaper?

3 A. I've been to an impact meeting in March or
4 April, whenever that was down at the --

5 Q. I think your volume's going down a little bit
6 again.

7 A. It's my voice. I'm sorry. I've been down to
8 the impact meetings down there downtown at whatever that
9 theater downtown was.

10 Q. And what was the impact meeting about?

11 A. From what I was gathering it was about the
12 referendum and explaining their side of the story of
13 Stillwater Farms.

14 Q. So, you mentioned certain benefits that you
15 believe the Stillwater Farms development will bring to
16 the city of Marysville. Aside from the -- I think you
17 mentioned something about tiff funds.

18 A. Yeah. That's been thrown out there several
19 times. You know, locally, I mean, just from general
20 discussion with people and, you know, people were
21 concerned how the tiff funds were going to be used and,
22 you know, I found out later --

23 MR. LEE: Volume.

24 THE WITNESS: I found out later that that was
25 not true.

1 BY MS. ABDALLAH:

2 Q. What was not true?

3 A. That tiffs were being used on this
4 development.

5 (Protestor's Exhibit 9, screenshot, identified.)

6 Q. Okay. And so I asked you if you had seen any
7 posts online and you said yes. If you could turn to tab
8 nine in your binder.

9 A. Yeah.

10 Q. And there are two online posts or screen
11 grabs of online posts. Do you recognize Exhibit 9 as a
12 screenshot from your Nextdoor account, Mr. Warner?

13 A. Yes.

14 Q. And did you review the Nextdoor discussion
15 that's set forth in Exhibit 9?

16 A. Explain that question again.

17 Q. Have you reviewed this discussion?

18 A. Well, I just -- you know, I'm just and
19 observer. I just watch, and I don't -- I don't get into
20 the discussions, so --

21 Q. But you are sure you read the discussion?

22 A. I read the discussion.

23 Q. Okay.

24 A. FaceBook, whatever I see.

25 Q. And is it your understanding that these

1 Nextdoor post discussions concerned this referendum?

2 A. The Stillwater part, yeah.

3 Q. As the -- as a registered elector in the city
4 of Marysville, you're the named protestor in this
5 protest, right?

6 A. That's what I found out, yes.

7 Q. And why are you protesting the annexation
8 ordinance going to the ballot?

9 A. I just don't think it was the
10 characterization -- the characterization that was set
11 forth and, you know, presenting it to the signees was
12 genuine.

13 MR. EWALD: I object to that. That's a broad
14 statement about all the circulators and all the
15 people.

16 MS. CHASE: I agree with that. Can you --
17 can you narrow the question field.

18 BY MR. INGRAM:

19 Q. In your experience, has the characterization
20 of the referendum been misleading?

21 A. Okay. I'm going to take it back. The person
22 that came to my door then, yeah, I thought it wasn't
23 genuine based upon what they were saying about the
24 referendum.

25 Q. What about the online posts and social media

1 posts?

2 A. Not genuine. I don't -- you know, I think
3 they're talking from an emotional state instead of a
4 realistic state.

5 MS. ABDALLAH: I have no further questions.

6 MS. CHASE: Okay. Cross-examination.

7 MR. EWALD: Yes, thank you.

8 CROSS-EXAMINATION

9 BY MR. EWALD:

10 Q. Good morning.

11 A. Good morning.

12 Q. I would like to come back to that post, first
13 of all, that you had just mentioned. You had that item
14 in front of you under Exhibit 9?

15 A. Yes.

16 Q. Can you tell me the name at the top of the
17 page of this portion of the post?

18 A. Barbara Phillips.

19 Q. Okay. Do you know Ms. Phillips?

20 A. Nope.

21 Q. Ever met her?

22 A. Nope.

23 Q. Talked to her?

24 A. Nope.

25 Q. All right. This is a -- you have the

1 application Nextdoor? It's like a FaceBook --

2 A. Yes.

3 Q. -- knockoff?

4 MR. INGRAM: Objection to knockoff.

5 BY MR. EWALD:

6 Q. It's a smaller platform than FaceBook?

7 MS. CHASE: If I can interrupt for a minute.

8 MR. EWALD: Yes.

9 MS. CHASE: The poster is actually in the
10 room.

11 MS. PHILLIPS: Right behind you.

12 MS. CHASE: That's Barbara Phillips. I don't
13 know if anybody -- because you're using the
14 exhibit, is anybody intending to call her as a
15 witness?

16 MR. EWALD: I do not.

17 MS. PHILLIPS: I've not been asked.

18 MR. EWALD: I'm exploring his understanding.

19 MS. PHILLIPS: So I'm not needed.

20 MS. CHASE: You're okay. Thank you.

21 BY MR. EWALD:

22 Q. Do you recall whether Barbara posted this or
23 it was someone else and she was responding?

24 A. I just get on there and see stuff all the
25 time.

1 Q. So you don't know who the poster was?

2 A. No. I don't know Barbara Phillips.

3 Q. Right. I guess what I'm asking is, earlier
4 counsel had asked about these being snippets, which means
5 we don't have the full context. So was Barbara the
6 poster of this particularly article --

7 A. I believe --

8 Q. -- or was it somebody else?

9 A. I'm guessing it was, yes.

10 Q. So it wouldn't have been a council member who
11 posted this and Barbara responded to her?

12 A. I never see council members on there.

13 Q. So your recollection it was Barbara.

14 A. Yeah.

15 Q. All right. I just wanted to confirm that.
16 Reading through this, does it say anywhere on there
17 they're fighting the zoning ordinance?

18 MR. LEE: Clarification. You talking about
19 the post?

20 MR. EWALD: I'm talking about the post on
21 Nextdoor, the portion that's been provided.

22 THE WITNESS: Rephrase your question.

23 BY MR. EWALD:

24 Q. My question stands. Does anywhere in this
25 text that's been provided that's a cut-out, does it say

1 they're fighting a zoning ordinance?

2 A. No.

3 Q. Does it mention the word referendum?

4 A. It mentions development.

5 Q. First page there's a cut that says
6 referendum; is that correct?

7 A. Yep.

8 Q. Okay. In addition to this, you said you
9 attended an impact meeting. Who put that meeting on?
10 Who posted it?

11 A. I think it was Chamber of Commerce, city
12 council. It was -- Highland Group was there as a guest
13 speaker and they showed slides.

14 Q. Were there speakers on behalf of the
15 referendum there?

16 A. Not that I remember, no. Not that I
17 remember.

18 Q. But there were speakers on behalf of the
19 developer.

20 A. Of the developer, yes.

21 Q. What made you go to the meeting? Why were
22 you there?

23 A. Conscientious citizen. I just want to know
24 what's going on in my town.

25 Q. Okay. The protestors that -- I'm sorry

1 the -- you referred to them as circulators that
2 approached you. Do you recall approximately when that
3 was?

4 A. Again, December sometime. It was cold.

5 Q. Sometime in December.

6 A. Somewhere. Could have been --

7 Q. Like early?

8 A. I don't remember. It was cold out.

9 Q. How many were there?

10 A. Just one.

11 Q. It was just one?

12 A. Just one lady. I don't remember her name.

13 Q. Okay.

14 A. I kind of shut her down after she got
15 started.

16 Q. So earlier in your testimony you said it was
17 her and then her husband; is that correct?

18 A. I didn't say anything about a husband.

19 MS. CHASE: That was the other one.

20 BY MR. EWALD:

21 Q. You know what? My mistake. So have you ever
22 seen this person before?

23 A. No.

24 Q. Okay. So it wasn't a neighbor that you're
25 aware of?

1 A. I don't think any of them are neighbors in
2 town from what I understand.

3 Q. What did -- what did the petition look like?

4 A. I just saw the scribbling down, whatever was
5 in seven. You know, I didn't take the time to read it.

6 Q. So you didn't read what they had in their
7 hand?

8 A. No, not really.

9 Q. Did they hand it to? Did you take it?

10 A. I didn't need to when she was telling me they
11 were going to raise my taxes and so I knew it was all a
12 bunch of malarky.

13 Q. Did they have any identification that
14 notified you that they were circulating a petition or
15 just verbal?

16 A. Verbal.

17 Q. What time of day was it?

18 A. Daylight. You know. Afternoon. I mean --

19 Q. Did they knock on the door or were you out in
20 the yard?

21 A. It was December, so I was in the yard. So it
22 was at my door.

23 Q. So they knocked on the door?

24 A. Yeah.

25 Q. They were on your porch?

1 A. Yeah.

2 Q. Had you had any prior discussions prior to
3 the person coming to your door to ask for a signature?

4 A. No.

5 Q. Okay. With anyone?

6 A. No.

7 Q. After that?

8 A. Yes.

9 Q. All right. Sometime in December?

10 A. Uh-huh.

11 Q. And who would that have been?

12 A. I was asked to go to a meeting at the VFW.

13 Q. Who asked you to do that?

14 A. Jason Axe.

15 Q. Okay. Did you go to the meeting?

16 A. No. I said I didn't want to get involved.

17 Q. And why is that? Why did you not want to get
18 involved?

19 A. First of all, I didn't think it would get
20 this far, and so, you know, I figured just, you know,
21 stay neutral at that point in time.

22 Q. Does your family have any relationship with
23 any of the property owners in this case?

24 A. Do I have any relationships?

25 Q. Your family. Are they friends with any of

1 the developers or possibly the property owners?

2 A. Friends with the property owners.

3 Q. So, how -- how close would you say your
4 families are?

5 A. Friends.

6 Q. For how long?

7 A. I don't know. Eight years maybe.

8 Q. Okay. Have they had any business dealings
9 with each other?

10 A. What's that?

11 Q. Have your families done any business
12 together?

13 A. Yes.

14 MR. EWALD: No further questions at this
15 time.

16 MS. CHASE: Attorney Abdallah, any redirect?

17 MS. ABDALLAH: Yes, please.

18 REDIRECT EXAMINATION

19 BY MS. ABDALLAH:

20 Q. So, back to Exhibit 9. Counsel just asked if
21 the Nextdoor posts mentioned a rezoning and you said no,
22 correct?

23 A. Yeah.

24 Q. But you agreed that the post references the
25 referendum there in the first sentence?

1 A. Yes.

2 Q. And the next line down it's a referendum on a
3 potential development, correct?

4 A. What are you looking at just so --

5 Q. The next line down it says --

6 A. What page?

7 Q. First page. So at least this potential
8 development can be voted on by the people of the city.
9 Do you see that?

10 A. Yes.

11 Q. The development that's being discussed in
12 this post is the Stillwater Farms development, correct?

13 A. That's how I took it, yes.

14 Q. And are you aware of any other referendums
15 about Stillwater Farms?

16 A. Referendums on Stillwater Farms?

17 Q. (Nods head).

18 A. Well, I mean, I was -- no, I don't think so,
19 no. Other than, you know, now I heard annexation. I
20 didn't know that part.

21 Q. You weren't told by any circulators or never
22 saw any posts --

23 A. I never heard about some boundaries they're
24 arguing about, which it was all about Stillwater.

25 Q. Have you done any business with any of the

1 petition circulators?

2 A. No.

3 MS. ABDALLAH: No further questions.

4 MS. CHASE: Recross?

5 MR. EWALD: None at this time.

6 MS. CHASE: Thank you. Board members have
7 any questions?

8 MR. STEELE: I have one question. Earlier in
9 your testimony you mentioned you were the primary
10 person in this particular protest and then you said
11 you found out you were a protestor. Could you
12 elaborate on how you found out you were --

13 THE WITNESS: I mean, I guess I don't
14 understand how you guys were doing the wording
15 there. I did a -- what do you call it? Just, you
16 know, signed up to -- you know, I didn't know I was
17 going to be called a protestor.

18 MR. STEELE: You reached out to someone to
19 protest this?

20 THE WITNESS: Yes.

21 MR. STEELE: Who was that?

22 THE WITNESS: Ralph Stonerock.

23 MR. STEELE: Okay.

24 MS. CHASE: Any other questions?

25 MS. LUKE: I have a question. Sir, you

1 mentioned earlier in your testimony that it wasn't
2 true that the tiffs were being used on this
3 development. How did you find out -- how did
4 you --

5 THE WITNESS: Went to the meeting.

6 MS. LUKE: Pardon?

7 THE WITNESS: Went to the meeting.

8 MS. LUKE: You were just asked if you had
9 business dealings with the -- the property owners
10 and you said yes. What was the nature of those
11 business dealings?

12 THE WITNESS: My father and Mr. Stonerock own
13 land together.

14 MS. LUKE: Okay.

15 THE WITNESS: In Delaware County.

16 MS. LUKE: That's all I have.

17 MR. LEE: Going back to the time the
18 petitioners were -- people circulating, can you
19 recall whether they talked about tiffs?

20 THE WITNESS: They -- I shut it down so
21 fast -- first of all, it was cold out, and you
22 know, they started working on the taxes and then
23 tiffs. You know, I didn't think it was that type
24 of project that would require tiffs, first of all.
25 And then, you know, the taxes I thought was just

1 B-S because I look at -- you know, when you're
2 building a neighborhood, you know, that's more of a
3 tax windfall if it is done right for the city.

4 MR. LEE: But you do -- do you recall them
5 saying that tiffs would be used in this project?

6 THE WITNESS: Yes. Or I've been seeing --
7 that or I've been seeing it in the social media
8 circles.

9 MR. LEE: But the petitioner, did they
10 mention tiffs?

11 THE WITNESS: I believe they did. I mean,
12 they were throwing all kinds of things out there,
13 like tiffs, like taxes, like traffic congestion,
14 like schools overcrowding.

15 MR. LEE: Okay. All right. Thank you.

16 MR. EWALD: I have a follow-up question for
17 clarification. I'm sorry, when -- Mr. Lee, when
18 you said petitioner, you mean the person that went
19 to their door?

20 MR. LEE: Yes. Circulator.

21 MR. EWALD: Circulator. I want to make sure
22 that's clear because petitioners are different.

23 MR. LEE: Right.

24 MR. EWALD: I'll follow up on it when I come
25 back about that question.

1 MS. LUKE: I have one more question. With
2 respect to Exhibit 9 itself, was this a -- did you
3 make this screenshot from your --

4 THE WITNESS: Yes.

5 MS. LUKE: Yes. So do you have a date?

6 THE WITNESS: A date for? The day when I --

7 MS. LUKE: What was the date of this post?

8 THE WITNESS: Oh, God. I don't know. I
9 just -- you know, I kind FaceBook stalked or
10 Nextdoor neighbor stalked, if you will. I just
11 kind of looked.

12 MS. LUKE: It was this year, 2023?

13 THE WITNESS: Oh, yeah.

14 MS. LUKE: All right. That's all I have.

15 MS. CHASE: Anything else from the board?

16 MS. ABDALLAH: A quick follow up to
17 Ms. Luke's question.

18 FURTHER DIRECT EXAMINATION

19 BY MS. ABDALLAH:

20 Q. Mr. Warner, do you have business dealings
21 with people on both sides of this issue?

22 A. Yes. And it stinks.

23 MS. ABDALLAH: No further questions.

24 MS. CHASE: Do you have a follow-up based on
25 the board questions?

1 MR. EWALD: I -- might not be at the proper
2 time. I do have a follow up to that particular
3 response, though.

4 MS. CHASE: That's fine.

5 RECROSS-EXAMINATION

6 BY MR. EWALD:

7 Q. Mr. Warner, earlier you said that you did not
8 have city business dealings with any circulators or
9 petitioners. You just answered --

10 A. Well, I mean, one is on the list that I found
11 out later, yes.

12 Q. Okay. So there are -- there are potentially
13 some --

14 A. One is a client. One is a client, yes.

15 Q. I just want to clarify because earlier you
16 said no. I just want to make sure. Back to the posts.
17 I think it is a great question. Do you recall like was
18 this Nextdoor screen grab, was that before the petition
19 was filed or after?

20 A. After the -- this is just chatter you see
21 on -- I mean, this is just one of many. I mean, don't
22 pretend this is the only one.

23 Q. Right. Was this taken during -- it was after
24 the petition had been filed; is that correct?

25 A. Oh, yeah. I mean, it's -- you see this

1 chatter all the time on Nextdoor and FaceBook.

2 Q. Does that necessarily mean that these people
3 are involved with the campaign or the petition?

4 A. I don't know who is. I'm just -- I was just
5 showing chatter. I didn't know until I was told.

6 MR. EWALD: That's all I have.

7 MS. CHASE: Mr. Warren, thank you very much
8 for your time.

9 THE WITNESS: Thank you.

10 MS. ABDALLAH: Thank you.

11 MS. CHASE: Next witness, please.

12 MR. INGRAM: At this time the protestor will
13 call Mary Gorrell.

14 MS. CHASE: Ma'am, if you'll remain standing
15 for a minute, I'm going administer the oath to you.

16 THE WITNESS: Okay.

17 MS. CHASE: So please get yourself settled.

18 THE WITNESS: Okay.

19 MS. CHASE: If you'll raise your right hand,
20 please. Do you swear or affirm that the evidence
21 you shall give in the case now in this hearing
22 shall be the truth, the whole truth, and nothing
23 but the truth and this you do as you answer unto
24 God? If so, say I do.

