

STATE OF RHODE ISLAND

PROVIDENCE, Sc.

SUPERIOR COURT

ROBERTA LACEY)	
)	
VS.)	PC-2024-05161
)	PC-2024-04858
TOWN OF BURRILLVILLE,)	
ET AL)	

HEARD BEFORE

THE HONORABLE MELISSA E. DARIGAN

ON DECEMBER 10 & 11, 2024

PRELIMINARY INJUNCTION

EXCERPT OF PROCEEDINGS

(TESTIMONY OF RAYMOND GOFF)

APPEARANCES:

MICHELLE HAWES, ESQUIRE
MARISSA DESAUTEL, ESQUIRE..... FOR THE PLAINTIFF

WILLIAM C. DIMITRI, ESQUIRE
ANTHONY DeSISTO, ESQUIRE..... FOR THE DEFENDANTS

LINDA M. CORDEIRO
OFFICIAL COURT REPORTER

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C E R T I F I C A T I O N

I, **LINDA M. CORDEIRO**, hereby certify that the succeeding pages **1** through **62**, inclusive, are a true and accurate transcript of my stenographic notes.

Linda M. Cordeiro

LINDA M. CORDEIRO
Official Court Reporter

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1 Tuesday, December 10, 2024

2 AFTERNOON SESSION

3 **(Excerpt of testimony of Raymond Goff)**

4 THE COURT: Is the town ready to present its
5 defense?

6 MR. DIMITRI: We are, Judge. I have Raymond Goff.
7 He's out in the hallway. I can grab him, Judge.

8 THE COURT: Well, let's do that.

9 Deputy, could you help us get Mr. Goff?

10 THE SHERIFF: What's the last name?

11 MR. DIMITRI: Mr. Goff, G-o-f-f.

12 (Pause)

13 THE CLERK: Good afternoon. Please raise your right
14 hand.

15 THE COURT: While you're being sworn, would you
16 please stand?

17 **RAYMOND MATTHEW GOFF,**

18 called as a witness, being duly sworn, testified as
19 follows:

20 THE CLERK: Please state your name for record and
21 spell your last name.

22 THE WITNESS: Raymond Matthew Goff, G-o-f-f, as in
23 Frank.

24 THE COURT: Now, sir feel free to have a seat. It's
25 an uncomfortable seat, but you can stand or sit, however

1 you're most comfortable. Either way, I do ask you to
2 please speak into the mic. It's moveable, it's very
3 malleable. Please try to do your best not to talk over
4 the attorneys, and the attorneys will do the same for
5 you. Our court reporter is writing down everything
6 everybody says, and it's a heck of a lot easier when only
7 one person talks.

8 THE WITNESS: I get it. Thank you.

9 **DIRECT EXAMINATION BY MR. DIMITRI:**

10 Q Good afternoon, Mr. Goff.

11 A Good afternoon.

12 MR. DIMITRI: Can I have Defendant's H for
13 identification, so far?

14 THE CLERK: I have F-1, and I do not have a letter H
15 in this packet.

16 MR. DIMITRI: I have another copy, if I can have
17 this marked?

18 THE COURT: I have a copy as well, if you don't mind
19 giving that up.

20 MR. DIMITRI: That's fine, Judge.

21 THE CLERK: H for ID?

22 MR. DIMITRI: H for ID, please.

23 (DEFENDANT'S EXHIBIT H MARKED FOR I.D.)

24 Q Mr. Goff, good afternoon.

25 A Good afternoon.

1 Q Are you currently employed, sir?

2 A Yes, I am.

3 Q And where are you employed?

4 A Town of Burrillville.

5 Q How long have you been employed by the Town of
6 Burrillville?

7 A Approximately seven years.

8 Q I'm going to show you what's been marked as Defendant's H
9 for identification. Do you recognize that, sir?

10 A Yes, I do.

11 Q And what is that?

12 A That is my resume.

13 Q And is that a true, fair, and accurate copy of the
14 resume, your current resume?

15 A Yes, it is.

16 MR. DIMITRI: I move that full, Judge.

17 THE COURT: Any objection?

18 MS. HAWES: No objection.

19 THE COURT: Admitted in full.

20 THE CLERK: Exhibit H full.

21 (DEFENDANT'S EXHIBIT H MARKED FULL)

22 Q Mr. Goff, can you tell us a little bit about your
23 experience, starting with your education?

24 A Sure. I have a masters degree in community planning from
25 the University of Rhode Island. I have worked

1 approximately 30 years as a planner in various
2 communities throughout Rhode Island and Massachusetts.

3 Q And where else have you worked besides Burrillville?

4 A I have worked for the Town of Glocester for 14 years;
5 West Greenwich, three years; Coventry, three years; and
6 Norfolk, Massachusetts about three years.

7 Q And since when, sir?

8 A I'm sorry?

9 Q Since how long?

10 A 1991, '92, somewhere in that range I've been a planner.

11 Q And in the time that you've worked for the Town of
12 Burrillville and the time that you've worked as a planner
13 in other municipalities -- strike that.

14 Generally, what are your duties as the town planner?

15 A I staff the planning board. What that means is I help
16 the planning board, who are volunteers, basically, work
17 through the subdivision regulations, review subdivision
18 applications, do ordinance rewrites, and update
19 comprehensive plans, so.

20 Q And do the rules and what you do as a town planner
21 require you to make determinations as to whether a
22 proposed project is subject to planning board review?

23 A Yes. Yes, so as a customer would come in with a project
24 that they're proposing to do, I would talk to that
25 customer about what they're proposing to do and try to

1 help them understand what the regulations require and
2 where they would fall within or outside the regulations.

3 Q And you indicated as town planner you are familiar with
4 the town zoning ordinances?

5 A Yes, I am.

6 Q And you indicated also that you are -- are you involved
7 in the formulation of the comprehensive plan?

8 A Yes.

9 Q And how are you involved in that?

10 A So as staff to the planning board, I -- the planning
11 board is essentially the expert on the comprehensive plan
12 in communities, so that's how the state legislature set
13 it up. So I staff the planning board, I assist the
14 planning board in developing modifications to the comp
15 plan, do annual updates -- every ten years we do an
16 update. So I'm pretty involved with the comprehensive
17 plan.

18 Q When was the last time the Town of Burrillville did an
19 update of the comprehensive plan?

20 A 2018 was our last update.

21 Q You also indicated that you update or assist in updating
22 town ordinances?

23 A Yes, I do.

24 Q What is your role in doing that, sir?

25 A So recently the state legislature made some changes to

1 the state enabling legislation concerning zoning. So we
2 worked with consultants, the planning board and myself,
3 worked with the consultant and made the changes to the
4 ordinances so we comply with the state law changes. And
5 then we would do other changes as necessary as the town
6 saw fit.

7 Q Now, subject to cases or people that come before the
8 planning board for review, what are some of the projects
9 that fall under the planning board of review?

10 A So it's simply administrative subdivisions, which is
11 moving the lot lines, one property to the another would
12 want to move the lot lines, that would be an
13 administrative subdivision. We have minor subdivisions
14 which are creating new lots up to five lots, they would
15 fall under minor subdivisions. A major subdivision would
16 be six or more lots. That's typically what we see for
17 subdivisions.

