

Page 1

1 STATE OF ILLINOIS }
 2 COUNTY OF OGLE } 3-19 AM
 3
 4
 5 In the Matter of the Petition
 6 of
 7 Gene R. Kempson, Flagg Township
 8 Ogle County, Illinois
 9
 10
 11 Testimony of Witnesses
 12 Produced, Sworn and
 13 Examined on this 30th day
 14 of May, A.D., 2019
 15 before the Ogle County
 16 Zoning Board of Appeals
 17
 18 Present:
 19 Rob Urish
 20 Mark Hayes
 21 James Reed
 22 Dave Williams
 23
 24 Paul Soderholm, Acting Chairman
 Michael Reibel, Zoning Administrator

Page 2

1 INDEX
 2
 3 Witness Examination
 4 Gene Kempson 9
 5 By Mr. Mannel 13
 6 Bill Hayes 15
 7 Donald Mannel 16
 8 Mike Harmon 22
 9 Thomas Lampley 30
 10 Laura Harmon 35
 11
 12
 13 EXHIBITS
 14 Exhibit Marked
 15 Objector's Exhibit A 21
 16
 17
 18
 19
 20
 21
 22 End. 49
 23
 24
 In Totidem Verbis, LLC (ITV)

Page 3

1 MR. SODERHOLM: I call this May 30th,
 2 2019, meeting of the Ogle County Zoning Board of
 3 Appeals to order at 6 p.m.
 4 Mr. Reibel, please read the roll.
 5 (Roll call was taken.)
 6 MR. REIBEL: Five present.
 7 MR. SODERHOLM: We have a five members
 8 present; therefore, there is a quorum.
 9 Let's please rise for the Pledge of
 10 Allegiance.
 11 (The Pledge of Allegiance was
 12 recited.)
 13 MR. SODERHOLM: The verbatim transcript
 14 serving as minutes from the last meeting is on
 15 file and will not be read at this time.
 16 I will entertain a motion to approve the
 17 minutes of the last ZBA meeting.
 18 MR. WILLIAMS: I'll make a motion.
 19 MR. SODERHOLM: Is there a second?
 20 MR. REED: I'll second.
 21 MR. SODERHOLM: It's been moved and
 22 seconded that we approve those minutes.
 23 All in favor, signify by saying aye.
 24 (All those simultaneously
 In Totidem Verbis, LLC (ITV)

Page 4

1 responded.)
 2 MR. SODERHOLM: All testimony will be
 3 taken under oath. Please come forward to
 4 testify, and state your name and address to the
 5 recording secretary. Please spell your last
 6 name. When testifying, please speak clearly and
 7 loud enough to be heard.
 8 This hearing is the only opportunity to
 9 place testimony and evidence on the record.
 10 There will not be another opportunity beyond
 11 tonight's hearing to submit additional evidence
 12 or testimony for consideration.
 13 Now, if you would please turn off or
 14 silence all electronic devices, that would be
 15 appreciated.
 16 The procedure on hearings that will be
 17 followed tonight is as found in the ZBA Rules of
 18 Procedures or Citizen's Guide to the Zoning
 19 Board of Appeals, which are available on the
 20 desk near the entrance to this room.
 21 If anyone has trouble hearing, please let
 22 me know. Mr.
 23 Reibel, what is the first order of
 24 business?
 In Totidem Verbis, LLC (ITV)

Page 5	Page 7
<p>1 MR. REIBEL: The first order of business 2 is to consider the request filed April 18th, 3 2019, of Gene R. Kempson, 8961 Gurler Grove 4 Court, Rochelle, for an Amendment to the Zoning 5 District to rezone from B-1 Business District to 6 I-1 Industrial District on property described as 7 follows and owned by the Petitioner: 8 Part of the Southeast Quarter of the 9 Southwest Quarter of Section 36, T40N, R1E 10 of the 3rd P.M., Flagg Township, Ogle 11 County, Illinois, 8.47 acres, more or 12 less. 13 Property Identification Number: 14 24-36-376-005. 15 At the Common Location: 8887 South 16 Highway 251. 17 For the record, all adjoining property 18 owners to the petition have been notified by 19 certified mail of the hearing this evening and 20 the specifics of the petition. A public notice 21 was published in the Ogle County Life on April 22 29th, 2019, again to notify the public of the 23 hearing this evening and the specifics of the 24 petition, and a sign -- actually, two signs have In Totidem Verbis, LLC (ITV)</p>	<p>1 Highway Department received May 13th, 2019, 2 which states that: The Applicant shall be 3 advised that the Ogle County Comprehensive 4 Stormwater Management Ordinance Provisions will 5 apply to any new construction on this parcel. 6 Signed by Jeremy E. Cecil, PE, County 7 Engineer. 8 Under the Staff Report, which is on file 9 and the Board members have received, I will 10 point out, under General Information, that the 11 property is located on the east side of South 12 Illinois Route 251 beginning approximately a 13 quarter mile south of East Steward Road. 14 Size is 8.47 acres. 15 Existing land use is the sales of 16 equipment/vehicles used by agriculture. 17 Surrounding land use and zoning, land to 18 the east and south is in residential use zoned 19 R-2 Single-Family Residence District; land to 20 the west and north is in agricultural use zoned 21 B-1 Business District. 22 Zoning history, the site was placed in a 23 Business zoning classification in 1965 upon 24 adoption of the first County Zoning Ordinance. In Totidem Verbis, LLC (ITV)</p>
Page 6	Page 8
<p>1 been posted along the frontage of the property 2 along Illinois Route 251 near the access road to 3 the site and then again interior along the 4 private access road along the frontage of the 5 actual property. 6 At the May 23rd, 2019, meeting of the Ogle 7 County Regional Planning Commission, Mr. Nelson 8 made a motion to recommend approval of the 9 petition, as the use fits the Comprehensive Plan 10 and there will be no change to the current 11 operation. Seconded by Mr. Reising. The motion 12 carried unanimously by five to zero roll call 13 vote. 14 I have a letter on file from the Illinois 15 Department of Transportation received May 9th, 16 2019, which states that: In the near future 17 there are no roadway construction plans for this 18 area that would affect the property at this 19 location for the rezoning request. 20 Consequently, at this time we have no 21 objections. 22 Signed by Kevin Marchek, PE, Region 2 23 Engineer. 24 And I have a letter on file from the Ogle In Totidem Verbis, LLC (ITV)</p>	<p>1 Special Information: 2 Public utilities, none available at this 3 time. 4 Transportation, South Illinois Route 251 5 is a hot-mix surfaced State highway that is 6 functionally classified as a major collector. 7 The site is accessed via a privately-owned 8 roadway. 9 Physical characteristics, the site is 10 located in an area an gently sloping topography. 11 There are no mapped wetlands or floodplain areas 12 on the site. According to the Ogle County 13 Digital Soil Survey, soil types on the site are: 14 198A - Elburn silt loam, zero to 2 percent 15 slopes, and 411B - Ashdale silt loam, 2 to 5 16 percent slopes. 17 The identified soils types on the site 18 have the following selected characteristics: 19 49.4 percent are well drained and 50.6 20 percent are somewhat poorly drained; 21 Zero percent are subject to ponding or 22 flooding; 23 100 percent are rated as being very 24 limited for septic fields due to depth to In Totidem Verbis, LLC (ITV)</p>

