
1. COMMENCEMENT

Mayor Weinbrecht called the meeting to order and led the ceremonial opening.

Call to Order and Ceremonial Opening

Adoption of agenda

<table>
<thead>
<tr>
<th>RESULT: APPROVED [UNANIMOUS]</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOVER: Jack Smith, District C Representative</td>
</tr>
<tr>
<td>SECONDER: Lori Bush, At-Large Representative</td>
</tr>
<tr>
<td>AYES: George, Weinbrecht, Smith, Robinson, Frantz, Bush, Yerha</td>
</tr>
</tbody>
</table>

2. QUASI-JUDICIAL PUBLIC HEARINGS

2.1 Amberly Glen 19-DP-0016

Weinbrecht: This case is before us tonight because the applicant had requested a revision to the Amberly Glen Subdivision. As a reminder to those in attendance tonight, even though we are in the council chambers, an evidentiary hearing is more like a court case. The council acts like the judge, and we can only accept evidence that is competent, material, and substantial. The North Carolina and United States constitutions give the applicants certain due process rights in an evidentiary hearing that council must comply with. The Constitution really ties our hands in what evidence we can accept. I apologize in advance for what might seem burdensome or a complex process. We will consider competent, material, and substantial evidence from anyone who testifies. By law, we can only accept testimony from expert witnesses regarding whether this development will affect property values, and whether any increase in traffic resulting from this development will pose a danger to public safety. Those who are with us this evening intending to testify, that are not qualified as experts, we can only accept testimony from you on the factual issues and what you have observed. Our contractual attorney, who is to my left, will help us determine who’s an expert and what evidence we can consider. The hearing procedures in detail are attached to the printed agenda. All speakers who want to speak during the public hearing must be administered an oath by Mrs. Johnson, who is to my right. And at this time, we are going to pause just a moment to allow those individuals to speak at the public hearing to approach Mrs. Johnson and receive their oaths, and council will pause at this time from taking any other action.
Virginia Johnson, clerk to the board, provided oaths to potential speakers.

Weinbrecht: I'll now ask council members if they've had any site visits, ex parte communication, financial relationships, specialized knowledge, or close relationship to an affected person to disclose.

All council members present had no site visits, ex parte communication, financial relationships, specialized knowledge, or close relationship to an affected person to disclose.

Weinbrecht: All right. Based on the evidence you've heard from the council members, at this time, I would invite any party to this matter, if they have an objection to any council member's participation in the hearing. Seeing none, we'll continue, and I'll open the quasi-judicial hearing. Cassie Schumacher-Georgopolous of our staff will introduce this hearing.

Smith: She's smiling.

Weinbrecht: Did I mispronounce it?

Bush: He did it.

Schumacher: No, you didn't.

Frantz: You got it right.

Bush: You got it right.

Schumacher: You did. I'm sorry. I'm very proud of you.

Bush: Yay.

[LAUGHTER]

George: That is awesome.

Schumacher: Good evening, Mayor, and Town Council. This evening we bring to you a request from the Amberly Glen Subdivision to convert 56 townhome units to 56 detached residential units. Amberly Glen is located along Weycroft Avenue on the east side of Yates Store Road and is part of the Amberly Planned Development District. This item originally came before Town Council due to the total number of units exceeding 100 units, and it was determined that the change being proposed tonight is significant enough to bring back for your review. Town Council originally approved the development plan for Amberly Glen on September 8th of 2016. The development plan included a total
of 283 units, 114—or sorry, 148 designated to be townhomes, and 135 to be detached residential units. Today, a total of 115 building permits have been issued. A little over a third of those have been for townhome units, and the remaining two-thirds have been for detached residential units. What is being proposed for your consideration tonight is the 56 townhome units outlined here in red. So, again, the request is to convert the 56 townhome units to 56 detached residential units. This proposed request will change the unit count from 148 townhomes to 94, and from 135 detached residential units to 189. The total number of units will remain the same, at 283 units. So, while the only proposed change to the plan is to convert the townhome units to detached residential units, Town Council’s action tonight will apply to the full development plan. No other changes are being proposed to the original development plan. Lot lines will not change. The buffers will remain unchanged. The common area remains the same as was approved in the original development plan, and the density will remain the same at four units per acre. And also, the development plan will have to meet the requirements of the Land Development Ordinance. This concludes staff’s initial presentation. And following the applicant and other speakers, I’ll return to summarize staff’s observations.

Weinbrecht: Thank you. At this time, I’ll call on the applicant’s attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Barron: Thank you, Mr. Mayor and members of the council. Jason Barron with the Morningstar Law Group, here on behalf of the applicant. Here with me tonight is Shayne Leathers of WithersRavenel. He’s the engineer who’s been providing the plans that are before you all tonight and will provide testimony as to a number of the findings required by the ordinance. Also here is Mr. Kevin Dean with Kimley-Horn and Associates. They provided the original traffic engineering associated with the site and have updated that information. And that’s included in your staff report, as well. We’re optimistic that, at the conclusion of the receipt of testimony, you all will agree we’ve satisfied the evidentiary burden that an applicant has in a case such as this, and that the approval should be granted. Cassie’s done a great job of summarizing the nature of the request, but essentially, we had 56 townhomes in the middle of the site that they want to convert for—to single-family detached dwellings.
A couple of points on that. One, since you might ask the question, why? And the reason why is that the market reception has been better for the single-family detached product than it has been for the townhomes. And so, they found that, in this particular location, the detached is something that the market has had a better time with. So that’s, essentially, the genesis for why they want to make the change. Open space was something that we talked a lot about on this case the last time it was approved. If you recall, the code-required open space was 5,000. There was a condition that, at the time of approval, that increased the community-gathering space, or community-gathering area to 31,000 square feet, and what is provided in the plan is 42,688. So, 42,688 square feet of community-gathering area has been included in the plan, so it’s roughly 11,000 square feet more than what was required even with the condition that was associated
with the prior plan approval. So, with that, I'm going to get out of the way and hand it over to the experts to put on the testimony.

Leathers: Good evening, Council. Good evening, Mayor. A little bit about myself. I am Shayne Leathers, the project manager with WithersRavenel. I have a B.S. in civil engineering from Iowa State University. I know it's not NC State. Licensed professional engineer through the State of North Carolina, and I have been practicing engineering for over 20 years. My role with Amberly Glen project is the project manager. I'm here to discuss the overall design of the project, and I personally oversaw the design of the subdivision plan. Compliance with the LDO, we've been working closely with town staff since about July, to develop the plan you see before you. With their assistance, we have been able to ensure that the plan meets all the technical requirements of the LDO. The subdivision plan has been designed in compliance with the Town’s LDO, where applicable, and the Amberly PDD where it supersedes the Town’s LDO. To protections for other property. The section of the overall subdivision plan, which contains the 56 lots to be converted to single-family detached, is basically in the middle of the development, except for the eastern boundary. This section is surrounded by other properties in the same community. Because these houses will be built under the same set of covenants as the rest of the community, the potential adverse effects to the surrounding properties is greatly limited. Along the eastern edge, which backs up to Weycroft neighborhood, there is a 30-foot Type B buffer, and the potential for a Town of Cary greenway. Taken together, these measures work to protect nearby properties from potential adverse effects of the proposed development. Harmony and unity. The plan helps to achieve the vision sought for this area when the Amberly PDD was approved. The proposed project will—still, will establish a residential community in the area that has been designated for residential since the inception of the Amberly PDD. Moreover, the project is surrounded by complementary residential uses. Will note that the townhomes that the revised plan removes were different from any type—any additional home type in the neighborhood. The single-family homes that this plan proposes would be similar to the current single-family homes that are along the south side of the Amberly Glen Subdivision that’s currently under construction. We’re providing four community gathering spaces with a total area greater than the previous minimum of 31,000 square feet that Jason mentioned. Those are located here. There’s a gazebo area in here, top lot, open-space area here, and another patio gazebo thing here. Safe conditions for pedestrians and motorists. The plan includes a sidewalk network which allows pedestrians to navigate the community on foot safely, as vehicles travel down the roads. The street sidewalk has been designed in a manner that will result in vehicle speeds that are conductive to a residential community. For example, the subdivision plan includes provisions for speed tables in various locations and two small traffic circles added to Weycroft Avenue. Additionally, the project includes street-greenway connections, community open spaces, the gazebo, and other amenities. We tied to the Overlook Greenway here. There’s a Town of Cary Greenway that we tied to through here. And then we tied to the Village Square sidewalk and greenway system to the back. Although you can drive to the amenities and park there, they are pedestrian-oriented. And that way, the plan provides
the necessary roads to move people around. But more than that, it also creates spaces
which prioritize the pedestrian experience. Emergency services. The plan has also been designed with adequate radii to
accommodate the emergency vehicles. So, in conclusion, in my professional opinion, the
proposed plan complies with all applicable requirements of the LDO, including Chapter 7
and 8. The plan adequately protects other property from potential adverse effects. The
plan is harmonious with the development of nearby properties, and the plan provides
safe conditions for pedestrian, and motorists, and provides safe ingress and egress for
emergency services to the site.
If there are no questions at this time, I would like to invite Kevin Dean, our traffic
engineer, to speak fully about the last point.