18 Q Now, are you familiar with the Town of Burrillville's
19 proposed synthetic turf field?

20 A Yes.

21 Q And how are you familiar with it?

22 A I have done a little bit of research in the recent months
23 because of this court case that came forward, and that's
24 pretty much how I came to be familiar.

25 (Interruption by the court reporter)

1 THE WITNESS: Sorry.

2 Q And you mentioned what a minor subdivision and what a
3 major subdivision is.

4 A Yes.

5 Q And does the artificial turf field or the refurbishing of
6 the athletic field at Burrillville High School fall under
7 the category of either a major or minor subdivision?

8 MS. HAWES: Objection. Seeking a legal conclusion
9 and expert opinion from someone who has not been declared
10 an expert.

11 MR. DIMITRI: I'll move him an expert, Judge.

12 Q Let me ask you a little bit more about your experience,
13 sir.

14 A Sure.

15 Q Tell me in greater detail about what your role is in
16 regulating or passing or being involved in major
17 subdivisions.

18 A So major subdivisions, essentially the application would
19 come in, I would review it, I would make sure that it is
20 a major subdivision, make sure it conforms with the
21 zoning ordinance, make sure the lots meet the minimum
22 zoning requirements, so for area, frontage, that they
23 conform to other aspects of the zoning ordinance, and
24 then also make sure that they comply with the subdivision
25 regulations in terms of process.

1 Q And what are some of the major subdivision regulations?

2 A So, you know, first off we would make sure that it is a
3 major subdivision and make sure that the application is
4 in the right category, the right materials have been
5 submitted along with the application. So there's a
6 number of materials that would be submitted along with
7 the application for subdivision.

8 Q What kinds of materials are submitted?

9 A Soil tests, a survey plan. What else? Sorry.
10 Additionally, an application, obviously, would be
11 submitted. And so additional materials such as that.

12 Q You indicated that that involves a subdivision that is
13 six lots or more?

14 A Correct.

15 Q And a minor subdivision is five lots or less?

16 A Or less.

17 Q And how long -- I've asked you this already. How long
18 have you been a town planner?

19 A About 30 years.

20 Q And the last seven in the Town of Burrillville?

21 A That is correct.

22 Q And you've got a master's degree in what?

23 A In community planning.

24 MR. DIMITRI: I move Mr. Goff as an expert in the
25 area of town planning, Judge.

1 MS. HAWES: Your Honor, I would like a further
2 definition of town planning. To the extent that in Rhode
3 Island town planning is a creation of statute by the
4 legislature, to the extent that an expert in town
5 planning is going to be asked to opine on the legal
6 interpretation of statutes, I don't believe we have
7 established a foundation for his ability to make those
8 opinions.

9 THE COURT: Why don't you do some voir dire on the
10 areas you're interested in.

11 MS. HAWES: Thank you, your Honor.

12 **VOIR DIRE EXAMINATION BY MS. HAWES:**

13 Q Mr. Goff, are you an attorney?

14 A No, I'm not.

15 Q Have you ever gone to law school?

16 A I have not.

17 Q Have you ever been qualified as an expert by a Court
18 previously?

19 A No.

20 Q Have you ever given testimony in any case previously?

21 A In a courtroom?

22 Q Yes.

23 A No, I have not.

24 Q In your role as town planner you are appointed by the
25 town manager and approved by the town council; correct?

1 A That is correct.

2 Q And that is pursuant to a town ordinance which creates
3 your position; correct?

4 A Yes.

5 Q And that same town ordinance, does it also detail your
6 duties and responsibilities as town planner?

7 A The ordinance does not.

8 Q Are you familiar with Section 12.14 of the town
9 ordinance?

10 A No. Could you tell me what that is?

11 MS. HAWES: If I may have one moment, your Honor?

12 THE COURT: You may.

13 MS. HAWES: I'd like to mark this for ID. I believe
14 this is would be 41.

15 THE COURT: All right. At some point we'll have to
16 go over some exhibits because I kind of lost track what
17 40 is. But that may be marked as 41.

18 MR. DIMITRI: I'll just point out, Judge, it's not
19 part of the town ordinance, but the town charter.

20 MR. HAWES: If I may present it to the witness?

21 THE COURT: What is it again?

22 MS. HAWES: There's a copy for you as well, your
23 Honor.

24 THE COURT: Thank you.

25 MS. HAWES: It is, as Mr. Dimitri stated, part of

1 the town charter.

2 THE COURT: Okay. Thank you.

3 (PLAINTIFF'S EXHIBIT 41 MARKED FOR I.D.)

4 Q Mr. Goff, as we stated, I believe I misspoke a little
5 bit, I said "ordinance" when I meant "charter." They're
6 both regulatory --

7 A Okay.

8 Q -- laws within the Town of Burrillville; correct?

9 A Yes.

10 Q Okay. Now, I've handed you a document that has been
11 identified as 41 for ID. Do you recognize this document?

12 A Yes, I do.

13 Q And you recognize these provisions?

14 A Yes, I do.

15 Q Okay. And if you can turn to Page 3 of 4, under
16 Section 12.14, do you see what I'm referring to?

17 A Yes, I do.

18 Q Does that lay out the duties of the town planner?

19 A Yes, it looks to do that.

20 Q Okay. And just to be clear, you are the town planner;
21 right?

22 A Yes.

23 Q So this lays out your duties and responsibilities
24 pursuant to town charter?

25 A Yup.

1 Q Okay. Among those duties and responsibilities, is there
2 anything which states that you are responsible for or
3 have a duty to advise whether or not planning review is
4 necessary for any proposed project?

5 A Say that again, please.

6 MS. HAWES: Your Honor, if I can have that read
7 back?

8 (PENDING QUESTION READ ALOUD BY THE COURT REPORTER)

9 THE WITNESS: Thank you.

10 A So that would be the letter B, review and evaluate
11 preliminary plat proposals prior to submittal to the
12 planning board.

13 Q Okay.

14 A And A, to a certain extent also.

15 Q In this matter for the Burrillville artificial turf field
16 project, did you review and evaluate a preliminary plat
17 proposal?

18 A I did not.

19 Q And is anywhere in that duty and responsibility a
20 responsibility for the interpretation of the zoning
21 ordinance?

22 A In here?

23 Q Yes.

24 A I guess you could interpret it in G, that attend in a
25 advisory capacity at all planning board meetings and

1 workshops and attend zoning board of review meetings upon
2 the request of the planning board or zoning board. So I
3 venture a guess that that would be the reason why I would
4 be there, to advise them.

5 Q So you work in a advisory capacity; correct?

6 A Yes.

7 Q So you can advise the planning board to act in a certain
8 way, but the planning board might disregard your
9 advisory; correct?

10 A Correct.

11 Q Because the planning board is the body with the statutory
12 power; correct?

13 A Yes.

14 Q And the same with the zoning board. You could make a
15 advisory to the zoning board, but that advisory is not
16 binding in any way upon the zoning board; is that
17 correct?

18 A That is correct.

19 Q And anywhere in here does it relate your duties and
20 responsibility, does it relate to the interpretation of
21 state statute in regard to the Comprehensive Land Use and
22 Planning Act?

23 A Specifically, no, but I think I answered that question
24 already in terms of zoning that, yes, that's one of my
25 duties and responsibilities.

1 Q You did talk very briefly about the different types of
2 applications that may come before the planning board.
3 You mentioned an administrative subdivision, a minor
4 subdivision, and a major subdivision; correct?