Page 9	Page 11
<p>1 saturated zones, seepage in the bottom layer, 2 slow water movement, and depth to bedrock; 3 100 percent are classified as prime 4 farmland. 5 That's all I have. 6 MR. SODERHOLM: Thank you. 7 Is the Petitioner here or somebody that 8 will be speaking on behalf of the Petitioner 9 here? Would you please come forward? Please 10 raise your right hand. 11 GENE KEMPSON, 12 being first duly sworn, testified as follows: 13 MR. SODERHOLM: Please state your name and 14 address and spell it for the recording 15 secretary. 16 MR. KEMPSON: I am Gene R. Kempson, 17 K-E-M-P-S-O-N. 18 MR. REIBEL: If you can hit the button 19 down at the base of the microphone. There you 20 go. 21 MR. SODERHOLM: Thank you. 22 MR. KEMPSON: My address is 8961 Gurler 23 Grove Court, Rochelle, Illinois, 61068. 24 MR. SODERHOLM: Would you please tell the In Totidem Verbis, LLC (ITV)</p>	<p>1 MR. KEMPSON: -- that you have. 2 I think the site plan -- proposed site 3 plan gives a good idea as far as the location, 4 and the need for the building is dictated by an 5 increase in their workload as they introduce new 6 products. So they have a lot of servicing to do 7 on these new products. 8 And I will state that most of their 9 service work is done in the field. So there's 10 some assembly and some repairs done at this 11 site, but when a piece of farm equipment breaks 12 down they're usually out in the field. 13 MR. SODERHOLM: Thank you. 14 Does anyone on the Board have any 15 questions for Mr. Kempson? 16 (No verbal response.) 17 MR. SODERHOLM: Has anybody filed for 18 appearance? 19 MR. REIBEL: Donald Mannel has entered an 20 appearance. 21 MR. SODERHOLM: Donald, would you please 22 come forward. 23 MR. REIBEL: This would be an opportunity 24 for him to ask Mr. Kempson any questions. In Totidem Verbis, LLC (ITV)</p>
Page 10	Page 12
<p>1 group assembled here what you're trying to 2 accomplish? 3 MR. KEMPSON: The ground and buildings 4 that are currently leased to Oxbo are on eight 5 and a half acres, 8.47 acres, and Oxbo would 6 like another building. Because the existing B-1 7 zoning allows for no more than 20,000 square 8 foot regardless of the lot size, it will be 9 20,000-square-foot floor space, to facilitate 10 Oxbo's request as the landowner, we want to 11 change the zoning because the zoning in I-1 has 12 no limits on floor space. 13 MR. SODERHOLM: Thank you. 14 MR. KEMPSON: One more comment. I do have 15 an Oxbo representative here for any questions 16 that -- concerning their operations. 17 MR. REIBEL: Is that all you have, 18 Mr. Kempson, or would you like to add some more 19 comment or testimony? 20 MR. SODERHOLM: Would you like to have the 21 representative from Oxbo speak right now? 22 MR. KEMPSON: I think I'd rather answer 23 any questions -- 24 MR. SODERHOLM: Okay. In Totidem Verbis, LLC (ITV)</p>	<p>1 Mr. Kempson, you may want to stay up there. 2 This is only an opportunity for Mr. Mannel to 3 ask questions of Mr. Kempson and not to testify 4 at this time. 5 MR. SODERHOLM: Would you -- I'm going to 6 swear you in. 7 MR. MANNEL: Sure. 8 MR. SODERHOLM: Would you please raise 9 your right hand and state your full name and 10 address so the recording secretary can hear 11 that. 12 COURT REPORTER: You need to actually 13 swear him in. 14 (Donald Mannel was duly sworn.) 15 MR. REIBEL: Now you can give your name 16 and address to the recording secretary. 17 MR. MANNEL: My name is Donald Mannel, 18 M-A-N-N-E-L. I reside at 8830 South Lynn 19 Street, Rochelle, Illinois, 61068. 20 MR. SODERHOLM: And you have some 21 questions for Mr. Kempson? 22 MR. MANNEL: Yes. 23 MR. SODERHOLM: Okay. 24 EXAMINATION In Totidem Verbis, LLC (ITV)</p>

Page 13

1 BY MR. MANNEL:
 2 Q. Gene, we're neighbors, so. The potential size
 3 of the new building?
 4 A. 10,000 square feet.
 5 Q. Okay. So it will be total floor space then,
 6 with the existing and new?
 7 A. 27,200.
 8 Q. So slightly over the 20,000 request. Okay.
 9 What about facilities, is there going --
 10 obviously there's going to be bathrooms and I'm
 11 assuming parking and all that type of thing?
 12 A. What we show on the concept plan is building
 13 with no bathrooms, because we have bathrooms in
 14 the other main building, and an improved rock
 15 area in between the new buildings.
 16 Q. Okay. So will there be any additional water
 17 runoff?
 18 A. Yes.
 19 Q. How would you handle that?
 20 A. According to the County's Soil and Water
 21 Management Plan, which will entail a plan.
 22 Q. Will there be a retention pond type system
 23 then?
 24 A. That has to be approved.
 In Totidem Verbis, LLC (ITV)