25 THE WITNESS: I do.

1 MS. CHASE: Thank you very much. Please have
2 a seat.

3 MARY GORRELL,
4 Having been first duly sworn, testifies as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. ABDALLAH:

8 Q. Good morning. Please state your name for the
9 record.

10 A. Mary Gorrell.

11 Q. Good morning, Mary. How -- where do you
12 live?

13 A. I live at 657 Wagon Wheel Lane, Marysville.

14 Q. And how long have you been in Marysville?

15 A. Since 2010.

16 Q. Okay. Are you a registered voter?

17 A. Yes.

18 (Protestor Exhibit 10, Affidavit, identified.)

19 Q. If you could grab that binder right next to
20 you and turn to tab ten, please.

21 A. Okay. Got to put the specs on. Okay. To
22 where?

23 Q. Tab ten.

24 A. Tab ten. Okay.

25 Q. For purposes of the record, tab ten is an

1 affidavit?

2 A. Yes.

3 Q. Do you recognize this exhibits?

4 A. Yes.

5 Q. And this is an affidavit that you signed in
6 this matter, correct?

7 A. Yes.

8 Q. And if you turn to page two, that's your
9 signature there?

10 A. Yes.

11 Q. And if you turn to Exhibit A of your
12 affidavit, that's a part petition --

13 A. Yes.

14 Q. -- concerning the referendum that brings us
15 here today?

16 A. Uh-huh.

17 Q. And line three of that part petition, that's
18 your name and signature, correct?

19 A. Yes.

20 Q. And it looks like you signed the petition
21 December 11, 2022?

22 A. Correct.

23 Q. I would like to talk to you about how you
24 came to sign this petition on December 11th of last year.
25 Where were you asked to sign the petition?

1 A. Where?

2 Q. Uh-huh.

3 A. It was at my house. I was -- if I remember
4 correctly, I was coming from grocery shopping and they
5 caught me at my door. They were coming across the lawn.

6 Q. How many circulators?

7 A. There was two. There was a man and a woman.

8 Q. And did you know them?

9 A. No.

10 Q. And what did the circulator say to you as you
11 were entering your home?

12 A. They said they had a petition that I should
13 probably sign and it had something to do with some
14 property that was going to be annexed in, but I -- it
15 would be raising my taxes. I -- I asked up front, I
16 said, so how does this affect me? And they said, well,
17 your taxes are going to go up.

18 Q. And how did they explain the referendum would
19 avoid your taxes going up?

20 A. They really didn't explain too much. It was
21 just mainly this petition is going around and if we want
22 to keep our taxes lower, it would be a good idea to sign
23 it.

24 Q. Did the circulators provide you with any
25 other information about the ordinance that they were

1 putting up to the ballot?

2 A. Not that I remember.

3 Q. Did you look at the ordinance itself?

4 A. No.

5 Q. Did you sign the petition?

6 A. Yes. It was just a form with one that I
7 just -- I just had -- it was just on a clipboard and
8 they -- and I signed it.

9 Q. So this was all you were presented with was
10 the signature page?

11 A. Yes.

12 Q. And why did you decide to sign the petition?

13 A. I don't want my taxes going up. Right now my
14 taxes is higher than my house insurance -- I mean my
15 house payment.

16 Q. Were you aware that the ordinance being put
17 up to referendum only concerns the city's acceptance of
18 an annexation petition and has nothing to do with your
19 taxes?

20 A. What was that again?

21 Q. I asked if you knew that the ordinance being
22 put up to referendum only concerned the annexation of
23 certain lands into the city and had nothing to do with
24 taxes?

25 A. No.

1 Q. And now being provided that information that
2 the ordinance only concerned the annexation and not
3 taxes, would you have signed the referendum petition?

4 A. Absolutely not.

5 Q. Looking back, how did you feel about the fact
6 that you were asked to sign the petition to stop an
7 increase in taxes and then you did in fact sign the
8 petition to stop your taxes from going up?

9 A. I feel like I was bamboozled. I don't feel
10 like they were honest and they didn't explain anything
11 except for my -- I'm only concerned about my taxes, but,
12 you know, they keep going up and it is just a matter of
13 time before we have to move out if it continues. Do you
14 guys all hear that? Do you guys raise my taxes?

15 MR. COOK: For clarity, the Board of
16 Elections does not review taxes.

17 THE WITNESS: I was going to say, old buddy
18 old pal, if you can get them down, I appreciate it.

19 MS. ABDALLAH: Thank you, Mary. I have no
20 further questions.

21 THE WITNESS: Oh, okay.

22 MS. ABDALLAH: He might have questions for
23 you.

24 CROSS-EXAMINATION

25 BY MR. EWALD:

1 Q. Good morning. Thank you for coming in.

2 A. Hi.

3 Q. I just actually want to know more about what
4 happened that day. So you said it is true you were on
5 your way home from the grocery store and walking up to
6 your house?

7 A. Yeah. They were walking up to my door and
8 they came across the lawn and said they had a petition.

9 Q. Did you carry the rest of your groceries in?
10 Did they help you?

11 A. No, they did not help me carry my groceries
12 in.

13 Q. Where was your husband at this time?

14 A. He was in the house and he saw me talking to
15 strangers so he came out. I think he was going to help
16 with the groceries.

17 Q. As a good husband should. So this entire
18 conversation occurred on your porch or out in the yard?

19 A. It was actually -- they were coming across
20 the yard. I was actually on my sidewalk coming up.

21 Q. Okay. And so you stopped what you were doing
22 and didn't take your groceries in and talked to them for
23 a few minutes?

24 A. Yeah.

25 Q. Approximately how long do you think it took

1 to talk to them?

2 A. It didn't take very long at all. My bottom
3 line was are you going to raise my taxes. I'm a very
4 greedy person when it comes to these taxes. So that was
5 my main concern.

6 Q. Have you ever seen these individuals before?

7 A. No.

8 Q. Did they have any kind of identification?

9 Were they --

10 A. I don't remember seeing any identification.

11 Q. Did they have a clipboard?

12 A. They had a clipboard, yes.

13 Q. Did they hand that clipboard to you to sign?

14 A. Yes.

15 Q. They had a clipboard in hand and they gave
16 you a pen?

17 A. Yeah.

18 Q. Did you have any follow-up questions for
19 them?

20 A. No. I just wanted to know about my taxes.

21 Q. Who was carrying the clipboard?

22 A. The female, I believe, was holding the
23 clipboard.

24 Q. So she handed it to you?

25 A. Yeah.

1 Q. What did she look like?

2 A. I can't remember.

3 Q. Okay.

4 A. I've slept since then.

5 Q. Has anybody after that come to your house and
6 asked you to sign the annexation petition?

7 A. No.

8 Q. So you had that one occurrence.

9 A. Yeah.

10 Q. And no other petitioners came to your house.

11 A. No.

12 Q. Or circulators.

13 A. Yeah.

14 Q. Did you have anybody knock on your door that
15 was running for office?

16 A. I can't remember that.

17 MR. EWALD: All right. I appreciate your
18 testimony. I will reserve right to re-call.

19 MS. CHASE: Oh. Redirect?

20 MS. ABDALLAH: None.

21 MS. CHASE: Thank you. Does the board have
22 any questions for this witness?

23 MR. STEELE: One brief one. Have you signed
24 petitions in the past?

25 THE WITNESS: If I do, you know what my

1 question is: Are you raising my taxes? I
2 really -- they raised my taxes this year way too
3 much, so I'm -- I'm -- that's where I'm at. I'm
4 greedy.

5 MR. STEELE: Did you read what this petition
6 said? Did you read the paper what it said what you
7 were signing?

8 THE WITNESS: No. They just explained it to
9 me and I just signed it.

10 MR. STEELE: Okay.

11 THE WITNESS: I don't remember anything being
12 at the top. Just signing it.

13 MR. STEELE: Okay. Thank you.

14 MR. COOK: Was it a man or a woman?

15 THE WITNESS: It was a woman, but -- it was a
16 man and woman that came but she had the clipboard.

17 MR. COOK: Okay. Thank you.

18 MS. CHASE: Any other questions? Ma'am, you
19 are excused. We thank you for your testimony, but
20 unfortunately you have to wait around. You can go
21 back to the room that you were in.

22 THE WITNESS: Okay.

23 MS. CHASE: Thank you very much.

24 THE WITNESS: All right. You don't want me
25 to take this, right?

1 MS. CHASE: I do not.

2 MR. INGRAM: At this time the protestor will
3 call Donnie Gorrell.

4 MS. CHASE: Okay. Good morning, sir. Thank
5 you very much for removing your hat. If you'll
6 stand by the chair.

7 THE WITNESS: Yes.

8 MS. CHASE: Raise your right hand, please.
9 I'm going to issue the oath to you.

10 THE WITNESS: Okay.

11 MS. CHASE: Do you swear or affirm the
12 evidence you shall give in this case now in this
13 hearing shall be the truth, the whole truth, and
14 nothing but the truth as this you do as you answer
15 unto God. If so, say I do.

16 THE WITNESS: I do under God.

17 MS. CHASE: Thank you, sir. Please have a
18 seat. And, counsel, you may inquire.

19 DONALD GORRELL,

20 Having been first duly sworn, testifies as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. INGRAM:

24 Q. Please state your name for the record.

25 A. Donald Lee Gorrell.

1 Q. And I noticed you pointed to your ear,
2 Mr. Gorrell. If -- if at any point you can't hear
3 anything that anyone asks you, please just let us know.

4 A. Tinnitus from Viet Nam.

5 Q. Thank you for your service.

6 A. Thank you, sir.

7 Q. Mr. Gorrell, where do you live?

8 A. 657 Wagon Wheel Lane, Marysville.

9 Q. How long have you lived there?

10 A. Bought the house in '12.

11 Q. So about 11 years.

12 A. 2012, yes.

13 Q. Mr. Gorrell, are you a registered voter in
14 the city of Marysville?

15 A. Yes, absolutely, yes.

16 (Protestor Exhibit 11, Affidavit, identified.)

17 Q. To your left is a black binder. If you could
18 retrieve that, please. And I would like for you to turn
19 to tab 11 in that binder and that is Exhibit 11. Let me
20 know when you get there.

21 A. I'm there, sir.

22 Q. Take your time.

23 A. I've got it.

24 Q. Okay. Mr. Gorrell, you signed an affidavit
25 in this matter, correct? You signed an affidavit in this

1 matter?

2 A. Yes, yes.

3 Q. And if I could direct your attention to page
4 two of the Exhibit 11.

5 A. I'm there.

6 Q. Okay. Is that your signature, Mr. Gorrell,
7 on page two of Exhibit 11?

8 A. On this list? Yes, sir.

9 Q. I want to make sure we are both looking at
10 the same thing. So, I'm actually, Mr. Gorrell, talking
11 about your -- asking you about your affidavit.

12 A. Yes, I signed that (indicating).

13 Q. Okay.

14 A. Oh, here, yes. I was on the wrong one.
15 Sorry.

16 Q. Okay.

17 A. Yes.

18 Q. There's -- there's an Exhibit A to your
19 affidavit that has a part petition or referendum
20 petition. Do you see that?

21 A. Yes.

22 Q. And I want to draw your attention to line
23 four on that part petition. Is that your signature?

24 A. This page here, sir?

25 Q. Yes.

1 A. Yes.

2 Q. And I see here that it says on this petition
3 that you signed it on December 11, 2022; is that correct?

4 A. Yes, sir.

5 Q. All right. So, I want to ask you a series of
6 questions about that day on December 11th that caused you
7 to sign the referendum petition. Is that okay?

8 A. Sure, go ahead.

9 Q. So where were you when you were asked to sign
10 this petition?

11 A. I was in the house and came out of the house.

12 Q. Okay. And -- and then how were you -- how
13 did it come that you -- what caused you to go out of your
14 house?

15 A. These two people came up to my wife who was
16 getting out of the car and coming into the house and she
17 was talking to them. I didn't know what it was about so
18 I just went out there.

19 Q. Did you recognize those two people --

20 A. No.

21 Q. -- who were talking to your wife?

22 A. No.

23 Q. Okay. When you approached those two people,
24 what did they tell you about this referendum petition?

25 A. They wanted us to sign something there. I

1 can't recall exactly what it looked like. They wanted us
2 to sign this thing to keep us from having to pay higher
3 property taxes. I said, well, absolutely. I don't want
4 that. I'm on a fixed income. I don't want to pay more
5 taxes. I got nailed already.

6 Q. Okay. How did the circulator -- so the
7 circulators told you about -- that this referendum would
8 increase your property taxes. Did I hear you correctly?

9 A. Yes.

10 Q. How did the circulator characterize the
11 ordinance that would be put to referendum?

12 A. Something about -- if I recall correctly,
13 about some property that was going in and that when that
14 property would be put in it would raise our taxes.

15 Q. Okay.

16 A. And I said, well, that don't make any sense.
17 I'm not -- I'm not for that.

18 Q. Okay.

19 A. Am I saying that correct?

20 Q. Is that what caused to you sign the petition?

21 A. Yeah. Red lights went off.

22 Q. Did the circulators provide you with any
23 other information about Ordinance 55-2022?

24 A. No, no, I didn't hear anything.

25 Q. Were you -- were you provided with any -- any

1 documents besides the page you signed there?

2 A. Best I can recall they had something in their
3 hands, but we weren't handed anything to review or read.

4 Q. So were you aware at the time that you signed
5 the petition that Ordinance Number 55-2022 only concerned
6 the city of Marysville's acceptance of the annexation of
7 the certain properties into the city of Marysville?

8 A. I'm not sure.

9 Q. Do you want me to restate the question?

10 A. Yeah, yeah, please do that.

11 Q. Were you aware at the time you were asked to
12 sign this petition --

13 A. Yeah.

14 Q. -- that the ordinance being put to referendum
15 only concerned the annexation of the land to the city?

16 A. Yes.

17 Q. So you knew that at the time?

18 A. Yes.

19 Q. Okay. But the discussion you had at the --
20 with the circulators only concerned the Stillwater Farms
21 development or your taxes; is that fair?

22 A. Yes.

23 Q. Based on your affidavit, Mr. Gorrell, did
24 circulators tell you or mention anything that -- that
25 this -- the ordinance being put to referendum was only

1 about annexing land?

2 A. Was it only about annexing land. I think
3 it's vague but I think that's what the purpose is to get
4 taxes out of me.

5 Q. Okay. Just trying to understand the only
6 thing that was discussed was the development and the fact
7 that the development would increase your property taxes.

8 A. Yes.

9 Q. Okay. Have you -- have you come to
10 understand whether or not the annexation of the land
11 would impact your property taxes, Mr. Gorrell?

12 A. Now I know it's not.

13 Q. Okay. How is that?

14 A. Why is that? It's my understanding that the
15 property taxes are going to be paid by the owners and not
16 through the -- through existing property owners.

17 Q. Okay. So when you referred to the property
18 taxes would actually be paid by the owners, you're
19 talking about the future owners of the --

20 A. Yes.

21 Q. -- Stillwater Farms development.

22 A. Yes.

23 Q. Okay. And in looking back to your experience
24 with the petition circulators, Mr. Gorrell, how do you
25 feel about the representation of -- of the ordinance that

1 was being put to referendum?

2 A. It's like they committed a fraud on me.

3 Q. Why is that?

4 A. Lying to me.

5 Q. Why is that?

6 A. I feel like I was misled.

7 Q. Okay. Why is that?

8 A. Because what they said is not true.

9 MR. INGRAM: Okay. I have no further
10 questions at this time.

11 MS. CHASE: Cross?

12 MR. EWALD: Yes.

13 CROSS-EXAMINATION

14 BY MR. EWALD:

15 Q. Good morning. Thank you for coming in and
16 thank you for your service as well.

17 A. That's very nice. Thank you, sir.

18 Q. We're here because of the annexation
19 referendum, and you submitted -- is it true you submitted
20 an affidavit in support of your testimony today?

21 A. I submitted an affidavit?

22 Q. I'm sorry. Let me rephrase. You had signed
23 an affidavit about your experience on the day in
24 question.

25 A. Yes.

1 Q. And is it your testimony that a male and a
2 female came to your door?

3 A. Yes, sir.

4 Q. Did they engage with you at first or with
5 your wife?

6 A. With my wife. Because of her being out there
7 alone with them I just went out there just out of
8 instinct.

9 Q. Where was your wife coming from?

10 A. I think she had been shopping. It's her
11 deal.

12 Q. Was she carrying anything in? Was she
13 carrying anything into the house at the time that they
14 came across?

15 A. I don't recall.

16 Q. Okay. Where was your wife standing
17 approximately when you came out of the house?

18 A. We met about halfway down the sidewalk
19 between the front door and the driveway.

20 Q. And who spoke first, your wife or the
21 individuals that were there?

22 A. I think they were in conversation -- or Mary
23 told me -- she started to tell me what they was about.

24 Q. Okay.

25 A. And talking about raising our taxes. I said,

1 we don't want to do that.

