

KRAMER RAYSON LLP

ATTORNEYS AT LAW

POST OFFICE BOX 629
KNOXVILLE, TENNESSEE 37901-0629

FOUNDED 1948

JOHN T. JOHNSON, JR.
WARREN L. GOOCH
EDWARD G. PHILLIPS
THOMAS M. HALE
JACKSON G. KRAMER
BEECHER A. BARTLETT, JR.
JOHN C. BURGIN, JR.
JOHN E. WINTERS
ROBERT L. BOWMAN
SHANNON COLEMAN EGLE
KATE E. TUCKER
BETSY J. BECK
WILLIAM J. CARVER
GEORGE R. ARRANTS, JR.
BRANDON L. MORROW
BRYCE E. FITZGERALD
NATHANIEL D. MOORE
ERICA D. GREEN
ANDREW M. HALE
LUCAS M. FISHMAN
JAMES T. SNODGRASS
KATHERINE R. OVERTON

OF COUNSEL
WAYNE R. KRAMER
CHARLES M. FINN
ROBERT A. CRAWFORD
STEVEN E. KRAMER
LESLIE L. SHIELDS

OFFICES
FIRST HORIZON PLAZA, SUITE 2500
800 SOUTH GAY STREET
KNOXVILLE, TENNESSEE 37929
TELEPHONE 865 525-5134
TELECOPIER 865 522-5723

105 DONNER DRIVE, SUITE A
OAK RIDGE, TENNESSEE 37830
TELEPHONE 865 220-5134
TELECOPIER 865 220-5132

R.R. KRAMER (1888-1966)
E.H. RAYSON (1923-2017)

July 24, 2023

H. Chris Trew
Law Offices of Biddle & Trew, LLP
20 Washington Avenue NW, P.O. Box 10
Athens, TN 37371-0010
Email: chris@hbctlo.com

**Re: *Mitchell Hyde v. Loudon County Board of Zoning Appeals*
*Loudon County Chancery Court Docket No. 13079***

Mr. Trew:

I am writing in response to your letter dated July 17, 2023, in the above-captioned matter. As we understand it, Mr. Hyde has not proffered a compromise, but is instead simply asking the Loudon County Board of Zoning Appeals to reverse its decision with respect to his application for a special exception. Our client respectfully rejects this request. We do not share your view that the Chancellor will overturn the Board's decision. When a local governing body has broad discretion, and the reviewing court is restrained by a limited standard of review, it does not bode well for a reversal.

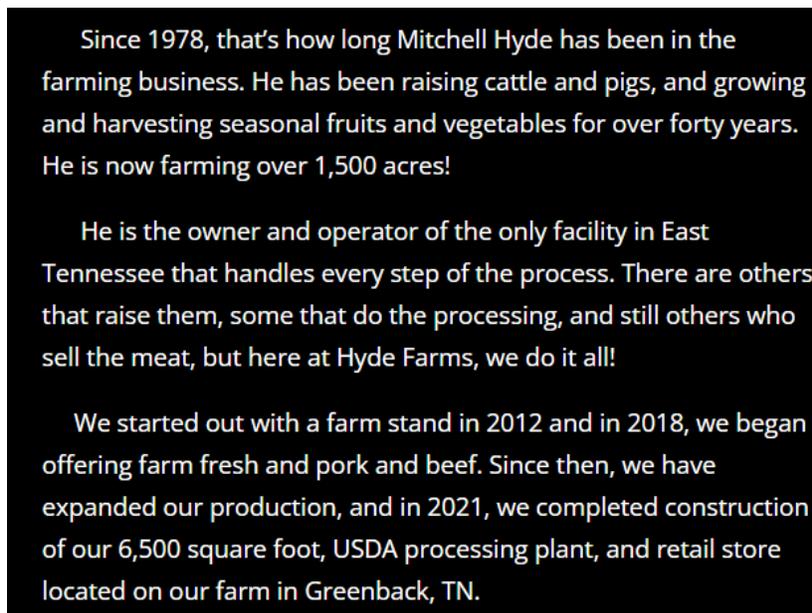
Loudon County's Zoning Resolution affords the Board of Zoning Appeals with broad discretion in considering applications for special exceptions. Indeed, "the Board may impose such conditions upon the proposed uses of buildings or land as it may deem advisable in furtherance of the general purposes of this resolution." (Zoning Res. § 7.060(B).) The "general purposes" include, among other things, "encouraging the most appropriate use of land;...conserving the value of land; [and]...providing for adequate...sanitation." (Zoning Res. § 1.010.) The debate at the Board of Zoning Appeals meeting obviously centered on the fact that Mr. Hyde was pumping waste from his grease trap out onto his fields. It is not a stretch to see how denying his application for a special exception supports the general purposes of the resolution.