Page 14

1 Q. I was just curious if there was going to be
 2 enough room for that.
 3 A. Well, my experience is that because of the
 4 gradient of the land is relatively flat, it's
 5 not a fast runoff, but there will have to be
 6 some provision on the west side of the property
 7 to slow that from entering the roadside ditch.
 8 The runoff won't be any faster than it did
 9 before.
 10 Q. Okay. Will there be any overhead doors or
 11 anything in the new building?
 12 A. We are planning four larger overhead doors and
 13 one small 10-by-10 overhead door.
 14 Q. And will they be facing the residential
 15 community or will they be --
 16 A. No. South.
 17 Q. So be kind of face-to-face?
 18 A. Yes.
 19 MR. MANNEL: I think that's all the
 20 questions I have right now.
 21 MR. SODERHOLM: Thank you.
 22 Is there anybody here who wishes --
 23 Q. (By Mr. Mannel:) One more. Will you be using
 24 Anthony Road at all?
 In Totidem Verbis, LLC (ITV)

Page 15

1 A. No. That will take a -- I believe to use that
 2 dead-end side, to take a subdivision plat, and
 3 we're not planning on buying that parcel. All
 4 our traffic will be off the private road.
 5 Q. Off private road, okay.
 6 MR. SODERHOLM: Is there anybody here that
 7 is wanting to speak in favor of this petition?
 8 AUDIENCE MEMBER: The petition from all of
 9 us or from Gene?
 10 MR. SODERHOLM: Would you like to speak?
 11 AUDIENCE MEMBER: When you say petition,
 12 do you mean --
 13 MR. REIBEL: The request to rezone.
 14 AUDIENCE MEMBER: Oh, in favor? No.
 15 MR. HAYES: I'll just say a couple words.
 16 MR. SODERHOLM: Would you please step
 17 forward, raise your right hand.
 18 BILL HAYES,
 19 being first duly sworn, testified as follows:
 20 MR. SODERHOLM: Please state your name and
 21 address.
 22 MR. HAYES: Bill Hayes, H-A-Y-E-S, 322
 23 South Third Street, Rochelle, Illinois, 61068.
 24 And what I would like to say is, I think
 In Totidem Verbis, LLC (ITV)

Page 16

1 it's a great opportunity for some more job
 2 creation in our community. It's going to help
 3 the operation work more integrally than it is
 4 right now, because they're working out of two
 5 separate locations. I think logistically, even
 6 for the people in the neighborhood, it will
 7 really help out with a lot of the traffic that
 8 goes in and out, going from place to place.
 9 Once it's all at one location, it's going to be
 10 very beneficial to the overall traffic in the
 11 region, I would think.
 12 That's my opinion, from seeing the
 13 operation on a fairly regular basis, so.
 14 MR. SODERHOLM: Thank you.
 15 MR. HAYES: Thank you.
 16 MR. SODERHOLM: Anybody else here that
 17 would like to speak in favor of this petition?
 18 (No verbal response.)
 19 MR. SODERHOLM: Is there anyone here
 20 wishing to speak as opposed to the petition?
 21 Please come forward.
 22 DONALD MANNEL,
 23 having been duly sworn, testified as follows:
 24 MR. MANNEL: As a member of the residents
 In Totidem Verbis, LLC (ITV)

<p style="text-align: right;">Page 17</p> <p>1 that's going to be adjacent to this particular 2 building and this particular change, the concern 3 that I have, and in speaking to our neighbors, 4 which I have letters that I can present to the 5 Board as well, a concern isn't the building, it 6 isn't the change in Oxbo's business. They have 7 been a good neighbor so far, and we don't 8 anticipate any problem in that respect. 9 The concern that our residents have is 10 moving from B-1 to an I-1 zoning, which would 11 allow in the future businesses that could be 12 pretty unsafe for a residential community to be 13 in the middle of. 14 And what we would like to do is find out 15 if there's any other way that Gene can 16 accomplish what he's looking for, which is 17 getting an extra 7,000 square feet of floor 18 space, basically, without making the I-1 change 19 in the zoning, be it a variance to the B-1, 20 which we have all discussed and felt that that 21 would not be a problem for us to sign off on, or 22 subdividing the property so he has two pieces of 23 property which would allow him to have 20,000 24 square feet on each piece of property . Either <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p></p>	<p style="text-align: right;">Page 19</p> <p>1 he wants to use it. What we want to do is, find 2 a solution so that he can do what he needs to do 3 without making it an Industrial zoning. 4 If you would like, I can read the letter 5 that we have for you. 6 MR. SODERHOLM: Do you want to see the 7 letter? 8 MR. REIBEL: He can read it. 9 MR. SODERHOLM: Would you like to read the 10 letter? 11 MR. MANNEL: I will read the letter, if 12 you would like. 13 On May 4th, 2019, I was informed of a 14 proposed zoning change to the Property 15 Identification Number 24-36-376-005 by the Ogle 16 County Planning and Zoning Department. I feel 17 the change could have adverse effects on the 18 property values to the homes adjacent to the 19 property. 20 Based on the information provided thus far 21 and this change, I feel that need to protest 22 this for the following reasons: 23 Number one, proposed zoning change from 24 B-1 to I-1 will allow large industrial <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p></p>
<p style="text-align: right;">Page 18</p> <p>1 one of those would allow the property that he 2 has to remain in B-1 and avoid a future problem 3 where an industrial building wants to come in 4 and manufacture auto parts there or trucking 5 operation to come in and park their trucks 6 overnight and let them run all night long while 7 they're 30 feet away from a community. 8 So those are all concerns that we have. 9 And we also have a concern with Anthony, which 10 is a side street basically, which is on the 11 corner of Lynn and Anthony which basically go -- 12 juts into Gene's property. Obviously there 13 would be a concern at some point where that 14 would be opened up and additional traffic, other 15 than community traffic, would be moving through 16 that roadway. 17 So our community has discussed it, and 18 there's approximately 17 houses in this general 19 area that either are adjacent to or in very 20 close proximity to this piece of property. And 21 we have discussed it with different people, and 22 I have letters from 12 of those that we were 23 able to discuss. Again, not necessarily wanting 24 to prevent Gene from using the property the way <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p></p>	<p style="text-align: right;">Page 20</p> <p>1 businesses to develop right next to an R-1 2 subdivision with approximately 17 residences. 3 These businesses could be harmful to the R-1 4 community. 5 Number two, alternative options to the 6 zoning change seem to be better fit for the 7 residential community adjacent to this property. 8 These options are, one, subdividing property, in 9 two four-acre parcels of land, thus allowing the 10 proposed building to be constructed without any 11 zoning change at all. Or, two, granting a 12 variance to the 20,000-square-foot restriction 13 in the B-1 zoning for this property. 14 Also another concern was the possible 15 increase in the traffic on Anthony Street, which 16 is currently not used for traffic and has been 17 maintained pretty much by the subdivision. 18 Increased noise and heavy equipment will 19 be another concern. 20 It is not our intent to prevent the 21 construction of the proposed building on the 22 Property Identification Number 24-36-376-005. 23 We do feel a zoning change -- we do not feel 24 that the zoning change is the correct way to <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p></p>