2 Q. And -- and did she have anything in her hand
3 at the time?

4 A. She carries her purse everywhere.

5 Q. Did she have a clipboard?

6 A. I can't recall. They had something that --
7 papers were on that we signed.

8 Q. And who signed it first, you or your wife?

9 A. My wife.

10 Q. Okay. Had she signed it before you walked
11 outside?

12 A. Can I take a look and see? Yes.

13 Q. And did you take the clipboard and read the
14 document you were going to sign?

15 A. No, sir, I don't recall.

16 Q. All right. So, who handed you the clipboard?

17 A. These -- these -- a couple. It was a man and
18 a woman. I can't remember which one handed it to me.

19 Q. So your wife. Did you visually see your wife
20 take the clipboard, sign it, and then give it back to
21 them?

22 A. Oh, yeah, yes.

23 Q. Who had the clipboard before they handed it
24 to you?

25 A. Oh, Lord. I believe the guy handed it to me.

1 Or she may have handed it to me. I'm trying to be
2 truthful.

3 Q. Okay. And they handed it to you, you signed
4 it, and then handed it back to who?

5 A. Handed it back to whom?

6 Q. Yeah, who did you hand it to?

7 A. As I recall they took it.

8 Q. The man or the woman?

9 A. I don't remember.

10 Q. Okay. And then at that point they said thank
11 you and left?

12 A. Yes.

13 Q. Okay. About how long do you think that that
14 interaction took in minutes?

15 A. Took me about half a second to sign it when I
16 heard the taxes were going up. The process that we were
17 together with the interaction, four or five minutes.
18 That may be a stretch.

19 Q. All right. And then did they turn and leave?

20 A. Yes.

21 Q. All right. Where did they go next? Did they
22 go next door to a neighbor, get in a car and leave?

23 A. They walked up across our lawn.

24 Q. Okay. Was there anybody else out knocking on
25 doors that day talking to you about any other issues?

1 A. No, no.

2 Q. Has anybody come back since that point in
3 time?

4 A. Regarding this matter?

5 Q. Yes.

6 A. I have people trying to get me to God.

7 Q. Any other circulators come to your house
8 asking you to sign anything?

9 A. Regarding this matter?

10 Q. Regarding this matter.

11 A. No, sir.

12 Q. How did you find out about today's hearing?

13 A. One of my student's parents had -- had
14 alerted us and was shocked that we had signed something
15 like this.

16 Q. All right. What's that person's name? Not
17 the student but the parent.

18 A. Laura.

19 Q. Okay. Last name?

20 A. Stonerock.

21 Q. Okay. Is that one of the property owners in
22 this case?

23 A. You know, I don't know the details of that.

24 Q. Okay. All right. So did that parent reach
25 out or did they talk through their child to you?

1 A. Oh, no. She called my wife and alerted me.

2 Q. Ms. Laura Stonerock --

3 A. Yes.

4 Q. -- called your wife?

5 A. Yes.

6 Q. All right.

7 A. Because she had seen our name on this thing.

8 Q. Okay. And what -- how did that conversation
9 go?

10 A. Well, she was shocked.

11 MR. INGRAM: Objection.

12 MR. EWALD: I'm asking for his impression.

13 MR. INGRAM: He just testified that he talked
14 to -- Ms. Stonerock talked to his wife.

15 MR. EWALD: I apologize.

16 MS. CHASE: That's correct. Sustained.

17 BY MR. EWALD:

18 Q. Did your wife tell you how that conversation
19 went?

20 A. Very briefly. And we didn't have really an
21 in depth knowledge of anything until she said that
22 they're not going to be raising the taxes on you. That's
23 how we found out about it.

24 Q. Thank you for your time. I appreciate it.

25 A. You're very welcome, sir.

1 MS. CHASE: Redirect?

2 MR. INGRAM: No.

3 MS. CHASE: Does the board have any
4 questions? Does anybody expect to re-call --

5 MR. EWALD: I do.

6 MS. CHASE: Okay. Sir, thank you very much
7 for your testimony. If you'll leave the exhibit
8 book at the table with the court reporter. And
9 unfortunately I can't tell you you can leave. If
10 you'll go back to the room where you were seated
11 and wait for us, I would appreciate it.

12 THE WITNESS: Oh, you got it.

13 MS. CHASE: Ladies and gentlemen, it's about
14 10:43. We would like to take a 15-minute break, so
15 if you could be here back in the room right before
16 11:00, we'll get started again. Thank you very
17 much.

18 (Thereupon, a recess was taken.)

19 MS. CHASE: We're going to get started again.
20 Go back on the record. It's 11:03. We're a little
21 bit late coming back. My understanding to the
22 protestor's side, do you have any other witnesses
23 that you want to call?

24 MR. INGRAM: At this time, members of the
25 board, the protestor does not have any live

1 witness. I would just direct the board members'
2 attention to Exhibit Number 13 in your binders.
3 Exhibit Number 13 is the affidavit of the June
4 Saindon, which was attached to the protestors'
5 notice of the protest and was made available to the
6 respondent and to the board several weeks ago in
7 which Saindon swears under oath that she saw an
8 advertisement on FaceBook regarding a petition in
9 the city of Marysville --

10 MR. EWALD: I'm going to object.

11 MR. INGRAM: Based on the advertisement, I
12 believe that the petition concerned the citizen's
13 right to vote an approval of a residential
14 subdivision in the city of Marysville. Her
15 understanding from that advertisement that was by
16 signing the petition the citizens of the city of
17 Marysville would have the right to vote on all
18 future residential subdivisions. Based on that
19 advertisement, she did not think the petition would
20 have any impact on developments that had already
21 been approved, such as the Stillwater Farms
22 development.

23 She goes on to state under oath that she
24 recently learned that the petition seeks to put
25 Marysville City Council Ordinance Number 55-2022 to

1 referendum, and now understands that the ordinance
2 only concerns the city of Marysville's acceptance
3 of the annexation of certain land to the city of
4 Marysville. None of the circulators for the
5 petition she signed told her that. She believed
6 that she was misled about the annexation ordinance
7 and had she known that the petition related only to
8 the annexation ordinance, she would not have signed
9 the petition. And we ask that -- or move that Ms.
10 Saindon's affidavit be considered by the board
11 during its deliberations. As I indicated to the
12 director prior to this hearing, we have witnesses,
13 including Ms. Saindon, that was unavailable to
14 appear today and that's what we have. Thank you.

15 MS. CHASE: Okay.

16 MR. EWALD: I'm going to object and move to
17 strike any conversation that just occurred into the
18 record. The witness is not here, not available.
19 We also have witnesses that couldn't be here, but
20 we understand the timeline of the board. In
21 addition, I have to enter objections to the
22 exhibits once we get to that point.

23 MS. CHASE: Okay. I think we're at that
24 point. I want to talk to -- just briefly talk with
25 the board members. Obviously, you understood what

1 Attorney Ewald just said with respect to
2 Ms. Saindon's affidavit. I'm going to let the
3 board make the decision on this. Technically, if
4 we were in the hearing someone can't testify via
5 affidavit because there's no right of confrontation
6 but we are not in a trial -- I said we're not in a
7 trial of this matter, so I'm going to leave this to
8 a board decision about whether or not you are
9 willing to consider Ms. Saindon's affidavits.

10 MR. STEELE: Can I ask why she's not here?

11 MR. INGRAM: She was unavailable.

12 MR. STEELE: Don't know.

13 MR. INGRAM: And the respondents were free to
14 subpoena her. They were aware of this affidavit.
15 They've had it for weeks. But it wouldn't have
16 mattered because she's -- I'm not sure what her
17 direct conflict was. I was just told she was
18 unavailable.

19 MR. STEELE: Okay.

20 MR. COOK: Normally we don't do this; is that
21 correct?

22 MS. CHASE: In a trial when you're looking at
23 rules of evidence and burden of proof that are
24 beyond preponderance of the evidence there is a
25 right of confrontation and there is -- a

1 confrontation can't be satisfied with an affidavit.

2 MR. INGRAM: And if I could add, in a trial
3 in a court proceeding, the trial is scheduled
4 months in advance and the parties have a lot more
5 time. In this particular hearing, this hearing was
6 scheduled last Wednesday and -- and the witnesses
7 and folks just did not have enough time to adjust
8 schedules to be here.

9 MS. CHASE: Is it my understanding -- I
10 believe, did your side, the protestors move for a
11 continuance of this hearing which was not granted
12 by the board?

13 MR. INGRAM: Correct, Ms. Chase.

14 MS. CHASE: All of those things could be
15 considered.

16 MR. STEELE: I would make a motion that we
17 disallow this particular petition due to the fact
18 that we've been trying to follow quasi judicial and
19 I think we should stick on that route.

20 MS. CHASE: You call it referring to this
21 particular affidavit that we referred, the
22 affidavit specifically of Ms. Saindon.

23 MR. STEELE: Ms. Saindon's affidavit I would
24 move that we disallow it just because we're trying
25 to follow court rules as best we can.

1 MR. COOK: Do you have that? Do we have a
2 second on that?

3 MS. LUKE: I would say that I would make a
4 motion to allow it and give it whatever weight we
5 give it, especially since we denied the continuance
6 they requested. So allow it in and we'll give it
7 whatever weight.

8 MR. LEE: I'll second that.

9 MR. COOK: Wait a minute. So I've got the
10 first one on the floor, so --

11 MR. STEELE: Mine didn't get the second.

12 MR. LEE: Didn't get a second.

13 MR. COOK: I now have a motion of Ms. Luke to
14 receive. Do I have a second?

15 MR. LEE: Yes.

16 MR. COOK: Motion granted. All in favor?

17 MS. LUKE: Aye.

18 MR. LEE: Aye.

19 MR. STEELE: No.

20 MR. COOK: Three yes, one no.

21 MR. EWALD: I will take that up on the other
22 exhibits I have concerns about, so when you're
23 ready.

24 MS. CHASE: Are we ready to deal with the
25 other exhibits? It appears by motion of the board

1 that Ms. Saindon's affidavit will be considered.
2 (Protestor's Exhibit 13, Saindon Affidavit, admitted.)

3 MR. INGRAM: Thank you, Ms. Chase. We
4 shall -- the protestors move that the documents in
5 your binder and subject to also the admission of
6 the PowerPoint presentation I'll be using in
7 closing be moved and considered during the board's
8 deliberations.

9 MS. CHASE: The PowerPoint presentation, has
10 that been provided to Mr. Ewald?

11 MR. INGRAM: Yes.

12 MS. CHASE: Okay. Thank you. Okay. All
13 right. And we're talking about Exhibits 1 through
14 17 in the book and the PowerPoint presentation
15 you're asking be admitted into evidence for the
16 board to consider. Okay. Mr. Ewald, your
17 objections?

18 MR. EWALD: I object to Exhibit Number 8.
19 This issue, this advertisement was placed in the
20 newspaper "come to a meeting to sign a petition"
21 was addressed in the last hearing. The board had
22 determined that a reasonable person would see that
23 and not conflict the issues, and in addition to
24 that, this is the sole basis of the affidavit for
25 Ms. Saindon, so therefore I object, renew my

1 objection about the testimony because it's based on
2 this ad.

3 MS. CHASE: Okay. Any other objections to
4 any of the other exhibits? So you have an
5 objection to 8 and I think you're renewing your
6 objection to 13.

7 MR. EWALD: Yes.

8 MS. CHASE: Anything else?

9 MR. EWALD: I also object to Number 9. That
10 is an incomplete screen capture of a conversation
11 that we don't have posted. Based on testimony here
12 today we don't know who posted this and only have
13 partial responses, and I ask that it be stricken
14 from the record.

15 MS. SPRANKLE: And to the extent that it is
16 also included in the PowerPoint presentation, we
17 would ask that be stricken as well.

18 (Protestor's Exhibits 1 through 7, 12, and 14 through 17
19 admitted.)

20 MS. CHASE: I'm going to turn to the board.
21 Seeing that these are evidentiary issues, they are
22 objecting to the protestors Exhibit Number 8, which
23 is this public notice petition signing related to
24 Marysville annexation. Exhibit Number 9, which is
25 the -- purported to be the Barbara Phillips

1 Nextdoor post that Mr. -- I believe Mr. Warner was
2 the one who testified about that, and he's renewing
3 the objection to the affidavit of June Saindon.

4 MR. EWALD: Just one follow-up. Also the
5 public notice is also published in the PowerPoint.

6 MS. CHASE: Okay. So we've got two of these
7 exhibits that appear in the PowerPoint. I think
8 the board has made a decision with respect to the
9 affidavit of June Saindon. Do you want to
10 reconsider Exhibit Number 13?

11 MR. INGRAM: Can I respond to the objection?

12 MS. CHASE: Yes, you may.

13 MR. INGRAM: With respect to Exhibit Number
14 8, counsel is correct, this is evidence from the
15 prior proceeding which I mentioned at the outset is
16 incorporated into this protest by reference. And I
17 believe that the individual who took out this
18 public notice testified and is available here
19 today.

20 MR. EWALD: Correct.

21 MR. INGRAM: Is that correct? So if you want
22 me to reexamine this person, re-plow that ground, I
23 can do that. I don't think that's a good use of
24 this board's time. And the testimony concerning
25 Exhibit 8 is set forth in Exhibit Number 16, which

1 contained the trial -- the transcript from the
2 prior hearing, and there is no objection to that
3 testimony, so I -- I don't think as an evidentiary
4 matter Exhibit 8 should be precluded. Now, counsel
5 is free to argue, which he has already done so, and
6 make argument in his closing about the merits of
7 that exhibit, but that's different than admitting
8 it for purposes of your deliberations and
9 consideration.

10 With respect to Exhibit Number 9, it was
11 pointed out that the poster of the first Nextdoor
12 post, Barbara Phillips, was in the room and
13 respondent's counsel indicated that he declined the
14 opportunity to call that witness because the
15 poster -- I mean, it's self-evident who posted
16 that. Likewise, the second post, Jason Axe, is
17 here today and respondents have indicated he's
18 going to testify and he also testified in the prior
19 hearing, so I don't think as an evidentiary matter
20 it would be proper to exclude this as evidence for
21 purposes of the board's deliberations or
22 consideration. Again, respondent's counsel is free
23 to argue the merits of the weight as to that
24 evidence.

25 MS. CHASE: All right. Does the board want

1 to reconsider this position -- I'm sorry.

2 MR. EWALD: I do have one brief response.
3 Separating 8 and 9. The board has already
4 deliberated and had a finding at the last hearing
5 on the public notice and did not find any problems
6 with that. That was in the record. And on Number
7 9, Barbara Phillips, I believe, based on the
8 testimony we heard is -- it's a response, not an
9 original posting and so we do not know who posted
10 this, and it's been admitted that these are
11 snippets taken out of the full context of the
12 conversation. That's why unless they're prepared
13 to present the entire thing, Number 9 should not be
14 reviewed.

15 MS. CHASE: All right. So, let's look --
16 does the board wish to reconsider the position on
17 Exhibit Number 13, which is the affidavit of June
18 Saindon?

19 MR. COOK: No. We voted on that.

20 MS. CHASE: Okay. All right. They're going
21 to consider -- 13 will come in. Let's go back to
22 8, protestor's Exhibit Number 8. We need to look
23 at 8 and look at 9. Once again, we've got
24 different rules if we're in a trial. This is an
25 administrative proceeding and administrative

1 hearing, so I'm going to, once again, leave that
2 decision up to the board.

3 MR. COOK: Did you -- you said eight's okay
4 or no?

5 MR. EWALD: No. Eight is what was
6 deliberated on and held in favor of the petitioners
7 last time so now we are revisiting the same thing.

8 MS. SPRANKLE: Asked and answered.

9 MR. EWALD: It's been asked and answered.

10 MR. COOK: Okay. So we have Number 8, the
11 public notice on the table. Does the board want to
12 allow it or not? Do you have a motion?

13 MS. LUKE: I would make a motion to allow
14 Exhibit 8 because it's already been admitted into
15 evidence at the prior proceeding.

16 MR. COOK: Do I have a second?

17 MR. LEE: Second.

18 MR. COOK: All in favor?

19 (Members Luke and Lee say aye.)

20 (Protestor's Exhibit 8 admitted.)

21 MS. CHASE: Exhibit 9.

22 MR. COOK: We have Number 9 on the table from
23 Barbara Phillips. It's the balance of a -- looks
24 like a text message.

25 MS. CHASE: One option the board would have,

1 since Mr. Axe is going to testify, I talked with
2 Attorney Ewald. You can also reserve deciding that
3 issue.

4 MR. COOK: Is he going to testify?

5 MR. EWALD: He is.

6 MR. COOK: Okay. Why don't we hold off on
7 that decision. Is that fair?

8 MR. STEELE: Yep.

9 MS. CHASE: All right. Thank you very much.
10 The case is with the respondent.

11 MR. EWALD: Thank you. Thank you for your
12 time. I first call Jason Axe to testify on behalf
13 of the petitioners.

14 MS. CHASE: If you would stand -- good
15 afternoon -- we're still in the morning. Good
16 morning. If you would raise your right hand,
17 please. Do you swear or affirm the evidence you
18 shall give in the case now in the hearing shall be
19 the truth, the whole truth, and nothing but the
20 truth and this you do as you do so under God or
21 under penalty of perjury?

22 THE WITNESS: Yes, I do.

23 MS. CHASE: Thank you. Please have a seat.
24 Counsel, you may inquire.

25 JASON AXE,

1 Having been first duly sworn, testifies as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. EWALD:

5 Q. Good morning, Mr. Axe. How are you today?

6 A. Wonderful.

7 Q. Okay. To your left you will find a binder
8 presented by opposing counsel. It lists all their
9 exhibits. If you could pick that up and open up to
10 Exhibit Number 9.

11 A. All right.

12 Q. This is from Nextdoor. Do you recognize
13 this? It's -- it was a post, a couple posts that --
14 partial posts in the Nextdoor?