5 A Yes.

6 Q What about land development projects?

7 A Yes, those do come before the planning board.

8 Q So you have minor land development projects; correct?

9 A Yes, that's correct.

10 Q And that's in addition to minor subdivisions; correct?

11 A Yes.

12 Q And how about major land development projects?

13 A Yes.

14 Q And that's also in addition to major subdivisions;
15 correct?

16 A Correct.

17 Q And the standards for subdivisions and land development,
18 even though the review is the same, the standards for the
19 type of project that would require that type of review is
20 different; correct?

21 A Yes, they are.

22 Q And the definitions that are relied upon in determination
23 for what type of project is before the board, those
24 definitions are contain in the zoning ordinance; correct?

25 A Yes, as well as the subdivision regulations.

1 Q Okay. How about development plan review?

2 A Development plan review is contained in both of those
3 regulations.

4 Q And that's something the planning board also undertakes
5 in addition to those areas you previously discussed;
6 correct?

7 A Yes.

8 Q And, again, you rely on the definitions within the
9 ordinance and the subdivision regs in regard to the
10 review of these projects; correct?

11 A Yes, I do.

12 MS. HAWES: Your Honor, I would like to renew my
13 objection to this witness being qualified as an expert
14 under *RICO Corporation v. Town of Exeter*, et al, 787 A.2d
15 1136, Rhode Island, 2001. It delineates the fact that
16 zoning boards like planning boards are statutory bodies,
17 and the Court, the Superior Court in that case, which was
18 reviewed by the Supreme Court of Rhode Island, made clear
19 that the determination of legal questions such as, what
20 is a nonconforming use, and what is a use, and those
21 legal determinations were not to be made by even the
22 zoning board. And I believe that, to further extrapolate
23 that, and then have a town appointed planner who is an
24 advisory to the zoning board and merely advisory to the
25 planning board, should not be allowed to offer an opinion

1 as to legal interpretations of the issues which the Rhode
2 Island Supreme Court has reserved for the Court.

3 THE COURT: I understand that objection. Before we
4 even arrived at this hearing, I raised I believe in at
5 least in one chambers conference with the parties that I
6 was a little concerned about experts, so-called experts
7 being proposed who would usurp the authority of the
8 Court. What do you have to say in response to
9 plaintiff's argument?

10 MR. DIMITRI: Well, your Honor, Mr. Goff is -- can I
11 ask him a question, Judge?

12 THE COURT: Sure.

13 MR. DIMITRI: Are you the administrative officer for
14 the planning board?

15 THE WITNESS: Yes, I am.

16 MR. DIMITRI: So, your Honor, he's an administrative
17 officer of the planning board. Certainly, under the
18 charter it lists six -- seven duties and
19 responsibilities. That is not confined and limited to
20 what he does on a daily basis. He's got the experience,
21 the education to determine what comes before him as the
22 town planner as to what requirements are needed, whether
23 it's major subdivision or minor subdivision, et cetera.
24 He's testified that he's familiar with the zoning
25 ordinances, he's familiar with the comprehensive plan,

1 all of which have been put in by plaintiff's counsel.

2 In addition, Judge, he does the land development
3 projects, he interprets -- is there a clause in here, is
4 there a section in here that he's entitled or he
5 interprets zoning ordinances? That's what he does every
6 day. Judge, that's what he does every day. He reviews
7 zoning ordinances, he reviews the comprehensive plan, he
8 reviews projects that are coming before the planning
9 board and advises them. Certainly, the planning board
10 has the ultimate decision as to whether or not they're
11 going to grant or approve a major subdivision or minor
12 subdivision, but based on his experience and training, he
13 certainly knows what is required and what is necessary to
14 qualify as a minor subdivision or major subdivision and
15 has the experience to be qualified as an expert.

16 I think we've had three experts here over the course
17 of the last five days, and no one has testified in court
18 before. So that is not a determining factor, Judge.
19 It's all based on his experience. Certainly, the Court
20 can weigh his testimony, accept it, give it any weight
21 that it wants, but his familiarly with the zoning
22 ordinances of the Town of Burrillville, and experience
23 over the last 30 years, give him the unique perspective
24 as to what projects should or should not undergo planning
25 board review.

1 THE COURT: We've talked about the rules of evidence
2 in this case since the first day of this hearing. There
3 are rules of evidence that are not applicable in this
4 type of proceeding. I said that I would follow them
5 somewhat loosely, applying the rules of reason in the
6 case.

7 Over plaintiff's objection I am going to accept
8 Mr. Goff as an expert, so-called. There's no magic to
9 anyone being declared to be an expert. The Court or
10 factfinder in any proceeding is free to completely
11 disregard an expert's opinion.

12 Mr. Goff certainly has extensive background and
13 education, training, and work history in the area of
14 planning, and I would like to hear what he has to say,
15 but what I do with that will be up to me.

16 Over plaintiff's objection, Mr. Goff is qualified as
17 an expert in the area of -- I'm not sure exactly how you
18 defined it, Mr. Dimitri, but in town planning.

19 MR. DIMITRI: Thank you, your Honor.

20 **DIRECT EXAMINATION BY MR. DIMITRI (CONTINUED) :**

21 Q So I believe my last question before the objection,
22 Mr. Goff, was: Based on your experience, your training,
23 does the proposed artificial turf field fall under a
24 category of either a major or minor subdivision?

25 A No, it does not.

1 Q Why not?

2 A Because we're not subdividing the property, so there's
3 nothing in this proposal that would be subdividing the
4 property, dividing it into more lots, essentially.

5 Q Now, you've already indicated, and I asked you, are you
6 familiar with the town's zoning ordinances and the
7 comprehensive plan?

8 A Yes, I am.

9 Q And as administrative officer of the planning board,
10 again, can you just briefly describe what it is you do
11 with the planning board?

12 A So, essentially, I work with the planning board chairman,
13 we set the agenda so as applications do come in to the
14 planning board, I would review them for accuracy, make
15 sure they have all the information they're supposed to
16 have, make sure they're appropriate for what they're
17 asking for, and then work with the chairman to set the
18 agenda, and then those applications would be heard by the
19 planning board at the next available planning board
20 meeting.

21 Q And you've indicated previously, a little while ago, that
22 you're familiar with the proposed refurbishing, I'm going
23 to call it, of the athletic field at Burrillville High
24 School; correct?

25 A Yeah, I'm familiar with the turf field.

1 Q And that's called Gledum (sic) Field?

2 A Gledhill Field.

3 Q Gledhill Field.

4 THE COURT: Can you spell that? I've heard that
5 many times, and no has ever spelled it.

6 THE WITNESS: G-l-e-d-h-i-l-l.

7 Q And how long, Mr. Goff, has the high school been at its
8 current site?

9 A I don't know exactly. It was in the late '50s, so you
10 could guess at '58.

11 Q And do you know, sir, what zone the high school is
12 located in?

13 A Yeah. Currently, that's an R-12 zone, so residential
14 12 acres on -- excuse me -- 12,000 square foot zone. I
15 apologize.

16 Q So since 1958?

17 A I don't know what the zoning was back then, so, but the
18 current zone is R-12.

19 Q And do you know whether or not that school -- strike
20 that.

21 Do you know when the town zoning ordinances were
22 initially adopted?

23 A I'm sorry. Can you say that again, please?

24 Q Do you know when the zoning ordinances were adopted?

25 A When they were adopted?

1 Q Yes.

2 A I think the late '50s also.

3 Q Do you know whether the high school was constructed prior
4 to the adoption of the town zoning ordinances?

5 A I do not know.

6 Q Now, relative to the property and the high school, have
7 the athletic fields on the school property been cited --
8 strike that.