Page 21

1 accomplish this for all concerned.
 2 Therefore, based on the above reasons, I,
 3 and then whatever resident it was, residing at,
 4 da, da, da, wish to object to the proposed
 5 zoning changes on that Property Identification
 6 Number, and then they signed it. And we have 12
 7 families.
 8 MR. SODERHOLM: Would you be willing to
 9 file that letter with the committee here?
 10 MR. MANNEL: Absolutely, yes.
 11 MR. SODERHOLM: And we will enter it as an
 12 exhibit.
 13 MR. MANNEL: I'm sorry?
 14 MR. SODERHOLM: We will enter that as an
 15 Exhibit A or Exhibit 1.
 16 MR. MANNEL: These are the signed records.
 17 MR. SODERHOLM: Thank you. See that,
 18 gentlemen?
 19 MR. REIBEL: We'll call these Objector's
 20 Group Exhibit A.
 21 (Objector's Exhibit A marked for
 22 identification.)
 23 MR. HARMON: My name is Mike Harmon,
 24 H-A-R-M-O-N.
 In Totidem Verbis, LLC (ITV)

Page 22

1 MR. SODERHOLM: May I swear you in first,
 2 Mike?
 3 MR. HARMON: Yup.
 4 MIKE HARMON,
 5 being first duly sworn, testified as follows:
 6 MR. HARMON: Mike Harmon, 8904 South Lynn
 7 Street, Rochelle, 61068.
 8 As Tom said, I'm one of the residents that
 9 backs up to this piece of property. I have no
 10 objection to the fact that they're looking for
 11 more building. It's just simply the zoning.
 12 Look at it as problematic. When Gene sells this
 13 piece of the property or in the future this
 14 changes hands, what options there are on that
 15 property with an I-1 zoning?
 16 As somebody residing right next to that
 17 property, I feel it would greatly diminish my
 18 value. When you look through the list of things
 19 provided to us as options on an I-1 zoning, very
 20 few of them were something that I would look for
 21 in a backyard if I was trying to buy a new
 22 house.
 23 So I -- just like I said, we have -- when
 24 we were discussing it as a group, nobody had an
 In Totidem Verbis, LLC (ITV)

Page 23

1 objection to him having the building or the
 2 extra square footage or doing the drainage or
 3 whatever has to be done. It was simply on the
 4 zoning, is where everybody got to the point
 5 where that's -- we all felt it was a negative
 6 thing for us as a group, so.
 7 MR. SODERHOLM: Is that it?
 8 MR. HARMON: Yup.
 9 MR. SODERHOLM: Thank you.
 10 MR. HARMON: Thank you.
 11 MR. SODERHOLM: Is there anybody else here
 12 that would like to speak against the petition?
 13 MR. KEMPSON: May I have a comment before
 14 we close?
 15 MR. SODERHOLM: Sure.
 16 MR. KEMPSON: I would like to thank these
 17 residents, and I also am a resident. I have
 18 four residential lots that are adjacent to this
 19 property. So totally sympathize with what
 20 they're saying.
 21 I did, at the onset of this, meet with
 22 Mike Reibel and asked about a variance, and he
 23 said a variance of that sort was not available.
 24 So we couldn't go that way.
 In Totidem Verbis, LLC (ITV)

Page 24

1 And to respond to the subdivision idea of
 2 my fellow residents and neighbors, to divide
 3 this into two four-acre lots will put the
 4 building too far away from the other two
 5 buildings to be a logical or expeditious use of
 6 the property. So -- and the subdivision process
 7 is long and complicated. That's why those
 8 decisions were made.
 9 And I absolutely agree with these people.
 10 I can't guarantee the future on this, and I
 11 can't guarantee that if Oxbo does not get to
 12 expand that these residents may lose a good
 13 neighbor. It's sad, but it's true. They need
 14 the space. They need to have this extra 10,000
 15 feet to stay where they're at. So if we can't
 16 find a better way that keeps everybody happy,
 17 then not everybody will be happy.
 18 So I'm just afraid if we get another
 19 neighbor in there -- because I do have a big
 20 investment there -- we it will get leased to
 21 someone else that may be not as happy with.
 22 MR. URISH: Mr. Chairman, excuse me.
 23 MR. SODERHOLM: Yes.
 24 MR. URISH: As a new kid on the block,
 In Totidem Verbis, LLC (ITV)

Page 25

1 could somebody explain to me why a variance
 2 can't be made?
 3 MR. REIBEL: There are certain allowable
 4 variations under the Zoning Ordinance. This
 5 provision that says for the B-1 district, that
 6 10,000 square feet devoted to one business is
 7 the max, is not something that's an authorized
 8 variation under the Zoning Ordinance. So that's
 9 why a variation is not authorized.
 10 You can vary setbacks, yard area,
 11 off-street parking and loading requirements, did
 12 I mention building height, and lot size. Those
 13 are the things that can be varied, but not
 14 everything in the Zoning Ordinance is authorized
 15 to be varied.
 16 MR. SODERHOLM: Anybody else want to --
 17 could you come up to the podium and speak so
 18 that we can -- everybody can hear.
 19 MR. MANNEL: You had mentioned that
 20 dividing it by two four-acre lots would put the
 21 building too far away. It wouldn't necessarily
 22 have to be two four-acres lot, would it?
 23 MR. KEMPSON: Correct.
 24 MR. MANNEL: You could go with a three-
 In Totidem Verbis, LLC (ITV)