Dean: Good evening. My name’s Kevin Dean. I’m a traffic engineer with Kimley-Horne &
Associates of 300 West Morgan Street in Durham. I have a bachelor’s degree in civil
engineering from NC State. I’ve been doing traffic analysis for seven years, and I’m a
professional engineer in the State of North Carolina. I helped prepare the original
analysis for this site and have reviewed the changes in terms of traffic. We reviewed the new plan based on the updated mix, and as noted in your staff report, it
does result in a slight but negligible increase in traffic volumes, given the change of mix.
We also looked at the impacts of that increase on the surrounding road network, found
no significant increases in delay, and no changes to intersection level of service. Based
on that review, there aren’t any additional improvements that should be required to
accommodate site traffic. It is my professional opinion that the proposed plan before
you tonight, which includes the originally committed traffic improvements, provides
mitigation for traffic congestion impacts reasonably expected to be generated by the
project. Happy to answer any questions you might have.

Weinbrecht: Thank you.

Dean: Yes, sir.

Barron: With that, Mr. Mayor, we conclude our presentation in chief. We’d ask that the
council accept into record as judicial notice copies of the Land Development Ordinance
and the Town’s other adopted plans, as well as copies of the staff report and the exhibits
attached thereto.

Weinbrecht: Thank you, Mr. Barron. At this time, I’ll invite speakers who have been
sworn in who wish to speak in support of the application to approach the podium.
Anyone to speak in support? Seeing no one, we’ll continue. Any reason to cross-
examine? No? All right. We’ll now open the hearing to those who are opposed to the
request. As a reminder to those testifying, please limit your testimony to facts that you
know. The applicant’s representative has a right to object to your testimony. He or she
may object while you are speaking. They have the right to do that. Our contractual
attorney sitting beside me is to help council determine what evidence to consider, and I
would invite you to the podium at this time. Anyone to speak in opposition? Seeing no one, we'll continue, and we'll call on staff to provide professional observations about the request.

Schumacher: Thank you. The conversion of 56 units from townhomes to detached residential is fitting with the original approval and matches the surrounding neighborhoods. Detached residential is considered a less-intense development use than townhomes; therefore, staff's perspective is development intensity will decrease. The proposed use remains residential, and as stated earlier, the lot lines, buffers, the density, and street layouts will not be altered by the proposed changes of use type, and the gathering areas remain the same size as the original approved plan. Traffic impacts will remain unchanged from the impacts identified in the original study, and no modifications have been requested. So council is simply reviewing the development plan against the six approval criteria, specifically focusing on how the proposed conversion of the 56 townhome units to detached residential units affects the original plan. And with that, staff would be happy to answer any questions.

Weinbrecht: Thank you.

Schumacher: Thank you.

Weinbrecht: We'll now begin the deliberative phase of the hearing, and I'll open it up to council members for questions or comments. Ms. Robinson?

Robinson: I have questions. So, it's a little confusing, looking at it, how you can take the same parcels and go from 56 townhomes to 56 single-family. So, are the units smaller? Is that how they're accommodating single-family detached?

Schumacher: So, the lot sizes are similar to the lot sizes that were originally approved for single-family uses. So these were planning to be larger townhomes than what is being constructed today on the western side of the development.

Robinson: Yeah, I understand that, but it just seems like if you're going from an attached product, and you get 56 of them in, you'd have some savings because you don't have side yard setbacks. And then you go to single-family, it seems like there should be, like, 52 units, or something like that, instead of 56. I'm just confused how the numbers work out that they can still fit in the same number of single-family units.

Schumacher: Can I call on the engineer to—okay.

Leathers: I kind of had the same question when it was brought to my attention, but the original townhomes were extraordinarily large, and it just works out that, with the setbacks and the product type after fitting, they just fit perfectly with the original plan.
Robinson: Okay. So they basically go smaller.

Leathers: They are a smaller home—

Robinson: Units go smaller.

Leathers: —in terms of footprints.

Robinson: Okay. Can someone explain to me this thing that is not a cul-de-sac? What is this? It looks like a rectangular turnaround? I mean, I deal with that all the time in Carpenter Village. It looks a little bit different from that, but you have to do a three-point turn to be able to turn around. Is that the intent here, that it’s a vehicular turning space, or is it a parking pad? It’s smack in the middle, the little light-gray thing.

Schumacher: This here?

Robinson: Yep. And then, there’s one to the left, and then another one to the left. Yeah, those three.

Leathers: This is just a community area. This here’s another parking area for the residents, and this one would be used as an example similar. This actually has the mail kiosk attached to it. This one has the mail kiosk attached to it. This—like, this one here is just parking for—there’s a tot lot, gazebo, a swing set, I think on that one. So, this is—it’s just parking. It’s not a dead-end road or any parking lot.

Robinson: Okay. When I look at this going towards a single family, it seems like you’re going to be getting more families than you would with townhomes. That’s—maybe not—but I don’t—I can understand with townhomes how you’d have to have a parking—an extra parking pad. But here, I would much rather see that used for either green space or seal it off and make it a—you know, a blacktop playground for kids. Put a basketball court in there or something, and let it be a gathering space. I don’t think that you need to have extra parking if these are going to be single-family homes. I presume if it’s single-family, they’re probably going to have a garage or a little driveway. They probably have capacity for two to four vehicles, you know, in it. So I’d be more amenable to moving to that product that’s, obviously, going to attract—in my opinion, attract more families if you take that space and convert it over to some type of, you know, public amenity that’s not parking.

Bush: Is that a mail kiosk? Look, I mean, because you do have cluster mailboxes here now in these units. Is that a cluster box, or like you had in the other locations or no?

Leathers: The one that we’re particularly talking about? No, it’s just parking.

Bush: Okay.
Frantz: Is there enough room for vehicles to safely park on the street and traffic to still come through?

Leathers: The road still follows the standard width and the horizontal criteria. Parking’s allowed in the streets in single-family, so.

Frantz: Okay.

Robinson: And these are public?

Leathers: They are public.

Robinson: These are public streets. Does the driveway cuts allow for enough space for a car to park between driveways?

Leathers: You should be able to fit in between each one. I haven’t actually measured them, but—

Robinson: Okay. You know, that’s just my impression. I—you know, I don’t know that we need an extra parking pad, and I think it could be a phenomenal amenity for the community, especially when you have so many homes with such small yards. It would be really nice to have a space. And a lot of kids play in cul-de-sacs, and we always say, “Hey, cul-de-sacs aren’t really for playing in,” but they do anyway, because they like to ride their bikes and whatnot. So, I mean, having it closed off as a blacktop playground or as a green space, I think, would have a lot of appeal to the community.

Bush: From a process perspective, I can’t remember—when we have a quasi-judicial discussion, and a site plan comes to us with respect to a change, is everything on the table such as this? Is it only—are we only to discuss what’s brought before us? I mean, how does that work? Because I know we had a discussion about this, but I can’t remember the answer.

Glover: Right. So, you’re actually looking at this as if it were a new plan. Now, you have seen it before, and so I want you to remember that, and that you did approve it before. But you’re looking at all six criteria and evaluating whether this plan as a whole meets the six criteria for review.

Bush: Okay.

Frantz: Did the previous plan that was approved have this little parking area?

Schumacher: It did. And the parking is in place today, and staff did have discussion about whether or not it was appropriate to look at converting it to green space or is the
parking lot appropriate because of the density of the uses and what might be limited to on-street parking. So, I think that there’s a balance at play to what is a needed amenity for the community there.