9 You've been town planner for the last seven years?

10 A Correct.

11 Q And has Gledhill Field always been in the same location
12 as it is now?

13 A Yes.

14 Q And since the high school is located in a R-12 zone,
15 would a special use permit be required today to build a
16 school in that area?

17 A Yes, it would.

18 Q But it currently exists?

19 A Correct.

20 Q It's been there since the '50s, to the best of your
21 recollection?

22 A Yes.

23 Q And how about the fields, how long have they been there?

24 A They have been there as long as the school has been
25 there.

1 Q And how many fields are on that property, athletic
2 fields?

3 A Well, there's Gledhill Field, there's a lower field, and
4 I don't know what that is called, it's part of Gledhill,
5 and also Alumni Field.

6 Q So Gledhill and Alumni Fields?

7 A Yes.

8 Q To your knowledge, have those sites where those fields
9 are materially changed in the years since you've been the
10 town planner?

11 A No.

12 Q So what is the existing use in its entirety of that
13 property? A high school; correct?

14 A Yes, it's a high school.

15 Q What else is there?

16 A There's associated fields, there's parking, there's an
17 ice rink. Behind the school there's additional parking,
18 storage. There's some storage sheds on the property.

19 Q And were there -- prior to the construction beginning for
20 the change of turf, were there spectator stands located
21 at Gledhill Field?

22 A I believe there was something there for lacrosse. I know
23 the kids play lacrosse there. So, yeah, I believe there
24 was something.

25 Q And based on your understanding, will stands, spectator

1 stands be a part of the field going forward?

2 A Yes.

3 Q If this field is completed, Mr. Goff, is the use of the
4 field, Gledhill Field, going to be the same in 2025 as it
5 was, say, in 2023?

6 A Yes.

7 Q And the use is what?

8 A The use is a sports field, so.

9 Q So this is, fair to say that it's not a new field?

10 A No.

11 Q And, now, were there plans, if you know, in the future
12 for other structures, field house, that sort of thing?

13 A Yes. There is a plan for a field house, locker rooms. I
14 think it's a field house they called it. It was locker
15 rooms.

16 Q And those are not, to your knowledge, being built
17 currently; correct?

18 A No.

19 Q Should the artificial, synthetic turf be installed at
20 Gledhill Field, is it going to be installed at the same
21 location where Gledhill Field currently sits?

22 A Yes.

23 Q And you're familiar with the location of the field?

24 A I am.

25 Q You're familiar with the size of the field?

1 A Yes.

2 Q Approximately how big is it?

3 A It's about two acres.

4 Q And how big would the new field be?

5 A I'm sorry?

6 Q How big will the new field be?

7 A Two acres.

8 Q Or the refurbished field, two acres; right?

9 A Yes.

10 Q Now, there was some discussion, testimony about the
11 location of the field, and is the property connected to
12 the high school an aquifer zone?

13 A Is that a question?

14 Q Yes, it is.

15 A Yes, it is.

16 Q And is there a name for that aquifer zone?

17 A Well, we have an aquifer overlay zone in the town that
18 was put in place, I believe that is an A-100 zone, where
19 the field is.

20 Q So an aquifer overlay zone?

21 A Yes.

22 Q And what does that mean?

23 A So the town put in an ordinance, I don't remember the
24 exact date, but let's say it was early '90s, to protect
25 the groundwater. So what they did was put this ordinance

1 in place to keep contaminants from getting into the
2 groundwater, basically, keep out uses that potentially
3 could cause contamination to the groundwater.

4 THE COURT: Can I just get you to get on that
5 microphone a little closer?

6 THE WITNESS: I'm not loud enough, okay.

7 Q Would you agree that ordinance -- strike that.

8 That's a town ordinance; correct?

9 A That is the town ordinance.

10 Q And you agree that under that town ordinance that certain
11 activities are not permitted in the aquifer zones?

12 A Yes.

13 Q And based on your knowledge of the zoning ordinances and
14 your experience, that's Section 31.2 of the town
15 ordinance?

16 A Yes.

17 Q And does that section address the limitations relative to
18 what can and cannot be done in aquifer zones?

19 A Yes, it does.

20 Q And, generally, what are those limitations, sir?

21 A It has a lot to do with septic systems. So it prohibits
22 certain uses with a high septic discharge into the
23 ground, and then it goes into particular prohibited uses.
24 So, you know, gas stations was one. Below ground gas
25 tanks is something that is prohibited in that zone. We

1 actually have a DPW garage that was built ten years ago,
2 and they had to do an above-ground gas storage tank
3 because of this ordinance.

4 Q And to your knowledge -- strike that.

5 To your knowledge, are synthetic turf fields
6 prohibited by Section 31-202?

7 A No, they're not.

8 Q Are they prohibited in the town by any ordinance, town
9 zoning ordinance?

10 A No, they're not.

11 Q Let me ask you this, if this project had come before the
12 planning board -- strike that.

13 Based on your experience and your expertise, was the
14 refurbishing of the grass to synthetic turf a project
15 that needed to come before the planning board?

16 A No.

17 Q If the project had come before the planning board, based
18 again on your experience and your opinion, would it have
19 been approved?

20 MS. HAWES: Objection. Asks for speculation into
21 the minds of planning board members.

22 THE COURT: It completely calls for speculation.
23 Sustained.

24 MR. DIMITRI: I gave it a shot.

25 Q But in your opinion it did not need to come before the

1 planning board?

2 A Yes.

3 Q Now, based on your experience, your expertise, and your
4 familiarity with the zoning ordinances, et cetera, would
5 the change from natural turf to synthetic turf have
6 required a zoning certificate?

7 A No.

8 Q And do you know whether or not permits were in fact
9 pulled for various parts of this project?

10 A Yes, there were permits pulled.

11 Q Do you know which ones?

12 A I do not. There was structural stuff that was pulled.
13 There was also other permits, not town permits, that were
14 authorized, DEM, because they were close to the river, so
15 we needed a wetlands permit.

16 Q Now, again, looking back at Section 31-202 and what it
17 permits and what it prohibits, is the field, in you
18 opinion, an obstruction?

19 A No.

20 Q And you've reviewed Section 30-32 regarding zoning
21 enforcement of -- enforcement of zoning?

22 A Okay.

23 Q Are you aware of any complaints being filed pursuant to
24 that section relative to this?

25 A I'm not, no.

1 Q Based on your experience, in your opinion is a change
2 from grass to synthetic turf a nonstructural use to be
3 initiated?

4 A To be an issue?

5 Q To be initiated.

6 A I'm not sure what you're asking. Can you rephrase it?

7 Q So the use of Gledhill Field is an athletic field;
8 correct?

9 A Yes.

10 Q So it already exists as an athletic field?

11 A Yes.

12 Q And is the change in topping, if you will, grass, natural
13 grass to synthetic turf a change in use?

14 A Absolutely not.

15 Q And going back to Section 30-202, specifically,
16 Section F-6, Mr. Goff, does that section, subsection,
17 regulate in part development in aquifer zones?