Page 26

1 acre and a five-acre or a two and six or
 2 whatever.
 3 MR. KEMPSON: I don't know what the
 4 minimum requirements are in B-1. I think
 5 they're one acre. So it could be reconfigured
 6 in another way.
 7 MR. MANNEL: So it's viable -- it's an
 8 option? I mean, may not be what you want --
 9 MR. KEMPSON: Right.
 10 MR. MANNEL: -- but, I mean, it is an
 11 option, correct?
 12 MR. SODERHOLM: I believe I'm going to ask
 13 Mr. Reibel to address that, dividing it up into
 14 two lots to achieve the same end, if that -- the
 15 efficacy or non-efficacy of that.
 16 Would that be fair to ask you of you?
 17 MR. REIBEL: Sure. Certainly it's
 18 possible to apply to subdivide. It is a
 19 process. But it's still one business. I mean,
 20 you're not talking about a separate business.
 21 It's still 10,000 square feet devoted to that
 22 business, and there still is that limitation.
 23 Even though it would be subdivided, you're still
 24 talking about one business. It might be
 In Totidem Verbis, LLC (ITV)

Page 27

1 spilling onto two lots, but it's still one.
 2 MR. KEMPSON: So that would not create a
 3 loophole?
 4 MR. REIBEL: Not really. We're still
 5 talking about one business. It wouldn't be a
 6 separate business. It would still be one.
 7 MR. WILLIAMS: He still wouldn't get the
 8 square footage that he's having, right?
 9 MR. REIBEL: Right.
 10 MR. WILLIAMS: By doing that, he wouldn't
 11 be allowed the square footage that he's applying
 12 for, because each parcel is limited to the
 13 10,000 square feet.
 14 MR. KEMPSON: It's 20,000.
 15 MR. WILLIAMS: Or 20,000.
 16 MR. KEMPSON: Because it's the same
 17 business, it would be -- whether it was at a
 18 property line running down the middle of the --
 19 MR. REIBEL: Right.
 20 MR. KEMPSON: -- operation, it would
 21 not --
 22 MR. REIBEL: Right. It's not a separate,
 23 independent --
 24 MR. MANNEL: So it's 20,000 per business?
 In Totidem Verbis, LLC (ITV)

Page 28

1 MR. REIBEL: Right. Business, firm,
 2 whatever it says.
 3 MR. MANNEL: Are there any other options
 4 that maybe we're not looking at?
 5 MR. REIBEL: The only other option would
 6 be to amend the Zoning Ordinance. The County
 7 Board would have to consider that and change the
 8 Zoning Ordinance, the B-1 Business District
 9 limitation on the maximum size that's allowable
 10 to be devoted to one business/firm.
 11 MR. HARMON: How drawn out a process would
 12 that be?
 13 MR. REIBEL: Several months.
 14 MR. KEMPSON: Did you say seven?
 15 MR. REIBEL: Several months. It could be
 16 several months.
 17 MR. HAYES: And there's no guarantee.
 18 MR. REIBEL: Yeah, I don't know what the
 19 County Board's feeling or what this Board's
 20 feeling would be. I mean, that would be -- an
 21 application would have to be made and go through
 22 a public hearing process as well and be
 23 presented to the County Board for ratification.
 24 And there's a reason -- I mean, I can
 In Totidem Verbis, LLC (ITV)

Page 29

1 speculate the reason that the maximum gross
 2 floor area limitation is in the Business
 3 District is because, I mean, it's for retail and
 4 service businesses and business district, and
 5 you get huge buildings and that's more suited to
 6 an industrial district. Bigger buildings and
 7 retail service, yeah, there are some Walmarts,
 8 you know, and the big box stores, but we don't
 9 really see Walmarts being built in
 10 unincorporated Ogle County. We see more
 11 modest-sized businesses.
 12 MR. KEMPSON: And Farm 'n Fleet could not
 13 be built, correct? It would exceed the 20,000
 14 square feet.
 15 MR. REIBEL: Right. They're looking for
 16 infrastructure, sewer and water generally.
 17 That's where you see them.
 18 But that would be the only other option,
 19 and there's no guarantee that that would be
 20 approved. But that is the other option, would
 21 be to amend the Zoning Ordinance.
 22 MR. SODERHOLM: For the record, has either
 23 the City of Rochelle or the Township, Flagg
 24 Township, made a comment on this proposal?
 In Totidem Verbis, LLC (ITV)

Page 30

1 MR. REIBEL: I have received nothing.
 2 MR. SODERHOLM: Nothing, okay.
 3 I might add, just north of you there
 4 there's a huge Pilot truck stop coming in.
 5 MR. KEMPSON: Close.
 6 MR. SODERHOLM: So it looks like the
 7 industrial area is growing southward.
 8 MR. MANNEL: We were aware of that.
 9 MR. SODERHOLM: Okay. Anybody else
 10 speaking against this proposal?
 11 Please step up to the podium, raise your
 12 right hand.
 13 THOMAS LAMPLEY,
 14 being first duly sworn, testified as follows:
 15 MR. SODERHOLM: Please state your name and
 16 address, spell it for the recording secretary.
 17 MR. LAMPLEY: Thomas Lampley,
 18 L-A-M-P-L-E-Y, 8874 South Lynn Street, Rochelle
 19 Illinois, 60168.
 20 I'm going to voice the same concerns that
 21 you already heard, pretty much. You know, our
 22 big concern is that if this property gets sold
 23 in the near future, we don't know what will go
 24 there. And that's our biggest concern, because
 In Totidem Verbis, LLC (ITV)

Page 31

1 our properties, you know, we're already thinking
 2 ahead from Pilot -- or Love's truck stop going
 3 in, and if we have a industrial subdivision in
 4 our backyard, then we're going to be facing
 5 bigger challenges, you know.
 6 Is there any way that we can get this
 7 rezoned or get the amendment to the zoning? How
 8 long will it take, if you try to?
 9 MR. REIBEL: It could be several months.
 10 MR. LAMPLEY: You can't give us a more
 11 concrete time frame? Three months? Six months?
 12 Ten months?
 13 MR. REIBEL: Not really. I mean, once
 14 something is settled on, we have to discuss it
 15 in a committee of the County Board to see if
 16 they would -- the committee of the County Board
 17 would even want to entertain a text amendment,
 18 and then there would need to be an application
 19 made, publication, a hearing scheduled. So I
 20 don't know, all I can say is three, four, five
 21 months, maybe.
 22 MR. LAMPLEY: How long are you looking at,
 23 Gene, before you want to do this?
 24 MR. KEMPSON: It needs to be done before
 In Totidem Verbis, LLC (ITV)