Bush: Was there a staff observation? Because I know that they are providing more parking than is required, as detailed in the staff report, already. Was there a staff observation with request to—with respect to whether that’s needed for this area where the homes are smaller and the lots are smaller?

Schumacher: So, our observation was that they are providing an excess of parking at this time, and that, you know, weighing between whether it were to be converted back to green space or—but maybe leaning more towards having that extra parking for the residents might be more useful—excuse me, ideal. I don’t know. I can’t find the right word—an amenity for the neighborhood.

Bush: So, parking—so, basically, it’s not a bad idea?

Schumacher: I don’t think so.

Frantz: I mean, I appreciate the concern. I can see the pros and cons to having a little extra parking in the neighborhood, if it gets a couple—few cars off the street.

Bush: Party.

Frantz: You know, some neighborhoods, while—you know, if you especially have cars parked on both sides, you know, you’re lucky to get one through—one car through at a time. But I also see that some extra green space might be beneficial to the community, as well. But I don’t know that it makes me not support the project. I mean, I kind of leave it up to them to determine what they think best fits their product, and I’m just—you know, to go from townhomes to single-family homes, I’m pleased with that. You know, initially, when I read the staff report, I kind of felt like this was one of those meetings we could have just had via email and called it good. You know? But I do appreciate your attention to detail and concern over that.

Weinbrecht: Any other comments? If not, if we’re ready for a motion, I’ll close the public comment portion of the hearing and ask council for a motion on the proposed development plan.

Robinson: Well, let’s see. Do we need to read the motion? I’ll throw out a motion and see if you guys like it, and if not, we’ll move on and we’ll do a different one. For the reasons discussed, I move that we approve the proposed development plan with conditions as stated below, as it meets all of the approval criteria set forth in Section 3.9.2(I) of the LDO. This approval is conditioned upon the following: the applicant must satisfactorily address all remaining Development Review Committee comments on the
master plan set—submitted for signature. Number two, all previous conditions of approval remain, and number three, that the parking area in the center of these 56 homes—single-family homes—be converted to a public amenity play space.

Frantz: I second it for discussion.

Weinbrecht: There’s a motion and a second. Discussion?

Frantz: More of a question, I guess, to the applicant. Do you have any heartburn issue with turning the parking into play space, or a paved play area, or something besides parking?

Barron: It’s in. The parking’s in, as of today.

Frantz: It’s already constructed?

Robinson: Built.

Barron: It’s already been constructed.

Frantz: Okay.

Barron: Their preference is to keep it, without having to rip it up.

Frantz: Okay, yeah.

Robinson: Yeah, I get that. Okay.

Barron: And parking’s a premium.

Frantz: Okay.

Weinbrecht: So, we have a motion and a second for an amenity.

Robinson: Yeah, I guess—

Weinbrecht: Would you like to withdraw that motion?

Robinson: I guess so. I mean, I wish we could just take—rip up a small part of it, at the curb. [LAUGHTER] Break it so a car can’t come in it, and just leave it curbed all around, and let kids play in that space. But, if that—I mean, you know, I always think about where are the kids going to play, you know. And—

George: Can I ask that—
Weinbrecht: So, are you ready to withdraw your second.

Frantz: Yeah.

Weinbrecht: Okay.

George: Then, can I ask a question? So, are you saying that, as shown, now it has to be parking only?

Robinson: Uh-huh.

Smith: They already did it.

Robinson: It’s already built.

George: No, no. But it has—it’s already asphalt.

Bush: Yeah, it’s already there.

George: It’s asphalt. That doesn’t mean it has to be parking, like Jennifer just said.

Bush: Unless you want to put the condition on it, and have them—

George: Block it off.

Bush: —block it off and invest additional resources.

Frantz: Yeah, but it’s not—it was not designed to be play space on the front end, so it’s not going to work.

George: Okay. Tricycles.

Robinson: It’s fine. I rescind my motion.

Bush: We see kids playing in the parking lot.

George: Yeah, kids playing—

Weinbrecht: So, we had a rescinding a motion from Ms. Robinson and Mr. Frantz. I would entertain another motion.

Frantz: For the reasons discussed, I move that we approve the proposed development plan with conditions as stated below, as it meets all the approval criteria set forth in
Section 3.9.2(l) of the LDO. This approval is conditioned upon the following: the applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set for signature, and that all previous conditions of the approval remain.

Yerha: Second.

Weinbrecht: There’s a motion and a second. Discussion?

Robinson: I just want to say that—and this is more of an overall comment. I don’t want to see us doing this any more for single-family homes, like having this kind of parking area, because I think what invariably happens is you get somebody who has an extra car and he parks it there, and then it sits there forever. He puts a little cloth over it. And then, you know, it just kind of attracts a nuisance thing. I mean, kids come and park there. I mean, it just really doesn’t seem like it’s the right thing for a single-family community. And I don’t want us to get in the habit of doing this. So, I think in—you know, to the west here where you have these really dense townhomes, it makes sense because you have such density that, you know, where’s anybody going to even park in that? I mean, I can’t believe how tight those little units are. But, in the future, I mean, if we think that there’s ever a chance that something’s going to convert over to single-family, I don’t want to see this kind of parking lot in here.

Smith: Yeah, and just to reinforce what she’s saying, if you go where we live, over by that controversial apartment complex on Tryon and Cary Parkway, they can have all the covenants in the world; people just don’t follow them. You’ve got boats stored there, you’ve got trailers stored there, and you’re at the mercy of the homeowners enforcing their own policies, and they do, but we always worry about that day they don’t, and then we just have another collection there. So—

Robinson: Yeah, that’s what I’m afraid of here. So I just think it’s—

Smith: —that’s kind of the thought you’ve got to keep in mind.

George: Mini storage.

Robinson: Yeah. Yeah. I just—I think it’s kind of a mistake. I mean, I regret that they’ve already paved it, because I think it’s going to be such a nuisance that—

Frantz: Just to Jack’s point, though. I mean, that controversial apartment complex. It’s nice to have sometimes when the parking lot at Cary Orthopaedics across the street is full, so—

George: [LAUGHS]
Smith: Yeah, well, people going to orthopedic aren’t driving their boats there. [LAUGHTER] I mean, you’re right. I think it’s great to have—I’m not arguing the parking. I’m arguing the uses there.

Robinson: Yeah.

Weinbrecht: So, we have a motion and a second. We’ve had discussion. All in favor of the motion, please say, “Aye.”

Weinbrecht, Bush, Smith, Frantz, Yerha, and George voted aye.

Weinbrecht: Any opposed?

Robinson: No.

Weinbrecht: The motion carries six to one.

Weinbrecht: And if everything’s in order, Ms. Silverstein, I’ll close this public hearing. All right. I’ll close the public hearing, and we’ll move to our second evidentiary hearing.

**MOTION (captured from vertibam wordage above):** For the reasons discussed, I move that we approve the proposed development plan with conditions as stated below, as it meets all the approval criteria set forth in Section 3.9.2(I) of the LDO. This approval is conditioned upon the following: the applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set for signature, and that all previous conditions of the approval remain.

<table>
<thead>
<tr>
<th>RESULT:</th>
<th>APPROVED [6 TO 1]</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOVER:</td>
<td>Don Frantz, District B Representative</td>
</tr>
<tr>
<td>SECONDER:</td>
<td>Ed Yerha, At-Large Representative</td>
</tr>
<tr>
<td>AYES:</td>
<td>George, Weinbrecht, Smith, Frantz, Bush, Yerha</td>
</tr>
<tr>
<td>NAYS:</td>
<td>Robinson</td>
</tr>
</tbody>
</table>

2.2 Bojangles Sketch Plan 17-DP-0893

Weinbrecht: This case is before us this evening because the applicant has requested to build a 4,696-square-foot drive-through restaurant. As a reminder to those in attendance, even though we are in the council chambers, an evidentiary hearing is more like a court case. Council acts like the judge and can only accept evidence that is competent, material, and substantial. The North Carolina and the United States constitutions give the applicant certain due process rights in an evidentiary hearing that council must comply with. Constitution really ties our hands on what evidence we can accept. I apologize in advance for what might seem a burdensome or complex process. We will consider competent, material, and substantial evidence from anyone who testifies. By law, we can only accept testimony from expert witnesses regarding whether
a development affects property values, whether increased traffic resulting from the development will pose a danger to public safety. To those who are with us this evening intending to testify that are not qualified as experts, we can only accept testimony from you on factual and what you have observed. Contractual attorney to my left, Mr. Silverstein, will help us determine who’s an expert and what evidence we can consider. The hearing procedure’s detailed rules are attached to the printed agenda. All speakers who wish to speak during the public hearing must be administered an oath by Mrs. Johnson, who is to my right. We'll pause at this time to allow those individuals who would like to speak at the public hearing to approach Mrs. Johnson and receive their oaths.

