

<p>1 IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS 1</p> <p>2 TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION 21</p> <p>3 BEFORE THE HONORABLE NANCY WATKINS-MCLAUGHLIN</p> <p>4 BG OLIVE AND GRAESER, LLC,)</p> <p>5 Plaintiffs,)</p> <p>6 vs.) Cause No. 20SL-CC04674</p> <p>7 CITY OF CREVE COEUR,)</p> <p>8 MISSOURI,)</p> <p>9 Defendant.)</p> <p>10 TRANSCRIPT OF PROCEEDINGS</p> <p>11 JUNE 15 & 16, 2021</p> <p>12 PRESENT FOR PLAINTIFFS:</p> <p>13 MR. GERARD CARMODY</p> <p>14 MR. RYAN PRSHA</p> <p>15 PRESENT FOR DEFENDANT:</p> <p>16 MR. CARL LUMLEY</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Court Reporter:</p> <p>22 Constance D. Petzall, CCR #775</p> <p>23 Official Court Reporter, Division 21</p> <p>24 St. Louis County Circuit Court</p> <p>25 105 South Central Avenue</p> <p>Clayton, Missouri 63105</p> <p>(314) 615-3249</p>	<p>1 yesterday by the presiding judge of the circuit 3</p> <p>2 indicates that masks are to be worn in enclosed</p> <p>3 spaces unless everyone is fully vaccinated. So I</p> <p>4 think the attorneys have advised me that they are</p> <p>5 and their clients are, and their staff are also</p> <p>6 fully vaccinated.</p> <p>7 There are also witnesses here in the</p> <p>8 courtroom, and I am sorry to have to ask this</p> <p>9 question, but because of the rule that states that</p> <p>10 we are to be masked unless everyone is vaccinated,</p> <p>11 I feel that I should ask the question. Is there</p> <p>12 anyone present at this time who is not fully</p> <p>13 vaccinated for the Corona Virus? Hearing none, I</p> <p>14 see that everyone is fully vaccinated and we do not</p> <p>15 need to wear masks.</p> <p>16 MR. CARMODY: Very good, Judge. Nice</p> <p>17 feeling.</p> <p>18 THE COURT: Yes.</p> <p>19 MR. CARMODY: Good morning, Judge,</p> <p>20 and I think, as you know, this case involves the</p> <p>21 wrongful denial of a conditional use permit by the</p> <p>22 City of Creve Coeur to our clients denominated</p> <p>23 BG Olive & Graeser, LLC, Forsyth Investments, LLC,</p> <p>24 and by virtue of their relationship, we are just</p> <p>25 going to refer to them as Gershman, and I think the</p>
<p>1 DAY ONE OF PROCEEDINGS 2</p> <p>2 JUNE 15, 2021</p> <p>3 THE COURT: We are on the record in</p> <p>4 the matter of BG Olive and Graeser, LLC, versus</p> <p>5 City of Creve Coeur, Missouri, 20SL-CC04674.</p> <p>6 This is the St. Louis County Circuit</p> <p>7 Court, Division 21. It is June 15th, 2021.</p> <p>8 Will the attorneys for the plaintiffs</p> <p>9 please state their names for the record?</p> <p>10 MR. CARMODY: Gerry Carmody and Ryan</p> <p>11 Prsha on behalf of the plaintiffs.</p> <p>12 THE COURT: Will the attorney for the</p> <p>13 defendant please state his name for the record?</p> <p>14 MR. LUMLEY: Carl Lumley appearing</p> <p>15 for the City of Creve Coeur.</p> <p>16 THE COURT: Are the parties ready to</p> <p>17 proceed?</p> <p>18 MR. CARMODY: We are, Your Honor.</p> <p>19 MR. LUMLEY: Yes, Your Honor.</p> <p>20 THE COURT: Please proceed.</p> <p>21 MR. CARMODY: If I may, Judge, I</p> <p>22 would like to make a brief opening statement.</p> <p>23 THE COURT: Before you do proceed, I</p> <p>24 guess there is one preliminary matter that I should</p> <p>25 have brought up. The administrative rule issue</p>	<p>1 explanation will come during the course of the 4</p> <p>2 testimony in this case. But I think for ease of</p> <p>3 reference, we will just call them Gershman.</p> <p>4 The CUP contemplated construction of</p> <p>5 a QuikTrip at the corner of Olive Boulevard and</p> <p>6 Graeser roads in Creve Coeur. The threshold issue</p> <p>7 in this case is what is it that you are supposed to</p> <p>8 do? And I don't know that there's agreement</p> <p>9 between the parties that we can tell you what the</p> <p>10 answer to that is.</p> <p>11 I think the cases make it clear. I</p> <p>12 don't think there's any issue about that. But</p> <p>13 apparently, because of the nature of what we saw in</p> <p>14 the plaintiffs' -- strike that -- in the</p> <p>15 defendant's brief, I do believe there may be an</p> <p>16 issue about that.</p> <p>17 Our view, shared by all of the court</p> <p>18 decisions we have found, is that you are trying</p> <p>19 this case de novo; that is, you are hearing the</p> <p>20 evidence; you are going to decide the facts; and</p> <p>21 you are going to issue your rulings based upon the</p> <p>22 facts that you find to be at issue and apply the</p> <p>23 law to those facts.</p> <p>24 The case law is fairly clear about</p> <p>25 that, that this is a non-contested case, and</p>

<p>1 indeed, as I think you may have seen in the brief</p> <p>2 that we filed, the City of Creve Coeur itself was</p> <p>3 involved in a case in which Judge Moody wrote a</p> <p>4 very detailed opinion in the Court of Appeals</p> <p>5 describing exactly the ordinances at issue in this</p> <p>6 case and said it is not a contested case but, in</p> <p>7 fact, is a non-contested case.</p> <p>8 THE COURT: As much as I hate to</p> <p>9 interrupt you --</p> <p>10 MR. CARMODY: Not at all.</p> <p>11 THE COURT: Is there any dispute that</p> <p>12 this is a non-contested case?</p> <p>13 MR. LUMLEY: No, Your Honor.</p> <p>14 THE COURT: All right. Thank you.</p> <p>15 MR. CARMODY: That having been said</p> <p>16 and accepted, then, Judge, the ideas at the end of</p> <p>17 this case based upon your findings, if indeed you</p> <p>18 find that the analysis of the factors necessary to</p> <p>19 conclude whether or not a CUP should be issued have</p> <p>20 been satisfied by the plaintiffs, in present time,</p> <p>21 that's your analysis. Once you make that finding,</p> <p>22 the cases also say it is then simply a ministerial</p> <p>23 act.</p> <p>24 When there's an issuance of a permit,</p> <p>25 it's a ministerial act once the underlying facts</p>	5	<p>1 through contested versus non-contested because we</p> <p>2 got an admission that there is -- this is a</p> <p>3 non-contested case. No need to go into that</p> <p>4 difference. So we will presume we are going to go</p> <p>5 forward on this basis.</p> <p>6 What does the North Lindbergh Legal</p> <p>7 Fund case say about the procedure and what goes on</p> <p>8 in this proceeding?</p> <p>9 THE COURT: I have read the case</p> <p>10 carefully.</p> <p>11 MR. CARMODY: Good. Thank you,</p> <p>12 Judge. And it says you are reviewing and listening</p> <p>13 to the evidence in this case, and rather than</p> <p>14 reviewing an agency record, you are conducting de</p> <p>15 novo review, determining the facts, deciding</p> <p>16 whether the agency's decisions are</p> <p>17 unconstitutional, lawful, unreasonable and so</p> <p>18 forth. So that's it.</p> <p>19 So let's then turn to the evidence in</p> <p>20 this case and what we are talking about now that we</p> <p>21 have gotten past that legal hurdle.</p> <p>22 Creve Coeur ordinance identified six</p> <p>23 separate factors. I know you've looked at those</p> <p>24 and you understand what they are. I won't go into</p> <p>25 detail about them right now, but I will simply say</p>	7
<p>1 have been satisfied. So we will see, and we can</p> <p>2 talk about those cases later, but I don't know that</p> <p>3 we need to at this time. Then what is the problem</p> <p>4 of why am I even addressing this? Because, in the</p> <p>5 defendant's brief, there was a suggestion that</p> <p>6 there was some sort of deference that was permitted</p> <p>7 after the trial of this case and that you need to</p> <p>8 defer somehow to what they call the local</p> <p>9 discretionary decision.</p> <p>10 I will quote: The city council</p> <p>11 lawfully and reasonably exercised its legislative</p> <p>12 and administrative discretion in denying the CUP.</p> <p>13 The court should defer to that discretionary</p> <p>14 decision. That is simply not the law. There is no</p> <p>15 deference to any underlying finding. There is no</p> <p>16 record of any rationale for the reasons why the</p> <p>17 CUP was denied, and there is no deference to be</p> <p>18 given at all.</p> <p>19 This court was, you know, decides de</p> <p>20 novo. Here's what the facts are. I find, we hope,</p> <p>21 that all these factors have been satisfied;</p> <p>22 therefore, I order the City of Creve Coeur to</p> <p>23 exercise its ministerial power and to issue this</p> <p>24 permit.</p> <p>25 So, again, Judge, I need not go</p>	6	<p>1 that the evidence in this case is going to</p> <p>2 establish that all of those have been satisfied</p> <p>3 with this conditional use permit application.</p> <p>4 Long ago, the city itself identified</p> <p>5 this very site as one in need of development. Mr.</p> <p>6 Jaggi himself has testified that they said we need</p> <p>7 to do something about this corner based upon the</p> <p>8 fact that it is -- it sits there. We got one</p> <p>9 building that's totally vacant, another being</p> <p>10 partially vacant. I direct your attention, Judge,</p> <p>11 to Exhibit 2A, which is a current, existing</p> <p>12 conditions photograph of that -- can you see it</p> <p>13 from there?</p> <p>14 THE COURT: Yes.</p> <p>15 MR. CARMODY: Okay. So again, Judge,</p> <p>16 we -- let's take a look at the site briefly. The</p> <p>17 site consists of five separate parcels, all of</p> <p>18 which have been zoned commercial since the</p> <p>19 exception of City of Creve Coeur. So the totality</p> <p>20 of this area, including this house, the totality of</p> <p>21 this area is zoned commercial. And what's the</p> <p>22 significance of that?</p> <p>23 There are many things that the owner</p> <p>24 of this property could do consistent with the</p> <p>25 commercial zoning: put in a grocery store, put in</p>	8

<p>1 a liquor store, put in a medical marijuana</p> <p>2 facility, many, many things it could do without a</p> <p>3 conditional use permit and without all the</p> <p>4 concessions that were made in connection with this</p> <p>5 conditional use permit application.</p> <p>6 That's the corner. That's the corner</p> <p>7 that's been in need of redevelopment. That's the</p> <p>8 corner which we sought the conditional use permit</p> <p>9 for.</p> <p>10 The concept became; Let's do the</p> <p>11 totality of the five parcels. Let's combine the</p> <p>12 strip center to the west with the strip center to</p> <p>13 the east, which we will raise and build the new</p> <p>14 QuikTrip itself. That was the concept. And</p> <p>15 ultimately, Judge, that concept and what was</p> <p>16 presented for approval is replicated here on</p> <p>17 Exhibit 5A, and we can see here, Judge, the</p> <p>18 QuikTrip building itself, where the gasoline pumps</p> <p>19 are here, and then this represents a new model</p> <p>20 strip center to the west of the what would be,</p> <p>21 then, the QuikTrip itself.</p> <p>22 One modification here, Judge, that's</p> <p>23 not shown in this photograph that I might as well</p> <p>24 point out now is that, along this dotted line along</p> <p>25 Graeser Road, there's a new sidewalk that's also</p>	9	<p>1 And, Judge, remember all commercial</p> <p>2 property that could be sold off, utilized in a</p> <p>3 stand-alone basis for commercial use without a</p> <p>4 CUP application, all of that has been dedicated to</p> <p>5 green space to help with the entire site.</p> <p>6 So, Judge, what else will you hear in</p> <p>7 terms of what the various factors are? One person</p> <p>8 you will hear from is a real estate consultant,</p> <p>9 real estate expert who happens to office just a</p> <p>10 little bit west of where this site is, at the</p> <p>11 corner of 270 and Olive. Linda Atkinson is here.</p> <p>12 I think she's here right now in the courtroom,</p> <p>13 fully vaccinated. And, Judge, you are going to</p> <p>14 hear Linda Atkinson talk about one of the issues</p> <p>15 raised in the factors; that is, would the granting</p> <p>16 of the CUP have a substantial negative effect on</p> <p>17 neighboring properties? That's the question.</p> <p>18 So we, understanding our burden, need</p> <p>19 some evidence to establish that that is not the</p> <p>20 case. And, in fact, she did a study. She did</p> <p>21 paired sales, went around and found out in the</p> <p>22 metropolitan area properties that sold before the</p> <p>23 construction of a project like this and then went</p> <p>24 back and found property, the same property, what it</p> <p>25 sold for after the construction of projects like</p>	11
<p>1 part of the conditional use permit application for</p> <p>2 pedestrian use, obviously, in connection with this</p> <p>3 redo. And we will talk more about the redo</p> <p>4 ultimately during the course of the presentation of</p> <p>5 the evidence.</p> <p>6 But that is, Judge, the application</p> <p>7 and, frankly, what was before Creve Coeur in trying</p> <p>8 to seek a conditional use permit.</p> <p>9 This, Judge, represents what it would</p> <p>10 finally look like. This is the main store. The</p> <p>11 stone, we will talk to you all about that, but it</p> <p>12 is very unique. Very many concessions were made.</p> <p>13 And, in fact, this is, as you will hear the</p> <p>14 testimony later this morning from Gwen Keen who has</p> <p>15 testified by deposition, representative of QuikTrip</p> <p>16 who handled this CUP application, they did more to</p> <p>17 accommodate the City of Creve Coeur's request than</p> <p>18 they have ever done in any other application that</p> <p>19 she knows of in the metropolitan area, the</p> <p>20 concessions for the stonework, the concessions for</p> <p>21 the landscaping, the concessions for the</p> <p>22 green space that ultimately became part of it to</p> <p>23 accommodate any issues with respect to houses back</p> <p>24 there. You can see the amount of the green space</p> <p>25 set aside.</p>	10	<p>1 this, very same kinds of projects. Went around St.</p> <p>2 Louis, searched the market and found multiple sales</p> <p>3 which she calls paired sales; that is, what did it</p> <p>4 sell for when it was purchased before any project,</p> <p>5 and what did it sell for afterwards? And she found</p> <p>6 an increase in all of those sales, totally</p> <p>7 unaffected by the project itself. And that's what</p> <p>8 you are going to hear her testify to.</p> <p>9 You are going to also hear from an</p> <p>10 expert named Lee Cannon who has a relationship with</p> <p>11 the City of Creve Coeur, lives in Creve Coeur,</p> <p>12 lives just down the street from another project,</p> <p>13 the Mobil On the Run project, and is very familiar</p> <p>14 with Olive Boulevard and has done multiple traffic</p> <p>15 surveys and analyses for that. He did the very</p> <p>16 traffic survey in connection with this project to</p> <p>17 make sure traffic itself would not become a</p> <p>18 problem.</p> <p>19 Again, Judge, this is a street that</p> <p>20 has 36,000 cars a day, and anybody who has driven</p> <p>21 up and down Olive knows the traffic situation on</p> <p>22 Olive. 36,000 cars a day. It is a state road</p> <p>23 governed by MODOT. They ended up, Lee Cannon will</p> <p>24 say, having MODOT approval for this project. And,</p> <p>25 basically, what Lee Cannon said is what they have</p>	12

<p>1 designed is essentially one that will have 2 mitigated any negative effect of any traffic 3 situation. So disregard those. 4 5 Next you are going to hear from a 6 gentleman by the name of John Brancaglione who is 7 going to testify basically about all of these 8 factors. He's been a planner for years, started in 9 the City of St. Louis at the Land Clearance for 10 Redevelop Authority. He has written many, many 11 comprehensive plans. He will testify whether or 12 not there's been, you know, compliance with the 13 comprehensive plan, because it seems in this case, 14 and I just found this out when I was reading their 15 brief, that the comprehensive plan itself is where 16 they are hanging their hat to defend the denial of 17 this conditional use permit. 18 19 It's interesting because you will 20 also hear testimony from Mr. Jaggi, Creve Coeur's 21 director of community development, that in his 22 opinion, generally we did satisfy the comprehensive 23 plan. There was no issue in all the studies that 24 they did and all the analysis that the staff did 25 that there was any issue with compliance with the comprehensive plan. You will hear John Brancaglione talk</p>	<p>1 intersection of -- this is another road, Schulte 2 Road, right here, and this is the Mobil On the Run 3 that had just been approved with the conditional 4 use permit. Stone's throw -- literally, a stone's 5 throw from our site. 6 7 That's the Mobil On the Run that they 8 said yes to, and this was the QuikTrip application 9 that they said no to. 10 11 The difference is, the main 12 difference is is that the Mobil On the Run facility 13 added a huge carwash facility that was operating 14 pretty much day and night on the site. The 15 difference is is that they actually had to rezone a 16 portion of the Mobil On the Run site because it had 17 been zoned residential. Not so in the case here. 18 You won't see a carwash facility at this QuikTrip 19 and you won't see any required rezoning of this 20 site, because it was totally zoned commercial from 21 the outset. 22 23 Again, the law says, Judge, and I 24 think it's important, not just from a factual 25 perspective and not just to determine whether or not the excuses that we now hear are pretextual, but the fact of the matter is that, from a law perspective, what do the cases say about the idea</p>
<p>1 himself about that, but I think the admissions by 2 the city, prior to the filing of this lawsuit, are 3 critical to the court's understanding of where they 4 are coming from now. 5 6 So, Judge, finally, I have to say 7 that the unfairness in the impropriety of the 8 denial of the conditional use permit is really 9 exacerbated by the fact that just a year before the 10 city approved conditional use permit, it really -- 11 the ordinance itself contained the exact kind of 12 language that's in our proposed ordinance for Mobil 13 On the Run. 14 15 And, in fact, when you -- you will 16 hear Gwen Keen talk about the fact when she first 17 came as the applicant for this conditional use 18 permit, she was told by the city to model what they 19 were doing after the Mobil On the Run conditional 20 use application because they had just approved the 21 Mobil On the Run application. 22 23 Well, they did more than Mobil On the 24 Run ever did. But the fact of the matter is, as we 25 can see, Mobile On the Run, which was just approved -- and, Judge, this is just about a hundred yards from our site. Our site would be here. This is the Mobil On the Run site at the very next</p>	<p>1 that you have one there that you approve and you 2 have one here that you don't. The cases say you 3 can't do that. Mr. Jaggi himself said when I asked 4 him the question in his deposition: How could you 5 do one and not the other? And he said: I think, in 6 fairness, you have to do both. 7 8 That's the reality. Those are the 9 admissions. And, frankly, that's the law. The law 10 says two equal applications. It's not up to a city 11 to pick and choose which one and discriminate one 12 against the other. 13 14 That's exactly the product of what 15 happened here. Because, as you listen to the 16 evidence and listen to the excuses, you could think 17 the same thing that I continue to think. Well, if 18 that may be true about QuikTrip, why wouldn't it 19 also have been true about the same thing three 20 football fields away, the Mobil On the Run site? 21 Every single thing that you say, this is subject to 22 the same comprehensive plan, subject to the same 23 East Olive Corridor discussion. Everything is the 24 same. 25 26 And, again, as I say, this is even a 27 tough call, to me, because of the fact it involves 28 a carwash and the noise generated by that carwash</p>

<p>1 which did not preexist, and because of the fact 2 that it was a rezoning required from residential to 3 commercial. 4 So, Judge, we believe that, by the 5 time that you hear all of the evidence, you will 6 conclude that all of the necessary factors have 7 been satisfied and that the conditional use permit 8 in this case should be issued. 9 THE COURT: Mr. Lumley? 10 MR. LUMLEY: Good morning. Again, 11 Carl Lumley representing City of Creve Coeur. 12 Judge, this case is not about whether 13 QuikTrip is a fine organization. They certainly 14 seem to be, you know, and that's not an issue. And 15 the case is not about whether QuikTrip could find a 16 great location in the City of Creve Coeur. 17 It's a very large city. It's got 18 Interstate 270 running north and south through it. 19 It does have State Highway Olive running east and 20 west through it. There are many more dense 21 commercial areas in town. So it's not about a city 22 trying to exclude a good enterprise. Now, they 23 would, I am sure, be a fine corporate citizen as is 24 the property owner. He's been very supportive of 25 city activities. There's no dispute about the</p>	17	<p>1 Corridor should encourage pedestrian access from 2 adjacent neighborhoods and prioritize walkability 3 between neighboring lots while accommodating car 4 access and easy parking. 5 This particular section of Olive is 6 relatively unique in that there still are homes 7 fronting on Olive in this portion. Very different 8 from the rest of the Olive corridor through the 9 city. 10 The court will hear that the city has 11 been working to implement that vision since its 12 adoption, but efforts have been interrupted, as you 13 will understand, by the pandemic, in terms of 14 public involvement. 15 This vision doesn't include an 16 unlimited number of service stations or vehicle 17 intensive uses or fast-food or 24-hour operations. 18 This is not part of the vision. 19 As counsel indicated, Creve Coeur 20 code lists a variety of permitted uses and then it 21 has a list of conditional uses. And Plaintiffs and 22 QuikTrip applied for a conditional use for a 23 service station because that's what the code 24 requires. And under City Code Section 405.1070, 25 the conditional use process provides procedure for</p>	19
<p>1 property owner. 2 This case is about whether QuikTrip 3 belongs at the location that they picked. Planning 4 and Zoning Commission in the City of Creve Coeur 5 said, no, they don't belong there, not in the East 6 Olive Corridor. 7 Creve Coeur developed a vision for 8 this area. It's a neighborhood commercial place 9 type, not the downtown commercial place type, not 10 the general. The neighborhood commercial place 11 type, the East Olive Corridor. The new vision that 12 they developed in 2017 was approved by the Planning 13 and Zoning Commission pursuant to Chapter 89. 14 That's how the process works. 15 It's entrusted to the appointed 16 officials to develop the comprehensive plan, not 17 the elected officials. It's not to be a political 18 decision. It's to be a planning decision. 19 So what is that vision? The vision 20 for East Olive is to create a walkable corridor, a 21 destination of retail boutiques, neighborhood 22 service businesses, small-scale restaurants, 23 attached townhomes, and low-density multi-family 24 homes and single-family homes. 25 Development of the East Olive</p>	18	<p>1 the city to determine the appropriateness of a 2 proposed use. 3 It reserved discretion to the city 4 council and fully reserved authority to deny 5 application. 6 Plaintiffs say there's no discretion. 7 But the factors that apply are not a simple 8 objective checklist. It's not is the building so 9 many feet away from the street? Is the height of 10 the building correct? It's not just those things 11 that's part of it, but many of the factors are 12 totally subjective. And this is what the Planning 13 and Zoning Commission and the city council and now 14 the court has to consider. 15 Does the proposed use meet the 16 comprehensive plan? Is it good for the community 17 in that location? Is it compatible with the 18 surrounding area? These are not objective factors. 19 These are things that people can disagree on. 20 The city, after thorough proceedings, 21 very thorough proceedings, and consistent with the 22 recommendation of the Planning and Zoning 23 Commission, which came first, the council said: 24 No, it's not appropriate. It doesn't fit. And the 25 evidence will show that the court should defer to</p>	20

<p>1 this decision pursuant to statute 536.150.</p> <p>2 We totally concur that it's a</p> <p>3 non-contested case. We totally concur it's a</p> <p>4 de novo review. We totally concur that the court</p> <p>5 is not to defer to any findings of fact, judgment</p> <p>6 of credibility and things like that. But,</p> <p>7 ultimately the statute says: If discretion is left</p> <p>8 with the authority, that discretion is to be</p> <p>9 honored, and the court is to defer to it. What</p> <p>10 does that mean?</p> <p>11 If the court sees facts that show</p> <p>12 that no reasonable person could have made this</p> <p>13 decision, well, you don't defer to that decision,</p> <p>14 obviously. We are not saying that you just have to</p> <p>15 rubber stamp. But the facts don't show that. The</p> <p>16 facts show that reasonable people can disagree.</p> <p>17 And, ultimately, the court should honor that</p> <p>18 discretion left by the code, left by the citizens</p> <p>19 through their elected officials.</p> <p>20 Plaintiff is saying that because the</p> <p>21 city approved the expansion of a decades old</p> <p>22 service station, Mobil On the Run, it can no longer</p> <p>23 pursue, it can no longer pursue the vision of the</p> <p>24 comprehensive plan for East Olive Corridor. They</p> <p>25 are seeming to say that the city must approve all</p>	21	<p>1 authorized to review that judgment call, as I've</p> <p>2 indicated, but absent evidence of an abusive</p> <p>3 discretion, which they have acknowledged is their</p> <p>4 burden of proof, then you should defer to the</p> <p>5 community's elected officials.</p> <p>6 The judgment was a QT was not a good</p> <p>7 fit at this location. The evidence will show that.</p> <p>8 The city had the discretion to make that decision</p> <p>9 that it's not consistent with the comprehensive</p> <p>10 plan and not compatible with the area.</p> <p>11 Thank you.</p> <p>12 THE COURT: Counselors, before we</p> <p>13 proceed with evidence, I would like you to address,</p> <p>14 if you are able to -- and maybe this isn't the</p> <p>15 right time, maybe later in the day -- the Furlong</p> <p>16 case? The Furlong Company case? I don't know if</p> <p>17 you've each taken a look at that, but there's</p> <p>18 language in that case which discusses the</p> <p>19 discretion or not discretion. So I will give you</p> <p>20 the site. Perhaps later in the day we can discuss</p> <p>21 it at some point.</p> <p>22 MR. CARMODY: Do you want to talk</p> <p>23 about that now, Judge?</p> <p>24 THE COURT: If this is a good time.</p> <p>25 If it's not and you would like an opportunity to</p>	23
<p>1 future applications for a service station just</p> <p>2 because; one, that it was a preexisting use.</p> <p>3 It existed decades prior to the</p> <p>4 development of this new vision had been approved.</p> <p>5 And if they are not saying that the city has to</p> <p>6 approve an unlimited number of these types of uses,</p> <p>7 these vehicle-intensive uses, they are still saying</p> <p>8 that the city has to approve at least one more, "At</p> <p>9 least our application."</p> <p>10 But that's still the judgment of the</p> <p>11 elected officials and now the court to examine.</p> <p>12 It's not for applicant to say: Well, I get to be</p> <p>13 the next one. There's nobody else.</p> <p>14 MR. CARMODY: Judge, if I may, I</p> <p>15 tried not to make closing argument. I tried to</p> <p>16 outline what the evidence was going to be, and I</p> <p>17 think that Mr. Lumley is continuing to make closing</p> <p>18 argument and make inferences and comment on our</p> <p>19 evidence, which I think is inappropriate in opening</p> <p>20 statement.</p> <p>21 MR. LUMLEY: Well, Your Honor, I</p> <p>22 believe I was trying to respond to the legal</p> <p>23 arguments that were made about the scope of review,</p> <p>24 but I can move on.</p> <p>25 Just in closing, the court is</p>	22	<p>1 review it, then we can do it later.</p> <p>2 MR. LUMLEY: I prefer to do that.</p> <p>3 THE COURT: Okay.</p> <p>4 MR. LUMLEY: But you were going to</p> <p>5 give us the site?</p> <p>6 THE COURT: Yes. It's 189 S.W.3d</p> <p>7 157. Would you like copy of it?</p> <p>8 MR. LUMLEY: That would be helpful.</p> <p>9 THE COURT: We will go off the record</p> <p>10 at this time.</p> <p>11 (Off record.)</p> <p>12 THE COURT: Back on the record. Mr.</p> <p>13 Lumley addressed the court's question off the</p> <p>14 record about whether or not with regard to the</p> <p>15 Furlong Company's case the issue of zoning of a</p> <p>16 subdivision had any applicability to this set of</p> <p>17 facts. In Mr. Lumley's position, it does not. And</p> <p>18 now, Mr. Carmody?</p> <p>19 MR. LUMLEY: And, just to clarify,</p> <p>20 it's not about the zoning of the subdivision in</p> <p>21 terms of, you know, is it a R-1 or R-2, you know,</p> <p>22 density. It's a question of someone comes forward</p> <p>23 and applies to subdivide their property with a plat</p> <p>24 that, if it meets all the ordinance requirements,</p> <p>25 then the city must approve it.</p>	24

1 THE COURT: But it's your opinion 25
2 this is different?
3 MR. LUMLEY: This is different. If
4 someone applies to change zoning, that's a
5 legislative decision. If someone applies for a
6 CUP, that's a legislative decision.
7 THE COURT: And Mr. Carmody?
8 MR. CARMODY: I strongly disagree.
9 The CUP is not a legislative decision. It is
10 effectively an administrative decision like any
11 other permit. They have the opportunity and they
12 did to spell out in an ordinance the factors to be
13 considered in granting or denying a permit.
14 A zoning issue is a legislative issue
15 that obviously defers to much legislative
16 discretion and so forth. A CUP, remember, just a
17 permit, "I want a permit to do this." I could do
18 all kinds of other things here, but effectively,
19 what the city gets in this permit process, the CUP
20 process, is the ability to control a lot more than
21 it otherwise would be able to control. So it's one
22 of those uses that has to come for a permit.
23 They denominate the six factors that
24 need to be considered in determining whether or not
25 to issue the permit. To suggest that, after

1 satisfaction of those six factors, we would come to 26
2 the court and a city clerk and say, "I don't like
3 this guy Stern. I don't like that guy Carmody. So
4 we are now going to use our discretion to say,
5 denied," and that the court has no authority to say
6 that's not how it works? This is really no
7 different than the subdivision plat which gets
8 filed. It's an administrative process. Does it
9 comply? End of story. And I think to suggest
10 otherwise is just flat wrong.
11 I mean, we saw them -- you know, you
12 could say yourself, Judge, what kind of discretion
13 would it be to exercise to say, "Let's approve --
14 let's approve this Mobil On the Run and say no to
15 them." And we don't have any recourse to come to a
16 court and let the court review the evidence and
17 say?
18 THE COURT: I have each of your
19 positions, and I'm ready to hear evidence.
20 MR. CARMODY: Thank you, Judge.
21 THE COURT: Thank you.
22 MR. CARMODY: At this time, Your
23 Honor, we call Mr. Tom Stern.
24 (Whereupon, the witness was sworn in
25 by the court).

1 (We want to make sure that if you are 27
2 unmasked you are fully vaccinated.)
3 MR. CARMODY: Thank you, Your Honor,
4 and I should say, Judge, we have -- I think you
5 know kind of what we have tried to set up here. So
6 we will try to display the exhibits as they come in
7 just for the sake of ease.
8 THE COURT: Thank you.
9
10 THOMAS A. STERN,
11 having been produced as a witness and duly sworn by
12 the court, testified as follows:
13 DIRECT EXAMINATION
14 QUESTIONS BY MR. CARMODY:
15 Q Good Morning, Mr. Stern. Would you
16 tell the court your full name.
17 A Thomas A. Stern.
18 Q And your address?
19 A 233 Brooke Trail Court in Creve
20 Coeur.
21 Q And what is your occupation, sir?
22 A I'm the executive chairman of
23 Gershman Commercial Real Estate.
24 Q Okay. And how long have you been
25 with Gershman?

1 A 55 years. 28
2 Q And how long have you been serving in
3 your current position?
4 A As executive chairman, about six
5 years.
6 Q Okay. And tell the court, if you
7 would, a little bit about Gershman, what it is.
8 A Gershman was founded in 1948 by my
9 father-in-law, Solon Gershman, and was a
10 full-service real estate firm doing both
11 residential and commercial. Mr. Gershman also
12 founded Gershman Mortgage, which is under separate
13 ownership at this point, as well as Missouri
14 Savings Association. And he was a developer
15 beginning in the early 1960s of a number of office
16 and retail properties. In 2005, we exited the
17 residential brokerage business and became a
18 full-service commercial real estate company.
19 Q Okay. And are you primarily managing
20 commercial real estate properties? Owning? What?
21 A We manage about 6 million square feet
22 of properties in St. Louis, in excess of 100
23 properties. About two dozen of those are strip
24 centers, which would be unanchored shopping
25 centers.

1 We have a brokerage division which, 29

2 in the last two years, has been involved in more

3 than 200 million dollars in transactions, most

4 notably the acquisition of the Sachs Properties

5 portfolio in Chesterfield, which involved 18

6 buildings and about 600,000 feet and, most

7 recently, the Metropolitan Life property on Tesson

8 Ferry in South St. Louis County, which is being

9 converted from office to residential.

10 Q Okay. And of that 6 million square

11 feet of commercial space that you have under

12 management, do you have any in Creve Coeur?

13 A We have six properties that we are

14 involved in in Creve Coeur.

15 Q And that amounts to about 150,000

16 square feet?

17 A Correct.

18 Q And, Mr. Stern, do you have any

19 relationship to the plaintiffs in this case, BG

20 Olive and Graeser and Forsyth Investments?

21 A BG Olive and Graeser, which owns the

22 southeast corner of the property which is to be

23 developed with QuikTrip, is owned by my wife and

24 her sister. They also own the property to the

25 south.

1 Q East and the property to the south? 30

2 A Correct.

3 Q Am I pointing at that property?

4 A Yes. And the property to the west is

5 owned by my wife, her sister, and her brother.

6 Q Okay. And how long have those two

7 properties being owned by the people you just

8 described?

9 A The property on the southeast corner

10 was developed by my father-in-law in the early

11 1960s. The property to the west was acquired in

12 2008 as part of an exchange transaction that also

13 included a building on Ballas Road in Creve Coeur

14 that is occupied by Central Bank and others. The

15 property to the south was acquired in 2015.

16 Q That is, describing the property to

17 the south, what of that -- we see the house. Looks

18 like there's a house?

19 A Yes.

20 Q Okay. And how long ago did you

21 acquire that?

22 A In 2015.

23 Q All right. So and what was the

24 purpose in acquiring that?

25 A It was basically to give us more

1 flexibility with regard to the redevelopment of the 31

2 properties on that site. Initially, the one on the

3 corner is just slightly over an acre. When we

4 acquired the western property, we go up to just

5 under 3 acres, which is sort of a requirement for a

6 lot more development, extensive development on the

7 site. And the property to the south had been on

8 the market for a number of years, and we determined

9 that it would give us even more flexibility with

10 redevelopment if we acquired that, and we did.

11 Q So how long have you contemplated the

12 prospective redeveloping of that corner?

13 A Probably at least ten years.

14 Q Okay. All right. And, Mr. Stern, to

15 get back to your personal involvement with the

16 city, I understand you are a resident of Creve

17 Coeur?

18 A We have been for 37 years.

19 Q Okay. And have you had any direct

20 involvement with the city itself in terms of real

21 estate related matters or the like?

22 A I served on the economic development

23 committee of the city some years ago. Most

24 recently I served on the Creve Coeur golf course

25 task force, which was contemplating the reuse of

1 the golf course for other developments. Was 32

2 involved in numerous discussions with regard to the

3 comprehensive plan, both the previous one, which I

4 believe was in the early 2000s, and then the most

5 recent one in 2017. And also involved in the

6 development of a transportation development

7 district which was formed to allow for the

8 construction of a Walgreens on the northeast corner

9 of Olive and Graeser.

10 Q Tell us, if you would, what the

11 transportation development district is.

12 A Basically, it's a way for funding

13 improvements to streets and parking to facilitate

14 the redevelopment of properties, and there is a tax

15 that's put on the sales of products and services,

16 if you will, in the affected areas, to pay off

17 bonds which are issued to fund those improvements.

18 Q Okay. And that transportation

19 development district was formed when?

20 A I believe it was 2010.

21 Q Okay. And so you agreed to be a

22 participant in that transportation development

23 district, is that right?