Page 32

1 the weather turns to cold.
 2 MR. LAMPLEY: Before winter. So I guess
 3 that's five, six months, max, probably.
 4 And how long does it take to get the
 5 zoning changed to I-1?
 6 MR. REIBEL: It's scheduled for a decision
 7 in June.
 8 MR. LAMPLEY: In June.
 9 MR. KEMPSON: I think the third Monday in
 10 June.
 11 MR. REIBEL: June 18th.
 12 MR. URISH: Mike, question, is there some
 13 way that covenants could be attached to this
 14 parcel that would minimize the likelihood of
 15 objectionable industrial use?
 16 MR. REIBEL: Not by this Board or the
 17 County Board, but Mr. Kempson could.
 18 MR. URISH: The landowner could do it,
 19 perhaps?
 20 MR. REIBEL: Yes. Yes.
 21 MR. LAMPLEY: So you're saying Gene could
 22 do that?
 23 MR. URISH: Yes. Well, Mike is. I'm not
 24 a real estate attorney.
 In Totidem Verbis, LLC (ITV)

Page 33

1 MR. REIBEL: Sure, Mr. Kempson could
 2 commit to certain covenants or restrictions on
 3 the property, he could.
 4 MR. LAMPLEY: But that would only be
 5 applied as long as he owns the property, I'm
 6 assuming.
 7 MR. REIBEL: Not necessarily.
 8 MR. LAMPLEY: Not necessarily?
 9 Would you be willing to do something like
 10 that?
 11 MR. KEMPSON: I'd have to look at it and
 12 think about it. Anything is possible.
 13 MR. LAMPLEY: You know, because that would
 14 give us peace of mind, you know, and then would
 15 make everybody happy with the circumstances.
 16 MR. KEMPSON: Mike, would that be in the
 17 context of doing a subdivision to attach those?
 18 MR. REIBEL: No. I think the suggestion
 19 was, could you commit to certain covenants or
 20 restrictions on the property? And my response
 21 was simply, Yes, you could.
 22 I'm not trying to put -- make commitments
 23 for you or put words in your mouth. But yeah,
 24 any landowner can put covenants on his property
 In Totidem Verbis, LLC (ITV)

Page 34

1 and attach them to the deed that carries on with
 2 the land.
 3 MR. KEMPSON: In other words, encumber the
 4 deed?
 5 MR. REIBEL: Right.
 6 MR. KEMPSON: That's something we could
 7 do.
 8 MR. WILLIAMS: I have a question. How
 9 long has Oxbo been renting?
 10 MR. KEMPSON: Five years.
 11 MR. WILLIAMS: Five years. And if they're
 12 willing to invest in this, there's no guarantees
 13 I know, but obviously if you're able to provide
 14 the facility, the likelihood of them staying in
 15 this facility is greater than a new business
 16 coming in if they leave?
 17 MR. KEMPSON: Very definitely. While
 18 we're not final on a new lease, we have
 19 discussed all the details and agreed that the
 20 new lease that will be created because of this
 21 building will be a 10-year lease.
 22 MR. WILLIAMS: Okay. And chances are if
 23 this doesn't happen, they might look to
 24 relocate?
 In Totidem Verbis, LLC (ITV)

Page 35

1 MR. KEMPSON: It's possible. I can't
 2 speak for Oxbo.
 3 MR. WILLIAMS: Right. No, and no one
 4 knows the future obviously, but.
 5 MR. KEMPSON: Right. And it's not been
 6 discussed, If this doesn't happen we're going to
 7 do this. It's been a whole different
 8 construction kind of discussion.
 9 MR. WILLIAMS: Right.
 10 MR. SODERHOLM: Are there any other
 11 questions from the Board?
 12 (No verbal response.)
 13 MR. SODERHOLM: Does anybody have any
 14 further new comment to make that hasn't been
 15 covered?
 16 Please raise your right hand.
 17 LAURA HARMON,
 18 being first duly sworn, testified as follows:
 19 MR. SODERHOLM: Please state your full
 20 name and address to the recording secretary.
 21 MS. HARMON: Laura Harmon, H-A-R-M-O-N.
 22 Address, 8904 South Lynn Street, Rochelle,
 23 61068.
 24 MR. SODERHOLM: Thank you.
 In Totidem Verbis, LLC (ITV)

Page 36

1 MS. HARMON: I am a real estate agent and
 2 I also am a neighbor to this property.
 3 I, again, don't have a problem with Oxbo
 4 and their building and all of that. I think
 5 that's great. However, zoning Industrial there
 6 is going to really impact our property. We
 7 bought in that neighborhood simply because it
 8 was a dead-end street, it was not in town, we
 9 could raise our kids and let them do what they
 10 wanted. A lot of people buy in that
 11 neighborhood for that reason. The building
 12 won't change that.
 13 Industrial zoning, if it does not -- if
 14 they don't stay or decided to stay for another
 15 ten years, their lease is up and something else
 16 goes in there, that will affect our property
 17 value.
 18 Everybody knows the real estate market has
 19 been kind of iffy the last few years and
 20 everybody's value has gone down. I just hate to
 21 have the Industrial zoning and it's stuck. You
 22 can't go back and change it.
 23 I think that, Gene, as a neighbor and as a
 24 resident there, I would hope that you would at
 In Totidem Verbis, LLC (ITV)

Page 37

1 least try the other option they're offering you.
 2 It's a couple of months, but for us that's our
 3 home value. I don't know how long you plan to
 4 stay. We love our neighborhood. We want to
 5 stay there.
 6 So I think that if there's another
 7 opportunity that you can try, we'd like to see
 8 you try.
 9 I don't know if you guys have any other
 10 questions for me, but I just -- it's just hard
 11 for us. We're a small community. I'm sure if
 12 it was in your backyard, maybe you would look at
 13 it a little differently. I don't know. I don't
 14 want to back up to Industrial, and I don't think
 15 any of you would want to either. If you
 16 purchased the property and it was not, that
 17 makes it change.
 18 So that's all I really have to say.
 19 MR. SODERHOLM: Thank you.
 20 MS. HARMON: Any questions?
 21 MR. SODERHOLM: Does the Board have any
 22 questions of her?
 23 (No verbal response.)
 24 MR. SODERHOLM: That's it.
 In Totidem Verbis, LLC (ITV)