Virginia Johnson, Town Clerk, administrated oaths to potential speakers.

Weinbrecht: At this time, I’ll ask if council members had any site visits, ex parte communication, financial relationships, specialized knowledge, close relationship to an affected person to disclose, starting on my right with Mr. George.

Council Members did not have any site visits, ex parte communication, financial relationships, specialized knowledge, close relationship to an affected person to disclose.

Weinbrecht: All right. Very good. Based on the disclosures you’ve heard from council members, I would invite anybody at this time, if they have an objection to a council member’s participation in the hearing, to approach the podium. Seeing no one, we’ll continue, and I’ll open the quasi-judicial hearing. Mr. Kevin Hales of our staff will introduce the item.

Hales: Thank you, Mayor, and good evening, Council. The next item on tonight’s agenda is a request for a sketch-only plan approval for a drive-through restaurant on N.C. 55. I emphasize that because it is a sketch-plan only, there are no architectural or fine-grain details. This is before you this evening because it is a drive-through facility and therefore requires council QJ approval. The subject site this evening is located on N.C. 55, between Morrisville Parkway and Morrisville-Carpenter Roads. The Carpenter Historic District is located just to the east, outlined on this slide in blue. It is separated from the Carpenter Historic District by a 100-foot Durham and Southern Railroad Corridor, which is owned by CSX. It’s located about 1,000 feet north of the Public Storage that was recently constructed this year. There are several nearby development projects underway in the vicinity. The N.C. 55 Eagles gas station is immediately north, and is close to administrative approval, immediately to the north. West Cary Professional Park is two lots to the south, which is a 25,000-square-foot office building, which had already been approved earlier this year. Across N.C. 55, you have the Blakeley and Wackena Hills subdivisions, which are both currently under construction. Carpenter’s Point is a subdivision, was rezoned earlier this year and has just started the development review process itself. Indian Wells rezoning was recently approved by
council in October, and then the Morrisville Parkway and N.C. 55 Assemblage has just started its rezoning process to the southwest. The site itself is currently sparsely wooded with mostly small pines and some hardwoods. Development of this property will occur on a lot in the Futrell-Cooke commercial subdivision, which has not currently begun construction, as it is still wooded. And to put that in a little bit better context, Futrell-Cooke was a three-and-a-quarter acre subdivision approved administratively in January of this year. Consisted of four commercial lots. This project occupies the second from the north, identified as Lot 5. Utilities and access for this property are provided by this underlying subdivision.

Access to the lots are provided by a new access road, which will run parallel to the Durham Southern Railroad corridor. Principal access to the site is via a leftover access on N.C. 55 between Lot 6 and 7 to the south of the subject property. The access road will also connect northwards to Morrisville-Carpenter Road. Ultimately, this access will be restricted to a right-in/left-out once the at-grade railroad crossing at Morrisville-Carpenter is closed at the end of the Carpenter Fire Station realignment project. And then there’s another right-in-only access on N.C. 55 provided on Lot 4, the N.C. 55 Eagles project, just north of the site. The site itself consists of a 4,700-square-foot drive-through restaurant going in the middle of the site. The drive-through itself—window is oriented toward the railroad corridor, so it will minimize visual impacts along 55. Sidewalks along N.C. 55 and the access drive are provided, as shown in the original Futrell-Cooke subdivision plans. There is an averaged 30-foot-wide buffer along the railroad, per the zoning conditions. The zoning conditions were written to allow the averaging, administratively, and a retaining wall and evergreen plant material supplementing that railroad corridor buffer will preclude unsanctioned crossing of the railroad corridor. The plan does include two modifications which were approved administratively during the review process. The first, a 30-foot streetscape along N.C. 55 is averaged in width; the minimum width would be 23 feet and the maximum width would be 41 feet. And this is due to irregularities in the right-of-way along the property’s frontage. The second modification is an increase to the maximum parking allowed on the site from 39 spaces to 46 spaces, which is approximately 18%, and this is due to anticipated parking demands for the use and is in line and consistent with other projects, with their modifications approved in similar situations. This concludes staff presentation. We’ll be back, following all the other speakers, to provide some brief observations. Thank you.

Weinbrecht: Thank you, Mr. Hales. At this time, I’ll call on the applicant’s attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Ghosh: Thank you, Mr. Mayor and members of the council. My name is Nil Ghosh. I’m with the Morningstar Law Group. I’m here tonight on behalf of the applicant, Tri-Arc Food Systems, present evidence in support of sketch plan approval for a restaurant with a drive-through facility that is about 4,700 square feet. In case you haven’t heard, it is a Bojangles’. Our burden is to show that each of the approval criteria has been met, and
we will do that tonight through the exhibits and testimony of our expert witnesses. For traffic matters, Mr. Rynal Stephenson of Ramey Kemp & Associates. But first, you will hear from Mr. Ron Hendricks of Piedmont Land Design, who has been site planner for the project. I am proffering both these gentlemen as expert witnesses in their fields. Mr. Hendricks.

Hendricks: Good evening. My name’s Ron Hendricks. I’m with Piedmont Land Design. I’m a principal in that firm. I’ve been a licensed P.E. since 1994, and I did receive my degree from State in 1989. For this project, I’m both the project manager and the civil engineer, and we’ve been working with staff for a long time to get to this point. We’re glad to be here. First approval criteria regards compliance with the LDO. As Kevin mentioned, we did request the two alternates that are approved by staff, and there are none that need approval from council. The first one was the parking increase. The second one was the street yard average. Now, with this approval, you know, we believe the site has been designed in accordance with the LDO. The second approval criteria is protection for other property. As you saw, it fronts on Highway 55, it backs up to the rail corridor, and it has commercial property both to the north and the south. You know, this area is not residential in nature, but we are, as required, providing a 30 foot—or the average 30-foot buffer on 55. Kevin mentioned that the property to the north is going to be a convenience store with gas sales, and there is a buffer required there, but in lieu of providing it there, we’re shifting it to the south to provide more of a buffer to the office that will occur to the south likely office use. And that’s been approved by staff, as well. Ultimately, we believe development of this parcel will not have a negative impact on nearby properties, as the most dominating characteristic is the railroad, and we’ve got a great barrier to the residential. The next criteria is harmony and unity. As I mentioned, this development plan, in conjunction with that of the adjacent convenience store provides harmony and unity of development as required by the rezoning and the conditions that we’re required to adhere to. Kevin mentioned that, you know, this site is already developing commercially. We’ve got the Public Service storage facility, then we’ve got the medical office, or the office that’s been approved. And nonresidential uses are reasonable in this area, given the adjacent railroad and frontage on the high-volume thoroughfare. As the rest of this area develops, it will do so in a manner that is harmonious with the pattern of development we are continuing. The fourth criteria is safe conditions for pedestrians and motorists. You know, with any fast food, you know, pedestrians do have to cross the driveways, so we’ve, you know, provided crosswalks and provided sidewalks and striping, so that they can get there safely. It’s not uncommon. All fast-food restaurants have that. And as Kevin mentioned, the cross-access driveway is provided behind the property to provide adequate access to the facility. And the internal drives provide access around the building.

Emergency services. This project has been designed with adequate width and radii on the drives to facilitate movements of emergency vehicles around the site, and the overall parcel can be accessed, as I stated, from Highway 55 and Morrisville-Carpenter Road. In conclusion, it’s my professional opinion the proposed plan complies with all applicable requirements of the LDO, including Chapter 7 and 8. The plan adequately protects other
property from potential adverse effects and is harmonious with the development of nearby properties. I also find that the plan provides safe conditions for pedestrians and motorists, and provides safe ingress and egress for emergency services. And I’m—if there are no questions, I’d like to invite Rynal Stephenson to address the traffic issues.

Weinbrecht: Thank you.