24 A That's correct.

25 Q And was there a particular

<p>1 development that triggered the creation of that 2 district?</p> <p>3 A As I said, it was Walgreens on the 4 northeast corner.</p> <p>5 Q And that would be, if I am pointing, 6 I know it's not on this picture, which is 5A.</p> <p>7 A The lower left-hand corner.</p> <p>8 Q Right where that QT sign is, correct?</p> <p>9 A Correct.</p> <p>10 Q All right. And so what were the 11 implications of you agreeing to be a participant in 12 the transportation development district?</p> <p>13 A Well, there were several. First of 14 all, my wife and I live off of Graeser Road. So we 15 travel quite frequently. And at that point there 16 was no traffic signal at the intersection of Olive 17 and Graeser. So it was most probably the most 18 dangerous intersection along Olive in the City of 19 Creve Coeur.</p> <p>20 So we were cognizant of that fact. 21 But we felt that it was in the best interest of the 22 city and its citizens to see Walgreens be developed 23 on that site. They were previously on the 24 northwest corner in a much smaller facility that 25 did not have drive-through capabilities.</p>	<p>33</p>	<p>1 both with the planning staff as well as their 2 consultant to discuss the comprehensive plan and 3 how it might facilitate development or 4 redevelopment along Olive.</p> <p>5 As is noted in the East Olive 6 Corridor portion of that plan, this area suffers 7 from the standpoint that there are a number of lots 8 which are very shallow from front to back, and that 9 makes it very difficult to redevelop existing 10 properties.</p> <p>11 As an example, the center on the east 12 was built in the 1960s where there was no provision 13 for green space or water detention; such that, if 14 we were to just take that building down and build a 15 new replica, it would be about 6,000 feet as 16 opposed to the current 8,000 feet. And that is 17 just not economically prudent.</p> <p>18 Q And that building, as we stand here 19 today or sit, is vacant?</p> <p>20 A It is.</p> <p>21 Q And kind of a crazy question, but how 22 did it get vacant?</p> <p>23 A Well, we had two very long-term 24 tenants in the shopping center. One was 25 Kruppenachers Pharmacy, which had been there since</p>	<p>35</p>
<p>1 As part of that, we agreed to 2 illuminate a highway cut that served the shopping 3 center on the corner and subjected our tenants to 4 an additional tax to help pay for the bonds.</p> <p>5 Q So no direct benefit to your site, 6 obviously, the light was a benefit ultimately, 7 generally?</p> <p>8 A Yeah. I would say the only other 9 detriment was -- you will see the median that runs 10 to the west from Graeser, and that restricted 11 left-turn access to just that in front of the 12 western shopping center. Had we not owned the two 13 properties, we certainly would not have been 14 amenable to that.</p> <p>15 Q So there was a time before that TDD, 16 in 2015, that the median at the base of Exhibit 17 2A here was not in existence, and a left turn could 18 be made into your shopping centers?</p> <p>19 A That's correct.</p> <p>20 Q Now, tell us, if you would, a little 21 bit about your participation in the comprehensive 22 plan process, because the comprehensive plan, as 23 you know, is an issue in this case.</p> <p>24 A I, along with a number of other 25 commercial property owners, slash, developers met</p>	<p>34</p>	<p>1 the exception of the shopping center almost 60 2 years ago. And the other was Sam's Shoe Repair, 3 who had been a tenant for almost 35 years. Due to 4 retirement, both of those tenants closed.</p> <p>5 And we also had an impact from the 6 pandemic in that a hair salon was unable to 7 function due to proximity to -- from operators to 8 clients. And a dry cleaner was also closing 9 because, since people weren't going to the office 10 or out very much, there was no need for dry 11 cleaning suits or cleaning shirts.</p> <p>12 Q All right. And have you made 13 efforts, you know prior to the application for -- 14 not prior, just prior, but have you made efforts to 15 release the spaces?</p> <p>16 A We have, in both shopping centers. 17 And point of fact, the rents that we are asking are 18 20 percent below other properties along Olive 19 Boulevard, but we have been unsuccessful in our 20 efforts.</p> <p>21 Q And how about your success in 22 tenanting up the shopping center to the west?</p> <p>23 A We have two long-term tenants in that 24 shopping center: Thai Nivas, which is at the west 25 end, and Pumpernickels Deli, which is at the east</p>	<p>36</p>

<p>1 end. They have both been there for decades and 2 continue to operate. So we have a few other 3 service-type tenants in the building, but no 4 retail.</p> <p>5 Q Did you have any conversations with 6 the City of Creve Coeur about the prospect for 7 redevelopment of that corner?</p> <p>8 A We have had numerous conversations 9 over the years with regard to it. And that was one 10 of the reasons that we felt compelled to acquire 11 the property to the south was to give us more 12 flexibility in development efforts.</p> <p>13 Q And did you make any prior effort to 14 try to get the property redeveloped?</p> <p>15 A We did. And that goes back probably 16 to right after we acquired the property to the 17 south, we had entered into lease discussions with 18 QuikTrip who were very interested in developing the 19 property at that time, and we couldn't reach 20 agreement on a number of issues, and that 21 transaction was to be a lease, which is different 22 than the current situation where it is a sale.</p> <p>23 Subsequent to that, we were 24 approached by Waterway who have a facility at Olive 25 and Old Olive and wished to relocate to this site.</p>	<p>1 Q And based upon your experience in 2 this industry, do you have an opinion about the 3 highest and best use right now for this site?</p> <p>4 A Well, as I just indicated, the people 5 who have been interested are automobile related, 6 and I think that reflects on the fact that there 7 are 36,000 cars a day that travel Olive Boulevard. 8 The development of properties, as suggested in the 9 East Olive Corridor of the comprehensive plan, have 10 been markedly impacted by what has transpired both 11 in the retail industry and then subsequently 12 through the pandemic.</p> <p>13 As an example, our firm manages the 14 Westgate Shopping Center, which is located on the 15 south side of Olive just west of 270, with TGI 16 Fridays and La Bonne Bouchee. When the property 17 was acquired in 1996, there were 10 retail tenants. 18 Today there are two. So the whole retail landscape 19 has changed with big boxes and now with e-commerce 20 so that most of our centers have been service 21 oriented. And part of the East Olive Corridor is 22 looking for neighborhood service businesses, and I 23 think QuikTrip certainly meets that criteria.</p> <p>24 Q Thank you. We talked a little in 25 opening statement about the zoning for your site.</p>
<p>1 And because there is a provision in the zoning 2 ordinance that prohibits garage doors from 3 commercial properties to face residential 4 properties, we were unable to get that approved.</p> <p>5 And then, subsequently, after Mobil 6 On the Run had been approved across the street for 7 a conditional use permit, we went back to QuikTrip. 8 We were in a different situation, as I said, from 9 leasing to sale, and we entered into a sale 10 contract in August of 2019, about six months after 11 the approval of the conditional use permit for On 12 the Run.</p> <p>13 Q And at the time that Waterway 14 approached you about putting a carwash in the 15 corner here, did that predate the approval of Mobil 16 On the Run and the carwash that is now on that 17 Olive Boulevard just west of you?</p> <p>18 A It was within that timeframe, but I 19 couldn't tell you whether it was before or after.</p> <p>20 Q Okay. All right. And, Mr. Stern, 21 did you have a direct conversation with either Mr. 22 Jaggi or his predecessor regarding efforts and the 23 need to redevelopment the property?</p> <p>24 A We had numerous discussions both with 25 Jason and Paul Langdon who was his predecessor.</p>	<p>1 Can I show you what's been marked as Exhibit 17 and 2 ask if you are familiar with this?</p> <p>3 A Yes, I am.</p> <p>4 Q Okay. And directing your attention 5 to the area outlined in black, do you see that?</p> <p>6 A Yes.</p> <p>7 Q And would you describe for the court 8 what that is?</p> <p>9 A That's the properties in question in 10 this litigation. They are five parcels, but 11 basically it's the two shopping centers, and then 12 8525 -- or 825 and 827 are the residential uses 13 that are in commercially zoned property.</p> <p>14 Q All right. And so all five -- 15 there's five parcels total?</p> <p>16 A Yes.</p> <p>17 Q And those will all be consolidated 18 into just two parcels with approval of the CUP?</p> <p>19 A Correct.</p> <p>20 Q And, Mr. Stern, if you direct -- if 21 we could direct your attention just a little bit 22 west on that zoning map, could you see the area 23 where the Mobil On the Run is located now?</p> <p>24 A Yes.</p> <p>25 Q And where is that?</p>

1 A That would be on the northwest corner 41
2 of Schulte and Olive.
3 Q So let me -- am I -- is this the
4 correct area?
5 A Yeah.
6 Q And was that area zoned commercial
7 like yours prior to the Mobil On the Run CUP
8 application?
9 A The southern part was, but the
10 northern part was zoned residential at the time,
11 and as part of an application process for Mobil On
12 the Run, the property was rezoned by the city.
13 Q All right. And is Plaintiffs'
14 Exhibit 17 a zoning of the area around your
15 property?
16 A Yes.
17 Q Okay. And I'm going to now show you
18 what's been marked as Exhibit 18. And we are not
19 going to page through the totality of this exhibit,
20 but it's in your binder.
21 A Thank you.
22 Q And I would just like for you to
23 describe, if you would, what this exhibit is?
24 A This is the portion of the zoning
25 ordinance of the city, I believe, that has to do

1 with the particular uses of properties. So across 42
2 the top you will see the different zoning districts
3 A, B, C, D, etcetera. Ours is GC, general
4 commercial, and then the various uses that are
5 possible in those districts, with P being a
6 permitted use and C being a conditional use permit.
7 Q All right. And are there and have
8 you studied, if there are, a delineation of uses
9 that you could put this property to without even
10 going through a CUP process?
11 A Yes.
12 Q Can you give the court some examples
13 of what you could do with these sites, all five
14 parcels, without even bothering to go through the
15 conditional use permit process?
16 A Well, you could put in, I think, a
17 medical marijuana facility. You could put in a --
18 I think financial institutions require a
19 conditional use permit, as do restaurants. So the
20 permitted uses, while they are reasonably
21 extensive, don't necessarily get at activities that
22 are reasonably able to be conducted in today's
23 environment.
24 Q But, if you so chose, based upon the
25 current zoning of these properties, you could

1 construct, could you not, a permitted use? A 43
2 grocery store, a liquor store, things of that
3 nature that are denominated in the exhibit I'm just
4 showing you on the area that you are now going to
5 be green space?
6 A Yes.
7 Q And do you know how much green space
8 that is dedicated in connection with this
9 conditional use application? Is it fairly and
10 accurately depicted in Exhibit 5A?
11 A Yes, it is.
12 Q And do you know why there became an
13 issue about dedicating that much in green space?
14 A I think primarily it was to provide a
15 buffer between the QuikTrip development and the
16 neighboring residences to the south and, also, to
17 provide for water detention for both of the
18 properties that front on Olive, which does exist at
19 this point.
20 Q Okay. And is it uncommon to have the
21 residential development behind commercial uses that
22 front on Olive?
23 A I would say it's very prevalent,
24 particularly as you go further east on Olive.
25 Q And at the time that those houses

1 were constructed, many of the houses were 44
2 constructed to the south of your site, was that
3 after your area had already been designated
4 commercial area?
5 A Well, all of the properties in
6 question were zoned general commercial well before
7 that.
8 Q Before the houses were built?
9 A I believe so, yes.
10 Q Okay. All right. Now, let's get, if
11 we could, to your thoughts about developing the
12 site and your revisiting with QuikTrip. Do you
13 recall about the timeframe that you first began
14 talking -- the second you began talking to them
15 about building a QuikTrip on the site?
16 A Yes. It was shortly after the Mobil
17 On the Run conditional use permit had been
18 approved, and QuikTrip thought that, based on that
19 approval, there was every reason to believe that
20 they could obtain a conditional use permit as well.
21 We felt likewise. So we entered into a contract
22 with them in August of 2019.
23 Q Okay. And who officially made the
24 application for the conditional use permit?
25 A QuikTrip.

<p>1 Q Okay. Were you involved at all in 45</p> <p>2 that process?</p> <p>3 A We signed the application, I believe,</p> <p>4 and certainly had meetings with city staff, along</p> <p>5 with QuikTrip.</p> <p>6 Q And did you recognize at the time</p> <p>7 that you entered into the contract with QuikTrip</p> <p>8 that a conditional use permit would be required?</p> <p>9 A Yes.</p> <p>10 Q And why was such a permit required?</p> <p>11 A Under the ordinance, convenience</p> <p>12 stores and service stations require a conditional</p> <p>13 use permit.</p> <p>14 Q Okay. Had you ever been through the</p> <p>15 conditional use permit process in your mere 55</p> <p>16 years in the industry?</p> <p>17 A Many times.</p> <p>18 Q All right. And so are you familiar</p> <p>19 with the various factors associated with the</p> <p>20 granting of a conditional use permit in Creve</p> <p>21 Coeur?</p> <p>22 A Yes.</p> <p>23 Q Let me show you, if I could, Exhibit</p> <p>24 1. Does this Exhibit 1 identify each of the</p> <p>25 factors listed in Creve Coeur ordinances for the</p>	<p>1 involvement with the City of Creve Coeur, and I 47</p> <p>2 would ask your opinion of whether or not you</p> <p>3 believe that the use that is being proposed and the</p> <p>4 application that is being considered by the court</p> <p>5 in this case satisfies the factors that we are</p> <p>6 going to denominate now?</p> <p>7 The first, factor two, will</p> <p>8 contribute to and promote the community welfare and</p> <p>9 convenience at the specific location. Do you have</p> <p>10 an opinion about that?</p> <p>11 A Yes. I believe it does satisfy that.</p> <p>12 From a convenience standpoint, this is on the south</p> <p>13 side of Olive whereas the Mobil On the Run and the</p> <p>14 Circle K, which is directly to the east of that,</p> <p>15 are on the north side. So for eastbound traffic,</p> <p>16 it provides much easier ingress and egress to their</p> <p>17 facility than those on the north side.</p> <p>18 In addition, the sales that a</p> <p>19 QuikTrip will generate should substantially provide</p> <p>20 both sales tax and revenue for the TDD bonds to be</p> <p>21 repaid. So it would be a financial benefit to the</p> <p>22 city as well.</p> <p>23 Q Factor number three: Will not cause</p> <p>24 substantial injury to the value of neighboring</p> <p>25 property. Do you have an opinion about that?</p>
<p>1 granting of a conditional use permit? 46</p> <p>2 A I believe so, yes.</p> <p>3 MR. CARMODY: And, Judge, if we</p> <p>4 could, at this time I would like to enter a</p> <p>5 stipulation into the record signed by Mr. Lumley</p> <p>6 and me which jointly stipulates that QuikTrip's</p> <p>7 proposed development at the southwest corner of</p> <p>8 Olive Boulevard and Graeser Road satisfies</p> <p>9 standards one and five of Section 405.1070E of the</p> <p>10 Creve Coeur Zoning Ordinance.</p> <p>11 THE COURT: Any objection, Mr.</p> <p>12 Lumley?</p> <p>13 MR. LUMLEY: No, Your Honor.</p> <p>14 THE COURT: Admitted.</p> <p>15 MR. CARMODY: Thank you, Judge.</p> <p>16 So that -- so there won't be any testimony directly</p> <p>17 about either of those two as a consequence, Judge.</p> <p>18 Q (BY MR. CARMODY) So, Mr. Stern, are</p> <p>19 you familiar with each of these factors?</p> <p>20 A I am.</p> <p>21 Q All right. Eliminating if we could</p> <p>22 numbers one and five, can we start with number two?</p> <p>23 And I would ask your opinion, based upon your years</p> <p>24 of experience in the industry and your time as a</p> <p>25 resident of the City of Creve Coeur, your</p>	<p>1 A I do not believe that to be the case. 48</p> <p>2 There was a number of specious comments that were</p> <p>3 made during the planning and zoning and county</p> <p>4 council meeting with regard to that, but there was</p> <p>5 never any evidence of that, and I believe the court</p> <p>6 will hear from an appraiser who has done a study</p> <p>7 that would indicate that to be the case.</p> <p>8 Q Fourth standard or factor: Meets the</p> <p>9 applicable provisions of the city's comprehensive</p> <p>10 plan and any applicable neighborhood or sector</p> <p>11 plans. Do you have any opinion about that?</p> <p>12 A Yes. I believe that it certainly</p> <p>13 comports with the East Olive Corridor portion of</p> <p>14 the comprehensive plan, which delineates</p> <p>15 neighborhood service businesses, which QuikTrip</p> <p>16 certainly is.</p> <p>17 In addition, the plan talks about a</p> <p>18 walkable community, and there's a sidewalk to be</p> <p>19 part of the QuikTrip on Olive as well as a walkway</p> <p>20 that would connect Olive Boulevard to the</p> <p>21 convenience store. And, also, as you indicated</p> <p>22 earlier, there is a proposal to add a sidewalk on</p> <p>23 the west side of Graeser where one does not</p> <p>24 currently exist.</p> <p>25 And, if I might, you know, I would</p>

<p>1 opine that there are more people walking in my</p> <p>2 74-home subdivision on any day than are walking on</p> <p>3 Olive Boulevard. Walkable is a sound good for city</p> <p>4 planners. But, in reality, you don't see a lot of</p> <p>5 people walking --</p> <p>6 Q Along Olive?</p> <p>7 A -- along Olive, correct.</p> <p>8 Q And if we could look at Exhibit 2C,</p> <p>9 that's an area of commercial development.</p> <p>10 Do we have that Andrea?</p> <p>11 Does this kind of fairly -- does it</p> <p>12 fairly and accurately describe the level of</p> <p>13 commercial development along Olive?</p> <p>14 A Yes.</p> <p>15 Q And neighboring properties,</p> <p>16 commercial properties along Olive?</p> <p>17 A Uh-huh.</p> <p>18 Q Could you describe, if you could,</p> <p>19 beginning at the bottom of that photograph and</p> <p>20 moving west, the neighboring properties along Olive</p> <p>21 there to you?</p> <p>22 A The First Community Credit Union is</p> <p>23 on the southeast corner of Olive and Graeser. The</p> <p>24 two shopping centers that are part of this</p> <p>25 conditional use application are adjacent to that.</p>	49	<p>1 regard to the fact that it is a neighborhood</p> <p>2 service business and addresses the walkability</p> <p>3 component of it, that it certainly does comply.</p> <p>4 Q Okay. And just so we can make</p> <p>5 certain that we have in the record the Exhibit 34,</p> <p>6 could I see that just for a second, Andrea?</p> <p>7 Is this the ordinance that approved</p> <p>8 the conditional use permit for the Mobil On the</p> <p>9 Run?</p> <p>10 A I believe that is.</p> <p>11 Q Okay. And does this ordinance</p> <p>12 contain language relating to compliance with the</p> <p>13 comprehensive plan?</p> <p>14 We are going to give you some help</p> <p>15 here.</p> <p>16 A What paragraph am I looking at?</p> <p>17 Q You are right below the whereas</p> <p>18 clause: The city council finds that the</p> <p>19 application and evidence presented clearly indicate</p> <p>20 that the proposed rezoning is in the public</p> <p>21 interest and the proposed conditional use when</p> <p>22 subject to certain conditions set forth herein.</p> <p>23 And then it goes on to state, among</p> <p>24 other things, does it state compliance with the</p> <p>25 very factors that are in issue in this case?</p>	51
<p>1 There is a small two-level office building at the</p> <p>2 corner of Merry Meadows and Olive, which has a</p> <p>3 podiatrist and a beauty salon. And I think Time</p> <p>4 Keepers is then further to the west.</p> <p>5 On the north side of Olive and</p> <p>6 Graeser is the Walgreens that I had mentioned</p> <p>7 previously. On the northwest corner is Scotsman</p> <p>8 Coin and Jewelry who moved to that location several</p> <p>9 years ago and, to the best of my knowledge, is</p> <p>10 probably the only new retail development that's</p> <p>11 been built along Olive in the last decade.</p> <p>12 Next to that is the former Walgreens</p> <p>13 site which is now a thrift store for St. Vincent</p> <p>14 DePaul, and then you have Circle K and Mobil On the</p> <p>15 Run.</p> <p>16 Q Thank you. And is it your opinion</p> <p>17 that there would be any negative impact, let alone</p> <p>18 a substantial negative impact, on any of those</p> <p>19 commercial properties that neighbor yours?</p> <p>20 A No.</p> <p>21 Q Any other factors associated with the</p> <p>22 comprehensive plan that you think are impacted by</p> <p>23 this proposal?</p> <p>24 A No. I think, based on the East Olive</p> <p>25 Corridor and the fact that this complies with</p>	50	<p>1 A Number three.</p> <p>2 Q That's the comprehensive plan, plan</p> <p>3 but before that are the other ones that you've</p> <p>4 already mentioned?</p> <p>5 A Yes.</p> <p>6 Q Does it recite specifically that the</p> <p>7 Mobil On the Run application, quote, meets the</p> <p>8 applicable provision of the city's comprehensive</p> <p>9 plan and any applicable neighborhood or sector</p> <p>10 plans and complies with other applicable zoning</p> <p>11 district regulations and provisions of this chapter</p> <p>12 unless good cause exists for deviation there from?</p> <p>13 Does it say that?</p> <p>14 A Yes.</p> <p>15 Q Thank you.</p> <p>16 And do you know how far away that</p> <p>17 Mobil On the Run is, actually, from the western</p> <p>18 line of your property?</p> <p>19 A Less than 300 yards.</p> <p>20 Q Okay.</p> <p>21 A I think, if you could hit a</p> <p>22 golf ball, if you could hit the fairway, which is</p> <p>23 Olive Boulevard, you could probably reach it.</p> <p>24 Q Some of us could.</p> <p>25 A Maybe if it's downwind.</p>	52

<p>1 Q All right, thank you.</p> <p>2 All right. And then we have another</p> <p>3 factor that we haven't discussed. The erosion</p> <p>4 control, again, we stipulated to. And then,</p> <p>5 finally, factor number six, will be compatible with</p> <p>6 the surrounding area and, thus, will not impose an</p> <p>7 excessive burden or have a substantial negative</p> <p>8 impact on surrounding or adjacent users or on</p> <p>9 community facilities or services.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And do you believe that it is</p> <p>13 satisfied -- that it satisfies that factor?</p> <p>14 A Yes. And I believe during the</p> <p>15 deliberations before the planning commission and</p> <p>16 city council, there was testimony or correspondence</p> <p>17 from the chief of police with regard to the fact</p> <p>18 that it would not, in their opinion, cause</p> <p>19 excessive crime or problems based on their</p> <p>20 experience with other similar kinds of uses and,</p> <p>21 similarly, I believe, also from the fire</p> <p>22 department.</p> <p>23 Q Do you know whether there were</p> <p>24 efforts made by QT to make the esthetics of the</p> <p>25 store compatible with the surrounding area?</p>	<p>1 record. Is there any cross examination of Mr.</p> <p>2 Stern?</p> <p>3 MR. LUMLEY: No, Your Honor.</p> <p>4 THE COURT: The witness is excused.</p> <p>5 MR. CARMODY: At this time, we would</p> <p>6 play the deposition of Gwen Keen taken on June 9th,</p> <p>7 2021.</p> <p>8 THE COURT: Pursuant to the parties'</p> <p>9 off-the-record agreement, I understand that the</p> <p>10 court reporter does not need to transcribe this</p> <p>11 because there is a transcript which the parties</p> <p>12 agree to. Is that correct?</p> <p>13 MR. CARMODY: Correct.</p> <p>14 MR. LUMLEY: That is correct.</p> <p>15 (The video-taped deposition of Gwen</p> <p>16 Keen was played.)</p> <p>17 THE COURT: Back on the record.</p> <p>18 MR. CARMODY: Your Honor, at this</p> <p>19 time we call Linda Atkinson, and Mr. Prsha is going</p> <p>20 to handle the direct examination.</p> <p>21 THE COURT: Please come forward and</p> <p>22 please face the court to be sworn.</p> <p>23</p> <p>24 LINDA ATKINSON,</p> <p>25 having been produced as a witness and duly sworn by</p>
<p>1 A Well, they certainly went out of</p> <p>2 their way to create a very attractive facade on the</p> <p>3 QuikTrip, far more distinctive than a normal</p> <p>4 QuikTrip that you might see, including elimination</p> <p>5 of the red band along the top, which is usually</p> <p>6 sort of their business logo. And then, in</p> <p>7 addition, they've agreed to the renovation of the</p> <p>8 shopping center to the west in a very compatible</p> <p>9 nature, which will significantly upgrade the look</p> <p>10 of that center as well.</p> <p>11 Q Okay. And, Mr. Stern, during the</p> <p>12 course of the pendency of the QT application, which</p> <p>13 I think took many months, did it not?</p> <p>14 A Yes, it did.</p> <p>15 Q Did anybody from the city tell you</p> <p>16 that there were issues in connection with the</p> <p>17 compliance with the factors that had been</p> <p>18 denominated?</p> <p>19 A No.</p> <p>20 MR. CARMODY: I have nothing further</p> <p>21 at this time, Judge.</p> <p>22 THE COURT: We will go off the record</p> <p>23 for a moment. Take a, maybe, 10-minute break?</p> <p>24 (Off record.)</p> <p>25 THE COURT: We are back on the</p>	<p>1 the court, testified as follows:</p> <p>2 DIRECT EXAMINATION,</p> <p>3 QUESTIONS BY MR. PRSHA:</p> <p>4 Q Good morning. Introduce yourself for</p> <p>5 the record, please.</p> <p>6 A Linda Atkinson.</p> <p>7 Q And what is your occupation?</p> <p>8 A I am a commercial real estate</p> <p>9 appraiser and real estate consultant.</p> <p>10 Q Approximately how long have you</p> <p>11 been involved in the real estate consulting</p> <p>12 business?</p> <p>13 A In total, about 44 years if you</p> <p>14 consider the time that I worked full-time and did</p> <p>15 real estate valuation and consulting work.</p> <p>16 Q Do you have any specific education or</p> <p>17 training with respect to real estate consulting and</p> <p>18 valuation?</p> <p>19 A I do. I have a bachelor's degree in</p> <p>20 accounting and finance. I also am affiliated with</p> <p>21 the appraisal institute and hold an MAI</p> <p>22 designation.</p> <p>23 Q And who is your current employer?</p> <p>24 A CBIZ.</p> <p>25 Q And approximately how long have you</p>

<p>1 been employed there?</p> <p>2 A I've been with CBIZ a little over 13</p> <p>3 years.</p> <p>4 Q What is your current position?</p> <p>5 A Director.</p> <p>6 Q And what are some of the types of</p> <p>7 projects you generally work on?</p> <p>8 A It varies. It can be something as</p> <p>9 simple as valuating a duplex to as complicated as</p> <p>10 valuating a ski resort, to doing consulting to a</p> <p>11 client and making buy/sell decisions to doing</p> <p>12 litigation projects.</p> <p>13 Q So does that consulting designation,</p> <p>14 real estate consulting, does that encompass more</p> <p>15 than just appraisals?</p> <p>16 A It does. The main difference between</p> <p>17 a consulting engagement and an appraisal is that,</p> <p>18 in an appraisal, you are always opining on an</p> <p>19 opinion of value. In a consulting assignment, you</p> <p>20 may be opining on an opinion of value, but you may</p> <p>21 not be. You might be just doing consulting, giving</p> <p>22 a recommendation to a client.</p> <p>23 Q Prior to this case, have you ever</p> <p>24 asked to determine the impact that a particular</p> <p>25 development will have on a property value?</p>	57	<p>1 THE COURT: Would it be easier for</p> <p>2 her if she sat on the other side of the glass so</p> <p>3 that she didn't have to look through the glass?</p> <p>4 MR. PRSHA: Honestly, it's also in the</p> <p>5 binder too. So it's easier. She can look at that.</p> <p>6 A Okay. I see it now.</p> <p>7 Q (BY MR. PRSHA) Can you just</p> <p>8 generally describe for me the character of this</p> <p>9 portion of Olive road?</p> <p>10 A Olive road, as the prior expert</p> <p>11 testified, is a commercial corridor road. It's a</p> <p>12 state highway. Both on the north and south sides</p> <p>13 of Olive there's a variety of commercial</p> <p>14 developments. There are some residential but mostly</p> <p>15 commercial, ranging from retail to office to light</p> <p>16 industrial.</p> <p>17 Q Do you know if most of those</p> <p>18 commercial uses back up to residential property?</p> <p>19 A I believe for the most part they all</p> <p>20 do.</p> <p>21 Q Okay. Miss Atkinson, what were you</p> <p>22 asked to do regarding this case?</p> <p>23 A I was asked to determine whether or</p> <p>24 not the development of the QuikTrip would not cause</p> <p>25 substantial injury to the value of neighboring</p>	59
<p>1 A Yes, I have.</p> <p>2 Q And so as a real estate consultant</p> <p>3 and valuation expert, is this something that would</p> <p>4 be within your scope of expertise?</p> <p>5 A Absolutely.</p> <p>6 Q Okay. And where is your office</p> <p>7 located?</p> <p>8 A The office is located at the</p> <p>9 southeast corner of Olive and 270.</p> <p>10 Q Is that in Creve Coeur?</p> <p>11 A Yes.</p> <p>12 Q And so you are pretty familiar with</p> <p>13 this area at Olive at issue in this case?</p> <p>14 A Yes, I am.</p> <p>15 Q I think we have now -- it's been</p> <p>16 marked as 2A. I am going to put up what's been</p> <p>17 marked it 2C, or if we could put up 2C here,</p> <p>18 actually.</p> <p>19 Ms. Atkinson, can you see that or?</p> <p>20 A I will move over here.</p> <p>21 Q Can you see that okay?</p> <p>22 A I can.</p> <p>23 Q And do you recognize what this is?</p> <p>24 A It looks like it's a section of</p> <p>25 Olive. I can't see that closely.</p>	58	<p>1 properties, which is item number three in the</p> <p>2 zoning code.</p> <p>3 Q Okay. And so did you look at the</p> <p>4 ordinance to see what the standard was?</p> <p>5 A I did.</p> <p>6 Q And did you familiarize yourself with</p> <p>7 the QuikTrip project?</p> <p>8 A I did.</p> <p>9 Q I would like to put up what's been</p> <p>10 marked as Exhibit 3.</p> <p>11 Miss Atkinson, do you recognize these</p> <p>12 pictures? They are also in your binder.</p> <p>13 A I do. That is the existing</p> <p>14 development that is there now, which is a 1960s</p> <p>15 vintage retail center with the -- with two</p> <p>16 buildings. The eastern building is, I believe,</p> <p>17 completely vacant. And then the western building</p> <p>18 has just a few tenants in it.</p> <p>19 Q Okay. And you familiarized yourself</p> <p>20 with the proposed development, is that correct?</p> <p>21 A Yes, I did.</p> <p>22 Q Did you ultimately form any opinion</p> <p>23 as to whether the proposed development would cause</p> <p>24 substantial injury to the value of neighboring</p> <p>25 property?</p>	60

<p>1 A I did. 61</p> <p>2 Q And what was that opinion?</p> <p>3 A My opinion is that it will not cause</p> <p>4 substantial injury to the surrounding property.</p> <p>5 Q Did you find any evidence that the</p> <p>6 development would cause any injury to the value of</p> <p>7 the surrounding property?</p> <p>8 A No, I did not.</p> <p>9 Q So, in your opinion, does the</p> <p>10 development satisfy standard three of the zoning</p> <p>11 ordinance?</p> <p>12 A I believe it does, yes.</p> <p>13 Q Did you conduct any studies or</p> <p>14 analysis prior to coming to this conclusion?</p> <p>15 A Yes.</p> <p>16 Q What kind of studies did you perform?</p> <p>17 A I performed a research study focusing</p> <p>18 on item number three, which is will the -- the</p> <p>19 development of the property will not cause</p> <p>20 substantial injury to the value of the neighboring</p> <p>21 property.</p> <p>22 Q What study did you perform first as</p> <p>23 part of that research project?</p> <p>24 A Well, the first thing I did was to</p> <p>25 kind of understand really what substantial injury</p>	<p>1 Q What is a paired sale analysis? 63</p> <p>2 A A paired sale analysis is an analysis</p> <p>3 that looks at, and it's used in really all forms of</p> <p>4 real estate and in different elements in real</p> <p>5 estate valuation as well as consulting. And it</p> <p>6 compares two components or two properties where you</p> <p>7 isolate one component of the property that is</p> <p>8 different to either measure a change in value or</p> <p>9 measure the contributory value of that component.</p> <p>10 Q Okay. So with respect to this case,</p> <p>11 the paired sales you were looking at, what was that</p> <p>12 component that changed?</p> <p>13 A The specific component that I was</p> <p>14 looking at was looking at whether or not the</p> <p>15 development of a particular store or gas station</p> <p>16 caused damage. By damage, I mean damage to the</p> <p>17 value of properties.</p> <p>18 Q Okay. And have you used this</p> <p>19 methodology before, this paired sales analysis?</p> <p>20 A It's used, you know, in valuation all</p> <p>21 of the time. It's part of the valuation process.</p> <p>22 Q So it's a generally accepted</p> <p>23 methodology in your field? Is that correct?</p> <p>24 A Yes, it is.</p> <p>25 Q And what did you conclude from your</p>
<p>1 means. So I kind of looked that up and looked up 62</p> <p>2 the definition. Substantial -- a substitute for</p> <p>3 substantial is large or material or considerable</p> <p>4 importance. And injury is, you know, can also --</p> <p>5 the word "damage" could be substituted for the word</p> <p>6 "injury," and then I actually looked things up in</p> <p>7 the dictionary, and I also looked at, in one</p> <p>8 definition that I found, it equated the word</p> <p>9 "substantial" in terms of percentage. And in</p> <p>10 percentage, the percentage it said substantial is</p> <p>11 80 percent or more.</p> <p>12 Q Okay. So what does the term</p> <p>13 "substantial injury" mean to you in this context?</p> <p>14 A In this context, it means damage or</p> <p>15 loss in value, substantial, whether that be to 80</p> <p>16 percent of the properties or 80 percent of the</p> <p>17 other surrounding properties.</p> <p>18 Q But over the course of your study,</p> <p>19 you found that this development -- you found no</p> <p>20 evidence that it would cause any injury to</p> <p>21 neighboring property, is that correct?</p> <p>22 A Correct.</p> <p>23 Q Did you perform a paired sale</p> <p>24 analysis?</p> <p>25 A Yes, I did.</p>	<p>1 paired sale analysis? 64</p> <p>2 A I concluded that there was no</p> <p>3 evidence whatsoever that the development would</p> <p>4 cause substantial injury to the surrounding</p> <p>5 properties.</p> <p>6 Q Okay. And we will unpack that in a</p> <p>7 couple minutes, but did you perform any additional</p> <p>8 studies to confirm your findings in the paired sale</p> <p>9 analysis?</p> <p>10 A I did. The second research analysis</p> <p>11 that I performed is what is called survey method.</p> <p>12 And the survey method, you can use that alone, but</p> <p>13 oftentimes it's used in addition or as additional</p> <p>14 support to another process or another valuation</p> <p>15 technique that you use.</p> <p>16 Q So what is the survey technique?</p> <p>17 A The survey technique is -- it's a</p> <p>18 method of either performing, you know, phone</p> <p>19 interviews, in-person interviews of experts in the</p> <p>20 field.</p> <p>21 Q Is that a methodology you used</p> <p>22 before?</p> <p>23 A Yes, it is.</p> <p>24 Q And is that a generally accepted</p> <p>25 method in your field?</p>

1 A Yes, it is. 65

2 Q Okay. And why did you perform both

3 studies?

4 A I mean I could have easily performed

5 just paired sale analysis, but oftentimes it's

6 better to have more than one approach. For

7 example, if you are doing a valuation, you could do

8 one approach, but if you do two it lends more

9 support to the conclusion.

10 Q So to answer the question of whether

11 the development will cause substantial injury to

12 surrounding property values, did you feel like you

13 needed to conduct an appraisal for that? Or were

14 these two studies sufficient, in your mind?

15 A I believe these two studies were

16 sufficient.

17 Q And did your paired sales analysis

18 and your survey study focus on residential

19 properties?

20 A Yes, they both did.

21 Q Is there also commercial properties

22 surrounding this development?

23 A There are commercial properties all

24 along both on the north and south sides of Olive.

25 Q During your work on this case, did

1 you ever analyze whether the proposed QuikTrip 66

2 would have a negative impact on surrounding

3 commercial properties?

4 A I did not feel it was necessary

5 because, if anything, they are complementary uses,

6 so I did not believe it was necessary to do that.

7 Q In your opinion, though, would this

8 development have any negative impact on surrounding

9 commercial property values?

10 A No, I do not believe it would have

11 any negative impact whatsoever.

12 Q And what is your basis for that?

13 A Well, what I said previously is that

14 it's a complementary use to many other uses, the

15 retail, the office and things like that.

16 Q And there is this, would you say,

17 looking at Exhibit 5A and 2A that have been

18 previously marked. In your opinion, is 5A an

19 improvement on the site compared to 2A?

20 A I believe it is. What exists now is

21 a fully vacant building and another building that

22 is substantially vacant. In Exhibit 5A, what you

23 have is a brand new, state of the art building.

24 Q So, in your opinion, is the

25 development of the new building going to be a

1 benefit to surrounding commercial uses? 67

2 A I believe it will, yes.

3 Q Okay. Did you prepare a report in

4 connection with your work in this case?

5 A Yes, I did.

6 Q And we are going to put up what's

7 been marked as Exhibit 29.

8 Also, 29 is in your binder. Miss

9 Atkinson, do you recognize this document?

10 A Yes, I do.

11 Q What is it?

12 A This is the consulting report that I

13 prepared.

14 Q Okay. And it's a fair and accurate

15 representation of your report?

16 A Yes, it is.

17 Q And what did you say the first thing

18 you conducted in connection with this project was?

19 A The first study is what I called

20 paired sale analysis.

21 Q And can you briefly again describe

22 what you were looking for in this paired sale

23 analysis?

24 A In the paired sale analysis, and I

25 don't know if you want me to be specific, but I

1 looked at gas station convenience stores that have 68

2 been developed in the St. Louis market over the

3 last ten years and looked at paired sales of

4 residential properties that sat adjacent to or

5 nearby or behind this development, and I looked for

6 sales and resales of the same property.

7 Q Okay. And how did you choose the

8 comparable convenience stores that were ultimately

9 utilized in your paired sales analysis?

10 A I started with the entire St. Louis

11 market, St. Charles, St. Louis County, St. Louis

12 City, and the first part of that search was to look

13 for newly developed gas station and convenience

14 stores. I went back about ten years.

15 Q And how did you conduct that search?

16 A I used, it's a private database

17 called CoStar where you can provide certain search

18 criteria. In this particular instance I looked for

19 the category of gas station and convenience store

20 that have been constructed in the last ten years.

21 Q And what did you do once you had your

22 list of all the stores that have been developed in

23 past ten years?

24 A The next step was to identify whether

25 or not there was residential property that sat

<p>1 behind it or -- the main criteria was that -- that</p> <p>2 I used is whether or not the residential property</p> <p>3 that sat behind it, whether or not they had to use</p> <p>4 the road that the development sat on to exit the</p> <p>5 subdivision or exit to a main artery.</p> <p>6 Q Okay. And what did you do -- did you</p> <p>7 identify any stores that had residential properties</p> <p>8 nearby?</p> <p>9 A I did.</p> <p>10 Q And what did you do once you</p> <p>11 identified those stores that had residential</p> <p>12 properties?</p> <p>13 A After I did that then I looked at --</p> <p>14 actually did an aerial search looking for sales and</p> <p>15 resales of same property over a specific time</p> <p>16 period.</p> <p>17 I started with, and I used a --</p> <p>18 actually a public database called Zillow which</p> <p>19 provides information on sales of residential</p> <p>20 property. And I basically looked at an aerial view</p> <p>21 of sales transactions and then dug into each one of</p> <p>22 those sales transactions to see if there had been a</p> <p>23 prior sale of that property prior to the</p> <p>24 development of a specific gas station and</p> <p>25 convenience store.</p>	<p>69</p> <p>1 called a controlled sale, and then I also looked at</p> <p>2 sales that were outside that controlled area. So I</p> <p>3 picked a subdivision that was nearby that area that</p> <p>4 did not have the same access road where the</p> <p>5 particular exit from the subdivision could be on a</p> <p>6 different road but not where the particular gas</p> <p>7 station and convenience store was.</p> <p>8 Q Did you ultimately find any</p> <p>9 convenience stores that had enough paired sales</p> <p>10 nearby to conduct your study?</p> <p>11 A Yes, I did.</p> <p>12 Q Which stores were those?</p> <p>13 A I found three different stores. One</p> <p>14 was actually the Mobil On the Run, which sits about</p> <p>15 point 2 miles from the subjects on the north side</p> <p>16 of Olive, and it's been referred to previously</p> <p>17 today.</p> <p>18 The next one was a PetroMart located</p> <p>19 in South County. It's 220 Meramec Station Road in</p> <p>20 Valley Park, Missouri. And then a third one was a</p> <p>21 Mobil On the Run located 5840 South Lindbergh.</p> <p>22 Once again, I started with a larger population of</p> <p>23 gas station convenience stores, but as I went</p> <p>24 through the search criteria looking for residential</p> <p>25 subdivisions that sat behind there and then sales</p>
<p>1 Q So what specifically was your</p> <p>2 criteria for a paired sale? You were looking for</p> <p>3 sales that were...</p> <p>4 A I was looking for sales that occurred</p> <p>5 after the development occurred and then a prior</p> <p>6 sale of that same property prior to the development</p> <p>7 of that property.</p> <p>8 Q And then what would you -- what was</p> <p>9 your ultimate goal in looking at those paired</p> <p>10 sales?</p> <p>11 A What I wanted to do was to look at</p> <p>12 the -- I ultimately measured the change in value</p> <p>13 over time of that property. So if it sold in X</p> <p>14 year and then resold in year Y, what was the change</p> <p>15 in value over that time and what was the annual</p> <p>16 percent change?</p> <p>17 Q All those stores were or all those</p> <p>18 paired sales were purchased before and after the</p> <p>19 development of the convenience stores, is that</p> <p>20 correct?</p> <p>21 A Yes, that's correct.</p> <p>22 Q So were you looking at the impact</p> <p>23 that the development of the store had on those home</p> <p>24 prices?</p> <p>25 A At the end, yes. But I did what I</p>	<p>70</p> <p>1 and resales, these were the only three that</p> <p>2 remained.</p> <p>3 Q With respect to the Creve Coeur Mobil</p> <p>4 On the Run, you said that was your first comparable</p> <p>5 store, is that correct?</p> <p>6 A Yes.</p> <p>7 Q Do you know when this site was</p> <p>8 developed?</p> <p>9 A It was developed in 2019.</p> <p>10 Q And can you generally describe what</p> <p>11 is currently on the site?</p> <p>12 A It has gas station pumps. It looks</p> <p>13 like there are probably at least eight. It has a</p> <p>14 convenience store, and then it also has a carwash,</p> <p>15 multi-vehicle carwash.</p> <p>16 Q Are there residential properties</p> <p>17 nearby?</p> <p>18 A Yes, there is.</p> <p>19 Q Okay. Do you know if there was a</p> <p>20 convenience store there before the development?</p> <p>21 A There was a small, you know, a small</p> <p>22 Mobil station that just had a kiosk, very small, no</p> <p>23 carwash, just a few pumps.</p> <p>24 Q Did the existence of that kiosk</p> <p>25 affect your analysis of this case?</p>
	<p>71</p> <p>72</p>

1 A No, because what was developed, it 73
2 was a brand new store, more state of the art.
3 Q Would you say it was a more intense
4 use?
5 A Very much, yes.
6 Q How many paired sales did you find
7 nearby this Creve Coeur Mobil On the Run that fit
8 your criteria?
9 A I looked at five different paired
10 sales.
11 Q Were those all of the paired sales
12 you found within that range?
13 A Yes.
14 Q Okay. I would like to direct your
15 attention to Page 9 of your report.
16 Put that up.
17 Miss Atkinson, does this chart
18 summarize your findings with respect to the Mobil
19 On the Run paired sales?
20 A Yes, it does.
21 Q And I would like to put up now
22 Exhibit 30. And, Miss Atkinson, is this a table
23 summarizing the information in your report
24 regarding the paired sales analysis of the Creve
25 Coeur Mobil On the Run?

1 A Yes, it is. 74
2 Q And does this table accurately
3 summarize all of that information?
4 A Yes, it does.
5 Q And, again, are these the only five
6 paired sales you found that fit your criteria with
7 respect to Mobil On the Run?
8 A Yes, they were the only ones that I
9 found that were sales and resales of the same
10 property.
11 Q Did all of those increase in value
12 after the convenience store was developed?
13 A Yes, they did.
14 Q Did you do anything to confirm that
15 the sale prices were not impacted by something like
16 a major remodel?
17 A So the original source of the data
18 that I used was Zillow. Oftentimes Zillow will
19 talk about whether or not there's been a remodel.
20 And then I also looked at the county records. So
21 to my knowledge, that they were the sale and resale
22 of the same property.
23 Q And what was the average total
24 percent increase in the sale price of these homes
25 after the development?

1 A So the average total increase was 32 75
2 percent.
3 Q So on average, these paired sale
4 homes increased in value by 32 percent after the
5 Mobil On the Run was developed?
6 A That's correct. So it's looking at
7 each sale and looking at the sale from time A to
8 this date and sale on time B and looking at the
9 total change in value. Yes.
10 Q And what was the average percent
11 increase per year?
12 A The average percent per year was 7.24
13 percent.
14 Q I believe you touched on this
15 earlier, but did you do anything to determine how
16 these homes were increasing in value compared to
17 homes in the area further from the development?
18 A I did. I looked at sales that were
19 not directly behind Mobil On the Run, but -- and I
20 think it was slightly to the east of there in
21 another subdivision. I looked at sales, paired
22 sales of the same property in that subdivision as
23 well.
24 Q If there were a negative impact from
25 the Mobile On the Run development, do you think

1 that would be reflected more in the homes closer to 76
2 the Mobil On the Run as opposed to those further?
3 A Yes.
4 Q Okay. And did you do -- on average,
5 did the homes -- did the value of the homes near
6 the development increase more on less than the
7 homes in your control group?
8 A So once again, the average increase
9 was about 7.24 percent. On the sales that I looked
10 at that were not in the area of the Mobil On the
11 Run, they had price increase of, annually, of 2.83
12 percent, 5 percent, with an average of 3.7 percent.
13 So it was actually lower than those sales.
14 Q So these sales increased faster than
15 the sales --
16 A Yes, that is correct, yes.
17 Q Based on this information, what can
18 you conclude?
19 A I concluded that the construction of
20 the Mobil On the Run on Olive in no way had any
21 impact on the sales of those properties.
22 Q Okay. Based on your findings, do you
23 believe the Mobil On the Run had any injury to
24 surrounding property values?
25 A No, not at all.

