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Transcript of Administrative Hearing

Date: July 7, 2017

Case: Potomac Foods Real Estate, LLC, In Re:

Planet Depos

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Conducted on July 7, 2017

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1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 JOSEPH CALOGGERO
2 FOR MONTGOMERY COUNTY, MARYLAND	2 Vice President, The Traffic Group
3 -----x	3 9900 Franklin Square Drive Suite H
4 In Re: :	4 Baltimore, Maryland 20236
5 Potomac Foods Real Estate, : Case No.	5
6 LLC : CU 1703	6 THOMAS FLYNN
7 -----x	7 President, Thomas Point Associates
8	8 5 Decatur Avenue
9 HEARING	9 Annapolis, Maryland 21403
10 Before Hearing Examiner Martin Grossman	10
11 Rockville, Maryland	11
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5 1 PROCEEDINGS 2 MARTIN GROSSMAN: All right. Mr. Kline, are you ready? 3 JODY KLINE: Yes, sir. 4 MARTIN GROSSMAN: All right. We call the case. This is 5 a public hearing in the matter of CU 1703, Potomac Foods 6 Real Estate, LLC, an application for conditional use 7 pursuant to Zoning Ordinance Section 59.3.5.14.e, to permit 8 a drive-through restaurant, a Burger King, at 16004 Shady 9 Grove Road in Gaithersburg, Maryland, in the general 10 retail, that's a GR1.5H45 zone. The subject property is on 11 parcels N017, N016, N019, and part of parcel 10 in the 12 Washington Industrial Park. The site is owned by Comprint 13 Court Joint Venture which has consented to the application. 14 My name is Martin Grossman; I'm the Hearing Examiner which 15 means I will take evidence here and write a report and 16 decision in the case. Will the parties identify themselves 17 for the record please? 18 JODY MILLER: Good morning. For the record my name is 19 Jody Kline. I'm an attorney with the law firm of Miller, 20 Miller, & Canby with offices at 200 B Monroe Street, here 21 in Rockville, and I represent the applicant, Potomac Foods 22 Group. We have five witnesses. I have given you the resumes 23 and there, since there are some unusual spellings in there, 24 normally I would give you the spellings, but you have them 25 all already.	7 1 you accept Technical Staff's Recommended Conditions, on 2 Exhibit 58, as approved by the Planning Board on June 22, 3 2017, Exhibit 59? 4 JODY KLINE: Mr. James, our initial witness and 5 representative of the company was going to testify that all 6 four conditions are acceptable to the applicant. 7 MARTIN GROSSMAN: Okay. And there usually are 8 additional conditions, as you are very familiar with, that 9 the hearing examiner proposes if a conditional use is 10 granted. 11 JODY KLINE: Sure. The team is prepared to address any 12 additional issues that you have. 13 MARTIN GROSSMAN: All right. Well, there are some that 14 are included in every one. We always have a catchall about 15 following the law. 16 JODY KLINE: Oh sure. Sure. 17 MARTIN GROSSMAN: And I don't know that there are any 18 additional- 19 JODY KLINE: I haven't shown them a copy of the 20 standard opinion, but I'll call that boilerplate, and 21 that's all acceptable. 22 MARTIN GROSSMAN: All right. Okay. Do we have an 23 affidavit of posting? 24 JODY KLINE: Yes sir. We have verified that the sign 25 was posted. Well, I know that the sign was posted
6 1 MARTIN GROSSMAN: All right. That's Lee Ann Gudorp, 2 Luke Fetcho, Joseph Caloggero, Thomas Flynn, and Mark 3 James? 4 JODY KLINE: Yes sir, that is correct. 5 MARTIN GROSSMAN: All right. And I see some people in 6 the audience. I presume those are your witnesses, but is 7 there anybody in the audience here who is not a witness to 8 be called by Mr. Kline? I'm seeing no hands. We will 9 proceed. All right. For the benefit of your clients let me 10 explain the nature of these proceedings. It sort of 11 operates in the way a court room operates. It's formal, but 12 with a little less formality than a court. We take 13 evidence, witnesses are sworn, they're subject to cross- 14 examination, if there were someone here to cross-examine, 15 and there is a court reporter who takes everything down; 16 and there will be a transcript. All right. This is an 17 application for conditional use which is a statutorily 18 permitted use, if conditions are met, both specific to this 19 kind of conditional use and in general for conditional 20 uses. I have a few preliminary matters. If there are any 21 amended documents or plans please make sure that we get 22 electronic copies as well. Also, there was a motion to 23 amend the Application filed on April 21, 2017 as Exhibit 24 51. It was noticed publicly on May 25, 2017, Exhibit 55, 25 it's unopposed, and it is therefore granted. Mr. Kline, do	8 1 originally, and we verified that it still remains in place. 2 MARTIN GROSSMAN: All right. 3 JODY KLINE: And actually, I said the sign, there are 4 actually four of them. 5 MARTIN GROSSMAN: All right. This will be Exhibit 62, 6 the signed Affidavit of Posting. Okay, any other 7 preliminary or procedural matters, Mr. Kline? 8 JODY KLINE: Yes. And it's probably more if you can 9 help me with some confusion that I have stumbled into. 10 MARTIN GROSSMAN: I have my own confusion. I don't 11 know that I can help with yours. 12 JODY KLINE: I know that you had your door closed and 13 I know you reviewed the file in advance of the hearing. 14 MARTIN GROSSMAN: Right. 15 JODY KLINE: Do you have in your file a Revised 16 Traffic Study and a Revised Needs Study? 17 MARTIN GROSSMAN: I don't believe I have a Revised 18 Needs Study. I don't remember if I have a Revised Traffic 19 Study. 20 JODY KLINE: Okay. Well, the reason I say that is I 21 have been, in preparing for the hearing, I had a bundle of 22 material dated March 24th, 2017 that includes submission 23 materials of plans and a Revised Traffic Study and a 24 exhibits today I did not see my letter of March 24th. I did 25 see the one you just referenced of April something or

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3 (9 to 12)

9 1 other, and for some reason, it did not reference that there 2 was included in that the Needs Study or the Revised Traffic 3 Study. So if you remember, we originally had two 4 restaurants on this site. 5 MARTIN GROSSMAN: Yes. 6 JODY KLINE: So both the Traffic Study and the Needs 7 Study had to be changed. And something's happened, either 8 my March 24th package didn't get to you or, what was 9 suggested by your staff maybe Ms. Forbes didn't get a 10 chance to log it in or something. I don't know. But I have 11 copies of the documents that we would be testifying for 12 today. But I just wondered if you had seen anything in your 13 file. Otherwise there seems to be some mistake between what 14 I have in my files and what action was filed with your 15 office. 16 MARTIN GROSSMAN: Okay. Well, what I have in terms of 17 a Needs Study, I actually looked at last night, was Exhibit 18 23. It's dated June 2016. 19 JODY KLINE: Does it say for two restaurants, or two- 20 MARTIN GROSSMAN: And it was received in my office on 21 July 21, 2016. 22 JODY KLINE: Okay. 23 MARTIN GROSSMAN: Is that number one or number two? 24 JODY KLINE: Well- 25 MARTIN GROSSMAN: Is that the revised or is that, do	11 1 MARTIN GROSSMAN: But I usually leave the record open 2 to get the transcript in any event. And since there's no 3 opposition here, I don't think there's going to be harm in 4 this case. So if you would, you have copies for me. Let's- 5 hand them up now of what you've got. 6 JODY KLINE: The Needs Study of March 2017. 7 MARTIN GROSSMAN: Okay. So that will be Exhibit 63, 8 and that's the Revised Needs Study, and that's dated March 9 2017. 10 JODY KLINE: And that's the Traffic Study. 11 MARTIN GROSSMAN: Okay. This will be Exhibit 64, 12 Revised Traffic Study, March 6, 2017. Did the numbers in 13 the Revised Traffic Study coincide with the numbers in the 14 Staff Report which were revised at the Planning Board 15 hearing? 16 JODY KLINE: The answer is yes. The staff would have 17 had the benefit of the Revised Traffic Study. 18 MARTIN GROSSMAN: Okay. All right. Then I don't think 19 that there's any problem with receiving now. I think it 20 would be much more of an issue if there were opposition 21 here and we hadn't gotten it in advance. 22 JODY KLINE: Sure. 23 MARTIN GROSSMAN: But I don't see any prejudice to 24 anybody and I can certainly, I'll take a listen to the 25 witnesses and then make sure I look at them
10 1 you want to take a look at it and see if it's the revised 2 one or- 3 JODY KLINE: The original one basically said- 4 MARTIN GROSSMAN: Oh, it does say two restaurants with 5 drive-throughs. Okay. 6 JODY KLINE: So if you haven't seen one that says 7 Needs Study dated March of, then apparently it did not get 8 into your file. 9 MARTIN GROSSMAN: Right. 10 JODY KLINE: Okay. 11 MARTIN GROSSMAN: Right. 12 JODY KLINE: And similarly, it's probably true of a 13 Traffic Study that's also dated, so something happened 14 either my March 24th filing didn't get to you. 15 MARTIN GROSSMAN: Didn't get to us. 16 JODY KLINE: Or Ms. Forbes and I maybe made an 17 agreement that I would pull it back and do something and 18 for some reason these documents didn't get resubmitted in 19 April. 20 MARTIN GROSSMAN: Didn't get filed. Okay. 21 JODY KLINE: So what I would do is I have copies of 22 them today. I can make them available during the testimony. 23 If when we're finished you say, Mr. Kline, I think I need 24 to look at these in the context of what you said today, we 25 could leave the record open to give you time to-	12 1 JODY KLINE: Sorry about the confusion. I would have 2 rushed over and talk to Ms. Forbes and find out what the 3 discrepancy was, but of course, that's not going to happen. 4 MARTIN GROSSMAN: Right. Well, she's, as you know, 5 retired. 6 JODY KLINE: Exactly. 7 MARTIN GROSSMAN: And Ms. Lounge (phonetic) is in 8 Virginia. All right. Okay. No harm, no foul. Let's, then 9 let's proceed with your- 10 JODY KLINE: Well, I'll just do a quick opening 11 statement because I know you reviewed the file. 12 MARTIN GROSSMAN: Yes. 13 JODY KLINE: And frankly you were aware of this 14 application even before it got filed because we had to 15 figure out how to handle the two restaurant idea. And maybe 16 I'll, in order to speed things up, because nobody wants to 17 be in this 77 degree room very long, I will sort of preempt 18 a little of Mr. James' testimony. You may recall that we 19 originally envisioned two buildings with two drive-in 20 restaurants. Why we had to back off from that was when 21 staff virtually was ready to publish the Staff Report, 22 found that the right-of-way along Shady Grove Road was not 23 adequate if we were going to go through subdivision to re- 24 plat the lots to accommodate those two uses. We would have 25 to dedicate 15 feet off the frontage of the property. It

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4 (13 to 16)

13 1 shrank the property so much that the client was not 2 comfortable that they would have enough parking to 3 accommodate two drive-through restaurants. So we had to 4 amend the plan and came up with something that I felt was 5 extremely creative, of still getting the four eating 6 establishments but only one drive-through restaurant. And 7 then I had to figure out how do I go from 173A and 3B to 8 173- 9 MARTIN GROSSMAN: And what we've all agreed to do was 10 to drop the B and convert the A into just CU1703. 11 JODY KLINE: Right. So I want to give you the 12 background of why you aren't seeing the two restaurants, or 13 the two drive-through restaurants. You will, the testimony 14 will explain there are still going to be four eating 15 establishments but all within a consolidated building. So I 16 put up a copy of the Zoning Vicinity Map which is an 17 exhibit in the record of the case, although I know you know 18 it pretty well. But Shady Grove Road is essentially running 19 from the upper right-hand corner to the lower left-hand 20 corner, and the subject property is highlighted in yellow, 21 or a little bit of orange, in what I guess you would call 22 the Northwest quadrant Shady Grove Road, and Comprint 23 Court. 24 MARTIN GROSSMAN: Is that particular exhibit already 25 in the file?	15 1 letter requesting they will void their records of the 2 current, or the existing Site Plan of the property. 3 MARTIN GROSSMAN: Okay. 4 JODY KLINE: So that's how we'll even eliminate it. 5 MARTIN GROSSMAN: That was, I believe, a condition of 6 it. 7 JODY KLINE: It is a condition, and that's how we'll 8 satisfy all at the administrative level. 9 MARTIN GROSSMAN: Okay. 10 JODY KLINE: The other thing I was going to say real 11 quickly was there is a neighborhood in the Staff Report and 12 that is acceptable to the applicant also. I'll run through 13 it if you want me to or did- 14 MARTIN GROSSMAN: I saw it on the- 15 JODY KLINE: You saw it on the, okay. Fine. So the 16 neighborhood is acceptable to the applicant, it's fine. 17 MARTIN GROSSMAN: Fine. Fine. 18 JODY KLINE: That having been said, but my apology 19 for the submissions error here I'll just call our first 20 witness, Mr. James. 21 MARTIN GROSSMAN: Okay. 22 MARK JAMES: Right here, Jody? 23 JODY KLINE: Yeah, here is great. Okay. Let me get the 24 elevations out here for you too. 25 JODY KLINE: Mr. James, could you please state and
14 1 JODY KLINE: Yes sir. Yeah. 2 MARTIN GROSSMAN: What exhibit number are you looking 3 at? Just so we make sure. 4 JODY KLINE: Twenty-two. 5 MARTIN GROSSMAN: Twenty-two, okay. 6 JODY KLINE: Mm-hmm. 7 MARTIN GROSSMAN: All right. 8 JODY KLINE: And I, it's exactly what was filed so I 9 didn't think you even need to read that any more. 10 MARTIN GROSSMAN: Okay. 11 JODY KLINE: I want to put it up to just make a 12 reference to the zoning history because that has, relates 13 to one of the conditions; and that was the property had 14 originally been zoned in the C3 classification, a highway 15 oriented classification, with the adoption of the new 16 zoning ordinance in October of 2014 was converted to the GR 17 1.5 zoning, with a height of 45 feet general retail zone. 18 But that eliminated the need, or the ability for this 19 coming additional use allocation will supersede the Site 20 Plan that was on the property before. And when I saw the 21 condition in the Staff Report, remove it, how do you do 22 that? So I had talked to Mr. Mark Pfefferle, the head of 23 Development Advisory and Regulatory Coordination Division, 24 and they told me that upon approval of the conditional use 25 application, if I sent them a copy of that with a cover	16 1 spell your name and give us your business address? 2 MARK JAMES: Sure. My name is Mark James, M-A-R-K, J- 3 A-M-E-S, and I'm with Potomac Foods Group, at 7611-N 4 Rickenbacker Drive, Gaithersburg, Maryland 20879. 5 MARTIN GROSSMAN: All right. Would you raise your 6 right hand please? Do you swear or affirm to tell the 7 truth, the whole truth, and nothing but the truth under 8 penalty of perjury? 9 MARK JAMES: Yes, sir. 10 MARTIN GROSSMAN: All right. You may proceed. 11 JODY KLINE: Mr. James, just tell us who Potomac Foods 12 is and what its relationship is with this application. 13 MARK JAMES: Okay. Potomac Foods Group owns and 14 operates 29 Burger King restaurants. We have an umbrella of 15 other franchises including Bojangles' Chicken 'n Biscuits, 16 and Golden Corral under the same umbrella. We do business 17 in Maryland, Virginia, Delaware, and the District. And our 18 primary application is Burger Kings. 19 JODY KLINE: Just tell us a bit about the history of 20 this restaurant. It's been there a while. How long is that? 21 MARK JAMES: It has been there since 1975-ish. I 22 didn't get the exact date. It's been remodeled three times 23 since its existence once in '89, once in 2000, again in 24 2007 for an interior remodel. 25 JODY KLINE: In your portfolio of restaurants is this