Page 38

1 MS. HARMON: Okay. Thank you.
 2 MR. KEMPSON: One final comment. One
 3 final comment. I know that we're almost done
 4 here. And it's a question for Mike.
 5 This parcel, including the parcel that
 6 these residences were built on, were originally
 7 zoned Commercial; is that correct?
 8 MR. REIBEL: Commercial Business, yes.
 9 MR. KEMPSON: Okay. Would Oxbo's
 10 contemplated 27,200 square feet have been
 11 allowed on the old Commercial Business Zoning?
 12 MR. REIBEL: In what context are you
 13 asking that? On the -- well, I'm not sure what
 14 you're asking.
 15 MR. KEMPSON: I'm asking -- I'm trying to
 16 get to the point, I guess, that we all built --
 17 bought property that was zoned Commercial
 18 originally, and these residences and my
 19 residence and vacant lots that are zoned
 20 Residential backed up to this parcel when we
 21 bought them.
 22 What were the uses of this parcel 20 years
 23 ago, before the zoning change?
 24 MR. REIBEL: I don't recall. I'm not sure
 In Totidem Verbis, LLC (ITV)

Page 39

1 what you're asking or why.
 2 MR. KEMPSON: Well, because we all bought
 3 property next to a commercial piece of property.
 4 The nomenclature between Industrial and Business
 5 was not existent in the County Zoning, I
 6 believe, when most of us bought our homes.
 7 MR. REIBEL: I'm sorry. Could you say
 8 that again? The distinction was not existent?
 9 MR. KEMPSON: Correct. When -- 20 years
 10 ago, the distinction in the County Zoning
 11 between I-1 and B-1 was nonexistent; is that
 12 correct?
 13 MR. REIBEL: No, there's always been an
 14 Industrial District and Business District.
 15 Business or Commercial Districts are intended
 16 for retail and service-type uses; Industrial for
 17 some service and light industrial uses. I mean,
 18 our Industrial District generally allowed light
 19 industrial uses. Heavy industrial uses are
 20 allowed only in the Special Use, and our
 21 landscaping and screening provisions included in
 22 the zoning district requirements.
 23 MR. KEMPSON: Okay. So the -- I just am
 24 under the impression that sometime approximately
 In Totidem Verbis, LLC (ITV)

Page 40

1 20 years ago the zoning classifications changed,
 2 that all that property surrounding this project
 3 was just zoned simply Commercial. Correct me if
 4 I am wrong.
 5 MR. REIBEL: Well, it was, and it still is
 6 Business -- zoned Business, B-1 Business.
 7 MR. KEMPSON: Okay. There was no such
 8 thing as just Commercial?
 9 MR. REIBEL: Well, I mean, many years ago
 10 there was a -- it may have been called
 11 something -- I think it may have been called a
 12 C-1, C-1A. You know, same thing. I mean, it's
 13 a retail and service district. The name may
 14 have changed but the general uses are --
 15 MR. KEMPSON: The same.
 16 MR. REIBEL: -- similar. The intended
 17 uses are for retail and service-type business in
 18 the Business or Commercial District; light
 19 manufacturing in the Industrial District.
 20 MR. KEMPSON: Very good. The point I was
 21 trying to make is moot. That's all.
 22 MR. REIBEL: Okay.
 23 MR. SODERHOLM: You look like you have a
 24 question.
 In Totidem Verbis, LLC (ITV)

Page 41	Page 43
<p>1 MR. URISH: I kind of feel like the 2 Solomon. 3 Is it appropriate to table the matter for, 4 I don't know, some period of time and suggest to 5 Mr. Kempson that some of these alternatives that 6 have been suggested be explored a month or two, 7 before the weather turns bad? 8 MR. REIBEL: It's an option for the Board 9 to continue for a month. 10 MR. URISH: Maybe my fellow board members 11 don't agree, but I -- I don't know how you flip 12 a coin. 13 MR. WILLIAMS: I mean, I would say if it's 14 in front of the Board and we're here, unless 15 Mr. Kempson wants to withdraw it or postpone it, 16 I think it's our duty to go ahead and make a 17 ruling. 18 MR. HAYES: I agree. 19 MR. SODERHOLM: Any further questions from 20 the Board? 21 (No verbal response.) 22 MR. SODERHOLM: Finding of facts. 23 MR. REIBEL: Is there any other closing 24 comments? In Totidem Verbis, LLC (ITV)</p>	<p>1 and other service providers will be able to 2 provide adequate public facilities and services 3 to the property, including, but not necessarily 4 limited to, schools, police and fire protection, 5 roads and highways, water supply and sewage 6 disposal, while maintaining adequate public 7 facilities and levels of service to existing 8 development. 9 MR. REED: Industrial use of the site will 10 not create a burden on the County of Ogle and 11 other public service providers due to the site's 12 proximity to service providers and its location 13 on a State highway. I believe the standard has 14 been met. 15 (All those simultaneously 16 responded.) 17 MR. REIBEL: 3) That the proposed 18 amendment will not result in significant adverse 19 impacts on other property in the vicinity of the 20 subject site or on the environment, including 21 air, noise, stormwater management, wildlife and 22 natural resources. 23 MR. HAYES: No significant adverse impacts 24 on other property in the vicinity or impact on In Totidem Verbis, LLC (ITV)</p>
Page 42	Page 44
<p>1 MR. SODERHOLM: Any closing comments, new 2 information? 3 (No verbal response.) 4 MR. SODERHOLM: This doesn't preclude 5 Mr. Kempson from making some kind of a 6 conciliatory agreement between the parties out 7 there that reaches an amicable solution, 8 gentlemen to gentleman, genteladies to 9 genteladies and so forth. 10 I'm seeing a lot of nodding in affirmation 11 of that, especially from Mr. Kempson there. 12 So time to move to the finding of the 13 facts. 14 MR. REIBEL: Amendment Standard 1) That 15 the proposed amendment will allow development 16 that is compatible with existing uses and zoning 17 of nearby property. 18 MR. WILLIAMS: The site is located within 19 an area that contains other commercial and 20 industrial uses and zoning. I believe the 21 standard is met. 22 (All those simultaneously 23 responded.) 24 MR. REIBEL: 2) That the County of Ogle In Totidem Verbis, LLC (ITV)</p>	<p>1 the environment is anticipated. I believe the 2 standard's met. 3 (All those simultaneously 4 responded.) 5 MR. REIBEL: 4) That the subject property 6 is suitable for the proposed zoning 7 classification. 8 MR. URISH: The site is located within 1.5 9 miles of the City of Rochelle on a major highway 10 in an area that contains existing commercial and 11 industrial uses. I think the standard's met. 12 (All those simultaneously 13 responded.) 14 MR. REIBEL: 5) That the proposed zoning 15 classification is consistent with the trend of 16 development, if any, in the general area of the 17 subject property including changes, if any, 18 which have taken place since the day the 19 property in question was placed in its present 20 zoning classification. 21 MR. WILLIAMS: The trend of development in 22 the general area is commercial and industrial 23 uses. I believe the standard's met. 24 (All those simultaneously In Totidem Verbis, LLC (ITV)</p>