18 A Yes, it does.

19 Q And, again, it sets certain limitations on certain
20 activity in an aquifer overlay zone; correct?

21 A Yes, it does.

22 Q Now, does that section, in your opinion, apply to the
23 change from natural grass to synthetic turf?

24 A No.

25 Q Why not?

1 A There's no trigger for it, so there's no threshold that
2 would cross that would require any additional review.
3 You're just changing the top surface of the field from
4 one thing to the other.

5 Q Now --

6 A And, I'm sorry, if I can?

7 Q Go ahead.

8 A The use of that field remains the same. It's a field,
9 it's a playing field.

10 Q So since it exists and existed as an athletic playing
11 field, would you agree that there's no alteration of any
12 natural site features?

13 A No. There's nothing natural there. It's all manmade.

14 Q It's all manmade --

15 MR. DIMITRI: That's an objection waiting to happen.

16 Q Despite the fact that today in a R-12 zone a special use
17 permit would be required?

18 A I'm sorry?

19 Q To build a high school.

20 A To build a high school today you need a special use
21 permit, that is correct.

22 Q Since it already exists, it's a prior nonconforming use?

23 A Yes.

24 Q And as you indicated, the size of the field is two acres.
25 It's going to be two acres still; correct?

1 A Yes.

2 Q Same spot, same location?

3 A Yes.

4 Q Have there been other projects in aquifer zones within
5 the town that have not come before the planning board?

6 MS. HAWES: Objection. Basis for knowledge and
7 relevance.

8 MR. DIMITRI: If he knows.

9 THE COURT: Basis for knowledge is covered by "if he
10 knows." Relevance, I would like to hear where it's
11 relevant.

12 MR. DIMITRI: I'll withdraw it, Judge.

13 Q Now, you've had a hand in updating the comprehensive
14 plan?

15 A Yes, I have.

16 Q And I think you said it was 2018, the last time it was
17 done?

18 A Correct.

19 Q And you've done that in your capacity as town planner?

20 A Yes, a number of times.

21 Q An administrative officer with the planning board?

22 A Yes.

23 Q You're familiar with the comprehensive plan?

24 A Yes, I am.

25 Q Is the field in your opinion consistent with the

1 comprehensive plan?

2 A Yes.

3 Q And why?

4 A It's a recreation field. It's associated with the high
5 school. It provides residents places to go to enjoy
6 sports and to comingle, so. In terms of specific
7 articles in the comprehensive plan, I couldn't rattle one
8 off the top of my head, but it is consistent with the
9 comprehensive plan.

10 MR. DIMITRI: Could I have a quick moment, Judge?

11 THE COURT: Sure.

12 (Pause)

13 MR. DIMITRI: I have no further, questions, Judge.
14 Thank you.

15 THE COURT: Thank you. Cross-examination?

16 **CROSS-EXAMINATION BY MS. HAWES:**

17 Q Good afternoon, Mr. Goff.

18 A Good afternoon.

19 Q Now, I believe I noted that on the Burrillville website
20 you are called a director of planning and also the
21 director of economic development; is that correct?

22 A Coordinator.

23 Q What does that mean?

24 A Well, I try to help the local businesses or new
25 businesses come into town, and I help them grow and

1 employ people, et cetera.

2 Q And is that an appointed position?

3 A It's part of my duties as the town planner and planning
4 director.

5 Q And I believe you said the town planner serves as staff
6 to the planning board; correct?

7 A Yes.

8 Q And you work under the supervision of the town manager;
9 correct?

10 A Yes, I do.

11 Q Did you seek or obtain any advisory opinion from the
12 state ethics commission on your testimony here today?

13 A No, I did not.

14 MR. DIMITRI: Objection. An advisory for what?

15 THE COURT: Did you ask for a clarification on that
16 question, or are you lodging an objection to the
17 question?

18 MR. DIMITRI: I guess both, Judge.

19 It's alleging an ethics violation, just like she's
20 apparently alleging that Mr. Ferrari and I had a
21 discussion last night. I think it's inappropriate.
22 Maybe I'll ask for a clarification first.

23 THE COURT: Where are you going with this?

24 MS. HAWES: I asked the question, I received a
25 response, I have nothing further.

1 THE COURT: Okay.

2 Q Given your position in the town as the director of
3 planning and -- I'm sorry. What was the role of
4 development again?

5 A Economic development coordinator.

6 Q Coordinator. Would you say that your professional
7 interests are tied to the town's successes and its
8 goals?

9 MR. DIMITRI: Objection, your Honor.

10 THE COURT: Overruled, to the extent that I think
11 Ms. Hawes is trying to develop some bias. We have 16
12 minutes left today. Can we focus, please, on the issues
13 that are really critical here?

14 I understand Mr. Goff, he's employed by the town.
15 I'm sure it's important to him to be employed and receive
16 that paycheck, among other things. I don't think you're
17 going to do or advance your side's interests very much by
18 trying to point out bias.

19 MS. HAWES: I'm ready to move on, your Honor.

20 THE COURT: Okay.

21 BY MS. HAWES:

22 Q Mr. Goff, you said that you have done some research on
23 the project; correct?

24 A Yes.

25 Q And would you agree that the project, the artificial turf

1 project, includes construction of upwards of four new
2 athletic lighting poles and appurtenances, new bleachers,
3 an approximately 400 square foot concession stand and
4 ticket booth structure, and a new approximately 400
5 square foot restroom structure, a new press box
6 structure, a new handicapped accessible parking area and
7 field viewing platform, and landscape improvements?

8 A Is that your question?

9 Q Would you agree that all of that is encompassed within
10 this project?

11 A I've been told that it is, yes.

12 Q And plans were drawn for the project; correct?

13 A Yes.

14 Q Did you have an opportunity to review those plans?

15 A No.

16 Q You said that previously there was some seating capacity
17 at the field; is that correct?

18 A Yes. I believe there are bleachers.

19 Q Do you know what the capacity of those bleachers were?

20 A I don't.

21 Q Do you know what the capacity of the proposed artificial
22 turf field project bleachers would be?

23 A No, I don't.

24 Q Do you know if that capacity is increasing?

25 A I suspect it is.

1 THE COURT: As far as I know, you're not --
2 plaintiff's case is not attacking the bleachers. The
3 issue is the field; right?

4 MS. HAWES: Not necessarily, your Honor. This is a
5 project. All of the elements of the project are
6 encompassed, and it has direct relevance in terms of the
7 requirement for land use review.

8 THE COURT: I think we've touched on this before. I
9 don't have your complaint right in front of me, but my
10 recollection is your complaint is very specific to the
11 field.

12 MS. HAWES: No, your Honor. In fact, there is a
13 substantial -- many different declaratory judgment counts
14 in regard to the land use review required under the
15 Burrillville Town Ordinance.

16 THE COURT: Forgive me. Your motion for preliminary
17 injunction is specific to the field.

18 MS. HAWES: The harms are specific to the field, but
19 these harms derive from the land use violations, your
20 Honor.

21 THE COURT: My recollection of your complaint is
22 that your complaint seeks an injunction to prohibit the
23 replacement of the grass field with the turf field. I
24 don't recall that you're requesting any other injunctive
25 relief. Am I wrong on that?

1 MS. HAWES: Your Honor, based on status of the law,
2 we are requesting that the project be halted, and the
3 project that is currently ongoing, the status of that
4 project at this point is ready for the installation of
5 the artificial turf field. And, again, this ties into
6 the harms identified in the land use claims.