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5 (17 to 20)

17 1 considered to be a successful restaurant? 2 MARK JAMES: Yes sir. That this is actually, this 3 restaurant's been the backbone of our company for quite 4 some time. It has held us in the weak economy. At one point 5 we were the fourth highest ranking Burger King in the 6 country. That's since dropped to under, about 15, but we 7 are currently still a very, very strong Burger King. 8 JODY KLINE: Mr. James, what's your position with the 9 company? 10 MARK JAMES: I'm the vice president of operations, 11 sir. 12 JODY KLINE: Okay. And you attribute the success of 13 this restaurant to what features; the features of the 14 restaurant, or its setting, or what? 15 MARK JAMES: I believe the setting and the features. I 16 think we updated it throughout the years to kind of go with 17 the times, so I think that's why it's been so successful. 18 JODY KLINE: So the inevitable question is: Why would 19 you change it then? 20 MARK JAMES: Well, two reasons. We have a franchise 21 agreement coming to a close at the end of this year so we 22 had to make the decision to remodel and this is an 23 extensive remodel because we're at 40 plus years, was the 24 first reason. The second reason is as negotiations with our 25 lease for the rents came about; the rent doubled starting	19 1 Grove in the little backpacking lot here that's ours and 2 they are directed to kind of queue, as you know it's a very 3 busy drive-through, queue into here. And actually they stop 4 and wait for people to come off Comprint. 5 JODY KLINE: So you actually have queuing for the 6 existing restaurant that's not necessarily immediately 7 adjacent to the building? 8 MARK JAMES: That's correct. 9 JODY KLINE: Okay. That's something, presumably, would 10 like to address as part of this application as well? 11 MARK JAMES: That's correct, yes. Yeah. So currently, 12 just the one lane drive-through system here and one entry 13 door. We have a very large playground on this lot, which I 14 think is, you know, a play land, an interior play land 15 which is almost 2000 square feet. So the play land will go 16 and be another food establishment in this area. Parking, 17 patrons come in and they have parking options currently 18 here, here- 19 JODY KLINE: And you're pointing sort of north and 20 northeast of the restaurant building? 21 MARK JAMES: Yes Sir. 22 JODY KLINE: Yeah. 23 MARK JAMES: Okay. I'm sorry, as well as parking down 24 here by Comprint. 25 MARTIN GROSSMAN: Okay.
18 1 in January 2017. Went from \$150,000 to \$350,000 for the 2 site we sit on. So we had to come up with something 3 creative to bring in a little bit more extra revenue on the 4 site to afford the rent. 5 JODY KLINE: All right. Thank you. We've put up on the 6 board a copy of Exhibit number 11, which is an existing 7 Conditions Plan, and it's a little hard to see everything 8 but just using that board, can you just explain to the 9 Hearing Examiner kind of how it all works? How it 10 functions today. 11 MARK JAMES: Sure. Today the Burger King sits here 12 next to a bank. 13 JODY KLINE: And if you don't mind, just kind of, can 14 you highlight that; just point out where that is, maybe. 15 MARK JAMES: Sure. Sure. So the bank sits here. We're 16 off of the 370 here and Shady Grove Road and Comprint 17 Court. So currently you can pull into the drive-through two 18 ways. Off of Shady Grove to come around the building or you 19 can come off Comprint Court and queue in line here. This 20 current site only has one menu board and one entry way. So 21 at times- 22 MARTIN COMPTON: That's the Comprint Court entry where 23 you're pointing. 24 MARK JAMES: Yes, sir. Yes, sir. What happens, 25 however, on the current site if they pull off of Shady	20 1 JODY KLINE: Okay. So we've put up on the board a 2 rendered copy of the Site Plan. This is not in the record, 3 Mr. Grossman, so I would ask if it could be made an 4 Exhibit. 5 MARTIN GROSSMAN: Sure. This would be Exhibit 65. 6 JODY KLINE: Can you write 65 on that. 7 MARTIN GROSSMAN: This will be the rendered Site Plan. 8 MARK JAMES: Bottom right? 9 JODY KLINE: Anywhere you want. That will be fine. 10 Thank you. 11 MARK JAMES: Yes sir. 12 MARTIN GROSSMAN: Don't forget to get me an electronic 13 copy of that. 14 JODY KLINE: Yes sir. Yes sir, okay. Mr. James, how 15 about just, using Exhibit 65, just give us an overview of 16 all what's different about this. How it's going to work 17 now. 18 MARK JAMES: So the layout the Timmons Group did here 19 for us is you can still, you still have the option to enter 20 and to queue off of Comprint or off of Shady Grove Road. To 21 queue in this will direct the traffic back to a two drive- 22 through lane system. 23 MARTIN GROSSMAN: The queuing off of Shady Grove Road? 24 MARK JAMES: Yes, sir. 25 MARTIN GROSSMAN: Just so the record is clear as to

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6 (21 to 24)

21 1 what you say this, the record doesn't- 2 MARK JAMES: Yes, my apologies. My apologies. So you 3 would queue off of Shady Grove Road, or you would queue off 4 of Comprint Court into where it comes into a one drive- 5 through lane system 6 MARTIN GROSSMAN: Okay. 7 MARK JAMES: So there will be two menu boards and two 8 ordering posts. You know the first car would go and then 9 the second car would go. 10 MARTIN GROSSMAN: So where is the merge? Where do 11 they merge together into one lane? 12 MARK JAMES: Right here, sir. Right around the storm 13 water. 14 JODY KLINE: So I'll guess you would say the northwest 15 corner of the building? 16 MARK JAMES: Yes. 17 MARTIN GROSSMAN: Okay. So where are the boards going 18 to be located that you said there was going to be two order 19 boards and two menu boards? 20 MARK JAMES: Yes. Yes sir. So the first ordering 21 station will be out here at the, for the people that come 22 off Comprint. 23 MARTIN GROSSMAN: Okay. And they're just being at the, 24 just before they make the right turn into the joint lane, 25 there's a board off Comprint.	23 1 lot as well. 2 MARTIN GROSSMAN: In the northwest corner? 3 MARK JAMES: The northwest corner. And Shirley Ann 4 (sic) will speak to this later but a major improvement- 5 MARTIN GROSSMAN: I said northwest corner. I'm 6 assuming that north and south, is that correct here? Which 7 way is- 8 MARK JAMES: Northwest is up, yes. Yes sir. 9 MARTIN GROSSMAN: On this Site Plan North is- 10 JODY KLINE: You can see on the existing it is kind of 11 in the upper right-hand corner is the directional arrow. 12 All right. So yeah, it is a north-south orientation. 13 MARTIN GROSSMAN: Okay. So you talk about parking 14 lots. You have one in the northwest corner, you say? 15 MARK JAMES: One in the northwest corner. Yes sir. 16 MARTIN GROSSMAN: And then it appears that you have 17 one to the east, northeast, corner as well. 18 MARK JAMES: Northeast as well, yes sir. And it's the 19 larger of the two parking areas, yes sir. 20 MARTIN GROSSMAN: Okay. 21 JODY KLINE: Rather than pull out a floor plan, just 22 explain to the Hearing Examiner how the interior of the 23 building is going to work, given that you're going to have 24 more than just a Burger King providing food to the 25 customers.
22 1 MARK JAMES: Yes sir. 2 MARTIN GROSSMAN: Okay. 3 MARK JAMES: And for the ones that come off of Shady 4 Grove Road there will be a board on the opposite side of 5 the same storm water retention pond. 6 MARTIN GROSSMAN: All right. And that's just also a 7 bit shy of where they join the other line? 8 MARK JAMES: Yes sir. And essentially you order and 9 you're placed right in the queue next. 10 MARTIN GROSSMAN: And then you wait along with the 11 other people, the other folks in the other direction to 12 pick up your food? 13 MARK JAMES: Yes sir. 14 JODY KLINE: And where is the pickup window then? 15 MARK JAMES: We have two windows; the same as we 16 currently have today. You have a cash window here, the 17 patrons pay and then you would pick up your food at the end 18 of the building here. 19 MARTIN GROSSMAN: Okay. So there's one cash window and 20 one pickup window which handles both of the lines, after 21 they've joined. 22 MARK JAMES: Yes sir. Yes sir. 23 MARTIN GROSSMAN: Okay. 24 MARK JAMES: Yes sir. As far as parking, it's pretty 25 much the same. Here and there's also parking in the lower	24 1 MARK JAMES: Certainly. So the building is about 2000 2 square feet larger than, or the proposed building is 2000 3 square feet larger than what we currently have here. As I 4 said before, the play area is going to go away and in that 5 play area there is going to be two concepts. One is a salad 6 concept and the other is, we're looking at two options. A 7 coffee concept and/or a Bojangles' eat in restaurant only. 8 It would not have a drive-through. The Burger King, the 9 only drive-through would service only the Burger King at 10 this restaurant. This 2000 square feet would occupy two 11 units. The Burger King base of the kitchen right here- 12 JODY KLINE: And you're point, just kind of tell us 13 where you're pointing. On the left-hand side of the 14 building so we can (crosstalk 0:24:28). 15 MARK JAMES: On the drive-through side of the 16 building. 17 JODY KLINE: The drive side. Okay. 18 MARK JAMES: The drive side of the building would be 19 the Burger King kitchen. And essentially the rest of the 20 building in the middle would be open for patron seating. 21 MARTIN GROSSMAN: All right. So there will no longer 22 be a play area is what you're saying. 23 MARK JAMES: That is correct, sir. 24 MARTIN GROSSMAN: Okay. 25 JODY KLINE: Is it an unpleasant comparison to

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7 (25 to 28)

25 1 describe it similar to something you would see it on the 2 Ohio or Pennsylvania Turnpike with a single building with 3 multiple food purveyors and a large dining room for 4 servicing everybody? 5 MARK JAMES: That's correct, right. 6 JODY KLINE: But you'll do it nicer than you see on 7 the interstate, yes? 8 MARK JAMES: Yes. It would be- the elevations are a 9 huge improvement to what's there right now. 10 JODY KLINE: Great. Great. But the reason we're here 11 today is really just the Burger King is the only drive- 12 through function at all and otherwise, other people just 13 come in and go to the counters of the places they want to 14 order from, if they wish to do it that way? 15 MARK JAMES: That is correct, yes. 16 JODY KLINE: I'm going to ask you some operational 17 questions now. Are we changing anything about the 18 operations in terms of the hours and how, what are those 19 hours? 20 MARK JAMES: No, sir. We currently run 6:00 a.m. to 21 1:00 a.m. 22 JODY KLINE: Every day of the week? 23 MARK JAMES: Every, seven days a week and that will be 24 the current hours, or that will be the hours of the new 25 location, if we-	27 1 JODY KLINE: And that will remain the same? 2 MARK JAMES: I hope it goes up but I think so. 3 JODY KLINE: Well, if, you know, because the Hearing 4 Examiner would probably like to get a sense of by two or 5 five or, how many? Get a sense of how- 6 MARK JAMES: It's a \$4.5 million restaurant right now. 7 We're projecting it to go to \$5 million so an increase in 8 \$500,000 would bring two to three employees extra. 9 JODY KLINE: Okay. And- 10 MARTIN GROSSMAN: So you think per the major shift or, 11 so you're talking about instead of 14 you'd have 16 or 17? 12 MARK JAMES: Per major shift, yes sir. 13 MARTIN GROSSMAN: Okay. I mean the reason we care 14 about that is traffic and parking and that's really- 15 MARK JAMES: Yes sir. 16 MARTIN GROSSMAN: And you mentioned the lobby to close 17 and you gave two different times, what time will the lobby 18 close? 19 MARK JAMES: We close at 11:00 currently, Monday 20 through Thursday. Sunday through Thursday, my apologies. 21 Friday and Saturday we're open an hour later until 22 midnight. 23 MARTIN GROSSMAN: All right; and that will stay the 24 same? 25 MARK JAMES: That will stay the same.
26 1 JODY KLINE: And we say the new location that will be 2 the Burger King? 3 MARK JAMES: That's correct. 4 JODY KLINE: Others likely to operate the same hours 5 or? 6 MARK JAMES: My envision is, we currently close the 7 lobby down at 11:00 p.m. and on Saturdays and Sundays it 8 closes at midnight. And we would ask that the other 9 patrons, or that the other establishments inside close at 10 the same time. 11 JODY KLINE: Okay. Very good. Now, number of 12 employees; how many are there and is it going to remain the 13 same or will you be able to operate it with fewer or more 14 people? 15 MARK JAMES: We currently run with a schedule, a full 16 schedule of about 45 people for the Burger King. I 17 anticipate that we're going to add a few for the 18 Bojangles'. The salad bar and the sub will operate kind of 19 a, they'll be using Burger Kitchen's kitchen, Burger King's 20 walk-in, so we're going to utilize those employees for 21 those. So the Bojangles' or the coffee concept would be the 22 only increase in employee activity on site. 23 JODY KLINE: What is your major, the size of your 24 major shift serving the Burger King operation? 25 MARK JAMES: Currently about 14 people.	28 1 MARTIN GROSSMAN: All right. And it's, I'm sorry. It's 2 12:00 Friday through Sunday, you say? 3 MARK JAMES: Friday and Saturday only. 4 MARTIN GROSSMAN: Friday and Saturday. Okay. Okay. 5 JODY KLINE: Will the product line, what you serve at 6 this restaurant be any different with the new restaurant as 7 compared to what you have today, or what is the current 8 Burger King line of products? 9 MARK JAMES: No. The Burger King will be exactly the 10 same line of products. 11 JODY KLINE: Could you pick up the elevations behind 12 you there and put them up? First of all, would you explain 13 to the Hearings Examiner your conversations with Mr. Kohn, 14 the architect and what it was you were trying to achieve at 15 this site relative to the uses that are around you in terms 16 of a vision for the sight. 17 MARK JAMES: Yeah. So we picked earth tones that our 18 neighboring partners used and we've picked up colors off of 19 their buildings and incorporated them into the drawings 20 here. 21 MARTIN GROSSMAN: Are these elevations already in the 22 record? 23 JODY KLINE: I'm sorry. These are, the elevations are. 24 The rendered versions are not. They should be marked an 25 Exhibit please.