Stephenson: Good evening. My name is Rynal Stephenson. I’m with Ramey Kemp & Associates, 5808 Faringdon Place in Raleigh. I am a registered professional engineer in the State of North Carolina. I have a bachelor’s of science and master’s of civil engineering degree from NC State, and I’ve got about 20 years’ experience in the field of transportation engineering. So, we—so there—for this particular property, there have been numerous traffic impact studies done on—the overall development includes this parcel as well as other developments that you saw by staff show you earlier. So, there’s been a lot of traffic analysis done out in this area. So, we kind of came in after this process got started. The original traffic study that was done for this overall development was from 2009, and so, when working with staff, we were asked to update the traffic study in terms of the traffic counts to get a current assessment of what’s going on out there and how this would—how this may impact things. And so that’s what we did. We took traffic counts that were done from March of this year and added in the other developments you saw on the screen earlier, as well as the proposed Bojangles’, and looked at how the traffic would work at the surrounding intersections. And what we found, when you look at the Bojangles’ itself, it had a very minimal increase in delay at these intersections, on the order of magnitude of one or two seconds. So it was a relatively—very minimal increase. So, as I said, the traffic study included the adjacent developments that you saw earlier, as well as 2% traffic growth from the counts that were taken. So, with the improvements and the access that you’ve seen on the plan, there—and the impacts, this development would not create the need for any additional transportation improvements to accommodate the traffic upon the buildout of the parcel. And I’ll be glad to answer any questions that you have.

Weinbrecht: Thank you.

Ghosh: Just for the record, this is Nil Ghosh again, speaking on behalf of the applicant. I’d like to, at this time, move into evidence all the exhibits relied upon or referred to by the witnesses, including the staff report, site plan, application materials, and all the exhibits, and ask that judicial notice be taken with regard to the contents of the LDO, the Cary Community Plan, and other adopted plans of the town. As I mentioned at the beginning of the hearing, our burden is to submit competent materials, substantial evidence into the record, showing that the proposal meets all of the requirements of the LDO for approval, and we have done that tonight; therefore, I respectfully ask this council to approve this master plan, and we’re happy to answer any questions. Thank you for your time.
Weinbrecht: Thank you, Mr. Ghosh. At this time, I’ll invite speakers that have been sworn in, who would like to speak in support of the application, to approach the podium. Anyone to speak in support? Seeing no one, I’ll ask if there is any reason for cross-examination. No. We’ll now open the hearing to those who are opposed to this request, and I’ll invite you to approach the podium. Anyone opposed? Seeing no one, we’ll continue, and I’ll ask for Mr. Hales to give a professional observation about the request.

Hales: Thank you, Mayor, again. And again, most of the observations are in the staff report; we did want to highlight very briefly, because this is located very close to the—right across the railroad tracks from the Carpenter Historic District, and that was a major consideration during the time of the rezoning in the ’90s and the development plan review, even though it is a sketch plan review. The 100-foot corridor does provide good spatial separation. In addition to that, the zoning conditions on the property do include a lot of architectural conditions, and we’re not talking about architecture tonight because there are no elevations. But it does control—there’s a palette of acceptable roof designs and a palette of acceptable masonry materials to be used, as well as limiting the colors of any metal roofs or asphalt roofs to an earth tone, to color brown/tan palette. So that will ensure some compatibility with the existing structures in the historic district. In addition, there are requirements for some additional evergreen screening in the buffer along Durham Southern Railroad, which will be complied with, with the full development plan. That concludes staff observations at this time. We’ll be available for questions. Thank you.

Weinbrecht: Thank you, Mr. Hales. Unless there’s any reason to continue this hearing, I’ll proceed. All right. We now begin the deliberative phase of the hearing. I’ll open it up to council members for questions or comments. Ms. Bush?

Bush: Could you explain, if somebody’s coming south on Highway 55 to get the Bojangles’ fix, how do they get in, how do they get out, to continue back south again? I’m not sure I get that one.

Hales: I’ll get my—

George: Probably Eagles.

Hales: —awesome access slide. So, you’ll notice there’s a leftover access between Lot 6 and 7. So, as you’re coming down, there’ll be a median break to allow left turns into the—that access. So that was part of the original Futrell-Cooke subdivision approved back in January. So there’s a left-over to allow southbound traffic to enter the subdivision. And to get back out, they would either have to go northbound, or they would go all the way up to Morrisville-Carpenter and go out at the light.

Bush: But they can’t make a left?
Hales: You cannot make a left out.

Bush: It says “right-in.”

Hales: It’s a left-over.

Bush: Now, okay, so a left over to get into Lot 6, basically.

Hales: So, coming over, you make a left over. You cannot go this direction.

Weinbrecht: Right out the exit.

Hales: It’s a right-out only.

Bush: Okay. And then, to get back on Highway 55 South, after you’re done with Bojangles’?

Hales: You would go up to Morrisville-Carpenter and access at the light and make a left-hand turn.

Bush: And I thought that was median-divided at Morrisville-Carpenter with the new crossover—with the new flyover?

Hales: It’s designed ultimately to be a right-in and then a left-out, because there will be no traffic coming from the right-hand side, as you’d be able to take a left to get out and go to the light.

Robinson: It’s closed at the railroad track.

Hales: Yeah.

Bush: Oh. Right. That’s right here, with the realignment.

Hales: Ultimately, with the realignment of Carpenter Fire Station, it gets closed. Correct.


Weinbrecht: Other questions?

George: You said the metal roofing material is going to be earth tones?

Hales: It allows metal roofing materials, and they’re limiting to an earth-toned palette of browns, grays, and tans.
George: So no orange?

Hales: No orange metal roofs. They can use orange. It cannot be any of the masonry, and it cannot be metal roofing.

George: Okay. So, it won’t match the mini storage?

Robinson: All the oranges on 55 are—

Hales: I don’t expect so.

Robinson: Yeah, they all clash. All the oranges are different.

Smith: Ugly.

George: That one orange.

Robinson: It is so ugly. Yeah, I would put this in, like, just incredibly disappointing uses for this. So, then you look at the sketch plan, and you say, “Okay, you know, can the sketch plan overcome the fact that you have the most disappointing use next to a historic area?” And I don’t see anything that’s been done here in the sketch plan that really overcomes it. I mean, I would expect to see massive planting, so that it’s very screened. We don’t know what will happen with that rail corridor, if CSX one day will say, “You know what? Let’s clear everything out of our corridor,” which they have total right to do. So, you said that there’s going to be some supplemental plantings. To what level? Type A? Type B?

Hales: We don’t have a planting plan yet, because it’s a sketch plan; however, they are required to have a Type B buffer with additional evergreen trees planted along there to provide a visual separation. That’s part of the zoning.

Bush: What is the LDO requirement for that area, C? Type? I mean, what is—?

Hales: It’s a Type B, usually, along a railroad corridor.

Bush: Type B?

Hales: Yeah.

Bush: I thought it was C, too. But—

Weinbrecht: Other questions?

Bush: No. I just want to make clear—
Robinson: Just wanted to see if it’s Type C. You know, I don’t think that the site, excuse me, the sketch plan brings this product into harmony or unity with the historic product. I don’t—I think this—there is a negative impact from this. I mean, I would never, ever, ever, ever select a Bojangles’ to go near a historic area. So, it’s incumbent upon—

Bush: Well, there’s a gas station right above it. So—

Robinson: Crap, I know.

George: Yeah.

Robinson: Total crap. I mean, this is like—

Yerha: A gas station is worse.

Robinson: It’s worse. I mean, they’re both crap.

Smith: Yeah.

Robinson: So, given that they’re so crappy, it seems like the applicant needs to kind of step up the game with the sketch plan and make it more acceptable. So, it just—I don’t see it here—[OVERLAPPING]

Bush: I just want to make sure that—gas station has already been administratively approved, right?

Weinbrecht: Right.

Robinson: Well, yeah. We’re not talking about the gas station.

Bush: So, I just—

Robinson: I think these both comply with whatever crazy zoning—[OVERLAPPING]

Bush: Because it’s highway zoning? Is that why?

Weinbrecht: This has a drive-through is the reason—[OVERLAPPING]

Hales: It’s general commercial conditional use, and there were some uses that were limited, but they’re automotive repair and automotive sales uses. The only other conditions were a split between office and retail, so you have commercial closer to the intersection, office to the south, and then the architectural conditions I covered earlier.
Robinson: I think we’ve asked this before. I’m just going to ask it again, going forward. Any time we have a rezoning, could you give us an exhaustive list. When they say, “Oh, it won’t be automotive,” can you give us an exhaustive list of everything imaginable that it could be, so that we could go through that list and go, “Whew, fast food next to the historic area? Gas station? No, we don’t want that.” Because sometimes we don’t think about what can be there. We’re focusing on what they’ve said that won’t be there.