1 Q I would like to move on to your 77
2 second comparable site. I believe you said it was
3 a PetroMart in Valley Park? Is that correct?
4 A Yes.
5 Q Do you know when that site was
6 developed?
7 A That site was developed in 2018.
8 Q And can you generally describe what
9 is currently located on that site?
10 A A gas station and a convenience
11 store.
12 Q And is there residential property
13 nearby?
14 A Yes.
15 Q How many paired sales did you find
16 nearby this site?
17 A I looked at five paired sales.
18 Q And I would like to direct your
19 attention to Page 12 of your report, Exhibit 29.
20 Is this a -- does this summarize your
21 findings with respect to the PetroMart paired sale
22 analysis?
23 A Yes, it does.
24 Q And if you could put up Exhibit 31,
25 please.

1 Does that table summarize the 78
2 information in your report regarding the paired
3 sales analysis of the PetroMart?
4 A Yes.
5 Q Does it accurately summarize this
6 information?
7 A Yes, it does.
8 Q And, Miss Atkinson, are these the
9 only five paired sales you found that fit the
10 criteria nearby the PetroMart?
11 A It was the only five that I found,
12 yes.
13 Q And did all of them increase in value
14 after PetroMart was developed?
15 A Yes, they did.
16 Q Okay. And did you do anything again
17 to confirm that the sale price of these homes were
18 not impacted by something like a major remodel?
19 A Once again, I read through the Zillow
20 description of the property, both the original and
21 the previous sale and, also, the county records.
22 Q Looking at this exhibit here, what
23 was the average total increase in the sale price
24 of these homes from before PetroMart went in to
25 after?

1 A The before, the average was 21 79
2 percent.
3 Q Okay. And was there also a percent
4 increase per year?
5 A Yes. The average increase per year
6 was 5.13 percent.
7 Q And did you then perform the same
8 analysis to determine how these homes were
9 increasing in value compared to some homes in the
10 area further from the development?
11 A Yes, I did. I looked at the sales of
12 homes once again that are not directly behind the
13 property and looked at sales and resales of those
14 properties as well.
15 Q On average, does the value of homes
16 near the development increase more or less than the
17 homes further from the development?
18 A They were about the same. They --
19 the average of the properties, average annual
20 increase of the property that sat behind the
21 PetroMart increased an average of 5.13 percent.
22 In the sales that I looked at that
23 were not behind there, they increased an average of
24 4.7 percent.
25 Q So is it fair to say that the

1 increase of the homes nearby was greater than the 80
2 average increase of the homes that were further
3 away?
4 A Yes.
5 Q Based on this information, what did
6 you conclude?
7 A I concluded that the construction of
8 the PetroMart in no way caused any damage to the
9 values of the surrounding property.
10 Q Okay. I would like to move on to
11 your third comparable site. You said Mobile On the
12 Run off of Lindbergh, is that correct?
13 A Yes.
14 Q When was that site developed?
15 A This site was developed in 2012.
16 Q Can you briefly describe what is
17 located on this site?
18 A It is a gasoline service station,
19 convenience store and carwash.
20 Q Are there residential properties
21 nearby?
22 A Yes.
23 Q How many paired sales did you find
24 nearby this site?
25 A On this particular one I looked at

<p>1 four paired sales.</p> <p>2 Q Okay. I would direct you to Page 15</p> <p>3 of your report, Exhibit 29. Does this summarize</p> <p>4 your findings with respect to the Lindbergh Mobil</p> <p>5 On the Run site?</p> <p>6 A Yes, it does.</p> <p>7 Q And I would like to put up Exhibit</p> <p>8 22. Does this table summarize the information in</p> <p>9 your report regarding the paired sale analysis of</p> <p>10 the Lindbergh Mobil On the Run?</p> <p>11 A Yes, it does.</p> <p>12 Q And does it accurately summarize that</p> <p>13 information?</p> <p>14 A Yes, it does.</p> <p>15 Q And, Miss Atkinson, are these the</p> <p>16 only four paired sales you found that fit your</p> <p>17 criteria nearby this Mobil On the Run site?</p> <p>18 A It was the only four that I found,</p> <p>19 yes.</p> <p>20 Q And did all of them increase in</p> <p>21 value? Did all of these homes increase in value</p> <p>22 after the Mobil On the Run was developed?</p> <p>23 A Yes, they did.</p> <p>24 Q Okay. Did you do anything -- did you</p> <p>25 again do the same, follow the same process to</p>	<p>81</p>	<p>1 Q And what did you find?</p> <p>2 A Well, I looked at three different</p> <p>3 sales, and on average those increased, on average,</p> <p>4 2.23 percent per year.</p> <p>5 Q So that would be less than these</p> <p>6 homes closer to Mobil On the Run --</p> <p>7 A Right, slightly less.</p> <p>8 Q -- is that correct?</p> <p>9 A Uh-huh.</p> <p>10 Q And based on this information, what</p> <p>11 can you conclude?</p> <p>12 A I concluded that the construction of</p> <p>13 the Mobil On the Run at 5840 South Lindbergh had,</p> <p>14 in no way, had any negative impact on the value of</p> <p>15 the surrounding properties.</p> <p>16 Q Okay. Based on your paired sale</p> <p>17 analysis of the three comparable sites, the two</p> <p>18 Mobils and PetroMart, what can you conclude?</p> <p>19 A I conclude that the proposed QuikTrip</p> <p>20 development will have no impact on surrounding</p> <p>21 neighborhood properties.</p> <p>22 Q Okay. Did you do any additional</p> <p>23 analysis once you completed the paired sale</p> <p>24 analysis to confirm your findings?</p> <p>25 A I did.</p>	<p>83</p>
<p>1 confirm that these homes were not impacted by</p> <p>2 something like a major redevelopment?</p> <p>3 A Yes, I did. I looked at sales of</p> <p>4 property that were not directly behind there but in</p> <p>5 a different subdivision nearby.</p> <p>6 Q But you also followed the same</p> <p>7 procedures, though, looking at the records and --</p> <p>8 A Yeah. I looked at Zillow description</p> <p>9 and also looked at the public records, yes.</p> <p>10 Q And what is the total average</p> <p>11 increase in total sales price for these homes from</p> <p>12 before Mobil On the Run was developed to after</p> <p>13 Mobil On the Run was developed?</p> <p>14 A The average total increase, on</p> <p>15 average, was 30 percent.</p> <p>16 Q Okay. And what was the average</p> <p>17 percent increase of the value of those homes per</p> <p>18 year?</p> <p>19 A The average per year increase was</p> <p>20 2.58 percent.</p> <p>21 Q And did you perform the same analysis</p> <p>22 to determine how these homes were increasing in</p> <p>23 value compared to other homes in the area further</p> <p>24 from the development?</p> <p>25 A Yes, I did.</p>	<p>82</p>	<p>1 Q And what else did you do?</p> <p>2 A I conducted a survey technique.</p> <p>3 Q And can you describe the particular</p> <p>4 survey that you conducted?</p> <p>5 A Yes. The survey, basically I</p> <p>6 contacted real estate experts and mostly real</p> <p>7 estate agents and brokers in the areas where the</p> <p>8 paired sales occurred and asked them specific</p> <p>9 questions related to, you know, if they were</p> <p>10 familiar with the development and if they felt that</p> <p>11 when the development occurred if it had any effect</p> <p>12 on the listing time or the sale price of</p> <p>13 residential properties that were near there.</p> <p>14 I asked them if they had ever sold</p> <p>15 any properties that were adjacent to or sat behind</p> <p>16 a gas station or convenience store, and I asked</p> <p>17 them a general question if they felt that the</p> <p>18 presentation of a gas station and a convenience</p> <p>19 store in front of or a residential property behind</p> <p>20 there, if that would have any impact.</p> <p>21 Q And did you know any of these</p> <p>22 experts, realtors, real estate brokers before you</p> <p>23 conducted the study?</p> <p>24 A No, I did not.</p> <p>25 Q And do you know approximately when</p>	<p>84</p>

<p>1 you conducted the study?</p> <p>2 A The studies were conducted between</p> <p>3 March 22nd and March 25th of 2021, this year.</p> <p>4 Q I am going to direct you to Page 18</p> <p>5 of Exhibit 29 in your report. And you may need to</p> <p>6 look at the binder to read this. But does this</p> <p>7 chart summarize your findings of the survey</p> <p>8 study?</p> <p>9 A Yes, it does.</p> <p>10 Q And can you generally tell us what</p> <p>11 you found?</p> <p>12 A Generally what I found is that, based</p> <p>13 on the surveys and the interviews that I conducted,</p> <p>14 in all cases, none of the individuals felt that the</p> <p>15 development of a gas station convenience store</p> <p>16 would have a negative impact on the surrounding</p> <p>17 property.</p> <p>18 In fact, several of them thought that</p> <p>19 it would actually be a benefit due to the</p> <p>20 convenience of having the ability to go to and from</p> <p>21 work to stop by and get gas or convenience items.</p> <p>22 Q And who are -- how did you choose</p> <p>23 these individuals?</p> <p>24 A I don't --</p> <p>25 Q Or why did you choose them, I guess?</p>	85	<p>1 impacting residential property values in the area?</p> <p>2 A No.</p> <p>3 Q Did any of them think it would be a</p> <p>4 benefit?</p> <p>5 A Yes.</p> <p>6 Q Did you talk to anyone else over the</p> <p>7 course of your study?</p> <p>8 A Yes. I did speak with, actually, two</p> <p>9 different individuals that are -- have interest in</p> <p>10 properties that are off the Graeser Road.</p> <p>11 Q Did you talk to a representative from</p> <p>12 Kemp Homes?</p> <p>13 A I did.</p> <p>14 Q And why did you talk to</p> <p>15 representative from Kemp Homes?</p> <p>16 A Well, I noticed that there was a new</p> <p>17 property that was under -- a new residential</p> <p>18 property that was under development. That</p> <p>19 particular property is located at 725 Graeser Road.</p> <p>20 It was an existing home that was -- after the</p> <p>21 purchase, it was demolished and redeveloped with a</p> <p>22 four-bedroom five-bath home that was listed for a</p> <p>23 million four twenty.</p> <p>24 Q If I could put up Exhibit 33 for a</p> <p>25 second.</p>	87
<p>1 A I don't want to say they were random.</p> <p>2 My first goal was to find real estate professionals</p> <p>3 that were in the same market that I was doing</p> <p>4 paired sale analysis. In some cases they were</p> <p>5 brokers on some of the properties that sold, but in</p> <p>6 other cases they had listings and sold properties</p> <p>7 that were just generally in the market.</p> <p>8 Q So does each of these individuals</p> <p>9 have an expertise in the -- in one of the areas</p> <p>10 that you conducted your paired sales analysis?</p> <p>11 A Yes, in all cases they were experts</p> <p>12 in that particular area.</p> <p>13 Q How many experts did you find with</p> <p>14 respect to each area?</p> <p>15 A For the Olive, I interviewed two</p> <p>16 different people. For the Meramec Station property</p> <p>17 I interviewed two different people, and then for</p> <p>18 the Lindbergh property actually interviewed three</p> <p>19 people.</p> <p>20 Q And, in your expert opinion, was</p> <p>21 that sufficient data to perform an opinion in this</p> <p>22 case?</p> <p>23 A Yes. I think it was.</p> <p>24 Q Okay. And did any of these experts</p> <p>25 tell you that the developments were adversely</p>	86	<p>1 Do you recognize this area, Miss</p> <p>2 Atkinson?</p> <p>3 A Yes, I do.</p> <p>4 Q And does it accurately depict the</p> <p>5 area of the site in question and this portion of</p> <p>6 Olive and Graeser?</p> <p>7 A Yes, it is -- it's the one that's on</p> <p>8 the west side and further south, that one right</p> <p>9 there.</p> <p>10 Q So that one there, that is the home</p> <p>11 that we are discussing right now?</p> <p>12 A Yes, it is.</p> <p>13 Q Okay. And approximately where is</p> <p>14 that development in relation to the QuikTrip</p> <p>15 development that is at issue today?</p> <p>16 A It is about 500 feet south.</p> <p>17 Q How did you learn about this new home</p> <p>18 development?</p> <p>19 A In the process of doing my research,</p> <p>20 and, actually, it was after I had completed the</p> <p>21 initial draft of this report, I always have a</p> <p>22 habit of going by and relooking at the property,</p> <p>23 and I just happened to notice that it was under</p> <p>24 construction and took down the information about</p> <p>25 the builder.</p>	88

1 Q And did you then contact the builder? 89

2 A I did, yes.

3 Q What did you ask the builder?

4 A I asked the builder if, number one,

5 if he was aware of the proposed development, and

6 number two, if he felt it had any impact on his

7 original purchase price of what was there before.

8 I asked him if the buyers, since the property was

9 under contract when I talked with him, I asked him

10 if the buyers were aware of the proposed

11 development, and I asked him if he thought that the

12 value of the property was at all impacted by the

13 proposed development and whether or not the buyer

14 felt that it was impacted.

15 Q And what did he say in response to

16 that?

17 A He said no. He said, number one, he

18 was aware of it, and he said it in no way impacted

19 the -- his -- his desire to purchase the property

20 or the purchase price.

21 Q And do you know what he purchased the

22 property for?

23 A I believe he paid \$330,000.

24 Q And do you know when that was?

25 A I don't -- 2020.

1 Q And do you know what the new 90

2 development is currently listed or was listed for?

3 A It was listed at a million four

4 twenty-five. And at the time I spoke with him,

5 which would have been sometime in April, it was

6 under contract.

7 Q So this 725 Graeser Road was listed

8 for 1.4 million and is now under contract, is that

9 correct?

10 A Yes, that is correct.

11 Q Okay. And if I could put up Exhibit

12 41 for a minute.

13 Do you recognize this picture?

14 A Yes. That is the home that is under

15 development at 725 Graeser.

16 Q And just to make sure I am clear, did

17 you -- you asked the developer whether he is aware

18 of the QuikTrip development down the street, is

19 that correct?

20 A I did, yes.

21 Q And he said he was aware of it?

22 A He said he was aware, yes.

23 Q And did he say whether the QuikTrip

24 development down the street had any impact

25 whatsoever on the sale price of this development?

1 A His exact words was that he was aware 91

2 of the proposed development at the time of the

3 sale, and the buyer of the property was also aware

4 of it, and neither Kemp Homes or the buyer had any

5 concerns about any impact on property values of the

6 proposed QuikTrip development.

7 Q So just generally talking about all

8 the surveys you conducted, based on all of your

9 interviews, what can you conclude?

10 A I conclude that the proposed QuikTrip

11 will in no way negatively impact surrounding home

12 values.

13 Q Okay. Did this information

14 corroborate your findings from the paired sale

15 analysis?

16 A Yes, it did.

17 Q With respect to -- I guess I would

18 like to put up Exhibit 1 now.

19 Are you familiar with this document?

20 A Yes, I am.

21 Q And I believe you discussed standard

22 three earlier. Is that the standard that you were

23 asked to make a determination on in this case?

24 A Yes, it was.

25 Q And over the course of your work on

1 this project, I believe you mentioned earlier that 92

2 you honed in on the word "substantial," and can you

3 just clarify again what you think the word

4 "substantial" means with respect to these

5 ordinances?

6 A Once again, I looked it up in the

7 dictionary because it's -- it can mean different

8 things, but it equates to the word "large" or

9 "material" or "considerable importance." And in

10 one dictionary I looked at it referred to, as a

11 percentage, 80 percent or more.

12 Q So, in your opinion, does this

13 standard require a finding that more -- or does

14 this standard have you look at more than just a

15 small injury? Could the -- could you -- let me

16 rephrase that.

17 Could you still be satisfied, satisfy

18 this standard if there was a small injury to the

19 value of neighboring property?

20 A Yes. Even if there were a small

21 injury, and kind of the thing that stuck out to me

22 was the one reference that said 80 percent, which

23 that's a pretty significant number. But even if

24 there were, which I didn't find any findings of.

25 If anything, I find it just to be the opposite of

1 that -- that it would not -- that it's not 93
2 substantial.
3 Q Okay. So just to clarify, over the
4 course of your work on this project, did you come
5 across any evidence that the QuikTrip would cause
6 substantial injury to the surrounding property
7 values?
8 A No, I did not.
9 Q Did you come across any evidence that
10 the proposed QuikTrip would cause any injury to the
11 surrounding property values?
12 A No, I did not.
13 Q And I believe you mentioned the fact
14 that it may have showed the opposite, is that
15 correct?
16 A That is correct, yes.
17 Q And so, Miss Atkinson, what is your
18 opinion as to whether the proposed QuikTrip
19 development, the project, satisfies factor three
20 here?
21 A My conclusion is that the development
22 of the QuikTrip, the proposed development, would
23 not cause any substantial injury to the surrounding
24 property.
25 MR. PRSHA: That's all I have.

1 THE COURT: Is there cross 94
2 examination?
3 MR. LUMLEY: No, Your Honor.
4 THE COURT: The witness is excused.
5 We will go off the record at this time.
6 (Off record.)
7 THE COURT: This would be a good time
8 for a lunch break. It is 12:28. Why don't we
9 return at 1:30. Court is in recess.
10 (Off record.)
11 THE COURT: We are back on the
12 record. Are the parties ready to proceed?
13 MR. CARMODY: We are, Your Honor.
14 THE COURT: Please proceed.
15 MR. CARMODY: At this time, Your
16 Honor, the plaintiffs would call Mr. John
17 Brancaglione.
18 THE COURT: Please come forward and
19 raise your right hand to be sworn.
20 (Whereupon, the witness was sworn in
21 by the court.)
22
23 JOHN BRANCAGLIONE,
24 having been produced as a witness and duly sworn by
25 the court, testified as follows:

1 DIRECT EXAMINATION 95
2 QUESTIONS BY MR. CARMODY:
3 Q Good afternoon, Mr. Brancaglione.
4 Please state your name and spell your last name.
5 A It's John Brancaglione,
6 B-r-a-n-c-a-g-l-i-o-n-e.
7 Q Affectionately known as John B?
8 A That's correct.
9 Q Tell the court, if you would, your
10 occupation.
11 A I'm a senior at PGA Planners, which
12 is a division of PGAV, and I'm an urban planner
13 representing various types of clients.
14 Q And would you tell us, although I
15 think the name kind of defines it to some extent,
16 but give the court what you do on a day-to-day
17 basis.
18 A My work for the, for our group,
19 pretty much crosses all of the disciplines, but
20 most of what I have done in recent years involved
21 comprehensive planning, zoning, some redevelopment
22 planning and some economic impact analysis.
23 Q And, basically, for what kinds of
24 clients? Do you need some water?
25 A That would be nice. Yes.

1 All kinds of clients. Our -- the 96
2 bulk of our planning work, I say zoning and
3 comprehensive planning is done for municipalities.
4 A lot of our economic analysis work is done for
5 those folks, but a lot of that is also done for
6 investment banking entities and other kinds of
7 private clients, mostly corporate clients.
8 Q Okay. And how long have you been
9 with PGAV?
10 A 29 years.
11 Q And, sir, would you give us a little
12 education in your employment history?
13 A Well, I have a bachelors from
14 Michigan State University and urban design,
15 industrial design. I started work with a private
16 firm called General Planning and Resource
17 Consultants. I went to another firm called Booker
18 Associates. And then from there I was director of
19 development for the City of St. Louis for about
20 four or four and a half years and then went back
21 into the private sector. I joined PGAV in 1992.
22 Q Okay. And what years were you
23 director of development for the City of St. Louis?
24 A '79 through like '83.
25 Q Okay.

1 A Or early '84. I don't remember. 97

2 Q All right. And then you left there

3 to go to PGAV?

4 A No. I was with another firm in --

5 actually, two other firms in between there.

6 Q Okay. All in St. Louis?

7 A Yes.

8 Q All right. And do you do any

9 teaching or have you done any teaching in your

10 field?

11 A I taught in the school of engineering

12 at Washington University for 16 years as adjunct

13 faculty.

14 Q What course were you teaching there?

15 A An upper level urban planning course

16 that was basically directed at seniors, undergrad

17 students in civil engineering and graduate students

18 in transportation engineering.

19 Q Okay. Can you give us some examples

20 of the kinds of projects, understanding what's at

21 issue in this case, the kinds of projects that

22 you've been involved in during the course of your

23 recent career?

24 A I've done lots and lots of

25 comprehensive plans. I have done lots and lots of

1 zoning work in the last five years. 98

2 Q And when you say you have done a lot

3 of comprehensive plans, is that meaning that you

4 are drafting the comprehensive plans for

5 municipalities?

6 A Yes. And the same thing is true with

7 zoning and other development code.

8 Q Okay.

9 A And in the last five years I have --

10 I've supervised the comprehensive plan for Des

11 Peres, for Dardenne Prairie. In fact, Dardeene

12 Prairie's plan was just adopted earlier this year.

13 The zoning code rewrite, actually a development

14 code rewrite.

15 It was a combination of combining

16 various development code elements in Crestwood, the

17 zoning code rewrite for Des Peres and, in a

18 cooperative project with city staff, Lake St.

19 Louis.

20 Q Okay. And have you been called upon

21 to testify as an expert witness in matters such as

22 this?

23 A Yes.

24 Q Have you ever been called upon to

25 testify as an expert witness in matters involving

1 conditional use permit? 99

2 A Yes.

3 Q Can you give us that example?

4 A Most recent one involved Webster

5 University with a proposed use by the University of

6 the Eaton Seminary, a part of the Eaton Seminary

7 property.

8 Q And what happened with that case?

9 A It was decided in favor of the city.

10 Q Of the city or the university?

11 A Excuse me, the university. It was

12 decided against the city.

13 Q Right. In other words, there was a

14 reversal of a decision by the city to deny a

15 conditional use permit?

16 A That's correct.

17 Q All right. Mr. Brancaglione, you

18 were contacted by us to render an opinion in this

19 case, were you not?

20 A Yes.

21 Q And what were you asked to look at

22 and do?

23 A Basically, I reviewed all of the

24 documents that I think started from square one with

25 respect to the submission of -- for the conditional

1 use permits, the staff reports, the meeting 100

2 minutes, any other documents that were submitted

3 supplementally, like traffic reports. There was a

4 report regarding property valuation against

5 commercial uses and, basically, all of the material

6 from beginning to end, as far as I know. In other

7 words, as far as what was available to me on the

8 city's website.

9 Q And what were you asked to do that

10 triggered you doing this review?

11 A Well, the notion here that this

12 conditional use permit was denied is what I looked

13 for -- for the why. Why was this denied? In

14 everything I looked at and knew about the area,

15 because I am familiar with Olive Boulevard, I own

16 an automobile that goes back and forth to one of

17 the dealers there, I drove out there and physically

18 looked at the property, and I, you know, it was

19 like, okay, well, why was this denied? So that's

20 why I read all of the background material.

21 Q And did you analyze the factors

22 delineated by the City of Creve Coeur for the

23 issuance of a conditional use permit?

24 A Sure. Because all conditional use

25 permits have a set of criteria that are evaluated.

<p>1 Yes, I did.</p> <p>2 Q Municipalities conditional use</p> <p>3 permits, in your experience, is there some</p> <p>4 similarity typically between municipalities in</p> <p>5 terms of their criteria for granting conditional</p> <p>6 use permits?</p> <p>7 A That's correct. There's not much</p> <p>8 difference. In fact, I've written similar ones</p> <p>9 myself.</p> <p>10 Q So you've, in fact, written the</p> <p>11 factors relating to the granting of conditional use</p> <p>12 permits?</p> <p>13 A Yes.</p> <p>14 Q And did you, after your review and</p> <p>15 analysis and visiting the site and looking for the</p> <p>16 why, find a why, in connection --</p> <p>17 A I did not.</p> <p>18 Q And did you, in your review, conclude</p> <p>19 anything with respect to the satisfaction of the</p> <p>20 appropriate standards for granting conditional use</p> <p>21 permit?</p> <p>22 A Well, I think all of the standards</p> <p>23 have been met, or exceeded.</p> <p>24 Q Okay. Let me show you what's been</p> <p>25 marked as and identified as, I should say, Exhibit</p>	101	<p>1 marked as Exhibit 20, and ask you if you can</p> <p>2 identify this document?</p> <p>3 A And I assume I can find that in here.</p> <p>4 Q You can.</p> <p>5 A Yes.</p> <p>6 Q Is that your report?</p> <p>7 A Yes, it is.</p> <p>8 Q And can you tell Judge McLaughlin --</p> <p>9 I know we are going to go through the individual</p> <p>10 components, but we are not going to go through the</p> <p>11 totality of the report. But can you tell Judge</p> <p>12 McLaughlin basically the conclusions that you</p> <p>13 reached, the conclusion that you reached in this</p> <p>14 report?</p> <p>15 A Well, in my opinion, when you</p> <p>16 evaluate this against those criteria, all six of</p> <p>17 the criteria, this proposal meets all of those</p> <p>18 criteria and, in fact, is a significant benefit to</p> <p>19 the community, to the -- to the -- to the</p> <p>20 particular area, and I -- I think you -- you would</p> <p>21 be hard pressed to find something else that would</p> <p>22 fill the criteria -- would fulfill the criteria and</p> <p>23 would do so in today's developmental environment.</p> <p>24 Q All right. And to look at the final</p> <p>25 page of your report, Page 6, your conclusion, "In</p>	103
<p>1 1. If we could take a look at that on the screen.</p> <p>2 Can you see the screen from there?</p> <p>3 A Yes. That's tougher.</p> <p>4 Q So you can see the screen, but can</p> <p>5 you see what's on the screen?</p> <p>6 A Yes.</p> <p>7 Q And looking at Exhibit 1 and</p> <p>8 scrolling through, you have seen that very exhibit</p> <p>9 before, have you not?</p> <p>10 A Yes.</p> <p>11 Q And does it contain the factors</p> <p>12 relating to approval of a conditional use permit in</p> <p>13 the City of Creve Coeur?</p> <p>14 A It does.</p> <p>15 Q Is it your opinion, Mr. Brancaglione,</p> <p>16 that the application that you reviewed for the</p> <p>17 QuikTrip to be constructed at the corner of Graeser</p> <p>18 and Olive Boulevard satisfies all of those</p> <p>19 standards?</p> <p>20 A Yes, it does.</p> <p>21 Q All right. So if we could go</p> <p>22 through, did you ultimately write a report, by the</p> <p>23 way, about this?</p> <p>24 A I did.</p> <p>25 Q Okay. Can I show you what will be</p>	102	<p>1 my opinion paragraph," if we could.</p> <p>2 A Yes.</p> <p>3 Q You state as follows, do you not?</p> <p>4 Quote, In my opinion, denial of this use is not</p> <p>5 only contrary to a test of the factors required by</p> <p>6 the ordinance; it ignores the clear broader land</p> <p>7 use, public revenue and development objectives for</p> <p>8 the area, the Olive corridor, the city, and the</p> <p>9 other taxing districts, end quote. Do you conclude</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q All right. Let's take a look, if we</p> <p>13 could. You understood, did you not, that there was</p> <p>14 an agreement between the parties that factors one</p> <p>15 and five had been satisfied and were not necessary</p> <p>16 for you to analyze?</p> <p>17 A That's correct.</p> <p>18 Q All right. Let's start, if we could,</p> <p>19 with standard number two, if you see that. Do you</p> <p>20 see standard number two?</p> <p>21 A Yes.</p> <p>22 Q All right. Exhibit 21, I want you to</p> <p>23 take a look at. And does this page summarize your</p> <p>24 conclusions with respect to standard number two?</p> <p>25 A It does.</p>	104

105

1 Q All right. And that standard is that

2 the project, subject to the application, will

3 contribute and promote the community welfare and

4 convenience at the specific location, correct?

5 A Correct.

6 Q And did you conclude that it would

7 contribute to and promote the community welfare and

8 convenience at the specific location?

9 A In fact, I believe it does on all of

10 the reasons that I specified.

11 Q All right. Would you -- can we go

12 through those with the court, please? First of

13 all, you state it improves the appearance of the

14 area?

15 A Yes.

16 Q In what respect?

17 A Well, you have two existing

18 commercial buildings on the site. There's actually

19 five parcels involved. And the one to the left in

20 that particular exhibit that we see there, they are

21 both --

22 Q On the east side?

23 A Pardon?

24 Q The east building?

25 A The east side. It's tired. It's

106

1 vacant. If you compare it to the building

2 adjacent, you can see that it's got, from a typical

3 commercial building today, its depth is shallow. It

4 doesn't look good. The building on the other side,

5 on the western side is better. It's configuration

6 in terms of depth is better. It's probably one of

7 the reasons why it has tenants and the other one

8 doesn't.

9 So, you know, does this improve the

10 area? Well, yes, because you get a brand new use

11 on a building that's standing there vacant, i.e.,

12 the QuikTrip. You get a complete redevelopment of

13 the other building that helps that building

14 maintain tenants and maybe attract new tenants if

15 somebody moves out. So you are replacing an

16 obsolete building on the one hand. You are

17 improving an existing building on the other hand.

18 This site will wind up generating

19 significantly more tax revenue to the city and the

20 other taxing districts that obviously rely on -- on

21 tax revenue for their operation. It improves the

22 sidewalks, the pedestrian access. It enhances the

23 landscaping.

24 All you have to do is compare those

25 two drawings to see what a difference it makes.

107

1 And it -- and the so-called streetscape, which is

2 planneries for how you make the appearance of a

3 traffic corridor and street look better. And

4 certainly these uses, both of them, are providing

5 products and services to the community. QuikTrip,

6 obviously that's one of those entities that has the

7 word "convenience" sort of in its nomenclature.

8 And it supports the south side of Olive Boulevard.

9 The traffic flow along Olive, like

10 any other major arterial like this means that that

11 QuikTrip is going to get primarily the eastbound

12 traffic as opposed to Mobil On the Run, which is

13 going to get the westbound traffic. People

14 generally don't like left turns. So it's sort of

15 the way it works. That doesn't mean that there

16 won't be some of that kind of traffic movement, but

17 generally, this is, to me, a benefit, particularly

18 when you consider that this is going to cater to

19 folks who are living and working on this side of

20 the community and the area to the west.

21 Q All right. Only one of these, and I

22 don't know that you touched upon, was number five,

23 which is increases buffering from residential

24 properties.

25 A The buffering, obviously, is far

108

1 exceeded from what exists today, and everything

2 presents a far better appearance and a greater

3 buffering distance to adjacent residential.

4 Q All right. Anything else that you

5 considered with respect to your opinion on standard

6 number two?

7 A No. I mean not other than the fact

8 this also fits well with the commercial uses that

9 are -- that are around it, both on the same side of

10 the street and across the street.

11 Q Okay. Standard number three is will

12 not cause substantial injury to the value of

13 neighboring property, and I think you created a

14 list of four items that you want to talk about with

15 respect to that conclusion. And tell us first what

16 your conclusion is about that factor.

17 A That it will not cause injury to the

18 value of neighboring property.

19 Q Okay.

20 A To me, it makes the surrounding area

21 generally more attractive. You really can't call

22 what's there now attractive in a -- in a --

23 certainly in a modern context. QuikTrip does maybe

24 and arguably, by some, but I think they do probably

25 the best job of design and landscaping and what

<p>1 have you of their properties of anybody in their 2 business. We get to look at these things from all 3 of the folks who do this stuff all over the 4 country. QuikTrips are generally the best of the 5 bunch. You can see what the resultant landscaping 6 is. That in and of itself and the buffering adds 7 value to the adjoining property, not detracts from 8 it.</p> <p>9 Design quality is high. It's already 10 zoned commercial property. It's been zoned 11 commercial for a very long time. And while I 12 didn't try to do a detailed dive into it, when I 13 looked at data from the assessor with respect to 14 adjoining properties, residential properties, on 15 the other side of the street around the Mobil On 16 the Run, Circle K, I did not see any valued decline 17 in those properties.</p> <p>18 I seen other instances where 19 commercial development had actually -- not only has 20 it not caused a decline; it's actually caused 21 property values to go up and new investment in 22 residential property, for example, to be made.</p> <p>23 Q And the next one that you considered 24 was standard number four: It meets the applicable 25 provisions of the city's comprehensive plan. And</p>	<p>109</p> <p>1 contemplated isn't inappropriate. It would be 2 different if where the property is located someone 3 was preparing to put up an industrial building. 4 This is sort of in the middle of town.</p> <p>5 Q Is it your experience, in all of the 6 comprehensive plans that you've done or are now 7 doing and all of the work that you are doing, that 8 this is an unusual situation where there are strip 9 centers that are old and dated that can't be 10 refurbished or put to highest and best use?</p> <p>11 A These kinds of situations are all 12 over the place, and it particularly, by my 13 observation, in the various municipalities we work 14 for, affect buildings of this vintage. There's 15 just a lot of them out there that have trouble 16 getting tenants or other end uses, whether it's 17 somebody renting or buying the building.</p> <p>18 But at the same time, in some 19 instances, they also attract uses you might not 20 want because the property owner is trying to make 21 some use of the property, some economic use of the 22 property. Can't get the rent that would otherwise 23 be gotten if the property were modern and 24 contemporary, all that sort of thing. And so they 25 take a land use that may or may not be the greatest</p> <p>111</p>
<p>1 before we dive into that, can you give us more of 2 an overview on what a comprehensive plan is and 3 adherence to it and factors like that?</p> <p>4 A Well, first of all, it's a guidance 5 document, so it is intended to guide planning and 6 development, to guide -- excuse me -- development 7 decisions on the municipality's part going forward.</p> <p>8 It is, however, just that, a guidance 9 document, and so consequently you have to revisit 10 particularly the future land use section or however 11 it is termed there, various terms in a 12 comprehensive plan, on an ongoing basis, because 13 real estate and development demand and needs 14 changes over time.</p> <p>15 So you may, for example, have a 16 designated land use for a particular area and for 17 all kinds of reasons that doesn't make sense 18 anymore. Or you have a set a circumstances that 19 happens. Dardeene Prairie's plan, the ink is 20 barely dry, and the area that's designated for park 21 and recreation use is a piece of property that's 22 owned by the city, and all of a sudden they are 23 offered 5.5 million dollars for it. I think that 24 plan has been changed. You know, I mean.</p> <p>25 And the use that's been being</p> <p>110</p>	<p>1 land use, even in some instances where it's a 2 permitted use.</p> <p>3 Q Well, what do you say today to 4 somebody who would look at that and say, "Mr. 5 Brancaglionone, gosh, this sure looks like a good 6 corner for me to put in a new retail store or 7 something. I got a lot of houses around there. 8 Why not that?" Would that work there?</p> <p>9 A Well, the market for retail 10 development, if taken as a general concept, is 11 probably as worse as it's ever been, and you have a 12 lot of -- you have a lot of economics going on, 13 some of which maybe had to do with the pandemic, 14 but a lot of which started a very long time ago.</p> <p>15 And so you have all kinds of retail 16 space existence because retail space was overbuilt. 17 And that's true nationally. That's not just a St. 18 Louis phenomena, but it's usually worse in Metro 19 areas like St. Louis and the community in the area 20 simply because we are not a growing population. We 21 are not, you know, we are not Atlanta. We are not 22 -- we do a lot of work in Colorado. The number of 23 housing units that go up almost on a monthly basis 24 are shocking to me. And that's generating some 25 commercial development. But it takes rooftops to</p> <p>112</p>

<p>1 generate many of the kinds of uses that would 2 otherwise maybe be interested in this.</p> <p>3 And restaurants, for example, are one 4 of the sectors that's very much in the dumper right 5 now. And you have the chains, for example, 6 clothing. So, I mean, I don't know what go in 7 there, from a land use standpoint, I can think all 8 I want to about shops and restaurants and what have 9 you, but then I say to myself, "Well, okay, there's 10 a lot of that space all over the place."</p> <p>11 Q Would the use projected for this 12 site; that is, the QuikTrip development, with the 13 refurbishing of the adjoining strip center conform 14 to your view of what would be, in your view, the 15 highest and best use of the property?</p> <p>16 A Well, planners never use the term 17 "highest and best use." That's, in essence, a real 18 estate term. What I would argue is that it's an 19 appropriate use for this property. It's going to 20 -- it's going to do all of the things that I 21 suggested it would do. Plus, it's taking a 22 building that does provide some small shop space 23 and giving it the opportunity to be a lot better, a 24 lot better looking, a lot more functional. And the 25 QuikTrip development allows the other building to</p>	<p>113</p>	<p>1 On the Run that was constructed several years ago 2 that is just west of the property at Graeser and 3 Olive?</p> <p>4 A Yes.</p> <p>5 Q Is that also in the East Olive 6 Corridor portion of the comprehensive plan?</p> <p>7 A It is.</p> <p>8 Q Okay. And so this description, the 9 main description in blue there: The vision for 10 east Olive is to create a walkable corridor of 11 destination retail boutiques, neighborhood service 12 businesses, small-scale restaurants, attached 13 townhomes and low-density multi-family homes and 14 single-family homes.</p> <p>15 Development of the East Olive 16 Corridor should encourage pedestrian access from 17 adjacent neighborhoods and prioritize walkability 18 between neighboring lots while accommodating car 19 access and easy parking.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q In your view, does the application in 23 this case satisfy, generally, that plan?</p> <p>24 A Yes.</p> <p>25 Q Tell us how?</p>	<p>115</p>
<p>1 go away. Because it's -- of the two buildings, in 2 my opinion, it's the one that economically and 3 physically, it's the least desirable, and the fact 4 that it's vacant is certainly evidence of that.</p> <p>5 Q And before we get into your summary 6 sheet on the comprehensive plan, I want to show you 7 what's been marked as Exhibit 19 and ask you if you 8 are familiar with the City of Creve Coeur 2030 9 Comprehensive Plan?</p> <p>10 A Yes.</p> <p>11 Q Is what you are seeing a copy of the 12 cover sheet of that comprehensive plan?</p> <p>13 A Right.</p> <p>14 Q Let me show you, if I could, a page 15 from that comprehensive plan dealing with the East 16 Olive Corridor. And if you could blow that up for 17 us, that would help. Thank you.</p> <p>18 And are you familiar with this 19 description of the East Olive Corridor?</p> <p>20 A Yes.</p> <p>21 Q Are you familiar with whether the 22 property at the corner of Olive and Graeser is 23 within that area?</p> <p>24 A It is.</p> <p>25 Q And are you familiar with the Mobil</p>	<p>114</p>	<p>1 A Well, first of all, it creates that 2 walkable environment, in fact, with far better 3 definition than its existence on the site as it's 4 currently built. The appearance of it is far more 5 appealing. There will be a sidewalk added along 6 Graeser that will also give the ability for folks 7 to walk to this location from the adjacent 8 neighborhood. I don't think Olive Boulevard is one 9 of those streets where people are going to go 10 strolling up and down Olive Boulevard at night, but 11 that's exactly what this would at least provide for 12 and provide for better than it does now. To me, 13 it's a very appropriate redevelopment reuse of this 14 site.</p> <p>15 Q Okay. Let me direct you, if I could, 16 to Page 8 of that comprehensive plan and the 17 paragraph -- or the sentence beginning with, "The 18 adoption of 2002," second paragraph, fifth line 19 from the bottom, which states as follows, does it 20 not:</p> <p>21 With the adoption of the 2002 22 comprehensive plan, Creve Coeur focused its 23 attention on the challenge on improving the 24 community's livability, quality of life and the 25 redevelopment of older, underutilized properties,</p>	<p>116</p>