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8 (29 to 32)

29 1 MARTIN GROSSMAN: Okay. So 66 will be rendered 2 Elevations. 3 JODY KLINE: And, Mr. Grossman, I suggest make it 66A 4 and B because there's a second one that takes, covers the 5 other two sides of the building. 6 MARTIN GROSSMAN: Okay. All right. So Rendered 7 Elevations A. What side of the building is this? How is it 8 described there? The front in other words or? 9 MARK JAMES: This top portion here is right main 10 elevation. 11 MARTIN GROSSMAN: All right. 12 MARK JAMES: If I may, this elevation is going to be 13 here to the north. 14 MARTIN GROSSMAN: Okay. Northeast? 15 MARK JAMES: Northeast and this is what you're going 16 to see here. This is going to be what you're going to see 17 from Shady Grove Road here. 18 JODY KLINE: And you're pointing to the lower of the- 19 MARTIN GROSSMAN: All right. 20 MARK JAMES: Lower of- 21 MARTIN GROSSMAN: All right. So we have, so A is, 22 there's another diagram in other words, Mr. Kline? 23 JODY KLINE: Uh- 24 MARTIN GROSSMAN: So A would be northeast and 25 southeast. And B would be?	31 1 JODY KLINE: Israel. 2 MARK JAMES: Israel for a month and a half. 3 JODY KLINE: Yeah. So normally I'd have an expert 4 witness to testify about that, because we don't have the 5 architect and they're based in Atlanta and they were not 6 able to send someone up. 7 MARTIN GROSSMAN: Okay. 8 JODY KLINE: We thought that based on Mr. James 9 experience in developing restaurants in settings like this, 10 his testimony would be able to describe how it matches up 11 with the other buildings. 12 MARTIN GROSSMAN: Yes. I think that's a factual thing 13 and not an expert question. 14 JODY KLINE: Thank you. Sure. Since you're at least an 15 expert on operations, we're always worried about, is this 16 function going to do anything that's going to be bothersome 17 to, in this case commercial operations; Noise, light, 18 smells, anything that would be objectionable about the 19 operation of the restaurant that would be bothersome to 20 join the neighboring properties? 21 MARK JAMES: Not in my opinion, no sir. 22 JODY KLINE: Okay. And how long did you say you been 23 doing this? 24 MARK JAMES: Forty years. 25 JODY KLINE: Okay. Thank you. And just to confirm what
30 1 MARK JAMES: The Left Drive-Through Elevation. 2 MARTIN GROSSMAN: Southwest? 3 MARK JAMES: Which is southwest, yes sir. And then 4 we've got the Rear Elevation. 5 MARTIN GROSSMAN: Okay. 6 JODY KLINE: Facing 370? 7 MARK JAMES: Facing 370 northwest-ish. 8 MARTIN GROSSMAN: Northwest. 9 JODY KLINE: Yeah. And can you mark that one too? 10 MARTIN GROSSMAN: Certainly. 11 JODY KLINE: Sixty-six. 12 MARTIN GROSSMAN: B that would be. 13 JODY KLINE: So your comment then, I guess, was this 14 building's in keeping with the style of the palette of 15 colors and architecture of the surrounding area? 16 MARK JAMES: Exactly. 17 JODY KLINE: Okay. Going in a certain area, are there 18 any residences anywhere within, I defined a zoning 19 neighborhood, but that you know of that are around close to 20 the restaurant at all? 21 MARK JAMES: No sir, there's not. 22 JODY KLINE: Okay. Explain why Mr. Kohn, who prepared 23 these exhibits, is not with us today. 24 MARK JAMES: He is out of the country in Egypt, I 25 believe for a month-	32 1 I said earlier, all the conditions recommended but the 2 Staff Report are acceptable to the applicant? 3 MARK JAMES: Yes sir. 4 JODY KLINE: I have no further questions of Mr. James. 5 MARTIN GROSSMAN: Okay. I don't have any at this time 6 either, Mr. James, thank you. 7 MARK JAMES: Thank you, sir. 8 JODY KLINE: I'll call as your next witness Ms. 9 Gudorp. 10 MARTIN GROSSMAN: You may proceed. 11 JODY KLINE: Ms. Gudorp, would you please state and 12 spell your name and give us your business address? 13 LEE ANN GUDORP: Sure. Lee Ann Gudorp. L-E-E A-N-N, 14 and last name is G-U-D-O-R-P. And business address is 1001 15 Boulders Parkway, Suite 300 in Richmond, Virginia 23223. 16 MARTIN GROSSMAN: And would you raise your right hand 17 please? 18 LEE ANN GUDORP: Sure. 19 MARTIN GROSSMAN: Do you swear or affirm to tell the 20 truth, the whole truth, and nothing but the truth, under 21 penalty of perjury? 22 LEE ANN GUDORP: Yes. 23 MARTIN GROSSMAN: All right. 24 JODY KLINE: Ms. Gudorp, you're educated and have 25 certification as what?

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9 (33 to 36)

33 1 LEE ANN GUDORP: I'm a licensed professional engineer 2 in Virginia and in Maryland. 3 JODY KLINE: Okay. And actually how about giving the 4 Hearing Examiner your Maryland license number. 5 LEE ANN GUDORP: Sure, it's 40288. 6 JODY KLINE: And your education is what? 7 LEE ANN GUDORP: Stevens Institute of Technology in 8 Hoboken, New Jersey; I have a bachelor of engineering in 9 Civil in 2005. 10 JODY KLINE: Okay. And you've been with Timmons how 11 long? 12 LEE ANN GUDORP: Three years. 13 JODY KLINE: Okay. Maybe I better- 14 LEE ANN GUDORP: Yeah. 15 JODY KLINE: How long have you been practicing Civil 16 Engineering? 17 LEE ANN GUDORP: For 12 years. 18 JODY KLINE: Okay. And in what locations? 19 LEE ANN GUDORP: From 2005 to 2011 I was working at 20 VHB in three locations, New Jersey, Richmond, Virginia and 21 Tysons Corner, Virginia; and then Bowman Consulting in 22 Chantilly, Virginia from 2011 to 2014; and now at Timmons 23 Group since 2014 in Richmond. 24 JODY KLINE: Okay. And what have you been doing? What 25 has been your attention devoted to in the last 11 years?	35 1 JODY KLINE: All right. Mr. Grossman, based on her 2 education and her years of practice of what I call project 3 management and design of project management I'd like to 4 offer her as an expert in that subject. I'm a little 5 surprised she hasn't been qualified in the past and I've 6 explained to her how we do it a little bit differently, but 7 as I understand it in Virginia the phenomenon is that they 8 let the lawyers do all the talking. 9 LEE ANN GUDORP: Yes. 10 MARTIN GROSSMAN: A big mistake usually. (Laughter) 11 JODY KLINE: So I'd like to offer Ms. Gudorp as an 12 expert in project design and management. 13 MARTIN GROSSMAN: Okay. Well you, actually you flipped 14 that. You said project management and does that mean, and 15 design. Is that site design you're talking about? 16 LEE ANN GUDORP: Mm-hmm. 17 JODY KLINE: Yes. 18 MARTIN GROSSMAN: So you're offering her as an expert 19 in project management and site design? 20 JODY KLINE: Yeah. And project management, I guess, 21 suggests she's just administrator. I guess I want to pick a 22 term that basically has more of a hands-on function because 23 she's both putting pencil to paper and supervising the work 24 of others that have expertise that she doesn't necessarily 25 have, like a landscape architect.
34 1 LEE ANN GUDORP: My main focus is private commercial 2 land development so my specialty is in restaurants, retail 3 shopping centers, and currently now I'm the program manager 4 for the retail, multi-site program such as this at Timmons 5 Group. So I'll oversee preparation of site plan drawings, 6 quality control, et cetera for those projects. 7 JODY KLINE: And this is the point in the presentation 8 where I say to you, have you ever qualified as an expert in 9 what I'll call project management and design in a, before a 10 hearing examiner like this or for a planning commission or 11 board of appeals or a court? 12 LEE ANN GUDORP: I have appeared before planning 13 commissions and board of supervisors, though during the 14 cases they did not, there weren't any questions so I was 15 not- 16 MARTIN GROSSMAN: Sworn? 17 LEE ANN GUDORP: I wasn't sworn, but I've had, I've 18 been in the situation where I could have been qualified as 19 an expert. 20 JODY KLINE: What professional organizations do you 21 belong to? 22 LEE ANN GUDORP: I'm currently involved in Commercial 23 Real Estate Women, also called CREW; that's since 2011. And 24 I'm also a member of ICSC, which is the International 25 Council of Shopping Centers.	36 1 MARTIN GROSSMAN: So what shall we call her? Do you 2 want to? 3 LEE ANN GUDORP: Well, I mean- 4 JODY KLINE: What do you- 5 MARTIN GROSSMAN: What's your- 6 JODY KLINE: What do you tell everybody you are? 7 LEE ANN GUDORP: I'm a program manager. 8 JODY KLINE: Okay. 9 LEE ANN GUDORP: I don't know if that would be a- 10 MARTIN GROSSMAN: So a project program manager, or is 11 that a program? How do you want to frame the description? 12 JODY KLINE: I'd like a term that would communicate 13 her expertise and understanding of how sites layout and 14 operate and that's why I was saying- 15 MARTIN GROSSMAN: Well, that's a site design. 16 LEE ANN GUDORP: Yeah. 17 JODY KLINE: -site design and management, because she 18 is a supervisor of others as well. 19 LEE ANN GUDORP: Yeah. 20 MARTIN GROSSMAN: Well, I think that's a project 21 management and site design and I'd add in a civil 22 engineering. 23 LEE ANN GUDORP: Yeah. 24 JODY KLINE: Yeah. Yeah, sure. 25 MARTIN GROSSMAN: A professional (crosstalk 0:38:12).

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10 (37 to 40)