Page 45	Page 47
<p>1 responded.)</p> <p>2 MR. REIBEL: 6) That the proposed</p> <p>3 amendment is consistent with the public interest</p> <p>4 and not solely for the interest of the</p> <p>5 Applicant, giving due consideration to the</p> <p>6 stated purpose and intent of the Amendatory</p> <p>7 Zoning Ordinance as set forth in Division I</p> <p>8 therein, the Land Evaluation and Site Assessment</p> <p>9 findings, and the recommendation of the Ogle</p> <p>10 County Regional Planning Commission with respect</p> <p>11 to the Ogle County Amendatory Comprehensive</p> <p>12 Plan.</p> <p>13 MR. REED: The proposed amendment is</p> <p>14 consistent with the public interest and not</p> <p>15 solely for the interest of the Applicant, as the</p> <p>16 proposed zoning district of I-1 is consistent</p> <p>17 with established uses and zoning in the</p> <p>18 vicinity, and the proposed amendment is also</p> <p>19 consistent with the purpose and intent of the</p> <p>20 Amendatory Zoning Ordinance. The Zoning Board</p> <p>21 of Appeals has given due consideration that the</p> <p>22 Regional Planning Commission has recommended</p> <p>23 approval. I believe the standard has been met.</p> <p>24 (All those simultaneously</p> <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p>	<p>1 MR. REIBEL: Hayes?</p> <p>2 MR. HAYES: Yes.</p> <p>3 MR. REIBEL: Williams?</p> <p>4 MR. WILLIAMS: Yes.</p> <p>5 MR. REIBEL: Soderholm?</p> <p>6 MR. SODERHOLM: Yes.</p> <p>7 (By voice vote five ayes.)</p> <p>8 MR. REIBEL: Five voted yes. Motion</p> <p>9 carried.</p> <p>10 MR. SODERHOLM: The motion has now been</p> <p>11 approved by a vote of five to zero.</p> <p>12 I might add that I would hope, and I think</p> <p>13 I can speak for the Board, that the meeting of</p> <p>14 the people on both sides of this issue convene</p> <p>15 and try to come to an applicable solution that's</p> <p>16 suitable to all. Thank you.</p> <p>17 MR. REIBEL: This petition will go on to</p> <p>18 the Ogle County Board for decision on June 18th,</p> <p>19 2019. That meeting is at 5:30 p.m. in this</p> <p>20 room.</p> <p>21 MR. SODERHOLM: Is there any further</p> <p>22 business?</p> <p>23 MR. REIBEL: No further business.</p> <p>24 MR. SODERHOLM: Is there a motion to</p> <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p>
Page 46	Page 48
<p>1 responded.)</p> <p>2 MR. REIBEL: Have the Board members read</p> <p>3 and considered the LaSalle Factors as applied to</p> <p>4 the petition?</p> <p>5 (All those simultaneously</p> <p>6 responded in the affirmative.)</p> <p>7 MR. SODERHOLM: I will now entertain a</p> <p>8 motion pertaining to the analysis for map</p> <p>9 amendment or rezoning decisions for Gene</p> <p>10 Kempson, Number 3-19 AM, B-1 to I-1.</p> <p>11 MR. WILLIAMS: Mr. Chairman, I'll make a</p> <p>12 motion to approve File 3-19, Map Amendment from</p> <p>13 B-1 to Light Industrial, I-1, based on the</p> <p>14 standards being met and the recommended approval</p> <p>15 of the Regional Planning Commission.</p> <p>16 MR. SODERHOLM: Is there a second?</p> <p>17 MR. HAYES: I'll second.</p> <p>18 MR. SODERHOLM: It's been moved and</p> <p>19 seconded to approve 3-19 AM.</p> <p>20 Call for the roll.</p> <p>21 MR. REIBEL: Reed?</p> <p>22 MR. REED: Yes.</p> <p>23 MR. REIBEL: Urish?</p> <p>24 MR. URISH: Yes.</p> <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p>	<p>1 adjourn?</p> <p>2 MR. URISH: So moved.</p> <p>3 MR. SODERHOLM: Is there a second?</p> <p>4 MR. WILLIAMS: I'll second.</p> <p>5 MR. SODERHOLM: Been moved and seconded to</p> <p>6 adjourn this meeting. All in favor, stand. The</p> <p>7 meeting is adjourned.</p> <p>8 (The hearing was concluded at</p> <p>9 6:55 p.m.)</p> <p style="text-align: center;">In Totidem Verbis, LLC (ITV)</p>

1 Now on this 30th day of May, A.D., 2019, I
2 do signify that the foregoing testimony was
3 given before the Ogle County Zoning Board of
4 Appeals.
5

6

7

8

9

Paul Soderholm, Acting Chairman

10

11

12

13

14

Michael Reibel,
Zoning Administrator

15

16

17

18

19

Callie S. Bodmer
Certified Shorthand Reporter
Registered Professional Reporter
IL License No. 084-004489
P.O. Box 381
Dixon, Illinois 61021

20

21

22

23

24

In Totidem Verbis, LLC (ITV)