Hales: Sure.

Robinson: Because I think none of us would have ever selected, like, yeah, let’s allow a gas station and a Bojangles’. But I do think it’s incumbent upon the applicant, if he’s going to put a Bojangles’ in there, that he goes to extra measures to screen it, and to make it compatible, you know, with the historic area around here. And so—and we want to make sure that we don’t end up, you know, looking terrible on 55, either. You know—

Weinbrecht: We’re kind of already there.

Smith: Yeah.

Weinbrecht: It’s the Capital Boulevard of Cary.

Robinson: Well, yeah. I mean, there’s like—it is becoming the Capital Boulevard.

Smith: Right, sure is.

Robinson: Yeah.

Bush: There’s four storage units.

Robinson: Yeah.

Bush: I mean, we can make it the best we can, but already it’s got—there’s a gas station, there’s two storage units, there’s, you know—

Robinson: There’s three storage units.

Bush: What else? Just—I mean, where—that you can see from that site.

Robinson: Oh, from that site that you can see? Yeah.

Bush: Right? I mean, question is, how can we make it the best Bojangles’ or something that fits that—you know, what it’s already allowed to be? Right? What it’s already zoned for.
Yerha: Well, it sounds like some of our concerns are more with the approval of the Futrell-Cooke subdivision back in January—

Weinbrecht: Yep.

Yerha: —that would allow this, rather than the subject that we’re talking about.

Weinbrecht: Exactly.

Hales: And to be clear, it’s actually the zoning that was approved back in—

Weinbrecht: Yep.

Hales: —you know, early 2000, late ’90s.

Yerha: So, I mean, to me, Bojangles’ would not be my first choice next to the historic district, but I believe it’s better than a lot of other uses that could be there, especially with the architectural requirements that are involved. My concern was with the buffer. I thought I remembered the staff report talking about Type C along the railroad track.

Bush: Yeah. That’s what I mean.

Hales: So, the LDO requires a Type C. With the addition of the plant—being evergreen plant material, it serves as a B. It’s actually a higher than Type C, because a Type C buffer has no evergreen plant material in it.

Bush: Oh, that’s why.

Hales: So, it’s an effective B.

Yerha: I see.

Bush: Okay.

Yerha: Okay. That helps it a great deal. That was—that’s my concern. I mean, I would like to say, “We don’t want a Bojangles’ there,” but I just don’t see us able to say that, based on the criteria that—

Smith: We can say “no drive-through.”

Yerha:—tonight. Right. The drive-through is the main reason why it’s coming—

Frantz: The reason it’s here.
Bush: Right. We wouldn’t even see it if it wasn’t a drive-through.

Yerha: Right.

Bush: If it was a restaurant, it would never come to us.

Hales: Correct.

Frantz: It could be any restaurant known out there. If it didn’t have a drive-through today, then it wouldn’t even be here.

Bush: Right.

Robinson: So, if we don’t think it’s appropriate to have a drive-through, we could say no to this?

Hales: You would have to tie it to one of the approval criteria that are in the ordinance. It couldn’t be just because the drive-through. You’d have to tie that—the existence of a drive-through is not compatible with the—

Robinson: Because it’s not in harmony with the historic area. I don’t know any drive-throughs in the historic, you know—

Frantz: It’s pretty unfair to say this is not in harmony, when a gas station—

Bush: It’s right next to a gas station.

Frantz: —is directly to the north and storage units and stuff. I don’t see how you’d penalize a Bojangles’ in that regard. To me, I see the only reason this is here is because it’s a drive-through use, and so, everything else, I’m—while it might be easier for some than others; I’m just kind of putting that aside and focusing, isn’t a drive-through use an appropriate use here, along a major corridor such as Highway 55 that’s getting people to and from work and home? And to me, the answer for that is yes. So, I can appreciate the concerns. I can appreciate the points that have been brought up. But, at the end of the day, I just don’t see it—I see it as an appropriate use. So—

Smith: Well—

Robinson: Yeah, I don’t. I just don’t.

Frantz: I don’t see it as crap. I can tell you that.

Robinson: Yeah. I do. I don’t like it.
Smith: I don’t see it as an appropriate use; however, the damage is done—we have the gas station. And the domino has fell—you know, has fallen. And now we have this coming, and you got two more spots. You know, if they change from O&I to something else, you know, I hope we get a hard look at that, because I think both of those are supposed to be commercial.

But, you know, if there was a lesson that I learned in Franklin, Tennessee, when we did our inner city, is how they have this—they have this beautiful historic area, and they allowed it to be overrun by the fast foods, and the Pizza Huts, and everything else. And now, they’ve realized how much damage it has done to the community, and they’re actually buying those commercial entities and tearing them down, and preserving the area around the historical center. Now, I don’t want to compare their historical center to ours, but I think we really need to start looking long and hard about those surrounding strips, like you’re saying, and you know, maybe it’s just a hole in our guidelines in Imagine Cary. When this was all created, our hope, or my hope, was that whole strip parallel to 55 would not end up like this, like you said, the Capital Boulevard. So, I’m torn, Don, because you are right. There’s appropriate use, as you’ve said, but it’s only appropriate because we’ve let the domino fall. I mean, I really don’t—I really don’t like this here, but I’m still more in shock at the gas station.

Bush: I want to understand really quickly the—just the history of this Futrell. When was it approved?

Weinbrecht: Was that the three-to-two vote we had?

Hales: Futrell-Cooke was an administratively approved commercial subdivision. It was just a subdivision of the property into four lots.

Weinbrecht: But the rezoning was—

Hales: The rezoning was, like I said, back in the early 2000s.


Weinbrecht: Oh, that’s not what I’m thinking of.

Hales: But, you could—2009.

Weinbrecht: In 2009.


Hales: So, not—eight years ago. Almost a decade ago. But you can see the zoning. This is the existing zoning of the corridor. A lot of this is zoning that has been out there for years.

Bush: Okay.

Hales: And it’s surrounded by ORD. Even in the historic district, a lot of that zoning doesn’t line up with the current vision.

Bush: And the historic district was created after 2009, or was it already there when it was approved?

Hales: The historic district was there.

Bush: Oh. I’m just trying to understand when things—

Hales: Correct.

Bush: So, my—I have to say I’ve been disappointed about the way Highway 55 has been developing the whole time. I mean, if this council, you know, already decided to put multiple storage units along 55, so it’s already become commercial. You know, I didn’t support it, but that’s the way it’s happened. Whether or not this gas station goes or not, I think it’s a done deal because it’s already been approved. If you’re going to put a drive-through anyway, you’re going to put it on a four-lane 55-moving, right, place where people are going to and from work. If you’re going to pick anywhere to put it, this is where it’s going to go. The problem I think we all have is that it’s also an historic district on that lane. So it’s already—the damage has already been done, from my perspective. You might as well make it the best Bojangles’ it can be in an historic district, because if you’re going to pick a Bojangles to be anywhere, that would be where you would put it, right next to a gas station.

Hales: And just to clarify, the historic district is on the opposite side of the railroad tracks, so this is not in the historic district.

Smith: Understand.

Robinson: It’s in the viewshed, though. You’ll be able to see this from there.

Hales: I understand. I just wanted to clarify for the record.

Bush: You can see it from there.

Hales: Yes.
Bush: You can see it from your house.

Hales: Absolutely.

Robinson: That’s why I’m saying the sketch plan should not have a Type B buffer or Type C; it should have a Type A buffer. It should be providing for us every assurance that we can that this is going to be the best Bojangles’ possible, and I don’t see the effort made here.

George: Can I ask about the elevation? Are we aware of the elevation of the—where the track is there above this site plan, by the parking lot? Do you have that information?

Hales: So, the build—the parking lot sits about five foot above, if I recall correctly, and Ron is going to look up the actual number. But the parking lot sits above Highway 55 and below the railroad track. And it’s not a significant elevation difference—about five feet, right?

Hendricks: The road is approximately at 380, the building is at 385, and railroad is at 390.

Bush: Wow. That’s kind of—

George: Five feet each side, so halfway between. Okay. So, we won’t get headlights with zero buffer if CSX clears—or they won’t get headlights—you have to have headlights higher than five feet up off the ground to shine into this historic district. There won’t be light bleeding over in this because of the height of the railroad tracks.