7 But, again, there are two aspects of the preliminary
8 injunction, which is the likelihood of success on the
9 merits, and then the review of the harms and the balance
10 of the equities, as your Honor is well aware.

11 So the land use issues and the scope of the project
12 and whether or not planning review was required and
13 whether or not zoning review was required directly bears
14 upon the nuisance claims and the other claims in regard
15 to the harms that will be derived from the artificial
16 turf field.

17 THE COURT: How much longer are you going to be
18 today, Ms. Hawes?

19 MS. HAWES: Probably at least 20 minutes, your
20 Honor.

21 THE COURT: All right. We're going to pause here
22 then. I want to go back and look at your complaints and
23 your motions, because I am concerned about the
24 wide-ranging nature of this. You might be very well
25 right, and I might be misremembering, but I want to take

1 a look at that again.

2 So, sir, you can step down and come back tomorrow.
3 And you're still under oath, you're still in the middle
4 of your examination. You really cannot speak with your
5 attorneys about the substance of your testimony at all.
6 You can talk about scheduling, where you are to be and
7 whatnot, but you're not to talk about the substance of
8 their examination of you or your cross-examination.
9 Okay?

10 THE WITNESS: Yes.

11 THE COURT: We're going resume tomorrow at 10:00, we
12 determined?

13 MR. DeSISTO: Yes, your Honor.

14 THE COURT: We originally scheduled this for 11:00,
15 but things have moved around scheduling-wise, so we're
16 going to resume at 10:00.

17 You can step down, and we'll be in recess until
18 tomorrow at 10:00. Why don't you get here at 9:30, and
19 we can have a conference.

20 THE SHERIFF: All rise.

21 (The proceedings adjourned at 3:48 p.m.)

22 *****

23

24

25

1 Wednesday, December 11, 2024

2 MORNING SESSION

3 **(Excerpt of the testimony of Raymond Goff continued)**

4 THE CLERK: You are currently still under oath.

5 THE WITNESS: Yes. Thank you.

6 THE COURT: Ms. Hawes, are you ready to continue
7 with your cross-examination?

8 MS. HAWES: Yes, your Honor.

9 THE COURT: Go right ahead.

10 CROSS-EXAMINATION BY MS. HAWES (CONTINUED) :

11 Q Mr. Goff, thank you for coming again this morning.

12 A You're welcome.

13 Q Yesterday, under examination by Mr. Dimitri, you had
14 testified to the fact that it was previously a grass
15 field, and it was now going to be a synthetic field. And
16 I believe your opinion was that, essentially, there was
17 not going to be a change of use; correct?

18 A It's the same use.

19 Q If I were to own an apartment building that's two floors,
20 and then I were to rebuild, say, the apartment building
21 and it had three additional floors and double the number
22 of units, would I not need a planning approval for that
23 building?

24 MR. DeSISTO: I'm going to object.

25 THE COURT: I'm going to overrule that. You asked

1 for Mr. Goff to be considered an expert in planning, so
2 we'll get his opinion on that hypothetical question.

3 A Can you repeat the question?

4 Q If you were to have an apartment building that's two
5 floors, could you then rebuild that apartment building,
6 add three additional floors, double the amount of units,
7 without getting planning review?

8 A That would be an increase in intensity of the use, so the
9 number of units would be increasing. Is what you're
10 telling me, or is that not?

11 Q Yes. The number of units would double, the floors would
12 go up by three.

13 A So under that situation, yes, you would have a planning
14 review.

15 Q So even though you started with an apartment building and
16 you ended up with an apartment building, the intensity of
17 use matters in terms of whether or not planning review is
18 required; correct?

19 A That is correct.

20 THE COURT: Mr. Goff, are you saying intensity of
21 use? I wasn't sure.

22 THE WITNESS: She is saying intensity of use. I'm
23 agreeing with her that the intensity or the number of
24 units increased.

25 THE COURT: Thank you.

1 BY MS. HAWES:

2 Q In regard to the project, the artificial turf field
3 project to be constructed in Burrillville, I believe that
4 you said that you did some research recently;
5 correct?

6 A Yes.

7 Q And you're aware that the site that the project is taking
8 place is within an aquifer overlay protection zone;
9 correct?

10 A Yes.

11 Q And you're aware that that aquifer overlay protection
12 zone has different zoning ordinances which apply to that
13 zone; correct?

14 A It is part of the zoning ordinance. I'm not sure what
15 you mean by different zoning ordinances.

16 Q Are you familiar with Section 30-152 of the Burrillville
17 zoning ordinances?

18 A What is that entitled?

19 MS. HAWES: Your Honor, we have the Burrillville
20 zoning ordinance as an agreed exhibit, number 28 at this
21 time. I'd like to move it in full, and I'd like a copy
22 of 28 to provide to the witness.

23 THE COURT: No objection to 28 being admitted in
24 full?

25 MR. DIMITRI: No, Judge.

1 THE COURT: 28 maybe admitted in full.

2 THE CLERK: Exhibit 28 full.

3 (PLAINTIFF'S EXHIBIT 28 MARKED FULL)

4 MS. HAWES: May I approach?

5 THE COURT: You may.

6 Q Again, the section that I have been inquiring about,
7 Section 30-152, I know it's a lengthy document, so please
8 let me know when you are able to locate that section.

9 THE COURT: Do you have any idea what page it's on?

10 I'm sorry, Ms. Hawes, I'm not trying to put you on
11 the spot, I'm just trying to find it.

12 MS. HAWES: Almost there. It's Page 50 of 126.

13 THE COURT: Thank you very much.

14 And you're looking at Section 152; right?

15 MS. HAWES: Yes.

16 THE COURT: Thank you.

17 A I'm ready.

18 Q Mr. Goff, isn't it true that only one structure is
19 permitted in the aquifer overlay zone pursuant to Section
20 30-152 of the zoning ordinance?

21 A I never read it that way.

22 Q The exact words read, Only one principal structure shall
23 be permitted on any lot in the aquifer overlay zone;
24 correct?

25 A She didn't finish the sentence. Only one principal

1 structure shall be permitted on any lot in the F-5, F-2,
2 R-40, R-20, R-12 zones, as well as the aquifer overlay
3 zone.

4 Okay. What is your question?

5 Q That only one principal structure is allowed on lots in
6 the aquifer overlay zone?

7 A That is correct.

8 Q And only one principal structure is located on lots in
9 the R-12 zone; correct?

10 A Only one principal structure is allowed.

11 Q And you stated this project was taking place at the high
12 school.

13 A Yes.

14 Q And that was in a R-12 zone; correct?

15 A Yes.

16 Q We discussed a little bit about the plans for the
17 artificial turf field project, and you said that you had
18 not previously reviewed those plans; correct?

19 A No.

20 Q Are you aware of whether the plans for the artificial
21 turf field project requires construction?

22 A Am I aware that it requires construction?

23 Q Yes.

24 A Yes.

25 THE COURT: Well, let's be specific with our

1 language, please, about what the artificial turf project
2 is, especially given the comments that were made earlier.
3 I just want to be clear -- I want you to be clear when
4 you're questioning the witnesses about what the project
5 is. There seems to be some blurring of what the project
6 is.