37 1 JODY KLINE: No. That's true. 2 MARTIN GROSSMAN: So, you know, based on the questions 3 and answers, I think, was that one of the resumes that you 4 forwarded here? Let's see. 5 JODY KLINE: Yes sir, it's Exhibit 60A. 6 MARTIN GROSSMAN: Sixty A. Yes. Based on her answers 7 and her resume Exhibit 60A and her qualifications as a 8 licensed engineer I accept Ms. Gudorp as an expert in civil 9 engineering, project management and site design. 10 JODY KLINE: Thank you, sir. 11 LEE ANN GUDORP: Thank you. 12 MARTIN GROSSMAN: Okay. Now you're officially an 13 expert. (Laughter) I've always wished that I could be one. 14 JODY KLINE: Ms. Gudorp I think probably you're best 15 off working off of, I guess it's Exhibit 65, which is kind 16 of- 17 LEE ANN GUDORP: Yeah, and then I could also bring up 18 more detail. 19 JODY KLINE: I know you've got, actually you put up 20 the boards that you think are the best for the 21 presentation. 22 LEE ANN GUDORP: Sure. Sure. Sure. I think I can do, I 23 have a couple. How about that. We'll start- 24 JODY KLINE: And just let me know what they're going 25 to be so I can know whether we need to-	39 1 one, but if, I can provide one for you if you'd like one. 2 MARTIN GROSSMAN: Yeah. I don't see it. I wonder if it 3 somehow got stuck in the other file from the previous B 4 version here. 5 JODY KLINE: Maybe that explains some of this. 6 MARTIN GROSSMAN: It's possible. But I don't see the 7 bigger version here. 8 JODY KLINE: Okay. I would not normally submit 9 something of a reduced size. 10 MARTIN GROSSMAN: Right. So this is- 11 JODY KLINE: It should be 51D. It should have in the 12 lower right-hand corner C2.0. 13 MARTIN GROSSMAN: Yes. It does. Let me look at the 14 exhibit list for a second here and see if- 15 JODY KLINE: Okay. 16 LEE ANN GUDORP: Did it list the sizes on this? 17 MARTIN GROSSMAN: No. 18 LEE ANN GUDORP: No. 19 MARTIN GROSSMAN: It doesn't make any distinction 20 between (inaudible 0:41:48). 21 JODY KLINE: Right. Right. 22 MARTIN GROSSMAN: So let's just, we'll call this 51D. 23 Okay. You may proceed. 24 JODY KLINE: Sure. What I'd like you to do, sort of do 25 the same thing Mr. James did.
38 1 LEE ANN GUDORP: I think this one, the Site Layout; 2 this should already be in the Exhibit List. 3 JODY KLINE: Yeah, that's true. Mr. Grossman, we're 4 putting up a copy of Exhibit 51D. 5 MARTIN GROSSMAN: Okay. 6 JODY KLINE: And since it's not rendered, I don't 7 think it needs to be made a separate exhibit. 8 LEE ANN GUDORP: Do we need to mark it? 9 JODY KLINE: No. No. 10 LEE ANN GUDORP: Okay. 11 MARTIN GROSSMAN: Pull that one out, 51D as in dog? 12 JODY KLINE: Yes, sir. 13 LEE ANN GUDORP: Mm-hmm. 14 JODY KLINE: That was listed as Site Layout Plan C2.0. 15 LEE ANN GUDORP: Yeah. This is a more detailed version 16 of the rendering. 17 MARTIN GROSSMAN: Okay. I've got that. 18 JODY KLINE: Ms. Gudorp, so using what I say, what 19 we've posted up there as Exhibit 51D. 20 MARTIN GROSSMAN: Wait, excuse me. 21 JODY KLINE: Yeah. 22 MARTIN GROSSMAN: The copy I have in hand is a 11x14 23 version. Is the full size version in the file? 24 JODY KLINE: Well, I would have thought that that 25 submission on 4/21/77 (sic) we would have given you a full	40 1 LEE ANN GUDORP: Yeah. 2 JODY KLINE: But from a civil engineering perspective, 3 just explain kind of how everything lays out and why it 4 lays out the way it did. 5 LEE ANN GUDORP: Sure. 6 JODY KLINE: And feel free to go through it. You heard 7 the coaching of Mr. James- 8 LEE ANN GUDORP: The description of it and the 9 direction. 10 JODY KLINE: -about it. How to tell us what you're 11 pointing at here. 12 LEE ANN GUDORP: With the building addition, one of 13 the major changes between the existing parking layout is we 14 had to move the ADA spaces since they were adjacent to the 15 front of the building. We've had to locate them in the next 16 drive aisle over to the northeast to accommodate the 17 addition. So that is one of the major changes of the front. 18 Well, I'm going to call this the upper parking lot. 19 MARTIN GROSSMAN: Okay. 20 LEE ANN GUDORP: From the existing condition. In 21 addition, we have, we're maintaining the access off of 22 Shady Grove Road and on Comprint Court. Shady Grove Road is 23 a ride-in, ride-out due to the existing median and Comprint 24 Court is full access. So those are, there's no changes to 25 access to the site. One of the, Mark already went over

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11 (41 to 44)

41 1 that, you know, we are adding the additional drive-through 2 lane to the northwest of the building; and another item to 3 point out is the improvement for the pedestrian 4 connectivity. We're now adding a sidewalk that connects to 5 the Shady Grove sidewalk so you'll be able to walk from 6 Shady Grove Road into the site. We have crosswalks marked 7 for pedestrians. You can come to the front of the store and 8 then also the lower parking area, we now have added a 9 sidewalk that you'll be able to walk from the lower parking 10 area behind the dumpster with a crosswalk to the front of 11 the building. Now, this is a major improvement from the 12 site today since there are no sidewalks that could lead a 13 customer to the front of the building, so they're literally 14 just walking in the drive access. 15 MARTIN GROSSMAN: Can you point to me the sidewalk you 16 just mentioned? 17 LEE ANN GUDORP: Sure. It is located right adjacent to 18 this row of parking. So you can- 19 MARTIN GROSSMAN: At the northwest end. 20 LEE ANN GUDORP: Yeah. The northwest end of the site; 21 and then the sidewalk runs along the two-way drive access 22 aisle and there's a striped crosswalk to the front of the 23 site. 24 MARTIN GROSSMAN: All right. So it's just, is that on 25 the markings is it just north of the dumpster?	43 1 stacking space required and you have 218 on the Comprint 2 side and 97 on the other side? 3 LEE ANN GUDORP: Yeah. And so it's a combined total 4 of- 5 MARTIN GROSSMAN: And parking you said you're 6 supplying 72 parking spaces and you said 33 are required? 7 Is that it? 8 LEE ANN GUDORP: Yes. 9 MARTIN GROSSMAN: Okay. All right. 10 JODY KLINE: Was there anything else you wanted to 11 highlight off of that drawing? Otherwise I'll take you to 12 the Landscaping Plan. 13 LEE ANN GUDORP: I, just to add that we've actually 14 dedicated a striped drive-through lane off of Comprint 15 Court, which isn't marked today. So I think that will help 16 provide, you know, clear, less congestion in this lower 17 parking area than is experienced today. 18 JODY KLINE: So are you saying there's three lanes 19 inbound? 20 LEE ANN GUDORP: Mm-hmm. 21 JODY KLINE: Or three lanes in there then? 22 LEE ANN GUDORP: Yes. 23 JODY KLINE: Okay. Okay. 24 LEE ANN GUDORP: Okay. Landscaping. 25 JODY KLINE: Can you, how about the Landscape Plan,
42 1 LEE ANN GUDORP: Correct. 2 MARTIN GROSSMAN: And then goes along just south of 3 the picnic tables, is that- 4 LEE ANN GUDORP: Correct. 5 MARTIN GROSSMAN: That's the sidewalk. Okay. 6 LEE ANN GUDORP: Yes. And then- 7 MARTIN GROSSMAN: And I see an ADA ramp from there. 8 LEE ANN GUDORP: Yes. 9 MARTIN GROSSMAN: Okay. 10 LEE ANN GUDORP: Yeah. And so then you'll be able to 11 park in the lower parking area and walk to the front of the 12 building. 13 MARTIN GROSSMAN: Okay. 14 LEE ANN GUDORP: And we are providing 72 parking 15 spaces total where 33 are required. 16 MARTIN GROSSMAN: Okay. 17 JODY KLINE: Will we, Mr. James was talking about 18 basically how the drive-through lanes would operate. Would 19 you verify for us that there is at least five queuing 20 spaces to accommodate the traffic? 21 LEE ANN GUDORP: Yes. We need 105 feet of queuing 22 length and in the Comprint Court queuing we're over 218 23 feet of stacking plus 97 on the Shady Grove access so we're 24 over 300 feet of stacking. 25 MARTIN GROSSMAN: So you're saying there's 105 feet of	44 1 yeah. 2 LEE ANN GUDORP: Sure. 3 MARTIN GROSSMAN: When you say three lanes inbound, I 4 thought you- 5 JODY KLINE: I said that wrong. There's two inbound, 6 and one outbound. 7 MARTIN GROSSMAN: Okay. 8 JODY KLINE: Yeah. 9 MARTIN GROSSMAN: So one of those inbound lanes, it 10 seems like, leads directly to the drive-through and the 11 other one you would have to circle around, is that, do I 12 understand correctly from this diagram? 13 LEE ANN GUDORP: Yes. We are providing a 10-foot lane 14 for the drive-through and then they required 20 feet for 15 the drive access lane around it. 16 MARTIN GROSSMAN: And the access lane around it, then 17 goes all the way up to the northeast corner and then is 18 there something blocking so they can't get through, or is 19 that, I see something indicated with striped lines at the 20 very end of that lane. Is that- 21 LEE ANN GUDORP: Yeah. We have pavement striping just 22 to denote the formation of that drive-through lane off of 23 Shady Grove. 24 MARTIN GROSSMAN: But they can make, I take it as they 25 enter from, off of, Comprint Court, not on the inside lane,

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12 (45 to 48)

45 1 but the other entry lane. It appears to direct traffic all 2 the way up into the farthest reaches, right up to the ADA 3 ramp on the northeast corner. Is that correct? 4 LEE ANN GUDORP: That's correct. And the intent would 5 be that if they wanted to park in the upper parking- 6 MARTIN GROSSMAN: In the upper lot. 7 LEE ANN GUDORP: -area they could do that, but we have 8 a specific lane for the drive-through. 9 MARTIN GROSSMAN: And they can get past? In other 10 words they can come over the ADA ramp is what you're 11 saying, as they drive through? 12 LEE ANN GUDORP: In the, yeah, it's a crosswalk. They 13 can drive over the crosswalk. 14 MARTIN GROSSMAN: Okay. All right. And up- 15 LEE ANN GUDORP: And then up to the upper- 16 MARTIN GROSSMAN: Or they could make kind of a U-turn, 17 or about a 170 degrees or whatever and come back through 18 the drive-through that way? 19 LEE ANN GUDORP: Potentially. But our intent would be 20 that if you're coming off of, Comprint and you're going for 21 the drive-through, you're going to enter in off the lane 22 that's designated and then that, the other lane allows you 23 to traverse the site and get from Comprint into the upper 24 parking area. 25 MARTIN GROSSMAN: And then sit in the restaurant?	47 1 JODY KLINE: You, and are all the drawings you've got 2 submitted on 4/21/77-17? Are those all just reduced 3 versions? 4 MARTIN GROSSMAN: Yes. That's what I have in front of 5 me now anyway. 6 JODY KLINE: Really. Wow. 7 MARTIN GROSSMAN: So that's what I'm going to check- 8 JODY KLINE: Well, we- 9 MARTIN GROSSMAN: -if we have the full size plans and 10 it's conceivable that we have the full size plans in the 11 other file, so let me check that- 12 JODY KLINE: Hopefully so. Yeah. 13 MARTIN GROSSMAN: -and I shall return. 14 JODY KLINE: Thank you. 15 (Off the record.) 16 (On the record.) 17 MARTIN GROSSMAN: They were not in the other file, but 18 they, turned out to be another, a redwell with the missing 19 plans in them. So it turns out- 20 JODY KLINE: Now, I feel a lot better. 21 MARTIN GROSSMAN: It turns out you were not at fault 22 so we'll blame you anyway, but that's not derogative. 23 (Laughter) They are in the record. 24 JODY KLINE: Oh. Well, that makes me feel a bit better 25 then, because I just couldn't understand why you were
46 1 LEE ANN GUDORP: Okay. 2 MARTIN GROSSMAN: Okay. Okay. I understand. 3 LEE ANN GUDORP: For the Landscaping Plan I have the 4 detailed Landscaping Plans for the two areas which I think 5 are listed in the- 6 JODY KLINE: Right. We're talking about Exhibit 51K- 7 II. Am I right Lee Ann? Are you talking about, are you 8 looking at the L2.1? 9 LEE ANN GUDORP: The L, yeah; 2.1 and 2.2. 10 JODY KLINE: Okay. So that's 51K-II and III. 11 MARTIN GROSSMAN: All right. And once again, I don't 12 see those plans here. I don't see the big version. Let me 13 take a five-minute recess here and go back and check and 14 see if those plans are in our office, or if we just have 15 to- 16 JODY KLINE: That would make me feel great if you 17 found another file or something because I just can't 18 imagine- 19 MARTIN GROSSMAN: Well, we know we have another file. 20 JODY KLINE: Yeah. 21 MARTIN GROSSMAN: I'm just not sure whether it 22 contains these plans. 23 JODY KLINE: Okay. Yeah. Sure. 24 MARTIN GROSSMAN: We have the other file. So let me go 25 check that out and we'll come back in about five minutes.	48 1 finding what you were finding. Next time you talk to Ms. 2 Forbes tell her that Mr. Kline screwed up but- 3 MARTIN GROSSMAN: I'll tell her that. 4 JODY KLINE: Yeah. 5 MARTIN GROSSMAN: All right, Mr. Kline, you may 6 proceed. 7 JODY KLINE: Okay. 8 LEE ANN GUDORP: Okay. 9 JODY KLINE: So, we have Exhibit 51D-I, I'm sorry, 10 51K-II and III. 11 MARTIN GROSSMAN: Okay. 12 JODY KLINE: And using the Landscaping Plans would you 13 go ahead and please just tell us about the landscape- 14 LEE ANN GUDORP: Sure. 15 JODY KLINE: -concept for the property. 16 LEE ANN GUDORP: Sure. 17 JODY KLINE: And what you are trying to accomplish. 18 LEE ANN GUDORP: There are quite a few large mature 19 existing trees on the site and the intent of our 20 Landscaping Plan was to, obviously, keep as many existing 21 trees as we could. There were three that do need to be 22 removed due to conflicts with the proposed building, the 23 drive aisle reconfiguration at the front and also the 24 microbio retention basins and so we did have to remove 25 them. But we are providing the mitigation by installing 10,

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13 (49 to 52)