<p>1 end quote.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And, in your opinion, does the</p> <p>5 proposed QuikTrip development support this overall</p> <p>6 objective?</p> <p>7 A It does.</p> <p>8 Q Okay. And now let me show you what's</p> <p>9 been marked as Exhibit 23, which I think is a</p> <p>10 summary of your conclusions as to whether the</p> <p>11 project at issue here meets the applicable</p> <p>12 provisions of the city's comprehensive plan in any</p> <p>13 neighborhood or sector plans in which -- you are</p> <p>14 not familiar with any of those arising in</p> <p>15 connection with this, are you? Neighborhood or</p> <p>16 sector plans?</p> <p>17 A Well, neighborhood -- this</p> <p>18 comprehensive plan is divided up into neighborhood</p> <p>19 and sector plans. This is one of them.</p> <p>20 Q Okay. And complies with other</p> <p>21 applicable zoning district regulations and</p> <p>22 provisions of this chapter unless good cause exists</p> <p>23 for deviation there from.</p> <p>24 With respect to that factor and now</p> <p>25 noting what you have on your summary sheet, would</p>	<p>117</p> <p>1 but, also, the renovated strip center located to</p> <p>2 the west?</p> <p>3 A Yes. I mean, I think you have to</p> <p>4 look at this in combination.</p> <p>5 Q Right.</p> <p>6 A And does this accommodate car access?</p> <p>7 Sure. And does it provide access from adjacent</p> <p>8 neighborhoods? Yes, it does. It meets or exceeds</p> <p>9 the underlying zoning requirements. That's in the</p> <p>10 staff report. And when you considered what it does</p> <p>11 with respect to buffering, landscaping,</p> <p>12 architectural appearance and all those other</p> <p>13 factors, it -- it not only meets it. It exceeds it</p> <p>14 by a wide margin.</p> <p>15 And this is the kind of retail</p> <p>16 development that is likely to succeed here for a</p> <p>17 long time.</p> <p>18 Q Okay. And, Mr. Brancaglione, did you</p> <p>19 find in your review of the documents that you</p> <p>20 collected in doing this analysis references in</p> <p>21 staff reports and analyses that reflected the same</p> <p>22 conclusion you are testifying to today about this</p> <p>23 project being in general compliance with the</p> <p>24 comprehensive plan?</p> <p>25 A Yes. That's how I interpreted the</p>
<p>118</p> <p>1 you please go down that summary sheet and tell the</p> <p>2 court your thoughts on the most important factors</p> <p>3 there?</p> <p>4 A Well, when I look at what the</p> <p>5 comprehensive plan says, and that's what this tried</p> <p>6 to focus on, first of all, is it redevelopment of</p> <p>7 older, underutilized property? Absolutely.</p> <p>8 Does it promote development of</p> <p>9 medium to low-density commercial retail office</p> <p>10 neighborhood service businesses? Yes. Because I</p> <p>11 think these are medium -- it's a combination of low</p> <p>12 and medium-density uses.</p> <p>13 Does it create this vision for a</p> <p>14 walkable corridor? I think it does. Their</p> <p>15 neighborhood -- again, these are neighborhood</p> <p>16 service businesses associated with this</p> <p>17 development. A QuikTrip often, in fact, caters to</p> <p>18 nearby residential neighborhoods and particularly</p> <p>19 people who are, for example, coming home and they</p> <p>20 -- somebody calls and says, "Bring milk or juice or</p> <p>21 a six-pack or whatever," the --</p> <p>22 Q And when you consider the designation</p> <p>23 retail boutiques, neighborhood service businesses,</p> <p>24 small scale restaurants and the like, are you</p> <p>25 including in your analysis not just the QT itself</p>	<p>119</p> <p>1 staff report.</p> <p>2 Q Okay. And do you recall the June 1st</p> <p>3 staff report, which is Exhibit 11, stating, quote,</p> <p>4 Staff finds that the proposed development embodies</p> <p>5 many of the recommendations of the comprehensive</p> <p>6 plan, end quote?</p> <p>7 A I did.</p> <p>8 Q And, also, on Page 6 of that report,</p> <p>9 do you recall the statement by the city that,</p> <p>10 quote, The proposal generally complies with the</p> <p>11 recommendations of the comprehensive plan and</p> <p>12 design guidelines?</p> <p>13 A Yes.</p> <p>14 Q And are you in agreement with these</p> <p>15 opinions voiced by those of the staff reviewing</p> <p>16 this application?</p> <p>17 A I am.</p> <p>18 Q Okay. All right. Now, if we could</p> <p>19 proceed to a discussion just briefly about the</p> <p>20 Mobil On the Run. You did some look at that</p> <p>21 application, did you not?</p> <p>22 A Yes.</p> <p>23 Q And became familiar with the site</p> <p>24 itself and the improvement?</p> <p>25 A Yes.</p> <p>120</p>

<p>1 Q Did you determine there were any</p> <p>2 differences between the two in terms of</p> <p>3 satisfaction of the CUP factors?</p> <p>4 A No. I mean the two -- to me, the two</p> <p>5 developments fulfill what would be pretty obvious</p> <p>6 land use decisions from a real estate standpoint,</p> <p>7 not necessarily from a planning standpoint. They</p> <p>8 are not directly across the street from each other.</p> <p>9 The Mobil On the Run has an added feature that I</p> <p>10 think has, you know, if somebody wants to talk</p> <p>11 about potential traffic issues, adding a carwash</p> <p>12 equation to any facility like this often increases</p> <p>13 the traffic and the turning movements, which are</p> <p>14 not present in the QuikTrip proposal. And there's</p> <p>15 virtually no difference from a decision-making</p> <p>16 standpoint, in my mind, as to why that was okay</p> <p>17 there and that is not okay in the QuikTrip</p> <p>18 scenario.</p> <p>19 Q Did you find in your analysis or</p> <p>20 comparison of the two; that is, the QuikTrip</p> <p>21 application and the Mobil On the Run application</p> <p>22 use, that in many respects the QuikTrip satisfies</p> <p>23 the factors to a greater extent than the Mobil On</p> <p>24 the Run?</p> <p>25 A Based on my observation of both of</p>	<p>121</p> <p>1 with other preexisting uses on Olive. In my own</p> <p>2 experience, and that was backed up by what the</p> <p>3 police review showed, there is no inherent crime</p> <p>4 that's associated with either uses that are</p> <p>5 proposed here.</p> <p>6 Like many of these kinds of uses, and</p> <p>7 when I say "these kinds," I'm talking about what I</p> <p>8 will call convenience uses, in general, there's</p> <p>9 really not a net impact on traffic in terms of</p> <p>10 volume because it's picking traffic up that's</p> <p>11 already on the roadway. In other words, most of</p> <p>12 these kinds of uses are associated with traffic</p> <p>13 that's already coming down the road.</p> <p>14 It gets rid of outdated and obsolete</p> <p>15 buildings and, certainly, it improves the</p> <p>16 streetscape, the buffering. Everything about the</p> <p>17 appearance of the area goes up exponentially, in my</p> <p>18 opinion.</p> <p>19 Q Okay. If I could show you Exhibit</p> <p>20 Number 10, going back to what you mentioned about</p> <p>21 the police department review. Take a look at</p> <p>22 Exhibit 10 and let me ask you if you can identify</p> <p>23 that.</p> <p>24 A Yes. That's the -- that's the letter</p> <p>25 from -- or the memo from the police.</p>
<p>1 those uses, and I may have said this in my report,</p> <p>2 I can't leave my house without going by a QuikTrip</p> <p>3 or a Mobil On the Run. They are all over the place</p> <p>4 where I live. The QT makes a better case, in my</p> <p>5 opinion, simply because in terms of what services</p> <p>6 and what things it offers. It's a broader use and</p> <p>7 satisfies more of the criteria in terms of things</p> <p>8 that people would want to come and buy in a given</p> <p>9 area.</p> <p>10 Q All right. Let's turn if we could</p> <p>11 then to standard number six, if we could. And this</p> <p>12 standard states that the question becomes whether</p> <p>13 or not the project will be compatible with the</p> <p>14 surrounding area and, thus, will not impose an</p> <p>15 excessive burden or have a substantial negative</p> <p>16 impact on surrounding or adjacent users or on</p> <p>17 community facilities or services.</p> <p>18 What was your opinion regarding that</p> <p>19 standard?</p> <p>20 A It will not have a negative impact.</p> <p>21 Q And do you want to start with</p> <p>22 community facility or services and what you found?</p> <p>23 A Well, it -- first of all, it's</p> <p>24 already a commercially zoned area and has been for</p> <p>25 a very long time. The proposed use is compatible</p>	<p>122</p> <p>1 Q Did you review that?</p> <p>2 A I did.</p> <p>3 Q And could you tell the court</p> <p>4 generally what the conclusion was in that memo?</p> <p>5 A That essentially there isn't anything</p> <p>6 about this use that promotes crime or causes --</p> <p>7 that gave the police department any other concern.</p> <p>8 Q Okay. And, Mr. Brancaglion, have we</p> <p>9 touched upon -- getting back to Exhibit 24, have we</p> <p>10 touched upon all of the items you have delineated</p> <p>11 in that exhibit summarizing your conclusions on</p> <p>12 standard six?</p> <p>13 A I think we have.</p> <p>14 Q We are about to hear from a traffic</p> <p>15 expert, but before he steps on the stand, I want</p> <p>16 you to comment if you would on your analysis of any</p> <p>17 impact on traffic.</p> <p>18 A Well, if you read both traffic</p> <p>19 reports, they are sort of a wash, in my opinion.</p> <p>20 And, for the most part, say the same thing and make</p> <p>21 some of the same recommendations. And, you know,</p> <p>22 if I've seen one traffic report, I have probably</p> <p>23 seen several dozen on this kind of use. These</p> <p>24 convenience, gas station convenience operations, in</p> <p>25 my experience, generally create less issue than,</p>

<p>1 for example, fast food.</p> <p>2 Q Okay. All right. Now let me show</p> <p>3 you what's been marked as Exhibit Number 16 and ask</p> <p>4 you if this is a copy of the ordinance presented to</p> <p>5 the board of -- strike that -- city council in</p> <p>6 connection with this application for conditional</p> <p>7 use permit?</p> <p>8 A Yes.</p> <p>9 Q All right. And then I'm going to</p> <p>10 also show -- there's language here that says the</p> <p>11 city council finds that the application in evidence</p> <p>12 presented clearly indicate that the proposed</p> <p>13 rezoning is in the public interest and the proposed</p> <p>14 conditional use, when subject to certain conditions</p> <p>15 set forth herein, and some of the factors, the four</p> <p>16 factors we are discussing in this case, were then</p> <p>17 delineated, correct?</p> <p>18 A Correct.</p> <p>19 Q And then Exhibit Number 34 I want to</p> <p>20 also show you and ask you if this is the ordinance</p> <p>21 proposed and accepted by the city council in</p> <p>22 granting the conditional use permit to Mobil On the</p> <p>23 Run?</p> <p>24 A Yes.</p> <p>25 MR. CARMODY: Okay. I have nothing</p>	<p>125</p>	<p>1 A Yeah.</p> <p>2 Q So the part you were looking at</p> <p>3 before where it talked about the adoption of 2002</p> <p>4 plan was sort of a historical background, correct?</p> <p>5 A Yes.</p> <p>6 Q Do you agree that a comprehensive</p> <p>7 plan are the province of the community's Planning</p> <p>8 and Zoning Commission, by statute?</p> <p>9 A It is.</p> <p>10 Q And in this instance, the Creve Coeur</p> <p>11 Planning and Zoning Commission recommended against</p> <p>12 issuance of this conditional use permit, correct?</p> <p>13 A They did.</p> <p>14 Q And the city council agreed with that</p> <p>15 recommendation and voted against the ordinance that</p> <p>16 you had -- that -- not ordinance, but the bill that</p> <p>17 was the proposed ordinance, correct?</p> <p>18 A Yes, sir.</p> <p>19 Q During your testimony you indicated</p> <p>20 that you have reviewed all documentation that you</p> <p>21 could find on the city website, correct?</p> <p>22 A Correct.</p> <p>23 Q And you would agree with me that that</p> <p>24 was pretty robust public accessibility to the</p> <p>25 information. You can basically see an entire</p>	<p>127</p>
<p>1 further of this witness.</p> <p>2 THE COURT: Is there cross</p> <p>3 examination?</p> <p>4 MR. LUMLEY: Yes, Your Honor.</p> <p>5</p> <p>6 CROSS EXAMINATION</p> <p>7 QUESTIONS BY MR. LUMLEY:</p> <p>8 Q Good afternoon. You've never lived</p> <p>9 in Creve Coeur, correct?</p> <p>10 A No, I have not.</p> <p>11 Q And you were not involved in the</p> <p>12 development of the Creve Coeur 2030 Comprehensive</p> <p>13 Plan that you have been discussing?</p> <p>14 A That's correct.</p> <p>15 Q During your direct examination, there</p> <p>16 was reference to adoption of the 2002 comprehensive</p> <p>17 plan, but that's the old plan, correct?</p> <p>18 A Yes. The -- it's my understanding --</p> <p>19 what -- I read the whole plan and the various</p> <p>20 iterations in what -- what is in place now is the</p> <p>21 2017 -- I think it's 2017 -- update.</p> <p>22 Q So it was adopted in 2017, correct?</p> <p>23 A Correct.</p> <p>24 Q And its appellation was the 2030</p> <p>25 plan?</p>	<p>126</p>	<p>1 agenda packet going way back?</p> <p>2 A Oh, yes. Took me hours and hours to</p> <p>3 read it.</p> <p>4 Q Right. So you were satisfied with</p> <p>5 it, if (Inaudible.)</p> <p>6 (Whereupon, the court reporter asked</p> <p>7 for clarification.)</p> <p>8 Q You were satisfied that if you didn't</p> <p>9 find everything you were pretty close to finding</p> <p>10 everything?</p> <p>11 A That's correct.</p> <p>12 Q And did that include a review of the</p> <p>13 minutes of the Planning and Zoning Commission and</p> <p>14 the city council meetings?</p> <p>15 A Yes.</p> <p>16 Q And so when you say you didn't find</p> <p>17 any reference to why their votes were the way they</p> <p>18 were, those minutes actually set forth a pretty</p> <p>19 good discussion of what the commissioners were</p> <p>20 expressing as their concerns, what the city council</p> <p>21 were expressing was their concerns with the</p> <p>22 application?</p> <p>23 A Well, yes, based on -- and, in my</p> <p>24 mind, based on the input they were receiving.</p> <p>25 Q So they were explaining why before</p>	<p>128</p>

<p>1 they wrote it, correct? 129</p> <p>2 A Yes.</p> <p>3 Q And you agree with me that the city's</p> <p>4 comprehensive plan recognizes real estate market</p> <p>5 realities and land use trends, in general?</p> <p>6 A I think any comprehensive plan that's</p> <p>7 reasonably done tries to do that. I think this one</p> <p>8 probably had good intentions.</p> <p>9 Q You described earlier QuikTrip is a</p> <p>10 broader use in the spectrum of convenience stores.</p> <p>11 Do you remember that?</p> <p>12 A Yes.</p> <p>13 Q And I believe you think that they are</p> <p>14 more successful than the average gas store</p> <p>15 convenience, correct?</p> <p>16 A Yes.</p> <p>17 Q And QuikTrips have offering similar</p> <p>18 to fast-food restaurants in some respects, correct?</p> <p>19 A In some respect, yes.</p> <p>20 Q With their QuikTrip kitchen and</p> <p>21 fast-food preparation?</p> <p>22 A Correct.</p> <p>23 Q And you have made reference in your</p> <p>24 testimony to the positive impact on local tax</p> <p>25 revenues. Do you recall that?</p>	<p>1 general. I mean, you -- I don't -- I don't know 131</p> <p>2 about anybody else, but I think every piece of</p> <p>3 evidence I've read or studies that I have read</p> <p>4 suggests that people do their shopping sort of in</p> <p>5 their direction of travel. So this would be no</p> <p>6 different than a lot of other uses. And, you know,</p> <p>7 I may go to the mall, for example, but if I have</p> <p>8 other things to do that are in that general</p> <p>9 direction, I'm generally going to try to plan those</p> <p>10 trips accordingly.</p> <p>11 Q Right. But, as compared to a</p> <p>12 restaurant, you know, if it's not breakfast, lunch</p> <p>13 or dinner time, a restaurant may not get the</p> <p>14 passing buy traffic to come on its lot, right?</p> <p>15 A Yes, that's true.</p> <p>16 Q But a QuikTrip is trying to get</p> <p>17 people constantly to interrupt their travel, stop,</p> <p>18 make a purchase, get back on the road and keep</p> <p>19 going, in general?</p> <p>20 A Well, yeah. I mean they are going</p> <p>21 there because they want something that's at that</p> <p>22 location, which is the same as any other retail</p> <p>23 use.</p> <p>24 Q It was proposed to be a 24-hour</p> <p>25 location, correct?</p>
<p>1 A That's correct. 130</p> <p>2 Q And, in fact, I think in your report</p> <p>3 you indicated that the average QuikTrip location</p> <p>4 generates \$20 million in sales?</p> <p>5 A I don't remember that I said it was</p> <p>6 average, but I know some of them, yes, do that kind</p> <p>7 of sales, and that was in the report.</p> <p>8 Q You are not saying to the court that</p> <p>9 QuikTrip is the only viable use for this property,</p> <p>10 are you?</p> <p>11 A I'm saying -- no, I'm not.</p> <p>12 Q You were talking about the traffic</p> <p>13 patterns indicated that a use such as a QuikTrip</p> <p>14 relies on drawing from the passing by traffic, the</p> <p>15 existing traffic. Do you recall that testimony?</p> <p>16 A That's correct.</p> <p>17 Q We have had evidence of, you know, a</p> <p>18 volume of 36,000 cars a day, correct?</p> <p>19 A Correct.</p> <p>20 Q And so while anybody, of course, can</p> <p>21 stop and shop, the focus of the business is to get</p> <p>22 people who were otherwise just going to keep</p> <p>23 driving down the road to stop, to come and go,</p> <p>24 correct?</p> <p>25 A Which is true of retail uses in</p>	<p>1 A That's right. 132</p> <p>2 Q And you are aware that QuikTrip</p> <p>3 indicated that they really couldn't control the</p> <p>4 timing of their deliveries? Do you recall that?</p> <p>5 A Well, they can't control the timing</p> <p>6 of some of their deliveries, no matter -- no</p> <p>7 different than any other retail use.</p> <p>8 Q So all of the independent vendors,</p> <p>9 the Pepsi truck and what have you, correct?</p> <p>10 A Probably, to some degree, that's</p> <p>11 correct.</p> <p>12 Q Now, the Mobil On the Run on Olive</p> <p>13 and Schulte was a preexisting use -- it predated</p> <p>14 the adoption of the 2030 Comprehensive Plan,</p> <p>15 correct?</p> <p>16 A That -- that I don't know.</p> <p>17 Q So you don't recall if that Mobil</p> <p>18 station at Schulte and Olive has been there for</p> <p>19 over 30 years?</p> <p>20 A Well, there was a station there for a</p> <p>21 very long time. The Mobil On the Run is much newer</p> <p>22 than that.</p> <p>23 Q Correct. It's been improved, but</p> <p>24 prior to the adoption of the comprehensive plan,</p> <p>25 2030 plan, it was already a Mobil station for</p>

<p>1 years.</p> <p>2 A Yes, it was a gas station, right.</p> <p>3 MR. LUMLEY: That's all my questions.</p> <p>4 THE COURT: Is there any additional</p> <p>5 redirect examination?</p> <p>6 MR. CARMODY: No, Your Honor.</p> <p>7 THE COURT: The witness is excused.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MR. CARMODY: Your Honor, we would</p> <p>10 next like to call Lee Cannon to the stand.</p> <p>11 THE COURT: Please come forward and</p> <p>12 face the court to be sworn.</p> <p>13 (Whereupon, the witness was sworn by</p> <p>14 the court.)</p> <p>15 THE COURT: Please be seated.</p> <p>16</p> <p>17 LEE CANNON,</p> <p>18 having been produced as a witness and duly sworn by</p> <p>19 the court, testified as follows:</p> <p>20 DIRECT EXAMINATION</p> <p>21 QUESTIONS BY MR. PRSHA:</p> <p>22 Q Good afternoon, Mr. Cannon. Will you</p> <p>23 introduce yourself to the court, please?</p> <p>24 A My name is Robert Lee Cannon.</p> <p>25 Q And What is your occupation, Mr.</p>	133	<p>1 just to say updated.</p> <p>2 Q And, Mr. Cannon, do you ever do any</p> <p>3 work for any municipalities?</p> <p>4 A I do. From time to time, I'm hired</p> <p>5 by municipalities to do specific projects. I also,</p> <p>6 though, serve as a third-party expert for some</p> <p>7 communities that choose to hire me on an on-call</p> <p>8 basis. So I am effectively the traffic engineer in</p> <p>9 their public works department as a consultant.</p> <p>10 A few examples of those are Brentwood, Missouri,</p> <p>11 and O'Fallon, Illinois, where I've done dozens of</p> <p>12 studies for those communities directly.</p> <p>13 Q Have you ever done work for the City</p> <p>14 of Creve Coeur?</p> <p>15 A Yes. Directly, we just got hired to</p> <p>16 start a design for an intersection improvement at</p> <p>17 Old Olive and Lindbergh. About two years ago, year</p> <p>18 and a half or two years ago, we were hired to do a</p> <p>19 study of the Craig Road south of Olive as it goes</p> <p>20 into the business park and golf course, where we</p> <p>21 reviewed some options to improve that road and</p> <p>22 change some of the intersections around.</p> <p>23 And we've done a lot of studies not</p> <p>24 necessarily for Creve Coeur but in Creve Coeur for</p> <p>25 a variety of different development proposals, some</p>	135
<p>1 Cannon?</p> <p>2 A I am a traffic engineer. I'm a</p> <p>3 principal with CBB here in St. Louis.</p> <p>4 Q And what does a traffic engineer do?</p> <p>5 A Well, we do traffic and parking</p> <p>6 studies. We also design infrastructure elements</p> <p>7 like the addition of turn lanes, new traffic</p> <p>8 signals, improvements at existing facilities, brand</p> <p>9 new facilities, interchanges. But in my role at</p> <p>10 CBB, I focus primarily on traffic impact studies</p> <p>11 and, to some extent, traffic safety evaluations to</p> <p>12 mitigate existing problems.</p> <p>13 Q How long have you been a traffic</p> <p>14 engineer?</p> <p>15 A 27 years as of this month.</p> <p>16 Q Do you have any specific education or</p> <p>17 training with respect to that?</p> <p>18 A Yes. I have a bachelor's degree in</p> <p>19 civil engineering from Christian Brothers</p> <p>20 University in Memphis, Tennessee, and a master's</p> <p>21 degree also in civil engineering with a focus on</p> <p>22 traffic and transportation from the University of</p> <p>23 Tennessee in Knoxville. I also have continuing</p> <p>24 education requirements each year as a licensed</p> <p>25 professional engineer that are on various topics,</p>	134	<p>1 that got built, some that didn't.</p> <p>2 Q Prior to this study for this case,</p> <p>3 have you ever performed a traffic study in</p> <p>4 connection with a conditional use permit?</p> <p>5 A Yes.</p> <p>6 Q We've heard a lot of testimony today</p> <p>7 regarding Mobile On the Run that was recently</p> <p>8 developed just down the street on Schulte and</p> <p>9 Olive. Are you familiar with that development?</p> <p>10 A Yes, sir.</p> <p>11 Q How are you familiar with that</p> <p>12 development?</p> <p>13 A For about 10 or 12 years I looked at</p> <p>14 various development proposals on that general</p> <p>15 project site, which is the -- which is the</p> <p>16 northwest corner of Schulte and Olive, Missouri</p> <p>17 Route 340. And, ultimately, when the Mobil On the</p> <p>18 Run was proposed with the carwash, we completed the</p> <p>19 traffic impact study that was submitted as part of</p> <p>20 that application. And, as you mentioned, I believe</p> <p>21 that was a conditional use permit project.</p> <p>22 Q Okay. And do you live in the</p> <p>23 vicinity of the Mobil On the Run on Schulte?</p> <p>24 A I do. I live close to the site, and</p> <p>25 I actually -- my headquarters is in Creve Coeur on</p>	136

<p>1 the other side of 270, south side of Olive, but I</p> <p>2 live north of Olive between Schulte and Craig, and</p> <p>3 so this general study area is part of my -- pretty</p> <p>4 much my daily commute.</p> <p>5 Q So you are pretty familiar with the</p> <p>6 portion of Olive road that runs through Creve</p> <p>7 Coeur?</p> <p>8 A Yes. I believe our office has been</p> <p>9 in Creve Coeur now for six or seven years. And I,</p> <p>10 again, I drive this every day. I've lived up there</p> <p>11 north of Olive for -- since 1998, so like 20 or 30</p> <p>12 years.</p> <p>13 Q And, Mr. Cannon, can you describe the</p> <p>14 character of this portion of Olive road?</p> <p>15 A Yes. Well, first of all, you know,</p> <p>16 it -- you will hear me say Route 340 or Olive.</p> <p>17 Olive Boulevard in this vicinity is a primary</p> <p>18 arterial highway that is owned and maintained by</p> <p>19 the Missouri Department of Transportation, and I</p> <p>20 will refer to them and MODOT from time to time. It</p> <p>21 has a high level of traffic. It's probably one of</p> <p>22 the top ten state service streets. And, by that, I</p> <p>23 mean something that's not an interstate, most</p> <p>24 heavily traveled -- top ten heavily traveled in the</p> <p>25 region.</p>	137	<p>1 application that QuikTrip filed with the City of</p> <p>2 Creve Coeur early in 2020?</p> <p>3 A Generally, yes.</p> <p>4 Q What, if anything, were you asked to</p> <p>5 do with respect to that application?</p> <p>6 A Two primary things. I do a lot of</p> <p>7 work for QuikTrip, so they asked me to help them</p> <p>8 with their site plan and access configuration, but</p> <p>9 then from the CUP perspective, I was asked to do a</p> <p>10 traffic impact study.</p> <p>11 Q Okay. And what was the purpose of</p> <p>12 that study?</p> <p>13 A So with the traffic impact study,</p> <p>14 it's important to realize, when we ask what is a</p> <p>15 traffic impact study? A traffic impact study is</p> <p>16 really documentation, calculations and evaluations</p> <p>17 of pertinent questions related to traffic that the</p> <p>18 agencies that own and maintain the roads and must</p> <p>19 then approve the access that want to know about.</p> <p>20 So, typically, it has to do with</p> <p>21 traffic safety and efficient flow of traffic. It's</p> <p>22 also important to keep in mind that most if not all</p> <p>23 development and redevelopment will generate</p> <p>24 additional traffic. So there will be some impact.</p> <p>25 And for the traffic engineer, we make</p>	139
<p>1 You know, it's -- in this area you</p> <p>2 see it's got five lanes, two in each direction with</p> <p>3 a center turn lane. It's a -- it's a primary</p> <p>4 arterial highway running east and west in this</p> <p>5 area, and in general terms, the land development</p> <p>6 along it is commercial frontage with typically a</p> <p>7 few hundred feet back behind the frontage, some</p> <p>8 sort of subdivisions or residential uses along the</p> <p>9 way.</p> <p>10 Q So, Mr. Cannon, what we have up here</p> <p>11 is Exhibit 5A and now Exhibit 2A. Do you recognize</p> <p>12 these exhibits?</p> <p>13 A I do, yes.</p> <p>14 Q And I guess, let me ask you this</p> <p>15 first. Do you know approximately how many cars are</p> <p>16 driving up and down Olive road here every day?</p> <p>17 A Yes. So part of what we do is we</p> <p>18 look at -- we rely on information provided by</p> <p>19 MODOT, and so, you know, with the global pandemic,</p> <p>20 traffic volumes are down. MODOT did a count on</p> <p>21 Olive that they reported as a 2020 count, and that</p> <p>22 volume was, I believe, was 27,000 cars a day.</p> <p>23 That's pandemic levels. Previously, it was in the</p> <p>24 mid 30,000 cars per day along Olive.</p> <p>25 Q Okay. And are you familiar with CUP</p>	138	<p>1 the assumption that through the processes it gets</p> <p>2 approved, gets funded, gets built and then that</p> <p>3 traffic that it's expected to generate goes on to</p> <p>4 the roadway system. We go through a process to</p> <p>5 estimate how much traffic might be added to the</p> <p>6 roadway system. We count the cars that are</p> <p>7 currently used in the roadway system, and then we</p> <p>8 add the additional traffic to determine what impact</p> <p>9 there is.</p> <p>10 In some instances, there won't be an</p> <p>11 impact, and there's no need for mitigation. In</p> <p>12 other instances, there is an impact which is of a</p> <p>13 level which requires mitigation. And so we</p> <p>14 identify potential improvements to the roadway</p> <p>15 system, whether they be added turn lanes or changes</p> <p>16 to the traffic controls, like the signals and the</p> <p>17 stop signs, in order to offset or to mitigate that</p> <p>18 impact such that there is no significant</p> <p>19 detrimental impact to traffic.</p> <p>20 Q Mr. Cannon, as a result of your</p> <p>21 study, did you make any recommendations to</p> <p>22 QuikTrip's proposal to ensure that impact on</p> <p>23 traffic is sufficiently mitigated?</p> <p>24 A I did. It is important to keep in</p> <p>25 mind, as I mentioned, when you ask what were we</p>	140

<p>1 asked to do, some of our recommendations got built 2 into the plan before the study was done, and then 3 additional recommendations were added after the 4 study was done and actually after some of the 5 reviews by the agencies were complete. So I don't 6 know if it's best if I point or if somebody points 7 for me.</p> <p>8 MR. PRSHA: Judge, would it be okay 9 if the witness pointed to the exhibits?</p> <p>10 THE COURT: Yes.</p> <p>11 Q (BY MR. PRSHA) Mr. Cannon, can you 12 show me some of those recommendations that you made 13 if it's possible for you to --</p> <p>14 A Would you just like me to speak up or 15 take a microphone or?</p> <p>16 Q I think you can speak up.</p> <p>17 A Okay. So number one, we have a term 18 we call "access management," and access management 19 is mitigating the number of curb cuts and 20 disruptions along the roadway and clarifying where 21 cars are supposed to enter and exit any roadway 22 system. So this is the existing view.</p> <p>23 THE COURT: As you point to the 24 document, please articulate what it is you are 25 pointing to.</p>	<p>141</p>	<p>1 access for the QuikTrip site is continued to be 2 connected and improved to that existing west drive. 3 So in comparing Plaintiffs' Exhibit 4 2A in the west driveway, Plaintiffs' Exhibit 5A in 5 the west driveway, it could be seen that the 6 driveway has been improved to clarify movement in 7 and out of the site and separates that inbound 8 outbound flow from the parking area.</p> <p>9 The central travel driveway when 10 comparing Exhibits 2A and 5A has also been improved 11 with a throat. Looking at Exhibit 2A, the center 12 driveway doesn't have any clarification. Looking 13 at Exhibit 5A, the driveway does. The existing 14 center driveway is currently right in and right out 15 only and will stay that way.</p> <p>16 Additional improvements that are 17 added on the plan are a right-turn lane on 18 eastbound Olive at Graeser Road which widening 19 would be put in place by QuikTrip, widening 20 eastbound Olive also at the existing center 21 driveway that provides right in right out. While 22 not shown on this drawing, not sure why, on 23 Plaintiffs' 5A, QuikTrip did propose a sidewalk 24 along the entire western frontage -- pardon me -- 25 along the entire west side of Graeser, which would</p>	<p>143</p>
<p>1 A Yes, Your Honor.</p> <p>2 I am on Plaintiffs' Exhibit 2A. And 3 there are currently three access driveways on 4 Olive. The first driveway is closest to the 5 Graeser Road traffic signals. The second driveway 6 is generally in front of the building located on 7 the east end of the site. The third driveway is 8 located adjacent to the building that is on the 9 west end of the site. The west end driveway has 10 three lanes that provide full access to Olive 11 Boulevard directly opposite a retail center which 12 is St. Vincent DePaul Resale Shop.</p> <p>13 The eastern driveway to the site will 14 be closed as part of the QuikTrip development 15 proposal. Now, moving to Plaintiffs' Exhibit 5A, 16 you will notice, looking at that same location on 17 Olive nearest Graeser, that there is no third 18 driveway any longer.</p> <p>19 One of the items that was built into 20 the plan for CBB's recommendation before the 21 traffic study began was that the existing west 22 driveway opposite St. Vincent DePaul should be 23 improved with a better throat distance; that is, 24 these curbs that go south of Olive kind of defining 25 the driveway, and then, also, making sure that that</p>	<p>142</p>	<p>1 be QuikTrip's eastern frontage.</p> <p>2 While I don't see it on this plan, it 3 was mentioned in the traffic impact study, so I was 4 aware of that when we began the process.</p> <p>5 Also, there would be an extension of 6 the two northbound lanes of Graeser past the 7 QuikTrip driveway to near the First Community 8 Credit Union driveway. So as cars stack up at the 9 light waiting to turn onto Olive, there would be a 10 longer segment of side-by-side lanes.</p> <p>11 And then, also, just look at the two 12 sides, the remaining retail side on the west end 13 and proposed QuikTrip on the east end, they are 14 very nicely tied together with flow patterns in 15 between the two so that the retail building can use 16 access to Graeser from the signal very clearly and 17 that the QuikTrip can use the western driveway to 18 Olive very quickly.</p> <p>19 Q (BY MR. PRSHA) And, Mr. Cannon, do 20 you know if any of these adjustments that you just 21 mentioned were warranted from current existing 22 baseline traffic conditions?</p> <p>23 A I believe what you are referring to 24 would be in the report we noted that, with respect 25 to MODOT's current access management guidelines,</p>	<p>144</p>

<p>1 the eastbound right-turn lane, which is not</p> <p>2 currently present, is warranted based on the</p> <p>3 current traffic loads.</p> <p>4 Q Do you believe that the adjustments</p> <p>5 you just mentioned and that you proposed and that</p> <p>6 were ultimately incorporated by QuikTrip would</p> <p>7 sufficiently mitigate any impact that QuikTrip</p> <p>8 development would have on traffic operations?</p> <p>9 A I believe that they would adequately</p> <p>10 mitigate so there are no significant impacts to the</p> <p>11 traffic.</p> <p>12 Q And do you know if QuikTrip</p> <p>13 ultimately adopted each of your recommendations</p> <p>14 into its final proposal?</p> <p>15 A Yes, that's my understanding.</p> <p>16 Q As you sit here today, do you have an</p> <p>17 opinion as to whether the final proposal that was</p> <p>18 submitted to the city which includes your</p> <p>19 recommendations will have a significant impact on</p> <p>20 traffic operating conditions in this area?</p> <p>21 A I do.</p> <p>22 Q And what is your opinion?</p> <p>23 A It's my expert opinion as a traffic</p> <p>24 operations engineer that the -- that with the</p> <p>25 stated improvements, the QuikTrip will not have a</p>	<p>145</p>	<p>1 certain parts.</p> <p>2 And so that was held on July 10th of</p> <p>3 2019 to get input for the nuances related to the</p> <p>4 specific study versus any other study that we might</p> <p>5 do. So we followed industry standards with respect</p> <p>6 to the general processes, but then that also</p> <p>7 includes very specifically issues that were</p> <p>8 discussed in that scoping meeting.</p> <p>9 Q Okay. And do you know what is</p> <p>10 currently located on the site in question?</p> <p>11 A Yes.</p> <p>12 Q And what is currently located there?</p> <p>13 A Well, there are two rectangular</p> <p>14 retail buildings with bays, I believe. At the time</p> <p>15 we began the study, the eastern building was</p> <p>16 partially occupied with maybe like a shoe repair</p> <p>17 shop and a handful of things. And then the west</p> <p>18 building might have been about half full at the</p> <p>19 time. It included at least one restaurant, a music</p> <p>20 store that we go to, and some other maybe</p> <p>21 lower-intensity retail shops.</p> <p>22 Q I believe you testified earlier that</p> <p>23 you believe the proposed QuikTrip development will</p> <p>24 generate some additional traffic for this site? Is</p> <p>25 that correct?</p>	<p>147</p>
<p>1 -- will not have a significant impact on traffic</p> <p>2 flow or safety on the studied roadways.</p> <p>3 Q Did you prepare a report in</p> <p>4 connection with your traffic study?</p> <p>5 A Yes, I did.</p> <p>6 Q Can we put up Exhibit 25. Mr.</p> <p>7 Cannon, do you recognize this document?</p> <p>8 A Yes.</p> <p>9 Q What is it?</p> <p>10 A It is the report that was written for</p> <p>11 the traffic impact study documentation, and it is</p> <p>12 dated January 13th, 2020, Plaintiffs' Exhibit 25.</p> <p>13 Q And does it fairly and accurately</p> <p>14 depict your January 2020 report?</p> <p>15 A Yes.</p> <p>16 Q Okay. And were the methodologies you</p> <p>17 used in this study consistent with what you would</p> <p>18 do for any traffic study?</p> <p>19 A In general, yes. But, as a</p> <p>20 clarifier, I would like to mention, with all</p> <p>21 studies, as I mentioned previously about what a</p> <p>22 traffic study is, we held what's called a traffic</p> <p>23 scoping meeting because we wanted to know what</p> <p>24 issues were important to the City of Creve Coeur as</p> <p>25 well as MODOT, because they have jurisdiction over</p>	<p>146</p>	<p>1 A Yes.</p> <p>2 Q And would you expect any development</p> <p>3 of substance to generate some additional traffic?</p> <p>4 A Yes.</p> <p>5 Q Can you describe the nature of the</p> <p>6 additional traffic at this site that you expect?</p> <p>7 A Well, yes. So at the time of the</p> <p>8 study, and we back checked this with the realtor</p> <p>9 during the hearings process. So the realtor</p> <p>10 indicated that -- I'm going to use some round</p> <p>11 numbers -- that maybe total 30,000 square feet</p> <p>12 between the two buildings. At the time we did our</p> <p>13 traffic counts, there was about 25 or 30,000 square</p> <p>14 feet of occupied space between the two.</p> <p>15 Q Okay.</p> <p>16 A Now, it's my understanding today that</p> <p>17 the eastern building is completely vacant. So it's</p> <p>18 generating no traffic. And I'm not sure if that</p> <p>19 answered the question.</p> <p>20 Q So I think it's a good point. My</p> <p>21 next question, though, is, you know, you testified</p> <p>22 that this development will generate some additional</p> <p>23 traffic. Can you describe the nature of that</p> <p>24 additional traffic for me?</p> <p>25 A Okay. So QuikTrip is a convenience</p>	<p>148</p>

<p>1 oriented use. They sell gasoline, convenience 2 store items, soda, packaged foods, some grab-and-go 3 hot foods. They have now, in these newer style 4 stores, like a barista so you can order a custom 5 coffee. And I think you can get a hot pizza with 6 things you want on it.</p> <p>7 But in general terms, a convenience 8 store with gas has two types of visitors, and it's 9 important to define two terms. There's what's 10 called a new trip. So as we look at the study area 11 and if I lived to the south on Graeser, and I was 12 cooking dinner, and I forgot that I needed milk, 13 and I'm at home, and I drive to QuikTrip because I 14 need milk, and I'm going to QuikTrip to get milk, 15 and then I drive back home, that's a new trip. If 16 I didn't need milk, if QuikTrip wasn't there, I 17 wouldn't go.</p> <p>18 However, if I'm on the way home and 19 my spouse calls me and says, "We need milk," and I 20 am on my way from the office to home, and I was 21 going to go from office to home anyway, and I 22 turned in to stop and get milk at QuikTrip, that's 23 called a pass-by trip. Or, if I'm on my way home 24 and I decide that I'm on empty on the gas tank, and 25 I was going home anyway, and I pulled over to get</p>	<p>149</p>	<p>1 have some new trips, but we will actually have a -- 2 based on the studies that we've done, and traffic 3 engineers in general find around 55 to 75 percent 4 of convenience store use trips are pass-bys.</p> <p>5 We use 75 percent for QuikTrip. They 6 have market information that they share with me, 7 and their numbers, as they poll their customers, 8 indicate that they believe they are around over 80 9 percent pass-by, but we use 75 to be a little bit 10 more conservative.</p> <p>11 Q So based on what you are saying, does 12 that mean that QuikTrip thinks or the number you 13 are using is about 75 percent of the new or 75 14 percent of the additional trips generated by this 15 site will be pass-by trips that were already going 16 up and down Olive Road?</p> <p>17 A That is our estimate of that, and 18 it's important to know we do that, also, you know, 19 with the review agencies, with MODOT and the city's 20 consultant, related to those numbers.</p> <p>21 Q Do you believe there will be a lot of 22 new cars driving up and down Graeser Road because 23 of this develop? New trips?</p> <p>24 A Not a lot, no. There may be some, 25 because the people that live south on Graeser may</p>	<p>151</p>
<p>1 gas, that's also a pass-by trip.</p> <p>2 Now, what's important to know is that 3 the new trip, and that's I drove to the store to 4 get milk, and that's one trip, and then I drove 5 from the store to back home, that's two new trips. 6 If I am driving through these intersections, and 7 then I turn in the QuikTrip driveway to get gas on 8 my way home, and then I turn out of the QuikTrip 9 driveway to keep on going home, I made two 10 additional turns at the QuikTrip driveway that were 11 pass-by trips.</p> <p>12 But as you look in each direction, on 13 the roadway system, I didn't add any traffic to the 14 other intersections. So out of that 30 to 35,000 15 cars per day on Olive, you would have only noticed 16 my gasoline pass-by trip when I turned in and 17 turned out of the driveway. You wouldn't have seen 18 any additional traffic at Graeser and Olive.</p> <p>19 Q Gotcha. So you say this development 20 will generate additional traffic. Does that 21 include the people who are already were traveling 22 down Olive and are just going to be turning in and 23 out of the site?</p> <p>24 A And we define that very specifically 25 in the study as new and pass-by trips. So we will</p>	<p>150</p>	<p>1 need things that they will come to the site for. 2 But it's important to keep in mind that currently 3 on this section of Olive, and I'm going to broaden 4 from the traffic study report, study area, that 5 there is the Mobil On the Run at Schulte; there's 6 the Circle K at Schulte; and then there is the 7 Waterway on Old Olive and Olive, and those three 8 locations, if somebody, again, needs milk or gas, 9 no matter whether they are coming from their home 10 or already on the roadway, that traffic is already 11 out there on the roadway system. So I don't know 12 that you would, in reality, have brand new needs 13 for the Graeser neighborhood to go get services 14 that they aren't already going through those 15 intersections to get on Olive.</p> <p>16 Q Okay. And just to clarify from 17 earlier, Mr. Cannon, in your expert opinion, did 18 the recommendations you proposed to QuikTrip, which 19 they agreed and incorporated, sufficiently mitigate 20 any substantial impact that these additional trips 21 would have on traffic conditions?</p> <p>22 A In my opinion, yes, mitigated any 23 significant or substantial impact.</p> <p>24 Q Okay. Did anyone review your study 25 on behalf of the city?</p>	<p>152</p>

153

1 A Yes.

2 Q Who reviewed your study?

3 A Well, specifically we received review

4 comments that were put together by George Butler

5 Associates.

6 Q And what is George Butler Associates?

7 A They are a consulting firm that also

8 does some traffic engineering work, and I believe

9 for a long period of time the city has used them as

10 a third-party consultant and reviewer.

11 Q Did they prepare a peer review of

12 report of your study?

13 A They did.

14 Q And did you review their report?

15 A I did.

16 Q If we could put up Exhibit 26,

17 please. Mr. Cannon, do you recognize this

18 document?