Moreover, the Board's decision is limited to a very limited standard of review. In certiorari actions, courts do not (1) inquire into the intrinsic correctness of the lower tribunal's decision; (2) reweigh the evidence; or (3) substitute their judgment for that of the lower tribunal. *411 P'ship v. Knox Cnty.*, 372 S.W.3d 582, 586-87 (Tenn. Ct. App. 2011). The Board's decision is "presumed to be valid and a heavy burden of proof rests upon the shoulders of the party who challenges the action." *McCallen v. City of*

Memphis, 786 S.W.2d 633, 641 (Tenn. 1990).

While your letter references proceeding with discovery in the event a resolution is not reached, discovery is generally not allowed in certiorari actions. “[R]eview under the common law writ of certiorari is generally limited to the record made before the lower tribunal or board,” *411 P’ship v. Knox Cnty.*, 372 S.W.3d 582, 588 (Tenn. Ct. App. 2011), which means that discovery is generally not allowed in these types of actions. See *Kaplow v. City of Gatlinburg Bd. of Adjustments & Appeals*, No. E201400347COAR3CV, 2015 WL 3964212, at *9 (Tenn. Ct. App. June 30, 2015) (“Thus, discovery as a general proposition has no place in a certiorari review action: the reviewing court should determine from the evidence filed before the lower tribunal whether that tribunal acted arbitrarily, illegally or without material supporting evidence.”) (internal citations omitted); *Shiple v. Pers. Advisory Bd. for City of Oak Ridge Tenn.*, No. 03A01-9603-CV-00096, 1996 WL 625810, at *3 (Tenn. Ct. App. Oct. 30, 1996) (“Because the standard of review by the Trial Court is whether the inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, it would be inappropriate to countenance additional testimony which might be uncovered by discovery and, as a result, reverse the administrative body based upon evidence not before it.”).

Even if the Board did not feel as strongly about its position as it does, it would not be inclined to acquiesce to Mr. Hyde’s demand because he has disregarded the Board’s decision and publicly flouted its authority. In your letter, you state several times that Mr. Hyde has been “operating a butcher shop for his own use.” However, Mr. Hyde’s butcher shop is, no doubt, open to the public. Hyde Farms maintains a [website](#) and an active [Facebook page](#) advertising their butchering services to the public. For example, this is a screen clipping from the website:



And Hyde Farms’ Facebook page is filled with advertisements for its butcher shop:

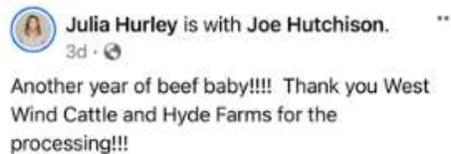


(posted July 17)



(posted July 14)

It also appears that Hyde Farms processed meat for former Loudon County Commissioner Julia Hurley:



Hyde Farms' online presence makes it clear that its butcher shop is not just for private use. And without the required special exception, Mr. Hyde is in violation of the Zoning Resolution. Please advise Mr. Hyde that he should immediately cease and desist from any further violations of the Zoning Resolution, including, but not limited to, operating a butcher shop open to the public without the required special exception. The Zoning Resolution provides that each violation is punishable by a fine of \$50 per day. (Zoning Res. § 7.100.) For the purpose of assessing the fine, please provide us with an accounting of the number of days Mr. Hyde's butcher shop has been open to the public in violation of the Zoning Resolution.

In light of the foregoing, our client does not have a counterproposal to Mr. Hyde's demand. However, if Mr. Hyde wishes to reconsider and provide us with a revised settlement proposal, we will be happy to discuss it with our client. Any revised settlement proposal should include a verified commitment from Mr. Hyde that he will operate his business in a sanitary manner by connecting all aspects of his operation to the sewer system and that he will not spray waste on his pastures.

H. Chris Trew, Esq.
July 24, 2023
Page 4

Sincerely yours,

KRAMER RAYSON LLP

Robert L. Bowman

cc: Brandon L. Morrow, Esq. (via email)