49 1 3 inch caliper trees elsewhere on the site. 2 MARTIN GROSSMAN: Okay. 3 LEE ANN GUDORP: We are providing, so these are the 4 existing trees that are remaining along Shady Grove and we 5 are supplementing where needed along with additional shrubs 6 and plantings within the island and some foundation 7 planting around the building as well. And there are 8 proposed microbio retention basins on the site and so those 9 will be planted as well. As you can see there's one 10 immediately to the north of the building and then in the 11 lower parking area we have two fire retention basins that 12 will also be planted. Along this parking row we're adding 13 additional trees; additional plantings around the dumpster 14 and on the north end of the site the same situation; adding 15 additional landscaping as needed to meet, and actually 16 we're exceeding the requirements. 17 MARTIN GROSSMAN: And the bio retention areas they 18 are, are they consistent with environmental site design 19 requirements? 20 LEE ANN GUDORP: Yes. 21 JODY KLINE: Ms. Gudorp, there are several provisions 22 noted in the Staff Report and I know you looked at it. In 23 Section 60, I'm sorry, Section 6 of the Zoning Ordinance 24 dealing with general conditions, does this application 25 satisfy all the requirements of Section 6 of the Zoning	51 1 substantially- 2 MARTIN GROSSMAN: Okay. 3 LEE ANN GUDORP: -on the remainder of the site. The 4 only item I mentioned earlier was we had to do the 5 mitigation for the removal of the three large caliper trees 6 and we supplemented that with additional plantings. 7 MARTIN GROSSMAN: Okay. 8 JODY KLINE: Ms. Gudorp, and the applicant has 9 received Planning Board approval of the Forest Conservation 10 Plan? 11 LEE ANN GUDORP: Yes. 12 JODY KLINE: And I'm going to submit to the Hearing 13 Examiner a copy of the letter dated July 15, 2016 14 referencing the Staff Report approving the preliminary 15 Forest Conservation plan. 16 MARTIN GROSSMAN: Okay. Is it attached to the Staff 17 Report also, or is it just- 18 JODY KLINE: It's referenced in the Planning Board's 19 transmittal letter. 20 MARTIN GROSSMAN: Yeah, I saw the reference in the 21 transmittal letter. Well, let me just mark it as an exhibit 22 if it's not already in there. 23 JODY KLINE: Actually I think you're probably right. I 24 think it is an attachment. 25 MARTIN GROSSMAN: Let's see.
50 1 Ordinance dealing with landscaping issues? 2 LEE ANN GUDORP: It does except for 6.9.2.c(3) on the 3 perimeter planting there's some utility lines that we 4 needed to maintain and you can't be planting- 5 JODY KLINE: Sure. 6 LEE ANN GUDORP: -trees within- 7 JODY KLINE: Can you show the Hearing Examiner where 8 that's located? 9 LEE ANN GUDORP: I believe that's along the rear. 10 We've got, I think we've got some storm drainage and go 11 along here, like we've avoided storm drain lines by 12 planting shrubs instead of trees and we've planted the 13 trees along the top, north of the site. There's another 14 storm drain line that we've- that we're not planting any 15 trees along the perimeter. 16 MARTIN GROSSMAN: Were there any waivers required for 17 that from 1596.10, I believe it is? 18 LEE ANN GUDORP: I don't believe there was a waiver. 19 JODY KLINE: I don't- 20 LEE ANN GUDORP: It was just an exception. 21 JODY KLINE: Yeah. There is a reference in the Staff 22 Report to it and it wasn't a waiver, just we understand why 23 they cannot be planted there. 24 LEE ANN GUDORP: Yeah. And we were exceeding the 5 25 percent planting requirement and the 25 percent coverage	52 1 JODY KLINE: Yes, sir. It's Attachment number 3 to the 2 Staff Report. 3 MARTIN GROSSMAN: Okay. 4 JODY KLINE: And did you give that an exhibit number, 5 Mr. Grossman? 6 MARTIN GROSSMAN: I can do that. This will be Exhibit 7 67, and it is the recommended approval, the recommended 8 staff approval. All right; Recommended Staff Approval of 9 Forest Conservation and Tree Variances. 10 JODY KLINE: Mr. Grossman, could I just ask you to 11 repeat how you labeled that? 12 MARTIN GROSSMAN: Yes. Recommended Staff Approval of 13 Forest Conservation and Tree Variances is what it looks 14 like. 15 JODY KLINE: Well, the letter that I gave you- 16 MARTIN GROSSMAN: Right. 17 JODY KLINE: -is actually the approval letter from the 18 Planning Department. 19 MARTIN GROSSMAN: Well, this is the staff recommends 20 approval of the variance. You're saying that this letter 21 from the Planning- 22 JODY KLINE: If you look on the third line of the 23 first paragraph it says conditionally approved, the 24 following conditions. 25 MARTIN GROSSMAN: I see. The plan, I see.

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14 (53 to 56)

53 1 JODY KLINE: And then the Planning Board's letter says 2 the preliminary Forest Conservation Plan and Tree Variance 3 associated was approved on July 15th, 2016. 4 MARTIN GROSSMAN: I see. Okay. So, all right. So we're 5 going to change that to Approval of Preliminary Forest 6 Conservation Plan and Tree Variances. 7 JODY KLINE: Yes sir. 8 MARTIN GROSSMAN: Dated July 15, 2016. Okay. 9 JODY KLINE: Great. Ms. Gudorp, while we're in the 10 general retail GR zone and that zone has a requirement for 11 amenity areas, I see that you've put up on the board a copy 12 of Exhibit 51E, but it's been rendered so could you go 13 ahead and mark this with the new number that the Hearing 14 Examiner will give to you? 15 MARTIN GROSSMAN: All right. This will be 68. And it 16 is a rendered- 17 LEE ANN GUDORP: Amenity Open Space. 18 MARTIN GROSSMAN: -version of Amenity Open Space Plan 19 which is originally Exhibit what? 20 JODY KLINE: That was Exhibit 51E. 21 MARTIN GROSSMAN: All right. So 68 is rendered version 22 of Amenity Open Space Plan Exhibit 51E. 23 JODY KLINE: Correct. 24 MARTIN GROSSMAN: Okay. And did you mark on there what 25 it is?	55 1 JODY KLINE: Fifty-one M; and have either one of these 2 been modified from what's in the record? 3 LEE ANN GUDORP: No, they have not. 4 JODY KLINE: Okay. So can you just tell us what the 5 fixtures on the site are going to look like? Where they're 6 going to be located? 7 LEE ANN GUDORP: Sure. We're proposing the use of LED 8 lighting fixtures for the property, and they are shown on 9 the Lighting Notes and Details exhibit. We're going to have 10 the, your parking lot light poles which will be this, the 11 area light. And then also there will be a wall pack sconce 12 along the drive through lane. There's going to be two wall 13 packs in this area. We've got a total of 11 site lights 14 that are going to be dispersed throughout the site. There 15 are four that have the double heads and seven that are the 16 single. We've got the double in the main, well, in the 17 upper parking area in these two islands and then perimeter 18 for the single light poles around the perimeter of the site 19 and the two other single lights are located adjacent to the 20 bio retention drain of the building and then the lower bio 21 retention. 22 MARTIN GROSSMAN: All right. Will this lighting be, in 23 your opinion, adequate for safety and people transferring- 24 LEE ANN GUDORP: Yes. 25 MARTIN GROSSMAN: -transversing down the block. And
54 1 LEE ANN GUDORP: Yeah, 68. 2 MARTIN GROSSMAN: Okay. Very good. 3 JODY KLINE: So, Ms. Gudorp, what is the requirement 4 in the GR zone for amenity space to be provided? 5 LEE ANN GUDORP: It's a 10 percent requirement. 6 JODY KLINE: And you have highlighted in green, I 7 guess the area that is considered amenity space? 8 LEE ANN GUDORP: Yeah. We have four different areas 9 for the amenity open space. We have the sidewalks that 10 we've discussed previously, the three bio retention areas 11 and we're also showing the landscaped areas as well as 12 we've added picnic tables to the site in two locations; one 13 in the north of the building and then to the northeast in 14 this landscaped island here, and over in this location. 15 MARTIN GROSSMAN: I see. 16 LEE ANN GUDORP: And this totals up to 14.58 percent. 17 So we are exceeding the requirements for open space, 18 minimum amenity space. 19 JODY KLINE: Okay. All right. Can I draw your 20 attention to the Lighting Plan for the property? 21 LEE ANN GUDORP: Sure. All right. This is the 22 Photometric Plan which- 23 JODY KLINE: Okay. Exhibit 51L. 24 LEE ANN GUDORP: And I also have the lighting detail, 25 lighting notes and detailed plan, which-	56 1 will it not unduly intrude into surrounding properties? 2 LEE ANN GUDORP: Correct. We are not exceeding .5 for 3 candle levels at the perimeter. 4 MARTIN GROSSMAN: Okay. 5 JODY KLINE: And the heads on the light fixtures 6 basically have everything diverted down? 7 LEE ANN GUDORP: Correct. Correct. Everything is 8 pointed down so there's no over-spilling of light. 9 JODY KLINE: Okay. Going back, I wanted to ask you a 10 couple of questions about parking. You told us about how 11 many spaces are being provided and are required, but 12 there's lots of provisions in the Ordinance about all the 13 special kinds of spaces. Does the application satisfy all 14 the requirements for the breakdown of motorcycles and 15 parking and- 16 LEE ANN GUDORP: Yes it does. It does. I can, do you 17 want me to show you where they are? 18 JODY KLINE: Yeah. You tell me which board you want to 19 use. 20 LEE ANN GUDORP: I'm going to be back to the Site 21 Layout Plan. 22 JODY KLINE: Okay. 23 LEE ANN GUDORP: Which, we have a couple of additional 24 parking requirements. We have the ADA spaces which are 25 going to be located in the closest proximity to the front

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15 (57 to 60)

57 1 door of the building. We have two motorcycle spaces which 2 we've located in the upper parking area to the northeast of 3 the building. We have one proposed car share space located 4 in the northeast and bicycle parking. We are proposing a 5 bike rack in this location in the northeast corner of the 6 building, and that is where we're going to be proposing the 7 bike locker, which is one of the conditions from the Staff 8 Report. 9 JODY KLINE: Okay. And the bike parking will just be 10 one of those stands that will hold multiple bikes? 11 LEE ANN GUDORP: Yes. 12 JODY KLINE: How many bikes can you accommodate there? 13 Have you even made that decision yet? 14 LEE ANN GUDORP: I don't, it's just requiring one bike 15 space with long-term. We have, we'll be providing a few- 16 MARTIN GROSSMAN: That's the bike locker. 17 LEE ANN GUDORP: The bike locker; we provide that on 18 the detailed construction document. 19 JODY KLINE: I guess I'd like to ask you some 20 questions about the general findings for the granting of a 21 conditional use, and you can go to whatever exhibit you 22 want. Is it in conformance with all previous approvals? 23 You heard my comment about the Site Plan being superseded, 24 but this application does satisfy all the requirements for 25 the conditional use?	59 1 neighborhood is in order to answer that question. 2 LEE ANN GUDORP: Yeah. The surrounding neighborhood is 3 commercial in general and we have the SunTrust Bank that's 4 located adjacent to our site. There is a Triple A Car Care 5 Center across Shady Grove Road, as well as a Red Roof Inn 6 development. So this is definitely in character with the 7 surrounding uses. 8 JODY KLINE: And is there anything about the proposed 9 use that preempts frontage along Shady Grove Road that 10 would prohibit visibility back into the site? 11 LEE ANN GUDORP: No. No, there isn't. 12 JODY KLINE: Is there anything about the proposed use 13 that you can think of from your design experience that 14 would basically disturb the peaceful enjoyment or 15 development potential of surrounding properties? 16 LEE ANN GUDORP: No. 17 JODY KLINE: I have no further questions of Ms. 18 Gudorp. 19 MARTIN GROSSMAN: I think there were actually two 20 other things in the specific conditions that you didn't 21 mention. 22 JODY KLINE: I, yes. 23 MARTIN GROSSMAN: Product displays. 24 JODY KLINE: Oh. Good question. Yeah. 25 MARTIN GROSSMAN: Do you want to handle that?
58 1 LEE ANN GUDORP: Yes. 2 JODY KLINE: For this kind of use? 3 LEE ANN GUDORP: Yes, it does. 4 JODY KLINE: Okay. Tell us about, there's density 5 limitation on the property, rather generous at 1.5 FAR. How 6 much FAR are we actually building out? 7 LEE ANN GUDORP: We are at .11. 8 JODY KLINE: Point one-one. Okay. 9 LEE ANN GUDORP: So we're far under the requirement. 10 JODY KLINE: All right. Are there any setback issues 11 with regard to the building and the various lot lines that 12 exist on the property? 13 LEE ANN GUDORP: No. There are no required, actually 14 there's no required around the perimeter. We are providing 15 a 6 foot front setback which we, the building is actually 16 about 45 feet from the property line. 17 JODY KLINE: Okay. And height in the zone, as is shown 18 on the Zoning City Map was limited to 45 feet. The height 19 of the building will be how tall? 20 LEE ANN GUDORP: It will be 21 feet tall. 21 JODY KLINE: Okay. Based on your experience in terms 22 of designing facilities of this type, do you feel that the 23 use in terms of its layout and design is harmonious with 24 the surrounding neighborhood? And maybe, I guess, you 25 ought to describe what the character of that surrounding	60 1 JODY KLINE: I don't have my notes in front of me. 2 MARTIN GROSSMAN: Okay. The question is will there be 3 any product displays, parked vehicles, and other 4 obstructions that adversely affect the visibility of 5 intersections were entrances and exits to and from the 6 drive-through? 7 LEE ANN GUDORP: No. 8 MARTIN GROSSMAN: Okay. And then this question, which 9 your written answers indicated it did not apply. When a 10 drive-through occupies a corner lot there are certain there 11 are certain provisions. Does this occupy a corner lot? 12 LEE ANN GUDORP: It does not, because the bank parcel 13 is actually the corner lot. 14 MARTIN GROSSMAN: And it says in areas where no master 15 plan of highways has been adopted, the street line must be 16 considered to be a minimum of 60 feet from the center line 17 of any abutting street or highway. 18 JODY KLINE: Well, this is subject to actually a very 19 special master plan, the Shady Grove Center Planning Area, 20 so it would determine what the rights-of-way should be. 21 MARTIN GROSSMAN: All right. 22 JODY KLINE: So I'm not sure that question would be 23 applicable. 24 MARTIN GROSSMAN: I'm just reading it from the- 25 JODY KLINE: Yeah.