15 A. Uh-huh.

16 Q. And you're listed in here. Can you tell me
17 what you know about this post and when it was?

18 A. This post was shortly after the hearing, that
19 first hearing for this -- at the Board of Elections, and
20 Barbara Phillips, the first post was just a blurb that
21 she just said, hey, we won at the board of elections in
22 regard to the referendum petition for the annexation out
23 on 245 and then more to come. And then she asked -- said
24 that I would explain more. And then I think there's like
25 70 posts or something, people commenting on it, and it

1 was from after the hearing because, I mean, her first
2 post was that we won.

3 Q. Who -- who posted the original post?

4 A. I would assume Barbara Phillips. I didn't.

5 Q. You don't know for sure?

6 A. I don't know for sure.

7 Q. All right.

8 A. This is my first run at social media on
9 Nextdoor app, so I'm a little --

10 Q. Do you believe everything you read on line?

11 A. No.

12 Q. All right. Just thought I would ask. There
13 was another exhibit that's been entered. I just want to
14 get these out of the way.

15 A. Okay.

16 Q. There was a public notice put out that was
17 discussed at length during the last hearing.

18 A. Uh-huh.

19 Q. That is Exhibit Number 8 --

20 A. Yep.

21 Q. -- in the book. Does that look familiar?

22 A. Yes. I placed that in the *Journal Tribune*.

23 Q. You provided testimony last time that you
24 procured the ad and put it out on behalf of the --

25 A. Yes.

1 Q. -- the movement.

2 A. Yep.

3 Q. Reading through there, did you -- did you
4 keep this consistently with the annexation versus the
5 zoning?

6 A. I would say definitely. I mean, it doesn't
7 say a single thing about zoning, and I think it says
8 annexation more than three times. I can read it quick if
9 you want.

10 Q. And that meeting occurred that this referred
11 to that as a call to action. See if I can -- apologize.
12 It's tiny. So, if you would like to sign the petition,
13 you must be a registered voter and gives an address to
14 show up to sign the petition?

15 A. Uh-huh.

16 Q. Did you -- were you at that meeting?

17 A. Yes. There's two different days we did. We
18 collected signatures there at the VFW hall or the
19 American Legion hall there by the Marysville Pool, and I
20 was there both days, yes.

21 Q. How did you guys set up? How did you guys
22 accept people in? Was it right in the front of the
23 building?

24 A. The one day we were in the basement of the
25 building; the other day upstairs because we had

1 scheduling conflict. We just had a sign up that said
2 "sign petition here," and there was a picture of the
3 paper with the public notice. And people just would --
4 literally just walked up and said, hey, how are you
5 today? We're good. And just said is this where we can
6 sign the petition in regard to the annexation on the west
7 side of Marysville, and I said yes.

8 Q. If you had to -- if you had to estimate in
9 your interaction -- were you a circulator?

10 A. I was a circulator.

11 Q. In your interactions, if you had to estimate
12 responses from individuals, would you say they were
13 mostly favorable or they were informed before they got to
14 you?

15 MR. INGRAM: Objection. Calls for
16 speculation.

17 MS. CHASE: He's asking about his personal
18 experience. I don't think it's speculative.

19 THE WITNESS: 95 percent I would estimate of
20 the people had known about it and were in favor of
21 the public getting to decide whether they were for
22 or against it.

23 BY MR. EWALD:

24 Q. And approximately how many circulators? Do
25 you know how many circulators?

1 A. There's 44 circulators.

2 Q. How many of those lived in Marysville?

3 A. Roughly half were inside the city limits and
4 half were township residents.

5 Q. Where do you currently reside?

6 A. I live in Paris Township.

7 Q. Okay. How are you affected by this?

8 A. I live on this west side of Marysville so I'm
9 aware of, you know, the traffic concerns and then I'm
10 also good friends with some of the school board people,
11 some of the retired teachers and stuff, and just know
12 that Marysville is kind of in a position right now that
13 there's a lot of growth going on and I'm just
14 concerned -- so, I've lived here -- I graduated
15 Marysville in 2008. I moved here in 2001. And ever
16 since I've lived here I was so excited this was my home
17 and this is where I wanted to raise my family and have
18 kids, and every year going forward that, like, happiness
19 is kind of going down because everything is just getting
20 overcrowded and stuff, and I just feel that the people
21 should get to have a little bit more say of what's going
22 on instead of just the council members.

23 Q. Do you know if any circulators were paid?

24 A. None of them were.

25 Q. Were they all volunteers?

1 A. They were all volunteers.

2 Q. Did you have a difficult time trying to
3 convince people to support this?

4 A. Not at all. I had one lady that said she
5 thought it was okay, that she was fine with it, and I
6 said, okay, that's fine. Because the problem is, is we
7 had -- we collected 1,511 signatures -- this was before
8 they were verified -- in 13 days in November into
9 December. As you all know, in Ohio that's less than
10 ideal whether. It gets dark at 5:00. Few people are
11 going to answer somebody knocking on their door at 7:00
12 p.m. in the winter, so our time window was so short that
13 it didn't make sense to try to persuade or sway people
14 into signing anything. I mean, when 90, 95 percent of
15 the people you all come to, oh, this is the referendum
16 petition to get the recent annexation on the ballot, yes,
17 oh, yeah, we'd love to sign it. Here, my husband's in
18 here, I'll get him to come to the door. So it was so
19 easy to get the signatures, it just wouldn't make sense
20 to sit there and have a conversation and waste time to
21 try to persuade somebody.

22 Q. In your experience when you dealt with the
23 public when you were circulating the petition, did they
24 refer to it by any other name?

25 A. It was -- most of them all said, you know, it

1 was about the annexation. There was a couple people that
2 would say, you know, is this about the building they're
3 wanting to do out there? But the vast majority of them,
4 it was the annexation.

5 Q. Do you -- to your knowledge, was this ever
6 covered in the local media or newspaper?

7 A. Yes. Both the *Journal Tribune* and the *Daily*
8 *Digital* throughout the process both had information on it
9 prior to the referendum petition -- or the intent to
10 referenda was filed. So, yes, all along it was very
11 public and, I mean, it was out in the open.

12 Q. Did you attend any of the council meetings
13 where this was discussed?

14 A. Yes. I believe I attended all of them, all
15 of the council meetings. I did not make it to any prior
16 meetings for the zoning -- or the --

17 MR. LEE: Planning --

18 THE WITNESS: Design review. Planning, yes,
19 thank you.

20 BY MR. EWALD:

21 Q. Were you present at the October 24 meeting in
22 2022 where the item was tabled?

23 A. Yes. That was supposed to be the third
24 reading and they tabled it, correct.

25 Q. Describe your experience at that meeting.

1 A. That experience at that meeting, they went
2 through their normal deal where I kind of zoned out, and
3 then shortly -- sorry for -- so then when they got to
4 Ordinance G, which was the annexation ordinance, Terry
5 Emery they introduced, and Terry said, Hey, I'm going to
6 hand it over to the developer, so -- he said I'm going to
7 hand it over to the developer because there's been lots
8 of concerns with traffic and other issues in the area.
9 And then during Ordinance G, which is the annexation
10 ordinance, he handed the mic over to I believe the
11 engineer representing them, and then he went on I believe
12 it was roughly 30 to 45 minutes through his presentation
13 that he had presented at the following meetings and it
14 was about the housing, you know, which areas were going
15 to be residential -- or like single family, which were
16 going to be like on to the more apartment and/or like
17 retirement type area, which was going to be the
18 commercial and went through their pictures of street
19 scapes and/or what they expected it to look like and
20 which areas were set asides for the green space and where
21 walkways were and the build-out timeframe and pretty much
22 the whole deal was through that Ordinance G, and then
23 after that it went to Ordinance H, which was the rezoning
24 ordinance.

25 Q. So they did separate Ordinance G and

1 Ordinance H?

2 A. Yes. But they -- they had already kind of
3 done all the rezoning issues and that was through
4 Ordinance G, which was the annexation ordinance.

5 Q. So would you say they merged the two?

6 A. I would say in my limited experience -- I'm
7 not a developer. I'm not a city council member. I do
8 practice law, but I would say the entire process was
9 lumped pretty much together as one. All the meeting, the
10 annexation and zoning were always in the same meeting.
11 There wasn't, hey, we're going to annex this and, okay,
12 it's been annexed and now we're going to do this. I
13 mean, even the council members, you know, the
14 conversation flowed freely between one another. It
15 was -- I mean, if somebody had never -- if I hadn't dealt
16 with this like I am right now, I would have thought it
17 was the same thing and it was all one vote and, you know,
18 was together like.

19 Q. To your knowledge were any media members in
20 the audience that evening? Was there a large crowd?

21 A. There was a large number of people there,
22 yeah.

23 Q. If you had to take an estimate of it, how
24 many people do you think showed up?

25 A. How many chairs are there? I believe they

1 had to bring in extra chairs.

2 Q. I don't know what the chamber holds.

3 A. 35, 40. Maybe more.

4 Q. And the other meetings you attended, did they
5 also involve the annexation?

6 A. Yes.

7 Q. Okay. Have you been to any non-annexation
8 meetings?

9 A. All the meetings for the Stillwater Farms
10 that I recollect that the annexation and the zoning were
11 all in the same meeting pretty much kind of blurred
12 together.

13 Q. When the item was -- when item G was turned
14 over to the developer to discuss, did they just stick
15 with maps and discussion about annexation?

16 A. No. I mean, it was -- it was a whole
17 slideshow. I don't know how many pages.

18 Q. If you take a look at item -- I'm sorry --
19 Exhibit 6, and there after page nine is an attachment A.
20 It's attached to the minutes. It says Stillwater Farms
21 on it. Is that the item that was introduced and
22 discussed that night?

23 A. Page nine. Is it this picture, the title?

24 Q. Yes.

25 A. That was the first slide.

1 Q. Okay. And did it go into great detail about
2 what was going to be built, what the use of the land was
3 going to be?

4 A. I mean, yeah. It -- way more detail than I
5 would have expected.

6 Q. All right.

7 A. I don't know if it helps, but I can play part
8 of that meeting where Terry Emery handed the microphone
9 over to the developer.

10 Q. Do you have audio?

11 A. Yeah.

12 MR. EWALD: Is the board interested in
13 hearing that?

14 MR. COOK: I doubt it.

15 MS. LUKE: (Shakes head).

16 MR. EWALD: Thank you.

17 THE WITNESS: Okay. Well, it took me a long
18 time to figure out how to get my WiFi speaker to
19 work.

20 BY MR. EWALD:

21 Q. Mr. Axe, have you ever participated in a
22 campaign of this sort before?

23 A. This was my first time.

24 Q. All right. Did you work with other
25 individuals who had some experience?

1 A. We had. I had reached out to some of the
2 Jerome Village residents out in that area that had done a
3 handful of referendums, and they had some -- I know the
4 township has different laws and speed bumps you have to
5 get over, so --

6 Q. You worked closely with the petitioners to
7 put this item together?

8 A. Yes. Yeah, it was definitely a combined
9 effort.

10 MR. INGRAM: I'm going to object to this line
11 of questions. These identical questions were asked
12 at the last hearing set forth --

13 MR. EWALD: He opened the door.

14 MR. INGRAM: I mean, we can go through and
15 redo this, but I don't see the need.

16 MR. EWALD: We're bringing in evidence from
17 the prior meeting. I have a live witness who is
18 willing to testify about his experience and
19 interaction. I don't think we should be shut down
20 while they're allowed to introduce evidence from
21 the last hearing.

22 MR. INGRAM: And to be clear, my objection is
23 to asking the exact same questions that were asked
24 during the last hearing. You're going to ask
25 different questions, I wouldn't object to that.

1 MS. CHASE: I'm going -- I'm going to allow
2 it.

3 BY MR. EWALD:

4 Q. Mr. Axe, so you worked closely with the
5 petitioners, just to remind where we're at.

6 A. Uh-huh.

7 Q. Did you help facilitate putting the
8 information together for the circulators?

9 A. Yeah.

10 Q. All right. Can you describe that process?

11 A. Myself, a few other petitioners, a couple
12 other circulators, we had been in contact with counsel in
13 regards of, you know, how it needs to be filled out, the
14 referendum petition, just making sure there wasn't any,
15 you know, grammatical or clerical errors that would make
16 it invalid on its face. We worked through that
17 diligently, and then we came up with a list of guidelines
18 what we needed to do as far as how to educate the
19 circulators to get signatures off of the code for the
20 charter with the State just to make sure that we were all
21 well within the guidelines of the law.

22 Q. I'm going to skip the discussions and
23 processes that occurred last time when we talked about
24 Ohio Revised Code. Can you look at Exhibit 7 and tell me
25 if that looks like the petition format that you utilized?

1 A. Format, yes, but it's not on legal size paper
2 and does not have red font on the front of it.

3 Q. Thank you.

4 A. Those were two of the big things that the
5 government casts out, so I remember those.

6 Q. All right. When you were working through the
7 process with the petitioners, did you guys lay out
8 guidelines or training or explain to the circulators
9 since you had -- did you say 44?

10 A. Yes.

11 Q. To explain to them how they should -- how
12 they should present the information to the voter and ask
13 for signatures?

14 A. We did. Because the State has pretty strict
15 guidelines -- well, the city, and they defer to the State
16 for the charter for the referendum process. So, yeah, we
17 did have guidelines. You had to make sure they were
18 registered voters within the city limits. You had to
19 physically witness them sign. They had to write their
20 name clearly, legibly. They had to sign it how they sign
21 when they vote, so whether that's -- they actually print
22 their name when they vote, it had to match that so the
23 Board of Elections could verify the signatures. And it
24 had to be in ink.

25 Q. Did you give any additional guidance on what

1 to say at the door?

2 A. The only guidance was just, you know,
3 essentially that the -- it was worded just how the city
4 had their ordinance for the annexation, you know, of how
5 many acres on the west side of Marysville.

6 Q. Did you guys provide any documentation other
7 than the petitions and did you provide any other
8 documentation to the circulators?

9 A. We had a map that was pulled directly from
10 their slideshow that was just an aerial that just
11 outlined the location of it, and I believe it said 196
12 point something plus or minus acres. And that was on it
13 that way if people had questions where it was, there's
14 just a picture of that map.

15 Q. Did you utilize a clipboard to contain all
16 this information?

17 A. Yeah, that was something for people to sign
18 on.

19 Q. Did you receive any feedback from anyone that
20 someone had been objecting to them being there or signing
21 the petition?

22 A. No.

23 Q. Mr. Axe, do you know a Rick Warner?

24 A. Yes, I do. He's a Marysville resident. He's
25 also my insurance agent for my business, my farm policy,

1 my home policy, my wife's car. All my insurance is
2 through him other than my health insurance.

3 Q. At any time did you talk to Mr. Warner about
4 signing the petition?

5 A. I sent Rick Warner a text on November 30th
6 and asked if he was a registered voter within the city
7 limits of Marysville.

8 Q. That was prior to the circulation of the
9 petition?

10 A. Yes.

11 Q. Okay. And, I'm sorry --

12 A. No, that was during the circulation.

13 Q. During the circulation of the petition?

14 A. Yes.

15 Q. Did you get a response?

16 A. Yes. He said yes, why do you -- why ask? Or
17 why do you ask?

18 Q. And then how did that conversation continue
19 on?

20 A. And then I have it right here. Can I read it
21 so it's word for word verbatim?

22 Q. Do you need to refresh your memory?

23 A. Yeah. I don't know all the words precisely.

24 MS. CHASE: Any objection to that?

25 MR. INGRAM: No.

1 THE WITNESS: So it was -- I believe it was
2 exactly how we had that ad for the Marysville
3 paper. It said -- I just sent him a text. It
4 said: Marysville city council recently annexed
5 over 260 acres on the west side of Marysville in
6 the area of State Route 245. City council annexed
7 it so over 600 dwellings could be built there even
8 though the citizens' input was firmly against
9 annexation. There's a petition being circulated
10 that would put the annexation on the ballot so that
11 Marysville voters can decide. By signing the
12 petition, you're not deciding whether you are for
13 or against the annexation, just that you think the
14 annexation should be placed on the ballot and
15 subject to a vote. And then says if you would like
16 to sign the -- if you would like to sign the
17 petition, you may do so at the American Legion post
18 located at 500 Park Avenue, Marysville, Ohio. And
19 the days and times for that were Sunday, December 4
20 from 12:00 p.m. -- 12:00 noon to 4:00 p.m. and
21 Wednesday December 7th from 3:00 to 7:00 p.m. And
22 he said, yeah, I know that one but I will probably
23 stay out of that one. And I said okay.

24 BY MR. EWALD:

25 Q. And that was during the circulation time?

1 A. Yes.

2 Q. Did you have any conversations following that
3 at the time?

4 A. Not during the circulation -- I had one
5 conversation with him on December -- November 13th, but
6 it was about policy stuff getting some equipment added,
7 and I believe that was the timeframe when he was out west
8 so then I followed up with an e-mail just to confirm that
9 he got that added. And then we did not have any contact
10 until I believe January 19th, which was well after the
11 petition signing, and then we had a conversation and he
12 explained to me why he was against it, that his father
13 and Ralph Stonerock had done business dealings in the
14 past and that himself had purchased some land for
15 investment up north towards Marion that he was hoping to
16 repurpose at some point.