7 So was your question intended to mean solely the
8 installation of the field turf, or was your question
9 broader?

10 MS. HAWES: Your Honor, I believe in both our
11 pleadings and previously before we've talked about the
12 project, and Exhibit 4, I'm happy to provide Exhibit 4 to
13 the witness which describes the artificial turf field
14 project, and that is what I was referring to do.

15 Q Mr. Goff --

16 THE COURT: Hang on. Give me a moment. I want to
17 look at this Exhibit 4. And I just want to make sure I'm
18 on the same page as you -- better said that you're on the
19 same page as me.

20 MS. HAWES: Thank you, your Honor.

21 THE COURT: Well, given that the type on this
22 exhibit is so tiny, I am unable to exactly figure out
23 what it says, but we'll continue and see how it goes.

24 You may continue.

25 MS. HAWES: If I may have a copy of Exhibit 4,

1 please, your Honor?

2 THE COURT: Sure.

3 MS. HAWES: If I may provide this to the witness?

4 THE COURT: You may.

5 BY MS. HAWES:

6 Q Mr. Goff, I had previously asked you about plans for the
7 artificial turf field project. I have just provided you
8 a document. Previously you stated you had not reviewed
9 plans. Have you reviewed that document I just provided
10 to you?

11 A No.

12 Q Are you aware -- I believe you previously testified that
13 you weren't aware, that you believe that there was
14 construction related to the artificial turf field
15 project, which is the plans in front of you. Are you
16 aware if the artificial turf field itself, the
17 installation of the artificial turf field required
18 construction?

19 A Am I aware the artificial turf field -- yes.

20 Q Did it require construction?

21 A Yes.

22 Q Are you aware of what the definition of development is in
23 the zoning ordinance?

24 A Refresh my memory, please.

25 Q If you can please turn to Page 5 of 126, which is part of

1 Section 30-3, definitions?

2 THE COURT: That's on --

3 MS. HAWES: Exhibit 28, your Honor.

4 A You said 5? Did you say 5?

5 Q Yes, Page 5 of 126. And we're looking at the definition
6 of development.

7 A Okay. Okay.

8 Q And in that it states that development means the
9 construction, reconstruction, conversion, structural
10 alteration, relocation, or enlargement of any structure,
11 any mining, excavation, landfill or land disturbance, any
12 change in use or alteration or extension of the use of
13 land; correct?

14 A Yes.

15 Q And I'm not going to ask you about those plans, because
16 you said that you had not previously reviewed those plans
17 in regard to the project, but are you aware of whether
18 the installation of the artificial turf field as part of
19 the project requires construction, land disturbance, or
20 excavation?

21 A Yes, I'm aware.

22 Q Did it require all of those elements?

23 A Yes.

24 Q Are you aware of whether this project is taking place
25 within a wetland buffer zone?

1 A Yes.

2 Q Are you aware of whether the zoning ordinance has
3 requirements for construction and development within a
4 wetland buffer zone?

5 A Yes.

6 Q Are you a familiar with Section 30-201?

7 A Is that the aquifer overlay zone?

8 Q I'm going to get you a page number.

9 Section 30-201 is development plan review, Page 69
10 of 126, please.

11 A Thank you. I have it.

12 Q So you're familiar with Section 30-201; correct?

13 A Yes.

14 Q And development plan review, you said you were familiar
15 with development plan review earlier. That's something
16 that the planning board undertakes; correct?

17 A That is correct.

18 Q And this section of the zoning ordinance, specifically,
19 Section C, identifies the type of projects that would be
20 subject to development plan review; correct?

21 A Applicability is what that says, yes.

22 Q Section 7 requires development plan review for any
23 development involving the filling or alteration of
24 wetlands or the wetland buffer area, any development
25 within the 100-year floor plan, any development within

1 200 feet of rivers, ponds, lakes, and vernal pools, and
2 any land within 100 feet of other resource areas;
3 correct?

4 A Yes.

5 Q Wouldn't you agree that the site that this project is
6 taking place with the installation of the artificial
7 field falls within the definition of Section 7 right
8 there?

9 A Yes.

10 Q The artificial turf field itself to be installed is
11 88,000 square feet; correct?

12 A I don't know the square footage. I was calling it about
13 two acres.

14 Q Okay. The entire area of land beneath that artificial
15 turf field to be installed had to be disturbed and graded
16 prior to installation; correct?

17 A Yes.

18 Q If you are to look at Section 5 of that same section, so
19 we are now on Page 70 of 126 of the zoning ordinance. It
20 reads: Any development that proposed to grade, clear --
21 sorry -- that proposes to clear, grade, or disturb
22 greater than 20,000 square feet of land, except clearing
23 conducted pursuant to a validly-issued subdivision
24 approval, building permit, or earth-removal permit, or
25 for agricultural, forestry or other related purposes, and

1 then it goes on, you would agree that the installation of
2 the turf field which required land disturbance and
3 grading under the entity of the turf field you estimated
4 to be two acres, exceeds the trigger here in Section 5;
5 correct?

6 A Yes.

7 Q Did the work also require the work have an excavator?

8 A Yes.

9 Q Now, under this same section, Section 30-201, Section E,
10 Page 71 of 126, then goes on to provide the review
11 procedures; correct?

12 A Yes.

13 Q And some of the review procedures it provides are minor
14 plan review; correct?

15 A I haven't read it, but that seems appropriate.

16 Q And some of them require major development plan review;
17 correct?

18 A Yes.

19 Q And those are plan reviews that would be undertaken by
20 the planning board; correct?

21 A Yes.

22 Q And in Section 1 -- strike that.

23 So whether it's a minor plan review or a major plan
24 review, either would be handled by the planning board;
25 correct?

1 A That is correct.

2 MS. HAWES: Your Honor, if I may retrieve Exhibit 4
3 and have Exhibit 2, please?

4 THE COURT: You may.

5 MS. HAWES: Can I have the plans, please?

6 THE WITNESS: Yes.

7 MS. HAWES: May I approach the witness?

8 THE COURT: You may.

9 Q Mr. Goff, you're being shown Exhibit 2, which is the
10 contract between the Town of Burrillville and FieldTurf
11 for the artificial turf field to be installed in this
12 matter. Have you had an opportunity to review this
13 document before today?

14 A I have not.

15 Q On the first page of the document, can you just take an
16 opportunity to review that real briefly to yourself, what
17 is to be installed into the property?

18 A (Witness complying). Okay.

19 Q Okay. Is it fair to say that -- actually, strike that.

20 I believe yesterday you testified that what's going
21 in is entirely manmade; correct?

22 A Yes.

23 Q Is it fair to say that this entirely manmade product that
24 is going in is a combination of different materials?

25 A Yes.

1 Q Are you aware of the definition of a structure in the
2 zoning ordinance?

3 A Yes.

4 Q If you can please turn to Page 10 of 126 in the zoning
5 ordinance.

6 A (Witness complying). I'm there.

7 Q Section 30-3, definitions, on this page that I just
8 mentioned, Page 10 of 126, provides a definition of
9 structure; correct?

10 A Yes, it does.

11 Q And a structure means the combination of materials to
12 form a construction for use, occupancy, or ornamentation,
13 whether installed on, above, or below the surface of
14 water; correct?

15 A The land over water, yes.

16 Q So you've already concluded that construction is
17 required; correct?

18 A Yes.

19 Q And that the field turf is a combination of different
20 materials?

21 A Yes.

22 Q So would you agree that the installation of artificial
23 turf here meets this definition of structure?

24 A Yes.

25 Q So would you like to revise your opinion about whether or

1 not the artificial turf to be installed is a structure?