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16 (61 to 64)

61 1 MARTIN GROSSMAN: -specific conditions for this type 2 of conditional use. 3 JODY KLINE: I understand. 4 MARTIN GROSSMAN: Okay. Why don't you, you could go 5 through the other, will the use, will not be a traffic 6 hazard or traffic nuisance because of its location? Do you 7 want to deal with the traffic- 8 JODY KLINE: I'd be glad to ask her that, but I was 9 going to let Mr. Caloggero take that. 10 MARTIN GROSSMAN: Okay. And the use of the proposed 11 location will not preempt frontage on any highway or public 12 road in a way that reduces the visibility and accessibility 13 of an interior commercial area zoned or proposed for 14 commercial use that is oriented in the same highway or 15 public road? 16 JODY KLINE: And I did ask her that question. 17 LEE ANN GUDORP: Yeah. 18 JODY KLINE: Yeah. 19 MARTIN GROSSMAN: Okay. All right. 20 JODY KLINE: No further questions then. 21 LEE ANN GUDORP: Good. 22 MARTIN GROSSMAN: I have no further questions. Thank 23 you, ma'am. 24 LEE ANN GUDORP: All right. Thank you. 25 JODY KLINE: Mr. Fetcho. Mr. Fetcho could you please	63 1 JODY KLINE: What have you been doing since 2004? 2 LUKE FETCHO: 2004 when I graduated I started work 3 with Whiting Turner as a project engineer and then 4 progressed up through assistant project manager with them 5 doing construction management; left them in 2007 and have 6 been with Timmons Group doing site, civil engineering for 7 the last 10 plus years. 8 JODY KLINE: And have you ever qualified as an expert 9 in that field before a body similar to this one? 10 LUKE FETCHO: Similar to what Lee Ann explained, I 11 have been through several planning commission hearings and 12 answered a few questions there, but never formally sworn in 13 or certified. 14 JODY KLINE: Okay. Based on his educational experience 15 and his practice for the last 12 years, I guess that would 16 be, 13 years maybe, I'd like to offer him as an expert in 17 Civil Engineering. 18 MARTIN GROSSMAN: And are you licensed in Maryland? 19 LUKE FETCHO: I am. My license number is 46098. 20 MARTIN GROSSMAN: All right. Based on Mr. Fetcho's 21 background and education as indicated in his resume and in 22 his testimony and his licensure in Maryland as an engineer, 23 I accept him as an expert in Civil Engineering. 24 JODY KLINE: Mr. Fetcho, the first question I'd like 25 to ask you is about the utility services, the public
62 1 state and spell your name and give us your business 2 address? 3 LUKE FETCHO: Luke Fetcho, L-U-K-E, F-E-T-C-H-O; and 4 business address is 20110 Ashbrook Place, Suite 100, 5 Ashburn, Virginia. 6 MARTIN GROSSMAN: Would you raise your right hand 7 please? Do you swear or affirm to tell the truth, the 8 whole truth, and nothing but the truth under penalty of 9 perjury? 10 LUKE FETCHO: Yes sir. 11 MARTIN GROSSMAN: All right, you may proceed. 12 JODY KLINE: Mr. Fetcho, you're an employee of what 13 company? 14 LUKE FETCHO: Timmons Group. 15 JODY KLINE: And how long have you been- and well, 16 what is your role with Timmons Group? 17 LUKE FETCHO: Timmons Group, I'm a project manager; 18 oversee several younger engineers that work underneath me 19 or with me and also do project management for the Northern 20 Virginia office. 21 JODY KLINE: Tell us about your education and 22 background. 23 LUKE FETCHO: Graduated from the University at Buffalo 24 with a BS in Civil Engineering and that was in 2004. What 25 was the second part?	64 1 utilities available to the property. We're making a bigger 2 building, do we need to do much, make any changes to the 3 utility systems serving the use? 4 LUKE FETCHO: No sir. There's, existing water is 5 served off of a 10 inch line that is just along the 6 frontage of Shady Grove Road; there is another 8 inch water 7 line that runs along Comprint Court. The sanitary sewer 8 currently outfalls to a manhole that's in Comprint Court 9 that's the very upstream most structure in that sanitary 10 run which is also a 10 inch PVC sanitary line. 11 MARTIN GROSSMAN: What's the rating on these? Are 12 these S1, W1 or what are they? 13 LUKE FETCHO: That, I'm not sure of off the top of my 14 head. 15 JODY KLINE: I don't think it's either in the Staff 16 Report, but the answer would be it would be S1 and W1 17 because they, it has those services today and it could not 18 have those services without those categories. 19 MARTIN GROSSMAN: Okay. 20 JODY KLINE: Where was I? So do you feel that the 21 lines that bring, the trunk lines will be adequate to 22 provide service for the expanded facility? 23 LUKE FETCHO: Yes sir. 24 JODY KLINE: And in your investigation did you hear 25 anything about any problems with transmission or treatment

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17 (65 to 68)

65 1 of sanitary sewer at all? 2 LUKE FETCHO: No, I did not. 3 JODY KLINE: Okay. We're always interested in knowing 4 about storm water management. That's the sophisticated, how 5 about telling us what is our storm water management concept 6 and how does it work and do you have an exhibit you want to 7 use, or? 8 LUKE FETCHO: We can use this exhibit, The Site Layout 9 Plan. 10 JODY KLINE: Okay. 11 LUKE FETCHO: So the Storm Water Management Concept 12 Plan is to meet the full EST value onsite before it leaves 13 the site. As mentioned previously we have four microbio 14 retention facilities; one that is located on the northeast 15 corner of the building which treats a small section of the 16 parking lot; one bio return, microbio retention facility 17 that is in between the two queuing lanes for the drive- 18 through. There is one in the middle of the northwest 19 parking lot and then there's one at the very northwestern 20 corner of the property, and those will treat the building 21 addition, treat portions of the parking lot because I know 22 the EPS water resources they want to focus more so on 23 treating the parking lot, that more of the contaminates and 24 pollutants will enter the system from that. With that 25 design we meet the full 2.2 inches of runoff with, I think	67 1 finding the Storm Water Management Concept acceptable. 2 Okay. 3 JODY KLINE: Mr. Fetcho, based on your professional 4 opinion, from a civil engineering perspective do you think 5 there's anything about the design or operation of the 6 proposed use that would have an adverse effect on any 7 surrounding property? 8 LUKE FETCHO: No sir. 9 JODY KLINE: Okay. Is there any reason to think that 10 anything about what you're proposing to do would have an- 11 have respect on the development potential of the 12 surrounding properties? 13 LUKE FETCHO: No sir. 14 JODY KLINE: I have no further questions for Mr. 15 Fetcho. 16 MARTIN GROSSMAN: I have none too. Thank you Mr. 17 Fetcho. 18 LUKE FETCHO: Thank you, sir. 19 JODY KLINE: Call Mr. Caloggero, please. 20 MARTIN GROSSMAN: Okay. 21 JOSEPH CALOGGERO: Good morning. 22 JODY KLINE: Good morning. Mr. Caloggero could you 23 please state and spell your name, and give us your business 24 address? 25 JOSEPH CALOGGERO: Sure. It's Joseph Caloggero, C-A-L-
66 1 it's approximately, the way it is right now a current, 2 we're over treating the requirements by approximately 400 3 cubic feet. 4 MARTIN GROSSMAN: You said there were four bio 5 retention facilities? 6 LUKE FETCHO: Yes. 7 MARTIN GROSSMAN: I'm only seeing three on the map. 8 LUKE FETCHO: There's one small, and it might be very 9 hard to see. There's a very small one that's in this 10 parking lot that's on the northeast side of the building. 11 MARTIN GROSSMAN: Okay. Maybe I'll look at the other 12 diagram here. Oh, I see. Okay. Okay. I see it. Thank you. 13 JODY KLINE: Mr. Fetcho, the application obtained or 14 received Storm Water Management Concept approval back on 15 August 24, 2016. That would have been based on the earlier 16 design? 17 LUKE FETCHO: The earlier design and then it was 18 revised and approved on May 18th, 2017. 19 JODY KLINE: Good. Mr. Grossman, I think, could you 20 hand this to Mr. Grossman? I would ask that be made an 21 exhibit, in the record of the case. Is it double-sided? 22 MARTIN GROSSMAN: I'm not sure. It is. 23 JODY KLINE: All right. 24 MARTIN GROSSMAN: All right, so this is Exhibit 69. 25 And this is a letter of May 18, 2017, from PS to Mr. Fetcho	68 1 O-G-G-E-R-O; with The Traffic Group, 9900 Franklin Square 2 Drive Suite H, Baltimore, 20236. 3 MARTIN GROSSMAN: Would you raise your right hand 4 please? Do you swear or affirm to tell the truth, the whole 5 truth, and nothing but the truth under penalty of perjury? 6 JOSEPH CALOGGERO: I do. 7 MARTIN GROSSMAN: All right. You may proceed. 8 JODY KLINE: Mr. Grossman, you have a copy of Mr. 9 Caloggero's resume, 60C. 10 MARTIN GROSSMAN: Yes. 11 JODY KLINE: And my question is: have you ever 12 qualified as an expert in the field of traffic engineering 13 or transportation planning before Mr. Grossman? 14 JOSEPH CALOGGERO: Not before Mr. Grossman, I believe, 15 but through- 16 JODY KLINE: But in this room against other hearings 17 though? 18 JOSEPH CALOGGERO: Yes, in other hearings here and 19 numerous jurisdictions. 20 MARTIN GROSSMAN: All right. 21 JOSEPH CALOGGERO: Across a few states. 22 JODY KLINE: Do you happen to remember the specifics 23 of the ones you would have qualified here and maybe who 24 that might have been in front of? 25 JOSEPH CALOGGERO: I do not.

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18 (69 to 72)

69 1 JODY KLINE: Okay. 2 MARTIN GROSSMAN: Are you trying to say we're not 3 memorable? (Laughter) 4 JOSEPH CALOGGERO: There's just been so many over 17 5 years it's hard to keep track. 6 JODY KLINE: But you have qualified in a forum such as 7 this as an expert in those two fields? 8 JOSEPH CALOGGERO: Yes, I have. Yes, I have. 9 JODY KLINE: Mr. Grossman, I'd like to offer Mr. 10 Caloggero based on his experience in transportation 11 planning and engineering as an expert in those fields. 12 MARTIN GROSSMAN: Okay. I don't recall, but your 13 educational background, et cetera? 14 JOSEPH CALOGGERO: A bachelor of science in Civil 15 Engineering from West Virginia University. 16 MARTIN GROSSMAN: Okay. 17 JOSEPH CALOGGERO: Back in the early '90s; registered 18 PE in Maryland and numerous states, professional traffic 19 operations engineering and professional transportation 20 planner. 21 MARTIN GROSSMAN: All right. All right, based on Mr. 22 Caloggero's background and education and licensing I accept 23 him as an expert in traffic engineering, is that what you 24 were wanting? 25 JODY KLINE: And transportation planning.	71 1 Burger King Site Plan, they were, you know, approved in 2 the, we have it in the late '70s, and updates in the mid 3 '80s and since this fast food restaurant was constructed 4 more than 12 years ago and the change is less than 30 peak- 5 hour trips that the LATR test was not required, and 6 therefore, would meet approval status. 7 MARTIN GROSSMAN: I actually think they haven't 8 actually come out with the current LATR Guidelines for the 9 new council-passed coordinates on this. But in any event, 10 so I'm not sure what exactly should be applying under those 11 circumstances. Do you have an opinion as to that? 12 JODY KLINE: Basically the rule is, and this 13 application there was no question because we did file with 14 staff in 2015 even, so there's no question we followed the 15 old rules. 16 MARTIN GROSSMAN: Yes. You were grandfathered you're 17 suggesting? 18 JODY KLINE: Right. Yes. 19 MARTIN GROSSMAN: Although I'm not entirely sure that 20 that's the way it was specified. 21 JODY KLINE: There was- 22 MARTIN GROSSMAN: It says- 23 JODY KLINE: There's a gray area of somewhere close 24 to, at a certain point in time, but we well preceded that. 25 MARTIN GROSSMAN: Yeah. But I think the way the
70 1 MARTIN GROSSMAN: And transportation planning. 2 JODY KLINE: Mm-hmm. 3 MARTIN GROSSMAN: Okay. 4 JODY KLINE: Mr. Caloggero, were you asked to prepare 5 a report related to this proposal? 6 JOSEPH CALOGGERO: Yes, I was. 7 JODY KLINE: Could you please describe your 8 methodology and your findings and conclusions? 9 JOSEPH CALOGGERO: Absolutely. So basically what we 10 had to do, we call it a trip generation comparison between 11 the existing and proposed uses. In talking with staff we 12 had decided since this is a unique site from a trip 13 generating standpoint to conduct our analysis in two 14 different ways. I'm talking from the March 6, 2017 letter 15 that was addressed to Mr. Klein. So one scenario that we 16 conducted; we assumed that the common area was spread 17 equally among the four different users. The second scenario 18 we used a base percentage of how much space each of the 19 four users would use and based on that percentage assigned 20 the common space that same percentage. Because basically 21 when you're projecting trips it's based on square footage. 22 The total square footage of restaurants with and without a 23 drive-through. So in general, both scenarios the trip 24 differential between existing and proposed uses was less 25 than 30, and as approved by staff that since the original	72 1 Council's language was it's if you had filed for 2 preliminary plan, maybe what they said. They didn't mention 3 conditional uses in terms of the time. 4 JODY KLINE: I see. 5 MARTIN GROSSMAN: So it weighs the question. 6 JODY KLINE: I didn't catch that nuance, yeah. 7 MARTIN GROSSMAN: We raised it early on but they never 8 changed it, so. All right. I was just looking to see how 9 your numbers coincided with the corrected numbers in the 10 Staff Report on Page 10, in terms of the total area. As you 11 can see there's a, when the Planning Board transmitted the 12 Staff Report they had corrections on Page 10. I'm not sure 13 how they all correspond here, so. 14 JOSEPH CALOGGERO: The existing numbers do correspond. 15 The proposed- 16 JODY KLINE: Well, if Mr. Caloggero and I are looking 17 at the Staff Report then we're probably looking at the 18 wrong thing because you were saying the Staff Report- 19 MARTIN GROSSMAN: Well, the Staff Report as corrected, 20 and it's redlined, Page 10. 21 JODY KLINE: Yeah. 22 MARTIN GROSSMAN: With the transmittal from the staff, 23 changes some numbers. 24 JODY KLINE: I'm going to- 25 MARTIN GROSSMAN: It changes on fast food with a

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19 (73 to 76)