17 Q. And did you have any specific conversations
18 about your opinions with him about development or growth
19 in Marysville?

20 A. Marysville in general. I just expressed, you
21 know, frustration with how city council just seems to say
22 yes to everything that comes through the door and they'll
23 make exceptions for -- so and so wants to build a hotel
24 here. It's not zoned for it, but they'll still go
25 through the whole hearing process and vote it down

1 anyway. So, yeah, I expressed concerns. And shortly
2 prior to that phone call I had with him, I spoke with
3 Bill Keck, one of my ag teachers who is on the school
4 board, and we had a long conversation about, you know,
5 different issues going on with the school board and that.
6 So, yeah, we had -- I think it was like a 17-minute
7 conversation that just in regard to, you know, just why
8 he wasn't going to sign the petition, which I understand.
9 I don't want to put anybody in a position that they're
10 comfortable with being a family friend or business
11 dealing. I'm not a pushy type at all, so we had a
12 conversation and went back and forth. It was fine. He
13 still currently is my insurance agent. I mean, I don't
14 think there's any ill feelings or anything there.

15 Q. And so to your knowledge no other
16 conversations occurred around this issue and -- no other
17 conversations occurred around this issue?

18 A. I didn't recall any. I went through my phone
19 records and e-mails and everything and that was -- this
20 was the only text I could come up with was just that
21 short blurb and he says he's going to stay clear of that
22 one and I said okay.

23 Q. All right. During your time of circulating
24 and working with the others, did -- did one of the topics
25 that's fair game was the taxes that this would raise, the

1 annexation would raise people's taxes?

2 A. I personally never brought anything up about
3 raising taxes. I -- we didn't instruct anybody to. All
4 the people that I had talked to that were circulating
5 were pretty clear that taxes weren't -- didn't have
6 anything to do with the annexation, you know, referendum
7 petition.

8 MR. INGRAM: Objection to the extent he's
9 referring to hearsay of what other people would
10 have told other people.

11 MS. CHASE: Sustained.

12 MR. EWALD: I have no further questions at
13 this time with right to re-call.

14 MS. CHASE: Cross-exam?

15 MR. INGRAM: Yes.

16 CROSS-EXAMINATION

17 BY MR. INGRAM:

18 Q. Mr. Axe, this is the second time you've
19 testified concerning this referendum, correct?

20 A. Yep.

21 Q. And I believe I heard you say you're a
22 resident of Paris Township?

23 A. Yes.

24 Q. And Paris Township is where the nine parcels
25 that are the subject of this annexation are located,

1 correct?

2 A. Correct.

3 Q. As a Paris Township resident, you don't vote
4 for Marysville city council members, do you?

5 A. Nope.

6 Q. Okay. And you were asked some questions
7 about Exhibit 9. I'll give you a moment to turn back to
8 that exhibit.

9 A. Uh-huh. Yep.

10 Q. When you get there, there's on the second
11 page of Exhibit 9 at the top of the page under Barbara
12 Phillips South Marysville, Jason Axe with a J is
13 depicted. That's you?

14 A. Yes.

15 Q. So is the text beneath the Jason Axe, is
16 that -- is that your words? Did you type that?

17 A. Yes. Taken slightly out of context. Was
18 replying to Leslie, who is Leslie Reams, who is Mark
19 Reams is the current president of council's wife made a
20 post saying that an angry mob of township residents are
21 going against city council -- I don't remember word for
22 word, but she was -- she was the one that called us an
23 angry mob. That's why I said this mob in quotes. And
24 she has since deleted it, so I was simply replying to her
25 text. And as I said, I believe there's like 60 or 70

1 posts, and you guys included one and a partial.

2 Q. Okay. The -- your post here, though, your
3 response, it's referring to this referendum?

4 A. This is referring to my feelings.

5 Q. I understand. But your feelings about this
6 referendum; is that correct?

7 A. This was about my feeling in the location of
8 the annexation. I guess I'm having trouble understanding
9 what you're getting at.

10 Q. Okay. When you referred to this development
11 does not fit the area --

12 A. That was --

13 Q. -- you're referring to the Stillwater Farms
14 development, correct?

15 A. I referred to it as a development because her
16 previous post she referred to as a development, so
17 keeping in line with responding to her post.

18 Q. I can appreciate that, Mr. Axe, but when you
19 say "this development," are you referring to the
20 Stillwater Farms development or are you referring to some
21 other development?

22 A. I was referring to the annexation, yes, the
23 property in that area. And I referred to it as a
24 development because that's how she called it out.

25 Q. Okay. And so I see the disconnect. I'm

1 saying Stillwater Farms development, you're saying
2 annexation.

3 A. Right.

4 Q. So in your mind the Stillwater Farms
5 development is the annexation, is that same thing?

6 A. That's how this city council commingled it
7 but I realize it is different.

8 Q. That wasn't my question. My question is,
9 your perception, you are -- when you are referring to
10 Stillwater Farms development, this development, you're
11 also treating it as the annexation, correct?

12 A. No.

13 Q. Okay. How is it different then?

14 A. Because the annexation has to take place
15 before a development can be done. You have to have the
16 zoning change -- they could do some sort of development
17 there. It would have to fit within the bounds of the
18 township guidelines, which is going to be a couple acre
19 lot, likely septic, a well. You're not going to have
20 near the density if it's not rezoned through an
21 annexation.

22 Q. Right. So, the development, the zoning, the
23 what gets built on the land --

24 A. Uh-huh.

25 Q. -- is a separate decision, fair?

1 A. Say that again.

2 Q. The what gets developed on the land, what
3 you're doing with it, the zoning, that's a different
4 decision than whether or not the land gets annexed into a
5 political subdivision or not. Fair?

6 MR. EWALD: I would object. The use of the
7 property is actually covered under annexation and
8 the city actually had to create a zoning buffer
9 because the use went from agriculture to PUD. So
10 what he's talking about is the use of the land
11 you're going to use to build homes. He's not
12 getting into all the intricate details of zoning.

13 MR. INGRAM: Objection to the speaking
14 objection, which is the exact same thing that
15 happened in the prior hearing. And that is all
16 argument, which is not even a correct or accurate
17 statement --

18 MR. EWALD: I was explaining the objection.

19 MR. INGRAM: -- under -- that can be --
20 counsel can make his arguments during his closing
21 statement. He doesn't need to argue through
22 objections to my questions to his witness.

23 MS. CHASE: What is your -- rephrase your
24 question. What is your question that you're asking
25 because I'm a little confused what you are asking

1 him.

2 MR. INGRAM: Sure.

3 BY MR. INGRAM:

4 Q. Mr. Axe, there is a disconnect here because
5 your words on Exhibit 9 refer to this development. This
6 development does not fit this area.

7 A. My words --

8 Q. When I asked -- let me finish, please.

9 A. Yes, sir.

10 Q. When I asked you about what it's referring
11 to, your answer was the annexation. The annexation. And
12 I asked you whether it was the Stillwater Farms
13 development or some other development, and your response
14 was it's about the annexation. And so I just want to
15 make sure that we're on the same page that when you're
16 referring to the annexation you're also referring to the
17 actual Stillwater Farms development. That's all.

18 A. I was referring to the annexation that is
19 being done for the Stillwater Farms, but it's not one in
20 the same to me.

21 Q. Okay.

22 A. Does that answer it? I'm sorry. I had
23 trouble understanding that one.

24 Q. I'll try to --

25 A. Dumb it down for me, if you could. That

1 would be great.

2 Q. Okay. And I notice your words here, you
3 refer to, quote, half ass road improvements.

4 A. (Nods head).

5 Q. Were you referring to infrastructure or road
6 improvements that the Highland Realty promised to make on
7 behalf of Marysville and the city taxpayers?

8 A. That -- that they promised to make assuming
9 that ODOT would approve them and warrant them.

10 Q. Okay.

11 A. So there's a lot of like, yeah, we'll do this
12 if they'll let us, and there's a lot of limited sight
13 issues in that area. Some of the people here live in
14 that area and can attest to that, so a left-turn lane at
15 33 -- or at 245 and Northwest Parkway, I would be willing
16 to bet money that would never be warranted because
17 there's a bridge embankment, so without moving that back
18 you can't see to see if there's any traffic coming if
19 there's somebody in that left turn lane to have a right
20 turn lane. There's issues and the process was kind of
21 rushed. And they even said in the meetings that they
22 were hoping that ODOT would approve some of the stuff,
23 but at the current level it's a level E and it has to be
24 level F to warrant change. They were hoping that they
25 could finagle traffic studies by doing them during a

1 busier time to get ODOT to approve some of the
2 recommended changes.

3 Q. Okay. So, with respect to this particular
4 referendum, fair to say you have opinions about in your
5 mind the traffic improvements associated with this
6 development. Fair?

7 A. That was me posting as myself, so, yes, I
8 have personal feelings with roadway improvements and
9 current traffic, and, I mean, everybody has opinions of
10 what's going on around them. But I wasn't --

11 Q. My question is your feelings with respect to
12 this referendum.

13 A. I mean, sir, are you saying was I speaking as
14 like the lead --

15 Q. I'll move on. You were also asked, Mr. Axe,
16 about Exhibit 8.

17 A. That dead horse?

18 Q. I'm sorry?

19 A. The article that we've already talked about
20 and that --

21 Q. Yes. You were asked about Exhibit Number 8,
22 the public notice --

23 A. Yep.

24 Q. -- that you participated in in drafting?

25 A. Uh-huh.

1 Q. That refers to this referendum, correct?

2 A. Uh-huh.

3 Q. And says that the city council annexed it so
4 over 600 dwellings can be built there, correct?

5 A. Uh-huh.

6 Q. I want you to turn to Exhibit Number 4. Let
7 me know when you're there.

8 A. (Indicating).

9 Q. Okay. Mr. Axe, Exhibit Number 4 is Ordinance
10 Number 55-2022. Have you seen this before?

11 A. Yes, fairly familiar with it.

12 Q. All right. And this is -- this is the
13 annexation ordinance, correct?

14 A. It is.

15 Q. Okay. Mr. Axe, I'll give you time to review
16 the entirety of this ordinance, but if you review this
17 from cover to cover, you're not going to find anywhere in
18 this ordinance that mentions or references 600 dwellings,
19 are you?

20 A. In the paper, no. In the meetings, they
21 commingled.

22 Q. That wasn't my question. My question was
23 this ordinance --

24 A. I answered that. I said no.

25 Q. Let me finish my answer -- or my question.

1 The actual ordinance, Ordinance 55-2022, the one being
2 put to referendum, nowhere in this ordinance does it
3 mention 600 dwellings, does it?

4 A. No, sir.

5 Q. And you also testified earlier about there
6 being I think you described it as written guidelines or
7 were they written guidelines or verbal guidelines?

8 A. Yes. There's guidelines through the Ohio
9 Revised Code.

10 Q. Did you provide anything in writing to the
11 circulators who were circulating this referendum
12 petition?

13 A. We had some meetings and we talked about what
14 to do and we had a list of guidelines that, like I said
15 before, included you had to have a driver -- or they had
16 to be a registered voter in the city of Marysville, they
17 had to -- you had to witness them sign it, it had to be
18 in pen, that they couldn't abbreviate, you know, road or
19 street or any of that, and they had to sign the way they
20 sign when they sign or print their name, however they do
21 it when they vote.

22 Q. Okay. Did you provide the circulators with
23 any summary of Ordinance Number 55-2022?

24 A. Yes, I believe so.

25 Q. Okay. Did you -- was it in writing?

1 A. Yeah. It would have been on the same piece
2 of paper.

3 Q. What paper are you referring to?

4 A. The one that was on the clipboards that we
5 gave out to the circulators.

6 Q. Okay. And you said you believed. Do you
7 know one way or the other what the summary said?

8 A. I don't recall word for word, no.

9 Q. Okay. You -- in connection with those
10 guidelines and terms that you discussed with the
11 circulators, you referenced that a map was included?

12 A. Uh-huh.

13 Q. And you said it was -- did it showed the --
14 the development from the presentation of the Stillwater
15 Farms?

16 A. Which section was that PowerPoint slide?

17 Q. Exhibit 5.

18 A. Five.

19 Q. And if you turn to the PowerPoint
20 presentation.

21 A. Do you know about how far back that is?

22 Q. Would it have been -- I think there is an
23 Exhibit E-2 for the development plan.

24 A. No, it was not. It was just a simple aerial
25 photo. Just kind of hard to tell on here, but they just

1 had the area just highlighted and the subject site
2 printed right off you guys' slideshow. It's hard to see
3 where it's black and white though.

4 Q. Okay. You're referring to Exhibit C of --
5 contained in Exhibit 5 which shows an aerial of the
6 Stillwater Farms residential subdivision, correct?

7 A. It shows the subject site for the property.

8 Q. Correct. But that's the Stillwater Farms
9 residential subdivision that was being proposed.

10 A. What? At the bottom of the page?

11 Q. The aerial depicted here on the map that
12 you're pointing us to.

13 A. Yeah. It highlights the area that was
14 under -- that was being annexed.

15 Q. Okay. And my simple question to you, though,
16 is this 196 acres concerned the Stillwater Farms
17 development, the actual subdivision, correct?

18 A. It was -- we used an aerial to show the
19 location to the city where the annexation is occurring.

20 Q. I'm not trying to ask you a trick question or
21 anything, Mr. Axe, but 196 acres being depicted here --

22 A. That is where they --

23 Q. -- is from the residential subdivision.

24 A. That is where they proposed the Stillwater
25 Farms subdivision, yes.

1 Q. It is about the development, correct?

2 A. The location -- we had it there for the
3 location so people would know where it's at.

4 Q. It does not list the 263 acres that was
5 actually subject to the annexation, correct?

6 A. Correct.

7 MR. INGRAM: I have no further questions at
8 this time.

9 MS. CHASE: Redirect?

10 MR. EWALD: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. EWALD:

13 Q. Mr. Axe, would you turn in the exhibit book
14 to Exhibit 4. As mentioned by opposing counsel that is
15 Ordinance 55.2022.

16 A. Uh-huh.

17 Q. 263 acres. Did you review -- you had
18 mentioned earlier that you were part of this group that
19 put forward the annexation. Did you -- in addition to
20 counsel, did you read the documents provided by the
21 county?

22 A. Uh-huh.

23 Q. All right. What is your understanding after
24 reading those documents that the process of the county
25 generally was?

1 A. So the process for them to begin the
2 annexation process?

3 Q. Yes.

4 A. From what I understood the county
5 commissioners here -- the property owners have to, you
6 know, wish to be annexed. The county commissioners have
7 a hearing, and then they approved it, and then it went on
8 to the city, and then the city had to decide whether or
9 not they wanted to annex it.

10 Q. And as part of that process, are you aware of
11 any documents that the city had to file regarding the
12 zoning?

13 A. They forgot a buffer zone and had to do a
14 resolution and re-add that in because it was the change
15 in the zoning from ag or farm use to a PUD.

16 Q. Did they call that a use, a use change?

17 A. I believe so.

18 Q. So the use of land was going from -- do you
19 recall what it was going from to?

20 A. Yeah. It was farm to PUD.

21 Q. Okay. And the wording in 56 that's been
22 mentioned here today is the intricate details of that
23 zoning change; is that correct?

24 A. Yes.

25 Q. Before you had mentioned that you had worked

1 with the other petitioners to put together the
2 instructions for the circulators.

3 A. Uh-huh.

4 Q. I'm assuming you followed those instructions
5 as well?

6 A. Correct.

7 Q. And generally, what was the advice provided
8 to the circulators when they would go out and talk to
9 people?

10 A. Just, I mean, we had the petitions with us,
11 and, you know, with the front page on the front, that way
12 they could read what it was they were signing. And we
13 would just knock on the door, and I would say 90 percent
14 of the people knew as soon as they saw the clipboard they
15 asked if that was about the referendum petition.

16 Q. Did you ever have anybody ask is this the
17 Stillwater Farms petition?

18 A. I don't recall. I don't remember on that.

19 Q. Okay. All right. And that was
20 approximately, what, December of last year?

21 A. Yeah. November, December.

22 Q. Okay. All right.

23 MR. EWALD: No further questions at this
24 time.

25 MR. INGRAM: Recross?

1 MS. CHASE: Recross.

2 RECROSS-EXAMINATION

3 BY MR. INGRAM:

4 Q. Mr. Axe, you only circulated two petitions,
5 correct?

6 A. Correct.

7 Q. When you're talking about 95 percent of the
8 folks that you discussed with when you're circulating the
9 petition, that was only in connection with two of the
10 petitions?

11 A. Yes. Sorry. I should have clarified. The
12 people I spoke with, I would say 90 to 95 percent of the
13 people knew what it was. I can't speak for others.

14 MR. INGRAM: No further questions.

15 MR. EWALD: Nothing further at this time.

16 MS. CHASE: Are you expecting to re-call this
17 witness. Keep in mind he has an appointment that
18 he has to --

19 MR. EWALD: Possibly, yes.

20 MS. CHASE: Can he go to the appointment?

21 MR. EWALD: If opposing counsel doesn't
22 object, I'm fine with that.

23 MR. INGRAM: I mean, this is the end of their
24 case. I don't see how he can re-call this witness
25 at all.

1 MS. CHASE: I apologize. I forgot the
2 board's questions. Sorry.

3 MR. LEE: I don't know care which one of the
4 counsel answers this question. Was this a regular
5 annexation or an expedited type two A?