19 A I do.

20 Q Does it fairly and accurately depict

21 GBA's peer review that you just described?

22 A It does. It's dated April 14th,

23 2020, and signed as being from Kyle Evans and Mike

24 Erdtmann.

25 Q Okay. I would like to direct you to

154

1 point 4 on Page 3 of the report.

2 A Of their report?

3 Q Of their report, yes.

4 A Point 4, yes.

5 Q Can you read those first two

6 sentences of point 4 for me?

7 A Yes, sir.

8 The 2020 background and forecasted

9 synchro files were reviewed to determine the impact

10 of the development with improvements proposed in

11 the study. With the stated improvements, the

12 development is not expected to have an unfavorable

13 impact on the surrounding roadway network.

14 Q What does that mean to you?

15 A I mean, effectively, it means that if

16 we do -- if QuikTrip does what we told them to do,

17 that they don't anticipate any significant impact

18 either. They are effectively concurring with the

19 traffic impact study.

20 Q Okay. So is it your understanding

21 that by the time this project was voted on by the

22 city council GBA had acknowledged that its traffic

23 concerns had been addressed to its satisfaction?

24 A That's my understanding.

25 Q Okay. And I believe you testified

155

1 earlier that MODOT oversees this portion of Olive

2 and Graeser?

3 A They do.

4 Q Okay. Did MODOT review your study?

5 A Yes, sir.

6 Q And did they provide any comments?

7 A Yes, they did.

8 Q If we could put up Exhibit 27.

9 Do you recognize Exhibit 27?

10 A I do.

11 Q Is it a fair and accurate

12 representation of the letter MODOT sent in response

13 to your study?

14 A It is.

15 Q And did QuikTrip incorporate all of

16 MODOT's suggestions?

17 A They did.

18 Q Okay. And by the time the city

19 council voted on the conditional use permit, do you

20 know if MODOT had any concerns about the impact the

21 development would have on traffic?

22 A Yes. I contacted the MODOT

23 representatives we had been dealing with and

24 indicated that QuikTrip was going to comply with

25 the two bulleted items, and MODOT indicated they

156

1 had no further concerns.

2 Q Okay.

3 A But it's important, as a

4 clarification, that MODOT accepts, using that word

5 "accepts," or concurs with findings of the traffic

6 impact study, but they do not issue approval

7 letters for reports.

8 Q So you wouldn't expect to see an

9 approval letter somewhere from MODOT at this stage?

10 A That is correct, because they do not

11 issue those. But their approvals come in the form

12 of a permit once design plans are drawn and meet

13 their criteria.

14 Q Got you. So at the end of the day,

15 by the time this conditional use permit was voted

16 on by the city council, had QuikTrip satisfied the

17 concerns of all the technical people involved,

18 meaning you, GBA, MODOT?

19 A That is my understanding, and some of

20 my understanding of that came through the owners'

21 representative Miss Gwen Keen, and she was relaying

22 to me any concerns that she had heard from the

23 collective, if you will, city, through the city

24 representatives.

25 Q Okay. I believe you testified

<p>1 earlier that you also conducted traffic studies for</p> <p>2 the Mobil On the Run at Olive and Schulte, is that</p> <p>3 correct?</p> <p>4 A I did.</p> <p>5 Q And did you find that the Mobil</p> <p>6 development there would generate any additional</p> <p>7 traffic?</p> <p>8 A I did. Very similarly, it has new</p> <p>9 and pass-by trips with the majority of trips to it</p> <p>10 also being pass-by. They are effectively the same</p> <p>11 use with the exception of a carwash component that</p> <p>12 Mobil On the Run has but QuikTrip does not.</p> <p>13 Q Okay. I'm going to go ahead and put</p> <p>14 up what's been marked as Exhibit 42.</p> <p>15 A Just for clarification, the</p> <p>16 side-by-side exhibits, one is flipped north up and</p> <p>17 one is flipped north down. But, so -- well, now</p> <p>18 both are facing -- okay -- that is correct. North</p> <p>19 is up on that one.</p> <p>20 Q Will that bother you if it's like</p> <p>21 that?</p> <p>22 A I just want to clarify, if we start</p> <p>23 talking about directions, for the people that view</p> <p>24 them in the courtroom, one is upside down, so the</p> <p>25 directions will be reversed.</p>	<p>157</p>	<p>1 A I do not believe that they did.</p> <p>2 Q But did QuikTrip incorporate</p> <p>3 everything you recommended?</p> <p>4 A To my understanding, yes, based on</p> <p>5 the site plan plus the addition of the sidewalk and</p> <p>6 the Graeser Road extension.</p> <p>7 Q Okay. And Mobil was approved,</p> <p>8 correct?</p> <p>9 A It was.</p> <p>10 Q And was -- and QuikTrip was not, is</p> <p>11 that correct?</p> <p>12 A That's correct.</p> <p>13 Q And in your expert opinion, was there</p> <p>14 any basis for the city to say that the Mobil On the</p> <p>15 Run did not have a substantial negative impact on</p> <p>16 traffic conditions but that QuikTrip did?</p> <p>17 A I don't know what they would be.</p> <p>18 Q Okay. Do you believe the QuikTrip</p> <p>19 development sufficiently takes into account</p> <p>20 pedestrian traffic?</p> <p>21 A I do.</p> <p>22 Q And how is that?</p> <p>23 A Two basic elements. The first of</p> <p>24 which I mentioned before which is access</p> <p>25 management. For every curb cut, the pedestrians</p>	<p>159</p>
<p>1 Q Just to clarify, this will be on the</p> <p>2 south side of Olive road, is that correct?</p> <p>3 A Plaintiffs' Exhibit 5A?</p> <p>4 Q Uh-huh.</p> <p>5 A It has north pointing down.</p> <p>6 Q And if you look to Exhibit 42, this</p> <p>7 Mobil site would be on the north side of Olive</p> <p>8 road, is that correct?</p> <p>9 A That is correct. Plaintiffs' Exhibit</p> <p>10 42, for the exhibit in the courtroom, north is</p> <p>11 pointing up.</p> <p>12 Q Okay. Thank you for the</p> <p>13 clarification.</p> <p>14 So I believe you testified a minute</p> <p>15 ago that the Mobil development generated additional</p> <p>16 traffic, kind of the same way that the QuikTrip</p> <p>17 would, is that correct?</p> <p>18 A In general terms, yes.</p> <p>19 Q And did you make recommendations to</p> <p>20 mitigate the impact of traffic that Mobil would</p> <p>21 have?</p> <p>22 A I did.</p> <p>23 Q And did Mobil On the Run incorporate</p> <p>24 all of your recommendations to mitigate traffic</p> <p>25 impacts?</p>	<p>158</p>	<p>1 walking along the walkway have to cross those curb</p> <p>2 cuts. And if the curb -- so the proposed QuikTrip</p> <p>3 plan eliminates the east driveway, so it eliminates</p> <p>4 one pedestrian crossing of traffic access.</p> <p>5 The proposed QuikTrip plan also</p> <p>6 improves the throat, the curved distance from Olive</p> <p>7 to the driveways or aisles in the parking lots that</p> <p>8 clarifies vehicular movement, and that also</p> <p>9 increases pedestrian safety as the pedestrians and</p> <p>10 vehicles are crossing one another.</p> <p>11 The second issue would be facilities.</p> <p>12 There is already a sidewalk along the south side of</p> <p>13 Olive to provide pedestrian facility. But there is</p> <p>14 not currently a sidewalk on the west side of</p> <p>15 Graeser Road, and so that facility would be added.</p> <p>16 Today there is a sidewalk on the east side of</p> <p>17 Graeser. The QuikTrip development would add a</p> <p>18 facility to accommodate pedestrians, I believe they</p> <p>19 indicated, all the way from Olive to their south</p> <p>20 property line, which is south of their driveway.</p> <p>21 Q Okay. And if the city is now</p> <p>22 claiming that this development would have a</p> <p>23 substantial negative impact on pedestrian traffic,</p> <p>24 would you agree with that statement?</p> <p>25 A I would not, but as a traffic</p>	<p>160</p>

<p>1 engineer, the way I would approach that is to</p> <p>2 determine what those concerns were and then to look</p> <p>3 for mitigating a measure to that if they -- if they</p> <p>4 had some specific reason.</p> <p>5 Q Did anybody raise that issue to you</p> <p>6 specifically and ask you to point out ways to</p> <p>7 mitigate the issue over the course of your work on</p> <p>8 this case?</p> <p>9 A One additional issue was raised by</p> <p>10 George Butler Associates, and that was an</p> <p>11 investigation of a second crossing of Olive</p> <p>12 Boulevard.</p> <p>13 Q Did you determine that to be</p> <p>14 necessary?</p> <p>15 A I did not.</p> <p>16 Q Okay.</p> <p>17 A If you look up and down Olive, over</p> <p>18 -- well, in the last 10 or 20 years there were not</p> <p>19 a whole lot of signalized crossings of Olive.</p> <p>20 MODOT has changed their attitude somewhat. This</p> <p>21 crossing, the crossing of Olive on the east side of</p> <p>22 Graeser Dautel was put in as part of another CBB</p> <p>23 project when the brand -- I call it brand new.</p> <p>24 It's probably been ten years now. When the newer</p> <p>25 Walgreens was put in at Dautel, the two roadways</p>	<p>161</p> <p>1 because this is a vehicle oriented business it will</p> <p>2 have a substantial -- or it will have a substantial</p> <p>3 negative impact on the character of the area.</p> <p>4 Would you agree with that statement, from a traffic</p> <p>5 and land use perspective?</p> <p>6 A No. It's important to clarify that,</p> <p>7 as I'm not a land use or a planning expert, but the</p> <p>8 term in traffic engineering is the transportation</p> <p>9 land use cycle. So we are connected in our -- in</p> <p>10 our professions, if you will.</p> <p>11 Over a long, long period of time, the</p> <p>12 frontages on both sides of Olive, for the majority,</p> <p>13 have been commercial. There's still a few homes up</p> <p>14 and down the roadway. I don't personally know</p> <p>15 whether some of those homes may still be</p> <p>16 residential zoning or they may have been converted</p> <p>17 to commercial. I know that some of those homes in</p> <p>18 the past have been used for commercial uses.</p> <p>19 There's a landscaping business in one</p> <p>20 of the homes that was torn down -- where the Mobil</p> <p>21 On the Run carwash is currently located.</p> <p>22 But when we talk about Olive</p> <p>23 Boulevard and its character, it carries a</p> <p>24 substantial amount of through traffic. It's a</p> <p>25 heavily traveled road. It's an arterial highway</p>
<p>1 were aligned opposite one another and signalized.</p> <p>2 That's also when the median was put in at Olive</p> <p>3 between Schulte and Graeser.</p> <p>4 As part of Mobil On the Run, Mobil On</p> <p>5 the Run did add a crosswalk on -- across Olive on</p> <p>6 the west leg of Olive at Schulte.</p> <p>7 Q So would both sites now have a</p> <p>8 crosswalk crossing Olive?</p> <p>9 A Both would have one crosswalk across</p> <p>10 Olive, but then both would have crossings of the</p> <p>11 side roads: Schulte and Mary Meadows, and then</p> <p>12 Graeser and Dautel, so that from either side of the</p> <p>13 road you could get to the single crossing of Olive.</p> <p>14 Q So, in your opinion, does this</p> <p>15 QuikTrip development pose any additional concerns</p> <p>16 with respect to pedestrian traffic that would not</p> <p>17 also be present from the Mobil On the Run?</p> <p>18 A Not in my opinion.</p> <p>19 Q Are you familiar with any of the -- I</p> <p>20 believe you talked about this earlier, but are you</p> <p>21 familiar with any uses that generally appear on</p> <p>22 this portion of Olive around the QuikTrip</p> <p>23 development?</p> <p>24 A Yes.</p> <p>25 Q And the city is now alleging that</p>	<p>162</p> <p>1 which means its purpose is to carry traffic from</p> <p>2 one side of the county to the other and in between</p> <p>3 the interstates to the local areas where we have</p> <p>4 subdivisions.</p> <p>5 And then there's very few traffic</p> <p>6 signals along Olive. When you think about it from</p> <p>7 an access perspective, they are spaced out with the</p> <p>8 intent that it's a lot easier to make left turns on</p> <p>9 and off of Olive at signals.</p> <p>10 So there's really two characters on</p> <p>11 each one of these roadways that intersect Olive at</p> <p>12 a signal. There's the frontage, couple hundred</p> <p>13 feet from Olive, you know, to the north or to the</p> <p>14 south. It's within the zoning characteristic of</p> <p>15 that area. It's a commercial corridor. It carries</p> <p>16 traffic to and from Olive.</p> <p>17 But then as you move behind the</p> <p>18 commercial corridor, the character of those</p> <p>19 roadways is generally a, you know, a collector</p> <p>20 street and primarily, specifically to Graeser, it's</p> <p>21 residential. Also, if you look to the north along</p> <p>22 Dautel, once you get past Walgreens and the coin</p> <p>23 shop, the Scotsman, it's also residential. You go</p> <p>24 north past the Mobil On the Run, it's residential.</p> <p>25 You go south on Mary Meadows, along Mary Meadows is</p>

1 a private street. 165

2 You do have commercial buildings on

3 both sides. There's a flag shop on one side, a

4 DJ business on the other, but down the hill on Mary

5 Meadows it's also residential.

6 So I don't believe, it's my

7 professional opinion, I don't believe that Graeser

8 Road is a residential character immediately

9 adjacent to Olive, but I also don't believe that

10 the proposal or the existing condition has a

11 character impact on Graeser Road south of the

12 commercial zone or the commercial frontage.

13 Q Okay. And, Mr. Cannon, the city is

14 alleging that this development poses a risk to the

15 safety of children. From a traffic standpoint,

16 would you agree with that statement?

17 A No, not over and above whatever risks

18 there might be to children being at Olive and

19 Graeser already. Doesn't really change it.

20 Q From a traffic standpoint, is there

21 anything about this development that makes it more

22 hazardous for children than Mobil On the Run down

23 the street?

24 A Not that I would know, not that I

25 could determine.

1 Q Okay. If we could put up Exhibit 1, 166

2 please.

3 Mr. Cannon, have you seen these six

4 standards before?

5 A I have.

6 Q And are you aware that the city is

7 alleging that one or more of the factors were not

8 satisfied because the impact the development would

9 have on traffic?

10 A That's my understanding.

11 Q And so with respect to traffic, do

12 you believe the proposed QuikTrip development,

13 after incorporating your recommendations, should

14 negatively impact any of these factors?

15 A Well, first of all, as an engineer, I

16 generally take things pretty literally, and traffic

17 is not specifically mentioned in any of these, but

18 I could also read in that issues related to

19 community welfare and convenience could go to

20 traffic congestion and traffic safety and safety of

21 all the users. But with the proposed improvements,

22 I do not believe that there will be negative

23 impacts, significant negative impacts, based on

24 these criteria, if improved as shown.

25 Q And as agreed to by QuikTrip, is that

1 correct? 167

2 A Yes.

3 And I would like to clarify one of

4 those answers.

5 Q Okay.

6 A And it relates to you asked me about

7 this list of criteria, and I would suggest to you

8 that I can only comment with respect to those

9 criteria that I have expertise, so I don't know

10 anything about, for example, erosion control, so.

11 Q Understood.

12 A As they relate to traffic, is my

13 answer.

14 Q Thank you, Mr. Cannon. That's all

15 I've got.

16 A Thank you.

17 THE COURT: Is there cross

18 examination?

19 MR. LUMLEY: Yes, Your Honor.

20 THE COURT: Proceed.

21

22 CROSS EXAMINATION

23 QUESTIONS BY MR. LUMLEY:

24 Q Good afternoon.

25 A Good afternoon, sir.

1 Q So when you did your traffic impact 168

2 study regarding the Mobil project, it was already

3 an existing gas station convenience store carwash

4 in operation at that corner, correct?

5 A Well, as I mentioned, I've lived here

6 for quite a while, and -- pardon me one second.

7 There was a Mobil gas station at that location.

8 They had a kiosk. I don't recall if it was a

9 large enough of a building where you could go in or

10 they handed you things through a window. And they

11 had a limited number of gas pumps, and I believe

12 they had a small drive-through carwash, but I don't

13 remember if in their last several years it was

14 operational or not.

15 Q And across Schulte there was a

16 formally a Shell and had become a Circle K,

17 correct?

18 A Yes.

19 Q Gas convenience store, small carwash,

20 correct?

21 A Yes. So they have gas -- they have

22 slightly larger convenience store, relatively small

23 by today's standards, and a drive-through carwash.

24 Q When you did the study for the Mobil,

25 there was no service station on the south side of

<p>1 Olive for a good mile in either direction, correct?</p> <p>2 You would have to go into Olivette to a BP to the</p> <p>3 east, and you have to go to the west to Ballas for</p> <p>4 a gas station, on the south side?</p> <p>5 A On the south side?</p> <p>6 Q Yeah.</p> <p>7 A I think the closest south side to the</p> <p>8 west would be Phillips 66 at Ballas, and I don't</p> <p>9 know if there is an operational gas station in</p> <p>10 Olivette anymore on the south side, but there are</p> <p>11 -- there is another one on the north side in Creve</p> <p>12 Coeur.</p> <p>13 Q In Creve Coeur or Olivette?</p> <p>14 A In Creve Coeur there is the Waterway</p> <p>15 -- which is that a BP, maybe? I'm not sure the</p> <p>16 brand, but it's Waterway gas. It has a medium-size</p> <p>17 convenience area, and -- and the hand wash, the --</p> <p>18 more of a tunnel with a service wipe down as such.</p> <p>19 Q And the Mobil was originally proposed</p> <p>20 for the expansion that you were doing the impact</p> <p>21 study for. The Mobil was originally proposed for</p> <p>22 20 filling stations, reduced to 16 before approval,</p> <p>23 is that correct?</p> <p>24 A I believe that is correct.</p> <p>25 Q And there's no left-turn access from</p>	<p>171</p> <p>1 different project for CBB, and one might be asking</p> <p>2 why we would do a 2016 study and rely on 2013 data.</p> <p>3 One reason is we started looking at</p> <p>4 that development well before 2013, and it was the</p> <p>5 most current data we had on hand, but it is, if you</p> <p>6 will, the comparison level, the no-build level that</p> <p>7 we used for our study.</p> <p>8 Q Okay. And it shows traffic volumes</p> <p>9 at three peak times of day, correct?</p> <p>10 A Yes.</p> <p>11 Q A.M, midday and P.M?</p> <p>12 A Yes. And, for clarification, that's</p> <p>13 the morning commuter rush hour, the kind of</p> <p>14 lunchtime rush hour, if you will, and then the</p> <p>15 evening commuter rush hour on the way home,</p> <p>16 typically.</p> <p>17 Q And then the arrows on the inset show</p> <p>18 the different traffic movements through</p> <p>19 intersections and the counts associated with those</p> <p>20 movement at the three peak times, correct?</p> <p>21 A That is correct. So the first number</p> <p>22 would be morning. The second number will be middle</p> <p>23 day, and the third number would be the evening,</p> <p>24 P.M.</p> <p>25 Q And if we wanted to get the total</p>
<p>170</p> <p>1 northbound Schulte into the Mobil site, correct?</p> <p>2 A Yes, sir. And that was mandated very</p> <p>3 early on by St. Louis County DOT. St. Louis County</p> <p>4 DOT owned and maintained Schulte Road north of</p> <p>5 Olive.</p> <p>6 Q So there would not be any fuel tanker</p> <p>7 deliveries from Olive going northbound on Schulte</p> <p>8 into the Mobil site?</p> <p>9 A They couldn't enter there. I believe</p> <p>10 they could exit onto Schulte, physically.</p> <p>11 Q All right. I'm going to show you</p> <p>12 Exhibit LC1 from your deposition, specifically</p> <p>13 starting with Exhibit 2 which is the way we've</p> <p>14 labeled that document, Page 7. Do you have it?</p> <p>15 Do you recognize that as your traffic</p> <p>16 impact study on the Mobil project?</p> <p>17 A Yes. It's Exhibit 2 from the traffic</p> <p>18 study completed for the Mobil On the Run.</p> <p>19 Q And that page, that Exhibit 2, is</p> <p>20 depicting the traffic counts prior to the Mobil</p> <p>21 project being completed, correct?</p> <p>22 A Yes. For clarification, it's</p> <p>23 depicting the base traffic counts, so it's like the</p> <p>24 starting level that we utilized. But it's actually</p> <p>25 based on counts that were collected in 2013 as a</p>	<p>172</p> <p>1 number of study vehicles at a particular</p> <p>2 intersection in a particular direction for the</p> <p>3 combination of the three peaks, we would just add</p> <p>4 those numbers together, correct?</p> <p>5 A Yes. So you could do that for</p> <p>6 any one approach or for the intersection as a</p> <p>7 whole.</p> <p>8 Q So for --</p> <p>9 A And that would be for one hour. Each</p> <p>10 one would represent the cars in one hour.</p> <p>11 Q But if you wanted to combine all</p> <p>12 three peaks, you would just add all those numbers</p> <p>13 together?</p> <p>14 A Well, traffic engineers wouldn't</p> <p>15 necessarily add the A.M., and the midday and the</p> <p>16 P.M., but to know how much traffic is on Schulte,</p> <p>17 you could add the left and the through and the</p> <p>18 right to know how much traffic was for the morning</p> <p>19 and then add the middle and add the P.M. All --</p> <p>20 but distinctly they are for a specific one-hour</p> <p>21 timeframe, each three different.</p> <p>22 Q So in that Exhibit 2 from your Mobil</p> <p>23 study, would you read the figures for the</p> <p>24 southbound Schulte at Olive traffic? And just</p> <p>25 indicate what you're identifying.</p>

<p>1 A I am happy to do so, but it's kind of</p> <p>2 small here. Do you have a full representation? Do</p> <p>3 you have the complete study printed sideways, the</p> <p>4 other way, so they are larger? Do you have a</p> <p>5 magnifying glass?</p> <p>6 Q Only copy that I got.</p> <p>7 A All right. So you want --</p> <p>8 Q So southbound, Schulte at Olive.</p> <p>9 A Southbound Schulte Olive.</p> <p>10 I think I read 185 plus 90 is 275.</p> <p>11 Q Which figure is that?</p> <p>12 A In the morning, Exhibit -- oh, we are</p> <p>13 on 2.1.K.</p> <p>14 Q So --</p> <p>15 A Are those the numbers?</p> <p>16 Q Just to clarify, so we have</p> <p>17 southbound traffic at Schulte and Olive.</p> <p>18 A Yes.</p> <p>19 Q We have through traffic, correct?</p> <p>20 We have the through traffic direction?</p> <p>21 A Okay.</p> <p>22 Q Right? What are the three peak</p> <p>23 numbers for that?</p> <p>24 A Traffic going from Schulte to Mary</p> <p>25 Meadows?</p>	<p>1 Olive, what are the three peaks?</p> <p>2 A From Mary Meadows?</p> <p>3 Q Yes.</p> <p>4 A Zero, one and one.</p> <p>5 Q And then the westbound traffic</p> <p>6 turning right onto Schulte to go northbound, what</p> <p>7 is the three readings?</p> <p>8 A Is it 55, 80 and 160? It might be</p> <p>9 90. I can't tell, in the middle there.</p> <p>10 Q Can you turn to Table 8 in that</p> <p>11 report?</p> <p>12 A In my report, Table 8.</p> <p>13 Q Level of service score card, if you</p> <p>14 will.</p> <p>15 A Okay. I am on 2.1.K., Page 21 of my</p> <p>16 traffic impact study, and I'm at Table 8, traffic</p> <p>17 operating conditions build traffic volumes.</p> <p>18 Q So that's showing the projected</p> <p>19 traffic scores after the Mobil is renovated and</p> <p>20 expanded, correct?</p> <p>21 A That is correct.</p> <p>22 Q Would it be fair to characterize that</p> <p>23 table as showing that the Mobil would have a</p> <p>24 traffic score of F across the board?</p> <p>25 A Across the board?</p>
<p>1 Q Yes.</p> <p>2 A Zero in the morning, zero in the</p> <p>3 midday and one in the afternoon.</p> <p>4 Q Okay. And right turn southbound</p> <p>5 Schulte onto Olive, what are the three peaks?</p> <p>6 A 90, 100 and 145.</p> <p>7 Q And left turn southbound Schulte to</p> <p>8 eastbound Olive?</p> <p>9 A 185, 130 and 140.</p> <p>10 Q If you would turn to -- well, I'm</p> <p>11 getting ahead of myself.</p> <p>12 If you would turn to page -- so on</p> <p>13 the -- now looking at traffic that would be going</p> <p>14 northbound on Schulte, okay?</p> <p>15 A On the same Exhibit 2?</p> <p>16 Q Correct. So we have the traffic</p> <p>17 that's coming east on Olive making a left turn on</p> <p>18 Schulte. What are the three peaks?</p> <p>19 A So this is eastbound Olive to</p> <p>20 northbound Schulte. Left turn is 40, 80 and 110.</p> <p>21 And, again, I -- I hope I'm reading those</p> <p>22 correctly. They are small on this copy. But if</p> <p>23 there's a clarification or a correction, please</p> <p>24 accept that.</p> <p>25 Q And through traffic coming across</p>	<p>1 Q Yeah.</p> <p>2 A What do you mean by that term, sir?</p> <p>3 Q In all respects, it would be a level</p> <p>4 of service F (Inaudible.)</p> <p>5 (Whereupon, the court reporter asked</p> <p>6 for clarification.)</p> <p>7 Q In all respects and instances, is</p> <p>8 that a fair characterization?</p> <p>9 A I don't believe so.</p> <p>10 Q In many respects, it's much superior</p> <p>11 to a level F, correct?</p> <p>12 (Whereupon the court reporter asked</p> <p>13 for clarification.)</p> <p>14 Q A level F.</p> <p>15 A F as in "Frank"?</p> <p>16 Q Yes.</p> <p>17 A Again, if we are talking about the</p> <p>18 entirety of Table 8, all the studied intersections</p> <p>19 that we looked at, I would agree that there are</p> <p>20 some levels of service that are F, and there are</p> <p>21 some levels of service that are much better than F,</p> <p>22 all of the way to 8, but it depends on which</p> <p>23 intersection and which movement that we are</p> <p>24 discussing.</p> <p>25 Q Go to Exhibit 4 within that report.</p>

<p>1 THE COURT: Just a moment. We will</p> <p>2 go off the record.</p> <p>3 (Off record.)</p> <p>4 THE COURT: We are back on the</p> <p>5 record. Please proceed.</p> <p>6 Q (BY MR. LUMLEY) I believe I left off</p> <p>7 on Exhibit 4 within your Mobil traffic impact</p> <p>8 study. Do you have that in front of you, on Page</p> <p>9 19?</p> <p>10 A I do.</p> <p>11 Q So for the southbound Schulte traffic</p> <p>12 at Olive --</p> <p>13 A Yes.</p> <p>14 Q -- would you, first, for the right</p> <p>15 turn westbound movement, what are the three peaks?</p> <p>16 A Southbound right Schulte to Olive,</p> <p>17 90, 100, 145.</p> <p>18 Q And on the through traffic, three</p> <p>19 peaks?</p> <p>20 A Zero, Zero, two.</p> <p>21 Q And on the left turn eastbound</p> <p>22 traffic on Olive Schulte?</p> <p>23 A I think it says 189, 138 and 149.</p> <p>24 Q And for northbound traffic from Olive</p> <p>25 onto Schulte, so first the westbound traffic is</p>	<p>177</p> <p>1 about 20-year conditions. We have a no-build</p> <p>2 20-year conditions, and we have a build 20-year</p> <p>3 conditions.</p> <p>4 The no build assumes roughly 10.5</p> <p>5 percent growth in the existing traffic volumes.</p> <p>6 The build adds the proposed Mobil On the Run site</p> <p>7 trips to that 20-year no-build base.</p> <p>8 I believe what you may have asked in</p> <p>9 your question or intended to ask was will the</p> <p>10 20-year growth have more detriment than the Mobil</p> <p>11 itself? Was that your question?</p> <p>12 Q Tell me what your conclusion was from</p> <p>13 your 20-year forecast.</p> <p>14 A Well, first of all, we generally</p> <p>15 don't have that as a finding, 20-year no-build</p> <p>16 condition to the -- generally, that would be how we</p> <p>17 would go about that. However, we do want to know,</p> <p>18 as traffic grows on the roadway from other things</p> <p>19 happening regionally, will the access serving the</p> <p>20 site still be able to operate efficiently and</p> <p>21 safely, and that's what the purpose of the 20-year</p> <p>22 analysis was.</p> <p>23 I would be happy to answer your</p> <p>24 question if I -- maybe if you could restate it.</p> <p>25 Q What conclusions did you draw from</p>
<p>1 turning right onto Schulte, three peaks?</p> <p>2 A 52, 75 and 158.</p> <p>3 Q And then the through traffic from --</p> <p>4 A From Mary Meadows? Is zero, one and</p> <p>5 one.</p> <p>6 Q And then the eastbound left-turn</p> <p>7 traffic onto northbound Schulte?</p> <p>8 A 45, 80 and 110.</p> <p>9 Q In your Mobil study, you also did a</p> <p>10 forecast 20 years out. Do you recall that? Page</p> <p>11 27, if that helps.</p> <p>12 A Yes.</p> <p>13 Q And you reached the conclusion that</p> <p>14 there would be more degradation of traffic if the</p> <p>15 project wasn't built than if it was built, correct?</p> <p>16 A No. No, that's not right.</p> <p>17 Q That's what it says?</p> <p>18 A Are you asking -- do you mean to say</p> <p>19 that background traffic growth over the next 20</p> <p>20 years will degrade traffic even if the Mobil On the</p> <p>21 Run is not built?</p> <p>22 Q Correct.</p> <p>23 A That is correct. So in keeping with</p> <p>24 standard, industry standard methodologies and MODOT</p> <p>25 and city requirements, starting on page 27, we talk</p>	<p>178</p> <p>1 the 20-year forecast comparing the scenario of no</p> <p>2 changed Mobil to the scenario of Mobil being</p> <p>3 rebuilt?</p> <p>4 A Well, in general terms, that the</p> <p>5 background traffic growth from the 20-year would</p> <p>6 pretty much outpace the specific traffic increases</p> <p>7 from the Mobil build.</p> <p>8 Q Okay. I believe you indicated that</p> <p>9 Graeser Road is a Creve Coeur maintained roadway,</p> <p>10 is that correct?</p> <p>11 A South of the MODOT right of way, yes.</p> <p>12 Q And Schulte Road north of the MODOT</p> <p>13 right away is a county road?</p> <p>14 A That is correct.</p> <p>15 Q And Graeser is classified as a minor</p> <p>16 north-south collector, is that accurate?</p> <p>17 A Yes. By East-West Gateway, that is</p> <p>18 its functional classification road system.</p> <p>19 Q And Schulte is classified as a major</p> <p>20 north-south collector, is that correct?</p> <p>21 A Yes, by the same entity.</p> <p>22 Q Can you explain to the court</p> <p>23 East-West Gateway's involvement in this street</p> <p>24 classification?</p> <p>25 A Yes. Generally speaking, East-West</p>
	<p>179</p> <p>180</p>

<p>1 Gateway council of Governments is a municipal</p> <p>2 planning organization, regional funding and</p> <p>3 decision making on expenditures related to roads,</p> <p>4 roadway improvements and roadway maintenance flow</p> <p>5 through East-West Gateway. They have some other</p> <p>6 roles, but specifically as it relates to</p> <p>7 transportation and traffic, they identify a</p> <p>8 hierarchy of roads.</p> <p>9 The highest road classification is a</p> <p>10 freeway, an interstate, if you will, with</p> <p>11 high-speed, low-access, regional connections.</p> <p>12 Then you have your arterials, your collectors and</p> <p>13 your local streets. So your local streets are</p> <p>14 providing lots of direct access to property at much</p> <p>15 lower speeds.</p> <p>16 So the differential between minor</p> <p>17 collector, major collector, in a system</p> <p>18 perspective, they are, you know, side by side in</p> <p>19 the system. They are very similar. What</p> <p>20 collectors do is they collect traffic from local</p> <p>21 roads, and they connect to other collectors and/or</p> <p>22 arterials.</p> <p>23 So it's much like your systems in</p> <p>24 your body, if you will. The expressway is the</p> <p>25 backbone, you know. The arterials are then other</p>	<p>181</p>	<p>1 A That is correct.</p> <p>2 Q And then if we turn to Exhibit 4</p> <p>3 within this Exhibit 25 -- yeah, that one.</p> <p>4 A Yes.</p> <p>5 Q That's showing your projected traffic</p> <p>6 counts with the QuikTrip being built?</p> <p>7 A That is correct. So Exhibit 2 is</p> <p>8 baseline volume, which are traffic counts that were</p> <p>9 completed, I believe, in August of 2019. And then,</p> <p>10 also, because it wasn't built yet -- yes, August of</p> <p>11 2019, while school was in session. Because it</p> <p>12 wasn't built yet, we added to the counts the</p> <p>13 traffic from the Mobil On the Run projected from</p> <p>14 the Mobil On the Run study, and it was brought to</p> <p>15 our attention by the city staff that the HBE -- is</p> <p>16 it Hospital Builders Enterprise or Engineers? --</p> <p>17 down the street at Mosley was generally vacant, and</p> <p>18 they wanted us to include trips for an occupied</p> <p>19 office building also in the baseline. So we added</p> <p>20 those to the counts.</p> <p>21 And then to get from Exhibit 2 to</p> <p>22 Exhibit 4, we added the anticipated trips from the</p> <p>23 proposed QuikTrip, which is shown in Exhibit 3.</p> <p>24 Q And when you did that, you -- back</p> <p>25 up. I think you testified about this earlier.</p>	<p>183</p>
<p>1 major components, and then the local streets are</p> <p>2 all of the way down, say, to your fingertips. That</p> <p>3 puts it in perspective.</p> <p>4 So these collectors are intended to</p> <p>5 collect traffic and provide access to the</p> <p>6 arterials.</p> <p>7 Q And the difference between a minor</p> <p>8 collector and a major collector is that a minor</p> <p>9 collector is going to carry lesser volume and/or</p> <p>10 have fewer connections, is that accurate?</p> <p>11 A In general, yes. In the hierarchy,</p> <p>12 it may provide less connections, if you will.</p> <p>13 Q In -- I can get one binder out of</p> <p>14 your way.</p> <p>15 So do you have Plaintiffs' Exhibit 25</p> <p>16 still open there?</p> <p>17 A Yes.</p> <p>18 Q Within that, in a similar fashion,</p> <p>19 you have an Exhibit 2, correct?</p> <p>20 A Yes. I know I do. So it would be</p> <p>21 Page 9 of Plaintiffs' Exhibit 25.</p> <p>22 Q And this exhibit sets forth the base</p> <p>23 traffic that you are working from in this traffic</p> <p>24 impact study, correct? The before build situation,</p> <p>25 right?</p>	<p>182</p>	<p>1 You've done a fair amount of work for</p> <p>2 QuikTrip in the past, correct?</p> <p>3 A Yes, sir.</p> <p>4 Q And so when you were projecting</p> <p>5 specific traffic growth related to this proposed</p> <p>6 QuikTrip, you didn't use sort of industry standard</p> <p>7 for a service station. You used your experience</p> <p>8 with specific QuikTrips in St. Louis, is that</p> <p>9 correct?</p> <p>10 A That's correct. The industry</p> <p>11 standard information is for generic land uses. And</p> <p>12 whenever we can get local data for a specific</p> <p>13 tenant, we prefer to use it because not all</p> <p>14 convenience stores are created equal.</p> <p>15 Q And the QuikTrip numbers are higher</p> <p>16 than sort of the generic numbers, correct?</p> <p>17 A The ones we use, yes, they are. And</p> <p>18 it just provides a more conservative look at --</p> <p>19 really more realistic look at what we would expect</p> <p>20 for this proposed development.</p> <p>21 Q Leading to the traffic mitigation</p> <p>22 measures that you recommended and that QuikTrip</p> <p>23 accepted, as you discussed today?</p> <p>24 A That is correct.</p> <p>25 Q And in this instance, you did not do</p>	<p>184</p>

<p>1 a 20-year forecast, correct?</p> <p>2 A I don't believe that we did. And as</p> <p>3 I mentioned, testified previously, as with most</p> <p>4 traffic studies, we had a scoping meeting related</p> <p>5 to this, and it was agreed to by the city staff</p> <p>6 involved as well as MODOT that 20-year analyses</p> <p>7 really weren't necessary for this site.</p> <p>8 MR. LUMLEY: That's all my questions.</p> <p>9 THE COURT: Is there redirect</p> <p>10 examination?</p> <p>11 MR. PRSHA: Very briefly, Your Honor.</p> <p>12 THE COURT: Please proceed.</p> <p>13</p> <p>14 REDIRECT EXAMINATION</p> <p>15 QUESTIONS BY MR. PRSHA:</p> <p>16 Q Mr. Cannon, did you take into account</p> <p>17 the existence of the additional Mobil traffic in</p> <p>18 your QuikTrip study?</p> <p>19 A Yes. As I just mentioned, the recent</p> <p>20 question, I did. Because it was approved, it might</p> <p>21 have been under construction, but it definitely</p> <p>22 wasn't reopened at the time I did the QuikTrip</p> <p>23 study.</p> <p>24 Q Other than that, did your Mobil On</p> <p>25 the Run study otherwise have any importance with</p>	<p>185</p> <p>1 approved it. So it would depend on where we were</p> <p>2 located, whether that was city and county or city</p> <p>3 and MODOT.</p> <p>4 Q But that project was still approved,</p> <p>5 is that correct?</p> <p>6 A It was. It was built.</p> <p>7 Q Fair enough.</p> <p>8 And, again, really quickly just</p> <p>9 directing you to Exhibit 1. And, Mr. Cannon, do</p> <p>10 you see the word "traffic" anywhere in these</p> <p>11 standards?</p> <p>12 A Not stated directly, no.</p> <p>13 Q And if the -- if something that the</p> <p>14 city wanted to directly state there, do you believe</p> <p>15 they probably could have included that in their</p> <p>16 ordinances?</p> <p>17 A I don't have an opinion on their</p> <p>18 ordinances.</p> <p>19 Q Okay. So just to make sure I</p> <p>20 understand your opinion, do you believe that the</p> <p>21 QuikTrip development, which incorporates your</p> <p>22 recommendations, would have any significant impact</p> <p>23 on traffic?</p> <p>24 A No. It's my professional opinion</p> <p>25 that if the mitigating measures that I recommended</p>
<p>1 respect to your conclusion -- to your conclusions</p> <p>2 in your QuikTrip study?</p> <p>3 A You mean -- are you asking did I rely</p> <p>4 on anything in the Mobil study to determine my</p> <p>5 recommendations in the QuikTrip study?</p> <p>6 Q Yes.</p> <p>7 A No, not -- the only thing would be</p> <p>8 the, as you mentioned, the site generated trips</p> <p>9 from the Mobil were taken at face value and brought</p> <p>10 into the QuikTrip study so we could accurately</p> <p>11 reflect a baseline level assuming Mobil On the Run</p> <p>12 was built and operational and generating traffic.</p> <p>13 Q And did your Mobil study find that</p> <p>14 some of the traffic operating conditions were less</p> <p>15 than acceptable for that site?</p> <p>16 A As I recall, yes, and we -- as we</p> <p>17 typically would, we made certain recommendation for</p> <p>18 improvements and discussed certain warranted</p> <p>19 improvements.</p> <p>20 Q And I believe you said earlier that</p> <p>21 not every one of your recommendations were accepted</p> <p>22 by Mobil On the Run, is that correct?</p> <p>23 A I think some of the issues that we</p> <p>24 brought up as mitigating measures ultimately</p> <p>25 weren't required to be built by the agencies that</p>	<p>186</p> <p>1 are put in place, which they were shown on the</p> <p>2 plan, and it's my understanding, from speaking with</p> <p>3 QuikTrip representatives, that they had agreed to</p> <p>4 build everything that was discussed up to that</p> <p>5 point. As an issue arose, we were asked to</p> <p>6 determine if mitigation was required or to</p> <p>7 determine an appropriate mitigation, and as we</p> <p>8 worked through the processes of the study, it was</p> <p>9 my understanding that all of the technical details</p> <p>10 related to impact of traffic had been adequately</p> <p>11 addressed.</p> <p>12 MR. PRSHA: Okay. I have no further</p> <p>13 questions.</p> <p>14 THE COURT: Is there additional cross</p> <p>15 examination at this time?</p> <p>16 MR. LUMLEY: No, Your Honor.</p> <p>17 THE COURT: The witness is excused.</p> <p>18 Please call your next witness.</p> <p>19 MR. CARMODY: Judge, we now have the</p> <p>20 deposition portions to play of the corporate</p> <p>21 representative of the City of Creve Coeur which</p> <p>22 we've exchanged with Mr. Lumley. Probably about a</p> <p>23 half an hour.</p> <p>24 THE COURT: Is his also a video?</p> <p>25 MR. CARMODY: Yes, it is.</p>
	<p>187</p> <p>188</p>