73 1 drive-through; total area crossed out the 4284 and 2 substituted 4289. 3 JODY KLINE: Okay. Yeah. 4 MARTIN GROSSMAN: And then, therefore, changed the 5 totals in that column of total area and square feet, it 6 changed from 8095 to 8100 square feet, and it changed the 7 net change, the bottom line, for total area from 1506 8 square feet to 1511 square feet. 9 JOSEPH CALOGGERO: I'm looking at what we did, and 10 hopefully this is correct. So I'm on Page 2 of my letter. 11 MARTIN GROSSMAN: Okay. 12 JOSEPH CALOGGERO: We had a total of 8100 square feet 13 of total building area and it looks like here on Page 10 of 14 the Report they're using 8095. 15 MARTIN GROSSMAN: That's been changed to 8100. 16 JOSEPH CALOGGERO: On yours? 17 MARTIN GROSSMAN: Yes. 18 JOSEPH CALOGGERO: Was that- 19 JODY KLINE: I think what's happened, Mr. Grossman, is 20 we have the original Staff Report that was presented to the 21 Planning Board when it was transmitted to you it was 22 changed. 23 MARTIN GROSSMAN: Yes. 24 JODY KLINE: And I don't think either Mr. Caloggero or 25 I have copies of that with us right now.	75 1 square footage where you say 1980 then you apply this 53 2 percent common and then you get a total of 4284. That 3 figure was what was originally on the staff report. They 4 changed that to 4289. I'm not sure what caused that change 5 exactly but that was a modification and then on the totals 6 they had, also they had some different numbers for the 7 sandwich shop; they had 1467. You have 1478 on your revised 8 report, square footage. For the coffee shop they have 1465, 9 you have 1473. For the salad space you have 865 and they 10 have 879. 11 JOSEPH CALOGGERO: Right. And when, and I guess the 12 key to this would be, in my opinion, when reviewing my 13 exhibits, Exhibits 3 and 4 from my letter it's basically 14 broken down into two uses, fast food with a drive-through 15 and fast food without a drive-through. 16 MARTIN GROSSMAN: Right. 17 JOSEPH CALOGGERO: So all the numbers that are off are 18 all lumped into what should be the same number since we 19 agree that the Burger King which is the fast food with 20 drive-through are the same. And I guess there are rounding 21 errors. I may have used an Excel program which brings it 22 out 28 plus places. So it could be a rounding- 23 MARTIN GROSSMAN: So 28 places- (Laughter) All right. 24 But you both come to the same conclusion as to the total 25 area of 8100. I don't know how the numbers add up the same
74 1 MARTIN GROSSMAN: Okay. Yeah. What I read you; I read 2 you the numbers that were changed. 3 JODY KLINE: Yeah. 4 MARTIN GROSSMAN: And I see you do have the 8100 5 square foot total. So I suspect that maybe- 6 JOSEPH CALOGGERO: Well the differences I can see, 7 just under my quick review is we had a 10 percent factor of 8 internal trips. So an internal trip, you know, to use an 9 example maybe somebody comes in, grabs a burger, walks to 10 the salad place, grabs a salad, walks to the coffee place, 11 grabs a coffee and rolls out, or pardon me, walks out. So 12 the, on Exhibit 2- 13 JODY KLINE: In your report? 14 JOSEPH CALOGGERO: In my report shows an internal trip 15 capture rate of 28 percent from the retail to retail uses. 16 Staff offered a minor 10 percent reduction so we believe we 17 had a conservative analysis just using 10 percent, although 18 we believe it could be up to 28 percent based on national 19 statistics and guidelines. That could be some of the other 20 discrepancies in our total, but either way we were below. 21 Page 10 of the Staff Report shows that it's still less than 22 30 trips. 23 MARTIN GROSSMAN: Yeah. I'm not sure that these minor 24 differences make any difference. I am pointing them out 25 though. But you start, for the Burger King, for example,	76 1 ultimately, but that's what they do, at 8100 square feet 2 total. So let me ask you this. 3 JOSEPH CALOGGERO: Yes. 4 MARTIN GROSSMAN: Looking at their new figures as I've 5 outlined them for you, do these differences make any 6 difference in your conclusion that the local area 7 transportation review standards are complied with? 8 JOSEPH CALOGGERO: It does not change my opinion. 9 MARTIN GROSSMAN: Okay. 10 JOSEPH CALOGGERO: And again, just to add to that, 11 staff has agreed to an internal trip capture which would 12 reduce those numbers which are not, that reduction is not 13 shown here. 14 MARTIN GROSSMAN: Okay. So really you- 15 JODY KLINE: So if we don't generate more than 30 new 16 trips under whoever's number's we're dealing with. 17 JOSEPH CALOGGERO: Correct. 18 MARTIN GROSSMAN: Okay. All right. I don't really 19 think they (inaudible 1:32:50) I just thought we should 20 (crosstalk 1:32:54) 21 JODY KLINE: No. I- 22 MARTIN GROSSMAN: -exist we ought to note it on the 23 record. 24 JODY KLINE: Yeah. 25 JODY KLINE: Let's go to operational issues, I guess,

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20 (77 to 80)

77 1 then. Do we have the proper markings to get, well let me 2 put it this way. Is the pedestrian and vehicular 3 circulation system safe, adequate, and efficient? 4 JOSEPH CALOGGERO: Absolutely, yes. 5 JODY KLINE: Okay. Do we have the right kind of 6 pavement treatments and signage so people can move and cars 7 will stop in the right places? 8 JOSEPH CALOGGERO: Yes. 9 JODY KLINE: And that's shown on the Site Plan, right? 10 JOSEPH CALOGGERO: Correct. 11 JODY KLINE: Okay. Is there any possibility of cars 12 backing up a queuing line to Shady Grove Road or Comprint 13 Court because of the operations of the restaurant? 14 JOSEPH CALOGGERO: No, there's not. 15 JODY KLINE: In your opinion will the proposed use 16 cause a traffic hazard? 17 JOSEPH CALOGGERO: No, it will not. 18 JODY KLINE: Will it cause a traffic nuisance? 19 JOSEPH CALOGGERO: No, it will not. 20 JODY KLINE: Will it cause frequent conflicts with 21 pedestrians crossing drive lanes and vehicles? 22 JOSEPH CALOGGERO: No, it will not. 23 JODY KLINE: And will it cause any adverse effect on 24 capacity of the surrounding transportation network? 25 JOSEPH CALOGGERO: No, it will not.	79 1 spell your name and give us your business address? 2 THOMAS FLYNN: Yes. My name is Thomas Flynn, F-L-Y-N- 3 N. My address is 5 Decatur Avenue, D-E-C-A-T-U-R, 4 Annapolis, Maryland 21403. 5 MARTIN GROSSMAN: Would you raise your right hand 6 please? Do you swear or affirm to tell the truth, the whole 7 truth, and nothing but the truth under penalty of perjury? 8 THOMAS FLYNN: I do. 9 MARTIN GROSSMAN: All right. You may proceed. 10 JODY KLINE: Mr. Flynn, what is your profession? 11 THOMAS FLYNN: I studied planning and urban 12 development in the '70s, but have practiced real estate 13 economics since then and economic development. So my 14 profession is basically real estate market research and 15 economics. 16 JODY KLINE: Parenthetically I'll add I saved Mr. 17 Flynn for the last because I know you've taken such an 18 interest in this subject matter after your Costco case that 19 you would just love to hear what he has to say about the 20 market issues. Mr. Flynn, were you asked to prepare what we 21 typically call a Needs Study for the purposes of this 22 restaurant? 23 THOMAS FLYNN: Yes, I was. 24 JODY KLINE: Okay. Could you describe for us your 25 methodology and then your findings and conclusions?
78 1 JODY KLINE: I have no further questions of Mr. 2 Caloggero. 3 MARTIN GROSSMAN: Site distances from the driveways 4 are sufficient? 5 JOSEPH CALOGGERO: I did not measure site distances. I 6 can only assume that since this has been in operation since 7 the '70s and, you know, without complaints. 8 MARTIN GROSSMAN: Well, I understand you didn't 9 measure it, but looking at the diagrams of the Site Plan- 10 JOSEPH CALOGGERO: Yeah, look for the- 11 MARTIN GROSSMAN: -can you tell from looking at that 12 whether or not the site distances would be adequate from 13 the existing driveways? 14 JOSEPH CALOGGERO: From a 2D scale, you know, it 15 doesn't look like there are site distance issues, so there 16 are no major obstructions along the sidewalk area and the 17 pedestrian refuge area, those types of obstructions would 18 not impact site distance. But the vertical curve of the 19 road and the horizontal curve of the road, I don't have 20 that readily available. 21 MARTIN GROSSMAN: All right. 22 JODY KLINE: I have no further questions. 23 MARTIN GROSSMAN: Thank you. Thank you, sir. 24 JODY KLINE: All right. One last witness, Mr. 25 Grossman. Mr. Flynn. Mr. Flynn, would you please state and	80 1 THOMAS FLYNN: Yes. 2 MARTIN GROSSMAN: Well first of all, his expertise. 3 JODY KLINE: Oh, I'm sorry. That's right. I'm sorry. 4 Mr. Grossman, for some reason I thought I'd sent you all 5 four of the resumes of all four of our experts. 6 MARTIN GROSSMAN: His resume is actually attached to 7 Exhibit 63, it's the last- 8 JODY KLINE: Okay. 9 MARTIN GROSSMAN: -end of- 10 JODY KLINE: Okay. Right. Well, Mr. Flynn, you've 11 given us, I guess, the introduction. You have for how many 12 years been preparing market analysis for both large 13 commercial uses but things like the required zoning 14 approval. 15 THOMAS FLYNN: Roughly 30 years. 16 JODY KLINE: Okay. Have you ever qualified as an 17 expert in that field, the field of market studies before 18 someone like Mr. Grossman, or even Mr. Grossman? 19 THOMAS FLYNN: Yes, I have. 20 JODY KLINE: Do you happen to recall what the case 21 was? 22 THOMAS FLYNN: Yes. I've worked on cases here 23 including a Wendy's in Silver Spring; various, so gasoline 24 and service stations in Montgomery County where there are 25 special exception issues, the Costco study in Silver

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21 (81 to 84)

81 1 Spring, those were the primary studies I've done here. 2 MARTIN GROSSMAN: Mr. Flynn as I recall, actually 3 testified as an expert. I can't remember which of the cases 4 you're referencing, Mr. Flynn, but you've appeared before 5 me before as an expert. Is that not so? 6 THOMAS FLYNN: Yes, it is. 7 MARTIN GROSSMAN: Okay. 8 JODY KLINE: I'd like to offer Mr. Flynn as an expert 9 in market studies. 10 MARTIN GROSSMAN: All right. In market studies or 11 anything more specific? 12 JODY KLINE: Well, I'm not quite sure how to best 13 describe what the zoning ordinance describes the means 14 study in terms of determining proliferation and saturation 15 because he does do a market analysis to determine, there 16 may be a better term but I'm just not sure what it is. 17 MARTIN GROSSMAN: Market analysis to determine need? 18 JODY KLINE: That's- 19 MARTIN GROSSMAN: Need for- 20 JODY KLINE: Well, that's certainly what the purpose 21 of it is. 22 MARTIN GROSSMAN: Is that a fair description of your 23 expertise as offered here, Mr. Flynn? 24 THOMAS FLYNN: I would say so, yes. 25 MARTIN GROSSMAN: Okay. So I accept Mr. Flynn based on	83 1 MARTIN GROSSMAN: But in any event, I guess the 2 Council determined that these particular types of uses had 3 sufficient potential impact that they wanted to make sure 4 that they were, in fact, independently analyzed as being 5 needed and in this case in the county and will not impose 6 unduly on the neighborhood, so that they've listed them and 7 requires this kind of study. 8 JODY KLINE: Right. 9 MARTIN GROSSMAN: And also, in this particular case 10 where you already have a drive-through going there, I 11 wonder whether that in and of itself, and I'll ask you, Mr. 12 Flynn, before you begin, wouldn't that in and of itself, 13 given that the testimony is that this business is thriving 14 as a drive-through wouldn't that be testimony to the 15 satisfaction of the need criteria? 16 THOMAS FLYNN: I would say it is. Further indication 17 is the fact that it's a successful operation. There's not 18 only the- 19 MARTIN GROSSMAN: Right. 20 THOMAS FLYNN: -drive-through, but it's actually 21 profitable and a good operation. 22 MARTIN GROSSMAN: Right. I think I, in the question I 23 said it was a thriving business. So that just seemed to me 24 to be the prima facie evidence of need being satisfied in 25 that you have an existing drive-through there that is
82 1 his background as indicated in his resume, as well as his 2 testimony and prior acceptance as an expert in market 3 analysis to determine need. And, I note that the need 4 provision in this case is somewhat different from some of 5 the others. I believe the gas station case required a 6 community, the immediate area and the neighborhood need, 7 where as this one that applies in this case, is for a 8 county need and adds the profile so that it will not result 9 in the multiplicity or saturation of similar uses in the 10 same the general neighborhood. A distinction, perhaps, 11 without a difference, but who am I to question the 12 council's use of the language. 13 JODY KLINE: Sure. 14 MARTIN GROSSMAN: Anyway, this one is under Subsection 15 6 in that litany in 59.7.3.1(e) and this one's 6; includes 16 funeral homes, undertakers, hotel/motel, shooting ranges, 17 drive-throughs, landfill, incinerator or transfer station, 18 and public use helipads, heliports or public use helistops. 19 JODY KLINE: I'm sure Mr. James is wondering why his 20 restaurants are categorized with those other uses but- 21 MARTIN GROSSMAN: Yeah. Well, I was, I mean, the 22 question that always occurs to me is if there's no need 23 won't the economy make the determination as to whether or 24 not a business will open in a place. 25 JODY KLINE: Sure.	84 1 thriving; plenty of evidence. 2 JODY KLINE: You are correct, and Mr. Flynn and I had 3 this conversation probably two years ago because normally 4 he and I are trying to ask you to approve a new gas 5 station. 6 MARTIN GROSSMAN: Right. 7 JODY KLINE: Or a new restaurant, and so we start off 8 saying we've already got one that's there. 9 MARTIN GROSSMAN: Right. 10 JODY KLINE: And is there any reason why it shouldn't 11 be allowed to be made more efficient. 12 MARTIN GROSSMAN: Right. All right. So now we'll stop 13 trying to preempt your testimony and let you proceed. 14 THOMAS FLYNN: Thank you. I didn't assume that it was 15 viable even though it, as a prima facie case is. My 16 methodology included the following actions. I went to look 17 at this particular Burger King. I spent several hours there 18 initially and then I revisited it several different times, 19 always trying to figure out its unique features of 20 operation, quality of operation, the patterns of use; the 21 satisfaction of the people who were using it. I looked at 22 all of the quick service restaurants in the area within a 23 15 to 20 minute drive, of all types. There are hundreds and 24 I visited, moved along all the streets and saw how each one 25 operated. I particularly looked for those that were similar