6 MR. INGRAM: Board member Lee, this was an
7 expedited type two annexation.

8 MR. LEE: Okay.

9 MS. CHASE: Barbara, do you have questions?

10 MS. LUKE: Yes. Of the witness. Mr. Axe,
11 were you aware that there were circulators
12 approaching people and telling them that they
13 should sign the petitions to prevent their property
14 taxes from going up?

15 THE WITNESS: I've never heard -- was not
16 aware of that, no.

17 MS. LUKE: Now that you are aware, do you
18 agree with that approach?

19 THE WITNESS: I don't. And I wish I could
20 know who was accused of doing that.

21 MS. LUKE: That's all I have.

22 MR. STEELE: I would just mention to you,
23 when you get older and can't see as well use your
24 phone and blow up things. Because I don't care
25 about talking, I like to see stuff, so I use my

1 phone to blow up --

2 MR. EWALD: I have technology challenges.
3 Thank you. I'll figure that out.

4 MR. STEELE: I taught that in school, so --

5 MR. EWALD: Thank you.

6 MR. COOK: Jason, now what map were you using
7 again? I was kind of interested what he was
8 talking about.

9 THE WITNESS: So --

10 MR. COOK: And hold on here. Did you have a
11 map on each one of those clipboards as that they
12 were presented with --

13 THE WITNESS: We had clipboards packaged with
14 the petitions because it was on legal paper so we
15 didn't want people to print it out and have the
16 wrong size paper. So that can create issues. So,
17 yeah, we had clipboard. And the ones that I
18 distributed -- I didn't distribute all of them --
19 had a picture of a map. It was just an aerial
20 picture of the area, the west side of Marysville --

21 MR. COOK: Right.

22 THE WITNESS: -- that highlighted the area
23 whereabouts is being annexed.

24 MR. COOK: Gotcha. Do you have a copy of
25 that map by any chance?

1 THE WITNESS: I believe it was this one. I
2 don't have the clipboard with me.

3 MR. COOK: That one you were presenting?

4 THE WITNESS: I believe it was that one. I
5 would have to dig stuff up.

6 MR. COOK: Does that include the whole area?
7 It doesn't include --

8 THE WITNESS: That one doesn't. I don't
9 recall if it included the Irwin parcels or not.

10 MR. COOK: Okay.

11 MR. INGRAM: If I could follow up for
12 purposes of the record?

13 MS. CHASE: Yeah.

14 MR. INGRAM: I was -- the witness was
15 answering referring to Exhibit C, regional context
16 plan, that outlines 196.05 acres and labeled as
17 subject site in connection with its -- its location
18 to the city of Marysville, and at the bottom of the
19 map it says Stillwater Farms and Highland Real
20 Estate among other things.

21 MS. CHASE: Do you want to mark that as a
22 separate exhibit? That may reduce confusion for
23 everybody.

24 MR. COOK: And to follow up, each person with
25 the clipboard had that map, correct?

1 THE WITNESS: I don't -- the people that I
2 distributed packets to had an aerial map. I can't
3 contest a hundred percent it was that one. It was
4 of the same area. It's an aerial map. I don't
5 remember if it had anything about Highland on the
6 bottom of it or anything without going home and
7 seeing if I can dig one up.

8 MR. INGRAM: For purposes of the record, we
9 would mark it as Exhibit 18.

10 MR. EWALD: No objection.
11 (Protestor's Exhibit 18, aerial map, marked.)

12 MS. CHASE: Thank you. Okay. I think we are
13 through. We were talking about whether this --
14 this witness can be excused.

15 MR. EWALD: Yes.

16 MS. CHASE: All right. Any intention to call
17 him in your rebuttal case?

18 MR. INGRAM: No, ma'am.

19 MS. CHASE: So, Mr. Axe, thank you very much.
20 You can be excused.

21 THE WITNESS: Am I welcome to sit until I
22 need to leave?

23 MS. CHASE: If you're not being re-called.
24 Thank you.

25 THE WITNESS: Thank you.

1 MS. CHASE: Mr. Ewald, any other witnesses?

2 MR. EWALD: Yes. I would like to call

3 Mr. Bob Hammond.

4 MS. CHASE: Bob Hammond.

5 MS. KINNEY: I'll have you stay standing and
6 she'll give you the oath.

7 MS. CHASE: Sir, I apologize. What was your
8 name again?

9 THE WITNESS: Robert Hammond.

10 MS. CHASE: Thank you, sir. Raise your right
11 hand, please. Do you swear or affirm that the
12 evidence you shall give in this case now in this
13 hearing shall be the truth, the whole truth, and
14 nothing but the truth, as this you do as you answer
15 under God. If so, say I do.

16 THE WITNESS: I do.

17 MS. CHASE: Thank you, sir. Please have a
18 seat and make yourself comfortable.

19 ROBERT HAMMOND,

20 Having been first duly sworn, testifies as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. EWALD:

24 Q. Good afternoon, Mr. Hammond. How are you?

25 A. I'm doing okay.

1 Q. To your left there is a document and exhibit
2 book that's been put together by opposing counsel. If
3 you could open that to number -- number ten. Have you
4 seen this before?

5 A. Yes.

6 Q. Okay. Have you read through it?

7 A. Yes, I have.

8 Q. All right. Do you personally know Mary
9 Gorrell?

10 A. No, I do not other than meeting her.

11 Q. And how did you meet her?

12 A. I was I think correct term is soliciting a
13 petition for a referendum on an annexation, and she
14 happened to be one of the houses that I went to.

15 Q. Okay. And earlier Ms. Gorrell testified that
16 she met a woman and a man that came to her door. Were
17 you traveling that day with any other people?

18 A. I went to that neighbor with Doug Bressler
19 and we met at a doughnut shop. He got in my vehicle. We
20 drove to that area -- it's kind of a circular
21 neighborhood -- and we parked there and then we went
22 around that neighborhood. He was on one side and I was
23 on the other side so we could cover more ground, so to
24 speak.

25 Q. At any point did you two approach the house

1 together?

2 A. No.

3 Q. Okay. Looking at the exhibit that's attached
4 to that affidavit, final page, does that appear to be
5 your name under the circulator statement?

6 A. What page are we at? I'm sorry.

7 Q. Sorry. Go to the affidavit. Go past Exhibit
8 A, which is part of this exhibit and then you go to the
9 last page. It's a copy of the petition.

10 A. Oh, yes. Yeah, I see it now. Sorry. Yes,
11 that's my name, Robert W. Hammond III, and that's my
12 signature.

13 Q. So does that appear to be the petition that
14 you circulated and witnessed Ms. Gorrell sign that day?

15 A. Yes, that appears to be. That's that
16 neighborhood, Wagon Wheel Lane and Surrey Lane.

17 Q. Okay. At any point did you have any
18 discussion with her about taxes?

19 A. I don't believe so. I -- basically I had a
20 script that I would talk with people. I knock on the
21 door. If they answer the door, I would let them know
22 that I was circulating a petition for annexation, and I
23 would say a vast majority of the people had already heard
24 about that and they would either sign or not. There was
25 some people that hadn't and they would ask what did they

1 annex that for or whatnot. I would explain they wanted
2 to build homes there and I would let them know -- if they
3 were apprehensive I didn't try to convince anybody to
4 sign or not because we were -- I was having such a high
5 success rate when I contacted people.

6 Most -- you know, probably my guess would be
7 80 or 90 percent of the people would want to sign. So I
8 would just let them know if they had questions that by
9 signing the petition you weren't saying that you were for
10 or against the annexation, only that you wanted to be
11 able to vote on that at a later date and you would have
12 approximately ten months to decide and look into more,
13 you know, of the pros and cons if you were for or against
14 it, but if we didn't get the required amount of
15 signatures, that you may not get the opportunity to vote
16 on that in the fall. And that was basically my script.

17 Q. And when you say "script", how did you come
18 to finalize the script?

19 A. It was just basically what worked and it was
20 I kind of kept that in my head, and it seemed like it
21 was -- it was my thoughts on the issue and it was
22 something that people could understand quickly and
23 easily. And most people once it was explained that way
24 to them, you know, they decided that they would like to
25 be able to vote on it, and I think if the board allows it

1 to go to the people in November that, you know, it will
2 be 80 or 90 percent of them will vote a particular way on
3 that.

4 Q. Did the -- I'll call it a campaign or the
5 people running it, did they give you a packet or
6 clipboard? What did they provide you?

7 A. I had a packet, a clipboard, and it had the
8 initial approach on there. Basically to be very specific
9 that it was for the annexation and it wasn't for other
10 types of things, that that's what the packet was for.
11 And that's what -- if I believe it's -- I thought it was
12 on the original here -- on the actual petitions that was
13 on there it stated that it was for the city ordinance
14 whatever the number is. I don't remember what that
15 number was.

16 Q. So the individuals who provided you the
17 information provided a sample approach of how to gather
18 signatures?

19 A. Correct. They had a sample script.

20 MR. EWALD: Okay. All right. That's all for
21 right now.

22 MS. CHASE: Cross?

23 MR. INGRAM: Yes.

24 CROSS-EXAMINATION

25 BY MR. INGRAM:

1 Q. Good afternoon, Mr. Hammond.

2 A. Good afternoon.

3 Q. My name is Chris Ingram. I don't think we've
4 met before.

5 A. I don't think we have, no.

6 Q. I just have a few questions for you. First,
7 so you live at 21785 Boored Road?

8 A. That's correct.

9 Q. Is that in the city of Marysville or
10 township?

11 A. No. That is in Allen Township in Union
12 County.

13 Q. Okay. So Allen Township?

14 A. Yes.

15 Q. So you don't vote for any of the Marysville
16 city council members?

17 A. That's correct.

18 Q. You won't be able to vote on this referendum,
19 correct?

20 A. Unless I move, no.

21 Q. You circulated three petitions for this
22 referendum; is that accurate?

23 A. Everything I tell you would be as 100 percent
24 accurate as I recall, and I don't remember the numbers
25 but, yeah, that sounds about correct, yes.

1 Q. Okay. And you are under oath, so I do want
2 you to testify to the truth, please.

3 A. If I wasn't under oath I would testify
4 truthfully.

5 Q. All right. You testified earlier that you
6 were provided materials. I want to hand you --

7 MR. INGRAM: If I can approach the witness.

8 MS. CHASE: Sure.

9 BY MR. INGRAM:

10 Q. -- what we marked as Exhibit 18, which is a
11 map.

12 A. Is that in here also?

13 Q. It is not.

14 A. Oh.

15 Q. Was this document provided to you,
16 Mr. Hammond, by the petitioners?

17 A. There was a map that was in there that I
18 believe the petitioners got the map -- I don't know if it
19 was this one.

20 Q. Okay.

21 A. Got a map that was in there from the actual
22 developer when that was presented at city council. They
23 used that map that was on there I believe is where that
24 came from.

25 Q. I'll represent to you that that is -- that

1 map was presented by -- if you see at the bottom there,
2 by the developer to city council.

3 A. Oh, so --

4 Q. By your recollection, is that the map?

5 A. I don't recall exactly now, but there was a
6 map in there.

7 Q. Okay. Fair enough. And you were asked about
8 your interactions with Mr. and Mrs. Gorrell and you were
9 asked whether or not you referred to taxes at all.

10 A. (Nods head).

11 Q. Correct?

12 A. Correct.

13 Q. And your answer was I don't believe so?

14 A. To my recollection, no. I spoke -- as
15 you said, there were three pages. I don't know how much
16 were on each one. I had a lot of interactions and the
17 interaction with them didn't stand out any more or less
18 than any other ones. That wasn't something that I
19 brought up typically, you know, taxes. Some of the
20 people that I spoke with would bring up, you know, taxes
21 or traffic or different types of things, but that wasn't
22 something that was in the script that I would bring up.

23 Q. So, I understand that the taxes under your
24 testimony was not part of your script --

25 A. Correct.

1 Q. -- right? But the question's a little bit
2 different. The question is do you know for sure, is it
3 your sworn testimony that you never mentioned the word
4 taxes to Mr. or Mrs. Gorrell?

5 A. I don't recall mentioning taxes to them.

6 Q. You don't recall one way or the other, or is
7 your answer to that question no?

8 A. I don't recall --

9 Q. One way or the other?

10 A. Yeah, I don't recall mentioning.

11 Q. That's fair. And as part of your script, did
12 you ever talk about the number of homes that would be
13 part of this project?

14 A. That was not part of the script. That would
15 occasionally -- people may ask how many homes were --
16 because I would -- if they asked -- a lot of people want
17 to know why it was annexed, the ones that didn't, that
18 percentage, and they would ask, you know, what was going
19 on with the annexation. I would explain that they were
20 planning on building homes there. They may have asked
21 how many homes were they planning on building there and I
22 would say I believe the plans were like 660. So if that
23 ever came up I would say approximately 600 because I
24 didn't want to seem like I was overstating it. But --
25 I'm sorry -- that wasn't part of the script. And that

1 was something that I did know what the plans were. If it
2 was something I didn't know, I would let them know I
3 would say I don't know that. You'll have ten months to
4 find that out if you -- again, that the petition is only
5 to get this on the ballot; it was not a for or against.

6 Q. Okay. And in connection with your
7 discussions with electors in describing or answering
8 questions about the annexation, you were -- you discussed
9 the Stillwater Farms -- proposed Stillwater Farms
10 development, fair?

11 A. It was typically, yeah, the housing. It may
12 be that development, yes, that name -- that's what people
13 called it.

14 Q. Did you call it Stillwater Farms development?

15 A. No, not in regard to the petition. That was
16 strictly for the annexation. That may -- that term was
17 in common parlance at that point. Because I believe the
18 developer had actually even added that to the annexation
19 talks to city council. There were a lot of newspaper
20 articles about it, digital things on it and stuff. So,
21 did I answer your question?

22 Q. Yep.

23 MR. INGRAM: No further questions.

24 MS. CHASE: Redirect?

25 MR. EWALD: None.

1 MS. CHASE: Okay. Board, any questions from
2 the members?

3 MR. COOK: Did you use a map that was
4 presented to you? Did you guys have a map like --

5 THE WITNESS: Like this?

6 MR. COOK: Yes.

7 THE WITNESS: There was a map. Again, I
8 don't -- I can't swear that it was this one.

9 MR. COOK: Okay.

10 THE WITNESS: There was a map because
11 sometimes people -- you would tell them where it
12 was at on 245. Most people -- Marysville is not
13 that big. Most people would know approximately
14 where that was at. There were a few that didn't
15 and then, you know, you could show them the map --
16 on the map where that proposed -- where the
17 annexation was and proposed development was at.

18 MR. COOK: And who was with you at the time?

19 THE WITNESS: A gentleman named Doug Bressler
20 was. He was not -- when I say with, again, I'm
21 sorry but I realize this is a legal proceeding.
22 It's like what's with? Because we went together to
23 that neighborhood.

24 MR. COOK: Right.

25 THE WITNESS: But we were not with each

1 other.

2 MR. COOK: Okay.

3 THE WITNESS: We were on separate sides of
4 the street and went around. The closest proximity
5 we had to each other was somebody came out of their
6 house -- I had already gone by the house. I was a
7 few houses down, and a lady -- I believe it was a
8 lady came out of the house and was like, hey, are
9 you guys doing the things on the annexation? And
10 it was, like, yeah. She's like I want to sign
11 that. And she was chasing us down the road. I was
12 down a little bit farther. Doug came over on that
13 side because he was closer to her. So we had some
14 proximity there. And I think maybe he might have
15 got done on one part and went to the other side of
16 the road, but we didn't go to any houses with each
17 other.

18 MR. COOK: That's fair. Don and Mary said it
19 was a man and a woman, and I was just --

20 THE WITNESS: I've got long hair, but I had
21 facial hair. I had the facial hair then too.

22 MR. COOK: I can't remember what --

23 MR. STEELE: Did you bring up the idea of
24 taxes with anybody or did anybody bring up the idea
25 of taxes with you?

1 THE WITNESS: A lot of people would bring up
2 that idea. That idea was -- even the city council
3 that was -- one of the city council members had
4 spoke. It was after the fact, but had spoke at one
5 of the Avalon meetings, a lot of people's concerns,
6 what they would bring up would be taxes and traffic
7 and school capacity and that type of stuff, but
8 that wasn't something -- not to be rude, but I
9 didn't want to have long conversations with people
10 and I didn't want to commiserate with the people
11 and whatnot. I wanted to, you know, get the
12 signatures and go on to the next house. Because we
13 were having such a high success rate with that, I
14 didn't need to convince anybody to sign it, nor did
15 I want to convince anybody to sign it. I'm at
16 their home and I don't want to make somebody feel
17 uncomfortable, you know. If I'm -- I don't want to
18 debate somebody. If some stranger shows up at the
19 house and debate them on anything -- I don't want
20 to do that at all. If they didn't want to sign or
21 if -- I would move on to the next house. So, but
22 to answer your question, yes, people brought up a
23 bunch of different issues, but I -- I didn't really
24 want to have a discussion with them. I wanted to
25 go to the next house and get another signature.