Hales: Yeah. So, the grading is going to do some of it, and remember, you’re going to have a semi-opaque buffer along there that’s 25 to 33 feet wide. So, that—I mean, CSX can’t clear our buffer; they can only clear their right-of-way.

George: I got you.

Hales: So you’re always going to have that 30-foot average buffer against the right-of-way and—or between the right-of-way and the internal drive aisle.

George: Then you’ve got five feet, in effect, as a permanent fence.

Hales: Correct. You have a grade difference.

George: Gotcha. Okay.

Weinbrecht: Other questions or comments before we move to the motion phase?
Bush: I do want to note, you hit a great point, Jennifer. How does the applicant feel about increasing the buffer?

George: The plantings?

Ghosh: Unable to do that. So, you can see the access coming in on this side?

Bush: Uh-huh.

Ghosh: That’s so the—oh, increasing the planting standard or the width?

Bush: Standard.

Weinbrecht: Make it opaque.

Bush: Going—make it opaque.

George: More plants.

Yerha: It’s a C that’s going to function as a B.

Bush: It’s a C that’s kind of a B. How about an A?

Hales: Any other questions while they’re researching that?

Weinbrecht: Yeah, any other questions while—

Robinson: I just have a—I have a general question about this experience. I think Lisa can best answer it. Lisa, we always talk about that they have to submit—everybody has to submit facts. So, when Nil concludes his remarks and says, “And we have proven that we satisfy all the criteria,” that’s not a fact; that’s his opinion.

Glover: He’s been tendered as an expert, and experts are permitted to make opinions.

Robinson: Okay. Thank you.

Ghosh: Yeah, so the applicant is amenable to increasing the planting standard, but the width cannot be increased.

Bush: Right.

Ghosh: But planting standard, sure.

Bush: Okay. That makes me feel better.
Weinbrecht: Are we ready to move to the motion phase? I’m thinking yes, since I’m not hearing anything. So we’ll close the public comment portion of the hearing, and I ask council for a motion.

Frantz: For the reasons discussed, I move that we approve the proposed development plan with conditions as stated below, as it meets all of the approval criteria set forth in Section 3.9.2(I) of the LDO. This approval is conditioned upon the following: that the applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set for—submitted for signature, and that the eastern buffer between the site and the historic district be of Type A.

Bush: I’ll second.

Weinbrecht: There’s a motion and a second. Discussion? All in favor of the motion, please say, “Aye.”

Weinbrecht, Bush, Robinson, Frantz, Yerha, and George voted aye.

Weinbrecht: Those opposed?

Smith: No.

Weinbrecht: Motion carries, six to one. Mr. Silverstein, if everything’s in order, I’ll close the public hearing.

Silverstein: It is, Mayor.

Weinbrecht: All right. We’ll close this public hearing.

MOTION (summarized from the vertibam wordage above):
For the reasons discussed, I move that we approve the proposed development plan with conditions as stated below, as it meets all of the approval criteria set forth in Section 3.9.2(I) of the LDO. This approval is conditioned upon the following: that the applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set for—submitted for signature, and that the eastern buffer between the site and the historic district be of Type A.
RESULT: APPROVED [6 TO 1]  
MOVER: Don Frantz, District B Representative  
SECONDER: Lori Bush, At-Large Representative  
AYES: George, Weinbrecht, Robinson, Frantz, Bush, Yerha  
NAYS: Smith

2.3 Sam's Xpress Car Wash 18-DP-0655

Weinbrecht: Now we’ll move to our next case, our third evidentiary hearing: Sam’s Xpress Car Wash, 18-DP-0655. This case is before us tonight because the applicant has requested to build a 4,120-square-foot drive-through car wash and 12 fueling stations. As a reminder to those in attendance, even though we are not in the count—even though we are in the council chambers—an evidentiary hearing is more like a court case. Council acts like the judge, and can only accept evidence that is competent, material, and substantial. The North Carolina and United States constitutions give the applicants certain due process rights in an evidentiary hearing that council must comply with. The Constitution really ties our hands in what evidence we can accept. I apologize in advance for what may seem like a burdensome and complex process. We will consider competent material and substantial evidence from anyone who testifies. By law, we can only accept testimony from expert witnesses regarding whether the development will affect property values, and whether any increase in traffic resulting from the development will pose a danger to public safety. To those who are with us this evening intending to testify, that are not qualified as experts, we can only accept testimony from you on factual issues and what you have observed. Our contractual attorney, who is sitting to my left, will help us to determine who’s an expert and what evidence we can consider. The hearing procedures and detailed rules are attached to the printed agenda. All speakers who want to speak during the public hearing must be administered an oath by Mrs. Johnson, who is to my right. We will pause at this time to allow those individuals who’d like to speak at the public hearing to approach Mrs. Johnson and receive their oaths.

Virginia Johnson, town clerk, administered oaths to potential speakers.

Weinbrecht: At this time, I’ll ask if any council members had any site visits, ex parte communication, financial relationships, specialized knowledge, or close relationship to an affected person to disclose. The members response are captured vertibam below:

Yerha: I did receive two emails the last couple days, but I did not open them or read them.

Bush: Same thing. They were titled “QJ,” so I didn’t open them.

Frantz: Same.
Weinbrecht: I actually opened them, so I could respond that we cannot read these. And so I responded to both—

Bush: You opened it to read it, to—

Weinbrecht: —of them, saying, “We cannot read these.” And I did not read them.

Robinson: No communication.

George: I responded no, but I have had a site visit.

Weinbrecht: Okay. So, based on what you have heard from council members—

Smith: Excuse me. On one of them, I sent a form reply that said it was a quasi-judicial, and I cannot address it.

Weinbrecht: Okay.

George: Which I did too. I did too.

Smith: I just wanted to be [OVERLAPPING] for this. I forgot about that.

Weinbrecht: But did you read it?

Smith: I just—when I noticed that it was on the agenda tonight, I did not read it. I replied with the comment.

Weinbrecht: Okay. Based on the disclosure you’ve heard from council members, I would invite anyone, any party to this matter, if they have an objection to any council member’s participation in the hearing—

Styers: We do not.

Weinbrecht: Okay. Very good. So, I’ll open the quasi-judicial public hearing and once again recognize Mr. Hales of our staff, who will introduce the hearing.

Hales: Thank you again. In the final item of tonight’s agenda is a request for development of a drive-through car wash and fueling stations located, southern part of Cary on two outparcels of the Swift Creek Shopping Center, and this is a drive-through facility, and therefore requires a Town Council QJ approval. Swift Creek Shopping Center is located at the confluence of Jones Franklin, Campbell, and Tryon Roads. Please note that the subject properties have no frontage on Tryon or Jones Franklin Roads; therefore, there are no road improvements required with this project. The two outparcels are
located at the north end of the existing Swift Creek Shopping Center and total almost
two-and-a-quarter acres in size. Brakes Plus is immediately adjacent to the west.
There’s a vacant commercial building in disrepair across Franklin Springs Lane to the
north, which we'll talk a little bit more in detail, and then former Campbell Road Nursery
Retail Center, which is being redeveloped across Campbell Road to the east. So, I
mentioned a couple of these already. But going through nearby development projects,
there is the Bee Safe self-storage, which is currently under administrator review to the
east, replacing the former Campbell Road Nursery Retail Center. Across Tryon Road,
there is the Sheetz filling station currently under review for replacing the former Rite-Aid
site. And then Walnut Street Retail located at the intersection of Walnut Street and
Tryon Road, farther to the northwest. Council may also recall a development plan
several years ago for an auto repair facility to replace the disrepaired run-down building
located immediately north. It was called Mom’s Auto Car and was approved in
September of 2015; however, that plan subsequently expired, with no development
activity being done on the project. So, the western parcel under consideration this
evening is the unused Ali-Gators mini golf and snow-ball stand. Eastern parcel is vacant,
except for what appeared to be seating and play equipment to support the adjacent use.
There is very little tree canopy on the site. The only existing significant tree canopy are
the street trees along the perimeter of the outparcel. Those existing streetscapes do not
meet current requirements. The current access is from the shopping center travel aisle.