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22 (85 to 88)

85 1 to the Burger King and looked at whether they had a drive- 2 through restaurant operations, whether they offered 3 amenities like the playground, whether they had adequate 4 parking, exactly where they were located. So my field work 5 initially involved studying and mapping all of the 6 facilities, all of the retail restaurants of this type in 7 the area. I then backed off and looked at what I tried to 8 determine as the market area based on roads, patterns of 9 travel, locations of major employers and residential areas, 10 and decided to use again two definitions for comparative 11 purposes. One a drive time of 7 minutes and secondly a 12 drive time of 15 minutes. Given the scope of the action 13 contemplated here initially and then subsequently of a 14 larger complex that offered additional kinds of food, it 15 seemed to me that it could draw from even greater distance 16 than the Burger King. So I looked at the 15 minute area. 17 And then I- 18 MARTIN GROSSMAN: Well, let me stop you for a second. 19 THOMAS FLYNN: Yes sir? 20 MARTIN GROSSMAN: I wondered about that when I read 21 your original report last night. Since this is a question 22 of county need rather than neighborhood need why do you 23 define it in terms of those smaller drive times because 24 it's not a question of what you pull from the neighborhood, 25 it's a question of what you need to have in the whole	87 1 a very local sense. The county, the definition of the 2 county or the idea of the county as the market isn't 3 realistic. It's not what we've used so I felt in order to 4 justify conclusions I had to look at a more specific 5 defined area. 6 MARTIN GROSSMAN: Okay. 7 THOMAS FLYNN: But I did look at the county as a whole 8 and I'll get to that in a second. 9 MARTIN GROSSMAN: Okay. I assume you mean whole, W-H- 10 O, not H-O-L. 11 THOMAS FLYNN: Yes sir. (Laughter) In addition to 12 field work and trying to define a market area I looked at 13 the demographics as they would relate to potential sales at 14 a place like this. Within 7 minutes of this Burger King is 15 12 percent of the county's population; that's 122,000 16 people. Nearly half of the population of the county is 17 within a 15 minute drive. The average household income of 18 the closer in population is \$91,000, so it's a well-to-do, 19 relatively affluent market. I needed to understand that 20 background. I also talked with the client, with Mr. Grimes, 21 and his people to understand the actual sales and 22 conditions at this location. And they own several other 23 Burger Kings in the area. The sales were very convincing 24 figures. They had a history of this. This is a successful 25 restaurant. They can clearly show that; and I needed to
86 1 county, isn't it, since they defined county need? 2 THOMAS FLYNN: Yes sir. I might have misinterpreted 3 the statute that you referred to, but I thought that I had 4 to show that it was needed in the general area; that of the 5 community as well as in the county. 6 MARTIN GROSSMAN: Well, actually the way it's, I mean 7 that's true to some extent in the other provision. There 8 are two provisions that call for need. One is the 9 neighborhood need, which is what it is for gas stations for 10 example, and the other is county need, the one that applies 11 specifically to this, that list that I read and 12 specifically to drive-throughs is, it reads as follows, 13 "The following conditional uses may only be approved when 14 the hearing examiner finds from a preponderance of the 15 evidence of record that the need exists for the proposed 16 use due to an insufficient number of similar uses presently 17 serving existing population concentrations in the county, 18 and the uses at the location proposed will not result in a 19 multiplicity or saturation of similar uses in the same 20 general neighborhood." So both apply in that sense that it 21 talks about not overwhelming the neighborhood but the 22 primary part of it is that there is insufficient number of 23 similar uses in the county. 24 THOMAS FLYNN: I see your point. I did look at the 25 county, but in my business real estate makes sense only in	88 1 know its condition economically since it is an existing 2 establishment. I next decided to interview people at the 3 Burger King and at other places and I randomly interviewed 4 50 different individuals at this location and at others in 5 the close-in area. I wanted to see how they perceived that 6 facility, that operation, whether they liked it, whether 7 they were, how they got there, where they came from. I 8 found that over half of the people drove to this location. 9 I expected that, but it was, I needed to establish it. The 10 majority of people felt that there was a need for enhanced 11 food services of this type in the area; over 75 percent 12 expressed that view. This was a- 13 MARTIN GROSSMAN: You tapped them on the shoulder 14 while they were eating at Burger King by the way? Are they 15 sure they didn't tell you a whopper or? 16 THOMAS FLYNN: (Laughter) they were already eating in 17 these different establishments. There was not only the 18 Burger King, but I also went to Starbucks and McDonalds. 19 MARTIN GROSSMAN: I saw. 20 THOMAS FLYNN: Wendy's and other places. 21 MARTIN GROSSMAN: Okay. I then looked at the traffic 22 data, which is very significant from the point of view of 23 an operation like this. It's quite an impressive situation 24 from a traffic point of view which is probably one of the 25 most important indicators of potential success of this kind

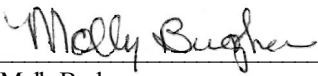
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23 (89 to 92)

89 1 of place. There's about a 40,000 car AADT average, average 2 annual daily traffic, on the main, on Shady Grove Road 3 there and the traffic on the Rockville Pike is between 35 4 and 45,000 north and south of the crossroads. And the 5 traffic is even higher on 270 and other roads in the 6 immediate vicinity. So it seemed to me that the, and the 7 traffic is growing. I looked at a comparison of a five-year 8 period and traffic is increasing. Finally, I created an 9 economic model to analyze the situation and what I would 10 expect sales to be in this type of location. That was my 11 methodology. My conclusions were the following: First of 12 all the demand projection that I got from the economic 13 model showed a significant potential for greater 14 development of this type in Montgomery County and in this 15 particular area, the defined market area. Not surprisingly 16 there's a gap of about what I would call, I'll say a 17 significant gap of about \$150 million of unmet demand in 18 this type of quick service restaurant in Montgomery County. 19 That amounts to, if you took an average sales figure, 20 annual sales figure of \$2.5 million per establishment that 21 would be roughly 60 additional quick service restaurants. 22 That means that there is the potential for more of these 23 kinds of operations which supports the idea that the 24 improvement or enhancement of this particular site is a 25 logical decision and perceived as a need by the community,	91 1 the additional food services, all of these seem to me to 2 confirm that this was merited and necessary. 3 MARTIN GROSSMAN: If I recall from reading your, the 4 first one, I haven't read the second one which was just 5 handed me, but you indicated in there that data supplied 6 from more general sources you found not to be applicable 7 here. You would therefore going, Can you explain that a 8 little bit? 9 THOMAS FLYNN: Yes sir. I felt that the projections 10 within the smaller geographic area didn't take into account 11 the tremendous road capacities that had been constructed 12 within the last five to ten years in that area. 13 MARTIN GROSSMAN: But what was the source of those 14 projections that you rejected; the data points you 15 rejected? 16 THOMAS FLYNN: Well, I didn't exactly reject them. But 17 I questioned them. They're all from the same source and 18 that is Nielson Economic Information, which used to be 19 called Claritas and when I appeared here before we've 20 talked about Claritas. It's now purchased by the Nielsen 21 Company and so it's Nielsen Demographics. I feel that they- 22 MARTIN GROSSMAN: And you say they gathered their 23 numbers from an earlier time period before we had road 24 expansions? 25 THOMAS FLYNN: No. I gathered them in 2015.
90 1 in my opinion. When we go down from the county level to the 2 smaller market area level of the 15 minute base there is 3 also a need of about, I think it was \$23 million which 4 suggested a potential need even in that smaller area for 5 about 10 more restaurants of this type. So the economic 6 projections that I do as a market analyst confirm the idea 7 that there was a need in terms of market demand. Secondly 8 with respect to the location features it seemed clear to me 9 that the improvements to the site that the concept was 10 proposing would enhance access and the site itself is 11 primarily one of road access advantage sites. Its primary 12 feature is its access to vehicles that move in that area. 13 The pedestrian connections are potentially important but 14 don't seem very strong. Most everyone I met who access this 15 place came by car. So any way to move traffic better, more 16 efficiently through the drive-through was a plus and from 17 that point of view it confirmed that this action was a good 18 one and was needed by the community. Thirdly, as you 19 pointed out a moment ago, the fact that it is a successful 20 restaurant would say to me that this is a logical thing and 21 it is needed. And finally, overall it seemed to be an 22 improvement to the site. And that further enhanced the idea 23 of its need in the community through the things that the 24 project manager has talked about. The site, the movement of 25 pedestrians, the bike parking, the approved configuration,	92 1 MARTIN GROSSMAN: No, I mean Nielsen. 2 THOMAS FLYNN: I think that they may have been using a 3 model based on the conditions that were five years or so 4 before. 5 MARTIN GROSSMAN: Okay. 6 THOMAS FLYNN: The fact that not only is the Burger 7 King successful, but it seemed, I didn't have all their 8 information but it seemed that all of the fast food 9 restaurants that I visited in that area are fairly 10 successful, the McDonalds as well. 11 MARTIN GROSSMAN: And if you applied the Nielsen 12 numbers instead of the ones that you did apply, would that 13 change your conclusion or would it just make it less 14 strong? 15 THOMAS FLYNN: Well, the figures that I cited to you, 16 sir, about the 7 minute and the 15 minute area and the 17 demand in those areas and in the county, those are based on 18 the Nielsen numbers. 19 MARTIN GROSSMAN: Okay. 20 THOMAS FLYNN: So I didn't use two sets of numbers. 21 There's just one set, and they confirm that there is demand 22 within this 15 minute drive and within the county as a 23 whole, excess demand. 24 MARTIN GROSSMAN: Okay. So you didn't use a separate 25 set of figures for correcting what you considered an

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24 (93 to 96)

93 1 understatement in the Nielson figures? 2 THOMAS FLYNN: That's right. 3 MARTIN GROSSMAN: Okay. 4 THOMAS FLYNN: I simply, in my own analysis, called 5 out that I felt that they had underestimated the demand. 6 MARTIN GROSSMAN: Okay. I understand; all right, and 7 so your bottom line is? 8 THOMAS FLYNN: My bottom line is this is a very, a 9 facility that's needed in the community based on support by 10 the community and that the action enhances the ability of 11 the facility to meet that need. 12 MARTIN GROSSMAN: And when you say needed in the 13 community are you including needed in the county? 14 THOMAS FLYNN: Yes, I am. 15 MARTIN GROSSMAN: And would its proposed location 16 result in a multiplicity or saturation of similar uses in 17 the same general neighborhood? 18 THOMAS FLYNN: No. 19 MARTIN GROSSMAN: Okay. Any other questions? 20 JODY KLINE: I have no further questions. 21 MARTIN GROSSMAN: All right. Thank you, Mr. Flynn. 22 THOMAS FLYNN: Thank you. 23 MARTIN GROSSMAN: I appreciate it. 24 JODY KLINE: Mr. Grossman, I don't think I need to 25 make any concluding comments other than to make sure I've	95 1 JODY KLINE: Yes. Correct. 2 MARTIN GROSSMAN: Okay. All right. So shall we, and by 3 that time we should have the transcript as well. I take it 4 that you wish to move all the Exhibits into evidence? 5 JODY KLINE: Please, Mr. Grossman. 6 MARTIN GROSSMAN: Okay. So I accept into evidence 7 Exhibits 1 through 69 and their subparts and also the 8 additional Exhibits that you'll be filing. And the record 9 today is the 7th, so the record will close on July 17, 2017. 10 (Off the record 11:50 a.m.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
94 1 got a good checklist of what items you would want to leave 2 the record open to receive, and I have noted that I need 3 additional time to get you electronic copies of the 4 rendered Site Plan and the Amenity Site Plan. I think those 5 are the only two? 6 MARTIN GROSSMAN: And also of the Revised Traffic 7 Study and the Revised Needs Study. 8 JODY KLINE: Oh, sure. Okay, yes. Right. 9 MARTIN GROSSMAN: And if there were any other plans 10 introduced in additional to those; you mentioned the 11 rendered ones. Let's see on the Exhibit List here, just to 12 make sure. I'm sure it's somewhere here buried. There you 13 go. Yeah, the rendered Site Plan, the rendered Elevations 14 those are your two exhibits; and the rendered version of 15 the Amenity Open Space Plan, so that makes a total of four 16 rendered exhibits. The rendered Site Plan and two rendered 17 Elevations and one rendered version of Amenity Open Space. 18 JODY KLINE: Okay. Got it. 19 MARTIN GROSSMAN: And then electronic copies of the 20 Revised Needs Study and Revised Traffic Study. 21 JODY KLINE: Yes sir. Yes sir. 22 MARTIN GROSSMAN: Okay. All right. And is 10 days 23 sufficient- 24 JODY KLINE: More than, yes. 25 MARTIN GROSSMAN: -for the purpose?	96 1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the best 5 of my ability from the audio recording as provided; and that I 6 am neither counsel for, related to, nor employed by and of the 7 parties to this case and have no interest, financial or 8 otherwise, in its outcome. 9 10  11 Molly Bugher 12 Molly Bugher 13 July 18, 2017 14 15 16 17 18 19 20 21 22 23 24 25