1 MR. STEELE: How did you respond when they
2 brought up the idea of taxes?

3 THE WITNESS: I would say that would be a
4 concern that a lot of citizens have.

5 MR. STEELE: (Nods head).

6 MS. CHASE: Anything else?

7 MR. LEE: Yeah. What spurred you to be
8 involved in this? You're not in the city, so why
9 are you being active inside the city, I guess?

10 THE WITNESS: A good friend of mine asked me,
11 you know, if I wanted to help, you know, circulate
12 petitions. And up until this point I thought kind
13 of how you presented that, but even on the outside
14 of the corporate limits, Marysville is my city. I
15 grew up in Marysville. I went to high school in
16 Marysville. I moved out here when I was like in --
17 I guess my parents moved here and drug me along
18 when I was in third grade. But I actually had
19 William Steele as my teacher I believe in eighth
20 grade, so --

21 MR. STEELE: And coached little league. I
22 remember.

23 THE WITNESS: So Marysville is my town. So
24 the things that go on in it affect me. And the
25 main thing is, you know, a friend of mine asked me

1 to help and that friend had helped me do a lot of
2 things in the past and stuff, so I thought I would
3 help them out.

4 MR. LEE: Okay. Thank you.

5 MS. CHASE: Any other questions from the
6 board members?

7 MR. COOK: Nope.

8 MS. CHASE: Anyone expect to re-call this
9 witness or is Mr. Hammond excused?

10 MR. EWALD: Excused.

11 MR. INGRAM: The protester does not.

12 MS. CHASE: Thank you, Mr. Hammond, for your
13 testimony today. You're free to leave. Any other
14 witnesses?

15 MR. EWALD: No.

16 MS. CHASE: All right. I think the only
17 other issue we have outstanding I don't believe
18 there was any objections to the Exhibit 18 by the
19 protestors, correct?

20 MR. EWALD: What is the purpose for which it
21 is submitted? As a map the protestors -- I'm
22 sorry, the petitioners circulated or just that it
23 was included in the packet?

24 MS. CHASE: I don't think it's either but I
25 could be wrong. I think it's a reasonable

1 facsimile to the map that was included. I don't
2 think anybody testified that that was exactly the
3 map. Is that my -- is my recollection correct?

4 MR. INGRAM: Well, we can always refer back
5 to the actual testimony, but my recollection was
6 that no one could remember for sure one way or
7 another but that looked to be the one. They just
8 couldn't say with 100 percent certainty.

9 MS. CHASE: I think the only thing it
10 represents -- and correct me if I'm wrong, Attorney
11 Abdallah and Ingram -- it is simply a
12 representation. I understand there's a discrepancy
13 between the amount of land that was with the
14 annexation of 263 acres versus 191 acres which was
15 part of the rezoning, correct?

16 MR. INGRAM: From the protestor's perspective
17 it's a little bit different than that, Ms. Chase.
18 And that is as an evidentiary matter, the map
19 was -- witnesses testified as to their recollection
20 with respect to that map, and as far as the weight
21 of what the testimony concerns is for the board to
22 decide during the deliberations.

23 MS. CHASE: Okay.

24 MR. INGRAM: So with that, protestor does
25 move Exhibit 18 into evidence and it's absolutely

1 appropriate for it to be considered.

2 MR. EWALD: If it's not moving in as what
3 they actually carried around and showed to people
4 we don't object to it.

5 MS. CHASE: Okay. Any objection to the board
6 that this is not the map that the referendum, the
7 circulators carried?

8 MR. LEE: No.

9 (Protestor's Exhibit 18 admitted.)

10 MS. CHASE: All right. Thank you. So 18
11 comes in. That leaves us with nine. Let's hear
12 arguments about admissibility on nine. You already
13 have -- is there anything additional you want to
14 add?

15 MR. EWALD: There is not. Again, this is
16 partial snippets and I would not oppose the full
17 text if it was supplied.

18 MS. CHASE: Any additional arguments on nine?

19 MR. INGRAM: The same arguments I previously
20 made. Stand by those arguments.

21 MS. CHASE: Board want to make a decision
22 with respect to Exhibit 9?

23 MR. COOK: Do you have a motion to accept or
24 decline Number 9?

25 MS. LUKE: I would make a motion to accept

1 Exhibit 9 for what it's worth. It's incomplete.
2 Mr. Axe was here. He could have provided the
3 entirety of what he stated if he stated anything
4 more, but this is what we have, so I would make a
5 motion to accept it and give it whatever weight is
6 appropriate.

7 MR. COOK: Do I have a second?

8 MR. LEE: Second.

9 MS. CHASE: All in favor?

10 (All members say aye.)

11 MR. COOK: Board, yes.

12 (Protestor's Exhibit 9 admitted.)

13 MS. CHASE: All right. I believe that -- did
14 you want to discuss the PowerPoint presentation?
15 You're going to -- you want to play this during
16 closing argument?

17 MR. INGRAM: Correct.

18 MS. CHASE: Is there objections to anything
19 in the PowerPoint? I know two of the things you
20 objected to are in the PowerPoint presentation.

21 MR. EWALD: We don't object to that. Just
22 renew my objection to the two exhibits.

23 MS. CHASE: Thank you. Counsel, the board
24 would like to continue and do closing argument. Is
25 there any objection from either side about that?

1 MR. EWALD: No.

2 MS. CHASE: All right. Let's proceed to
3 closing argument, then, starting with the
4 protestors.

5 MR. INGRAM: Thank you. I'll -- I would ask
6 a technology question whether it's going to --

7 MR. CLAY: I'll put it up.

8 MR. INGRAM: Members of the board. Thank you
9 very much for your time and for your consideration.
10 Thank you to the folks that attended today's
11 hearing. I'm just going to briefly summarize the
12 evidence that we heard today and the applicable
13 law, and as a result of, you know, the proper
14 application of Ohio election law and this board's
15 duty, this board should decertify this petition
16 from being considered on the ballot.

17 Next slide, please. And I -- I understand
18 there's a technology issue. I'm speaking from a
19 PowerPoint presentation. It is viewable at the
20 back of the room? If you can't see that far, which
21 I don't know many who can, we did provide you all
22 in your binders a hardcopy printout. And so I want
23 to first start with the genesis of this referendum.
24 First and foremost, Marysville -- Marysville's
25 charter expressly limits --

1 MS. KINNEY: I'm sorry to interrupt.
2 Everyone wants to know if I can release the
3 witnesses?

4 MS. CHASE: Release the witnesses?

5 MR. EWALD: Yes.

6 MS. KINNEY: Thank you.

7 MR. INGRAM: Marysville's city charter
8 expressly limits the city's referendum power. The
9 petition before this board is a proposed referendum
10 of a Marysville municipal ordinance and that
11 city's -- citizens have passed a charter that
12 expressly states that the electors reserve to
13 themselves the powers of referendum to the extent
14 permitted and the procedure provided by Ohio law
15 and the Ohio Constitution; and, therefore, any
16 referendum concerning a municipal ordinance within
17 the city of Marysville must comply with the Ohio
18 election law and Ohio's election procedures, which
19 is within this board's expertise and domain.

20 And under Ohio election law, as this board is
21 familiar with a prior protest, the Supreme Court of
22 Ohio has repeatedly emphasized that a referendum
23 must fairly and accurately present the issue to be
24 decided to ensure that a free, intelligent, and
25 informed decision can be made by the electorate.

1 And that's from the *Donaldson* decision, two years
2 ago.

3 If I could move to the next slide. This
4 board's also distinctly aware that strict
5 compliance with Ohio election law is required. The
6 settled rule is that election laws are mandatory
7 and require strict compliance such that substantial
8 compliance is acceptable only where it's provided.
9 So time and again, we're -- we lawyers are before
10 this board with these types of petitions, and the
11 reality is the power of referendum if the citizens
12 are going to take it upon themselves to try to
13 overturn a decision by the elected representatives
14 of that -- that city council -- of that city,
15 they've got to follow the rules. They've got to
16 strictly comply with the rules, and in this case
17 they have to fairly and accurately characterize the
18 measure that is being put to the ballot and put to
19 the electorate.

20 Next slide. Page four. And, in fact, the
21 Ohio Revised Code expressly prohibits misleading
22 referendum efforts. As set forth in Revised Code
23 731.36(A), no person shall directly or note here
24 indirectly willfully misrepresent the contents of
25 any referendum petition. Now, I would also point

1 out that from this board's experience,
2 annexation -- annexation referendums on an
3 annexation petition form is different under your
4 proceedings. There is also a rezoning referendum
5 form, which is entirely different, and when you
6 contest or seek to put a zoning ordinance or a
7 zoning decision up for referendum, you have to
8 fairly characterize that rezoning. You've got to
9 talk about the good and you've got to -- if you
10 want to talk about your concerns, you've got to
11 talk about the public benefits. That was not done
12 here.

13 Next slide, page five. Because ultimately
14 the bottom line issue here under Ohio election law
15 is that if the petitioner's efforts don't strictly
16 comply and directly or indirectly mislead the
17 electorate, it's invalid. It shouldn't go to the
18 ballot. So, for example, in the *Jacquemin* decision
19 that came through this Board of Elections the
20 Supreme Court of Ohio agreed that efforts to poison
21 would-be signers by referencing a sore spot to the
22 community was misleading. The electors in that
23 case were led to infer that the petition addressed
24 a different contention than just zoning change that
25 was already approved.

1 That's exactly what happened here. These
2 circulators, these petitioners, their concern is
3 with the Stillwater Farms development. The
4 rezoning is a totally different ordinance that was
5 passed through 56-2022 than the one that is being
6 actually put on the ballot. That's misleading.
7 That's Jacquemin Farms all over again. The
8 evidence on this point is clear and, in fact, we've
9 heard during -- even respondent's counsel they're
10 very different issues. They're separate issues,
11 the rezoning versus annexation, but yet only the
12 annexation ordinance is the ordinance that was
13 circulated upon even though they wanted to talk
14 about the rezoning.

15 So next slide. That's one of the several
16 reasons why this referendum is invalid and
17 misleading. The petition circulators wanted to
18 talk about the 600 homes, the taxes. Taxes came
19 up. We have sworn testimony from -- from witnesses
20 or electors that signed the petition they were told
21 it will increase their taxes, and this circulator
22 said he couldn't remember whether or not one way or
23 another what he said but he also said that taxes
24 came up. Did you not -- did he tell the folks that
25 this -- annexing the land doesn't have a direct

1 implication on one's taxes? No.

2 That's because what they were talking about
3 was the Stillwater Farms development. The zoning.
4 Because the reality is, the simple truth is, when
5 you look at the annexation ordinance, it doesn't
6 approve any development at all. It's the who. Who
7 controls the zoning decisions on that land? That's
8 the ordinance that's being put to referendum. But
9 what the petitioners are taking issue with, what
10 the petitioners circulate this petition with is the
11 what. The what goes on the land. The Stillwater
12 Farms residential subdivision.

13 Curiously, we've heard several circulators,
14 none of whom are in this city, none of whom will
15 have the ability to vote on this petition, but, oh,
16 by the way, guess what, if this annexation is
17 denied, guess who gets to control what goes on that
18 land? Paris Township. Not Marysville city
19 council. Not the people in the city of Marysville.
20 To the extent you want to take issue with what goes
21 on the property, this -- the city electors will
22 lose their vote, will lose the ability to have any
23 decision making on what goes on this land if it
24 doesn't get annexed into Marysville. It will be
25 left to the township.

1 No one was informing or telling the electors
2 that if they agreed with this they're actually
3 going to lose their right to control what goes on
4 or have a say what goes on to that property. If
5 they had an issue with what goes on that property,
6 they should have and they're required to circulate
7 a zoning referendum petition which would describe
8 the actual zoning and the project.

9 Next slide, please. So when you look at the
10 face of the petition, the only issue that is
11 being -- that technically is subject to referendum
12 is Ordinance Number 55-2022, and as -- at the time
13 the city council president who reached and
14 considered and approved that ordinance it's pretty
15 straightforward. There's three sections to it. We
16 talked about it. We still maintain it was merely a
17 ministerial or administrative decision, but
18 regardless no development was approved through this
19 three-paragraph ordinance. The only thing city
20 council did, if you look at Section 1, was accept
21 the annexation that was approved by the county
22 commissioners. The second paragraph just directs
23 the clerk of the city council to make copies and
24 send those copies to certain county and state
25 offices. That's it. There's nothing in this

1 ordinance about 600 homes or what goes on the land.
2 And you'll recall Marysville city manager Terry
3 Emery also testified in the last hearing that the
4 Stillwater development is not the subject of this
5 annexation ordinance at all.

6 Next slide. And so it's clear there were two
7 separate ordinances. They were -- when they
8 were -- when they were considered and approved in
9 that November meeting they were deliberated upon
10 separately and they do very different things. The
11 annexation ordinance merely accepted it. There
12 were nine -- there were nine parcels of land in the
13 annexation ordinance, and the annexation ordinance
14 does not confer any development rights whatsoever.

15 Meanwhile, Ordinance Number 56-2022, that's
16 the ordinance that actually approved the rezoning
17 and rezoned the land from agricultural use to a
18 planned residential development, and that consisted
19 of seven parcels of land. And for what it's worth,
20 I realize I have a typo in my slide. With respect
21 to the number of parcels of land I switched them.
22 Sorry. And the important thing, though, is the
23 rezoning Ordinance Number 56-2022, that ordinance
24 is the ordinance that confers the development
25 rights for the land planned unit development. That

1 ordinance is the one that pertains to the number of
2 residents that are moving in, traffic concerns, the
3 school concerns, the tax concerns, all the benefits
4 that Highland Realty would be bringing to the city
5 of Marysville, the million dollars in income taxes
6 for Marysville taxpayers. That all arises from
7 Ordinance 56-2022, and that's what the focus of
8 this referendum is really on and that's why it's
9 misleading.

10 Next slide. And you notice the map that
11 was -- that was presented to the circulators.
12 They -- they chose and circulated a map from the
13 Stillwater Farms development. There's a plat that
14 was part of the annexation. The plat depicted the
15 nine parcels that are to be annexed. They could
16 have circulated just the mere plat that depicted
17 all nine parcels. They didn't do so. They didn't
18 do so at all. Instead they circulated a map that
19 pertained to the development.

20 Next slide. It's clear that whether it's
21 Mr. Axe or really any of the referendum proponents,
22 their concerns have pertained to the development:
23 The number of people, the growth. Not the
24 utilization of the land itself. I would also call
25 to the board on page 86 of last hearing transcript,

1 circulator Erin Higinbotham testified -- a township
2 resident -- it's very clear that he supported the
3 referendum because I don't think it's well thought
4 out. I currently don't think it's the best fit for
5 the area as currently presented. It needs changes
6 to be more in suit with the topography. Currently
7 it's incompatible with the neighboring properties.

8 Mr. Higinbotham's entire issue, just like
9 everyone else's who are proposing this referendum
10 concerns the development. They're not talking
11 about where Marysville's border begins and ends.
12 They're not talking about whether or not it is the
13 township trustees who get to decide what goes on
14 this land or Marysville City Council.

15 Next slide. Instead they're focusing on the
16 600 dwellings. Next slide. As I said, the board
17 should -- should and must require strict compliance
18 with Ohio election law, Ohio election procedures.
19 If these petitioners took issue with the rezoning
20 and the Stillwater Farms development, they could
21 have and should have circulated a zoning referendum
22 petition. They chose not to do so. And based on
23 everything that they presented to the electors and
24 the electorate, it did not fairly or accurately
25 present this issue to the voters such that a voter

1 could not make a free, intelligent, and informed
2 decision; therefore, this board must require strict
3 compliance with those requirements, sustain the
4 protest and invalidate the petitions because at
5 issue the petitioners and circulators have poisoned
6 the Marysville electors that this referendum is
7 about the sore spot in the community. That is
8 simply not the subject of Ordinance 55-2022. Thank
9 you.

10 MS. CHASE: Thank you, Attorney Ingram.
11 Respondent closing argument.

12 MR. EWALD: Thank you. I have to agree with
13 my cocounsel -- my opposing counsel over here.
14 This issue is a sore spot in the community. The
15 beginning of this occurred when city council made a
16 decision that they wanted to develop large tracts
17 of land. And it's really that simple. They --
18 they have a belief that if you're not growing,
19 you're dying, and that -- that's not something just
20 isolated in Marysville. It's other places.
21 Because you have to continually try to chase income
22 tax because that's the lifeblood of a municipality.
23 Income tax. Not property tax. So, in order to do
24 that, they allow for those things and they allow
25 tax exemptions, they allow tiffs to capture more

1 money on the value, to increase of land, things of
2 that nature.

3 What is clear in this case the petition on
4 its face is valid. What we've heard is collateral
5 attacks on the petition. The petition is actually
6 a form off of the Secretary of State that you fill
7 in the information as provided by the city. So the
8 form itself hasn't been attacked. The text of the
9 title of the resolution to accept the annexation of
10 certain territory containing 263.25 acres in Paris
11 Township to Union County to the city of Marysville.
12 That's not been attacked. Nothing on the face of
13 the petition has been attacked. It's valid. The
14 thought is what I said in the beginning: He
15 said/she said.

16 We have conflicting testimony today. And I'm
17 more than happy to go through it. So first of all,
18 what's the standard. 731.36 requires intentional
19 or willful activity on behalf -- I mean, it's been
20 provided in the thing. I can actually read the
21 standards to you. No person shall directly or
22 indirectly willfully -- which is intentional --
23 misrepresent the content of any initiative or
24 referendum petition. We have conflicting accounts
25 of what occurred during this, but not nearly the

1 breathe of the 44 circulators.