<p>1 THE COURT: For the record, do you</p> <p>2 have a transcript of the deposition which you will</p> <p>3 stipulate to put into evidence?</p> <p>4 MR. CARMODY: I do. We do. And,</p> <p>5 again, you may be done for the day.</p> <p>6 (Laughter.)</p> <p>7 THE COURT: So for the record, the</p> <p>8 court reporter does not need to transcribe the</p> <p>9 video deposition as it is played.</p> <p>10 MR. CARMODY: That is correct.</p> <p>11 MR. LUMLEY: Your Honor, this is just</p> <p>12 so the record is clear. This is not an objection.</p> <p>13 The prior -- the entire video was</p> <p>14 played, so the entire transcript, you know, would</p> <p>15 come into the record. In this instance, we are</p> <p>16 just doing portions. So I think we are going to</p> <p>17 need to identify -- doesn't need to be now, but I</p> <p>18 think we need to identify the portions that are</p> <p>19 being shown so we know what part of the transcript</p> <p>20 came into the record.</p> <p>21 MR. CARMODY: We do. We have</p> <p>22 colorized versions of the or a colorized version of</p> <p>23 the transcript showing what we have and then a</p> <p>24 counter designation that we've agreed to. So we</p> <p>25 got yellow for ours, blue for theirs, and we can</p>	<p>189</p>	<p>1 record. Does the plaintiff have any additional</p> <p>2 evidence to offer at this time?</p> <p>3 MR. CARMODY: No more evidence to</p> <p>4 offer at this time, Your Honor; although, we will</p> <p>5 offer into evidence at this time, having been</p> <p>6 identified, Exhibits 1, 2, 3, 4, 5, 6, 7, 10, 11,</p> <p>7 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,</p> <p>8 29, 30, 31, 32, 33, 34, 36, 41, 42, and I have not</p> <p>9 obviously described what each of those are, but I</p> <p>10 don't believe that there were objections interposed</p> <p>11 by Mr. Lumley, and I don't need to describe unless</p> <p>12 you wish.</p> <p>13 THE COURT: To recap, I believe that</p> <p>14 the plaintiff is offering into evidence Exhibits 1</p> <p>15 through 7, 10 and 11, 15 through 27, 29 through 34,</p> <p>16 36, 41, and 42. Is that correct?</p> <p>17 G MR. CARMODY: Perfect.</p> <p>18 THE COURT: Is there any objection?</p> <p>19 MR. LUMLEY: No objection.</p> <p>20 THE COURT: Admitted.</p> <p>21 Is anything there else before going</p> <p>22 off the record?</p> <p>23 MR. CARMODY: Nothing, Your Honor.</p> <p>24 MR. LUMLEY: Nothing, Your Honor.</p> <p>25 THE COURT: All right, off the</p>	<p>191</p>
<p>1 give you the entire deposition transcript, and you</p> <p>2 will know that what we are playing is the yellow</p> <p>3 and the blue combined.</p> <p>4 THE COURT: If that is agreeable to</p> <p>5 both parties, I will be happy to take it that way.</p> <p>6 MR. LUMLEY: Yeah, that's fine. I</p> <p>7 just thought the record should be clear that it's</p> <p>8 not the entire transcript.</p> <p>9 THE COURT: Thank you. So I</p> <p>10 understand that you will submit to the court the</p> <p>11 transcript of the deposition colorized, as Mr.</p> <p>12 Carmody has described it, and that will be in lieu</p> <p>13 of the court reporter taking down what is played in</p> <p>14 court this afternoon.</p> <p>15 MR. LUMLEY: Correct.</p> <p>16 THE COURT: Thank you. Are you ready</p> <p>17 to proceed with that deposition?</p> <p>18 MR. CARMODY: We are, Judge.</p> <p>19 THE COURT: We will go off the</p> <p>20 record, in a sense. Of course, we are on the</p> <p>21 record for purpose of this playing, but Constance</p> <p>22 will no longer be transcribing. Thank you.</p> <p>23 (Whereupon, the videotaped deposition</p> <p>24 of Jason Jeggi was played.)</p> <p>25 THE COURT: We are back on the</p>	<p>190</p>	<p>1 record. Court is in recess.</p> <p>2 (Off record.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>192</p>

1	DAY TWO OF PROCEEDINGS	193	1	was played yesterday. You indicated you are the	195
2	JUNE 16, 2021		2	director of community development for the City of	
3	THE COURT: We are back on the		3	Creve Coeur, is that correct?	
4	record. Counselors, are you ready to proceed?		4	A Correct.	
5	MR. CARMODY: We are, Your Honor.		5	Q How long have you been in that	
6	And, Judge, if I may, at this point I		6	position?	
7	would like to offer Plaintiffs' Exhibits 43 and 44,		7	A I've been in that position for five	
8	43 being the transcript of the deposition of Gwen		8	and half years, almost six years.	
9	Keen, which was played in totality during the		9	Q In your deposition testimony you went	
10	course of yesterday's proceedings.		10	over your educational background and employment	
11	Exhibit 44 is portions of -- well,		11	history. Just to recap, how long have you been a	
12	it's the totality of transcript of Mr. Jaggi's		12	professional planner? How long has that been your	
13	deposition as corporate designee of the City of		13	occupation?	
14	Creve Coeur. It is a marked transcript, and the		14	A I've been a professional planner	
15	markings will be those portions of the deposition		15	since 1999.	
16	which were played yesterday.		16	Q Do you belong to any professional	
17	The yellowed markings are those of		17	organizations?	
18	Plaintiff and the blue markings are the counter		18	A Yes. The American Planning	
19	designations made by Defendant. So I would offer		19	Association as well as the American Institute of	
20	both of those transcripts into evidence.		20	Certified Planners.	
21	THE COURT: Any objection?		21	Q I think you have before you the	
22	MR. LUMLEY: No objection.		22	exhibit binder from yesterday. Is that still	
23	THE COURT: Admitted.		23	there?	
24	MR. CARMODY: Thank you, Judge.		24	A Yes.	
25	THE COURT: Is there anything further		25	Q Can you turn to, I think, Plaintiffs'	
1	on behalf of the plaintiff?	194	1	Exhibit 19.	196
2	MR. CARMODY: Nothing further at this		2	A Okay.	
3	time, Your Honor. The plaintiff rests.		3	Q Do you recognize that as the Creve	
4	THE COURT: Is the defendant ready to		4	Coeur 2030 Comprehensive Plan, is that correct?	
5	proceed?		5	A Correct.	
6	MR. LUMLEY: Yes, Your Honor.		6	Q Can you explain to the court in	
7	THE COURT: Please proceed.		7	general what a comprehensive plan is?	
8	MR. LUMLEY: We will call Jason		8	A The comprehensive plan is a	
9	Jaggi.		9	long-range planning document to complete with a	
10	THE COURT: Mr. Jaggi, please raise		10	horizon for 15 to 20 years. It outlines the	
11	your right hand to be sworn.		11	long-range objectives for a community, provides	
12	(Whereupon, the witness was sworn by		12	strategies and recommendations to implement those	
13	the court.)		13	strategies as well as a vision for the community as	
14	THE COURT: Please be seated.		14	a whole and within certain areas of the community.	
15			15	Q Is it your understanding as a	
16	JASON JAGGI,		16	professional planner that the city is required to	
17	having been produced as a witness and duly sworn by		17	have a comprehensive plan in order to enact zoning?	
18	the court, testified as follows:		18	A Yes.	
19	DIRECT EXAMINATION		19	Q And you heard Mr. Brancaglione's	
20	QUESTIONS BY MR. LUMLEY:		20	testimony yesterday that a comprehensive plan is	
21	Q Will you state your name and address		21	meant to be a guide with respect to zoning and	
22	for the record?		22	planning. Do you remember that testimony?	
23	A Jason Jaggi, 3 Butternut Court,		23	A I do.	
24	O'Fallon, Missouri 63368.		24	Q Do you agree?	
25	Q Mr. Jaggi, your deposition testimony		25	A I agree.	

<p>1 Q Were you involved in the development 2 of Creve Coeur 2030 Comprehensive Plan?</p> <p>3 A Yes.</p> <p>4 Q What period of time was involved in 5 the development of the plan, start to finish?</p> <p>6 A As soon as I started with the City of 7 Creve Coeur, we began the comprehensive plan 8 development process, which was 2015, and it ended 9 with the adoption by the Planning and Zoning 10 Commission in March of 2017.</p> <p>11 Q If you turn to Page 12 of Exhibit 19, 12 the page entitled "creating the plan." Do you see 13 that?</p> <p>14 A Yes.</p> <p>15 Q And does that page accurately 16 describe the process involved in developing this 17 comprehensive plan?</p> <p>18 A Yes, it does.</p> <p>19 Q Can you just highlight the steps that 20 were involved in that process for the court, 21 please?</p> <p>22 A Sure. The process involved a lot of 23 input into creating the plan. There were five 24 public workshops that were conducted by the city's 25 planning consultants. There were five focus group</p>	197	<p>1 involved in the process through points of contact, 2 meaning they were contacted as directly as part of 3 the process or they participated in the process.</p> <p>4 Q Did the Planning and Zoning 5 Commission hold formal public hearings regarding 6 the plan before voting on it?</p> <p>7 A Yes. They held four public hearing 8 meetings prior to the adoption of the plan.</p> <p>9 Q And then the Planning and Zoning 10 Commission ultimately adopted Exhibit 19 as the 11 city's Comprehensive Plan 2030, correct?</p> <p>12 A Yes, correct.</p> <p>13 Q And Page 2 and 3 set forth the 14 Planning and Zoning Commission's resolution 15 adopting the plan, correct?</p> <p>16 A Correct.</p> <p>17 Q So that was adopted, as stated, March 18 20th, 2017, is that accurate?</p> <p>19 A That's accurate.</p> <p>20 Q If you turn to Page 58 of Exhibit 19. 21 Are you with me?</p> <p>22 A Yes.</p> <p>23 Q And the heading on Page 58 is 24 Community Place Types Overview. Do you see that?</p> <p>25 A Yes.</p>	199
<p>1 sessions with elected officials as well as staff 2 members. There were five additional resident and 3 stakeholder group meetings that were conducted. We 4 also had four workshops with the consultant and the 5 Planning and Zoning Commission for work sessions. 6 Then there were also several follow-up meetings 7 with the stakeholder groups that were part of the 8 process.</p> <p>9 Q And when you refer to a stakeholder 10 group, who are you referring to?</p> <p>11 A Stakeholder groups involve residents, 12 subdivision trustees, business community 13 representatives, commercial developers, commercial 14 real estate interests as well as, like I mentioned 15 earlier, resident groups.</p> <p>16 Q And you heard Mr. Stern's testimony 17 yesterday, correct?</p> <p>18 A Yes.</p> <p>19 Q And he indicated he was involved with 20 that process. Do you agree with that?</p> <p>21 A I agree.</p> <p>22 Q Can you tell the court how many 23 people participated overall in the development of 24 this plan?</p> <p>25 A Overall, about 250 people were</p>	198	<p>1 Q Can you explain to the court the 2 approach that was taken in this plan to have these 3 community place types? What's the significance?</p> <p>4 A The community place type is a -- is a 5 framework for which the plan was developed, and the 6 community place type identified areas with unique 7 characteristics and explained existing conditions 8 as well as offered recommendations based upon a 9 desired outcome based upon the unique traits and 10 characteristics and challenges of each of these 11 separate areas of the city.</p> <p>12 Q And on Page 58, there's the 13 neighborhood commercial district. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And, as stated, it says it comprises 16 the East Olive Corridor, correct?</p> <p>17 A Correct.</p> <p>18 Q Could you read that paragraph, 19 please?</p> <p>20 A Neighborhood commercial district 21 comprising the East Olive Corridor, the 22 neighborhood --</p> <p>23 (Whereupon, the court reporter asked 24 for clarification.)</p> <p>25 A My apologies. Comprising the East</p>	200

<p>1 Olive Corridor. The neighborhood commercial</p> <p>2 district supports the development of a variety of</p> <p>3 medium to low-density commercial and neighborhood</p> <p>4 service businesses and low-density, multi-family</p> <p>5 residential development and a corridor with shallow</p> <p>6 lot depths adjacent to established subdivisions.</p> <p>7 Providing a transition between more intense</p> <p>8 commercial districts to the east and west, this</p> <p>9 district is ideal for specialty retail and service</p> <p>10 businesses, providing both easy car access and a</p> <p>11 walkable environment. The neighborhood commercial</p> <p>12 district provides for lot-by-lot redevelopment that</p> <p>13 builds towards a coherent corridor identity.</p> <p>14 Q And to the left of that paragraph,</p> <p>15 there's a map that's relatively small, but that's</p> <p>16 laying out the location of the East Olive Corridor</p> <p>17 of the neighborhood?</p> <p>18 A Yes.</p> <p>19 Q Can you explain to the court the</p> <p>20 boundaries of this area?</p> <p>21 A Yes. It's expands Olive Boulevard, a</p> <p>22 portion of Olive Boulevard, generally bounded by</p> <p>23 Mosley on the west end and North Spoele Road on the</p> <p>24 east end, north and south of the Olive Boulevard</p> <p>25 roadway.</p>	<p>201</p>	<p>1 Q As a professional planner, do you</p> <p>2 understand that vision to include an unlimited</p> <p>3 number of gas stations?</p> <p>4 A No.</p> <p>5 Q Fast food restaurants?</p> <p>6 A No, not -- not -- those specific uses</p> <p>7 are not enumerated.</p> <p>8 Q An unlimited number of 24-hour</p> <p>9 operations?</p> <p>10 A No.</p> <p>11 Q Can you describe for the court the</p> <p>12 existing uses of land in that Olive corridor as we</p> <p>13 are here today?</p> <p>14 A So the existing uses, there's a wide</p> <p>15 variety of them. There are retail centers.</p> <p>16 There's daycares. Walgreens, for example. So you</p> <p>17 have a pharmacy retail store. There are banks,</p> <p>18 cleaners. There are two existing gas stations</p> <p>19 within this corridor and other smaller retail or</p> <p>20 office service-type businesses.</p> <p>21 Q Are there any properties that are</p> <p>22 zoned residential rather than commercial?</p> <p>23 A Yes.</p> <p>24 Q Are there any new developments</p> <p>25 underway in the East Olive Corridor?</p>	<p>203</p>
<p>1 Q And is it strictly the frontages on</p> <p>2 Olive or does it go beyond that?</p> <p>3 A It's primarily the frontage</p> <p>4 properties on Olive.</p> <p>5 Q Can you turn to Page 88 of Exhibit</p> <p>6 19. Are you with me?</p> <p>7 A Yes.</p> <p>8 Q And pages 88 through 94 pertain to</p> <p>9 the East Olive Corridor, is that right?</p> <p>10 A That's correct.</p> <p>11 Q And on Page 88 there's an initial</p> <p>12 paragraph that starts, "The vision," do you see</p> <p>13 that?</p> <p>14 A Yes.</p> <p>15 Q Can you read that, please?</p> <p>16 A The vision for East Olive is to</p> <p>17 create a walkable corridor of designation retail</p> <p>18 boutiques, neighborhood service businesses,</p> <p>19 small-scale restaurants, attached townhomes and</p> <p>20 low-density, multi-family homes and single-family</p> <p>21 homes. Development of the East Olive Corridor</p> <p>22 should encourage pedestrian access from adjacent</p> <p>23 neighborhoods and prioritize walkability between</p> <p>24 neighboring lots while accommodating car access and</p> <p>25 easy parking.</p>	<p>202</p>	<p>1 A There's one under construction</p> <p>2 presently. It is a 20-unit multi-family apartment</p> <p>3 building on the north side of Olive.</p> <p>4 Q Has the city taken steps to implement</p> <p>5 the plan for East Olive Corridor?</p> <p>6 A Yes. We've held numerous work</p> <p>7 sessions and meetings with the Planning and Zoning</p> <p>8 Commission. We've developed drafts of potential</p> <p>9 ordinance updates to reflect the vision and</p> <p>10 recommendations of the plan for East Olive. We got</p> <p>11 to the point last year where we were scheduling</p> <p>12 meetings with commercial property owners within the</p> <p>13 corridor as well as residents in and adjacent to</p> <p>14 the corridor. However, those letters went out;</p> <p>15 however, we did cancel that due to the pandemic.</p> <p>16 It was right when the pandemic hit, and certainly</p> <p>17 realized it wouldn't be good to gather people to</p> <p>18 have meetings like that.</p> <p>19 Q Has the city been able to resume that</p> <p>20 process yet?</p> <p>21 A We are gearing up to resume that, and</p> <p>22 we are having some preliminary discussions about</p> <p>23 how to restart that. That's correct.</p> <p>24 Q Were you involved in the city's</p> <p>25 process of reviewing and approving the Mobil On the</p>	<p>204</p>

205

1 Run project that's been discussed yesterday?

2 A Yes.

3 Q And about what period of time did

4 that cover, that process?

5 A So Mobil took a long time to get to

6 the review process. It started in November of 2016

7 and ultimately went through to February of 2018.

8 Q Was the initial application approved?

9 A No.

10 Q And what happened with the initial

11 application?

12 A The initial application received --

13 went through review process. There was a lot of

14 concerns about the scale and intensity of that use

15 in that corridor understanding there's an existing

16 gas station but was proposed for the first

17 iteration, did not receive Planning and Zoning

18 Commission's recommendation for approval, presented

19 it to the city council and the city council took

20 comments and remanded it back to P&Z and they

21 ultimately made adjustments to it and resubmitted

22 it.

23 Q What was the status of the Mobil

24 property at the time they submitted the

25 application?

206

1 A It was a functioning gas station, a

2 smaller gas station that had been there probably

3 since at least mid '80s. So it already had a gas

4 station and a carwash component as well.

5 Q You heard testimony yesterday about

6 the small kiosk. Do you agree with that

7 description as well?

8 A I agree that it was a much smaller

9 store in association with the gas pumps, yes.

10 Q Overall, what condition was it in?

11 A I would characterize it as obsolete,

12 not meeting today's standards, rundown and in need

13 of improvement.

14 Q Can you turn to Exhibit 34 in the

15 binder, please? Do you recognize that as the

16 ordinance that approved the CUP for Mobil On the

17 Run?

18 A Yes.

19 Q And, again, what was the date of

20 that?

21 A Ordinance was approved February 26th,

22 2018.

23 Q Were there conditions of approval?

24 A There were 26 conditions of approval.

25 Q Was there a citizen protest -- well,

207

1 let me back up.

2 That application, as we heard

3 yesterday, at least from Miss Keen, if not others,

4 involved a rezoning request as well as a CUP. Do

5 you agree with that prior testimony?

6 A I agree.

7 Q Was there a citizen protest petition

8 submitted regarding the rezoning request?

9 A Yes.

10 Q And the city approved the rezoning

11 notwithstanding that citizen protest?

12 A That's correct.

13 Q Have you attended nearly all Planning

14 and Zoning Commission meetings and city council

15 meetings when there's zoning matters on the agenda

16 at least during your employment with the city?

17 A Yes.

18 Q Have you observed the city approve

19 multiple applications despite significant resident

20 oppositions?

21 A Yes.

22 Q Were you involved in the city's

23 process of reviewing the QuikTrip CUP application

24 that's the subject of this litigation?

25 A Yes, I was.

208

1 Q What period of time did that process

2 involve?

3 A There were at least a couple meetings

4 prior to the application that was formally

5 submitted to the city. As mentioned yesterday,

6 there was a traffic scoping meeting that we held

7 with them. I believe it was in the summer, perhaps

8 July of 2001. We met with them later on that fall,

9 and then we met with them numerous times when they

10 -- after they filed the application and throughout

11 the process.

12 Q And so covering what period of time,

13 roughly?

14 A Okay. Roughly, I would say our first

15 preliminary meeting after the scope of study where

16 they were trying to prepare the application was in

17 October of 2019, and we met with them all of the

18 way through the council vote, which would have been

19 in August of 2020.

20 Q So roughly how many times did staff

21 have, you know, true meetings, not just emails and

22 phone calls, but actually get-together meetings?

23 A I would say nine or ten times.

24 Q And beyond that, there would have

25 been emails and phone calls as Miss Keen testified

<p>1 to?</p> <p>2 A Correct.</p> <p>3 Q And then the Planning and Zoning</p> <p>4 Commission considered the application, correct?</p> <p>5 A Correct.</p> <p>6 Q How many meetings did the commission</p> <p>7 devote to that application?</p> <p>8 A Four.</p> <p>9 Q And including a public hearing again?</p> <p>10 A Yes.</p> <p>11 Q And did P&Z recommend approval?</p> <p>12 A No.</p> <p>13 Q And the council held meetings,</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q Among other things, to consider the</p> <p>17 application?</p> <p>18 A Yes.</p> <p>19 Q How many council meetings were</p> <p>20 involved?</p> <p>21 A Two.</p> <p>22 Q And council did not approve, correct?</p> <p>23 A Correct.</p> <p>24 Q Can you turn to Exhibit 16.</p> <p>25 A Okay.</p>	<p>209</p>	<p>1 Q Was there an opposition, citizen</p> <p>2 petition?</p> <p>3 A Yes.</p> <p>4 Q Do you know how many people signed</p> <p>5 that?</p> <p>6 A I would say around a hundred, at</p> <p>7 least.</p> <p>8 Q Was anyone identified as a</p> <p>9 spokesperson for the residents?</p> <p>10 A Yes.</p> <p>11 Q And who were those folks?</p> <p>12 A The two spokespersons that were</p> <p>13 speaking on behalf of the residents were Brett</p> <p>14 Berger and Curt Lore (Spelled phonetically).</p> <p>15 Q Was their role disputed by anyone,</p> <p>16 their role as a spokesperson?</p> <p>17 A No.</p> <p>18 Q Does the city encourage the residents</p> <p>19 to use a spokesperson?</p> <p>20 A Yes.</p> <p>21 Q Why?</p> <p>22 A Because a lot of the information at</p> <p>23 public hearings is repetitive. The opportunity for</p> <p>24 a spokesperson is to grant -- they can be granted</p> <p>25 more time. Traditionally, they are given more time</p>	<p>211</p>
<p>1 Q And as was stated yesterday, you</p> <p>2 recognize that as the final version of the proposed</p> <p>3 build regarding the QuikTrip application?</p> <p>4 A Yes.</p> <p>5 Q That's the build that the council</p> <p>6 voted on?</p> <p>7 A Correct.</p> <p>8 Q Was there a final amendment made to</p> <p>9 that prior to the vote that's not reflected in the</p> <p>10 document?</p> <p>11 A There was.</p> <p>12 Q What did that concern?</p> <p>13 A It required a solid wall or a barrier</p> <p>14 adjacent to residences to the south.</p> <p>15 Q A masonry wall?</p> <p>16 A Masonry, yes.</p> <p>17 Q To your understanding, did QuikTrip</p> <p>18 accept all proposed conditions of approval?</p> <p>19 A Yes.</p> <p>20 Q Was there public involvement in the</p> <p>21 process of the city's considering the QuikTrip</p> <p>22 application?</p> <p>23 A Yes. And I would describe that as</p> <p>24 extensive. There was a lot of public involvement</p> <p>25 in this.</p>	<p>210</p>	<p>1 to present the information with the understanding</p> <p>2 that they are representing their group. And that</p> <p>3 process was offered and followed in the public</p> <p>4 hearings. And so it creates a more efficient</p> <p>5 meeting rather than having a lot of repetitive</p> <p>6 information being offered.</p> <p>7 Q Mr. Jaggi, I've handed you what's</p> <p>8 marked as Defendant's Exhibit A entitled Section</p> <p>9 405.1070, conditional use permits. Can you</p> <p>10 identify that document?</p> <p>11 A Yes.</p> <p>12 Q Please proceed.</p> <p>13 A Okay. This is the section of the</p> <p>14 zoning ordinance that outlines standards in which</p> <p>15 conditional use permits must follow in order to be</p> <p>16 approved.</p> <p>17 Q And you heard the discussions</p> <p>18 yesterday about the six standards? Do you remember</p> <p>19 those -- that testimony?</p> <p>20 A Yes.</p> <p>21 Q Do those standards come from this</p> <p>22 municipal code section?</p> <p>23 A They do.</p> <p>24 Q And that's in subsection E, is that</p> <p>25 right?</p>	<p>212</p>

1 A Correct. 213
2 Q Your Honor, I moved for admission of
3 Defendant's Exhibit A.
4 THE COURT: Any objection?
5 MR. CARMODY: No objection, Your
6 Honor.
7 THE COURT: Admitted.
8 Q (By Mr. Lumley) And, Mr. Jaggi, can
9 you read subsections A1 and 2, please.
10 A Subsection A1, generally, the purpose
11 of the conditional use permit is to provide the
12 city with a procedure for determining the
13 appropriateness of a proposed use not authorized as
14 a matter of right by the regulations of the
15 district in which the use is proposed to be
16 located.
17 The appropriateness of the use shall
18 be determined in consideration of surrounding uses,
19 activities and conditions of the site and of
20 surrounding areas. Based upon this determination,
21 the city may decide to permit, reject or permit
22 conditionally the use for which the conditional use
23 permit is sought. That's A1.
24 A2 states the city council may
25 authorize by ordinance under prescribed conditions

1 the construction or undertaking of any conditional 214
2 use that is expressly permitted as a conditional
3 use in a particular zoning district; however, the
4 city reserves full authority to deny any request
5 for conditional use, to impose conditions on the
6 use or to revoke approval at any time upon a
7 finding that the permitted conditional use will or
8 has become unsuitable and incompatible in its
9 location as a result of any nuisance or activity
10 generated by the use.
11 Q Turning to subsection E, the sixth
12 standard, can you read that introductory clause
13 preceding the six standards.
14 A Subsection E, standards. The city
15 council shall not approve a conditional use unless
16 it finds that the application and evidence
17 presented clearly indicate that the proposed
18 conditional use -- and then this lists the six
19 standards.
20 Q Looking at standard one, complies
21 with all other applicable provisions of this
22 chapter. What does that chapter refer to?
23 MR. CARMODY: I'm going to object to
24 this on the basis that we stipulated away standard
25 one, and I don't know why we need to spend time on

1 it. 215
2 MR. LUMLEY: He's not going to
3 contradict the stipulation, just explain the
4 language, what the language is referring to.
5 MR. CARMODY: I repeat the objection.
6 I think it's time consuming and irrelevant to this
7 proceeding at this stage.
8 THE COURT: Sustained. The document
9 speaks for itself.
10 MR. LUMLEY: Very good.
11 Q (BY MR. LUMLEY) And you are aware
12 that the city has stipulated that standard or
13 factor number one was satisfied by the QuikTrip
14 application, is that right?
15 A Correct.
16 Q Did you, as director of department of
17 community development, take the position that the
18 application fully met that standard before the
19 city?
20 A For one?
21 Q Yes.
22 A Yes.
23 MR. CARMODY: Objection to relevance.
24 I don't know why we are spending time on this.
25 THE COURT: Sustained.

1 MR. LUMLEY: Your Honor, the 216
2 testimony will demonstrate why the city was willing
3 to -- why the staff was willing to say certain
4 aspects were fully met and others were not. Just
5 explaining his position on the other standards why
6 there was a difference. That's the purpose.
7 MR. CARMODY: I don't know the why of
8 a stipulation to remove something from an issue in
9 the court is relevant.
10 MR. LUMLEY: It's not regarding the
11 stipulation. It's regarding his actions during the
12 process.
13 MR. CARMODY: Regarding the
14 stipulated issue.
15 MR. LUMLEY: Regarding all of the
16 factors.
17 MR. CARMODY: That's not what I
18 understood the question to be.
19 THE COURT: I will allow limited
20 examination. Please proceed.
21 Q (BY MR. LUMLEY) Why were you willing
22 to take the position that this application fully
23 met factor number one before the city?
24 A Factor number one contains standards
25 that are more objective in nature. They are easily

<p>1 verified, and so as consideration of that</p> <p>2 requirement, staff felt comfortable in providing a</p> <p>3 recommendation of compliance.</p> <p>4 Q And would your answers be the same</p> <p>5 with regard to condition or factor number five?</p> <p>6 A Yes.</p> <p>7 Q Turning to factor number four, meets</p> <p>8 the applicable provisions of the city's</p> <p>9 comprehensive plan.</p> <p>10 Did you, as director of -- the</p> <p>11 director of community development, take a position</p> <p>12 before the city on whether the QuikTrip application</p> <p>13 fully met standard number four?</p> <p>14 A The staff's analysis of number four</p> <p>15 provided information on the areas where the</p> <p>16 proposal and generally met a lot of the</p> <p>17 requirements of the comprehensive plan. That's</p> <p>18 information that was provided to the commission in</p> <p>19 our analysis, but we also noted that the commission</p> <p>20 should also review the information and make a</p> <p>21 determination as to compliance with the</p> <p>22 comprehensive plan.</p> <p>23 Q So you weren't comfortable stating</p> <p>24 that the --</p> <p>25 MR. CARMODY: Objection to the form</p>	<p>217</p>	<p>1 MR. CARMODY: Judge, I would like to</p> <p>2 exclude him from the testimony here today. He's</p> <p>3 going to be called?</p> <p>4 MR. LUMLEY: You have to sit outside.</p> <p>5 You have to wear your mask when you are out there.</p> <p>6 (Mr. Berger left the courtroom.)</p> <p>7 MR. LUMLEY: At this time I would</p> <p>8 offer Defendant's Exhibits D and E of city council</p> <p>9 meeting minutes and zoning commission meeting</p> <p>10 minutes. I understand Plaintiff have an objection</p> <p>11 but the parties did agree that we did need to have</p> <p>12 certified copies to prove they are official</p> <p>13 minutes, but we are offering these to show the</p> <p>14 discussion and the formal vote was taken in the</p> <p>15 final meetings of each body. One of the standards</p> <p>16 of review for the court under the statute 536.150</p> <p>17 is whether or not the city acted arbitrarily which</p> <p>18 is evidence the discussion shows a very serious</p> <p>19 discussion. It's not an arbitrary decision.</p> <p>20 MR. CARMODY: Judge, we have</p> <p>21 interposed an objection to these for this reason.</p> <p>22 And Mr. Berger is part of this whole process too.</p> <p>23 So I think we could wrap all of this up in this</p> <p>24 objection.</p> <p>25 We are not here to talk about what</p>	<p>219</p>
<p>1 of the question, leading and suggestive.</p> <p>2 THE COURT: Sustained.</p> <p>3 Q (BY MR. LUMLEY) You heard your</p> <p>4 testimony yesterday and reiterated that you were</p> <p>5 comfortable testifying that this application</p> <p>6 generally met the comprehensive plan, correct?</p> <p>7 A Yes.</p> <p>8 Q Were there points of uncertainty that</p> <p>9 prevented you from saying it fully met the</p> <p>10 standard?</p> <p>11 A We did not indicate that it fully</p> <p>12 met. We outlined the areas where their compliance</p> <p>13 was consistent with the plan. We provided that</p> <p>14 information to the commission.</p> <p>15 Q What were the areas of uncertainty</p> <p>16 for the commission to deliberate upon?</p> <p>17 A The areas of uncertainty through this</p> <p>18 process were the intensity of that use on that</p> <p>19 corner, the traffic packets that were generated by</p> <p>20 this use and, I think, the general compatibility</p> <p>21 question of whether this meets the vision of the</p> <p>22 East Olive Corridor as a whole.</p> <p>23 MR. LUMLEY: Your Honor, this is our</p> <p>24 witness, Mr. Berger. He has been fully vaccinated.</p> <p>25 THE COURT: Thank you.</p>	<p>218</p>	<p>1 happened in the city council meeting. This is not</p> <p>2 a contested case as has been made clear from the</p> <p>3 outset. We now have the minutes of a proceeding as</p> <p>4 if it were a contested case to establish the bona</p> <p>5 fides of conduct which is not at issue.</p> <p>6 I'm not debating whether or not there</p> <p>7 were four sessions that were held before the</p> <p>8 planning commission and the city council. We are</p> <p>9 not talking about that. This case is about what</p> <p>10 the evidence is before this court regarding those,</p> <p>11 and this is all just regurgitation of things that</p> <p>12 they would like to toss into the record to justify</p> <p>13 their conduct.</p> <p>14 I'm not worried about justifying</p> <p>15 their conduct. I'm worried about what this court</p> <p>16 has to say about compliance with the six factors</p> <p>17 they have delineated. Same goes, if you don't</p> <p>18 mind, Judge, the proposed testimony of this Mr.</p> <p>19 Berger.</p> <p>20 Are we going to just line people up</p> <p>21 who are going to come in and say, "I was against</p> <p>22 this"? That's not what this case is about, and we</p> <p>23 could stretch that end. Should I begin bringing</p> <p>24 people in to say, "I think this was a great idea</p> <p>25 and should happen and would be good for the</p>	<p>220</p>

1 revenues of the City of Coeur"? No, we are not
2 going to do that, nor should we be doing this.
3 If this was a contested case, I would
4 obviously be saying of course this comes in and
5 then you determine that. The issue of
6 arbitrariness, unlawfulness, unreasonableness, as
7 is cited and spelled out in all of the cases,
8 including the Furlong case that you talked about
9 yesterday is clear.
10 You make the determination as to
11 whether the factors have been satisfied. Then, if
12 there's a declination by the legislative body, it
13 is their -- it is per se, then, unlawful,
14 unreasonable and arbitrary. It's not to say, "Was
15 there discussion about this?"
16 Sorry for the length, Judge, but that
17 is an objection.
18 THE COURT: The court understands it
19 has a de novo review. The court understands the
20 meaning of de novo review. Is your objection -- is
21 your legal objection relevance?
22 MR. CARMODY: Yes.
23 THE COURT: Overruled. Please
24 proceed.
25 MR. LUMLEY: And so Exhibits D and

221

1 E have been admitted? Is that correct, Your Honor?
2 THE COURT: The objection as to the
3 relevance of D and E is overruled. If there's no
4 objection as to the authentication and there's no
5 requirement that they be identified, then they will
6 be admitted.
7 MR. CARMODY: Correct, Judge. We
8 agreed no further foundation need to be laid.
9 THE COURT: D and E are admitted.
10 MR. LUMLEY: Thank you.
11 THE COURT: Please proceed.
12 MR. LUMLEY: Thank you, Your Honor.
13 Q (BY MR. LUMLEY) We are not going to
14 dwell on this. I just want to have you identify
15 for the court the location since it's an agenda
16 with multiple items of business. So looking at
17 Exhibit E first, the Planning and Zoning Commission
18 meetings, does the discussion of the QuikTrip
19 matter start on Page 2 under unfinished business,
20 item one?
21 A Yes.
22 Q And in Exhibit D, the city council
23 meeting minutes of August 10th, 2020, does the
24 discussion of the QuikTrip application start on
25 Page 2 under unfinished business, item two?

222

1 A Yes.
2 Q And the Exhibit E, the Planning and
3 Zoning Commission meeting, reflects the discussion
4 of the commissioners and their final vote on the
5 application, correct?
6 A Yes.
7 Q And that was July 6th, 2020?
8 A Yes.
9 Q And the Planning and Zoning
10 Commission is entrusted with the development and
11 approval of the comprehensive plan as you
12 testified?
13 A Correct.
14 Q And they rejected the application --
15 or they recommended rejection of the application?
16 A Yes.
17 Q And then Exhibit D reflects the final
18 council vote on the application denying it?
19 A Yes.
20 Q So remaining factors besides one and
21 five that were stipulated to and four that we have
22 been discussing, so factors two, three and six,
23 will not -- will -- I'm sorry, strike that. Will
24 contribute to and promote the community welfare and
25 convenience at the specific location, will not

223

1 cause substantial injury to the value of
2 neighboring property, will be compatible with the
3 surrounding area and, thus, will not impose an
4 excessive burden or have a substantial negative
5 impact on surrounding or adjacent users around
6 community facilities or services.
7 Did you, as the director of the
8 department of community development for City of
9 Creve Coeur, take the position that the QuikTrip
10 application fully met factors two, three, and six?
11 A No, we did not take a formal
12 position.
13 Q Why not?
14 A Because those areas of the
15 conditional use permit standards are subjective.
16 Their information is not easily verified or
17 reviewed under, you know, typical -- it's not like
18 a land use ordinance. So they are more subjective,
19 and staff deferred that to discussion and
20 determination of the Planning and Zoning
21 Commission.
22 Q Can you turn to Exhibit 25 in the
23 binder. Is that what it is?
24 A Yes, Exhibit 25.
25 Q Do you recognize Exhibit 25 to be the

224

<p>1 traffic impact study that Mr. Cannon and his firm</p> <p>2 did regarding the QuikTrip application?</p> <p>3 A Yes.</p> <p>4 Q And that's a document that you</p> <p>5 reviewed in the course of working on the</p> <p>6 application?</p> <p>7 A Yes, along with the city's contracted</p> <p>8 transportation engineer.</p> <p>9 Q If you would turn to first on Page 9</p> <p>10 with the study labeled as Exhibit 2 within Exhibit</p> <p>11 25.</p> <p>12 A Uh-huh, yes.</p> <p>13 Q Did I already hand you this?</p> <p>14 A Yes.</p> <p>15 Q Okay. So on that Exhibit 2, there's</p> <p>16 a little inset, correct?</p> <p>17 A Correct.</p> <p>18 Q That shows the streets involved and,</p> <p>19 as Mr. Cannon explained, arrows showing direction</p> <p>20 of traffic movement at various intersections and</p> <p>21 traffic counts at the three peak times of day,</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q Do you recognize what's been marked</p> <p>25 as Defendant's Exhibit B?</p>	225	<p>1 Q And, likewise, it shows all vehicle</p> <p>2 movements leaving Olive onto Graeser south,</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q And if you can turn to Page 14 of</p> <p>6 Exhibit 25 and what is labeled within there as</p> <p>7 Exhibit 4.</p> <p>8 A Yes.</p> <p>9 Q And you understand that to reflect</p> <p>10 Mr. Cannon's results for the traffic assuming that</p> <p>11 the QuikTrip is built, correct?</p> <p>12 A Correct.</p> <p>13 Q And so the lower figures to the left</p> <p>14 on this chart, Graeser Road north to Olive, Graeser</p> <p>15 road south from Olive, likewise, do these figures</p> <p>16 reflect totals from Mr. Cannon's work?</p> <p>17 A Yes.</p> <p>18 Q You heard Mr. Cannon's testimony</p> <p>19 yesterday where he read similar numbers from the</p> <p>20 Mobil On the Run study, correct?</p> <p>21 A Yes.</p> <p>22 Q With regard to the movements on</p> <p>23 Schulte Road south to Olive, north from Olive, both</p> <p>24 before and after the Mobil On the Run being built,</p> <p>25 correct?</p>	227
<p>1 A Yes.</p> <p>2 Q With regard to items labeled Graeser</p> <p>3 Road north to Olive, Graeser Road south from Olive,</p> <p>4 do you see there's two entries like that one for</p> <p>5 the 2020 baseline and one for the 2020 QuikTrip</p> <p>6 build, right?</p> <p>7 A Yes.</p> <p>8 Q So looking at the top of the 2020</p> <p>9 baseline again on Graeser, how do those -- do those</p> <p>10 figures for the three peaks correlate to Exhibit 2</p> <p>11 within Mr. Cannon's traffic study?</p> <p>12 A Yes.</p> <p>13 Q And how do they correlate?</p> <p>14 A This is information from their study</p> <p>15 that details traffic movements during the three</p> <p>16 peak periods derived from the plan.</p> <p>17 Q And does it combine figures from</p> <p>18 Exhibit 2?</p> <p>19 A It does. It combines all the</p> <p>20 movements for A.M. peak, midday peak, and P.M.</p> <p>21 peak.</p> <p>22 Q So with respect to Graeser Road north</p> <p>23 to Olive, if combines all three figures, all</p> <p>24 turning movements, correct?</p> <p>25 A Yes.</p>	226	<p>1 A Yes.</p> <p>2 Q And these figures correlate to the</p> <p>3 numbers that he read into the record?</p> <p>4 A Correct.</p> <p>5 MR. LUMLEY: Your Honor, I move for</p> <p>6 the admission of Defendant's Exhibit B.</p> <p>7 THE COURT: Any objection?</p> <p>8 MR. CARMODY: No objection, Your</p> <p>9 Honor.</p> <p>10 THE COURT: Admitted.</p> <p>11 Q (BY MR. LUMLEY) From Exhibit B and</p> <p>12 the work that Mr. Cannon did that's summarized in</p> <p>13 Exhibit B, in general, how does traffic on Graeser</p> <p>14 compare to traffic on Schulte at Olive? Which one</p> <p>15 is bigger?</p> <p>16 A Schulte Road has more traffic.</p> <p>17 Q And is that consistent with Mr.</p> <p>18 Cannon's testimony that Schulte is a major</p> <p>19 collector and Graeser is a minor collector?</p> <p>20 A Yes.</p> <p>21 MR. LUMLEY: No further questions,</p> <p>22 Your Honor.</p> <p>23 THE COURT: Is there cross</p> <p>24 examination?</p> <p>25 MR. CARMODY: Yes, Your Honor.</p>	228

1	THE COURT: Please proceed.	229	1	Q	And doesn't it necessarily follow	231
2			2		that for any successful redevelopment one would	
3	CROSS EXAMINATION		3		need to have business? Is that fair?	
4	QUESTIONS BY MR. CARMODY:		4	A	Yes.	
5	Q Let's start where we just finished,		5	Q	And doesn't it happen that in an	
6	if we could, sir. I'm sorry. Rather than dive		6		intersection like this, like any other commercial	
7	into all of the numbers I saw on that page of the		7		development up and down Olive, that business is	
8	exhibit that I just saw, suffice it to say, would		8		usually generated in the form of automobiles?	
9	you agree that you would prefer to have some		9	A	Correct.	
10	traffic at the corner of Graeser Road and Olive?		10	Q	Would that be any different for here?	
11	Or is the current situation of a vacant building		11	A	No.	
12	without any traffic, in your role as -- I will call		12	Q	Is there anything wrong with that?	
13	you planning director. I don't want to demote you		13	A	No. But analysis of a traffic impact	
14	or promote you as you sit here, but it will be		14		study is performed to determine how much traffic	
15	easier for me. But is that your objective as		15		and how to mitigate traffic, so there are other	
16	planning director to make sure that we don't have		16		factors in that type of review.	
17	any traffic at a prime commercial location?		17	Q	Traffic is not mentioned in the	
18	A No, that's not the objective is to		18		standards, is it?	
19	have zero traffic.		19	A	Not directly.	
20	Q Okay. And would you expect, sir, as		20	Q	Okay. Creve Coeur could enact an	
21	you had all the discussions, including those with		21		ordinance amending this any day of the week, could	
22	Mr. Stern about this site and how desperately this		22		it not?	
23	area needed to be redeveloped, that any		23	A	The ordinance?	
24	redevelopment, hopefully, will bring traffic to the		24	Q	Yes.	
25	area? Fair?		25	A	Sure.	
1	A I would say that, yes, any	230	1	Q	Never made an amendment to say, "By	232
2	redevelopment is going to bring traffic to the		2		the way, we have to make certain that there's no	
3	area.		3		traffic impact in order to approve a CUP." It	
4	Q Okay.		4		doesn't say that, does it?	
5	A The existing redevelopment, if it was		5	A	As I stated, it doesn't specifically	
6	fully utilized, would also bring traffic to the		6		list traffic directly, but I would consider that	
7	area. So yes.		7		traffic to be a component of the compatibility of	
8	Q Can you tell me how you are going to		8		the impact to surrounding properties. I think	
9	fully utilize this vacant strip center at the		9		traffic is a component of that -- of that standard.	
10	corner of Graeser and Olive?		10	Q	Okay.	
11	A Utilize it in its current state or		11	A	Although, it's not directly stated.	
12	utilize it for redevelopment?		12	Q	Right. That was my question, sir.	
13	Q Well, what's your decide? What's the		13		If you just answer my questions, it would be	
14	city's --		14		helpful.	
15	A Redevelopment.		15		All right. So it doesn't say that.	
16	THE COURT: Just a moment. We need		16		It doesn't say, does it, that if there's more than	
17	to slow down a little bit. Only one person's		17		one use, like the use under consideration for the	
18	statement can be transcribed at a time.		18		conditional use permit, it should be denied, does	
19	A Sorry. Redevelopment would be the		19		it?	
20	preference for that site.		20	A	No.	
21	Q (BY MR. CARMODY) Okay. And		21	Q	And you admitted, did you not, in	
22	redevelopment would contemplate scraping the		22		your deposition and beyond that, the fact that	
23	building, correct?		23		there is another use would have no impact in your	
24	A It could, yes, that would be what we		24		perspective on the pending conditional use permit	
25	would typically expect.		25		application, correct?	