2 A Sure.

3 Q Referring back to the development plan review portion
4 that we just reviewed, and you reviewed, and you agreed
5 that this artificial turf to be installed meets several
6 of those trigger elements; correct?

7 A Yes.

8 Q Would you like to revise your opinion about whether or
9 not at least development plan review was required for the
10 installation of the artificial turf field?

11 A Yes.

12 Q And what is your opinion now?

13 A My opinion is that based upon the ordinance, yes, it
14 would be triggered to go to development plan review.

15 MS. HAWES: Nothing further, your Honor.

16 THE COURT: Thank you.

17 MR. DIMITRI: One moment, your Honor.

18 THE COURT: Absolutely.

19 **REDIRECT EXAMINATION BY MR. DIMITRI:**

20 Q Mr. Goff, you were asked on cross-examination about
21 change in intensity of use, increased intensity; correct?

22 A Yes.

23 Q And you were talking about, the example given was an
24 apartment building, a two-family structure that's
25 changing to a five-family structure?

1 A Right.

2 Q In that particular case, is it fair to say that the
3 increased intensity, so-to-speak, is because the
4 structure is going to be larger?

5 A Yes.

6 Q It's going to entail the construction of three more
7 apartments?

8 A Yes.

9 Q And, as such, it would require building permits; right?

10 A It would.

11 Q And it would require some review?

12 A Yes.

13 Q In this particular case, as you testified yesterday, is
14 the field, as it was, going to be a field at the
15 completion of the construction -- the completion of the
16 refurbishment of the topping with the artificial turf?

17 A Are you asking if it's more intense?

18 Q Yes.

19 A No, it's not.

20 Q Not more intense.

21 A Right.

22 Q Was the field --

23 A It still is a field.

24 Q It's going to be a field; right?

25 A Yes.

1 Q As far as you testified yesterday, that there was not a
2 structure; right?

3 A Yes.

4 Q And you just testified you would agree that it is a
5 structure today?

6 A Yes.

7 Q Based on the definitions that you read?

8 A The definitions in the zoning ordinance.

9 MR. DIMITRI: Can I have 28 full, please?

10 THE CLERK: Exhibit 28? He still has it.

11 THE COURT: I think Mr. Goff still has it.

12 THE WITNESS: Which one is that?

13 THE COURT: That's the big one.

14 MR. DIMITRI: I'm giving this back to Madam Clerk.

15 THE WITNESS: It's a little messy. I'm sorry.

16 MR. DIMITRI: That's all right.

17 Q What is the principal structure at the location of that
18 site, sir?

19 A The high school would be the principal structure.

20 Q And, again, were the fields that were there accessory
21 structures -- accessory uses?

22 A I would say they're accessory uses. Being a field, I'm
23 not sure that I would call that a structure, but.

24 Q So being a field, you would not necessarily call it a
25 structure?

1 A I wouldn't not.

2 Q And the field itself, the field itself, was that --
3 strike that.

4 Was the school, again, a prior nonconforming use?

5 A Yes. It would require a special use permit so it would
6 be a conforming use in that zone.

7 Q Conforming use?

8 A Yeah, with a special use permit, but since it doesn't
9 have a special use permit, you could say it's a
10 nonconforming use.

11 Q If it was being built today?

12 A Yes.

13 Q And, again, the field that we're talking about was an
14 accessory use?

15 A Correct.

16 Q It remains an accessory use?

17 A Correct.

18 Q Now, relative to questions about wetlands, you testified
19 yesterday that there was a DEM permit; correct?

20 A Yes.

21 Q And that was applied for and granted, issued?

22 A Yes, it was.

23 Q So that being a use in -- an accessory use which has been
24 in effect for decades; correct?

25 A Yes.

1 Q And you indicated on cross-examination that it involves a
2 combination of materials; right?

3 A That's correct.

4 Q Okay. Building materials, wood, steel, that type of
5 thing?

6 A Yeah, concrete, there are a number of things.

7 Q Concrete buffer?

8 A Yeah.

9 Q But the field itself?

10 A Is made out of synthetic materials.

11 Q Synthetic materials with some gravels?

12 A Gravel, yes. Gravel, some rubber tire, from what I
13 understand.

14 Q And the use is not changing?

15 THE COURT: Gentlemen, I'm going to have to ask both
16 of you to speak up.

17 THE WITNESS: I'm sorry.

18 THE COURT: Okay, because I'm having a lot of
19 trouble hearing both of you. Thank you.

20 MR. DIMITRI: I'm sorry, Judge.

21 Q And the use is not changing?

22 A No, it is not changing.

23 Q Is the field used for occupancy?

24 A No.

25 Q Is it used for ornamentation?

1 A I don't believe so.

2 Q Relative to the field itself and the definition of
3 development, is there a relocation of the field?

4 A No.

5 Q An enlargement of the field?

6 A No.

7 Q Mining?

8 A No.

9 Q There's certainly some land disturbance; correct?

10 A Yes.

11 Q And if the field were to be replaced with the grass, it
12 were to be replaced with blue grass, for instance, would
13 that require land disturbance as well?

14 A That would be a land disturbance.

15 Q And under development, again, any change in use?

16 A Right, yes.

17 Q I'm sorry?

18 A It would require, you know, development plan review if
19 you change the grass to blue grass. Is that what you're
20 asking me?

21 Q Yes.

22 A It would, under the regulations, yes.

23 Q No enlargement; right?

24 A No enlargement.

25 Q No conversion?

1 A No conversion.

2 MR. DIMITRI: I have no further questions, Judge.

3 THE COURT: Thank you, Mr. Dimitri.

4 Do you have any questions?

5 MS. HAWES: I have just one brief question, your
6 Honor.

7 THE COURT: I thought you might.

8 **RE-CROSS-EXAMINATION BY MS. HAWES:**

9 Q Mr. Goff, I own my residence. It's three floors. I use
10 it as a residence; correct?

11 A Yes.

12 Q Okay. If I were to then convert my residence into a
13 apartment building and divide my residence without
14 enlarging the structure at all into five units for people
15 to live in without enlarging the structure at all, it
16 would still remain a residence, but I would have to get
17 planning board review; correct?

18 MR. DIMITRI: I'm going to object, Judge.

19 THE COURT: Overruled.

20 A Because of the number of units that you were increasing
21 it by, zoning only allows one principal use, which would
22 be the residential use, so by adding more residential
23 uses, you would be required to get an approval.

24 Q And, in fact, if I'm going from a single-family residence
25 to a multi-family residence, even though it's still a

1 residence for people to live in, I would have to go get
2 zoning relief, wouldn't I?

3 A Yes, you would.

4 Q And you did testify to Mr. Dimitri that there is no
5 enlargement of the field, but, again, you didn't review
6 the plans of the field; correct?

7 A That's correct.

8 MS. HAWES: Nothing further, your Honor.

9 THE COURT: All right. Mr. Goff, thank you very
10 much. You may step down, and you will be excused.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Dimitri and Mr. DeSisto, your next
13 witness.

14 MR. DeSISTO: Your Honor, may we approach, briefly?

15 THE COURT: Sure.

16 (Bench conference, without the court reporter)

17 **(End of excerpt)**

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