2 We had a couple. And of those couple you
3 have two really nice residents in the community who
4 swore that multiple people were at their house and
5 they signed the document that was provided today,
6 the petition, and that circulator swore under oath
7 I was by myself and my buddy was across the street.
8 Because -- that's typical in campaigning. You have
9 one person this side, one person this side, and
10 you're trying to get along as quick as you can.
11 The last thing you want to do, according to
12 testimony, is get into a debate because everybody
13 is willing to sign this thing based on the
14 testimony presented here today. So you have that.

15 The question is was there any intentional
16 misleading. I don't think so. You have residents
17 who are not legal scholars. There's an education
18 gap in the community. I'll be the first one to
19 admit, I don't know anything about everything.
20 According to the phone Mr. Steele told me about
21 earlier, I haven't done that. I don't know. I'm
22 not the brightest bulb in the shed, but at the end
23 of the day you're dealing with residents who are
24 doing their best to go out.

25 I understand the strict compliance. The

1 strict compliance is the form that's been provided
2 by the Secretary of State to make sure when a
3 person reads it, don't just believe what people
4 tell you. Read the form. What are you actually
5 doing? And here's the other thing. Part of the
6 county process is what are you changing the use
7 from? You're going from farm, essentially open
8 land, to PUD. And the PUD is building homes. Does
9 anybody really in here believe that the developer
10 would be in here trying to aggregate a neighbor's
11 land for no purpose? No.

12 We heard testimony there's potentially
13 utility lines going across this. And you also have
14 the aggregate of requiring that contiguous nature
15 to the city in order to get the annexation. So
16 those parcels served their purpose by being
17 adjacent and creating enough aggregate land to
18 actually come into the city. They were integral to
19 that development. Even though you may not be
20 building on it, they were part of it. That's why
21 they needed the annexation with those -- the 263.25
22 acres because they had to meet certain requirements
23 to aggregate in or to annex in.

24 During the process under Resolution 22-2006,
25 I believe that was the second resolution from the

1 city, under one of the warehouses, it actually
2 says: The city of Marysville has approved
3 submitted resolution 09-2022 on June 6 of 2022
4 which resolution addresses potential zoning buffer.
5 You cannot completely divest yourself of the zoning
6 apparatus from the annexation because they're going
7 to know what use are you doing with the land.
8 We're going to build homes. And most people if you
9 go to their house, are they going -- are they not
10 going to ask what's an annexation? What are they
11 trying to do? They're trying to build homes.
12 They're not trying to aggregate vacant land to sit.
13 They're going to build a development.

14 So at the end of the day, people will throw
15 the word development around. They're talking
16 about -- they don't have the technical expertise
17 for the most part to differentiate between a
18 development and this thing that's happening over
19 here. A lot of people will use generically the
20 term development, and it's a very broad term. What
21 does it mean? Does it mean the visual of the
22 layout of the homes? Does it mean the aerial of
23 what the area is? I mean, what does it mean? We
24 haven't heard any kind of description that counters
25 what has been put forth on the petition. Again,

1 the petition is valid on its face.

2 We've had some testimony that different
3 things were said, but we have conflicting
4 testimony. In addition to that, when the public
5 attends a hearing -- a meeting and then city
6 council allowed for deferment to a developer to
7 present information under the annexation category,
8 it now becomes part of the discussion. And we
9 don't know who was in the room. There were
10 residents there. They talk to people. A press
11 report. All these people. All the sudden now it's
12 out there in the ether, which is why circulators,
13 based on testimony, went to these homes. They
14 already knew what they were there for. They go,
15 oh, the Stillwater Farms thing, which was what was
16 discussed during the annexation hearing.

17 So, this general information that is in the
18 community does not mean the well is poisoned; it
19 means that some of the information from these
20 meetings is filtering out through whether it's the
21 press or open meetings to the public to have these
22 discussions. And so it's not the circulator's
23 responsibility, quite honestly. They are there to
24 get signatures. They're not there to educate
25 people. And I know that's a sad fact. They should

1 take the time, they should talk to them, but the
2 law doesn't require that. They require you to
3 present a form with the appropriate information in
4 a legal format that's substantially compliant --
5 actually strictly compliant -- with the Ohio law
6 which is provided by the Secretary of State. And
7 they did that. And there's no evidence of the
8 contrary to that.

9 The map that we referred to earlier is the
10 map that they used. There's been no evidence of
11 what map was used. All we know is it is an aerial
12 photo that involved the area. As far as a free and
13 intelligent society, I know I'm going to get kicked
14 for this later, but we as voters have to take a
15 higher responsibility to educate ourselves. We
16 always complain about the politicians. We always
17 complain, oh, you know, they're doing all this
18 stuff. We don't know that. They probably have
19 access to more information than we do and maybe we
20 should take time to go to the meetings and learn
21 what we're trying to discuss.

22 Again, I mean, there's no evidence in this
23 case that the form is invalid. There's conflicting
24 testimony whether or not one person showed up or
25 two people showed up. It was a while ago.

1 People's memories fade. And, you know, here's
2 where we're at. We have a valid petition that is
3 going to the ballot right now for the people to
4 make an informed decision on, and what opposing
5 counsel has asked you to do is take that away.
6 They're certainly welcome to take the money that
7 they're spending on legal fees and put into a
8 campaign and oppose this thing. They have that
9 right, just like anybody else whether you live in
10 the city or not. You can actually go and campaign
11 against this thing. But yet we're -- we're being
12 asked today to allow for it to be stripped from the
13 voters so they don't have a choice. Thank you for
14 your time.

15 MS. CHASE: Thank you. Rebuttal.

16 MR. INGRAM: Thank you. Just briefly.
17 Respondent's counsel said a couple things. One
18 thing that I circled was circulators are, quote,
19 there to get signatures. Their job is to get
20 signatures. Not to explain the issue being put on
21 the referendum? That's not true. Their job is to
22 fairly and accurately describe the contents of the
23 measure being put to referendum because they're the
24 ones that are seeking to overturn the legislative
25 approval of the elected officials in that city. So

1 what that means is they do have the duty, they do
2 have the obligation, to neither directly or
3 indirectly mislead these electors about the content
4 of what's being put to referendum.

5 And we've heard several instances where
6 they're talking about the development and they're
7 not talking about the annexation, and there's --
8 there's -- no one can recall what specific map or
9 what the document was. Okay. But you know what
10 they all agreed with? It was a map from the
11 Stillwater Farms developer in connection with that
12 development presentation. Interestingly, when you
13 go back in your deliberations, if you look at the
14 ordinance that they're putting to referendum,
15 Ordinance Number 55-2022, tab four, I encourage you
16 to flip to the last page. You know what? There's
17 a plat. That ordinance contained a plat with all
18 nine parcels that is the subject of this
19 annexation. It would have been very easy and
20 accurate to circulate this map to talk about this
21 map, but they intentionally chose to circulate a
22 different one, one about the development. The
23 other thing as a land use attorney and property
24 rights attorney, under *Norwood V Horney*, the
25 Supreme Court of Ohio held that private property

1 rights in Ohio are sacrosanct. They're inviolate.
2 We take in Ohio private property rights very
3 seriously. One of those inviolate property rights
4 concern the free alienation of one's property.
5 That is, the right to choose who governs your land.
6 And that's what this annexation is about.

7 This is an administrative expedited type two
8 annexation where all the landowners have consented
9 and chose to have the Marysville city council
10 govern their land. The township residents have
11 circulated a petition to challenge that election.
12 The township residents, seems to me, they want to
13 have a say. That's what they annexation is really
14 about. It's about the who. Who gets to make the
15 call on what goes on this ground. Because you look
16 at all the evidence what electors were told about
17 and described how this, quote, annexation had been
18 characterized has been about the what. What goes
19 on that land. What are the consequences of what
20 goes on that land. And if you want to challenge
21 the what, you should have circulated a zoning
22 referendum petition and fairly characterized it.
23 They didn't. And it's this board's duty to
24 strictly apply Ohio's election law and procedures,
25 and for that reason this issue must be decertified

1 from the ballot. We thank you for your time and
2 attention and happy to answer any questions.

3 MS. CHASE: Does the board have any questions
4 for the attorneys? All right. We'll consider the
5 case submitted at this point. Dean.

6 MR. COOK: What would be a reasonable title
7 for going into executive session?

8 MR. GRAY: To deliberate.

9 MR. COOK: I need a motion for the board to
10 go into executive session to deliberate.

11 MR. LEE: I so move, Mr. Chairman.

12 MR. COOK: Do I have a second?

13 MS. LUKE: I second.

14 MR. COOK: I need a roll call vote on that.
15 Mr. Lee?

16 MR. LEE: Yes.

17 MR. COOK: Mr. Cook, yes. Mr. Steele?

18 MR. STEELE: Yes.

19 MR. COOK: Ms. Luke?

20 MS. LUKE: Yes.

21 MR. COOK: We'll be back shortly. I hope.

22 (Board went in to executive session and began
23 deliberations at 12:56 p.m.)

24 (Back on the record at 1:47 p.m.)

25 MR. COOK: Everybody ready? I would like a

1 motion to come out of the executive session.

2 MR. STEELE: I would make a motion to return
3 from executive session.

4 MR. LEE: Second.

5 MR. COOK: I have a second. Roll call vote.
6 Mr. Lee?

7 MR. LEE: Yes.

8 MR. COOK: Mr. Cook, yes. Mr. Steele?

9 MR. STEELE: Yes.

10 MR. COOK: Ms. Luke?

11 MS. LUKE: Yes.

12 MR. COOK: Okay. Thanks, everybody, for
13 participating today. I'm going to start off with
14 Mr. Steele here. He's going to -- he's the lucky
15 one today that gets to start out.

16 MR. STEELE: I'm so lucky.

17 MR. COOK: He's going to read -- similar to
18 what we did last time on how this vote will go.

19 MR. STEELE: All right. I would like to make
20 the motion that the referendum should remain on the
21 November ballot and the protestors be denied.

22 MR. COOK: So our vote will either be allow
23 or disallow on the vote, correct?

24 MR. STEELE: Well, affirmative would be it
25 stays on the ballot.

1 MR. COOK: So allow or disallow.

2 MR. STEELE: Yes.

3 MS. LUKE: I'll second. I'll second the
4 motion.

5 MR. COOK: Okay. To allow it to stay on the
6 ballot. Okay. Mr. Lee?

7 MR. STEELE: Any discussion?

8 MR. COOK: Yeah. Oh, wait a minute here.
9 Let's have some discussion here. Let's start over.
10 Mr. Steele, go ahead and give us your reasons why
11 you voted to allow it to stay on the --

12 MR. STEELE: Well, as I've said in the past
13 and I'll probably say in the future as long as I
14 don't drop over in a few minutes is that I believe
15 in citizen democracy and we've not grown to the
16 point that -- at this point in time where citizens
17 can't have a say. We're not ancient Greece, but at
18 the same time we're not Los Angeles. So I just
19 think citizens voting on issues is an important
20 thing.

21 MR. COOK: That's good. And so your motion
22 was to allow it to stay on the ballot, correct?

23 MR. STEELE: Allow the referendum to be voted
24 on, yes.

25 MR. COOK: Ms. Luke.

1 MS. LUKE: I'll second the motion. I do find
2 that there were misleading statements and that they
3 probably had an impact; however, I can't find any
4 authority in the law to allow us to decertify on
5 that basis, and so I -- I feel we don't have a
6 choice except to allow the referendum to stay on
7 the ballot.

8 MR. COOK: So we -- okay. Mr. Lee, you're up
9 next. Do you want to give us a little speech?

10 MR. LEE: No. I might give you a few
11 thoughts, but not a speech. You know, I -- I agree
12 with what Barbara said. And to take into account
13 with Mr. Steele said, I do not disagree with that,
14 but I'm also a strong property rights advocate, and
15 I -- you know, I -- I didn't hear anything today
16 that would change my vote from a few months ago, so
17 I'm not -- my vote will be no.

18 MR. COOK: So you will keep it on the ballot,
19 so allow it?

20 MR. LEE: No. Remove it.

21 MR. COOK: Remove it from the ballot. Okay.

22 MR. LEE: Opposite of Bill.

23 MR. COOK: Okay. And I agree, too, with
24 Mr. Steele. Of course, I never knew how jurors
25 have such rough times in their lives, but now I

1 know how it is. I agree with Ms. Luke also. You
2 know, there was some things in there that I didn't
3 agree with, and, you know, I -- I understand that I
4 like growth. I like controlled growth. I'm like
5 Mr. Lee. I agree with property rights. We have
6 9,000 jobs in Union County that really has nothing
7 to do with what this hearing was. I'm voting as a
8 board member of the Union County Board of
9 Elections. The map just completely set me aside
10 myself because I was a member of the board in the
11 Jacquemin case and the Jacquemin case got taken to
12 the Supreme Court and I got overruled on that, and
13 it was Mr. Steele's fault. I'll blame him.

14 MR. STEELE: Everything is.

15 MR. COOK: The map said 190 on the acreage
16 and it was actually 263. That's what that case
17 came down to was acreage and road alignment. So,
18 you know, I'm going to vote to disallow it at this
19 time. So I know this is going to probably cost me
20 my job on the Board of Elections because Frank
21 LaRose will probably fire me from making this
22 decision. Right, Susie?

23 MS. O'BRIEN: You vote the way you vote.

24 MR. COOK: That's right. So I'm going to
25 disallow it.

1 MR. LEE: To allow it?

2 MR. COOK: I'm going to disallow the --

3 MR. STEELE: Do you want to take a
4 professional vote and my motion?

5 MR. COOK: I don't want it on the ballot, so
6 I'm going to have it removed. So, we're two, two.
7 So at that time --

8 MR. STEELE: I think we probably just need to
9 do an official vote.

10 MR. COOK: It will be a yay or nay. We'll
11 just do another one. Mr. Steel?

12 MR. STEELE: Yay.

13 MR. COOK: Ms. Luke?

14 MR. STEELE: To leave it on the ballot.

15 MS. LUKE: Yes.

16 MR. COOK: Yay. Mr. Lee?

17 MR. LEE: No.

18 MR. COOK: Mr. Cook, no. So we have -- we're
19 at two/two. And so I'm going to turn it over to
20 Susie O'Brien. She'll explain to you what happens
21 at this time. I believe it goes to the Secretary
22 of State's office; is that correct?

23 MS. O'BRIEN: That is correct. Each board
24 member will write something why you voted the way
25 you did and send it to Secretary LaRose. And it

1 can be sealed so no one else sees it. But if we
2 could do that as soon as possible, that would be
3 great.

4 MR. COOK: We'll try to have the board done
5 by the end of the week; is that fair?

6 MS. O'BRIEN: That's perfect.

7 MR. LEE: This needs to be done as quickly as
8 possible because our staff is sitting here with a
9 lot of candidates and a lot of issues and they need
10 some certainty when they start putting the ballot
11 together, so --

12 MR. COOK: We apologize you had to hurry up
13 everything, but at the end of the day, our staff,
14 like Mr. Lee said, we're -- they're up to here
15 with -- we had to put on this election in August
16 and this was just a challenge for us. So we have
17 wonderful staff here. We're very fortunate. So is
18 there any other questions from --

19 MR. INGRAM: Just a point of order,
20 Ms. O'Brien, will the Secretary of State obtain a
21 transcript of these proceedings? I just want to
22 make sure you all have all the evidence.

23 MS. O'BRIEN: You know, that would be great.
24 Let me just check on that. I don't -- I've only
25 had one other tie vote. It wasn't anything like

1 this. It was just something on the -- you know, I
2 don't actually remember it was so long ago.

3 MR. COOK: Anymore questions?

4 MS. O'BRIEN: How long does it take to get
5 the transcript?

6 THE COURT REPORTER: Just a couple weeks.

7 MS. FORRIDER: How about an expedited
8 transcript?

9 THE COURT REPORTER: I have to check the
10 date. I'm leaving town.

11 MR. GRAY: Wait. The only thing I want to
12 make clear, is who -- if there's going to be a
13 transcript requested, who's requesting it because
14 I'm not sure -- at least if the board wants it,
15 make sure they're clear about that so we know who
16 is paying the bill.

17 MR. COOK: The Secretary of State's office is
18 requesting it, right?

19 MS. O'BRIEN: Let me go make a phone call
20 real quick, if that is okay.

21 MR. LEE: Yeah.

22 MR. COOK: Anyway, that can be handled
23 afterwards, right? Anything else, any other
24 questions? I have a motion to adjourn our meeting?

25 MR. LEE: So moved.

1 MR. COOK: Second?

2 MR. STEELE: Second.

3 MR. COOK: All in favor?

4 (All members say aye.)

5 (Hearing adjourned at 1:59 p.m.)

6 C-E-R-T-I-F-I-C-A-T-E

7 - - - - -

8 I, Belinda M. Wolford, do hereby certify
9 that the foregoing transcript is a true and correct
10 transcript of the August 23, 2023 proceedings in this
11 matter, taken by me and transcribed from my stenographic
12 notes to the best of my ability.

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17
18 Belinda M. Wolford
19 Registered Professional Reporter
20 Notary Public, State of Ohio
21 My commission expires: 4/12/26
22
23
24
25