233

1 A Correct.

2 Q So if you have four gas stations on

3 the corner or four any other uses, all of which

4 have CUPs, it doesn't matter when the city

5 considers a new CUP that they are already there,

6 correct?

7 A The city doesn't -- correct in the

8 sense that we don't -- we don't determine how many

9 is too many and how many is too few. There's not a

10 requirement for a certain number of uses.

11 Q All right. And I'm only raising this

12 because I thought you talked about that in response

13 to Mr. Lumley's questions, like it doesn't say that

14 there gas stations or anything of that nature; that

15 wasn't in your conversation, was it?

16 A No, it wasn't.

17 Q Okay. And, sir, in terms of the

18 traffic itself, you hired a traffic expert to

19 review Mr. Cannon's traffic report, did you not?

20 A Correct.

21 Q Your traffic expert told you

22 essentially no problem with any traffic issues

23 associated with this application, correct?

24 A He agreed with the findings of the

25 traffic study prepared by Mr. Cannon and the

234

1 mitigation measures recommended by Mr. Cannon. He

2 agreed with that.

3 Q And you said, did you not, to the

4 commissioners and the city council members that

5 there was really no issue in terms of your expert

6 about traffic, correct?

7 A Correct. The opinion was that the

8 traffic would be mitigated with the proposed

9 improvements.

10 Q All right. And what I'm struggling

11 with, just like any of the other statements that

12 were made, are you changing that testimony now?

13 Are you raising the traffic issue and going through

14 this exhibit that we had to suggest to the court

15 that now you really do think there was a problem

16 with traffic?

17 A To be clear, I don't believe there

18 was a problem with the traffic with the mitigation

19 that was proposed.

20 Q Thank you.

21 A Was it a concern? Should it be a

22 component of review? Yes.

23 Q Well, matter of fact, your staff

24 reports you remember saying -- you said, quote, The

25 applicant has received comment from MODOT regarding

235

1 necessary traffic mitigation. The applicant has

2 incorporated these requirements into their plans or

3 has committed to altering to them -- to adhering to

4 them, end quote.

5 You said that, did you not?

6 A Correct.

7 Q And then you said, also, quote,

8 Generally, the proposed volumes and operations at

9 this location would be similar to the other

10 intersections along Olive, end quote. Correct?

11 A Correct.

12 Q So in your view, sir, we should

13 eliminate traffic totally from any consideration as

14 to whether or not the CUP should have been granted,

15 correct?

16 A I don't agree with that.

17 Q You don't agree with that.

18 All right, let me ask you this, what

19 you did agree with before. And you did agree

20 before, during your deposition, to the fact that

21 you believed that this CUP should have been

22 granted, correct?

23 A I believe, as a staff person, as a

24 professional planner, that there were more reasons

25 to approve the project. That it had a high level

236

1 of compliance with a lot of our subjective standard

2 ordinances for conditional use permits, yes.

3 Q Okay. You didn't make a

4 recommendation because you never make a

5 recommendation, correct?

6 A We don't make formal precise

7 recommendations, that's correct. We provide

8 information and analysis.

9 Q And then with respect to the

10 comprehensive plan, it's something else I'm a

11 little perplexed by, because you initially

12 suggested there was general compliance with the

13 comprehensive plan, did you not?

14 A Correct.

15 Q Are you still saying that today?

16 A Yes.

17 Q All right. There can never be

18 complete compliance with a comprehensive plan, can

19 there? Because a comprehensive plan like that may

20 call for ten-story office buildings and other

21 things. So you can't comply with every component

22 of a comprehensive plan, correct?

23 A I would tend to agree with that, and

24 it's a guide, and it's a general guide for

25 development. So there are strengths and weaknesses

1 through most applications. 237

2 Q All right. And then when you just

3 testified, when you talked about essentially

4 stipulating and agreeing to the -- to factors one

5 and five, which we have entered into a stipulation

6 about, that have not having agreement regarding the

7 rest of the factors, correct?

8 A That's correct.

9 Q Okay. Do you remember making a

10 presentation to the commission?

11 A Yes.

12 Q A Powerpoint presentation? And do

13 you remember telling them this. Quote, the

14 proposal generally meets items one, four, and five

15 subject to meeting certain identified additional

16 conditions. The commission will need to weigh all

17 information provided to assess items two, three,

18 and six.

19 Do you remember telling them that?

20 A I do.

21 Q And that's what your Powerpoint

22 says, correct?

23 A Correct.

24 Q You didn't say that this morning, did

25 you?

1 A I want to -- with respect to number 238

2 four?

3 Q Yes.

4 A Okay. Staff view and the information

5 we presented, the staff perspective on the

6 application was that it -- it met several other

7 requirements and objectives of the comprehensive

8 plan, and, in our view, it did. That is

9 information I provided.

10 During the course of the review,

11 there were concerns about that that were expressed

12 by the commission and later the council that it did

13 not meet four. So there wasn't a consistent

14 opinion in terms of the city's review of that

15 standard.

16 Staff's review is that it largely met

17 condition number four with respect to the

18 comprehensive plan.

19 Q The staff was -- how many hours did

20 you collectively spend on this application over the

21 many months that you considered it? Hundreds,

22 fair?

23 A Yeah.

24 Q Do you know whether the plan

25 commission members and the city council members

1 even read your staff report before the vote? 239

2 A I have no way to know that.

3 Q There were people asking questions

4 that were answered in the staff reports, were there

5 not, that you had already answered, but they were

6 still asking you about them because they didn't

7 seem to know the answers, correct?

8 A I can't speak to that.

9 Q Okay. There were people -- there

10 were questions that came up during these hearings

11 about the comprehensive plan that you corrected and

12 suggested there was compliance with the

13 comprehensive plan, correct? Do you remember

14 that?

15 A Yes.

16 Q So to the extent that somebody raised

17 one of these, you were defending the application

18 itself saying, "No, no, no. Staff believed, we

19 believed it met those guidelines of the

20 comprehensive plan."

21 A Correct.

22 Q And when we were coming in this case

23 and involved in this litigation, the contemplation

24 originally was that you would stipulate, the city

25 would stipulate that it met the comprehensive plan

1 requirements, correct? 240

2 A Correct.

3 Q Why did that change?

4 A I'm not changing my position on the

5 fact of the comprehensive plan. I am trying to

6 describe the review process that the city

7 undertook, the staff analysis and the position that

8 staff had on the application, the position the

9 commission had and the position that council had on

10 all of these factors. They were not the same

11 throughout the process.

12 When staff develops an application,

13 we assess it, we base our analysis, and we provide

14 the information. And you are correct; I did -- I

15 did state opinions in terms of how it complied.

16 Q But did you -- and, again, Mr. Jaggi,

17 understand I know the challenging position you are

18 placed in in the context of this case as somebody

19 that did the review and now you are here as a

20 representative of the city. And is it fair to say

21 that you may not agree with the ultimate result

22 that was reached? Is that fair to say?

23 A That's a fair statement.

24 Q Okay. Did the city ever hire an

25 expert, other than the traffic expert, to do any

<p>1 analysis of the compliance with any other factors? 241</p> <p>2 A No.</p> <p>3 Q Do you -- in other words, one of the</p> <p>4 factors was the effect, substantial negative effect</p> <p>5 on neighboring properties. And you are saying, as</p> <p>6 you sit here today, you don't know whether that's</p> <p>7 true or not? Or you think that it -- that it may</p> <p>8 not have satisfied that factor?</p> <p>9 A I think it's a subjective standard.</p> <p>10 Q Why is it? Did you hear the</p> <p>11 testimony of Linda Atkinson yesterday?</p> <p>12 A I did.</p> <p>13 Q Did that sound subjective?</p> <p>14 A That provided a lot more information</p> <p>15 than we had at the time.</p> <p>16 Q Did you ever attempt to get that</p> <p>17 information?</p> <p>18 A We did analysis, research Internet</p> <p>19 analysis on effects of commercial properties</p> <p>20 adjacent to residential areas. We provided that</p> <p>21 analysis, the citations of those reports. We</p> <p>22 didn't find anything that was specific to this</p> <p>23 question. We noted that in the report. So we</p> <p>24 provided some analysis but not certainly to the</p> <p>25 level that you heard yesterday.</p>	<p>1 A Yes. I believe that's consistent 243</p> <p>2 with my prior statement.</p> <p>3 Q Another quote from your July 6th</p> <p>4 staff report. Quote, Such negative impact is only</p> <p>5 for a short period of time. Wherein the long term,</p> <p>6 the initial reduction was found to be more than</p> <p>7 offset within a few years of construction of the</p> <p>8 new retail, end quote.</p> <p>9 A Correct, yes.</p> <p>10 Q And then final quote: However, these</p> <p>11 studies are generally looking at new commercial</p> <p>12 development against existing residential</p> <p>13 development, which would be that, in our case,</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q Whereas the subject properties have</p> <p>17 been zoned commercial with existing retail</p> <p>18 commercial developments. Correct?</p> <p>19 A Correct.</p> <p>20 Q And is the fact this property has</p> <p>21 been zoned commercial for decades of any relevance</p> <p>22 to you, to the city, in the context of the</p> <p>23 CUP application?</p> <p>24 A Is certainly -- it tells me that this</p> <p>25 area has long been identified as an area for</p>
<p>1 Q Okay. But the general conclusion of 242</p> <p>2 the staff after, you know, laudably, going to the</p> <p>3 Internet and trying to find out some research on</p> <p>4 impact of commercial development on residential</p> <p>5 properties was basically that, in your staff</p> <p>6 reports, there was no effect on neighboring</p> <p>7</p> <p>8 ****</p> <p>9 properties as a consequence of this proposal?</p> <p>10 A Our research found that there was</p> <p>11 some information that suggested there were impacts</p> <p>12 for the most adjacent properties, especially</p> <p>13 initially. But that, over time, that was not as</p> <p>14 much of a factor. And, certainly, the further you</p> <p>15 are away from the development proposal, the less</p> <p>16 impacted -- the less impacts there were. That was</p> <p>17 our summary.</p> <p>18 Q So from staff -- so from a staff</p> <p>19 perspective, let me ask you if these are the</p> <p>20 statements that you made below and reflect your</p> <p>21 feelings today. Quote, the staff's research</p> <p>22 generally finds little or only modest impact which</p> <p>23 extends out no more than a few thousand feet from</p> <p>24 commercial sites.</p> <p>25 Do you believe that to be true?</p>	<p>1 commercial development, that we would expect a 244</p> <p>2 commercial development proposal to be submitted,</p> <p>3 that because of the size of the property, it would</p> <p>4 likely not need additional rezoning or land -- you</p> <p>5 know, that it's a nice size site for that corridor,</p> <p>6 which is not typically found in that area.</p> <p>7 Q Okay. And there had been approval</p> <p>8 for redeveloped of a Waterway, correct?</p> <p>9 A There was a proposal, that's</p> <p>10 correct, and a code amendment that ultimately did</p> <p>11 not pass.</p> <p>12 Q Okay. So it would have needed the</p> <p>13 city to enact a code amendment in order for the</p> <p>14 Waterway to go here?</p> <p>15 A That's correct.</p> <p>16 Q You permitted a carwash to go a few</p> <p>17 hundred yards away in connection with the Mobil On</p> <p>18 the Run application, correct?</p> <p>19 A Correct.</p> <p>20 Q Okay. No inconsistency there in</p> <p>21 terms of, "We are going to let Mobil On the Run</p> <p>22 have their carwash, but we are not going to let one</p> <p>23 go in at Graeser and Olive"?</p> <p>24 A No. The issue with the Waterway</p> <p>25 was location of the garage, carwash opening, and</p>

<p>1 the code issue. That was not the case with the</p> <p>2 Mobil.</p> <p>3 Q It could have been corrected, though</p> <p>4 with --</p> <p>5 A Correct, yes.</p> <p>6 Q And city council chose not to do</p> <p>7 that?</p> <p>8 A Correct.</p> <p>9 Q Okay. So based upon what I just</p> <p>10 talked to you about, factor three, there's really</p> <p>11 no issue on the possibility of declining values</p> <p>12 associated with this project, is there?</p> <p>13 A I did not -- I don't have any</p> <p>14 suggestion that there is something to suggest</p> <p>15 otherwise.</p> <p>16 Q All right. And then with respect,</p> <p>17 sir, to the comprehensive plan, to get back to</p> <p>18 that, that would be number four, right?</p> <p>19 A Yes.</p> <p>20 Q Going to number four, you don't have</p> <p>21 any thoughts that every single component of a</p> <p>22 comprehensive plan must be met?</p> <p>23 A I think you have to review the</p> <p>24 project as a whole and look at it on the balance of</p> <p>25 the proposal and the strength of the compliance</p>	<p>245</p> <p>1 reasons why they were in support or opposition. In</p> <p>2 this case, it was opposition, I think, by all but</p> <p>3 one.</p> <p>4 Q Well, but that's just --</p> <p>5 A But -- but they don't -- it's</p> <p>6 discussion leading up to a vote. We did have that</p> <p>7 in this case.</p> <p>8 Q I mean I may raise something during</p> <p>9 the course of this trial, the court may raise</p> <p>10 something during this trial just asking the</p> <p>11 question, and I think that what I've seen so far is</p> <p>12 you are taking some of those questions that were</p> <p>13 asked and imputing them to be the reasons for</p> <p>14 denial of the conditional use permit. Are you</p> <p>15 doing that?</p> <p>16 A I guess I am linking the comments</p> <p>17 that were made as to the reasons why the vote was</p> <p>18 the way it was.</p> <p>19 Q Right. You are speculating --</p> <p>20 A But I suppose those questions could</p> <p>21 be asked and then the vote could be contrary to</p> <p>22 those questions.</p> <p>23 Q Correct. I could ask you a question</p> <p>24 about something. I just want to make sure of one</p> <p>25 thing, so I'm going to ask this question. But I</p>
<p>1 with the plan in a more -- you know, in a general</p> <p>2 sense, an overview sense.</p> <p>3 Q Okay. And we -- do you believe that</p> <p>4 it complies with this comprehensive plan?</p> <p>5 A As we stated in the report, staff</p> <p>6 believed that there was several areas of compliance</p> <p>7 with the recommendations in the East Olive Corridor</p> <p>8 section of the plan.</p> <p>9 Q Basically, the compliance with the</p> <p>10 comprehensive plan was not an issue in this</p> <p>11 application, fair?</p> <p>12 A From the staff's perspective, we did</p> <p>13 not view it as a large concern.</p> <p>14 Q Okay. So, similarly, sir, to the</p> <p>15 extent there would have been noises about -- and,</p> <p>16 again, when we -- when we hear any objections that</p> <p>17 have been raised in this proceeding or in any of</p> <p>18 the prior pleadings in this case regarding the</p> <p>19 city's position, we don't know what caused anybody</p> <p>20 to vote yes or no in either the plan commission or</p> <p>21 the city council meeting, correct?</p> <p>22 A There were statements in the minutes</p> <p>23 that I think led up to votes --</p> <p>24 Q Right.</p> <p>25 A -- where they were made as the</p>	<p>246</p> <p>1 may vote the other way, just "Thank you for</p> <p>2 clarifying that for me" kind of thing, right?</p> <p>3 A Yes.</p> <p>4 Q So as we sit here today, it would</p> <p>5 only be speculation about what the rationale was</p> <p>6 for the denial of the CUP, and that speculation</p> <p>7 could include, could it not, that there were noises</p> <p>8 made by some people, by some organization, and</p> <p>9 calls made and letters written and so forth that</p> <p>10 impacted the vote. You would agree with that,</p> <p>11 would you not?</p> <p>12 A I would agree that the resident</p> <p>13 opposition was a factor in the review.</p> <p>14 Q Okay. And, also, there was resident</p> <p>15 opposition at the Mobil On the Run?</p> <p>16 A Correct.</p> <p>17 Q And so when we talk about, let's say,</p> <p>18 compliance with the comprehensive plan, in fact, in</p> <p>19 compliance with all of the factors, that was all</p> <p>20 the same for this CUP, Mobil On the Run, as it</p> <p>21 would be for this, correct?</p> <p>22 A What -- in a general sense, I would</p> <p>23 agree with that. I would note that the</p> <p>24 comprehensive plan was in development. It wasn't</p> <p>25 adopted prior to Mobil's application with the city,</p> <p>247</p> <p>248</p>

1 but it was far along. That is, in my mind, that is 249
2 a little bit of a distinction, but in a general
3 sense, I would say similarities exist.
4 Q Okay. I mean, there was no grand
5 change in terms of the city's objectives about
6 Olive and Graeser with the this new plan, was
7 there? I mean, that pretty much reflected what had
8 been the general sense for a while.
9 A I would agree with that. There
10 wasn't a large change in land use.
11 Q Okay. But in terms of compliance
12 with the comprehensive plan, in terms of potential
13 damage to, substantial injury to neighboring
14 property and general welfare and all of the other
15 factors that are at issue in this case, they are
16 the same for the Mobil On the Run as they are here,
17 right?
18 A Correct.
19 Q Okay. And so, to the extent that --
20 let me ask you this. Did you conclude, as part of
21 the staff report, that the Mobil On the Run
22 application met the comprehensive plan?
23 A I concluded that on the revision.
24 Q On the revision?
25 A On the amended proposal.

1 Q Okay. 250
2 A I believe that satisfied the
3 objectives of the plan better.
4 Q Okay.
5 A Staff did not view the first
6 iteration as being in compliance due to the scale
7 and intensity of -- but this proposal we were more
8 comfortable with it.
9 Q So you are telling me that the
10 original proposal that was declined had a greater
11 scale and intensity than what's pictured here on
12 Exhibit 42?
13 A Yes.
14 Q When it was revised, it came down to
15 just this level of scale and intensity, and you
16 felt at that time that that satisfied the
17 comprehensive plan, correct?
18 A Yes. It was -- it was more in line
19 with the plan in terms of the scale and size,
20 intensity of the use.
21 Q Okay. And you testified earlier, I
22 believe, that to the extent that both of these
23 would have satisfied all of the factors, it would
24 not be proper to decline one and approve the other,
25 correct?

1 A Correct, unless there were other 251
2 issues. But, yes, generally speaking, correct.
3 Q All right. There was some discussion
4 about the pedestrian friendly site. Do you believe
5 that the plan -- and, Mr. Jaggi, you understand
6 that I -- I try to point it out when I can, that
7 there's a sidewalk that's missing running down
8 parallel to the Graeser Road, correct?
9 A Correct.
10 Q Okay. And you worked with QuikTrip
11 for a long time; was there ever a time that you --
12 the city asked QuikTrip to do something that they
13 refused to do?
14 A No. Very cooperative.
15 Q And how many conditions ultimately
16 did you require to be attached to the ordinance?
17 A It's on the exhibit.
18 Q Can I show you that exhibit?
19 A Yeah. I would just venture to guess
20 the number.
21 Q Well, don't do that. See if I --
22 MR. LUMLEY: I think it's Exhibit 16.
23 Q (BY MR. CARMODY) Exhibit 16 in your
24 binder.
25 A It's what I would have guessed, 28.

1 Q 28. All right. All of which were 252
2 agreed upon by QuikTrip, correct?
3 A To the best of my knowledge, they did
4 not dispute that.
5 Q If you wouldn't mind, would you look
6 at -- just let me clarify something here. The
7 final whereas clause on the first page, would you
8 take a look at that for me. Does it say, as
9 follows.
10 Quote, Whereas the city council finds
11 that the application and evidence presented clearly
12 indicate that the proposed rezoning is in the
13 public interest and the proposed conditional use
14 when subject to certain conditions set forth
15 herein, colon, end quote.
16 Do you see that?
17 A Yes.
18 Q Tell me what -- did you draft this?
19 A No.
20 Q Who drafted it?
21 A You know, let me clarify. I believe
22 staff did prepare the initial draft, and it was
23 reviewed and approved and edited by the city
24 attorney.
25 Q Okay. So will you tell me what

1 proposed rezoning was involved in this application? 253

2 A That must be an error. There was no

3 rezoning.

4 Q Okay. I mean, this really was a

5 reprint from your Mobil On the Run ordinance,

6 wasn't it?

7 A It was probably based on that and

8 then edited, that's correct. And this was an

9 error.

10 Q And there was a rezoning involved

11 with Mobil On the Run. You used that as the basis

12 to do this one, and it just got placed in there?

13 A Yes. That is a standard practice for

14 us to use old versions.

15 Q I understand. Lawyers have been

16 known to do that too.

17 And I think there was also a

18 discussion about the number of gas, you know, gas

19 stations asked about and so forth. Restaurants,

20 all restaurants need CUP, don't they?

21 A Yes.

22 Q Any idea about the number of

23 restaurants you have given CUPs to over the years

24 that now exist between 270 and Lindbergh?

25 A I would say restaurants are probably

1 our most typical use permit application. 254

2 Q Probably -- there may be 30, 40, 50,

3 60 restaurants with CUPs up and down Olive,

4 correct?

5 A Correct.

6 Q Do you know of one that's ever been

7 turned down because the fact they say there's

8 another restaurant there?

9 A No.

10 Q Any issue, in your mind, in terms of

11 factor two with the convenience of this location in

12 satisfaction of that portion of the standard?

13 A Could you repeat the question?

14 Q Sure. The standard number two talks

15 about will contribute to and promote the community

16 welfare and convenience at the specific location.

17 Any issues there, in your mind?

18 A Well, in my mind, certainly a gas

19 station could be viewed as a convenience to the

20 neighborhood. It's a typical service that most

21 residents would utilize. They need to fill up

22 cars. I believe that could be viewed as a

23 convenience. That would be my take on that.

24 Q What about the convenience store

25 component? It's called -- it actually uses the

1 name, doesn't it? 255

2 A It does.

3 Q But you didn't mention that in your

4 answer?

5 A No, I did not.

6 Q Okay. So that doesn't affect

7 anything -- any way you would decide?

8 A I never put those two together.

9 Q Okay. Was there any issue in your

10 mind about the proposed scale of this application,

11 the QuikTrip application?

12 A No.

13 Q Okay. And you've said that -- and I

14 think your staff report says, quote, The scale of

15 the development is consistent with existing

16 developments along the corridor and is similar to

17 the recently approved gas station and convenience

18 store across Olive Boulevard, end quote.

19 That refers to the Mobil On the Run?

20 You refer to that yourself, correct?

21 A That's correct.

22 Q And then you also say that the use

23 provides neighborhood service businesses with an

24 appropriate scale, correct?

25 A Correct.

1 Q Isn't that one of the -- the things 256

2 that you wanted to achieve in the comprehensive

3 plan?

4 A Yes. That is one of the land use

5 categories.

6 Q Okay. And then you say finally

7 there: And, again, just to summarize, all of the

8 information in our report, we do feel this proposal

9 adheres to a lot of those principles and objectives

10 for not only the auto service station uses

11 themselves but also for any development project,

12 end quote. You said that, right?

13 A Yes.

14 Q Okay. And was the redevelopment of

15 the strip center to the west an issue in terms of

16 the CUP?

17 A No, it was not subject to the CUP.

18 Q Okay. But to the extent that the

19 application for CUP contemplated the rehabilitation

20 of that building, did that play any factor in your

21 consideration?

22 A Yes. I viewed it as a positive

23 element of the proposal, as a whole.

24 Q Okay. And did you have any issues

25 with respect to the landscaping, the green space or

1 any of the other things that you see on what is now 257
2 Exhibit 5A?
3 A No. I believe the applicant put
4 forth their best effort to provide a high degree of
5 landscaping. Buffering exceeds standards. There
6 were no real concerns. I believe we had a couple
7 minor suggestions but nothing significant in terms
8 of landscaping or buffering.
9 Q All right. And finally, I think
10 finally, there is a suggestion that there's some
11 problem with safety to children. Did you say that?
12 Did you ever -- did you ever suggest or do you
13 suggest today, I should say, Mr. Jaggi, that there
14 is anything associated with this proposal that
15 would constitute some sort of impact on safety to
16 children?
17 A That concern was expressed during the
18 public hearings. My feeling is that this project
19 does not create any further negative condition than
20 what exists there today with respect to bus stops
21 or children.
22 MR. CARMODY: All right. Thank you.
23 Just if I could have a moment, Judge.
24 If I could, Judge, I would like to
25 have Mr. Jaggi identify Exhibit 12, which is a

1 staff report of June 15th, 2020, Exhibit Number, if 258
2 you can see, is that -- yeah, you can look.
3 Q (BY MR. CARMODY) Mr. Jaggi, I will
4 go 12, 13, 14.
5 A I'm sorry. Which exhibit?
6 Q Exhibit 12.
7 A Thank you. Okay.
8 Q All right. Is that your staff report
9 dated June 15th, 2020?
10 A Yes.
11 Q And did you prepare that?
12 A Yes. And the city planner. We both
13 prepared it.
14 Q Okay. I realize a lot of other work
15 goes into those, obviously.
16 Exhibit 13, staff report dated
17 7/6/2020. Is that yours?
18 A Yes.
19 Q Okay. And then finally I have some
20 slides. I just referred to one of those slides.
21 MR. CARMODY: Can you show -- can you
22 get this slide I referred to, make sure we are
23 oriented on that, Andrea?
24 Q (BY MR. CARMODY) Is this your
25 Powerpoint presentation?

1 A It is. 259
2 Q And do you know when you presented
3 that? Not a date. Was it to the planning
4 commission or the city council or both?
5 A I believe that was the planning
6 commission.
7 Q Okay. Thank you.
8 A The title would verify that, the
9 first page of the preparation, but I believe that
10 was planning commission, yes.
11 Q All right. And I have -- does the
12 title help you now?
13 A Yes. Thank you. I just saw it.
14 Thank you.
15 Q And let me just refer to the slide I
16 talked about before. Are these your words, as
17 discussed in the staff report, bullet point, the
18 proposal generally meets items one, four and five
19 subject to meeting certain identified additional
20 conditions?
21 Do you see that?
22 A Yes.
23 Q Four was the comprehensive plan
24 factor, correct?
25 A Correct.

1 Q And it met certain identified 260
2 additional conditions the application did
3 ultimately meet, correct?
4 A Correct.
5 MR. CARMODY: Okay. Thank you. I
6 have no further questions of this witness.
7 Oh, let me offer those exhibits if I
8 could, Judge, so I don't forget. Do what I'm told.
9 THE COURT: 12, 13 and 14?
10 MR. CARMODY: Please.
11 THE COURT: Is there any objection?
12 MR. LUMLEY: No objection.
13 THE COURT: Exhibits 12, 13 and 14
14 are admitted into evidence.
15 How much redirect examination do you
16 have?
17 MR. LUMLEY: Very brief.
18 THE COURT: Thank you.
19
20 REDIRECT EXAMINATION
21 QUESTIONS BY MR. LUMLEY:
22 Q Mr. Carmody was discussing with you
23 the debates, the discussions that occurred in front
24 of the commission and in front of council that were
25 reflected in the Exhibits D and E, the minutes, and

<p>1 he was characterizing those discussions as simply</p> <p>2 raising questions. Do you recall that?</p> <p>3 A Yes.</p> <p>4 Q But those minutes reflect</p> <p>5 statements of intent, statements of evaluation by</p> <p>6 commissioners and council members as well, correct?</p> <p>7 MR. CARMODY: Objection, foundation,</p> <p>8 conclusion on the part of this witness.</p> <p>9 MR. LUMLEY: Well, I can have him</p> <p>10 read from the exhibit. I was just trying to cut it</p> <p>11 short.</p> <p>12 THE COURT: Has the exhibit already</p> <p>13 been admitted?</p> <p>14 MR. LUMLEY: Yes.</p> <p>15 THE COURT: You are reading from one</p> <p>16 of the exhibits?</p> <p>17 MR. LUMLEY: Or he can just make that</p> <p>18 one statement and I'll move on.</p> <p>19 THE COURT: Overruled.</p> <p>20 A Yes.</p> <p>21 Q (BY MR. LUMLEY) And the city code</p> <p>22 does not leave it up to staff to approve the</p> <p>23 conditional use permit, does it?</p> <p>24 A Correct.</p> <p>25 Q It's up to the city council?</p>	<p>261</p>	<p>1 know, I opposed it and others opposed it, and the</p> <p>2 question becomes, "So what?" And I therefore</p> <p>3 believe that that testimony would be irrelevant to</p> <p>4 any issue in this case. And whether he objects or</p> <p>5 not, do we bring in, then, you know, counter</p> <p>6 witness saying, "Jeez, I thought this was a great</p> <p>7 idea, and I can't wait to go to QuikTrip"?</p> <p>8 I don't think that is what this is</p> <p>9 about. I think his testimony would be irrelevant</p> <p>10 and inadmissible, and for that reason I interpose</p> <p>11 that objection to the testimony.</p> <p>12 THE COURT: At this time the court</p> <p>13 does not know what the testimony is going to be.</p> <p>14 Mr. Lumley?</p> <p>15 MR. LUMLEY: Your Honor, the witness</p> <p>16 lives nearby the site, will testify to the nature</p> <p>17 of the area where he resides, which is a relevant</p> <p>18 factor in this whole circumstance, and the concerns</p> <p>19 that it raised to him as a recognized spokesperson</p> <p>20 for the residents so that the court can hear the</p> <p>21 same concerns that the council heard before it</p> <p>22 voted.</p> <p>23 THE COURT: How lengthy do you</p> <p>24 anticipate his testimony to be?</p> <p>25 MR. LUMLEY: Much shorter than Mr.</p>	<p>263</p>
<p>1 A Yes.</p> <p>2 MR. LUMLEY: No further questions.</p> <p>3 THE COURT: Is there any additional</p> <p>4 cross examination?</p> <p>5 MR. CARMODY: No, Your Honor.</p> <p>6 THE COURT: The witness is excused.</p> <p>7 This is a good time for a break. We will be in</p> <p>8 recess for 15 minutes. We are off the record.</p> <p>9 MR. CARMODY: Judge, before --</p> <p>10 THE COURT: I know you want to talk.</p> <p>11 (Off record briefly.)</p> <p>12 THE COURT: Defendant's intend to</p> <p>13 call Brett Berger as our next and final witness.</p> <p>14 MR. CARMODY: And, Judge,</p> <p>15 anticipating what Mr. Berger may testify about,</p> <p>16 which I don't know that I know, but I assume, just</p> <p>17 from conversations that I have had with counsel,</p> <p>18 that he, as I understand it, was the leader of the</p> <p>19 opposition effort to have this CUP denied. And</p> <p>20 that I assume, but I do not know that he will come</p> <p>21 in and testify about what he believes and his other</p> <p>22 members of this group believe were the infirmities</p> <p>23 of this proposal.</p> <p>24 That having been said, I don't think</p> <p>25 this is a me-too type matter. This should, you</p>	<p>262</p>	<p>1 Jaggi.</p> <p>2 THE COURT: The court understands</p> <p>3 it's -- this is a de novo hearing. The court is</p> <p>4 essentially standing in the shoes of the city</p> <p>5 council, correct?</p> <p>6 MR. LUMLEY: Yes.</p> <p>7 THE COURT: No.</p> <p>8 MR. CARMODY: I don't believe that.</p> <p>9 THE COURT: All right. And tell me</p> <p>10 what you believe a de novo review means.</p> <p>11 MR. CARMODY: I think a de novo</p> <p>12 review is an independent analysis based on the</p> <p>13 facts deduced at this hearing, and I don't think,</p> <p>14 "let me stand in the shoes of aldermen or city</p> <p>15 councilmen for Ward 1 and say, 'I have somebody</p> <p>16 knocking on my door complaining,' so, okay, it's</p> <p>17 justified that you voted this way."</p> <p>18 I don't -- and, Judge, we may be</p> <p>19 splitting hairs in terms of sitting in the position</p> <p>20 of city council or not, but I've tried to, and I</p> <p>21 think the cases have tried to detach the judicial</p> <p>22 review component from what went on below. And I</p> <p>23 think, to maintain that integrity, the idea is,</p> <p>24 "I'm looking at these. I'm going to listen to the</p> <p>25 evidence as presented to me, and then I am going to</p>	<p>264</p>

<p>1 decide -- I, Judge McLaughlin, decide whether or 2 not you satisfied those standards." 3 THE COURT: The court is in agreement 4 that you are splitting hairs. The court is in 5 agreement that that is what the court's role is. 6 The court does not know every question and every 7 answer that this witness is being proposed to 8 testify about. And so I cannot give a blanket -- 9 MR. CARMODY: I understand. 10 THE COURT: You know, I -- so. 11 MR. CARMODY: Exclusive. I 12 understand. 13 THE COURT: Yes. Overruled. The 14 witness will be allowed to testify and the court 15 will be -- certainly, if you have objections as to 16 questions asked, the court will hear those 17 objections at that time. 18 MR. CARMODY: Okay. 19 THE COURT: Is there anything further 20 before we go off the record? 21 MR. LUMLEY: No, Your Honor. 22 THE COURT: We are off the record. 23 We will be in recess for 15 minutes. 24 (Off record.) 25 THE COURT: Back on the record.</p>	<p>265</p>	<p>1 the proposed site. It's across the street from 2 Martin Grove. So the entrance to our house is 3 basically right adjacent to the entrance of Martin 4 Grove. 5 Q How does your neighborhood relate to 6 the Credit Union that's across the street from the 7 proposed QuikTrip location? 8 A Yeah, exactly. Our group of houses 9 is contiguous with the credit union. My house 10 doesn't back up to it, but I'm like one house away 11 from that First Community Credit Union, which is 12 across the street from the applicant's proposed 13 site. 14 Q How long have you resided there? 15 A Since August of 2013. 16 Q And who lives there with you? 17 A My wife, my children, two children, 18 pets. 19 Q Would you describe your educational 20 background briefly for the court? 21 A Sure. I have a Bachelor of Science 22 from Indiana University, Kelley School of Business, 23 with a specialty in computer information systems. 24 I graduated in 2001. 25 Q And are you currently employed?</p>	<p>267</p>
<p>1 Please call your next witness. 2 MR. LUMLEY: Thank you, Your Honor. 3 I'll call Brett Berger. 4 THE COURT: Please come forward. 5 Please face the court and raise your right hand. 6 (Whereupon, the witness was sworn by 7 the court.) 8 THE COURT: Please be seated. 9 10 BRETT BERGER, 11 having been produced as a witness and duly sworn by 12 the court, testified as follows: 13 DIRECT EXAMINATION 14 QUESTIONS BY MR. LUMLEY: 15 Q Will you please state your name and 16 address for the record? 17 A Brett Berger. I reside at 10 18 Winfield Pointe, Creve Coeur 63141. 19 Q And is your home located near the 20 location of the proposed QuikTrip at the corner of 21 Olive and Graeser? 22 A Yes. My home is basically catty 23 corner. It's not adjacent, but it's the -- it's 24 the group of houses that is just east of the 25 proposed -- east and south of the proposed -- of</p>	<p>266</p>	<p>1 A Yes. I work for a company called 2 Shipworks. We are a software provider for folks 3 who sell and ship on line. We are a subsidiary of 4 Sams.com. I have been with Shipworks for over 11 5 years. 6 Q Did you become aware of the QuikTrip 7 application for a conditional use permit at the 8 location in question? 9 A Yeah. When I first became aware, it 10 was via a letter that was sent out to neighbors 11 that I think was required for the applicant to send 12 a letter to all neighbors within, I believe, 300 13 feet of the proposed site. And so that is when I 14 first found out about the proposition for the 15 QuikTrip. 16 Q And there's been testimony previously 17 about the QuikTrip representative that they held a 18 meeting with residents in connection with the 19 application. Did you attend that meeting? 20 A Yes, absolutely. It's what I would 21 refer to as the meet and greet. They invited 22 neighbors that were within kind of the 300-foot 23 radius to come on out, see the plans, talk about 24 the proposed site, that kind of thing. 25 I was there. I also organized a</p>	<p>268</p>

<p>1 bunch of neighbors also to attend to be able to</p> <p>2 kind of be able to be aware of what was going on,</p> <p>3 be aware of the proposition, that kind of thing.</p> <p>4 So it was not just myself and the neighbors within</p> <p>5 300 feet, because I actually kind of helped round</p> <p>6 up additional neighbors that were further, to</p> <p>7 attend that meeting as well.</p> <p>8 I was there. I believe one member of</p> <p>9 the council was there as well along with, you know,</p> <p>10 QuikTrip and many neighbors.</p> <p>11 Q When you first learned of the</p> <p>12 application, did you have concerns about it?</p> <p>13 A Absolutely. You know, there was a</p> <p>14 proposal many years back for another gas station</p> <p>15 and carwash there. That was turned down. And, you</p> <p>16 know, the idea of a 24-hour-a-day mega convenience</p> <p>17 store and gas station adjacent to what I consider</p> <p>18 to be, you know, luxury homes, I was very concerned</p> <p>19 about that on a variety of different levels. So,</p> <p>20 yes, concerns were heavy on my heart.</p> <p>21 Q Can you describe for the court the</p> <p>22 character of your neighborhood?</p> <p>23 A Yes, absolutely. It's a quiet,</p> <p>24 residential neighborhood. There's, you know --</p> <p>25 it's my group of houses is one of the cul de sacs</p>	<p>269</p> <p>1 commercial traffic. There is very little trucks or</p> <p>2 anything like that that cuts through. From what I</p> <p>3 can see, there's tons of people walking up and down</p> <p>4 the street on Graeser.</p> <p>5 It's a pretty quiet, nice, relaxed</p> <p>6 residential area is how I would describe it.</p> <p>7 Q And generally how would you describe</p> <p>8 the boundaries of your neighborhood as you --</p> <p>9 A Sure. I would probably consider my</p> <p>10 neighborhood to be up and down Graeser Road and the</p> <p>11 cul-de-sacs that feed into it.</p> <p>12 Q When you attended the meeting that</p> <p>13 QuikTrip hosted, did they make you feel comfortable</p> <p>14 with their proposal?</p> <p>15 MR. CARMODY: Judge, I am going to</p> <p>16 object to this as being irrelevant, and I would</p> <p>17 like this to be a continuing objection to this line</p> <p>18 of questioning.</p> <p>19 THE COURT: Overruled. And the</p> <p>20 request for a continuing objection is granted.</p> <p>21 MR. CARMODY: Thank you, Judge.</p> <p>22 A You know, I think that they did</p> <p>23 everything they could to explain to us the</p> <p>24 proposition, what the site would look like and to,</p> <p>25 in an attempt to keep neighbors even-keeled, I</p>
<p>1 that feeds off of Graeser Road. I would describe</p> <p>2 it as a very quiet neighborhood.</p> <p>3 For the most part, the houses are</p> <p>4 what I consider to be luxury homes and what I would</p> <p>5 say -- up and down Graeser Road are many million</p> <p>6 dollar homes. So I would consider that to be a</p> <p>7 luxury home.</p> <p>8 Certainly not all of them are million</p> <p>9 dollar homes, but most of the homes up and down</p> <p>10 along Graeser and along those cul de sacs probably</p> <p>11 are estimated by the city in the six and \$700,000</p> <p>12 range, which I would classify that in the -- not</p> <p>13 that I am trying to brag here, but I would classify</p> <p>14 that probably in the upper tier of, cost wise, in</p> <p>15 homes in our near vicinity in the St. Louis area,</p> <p>16 you know, maybe Ladue, Creve Coeur, Clayton, the</p> <p>17 homes in those areas tend to be more expensive.</p> <p>18 I would say it's a very quiet neighborhood.</p> <p>19 There's very little commercial traffic that goes up</p> <p>20 and down Graeser Road. I have been working from</p> <p>21 home, with Covid, for the past year and I have been</p> <p>22 out and about in the neighborhood much more than I</p> <p>23 would have been when I was working full-time.</p> <p>24 There are tons of people walking up</p> <p>25 and down Graeser Road. There is very, very little</p>	<p>270</p> <p>1 think is probably a way to say it.</p> <p>2 I don't know if I was ever really</p> <p>3 comfortable with the idea of the proposal at any</p> <p>4 time personally, because I don't think it's an</p> <p>5 appropriate spot for, you know, a very high-volume</p> <p>6 gas station and a 5,000 square foot mega</p> <p>7 convenience store.</p> <p>8 So to say I was comfortable with it,</p> <p>9 I don't know if I would say I was comfortable with</p> <p>10 it. I think they did a good job of presenting the</p> <p>11 proposal and answering the questions of the</p> <p>12 neighbors.</p> <p>13 Q (BY MR. LUMLEY) Did you get involved</p> <p>14 in the city's public review process? Did you</p> <p>15 involve yourself in it?</p> <p>16 A Oh, absolutely.</p> <p>17 Q And what did you do?</p> <p>18 A I was very involved. And this was</p> <p>19 something that was happening on multiple hearings</p> <p>20 over the period of a year. Myself and a couple</p> <p>21 other neighbors created a committee that we called</p> <p>22 Graeser Neighbors for Safety. It was myself and a</p> <p>23 couple other neighbors, one of which was very</p> <p>24 instrumental in helping me.</p> <p>25 We were involved -- very involved in</p>
	<p>271</p>

<p>1 the process. We met with Mr. Jaggi. We met with</p> <p>2 city staff in advance of any of the hearings to</p> <p>3 talk about the proposal, to understand what it</p> <p>4 included. We were at every hearing. We were at,</p> <p>5 you know, I was at -- I was basically trying to</p> <p>6 take every opportunity to speak with as many folks</p> <p>7 as I could to understand what exactly this all</p> <p>8 entailed to see if this was something that would be</p> <p>9 appropriate for our neighborhood.</p> <p>10 Q When you say you participated in</p> <p>11 these meetings, these were Zoom meetings because of</p> <p>12 Covid, right?</p> <p>13 A Yeah. So this really kind of</p> <p>14 happened -- the meet and greet, I want to say, was</p> <p>15 in February of last year. I can't remember</p> <p>16 exactly.</p> <p>17 And then what I do remember is that I</p> <p>18 was out of town with my family on Spring Break. It</p> <p>19 was like the second week of March. And this was</p> <p>20 right before, you know, the Corona Virus kind of</p> <p>21 really exploded.</p> <p>22 In advance of that, some neighbors</p> <p>23 and I went door to door to collect petition</p> <p>24 signatures to say -- to try to get an idea of which</p> <p>25 neighbors were opposed to the proposition. It was</p>	<p>273</p> <p>1 submitted information from the applicant, traffic</p> <p>2 studies, understanding like health implications,</p> <p>3 you know, considerable research online, of course,</p> <p>4 meeting with city staff, you know, communicating</p> <p>5 with council members, you know, talking to</p> <p>6 neighbors. I mean, really as involved as I could.</p> <p>7 I mean it was countless hours spent doing research</p> <p>8 and involved in this particular effort.</p> <p>9 Q And you were discussing efforts to</p> <p>10 circulate a petition in your neighborhood. And</p> <p>11 were those efforts cut short by Covid?</p> <p>12 A Yeah, exactly. That's what I was</p> <p>13 getting to there. But this was probably like a</p> <p>14 week before the Corona virus explosion, so to</p> <p>15 speak.</p> <p>16 And so the three of us, I think we</p> <p>17 spent about two or three hours total. We</p> <p>18 collected, want to say, 120 petition signatures</p> <p>19 just up and down along Graeser. And, then, of</p> <p>20 course, after that weekend or a week later, Corona</p> <p>21 virus really kind of exploded in the news, and at</p> <p>22 that point we were not comfortable walking going</p> <p>23 door to door to try to collect additional</p> <p>24 signatures. I think we got like 120 signatures on</p> <p>25 that day.</p>
<p>1 myself and two other neighbors. I think this was</p> <p>2 just before Corona virus really kind of exploded.</p> <p>3 So it was myself and two other</p> <p>4 neighbors. We spent about, I want to say, three</p> <p>5 hours each between three total people. We</p> <p>6 collected about 120 signatures of neighbors, and</p> <p>7 this was just up and down Graeser Road.</p> <p>8 MR. CARMODY: I want to object. This</p> <p>9 is nonresponsive. It's a narrative.</p> <p>10 THE COURT: The witness is instructed</p> <p>11 to answer the question. Would you please repeat</p> <p>12 your question?</p> <p>13 THE WITNESS: You want to repeat your</p> <p>14 question since I was going on a tangent here?</p> <p>15 Q (BY MR. LUMLEY) I can move on and</p> <p>16 get back to that.</p> <p>17 So we were talking about your</p> <p>18 involvement in the public review process. Did you</p> <p>19 do any search regarding this application?</p> <p>20 A Absolutely.</p> <p>21 Q What kind of things were you looking</p> <p>22 at?</p> <p>23 A I mean reading all of the Creve Coeur</p> <p>24 ordinances and documents, certainly understanding</p> <p>25 like, you know, trying to go through all of the</p>	<p>274</p> <p>1 Q What other activities did you engage</p> <p>2 within your neighborhood regarding this</p> <p>3 application?</p> <p>4 A Communicating with all of the</p> <p>5 neighbors, doing as much research as possible,</p> <p>6 understanding people's concerns, getting as many</p> <p>7 neighbors involved as possible. There were, you</p> <p>8 know, when we were on the doorstep of neighbors and</p> <p>9 speaking with neighbors, there were next to none</p> <p>10 that thought this was a good proposition that</p> <p>11 really wanted this.</p> <p>12 You know, one of the questions that a</p> <p>13 lot of folks asked was, "We already have, you know,</p> <p>14 two gas stations there. Why would we need another</p> <p>15 one within a square block?"</p> <p>16 And so that was really one of the big</p> <p>17 questions on the doorstep that a lot of people had</p> <p>18 asked.</p> <p>19 Involving all of the neighbors as</p> <p>20 much as I could was a big part of my process.</p> <p>21 Q At the city -- planning and zoning</p> <p>22 meetings and city council meetings, did you</p> <p>23 identify yourself as a spokesperson and were you</p> <p>24 recognized as such by the city?</p> <p>25 A Yes. Our committee, Graeser's</p> <p>275</p>
	<p>276</p>

<p>1 Neighbors of Safety, our -- well, what we were</p> <p>2 attempting to do was to collect all the concerns of</p> <p>3 neighbors to try to --</p> <p>4 MR. CARMODY: Objection,</p> <p>5 non-responsive, Judge.</p> <p>6 THE COURT: Sustained. The witness</p> <p>7 is instructed to answer the question.</p> <p>8 THE WITNESS: What was the question?</p> <p>9 Q (BY MR. LUMLEY) Did you serve as a</p> <p>10 spokesperson?</p> <p>11 A Yes, I served as a spokesperson.</p> <p>12 Q Are you aware of anyone that disputed</p> <p>13 your role as a spokesperson?</p> <p>14 A No.</p> <p>15 Q And the city recognized you as such</p> <p>16 and granted you additional time to speak, is that</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q Did you raise concerns at the</p> <p>20 Planning and Zoning Committee and council meetings</p> <p>21 on behalf of your neighborhood?</p> <p>22 A Yes.</p> <p>23 Q What were the concerns that you</p> <p>24 expressed?</p> <p>25 A My concerns were extensive. It's an</p>	<p>277</p> <p>1 the concerns that you raised to the commission and</p> <p>2 the city council?</p> <p>3 A Yes. I apologize if I am very</p> <p>4 verbose and -- too verbose for the court. I will</p> <p>5 try to be more explicit.</p> <p>6 My concerns were regarding health,</p> <p>7 traffic, safety, crime, transient litter. I mean</p> <p>8 it's a very long enumerated list. If I would be</p> <p>9 allowed to speak in regards to the details of those</p> <p>10 -- of why those are concerns, I would be glad to do</p> <p>11 so.</p> <p>12 Q Yeah. Please explain your concerns.</p> <p>13 A Say again?</p> <p>14 Q Please explain your concerns.</p> <p>15 A Okay. So, for example, concerns</p> <p>16 about health. With filling stations, there are</p> <p>17 underground service tanks that whole all of the</p> <p>18 gasoline so that they can be pumped into people's</p> <p>19 vehicles, and there are fumes that need to be</p> <p>20 vented from those underground service tanks so</p> <p>21 that, you know, there's not any kind of, you know,</p> <p>22 explosion or fire.</p> <p>23 And so, if you've ever driven past a</p> <p>24 gas station, you will see that there are pipes,</p> <p>25 conduit, that comes up out of the ground near the</p>
<p>1 enumerated list. I was told I'm not to bring notes</p> <p>2 here. So if I would be allowed to speak about my</p> <p>3 concerns off the cuff, I would like to do that.</p> <p>4 Q All right.</p> <p>5 A Okay. So the concerns, again, it was</p> <p>6 a very long list, and since I don't have my notes</p> <p>7 in front of me, I am going to have to go from</p> <p>8 memory. And, again, the last time I really worked</p> <p>9 on this was about a year ago.</p> <p>10 MR. CARMODY: Judge, I -- there's --</p> <p>11 obviously, I know the court is trying to give the</p> <p>12 city and this witness latitude, but I think he</p> <p>13 says, in answer to a question, anything he wishes</p> <p>14 to say, and I would object. I understand the court</p> <p>15 is allowing it generally over a relevance</p> <p>16 objection, but I do think that we need to confine</p> <p>17 it to what is arguably relevant, if we could.</p> <p>18 THE COURT: What is your legal</p> <p>19 objection?</p> <p>20 MR. CARMODY: My legal objection is</p> <p>21 that the answer is nonresponsive.</p> <p>22 THE COURT: Sustained.</p> <p>23 MR. CARMODY: It's a shorter way of</p> <p>24 doing it.</p> <p>25 Q (BY MR. LUMLEY) Could you identify</p>	<p>278</p> <p>1 front of the gas station, numerous ones, one for</p> <p>2 probably each underground service station --</p> <p>3 underground service tank, pardon me. And that</p> <p>4 vents the gas from the gasoline.</p> <p>5 Gasoline is, as we know, contains</p> <p>6 high amounts of benzene, which is poisonous to</p> <p>7 humans, okay? And as, you know, as we know, humans</p> <p>8 are resilient beings. We are able to sustain</p> <p>9 certain amounts of toxins; however, you know, it's</p> <p>10 like drinking alcohol. You drink too much of it</p> <p>11 and it's not healthy for you.</p> <p>12 And so if you look and -- there is</p> <p>13 considerable research out there and different</p> <p>14 municipalities have different rules, but certain</p> <p>15 municipalities state that you have to be 500 feet</p> <p>16 from that venting, from those vents. The reason</p> <p>17 being is because those vents put out dangerous</p> <p>18 chemicals.</p> <p>19 And, for example, if you are there</p> <p>20 pumping your gas once a week, it's probably not a</p> <p>21 problem. But if you are adjacent to that property</p> <p>22 and that -- that venting and those chemicals are</p> <p>23 constantly adjacent to your property and you have</p> <p>24 kids playing in the grass and pets and whatnot and</p> <p>25 they are exposed to that every day, day in and day</p>
	<p>279</p>

<p>1 out, I find that to be a concern. And I think that</p> <p>2 any family that would be considering moving into a</p> <p>3 property would, you know, would consider that to be</p> <p>4 a concern.</p> <p>5 Q Can you explain your other concerns?</p> <p>6 A Yes. I mean, there's a lot of other</p> <p>7 concerns. There's concerns about traffic, for</p> <p>8 example. The applicants own traffic study talked</p> <p>9 about how traffic levels on Graeser and on Olive</p> <p>10 Road would basically, with the new development,</p> <p>11 would reach levels that are nearing unacceptable,</p> <p>12 nearing unacceptable levels of traffic.</p> <p>13 And, you know, my committee believes</p> <p>14 that the traffic study is not necessarily including</p> <p>15 as much traffic as this particular site would</p> <p>16 generate. You know, the applicant states that,</p> <p>17 "Well, it's just going to be drive-by traffic</p> <p>18 that's going to be stopping in and grabbing a</p> <p>19 coffee or whatever."</p> <p>20 I would argue that I think they will</p> <p>21 attract new traffic to Olive Street Road. Why?</p> <p>22 Because they will put on Highway 270, you know, the</p> <p>23 exit, food exit signs, gas exit signs, QuikTrip.</p> <p>24 QuikTrip is a destination. This is a</p> <p>25 5,000 square foot -- that they are proposing. It's</p>	<p>281</p> <p>1 outside of the vicinity.</p> <p>2 And so, you know, concerns about</p> <p>3 transient traffic. Concerns about people that</p> <p>4 aren't really neighbors, you know, coming through.</p> <p>5 And certainly we don't assume that anybody is going</p> <p>6 to proactively come to try to make that their spot</p> <p>7 for a crime. I don't think that anybody is</p> <p>8 planning on doing that. I think it just creates</p> <p>9 more opportunity, more opportunity for a crime.</p> <p>10 The applicant talks, you know, a lot</p> <p>11 about their -- their video surveillance, their</p> <p>12 equipment, you know, all these things that will</p> <p>13 help prevent it. And my argument is that those are</p> <p>14 great. I love, you know, surveillance, but those</p> <p>15 things aren't going to help really prevent any</p> <p>16 crimes. Those things are going to basically help</p> <p>17 to identify after the fact. Those things aren't</p> <p>18 really good things for preventing crime.</p> <p>19 I have concerns about noise and light</p> <p>20 pollution.</p> <p>21 MR. CARMODY: Object to the narrative</p> <p>22 form of the response.</p> <p>23 THE COURT: So, Mr. Berger?</p> <p>24 THE WITNESS: Yeah.</p> <p>25 THE COURT: In a court of law, we</p>
<p>1 a 5,000 square foot mega convenience store with a</p> <p>2 full kitchen. You know, there's Panera Breads that</p> <p>3 are 5,000 square feet. So to give you an idea of</p> <p>4 the size of this thing, you know, this is a</p> <p>5 destination. This is a destination for people to</p> <p>6 go to, to go to eat and get snacks and that kind of</p> <p>7 thing, and so my committee is confident that</p> <p>8 additional traffic will be brought to Olive Street</p> <p>9 Road in that way.</p> <p>10 Q What are your concerns about safety?</p> <p>11 A Definitely there's concerns about</p> <p>12 safety. I mean we are talking about a 24-hour</p> <p>13 operation where there's, you know, opportunity for</p> <p>14 additional, you know, crimes of opportunity. When</p> <p>15 we were doing our research, we found out about a</p> <p>16 specific thing called slider crimes, and basically</p> <p>17 it's somebody stops into a gas station, runs into</p> <p>18 the convenience store to pick up a piece of food,</p> <p>19 and while they leave their car running, somebody</p> <p>20 comes in and steals their vehicle.</p> <p>21 Or while the driver is not in the</p> <p>22 driver seat, somebody would come and, you know,</p> <p>23 like with weaponry would potentially hold that</p> <p>24 person up. And there are numerous examples of this</p> <p>25 happening, even at QuikTrips outside of, you know,</p>	<p>282</p> <p>1 have certain rules of evidence. And in order to</p> <p>2 make it so that the other side can object to</p> <p>3 something that might be objectionable, for any</p> <p>4 variety of legal reasons, he has to know what the</p> <p>5 question is asking. When you go on to a narrative,</p> <p>6 he doesn't know that.</p> <p>7 If you could confine your answer to</p> <p>8 the question that's asked, that would be very</p> <p>9 helpful.</p> <p>10 THE WITNESS: The question I was</p> <p>11 asked was about my concerns. Yes.</p> <p>12 THE COURT: And so I do sustain the</p> <p>13 objection, and I do instruct you to answer the</p> <p>14 question that's asked. That doesn't mean you can't</p> <p>15 explain it, but you have to keep it to the question</p> <p>16 that's asked. So I think it was about safety. Is</p> <p>17 that correct?</p> <p>18 MR. LUMLEY: Correct.</p> <p>19 THE COURT: Yes. So.</p> <p>20 A Okay. Yeah, you were asking about</p> <p>21 the concerns that I had and the concerns about</p> <p>22 safety.</p> <p>23 THE COURT: Perhaps Mr. Lumley could</p> <p>24 be more specific in his question without leading</p> <p>25 the witness.</p> <p>283</p> <p>284</p>

1 Q (BY MR. LUMLEY) Going back first to 285
2 the traffic issue. Did you do any independent
3 research about traffic levels at QuikTrip?
4 A I did.
5 Q Can you describe that?
6 A Yes. I went to a QuikTrip that was a
7 very similar or analogous, what I considered to be
8 a similar or analogous QuikTrip site that was an
9 approximately 5,000 square foot site that had the
10 same amount of pumps, eight pumps or ten. I can't
11 remember exactly what the number was. I don't have
12 documents in front of me. I went to that QuikTrip.
13 Q And what did you do when you went
14 there?
15 A I video recorded, counting cars that
16 were going in and out of the side, for an hour.
17 Q And what did you discover?
18 A I discovered that the traffic impact
19 study that was provided to the city vastly
20 underestimated the amount of traffic in comparison
21 to that particular site.
22 Q And returning to your safety
23 concerns, did you have any concerns specific to
24 children in the area?
25 A Absolutely.

1 Q What are those concerns? 286
2 A The proposed entrance to the QuikTrip
3 site on Graeser Road is a few feet from a public
4 school stop, bus stop and shelter, brick covered
5 shelter and crosswalk. It's been a brick covered
6 shelter and crosswalk since 1990, since our
7 neighborhood was built. The applicant agreed that
8 that is concerning, in our discussion, and they
9 proposed to petition the school board to move the
10 school bus stop further, more away, to try to
11 prevent those safety concerns.
12 Unfortunately, that means that we
13 wouldn't -- the children wouldn't be able to use
14 the crosswalk really in the vicinity or the school
15 bus shelter because, really, the only way they
16 could do it is to move the bus stop further down
17 south. So that would mean, you know, the children
18 would have to walk a few blocks south to the next
19 bus stop further south.
20 Q Were you aware that the fuel tanker
21 deliveries were to be made --
22 MR. CARMODY: Object to the form of
23 the question, leading and subjective.
24 Q (BY MR. LUMLEY) Did you have any
25 understandings about how fuel was to be delivered

1 to the site? 287
2 A Yeah. There's concerns about that
3 too.
4 Q What were those concerns?
5 A You know, if you've ever seen a
6 moving truck on Graeser Road try to deliver, you
7 can see how an 18-wheeler is turning in that, there
8 is not enough space for these large vehicles to be
9 able to maneuver.
10 That wasn't the main concern. The
11 main concern was the fact that the applicant had
12 advised us that, well, most likely they can control
13 the tanker trucks not going southbound on Graeser
14 towards Ladue and that they would only exit onto
15 Graeser to get to the stoplight to get onto Olive.
16 And certainly they would have to do that to go
17 westbound on Olive because there's just not enough
18 access to turn out of the cutout. But the -- yeah,
19 I think that -- can you repeat the question again?
20 Q What concerns did you have about the
21 proposed method of delivering fuel to the --
22 A Right, pardon me. Thank you.
23 You know, so they did assure us that
24 the tanker trucks would only not be going
25 southbound on Graeser, but what they said is that

1 they are not able to control any vendors for 288
2 additional products like food delivery and beer
3 delivery and all of the products that they need to
4 restock, because those are vendors that are not --
5 they don't own those vendors. They don't control
6 those vendors. And while they would ask those
7 vendors certainly not to go southbound on Graeser,
8 they couldn't prevent that or control that.
9 They also advised that restocking any
10 of these products could happen on an as-needed
11 basis, 24 hours a day, at any time of day. That
12 means that, you know, an Anheuser Busch truck could
13 come at 3 a.m. to deliver beer, which is, you know,
14 a couple feet from Martin Grove.
15 You know, let's say it's 3 a.m. and
16 they are doing a delivery and they are banging the
17 doors on the big 18-wheeler trucks and they are
18 pulling the ramp out and they are dropping it onto
19 the ground and they are pushing the -- the -- you
20 know, whatever those huge, you know, wheel --
21 MR. CARMODY: Objection. Again, Mr.
22 Berger's drama is unnecessary. He needs to respond
23 to questions which I wish were more tightly made.
24 And I object to the nonresponsive narrative form of
25 the answer.

1 MR. LUMLEY: Your Honor, I believe 289
2 the witness is explaining to the court what his
3 concern was.
4 THE COURT: The objection is
5 overruled.
6 A We are worried about noise and
7 delivery in the middle of the night. The applicant
8 said that they have no control over that, and it
9 will happen whenever it needs to happen based on
10 need.
11 Q (BY MR. LUMLEY) Okay. You indicated
12 you had concerns about light? What were those
13 concerns?
14 A Absolutely we have concerns about
15 light pollution. The luxury homes in Martin Grove
16 that are contiguous to this site, Martin Groves is
17 at a higher elevation than the site. And so, you
18 know, the applicant talks about planting, you know,
19 trees. And, you know, the renderings are using
20 mature trees to kind of show how, you know, how
21 light pollution and how a fence would block that.
22 My argument is that, well, number
23 one, they are going to be planting saplings, little
24 small trees. And the other argument is that, you
25 know, even after those trees mature over a time of

1 a decade, you know, the elevation of Martin Grove 290
2 is considerably higher than the site. And so the
3 light pollution 24 hours a day would be something
4 that would constantly be seen by those neighbors.
5 Q Have we touched on the main areas of
6 your concerns now, or have I omitted one?
7 A I mean, they are, like I said,
8 there's a long enumerated list, but those are some
9 of the mains one, yes.
10 Q Did you feel that you were allowed to
11 express these concerns in front of the Planning and
12 Zoning Commission and city council?
13 A Yes.
14 MR. LUMLEY: I don't have any further
15 questions.
16 THE COURT: Is there cross
17 examination?
18
19 CROSS-EXAMINATION
20 QUESTIONS BY MR. CARMODY:
21 Q Mr. Berger, I am going to ask you
22 questions I ask direct answers to, please. Would
23 you do that for me?
24 A Sure.
25 Q Did you ever threaten Gwen Keen?

1 A No. 291
2 Q Did anybody in your group threaten
3 her physically?
4 A Physically? No.
5 Q Otherwise, did you make any threats
6 to Gwen Keen or any of her staff?
7 A Like how do you mean threats?
8 Q Sir, you are parsing things. It's
9 either a yes or a no. Did you ever have anybody in
10 your group threaten to do something if QuikTrip
11 continued its application for CUP?
12 A The threat was that we would fight
13 because it's not an appropriate development. That
14 was the threat.
15 Q But what kind of fighting were you
16 doing? You are making calls. You are writing
17 letters, correct?
18 A Yes.
19 Q Did you call every council member
20 multiple times?
21 A No.
22 Q Did you call every Planning and
23 Zoning Commission member multiple times? By
24 "you," I mean your group.
25 A No.

1 Q So nobody did? 292
2 A Well, I don't know about -- I mean,
3 I can't speak, sir, for the responsibility of what
4 other folks did, but I --
5 Q No, but you can speak to --
6 THE COURT: Just a moment. We can
7 only have one person speaking at a time.
8 THE WITNESS: Yes, ma'am.
9 THE COURT: Thank you.
10 Q (BY MR. CARMODY) You are the one who
11 came up with the playbook for beating a QT
12 application from Texas and California, aren't you?
13 A I don't understand the question. No,
14 I have no playbook for beating Texas and
15 California.
16 Q No. For how to beat a QuikTrip
17 application.
18 A No.
19 Q You never saw anything like that?
20 A No.
21 Q Okay.
22 A Maybe you are talking about Curt who
23 was on my committee. I don't know, though.
24 Q Okay, well, someone -- you talked to
25 him about it, though, didn't you? And you said,

1 "Let's follow this playbook"? 293
2 A I'm not sure I know what playbook you
3 are talking about. I have no play -- there is no
4 playbook. There was no document that we followed.
5 Q Okay. No, you just did this on the
6 fly? You were --
7 A We did it on the fly, that's right.
8 Q Did you ever make contact with a
9 facility that was going to conduct -- and by "you"
10 now, I'm talking about your group, this Graeser
11 Road --
12 A Graeser Neighbors for Safety.
13 Q Graeser Neighbors for Safety that was
14 formed just to defeat this, correct?
15 A It was formed to basically protect
16 the safety of our neighbor.
17 Q To defeat this CUP application?
18 A That was part of it, yeah.
19 Q What's the other part of it?
20 A To continue to protect our
21 neighborhood and make sure there's appropriate
22 development at that corner. We have not dissolved
23 our committee.
24 Q What is an appropriate development,
25 sir?

1 A Well, it certainly wouldn't be a 294
2 24-hour high-volume --
3 Q I didn't ask you that. I asked what
4 would be an appropriate development for this
5 corner?
6 A Neighbors are very pro-development at
7 this corner, sir. You know, we would like --
8 THE COURT: Excuse me. The witness
9 is instructed to answer the question if he can.
10 A What would be an appropriate?
11 Q (BY MR. CARMODY) I will ask -- that
12 will be the third time, okay? Again, if we can
13 just do this, and I can be done with you, it will
14 be best.
15 What is an appropriate development
16 for that corner?
17 A I would say a medium-density
18 commercial.
19 Q Okay. And if the neighbors get
20 something in there they don't want, they go through
21 this process again, right?
22 A Well, I don't know if it would be the
23 exact same process, but certainly, if it's a
24 problematic development or proposition, we would --
25 yeah, we would fight it.

1 Q Did you or your people, whoever were 295
2 members of your group, contact Enterprise Bank and
3 threaten to withdraw their money if they allowed
4 the QuikTrip meeting to go forward in their
5 facility?
6 A I am not aware of that, no. I didn't
7 do it.
8 Q Is that where the original meeting
9 was scheduled?
10 A What?
11 Q Is that where the original meet at
12 greet was scheduled?
13 A No. The meet and greet was at the
14 Creve Coeur ice arena.
15 Q And that's where it ultimately was
16 held?
17 A The meet and greet that QuikTrip held
18 was at the Creve Coeur ice rink.
19 Q Was it scheduled for someplace else
20 before?
21 A I don't know. I don't think so. No.
22 I got the letter and they said, "This day at the
23 ice arena."
24 Q Okay. And, again, who is this Curt
25 Lore?

1 A Curt Lore is a neighbor and a member 296
2 of the committee.
3 Q Of the group?
4 A Yeah.
5 Q So is he proactive also, like you?
6 A Yes.
7 Q So do you know whether he made a call
8 to the originally scheduled bank facility that was
9 going to host the meet and greet with suggestions
10 that they would withdraw their accounts if they
11 allowed this to go forward?
12 A I'm not aware of that.
13 Q Okay. So you've been in your house
14 for eight years, correct?
15 A Yeah.
16 Q And let me direct your attention if
17 I could to what's been marked as Exhibit 2C, which
18 -- direct your attention up there. Can you see
19 that?
20 A Uh-huh, yes.
21 Q Your property, your house is behind
22 the credit union, correct?
23 A That's approximate.
24 Q Your house is a luxury house,
25 correct?

1 A I would consider it to be so, yes, 297
2 based on St. Louis market.
3 Q And you suggested I think in one of
4 your writings that it was okay to have the Mobil On
5 the Run there because these homes are not luxury
6 homes?
7 A I mean, I think that that's part of
8 it, but certainly that's not the single reason.
9 Q But you ultimately did say, did you
10 not, that that would be --
11 A No, that's not what I said.
12 Q Sir --
13 THE COURT: Just a moment, just a
14 moment. I will ask the witness to wait until the
15 attorney has completely formulated his question
16 before you answer so that the court reporter can
17 correctly take down both the question and the
18 answer.
19 Q (BY MR. CARMODY) The question I'm
20 asking you is did you ever suggest that the
21 situation with Mobil On the Run was different than
22 yours because the people living in those homes
23 actually were in St. Louis County and not Creve
24 Coeur, and their homes, unlike yours, were not
25 luxury homes?

1 A I think that's part of it, yes. 298
2 Q So when you moved into your home
3 eight years ago, reflected up there, was there a
4 credit union there?
5 A Yep.
6 Q And did you have any questions like,
7 "Maybe I don't want to live right behind a credit
8 union"?
9 A There was certainly thoughts went
10 through my mind about being so close to a
11 commercial development, but it wasn't a problem for
12 me.
13 Q It wasn't?
14 A No.
15 Q And it isn't now?
16 A It's not now, no.
17 Q Okay. And then looking at the corner
18 there, you are right behind -- you are right off of
19 Olive, did it concern you that you were so close to
20 Olive?
21 A I mean, sure there are concerns about
22 that, absolutely. I mean, traffic flies down that
23 road and I got little kids. So, yeah, there were
24 concerns.
25 Q Right. And so then right across the

1 street from the credit union -- well, let's go 299
2 across Olive. You've got a Walgreens, right?
3 A Uh-huh, right.
4 Q Bother you?
5 A No.
6 Q Then across the street there's the --
7 another commercial facility, is there not, the
8 Scotsman Coin and Jewelry, right?
9 A Correct.
10 Q And then come across the street from
11 there, let's go to the south side of Olive, is the
12 area that's involved in this case, correct?
13 A Uh-huh.
14 Q That's a yes?
15 A Yes.
16 Q Did it bother you when you moved in
17 eight years ago that we got these -- "I got a
18 credit union here, I've got this Walgreens here. I
19 got this Scotsman here, and I've got two strip
20 centers right on that corner. Maybe I don't want
21 do live that close to any of them"?
22 A No, it didn't bother me. Those are
23 nice, quiet commercial strip centers.
24 Q Okay. This one is too, right?
25 A Relatively speaking.

1 Q The existing one? 300
2 A Uh-huh.
3 Q I guess part of the reason it's quiet
4 is that it's vacant, right?
5 A Wasn't vacant when I moved in.
6 Q Okay. It became vacant over time?
7 A Yeah. And I will be glad to talk
8 about that.
9 Q Well, I don't want you to talk about
10 that.
11 A Okay.
12 Q The fact of the matter is, sir, is
13 that that was a fully occupied strip center when
14 you moved in?
15 A Oh, I don't know if it was a fully
16 occupied. I couldn't recall.
17 Q Did you know what the zoning was for
18 all of that property around there?
19 A Yeah.
20 Q What was it?
21 A It's commercial.
22 Q Well, did it concern you that at some
23 point in time that somebody is going to come and
24 redevelop this into --
25 A It did not concern me. Neighbors are

<p>1 pro-development.</p> <p>2 Q I didn't finish my question. That</p> <p>3 somebody would redevelop it into something other</p> <p>4 than an existing strip center? Did that concern</p> <p>5 you?</p> <p>6 A I think that that's always in the</p> <p>7 back of my mind, yes.</p> <p>8 Q Okay. And you nevertheless said,</p> <p>9 "Fine I'm going to plunk down whatever I'm paying</p> <p>10 for my house notwithstanding all of this, and I'm</p> <p>11 moving in," right?</p> <p>12 A Sure.</p> <p>13 Q Do you understand, sir, and I'm sure</p> <p>14 doing all the research that you did, you probably</p> <p>15 developed some familiarity with what uses this</p> <p>16 commercial property could be put to without having</p> <p>17 a CUP at all.</p> <p>18 A Okay, yes.</p> <p>19 Q Do you realize that?</p> <p>20 A Yes, I am.</p> <p>21 Q Do you realize that these are five</p> <p>22 parcels of property, and on any one of them the</p> <p>23 owner could put, with the commercial current</p> <p>24 zoning, a grocery store, a liquor store?</p> <p>25 A Yes, I'm aware.</p>	<p>301</p> <p>1 have any right to do what you did in connection</p> <p>2 with this CUP in connection with somebody utilizing</p> <p>3 their property the way it was intended?</p> <p>4 A I'm not sure I understand the</p> <p>5 question.</p> <p>6 Q Well, you have a house. You do</p> <p>7 things with your house, right?</p> <p>8 A Yeah.</p> <p>9 Q And it's not your neighbor's business</p> <p>10 as to whether or not you get to do what you do,</p> <p>11 right?</p> <p>12 A Not necessarily, sir. If I wanted to</p> <p>13 add an edition to my house, I would have to get</p> <p>14 permission from the city, right?</p> <p>15 Q Right.</p> <p>16 A Right.</p> <p>17 Q Okay.</p> <p>18 A I'm not sure I understand the</p> <p>19 narrative you are trying to show here.</p> <p>20 Q No. All you need to do is answer the</p> <p>21 questions, okay? The fact of the matter is that</p> <p>22 you understand that you would have no control over</p> <p>23 anything that was built within commercial zoning?</p> <p>24 A I mean I don't own the property, so I</p> <p>25 wouldn't have any control over it.</p>
<p>1 Q A marijuana facility?</p> <p>2 A Yes, I'm aware.</p> <p>3 Q No problem for you. You would rather</p> <p>4 have that than you would this QuikTrip?</p> <p>5 A Yes.</p> <p>6 Q Okay.</p> <p>7 A There's already a marijuana facility</p> <p>8 in that strip center further down.</p> <p>9 Q Okay. And, for instance, the current</p> <p>10 owner and if this stays the same and the court</p> <p>11 doesn't take any action, there's five parcels of</p> <p>12 commercial property you know that you could do</p> <p>13 nothing about if we just built on this parcel the</p> <p>14 grocery store, on this parcel the liquor store, and</p> <p>15 any of the other uses that can be built with the</p> <p>16 commercial use, correct?</p> <p>17 A Yes, I'm aware.</p> <p>18 Q And you have no problem with that</p> <p>19 being the result?</p> <p>20 A I mean I would say that I would want</p> <p>21 to investigate before I give you a definitive yes</p> <p>22 or no that that's okay by me. Would be nice to</p> <p>23 know more about what you are saying is okay by me</p> <p>24 before I say yes I have no problem with that.</p> <p>25 Q Again, do you think that you would</p>	<p>302</p> <p>1 Q Yes.</p> <p>2 A Understood.</p> <p>3 Q And then with respect to the safety</p> <p>4 issue. So, as I understood it, there was some</p> <p>5 problem you had with the school bus or something?</p> <p>6 Is that right? That you voiced?</p> <p>7 A Yes. There are concerns about the</p> <p>8 entrance being --</p> <p>9 Q Let's, if we could, take a look at</p> <p>10 Exhibit 40. Is that the school bus stop that you</p> <p>11 were talking about?</p> <p>12 A It's not in the picture.</p> <p>13 Q Oh, it's not?</p> <p>14 A No.</p> <p>15 Q Okay. Where is it?</p> <p>16 A That's the crosswalk.</p> <p>17 Q That's the crosswalk to get to --</p> <p>18 A It's to the left of it. It's not in</p> <p>19 the photo.</p> <p>20 Q All right.</p> <p>21 A It's small like 10 square foot brick</p> <p>22 enclosure with lighting.</p> <p>23 Q Okay. So is it -- is it on the south</p> <p>24 side of that crosswalk?</p> <p>25 A It's like adjacent to the crosswalk.</p> <p>304</p>

<p>1 It's maybe like two feet north of the crosswalk.</p> <p>2 Q All right. So that somebody,</p> <p>3 obviously, the children would walk across the</p> <p>4 street right there where the --</p> <p>5 A Yeah. They do every day to get to</p> <p>6 the bus.</p> <p>7 Q Okay. And do you agree that that is</p> <p>8 a fair and accurate depiction of the view from that</p> <p>9 crosswalk to the property that's at issue in this</p> <p>10 case?</p> <p>11 A I mean, you can't see how close the</p> <p>12 property is.</p> <p>13 Q I'm asking you this. The question I</p> <p>14 asked you, sir, is is this a fair and accurate</p> <p>15 depiction of the view from that crosswalk to the</p> <p>16 property at issue in this case?</p> <p>17 A No, because it's looking the opposite</p> <p>18 direction. It doesn't even look at the property in</p> <p>19 question. Is this an accurate depiction of the</p> <p>20 site? This is facing south. You are looking</p> <p>21 south.</p> <p>22 Q This is facing north.</p> <p>23 Isn't this the entrance to your subdivision?</p> <p>24 A This looks like the entrance to my</p> <p>25 subdivision. I'm trying to figure out which</p>	<p>305</p> <p>1 and bus service?</p> <p>2 A I am not aware of what the school</p> <p>3 board replied. I know that Curt was speaking with</p> <p>4 the school board about this. And I don't think</p> <p>5 that the school board replied and said one way or</p> <p>6 the other. I am not aware of any kind of -- of a</p> <p>7 judgment made by the school board as to whether or</p> <p>8 not this would be a problem or not.</p> <p>9 Was there a document that described</p> <p>10 that? Because I didn't see it.</p> <p>11 MR. CARMODY: That's all I have. No</p> <p>12 more questions.</p> <p>13 MR. LUMLEY: Nothing further, Your</p> <p>14 Honor.</p> <p>15 THE COURT: The witness is excused.</p> <p>16 THE WITNESS: Thank you. Am I</p> <p>17 allowed to stay?</p> <p>18 THE COURT: Will the witness be</p> <p>19 recalled? Is here an objection to his staying?</p> <p>20 MR. CARMODY: Yes, Your Honor.</p> <p>21 THE COURT: On what basis?</p> <p>22 MR. CARMODY: He may be recalled. I</p> <p>23 don't know what he's going to do next.</p> <p>24 MR. LUMLEY: I was about to say that</p> <p>25 we are finished.</p>
<p>1 direction this is facing. Is this picture taken</p> <p>2 going north or south?</p> <p>3 Q Sir, you are there every day. This</p> <p>4 is a picture looking north to Olive Boulevard, and</p> <p>5 on the left side in the middle of that photograph</p> <p>6 you can see vaguely some portion of the strip</p> <p>7 center's --</p> <p>8 MR. LUMLEY: May I suggest the</p> <p>9 witness look at --</p> <p>10 A Okay. I apologize. I thought this</p> <p>11 was the other direction facing southbound and not</p> <p>12 facing northbound. So kind of in the top left</p> <p>13 corner I guess is where you would see where that</p> <p>14 site would be.</p> <p>15 There are two entrances to my</p> <p>16 neighborhood, so that could have been the north or</p> <p>17 the south.</p> <p>18 Q (BY MR. CARMODY) But the fact of the</p> <p>19 matter is this is where a bus would come to pick up</p> <p>20 children?</p> <p>21 A Yes, this is where the bus comes.</p> <p>22 Q Are you aware of the fact, sir, that</p> <p>23 the school district was advised of what was going</p> <p>24 to happen here with this CUP application and said</p> <p>25 there was no issue in connection with its service</p>	<p>306</p> <p>1 MR. CARMODY: Oh, okay. That's fine.</p> <p>2 THE COURT: Please proceed.</p> <p>3 MR. LUMLEY: So Defendants are</p> <p>4 finished.</p> <p>5 THE COURT: Defendants rest, is that</p> <p>6 correct?</p> <p>7 MR. LUMLEY: Correct, yes.</p> <p>8 THE COURT: Is there any rebuttal</p> <p>9 evidence to be presented by the plaintiffs?</p> <p>10 MR. CARMODY: No, Your Honor. I</p> <p>11 would like to offer exhibits.</p> <p>12 Exhibit 40, Judge.</p> <p>13 THE COURT: 40, four zero. Is there</p> <p>14 any objection?</p> <p>15 MR. LUMLEY: No objection.</p> <p>16 THE COURT: Exhibit 40 is admitted.</p> <p>17 Is there any other rebuttal evidence?</p> <p>18 MR. CARMODY: No, Your Honor.</p> <p>19 THE COURT: Is there anything further</p> <p>20 before we go off the record on behalf of either</p> <p>21 party? Mr. Carmody?</p> <p>22 MR. CARMODY: No, Your Honor.</p> <p>23 THE COURT: Mr. Lumley?</p> <p>24 MR. LUMLEY: No, Your Honor.</p> <p>25 THE COURT: We are off the record.</p>

1 (End of proceedings.) 309
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 REPORTER'S CERTIFICATE 310
2
3 I, Constance D. Petzall, Official Court
4 Reporter for Division 21 of the 21st Judicial
5 Circuit of the State of Missouri, hereby certify
6 that on June 15, 2021, and June 16, 2021, I
7 reported the foregoing proceedings in the case of
8 BG Olive and Graeser, LLC vs. City of Creve Coeur
9 Missouri, Cause Number 20SL-CC04674, and I further
10 certify that the foregoing pages contain a true and
11 accurate reproduction of said proceedings.
12
13
14 /s/ Constance D. Petzall
15 _____
16 Constance D. Petzall, CCR #775
17 Certified Court Reporter
18 Division Number 21
19 105 South Central Avenue
20 Room 316
21 St. Louis, Missouri 63105
22 314-615-3249
23
24
25