There is no access onto Campbell Road or Jones Franklin directly. So, development plan
proposed before you this evening, tonight, is for a 4,100-square-foot car wash building,
which is located adjacent to Campbell Road, shown here in the orangish-brown color. It
has a corner entry tower element that addresses the intersection of Franklin Springs and
Campbell Road toward the north end, and the drive-through entrance and queuing is
along the south side of the building. To the west of that are 21 vacuum parking spaces,
some under a canopy and some open. And then, farther west from that is 12 fueling
stations located under a canopy. Storm water control measures located underground,
underneath the drive-through queuing lanes. Additional access is being expanded to the
site to provide access directly to Franklin Springs Lane. This results in better trip
distribution, which helped to mitigate some of the traffic impacts from the site. As with
the last case, this plan did include two modifications to the development ordinance,
approved administratively. The first is to increase the maximum parking from 22 to 28
spaces. This is really based on the usage of the space as vacuum spaces. People tend
to occupy those more, for a longer period of time, as they clean out their vehicles. The
second modification is to reduce the corner clearance, which is the separation between
the newly proposed driveway and Jones Franklin Road intersection from 200 foot to 100
foot, and that approval was based on a Synchro analysis, which demonstrated that the
queueing coming into the site from Jones Franklin Road would not back up and interfere
with function of Jones Franklin Road. That concludes staff’s presentation. We’ll be
available following all the other speakers to provide some observations.
Weinbrecht: Thank you, Mr. Hales. At this time, I’ll invite the applicant’s attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Styers: Thank you, Mr. Mayor, members of the council. My name is Gray Styers. My address is 434 Fayetteville Street, Raleigh, North Carolina 27601. It is my privilege tonight to represent the applicant, Sam’s Xpress Car Wash. I’ve identified a number of exhibits that I’d like to go ahead and hand to the clerk. I’ll tell you what they are right now, and then they will be referenced during the expert—my testimony and the expert testimony that will follow, and then I’ll ask they be moved into evidence following their authentication during the testimony.

(As discussed later, the exhibits are not included as it was no new information for council to consider).

Styers: The first exhibits are going to be six photographs I’m going to show you in just a moment, of the surrounding area, the streetscape. I’ve heard—you’ve heard me say I like pictures. I think they’re worth more than a thousand words. The second exhibit is labeled as the set—is actually the site plan set that has been submitted to the Planning Department staff. The third exhibit is a real estate appraiser report by Kirkland Appraisals, Rich Kirkland. He’ll be discussing this report in his testimony. And the fourth is a traffic impact assessment by Mr. Travis Fluitt and the affidavit authenticating that report. So, I’ll hand those to the clerk so they could be identified and later admitted into evidence. As Mr. Hales was discussing earlier, here’s a view of the site, of the sno-cone stand, looking from the shopping center over to where the unused mini golf area is, and a CashPoints automated teller there. Then—actually, I don’t have—I don’t have copies for everyone. I’ve just asked the clerk to hold those for the time being. There are not copies for everyone. I can distribute some, if there’s specific questions about those. The second exhibit, 1B, is of the shopping center from the site, that you can see there; 1C is also of the shopping center from a different—from the other site, slightly to the east. There’s the abandoned building at the corner of Jones Franklin and Tryon Street, across from this location. There is a Kangaroo Express on the other side of Jones Franklin Street, and then, immediately adjacent to this site is the Brakes Plus site. So you have an automotive repair shop immediately adjacent to this site. We recognize that this is a general commercial zone district. There are a lot of uses that are allowed here by right. Filling stations are allowed here by right, car washes by right. A number of other uses. This is a reuse of this general commercial zoning district, and the only reason we are here is because of the town’s position that a car wash is a drive-through use that is required for site plan before you. But the use itself is permitted, legislatively, by the rezoning classification of this parcel.

There are six criteria, as you well know, for the approval of the site plan. The evidence that you have received already in the packets that came to you, the aerial photographs that have been provided shows the area. And let me—let’s see if I can go back to that. Maybe go back to 51, I believe. Oh, sorry. Maybe I was—there is the—again, the area
around it gives you some idea of the shopping center to the south. The uses along Tryon Road, Walnut Street, Jones Franklin Road. So this is going to be, you know, along the major commuter routes of this part of town, a very appropriate use in harmony with the surrounding areas. You’ll hear more of that from our witnesses that are to come. But, in light of the testimony that has been presented and that you will hear from our expert witnesses, we believe that we will have submitted competent material and substantial evidence of the compliance with all six of the criteria under ordinance for a use in the general commercial district. I have with me tonight a number of folks that have sworn in. Not everyone I will call, but let me just say that Mr. Chris Morgan, who is the construction manager for Sam’s Xpress Car Wash is sitting to my left. Also, Michael Hill, who is the chief operating officer of Sam’s Xpress, is here as well. As you have heard at a previous meeting, Sam’s Xpress is coming to the Triangle area, and has one open in Apex; one in Knightdale, I believe; and one in Wake Forest. They have proven to be extremely popular. There’s been a high demand for the particular services that they provide. Well-received, and we think that it will be an asset to this area and consistent with your land use plan for redevelopment of older shopping areas such as this. Our expert witnesses include Jeremy Roberts, our civil engineer; Mr. Rich Kirkland, our appraiser; and Mr. Travis Fluitt, our traffic engineer. So, with that, I will turn it over to Mr. Jeremy Roberts, our civil engineer, to testify next, but am glad to answer any questions that you have before I sit down.

Weinbrecht: Before you move to your expert witnesses, I don’t know what’s in the handouts. My question is, is there new evidence that’s going to be presented that is not in the staff report in those handouts that is not going to be covered? I need to know what’s in the handouts. Because if there is new evidence in the handouts, then council may decide to continue this hearing till another time.

Styers: Certainly. We would like you to go forward tonight with the proceeding. The only information—I think the traffic—if I’m not mistaken, the traffic impact report was provided to the town, and that is the basis for the town’s evaluation of the traffic. What the report is, is all the data that went into that report. There’s nothing new there, other than the supporting data that goes into Mr. Fluitt’s testimony that you will hear. If—I do not want this to be delayed tonight, so if you think that is inappropriate to submit in the record, I’m just doing it for purposes of completeness, to ensure that the record is complete, to show the—as Mr. Silverstein knows—the factual basis of an expert opinion. You can hear Mr. Fluitt’s professional opinion, but this is simply the documentation that supports the opinion that you will hear tonight. Likewise, with Mr. Kirkland, to the extent that he undertook an analysis of the surrounding properties and reached a professional opinion, the basis for that opinion is just set forth in a written document that he can summarize to that to you orally. So, I would be glad not to submit additional documents into the record. But I also—

Weinbrecht: I think that’s your safest bet.
Styers: Okay.

Weinbrecht: Because if you don’t do that, I’m going to ask council members to look at it, and if they decide we have new evidence that we haven’t had the time to review, then they may decide to continue this hearing till another time. But if you think all that information is going to be covered, then I would recommend you—

Styers: I do think all that evidence will be covered, and I’ll ask Mr. Fluit and Mr. Kirkland to explain the basis of their opinions. It may result in their testimony being a little more detailed than otherwise would, but I would—I will not move those exhibits into evidence—

Weinbrecht: Okay. And now I’m going to ask the advice of my attorney, if you think I’m being incorrect, or making an incorrect move, or advice is what I’m looking for here.

Silverstein: You are not making an incorrect move or advice, because it’s sometimes hard for you to do that in your position as chair of these proceedings. I think that you could do it either way. You could consider it to be new evidence that you would have to consider at a future meeting, or you could hear from the experts and allow them to introduce their background and materials, if you determine that would be appropriate at that time.

Weinbrecht: But not having seen what’s been put over here, I can’t tell if there’s something written, that’s not said, that now will be—

Silverstein: Right.

Weinbrecht: —inserted as part of the testimony. That’s my concern.

Silverstein: That’s what I’m saying. That’s why I’m saying, as chair, you can do it either way.

Weinbrecht: Yeah. I would prefer to take the safe route, so I’m going to ask council members if they have any objection to my proposal.

George: To leave it, to not collect it?

Weinbrecht: To not collect it.

Styers: Okay. That’s just perfect. I did not want to provide information to you outside of the—some boards do not want to receive evidence, except from an applicant, except through staff, outside of the hearing, for fear it might be ex parte, inappropriate, just as it would be inappropriate if you were to receive emails and comments. So I erred on not wanting you to have information that wasn’t presented by sworn testimony. So that was my purpose for not providing it earlier, not to hide anything.
Weinbrecht: So, very good. So, as we proceed, if you think we need a handout, then we can look at it and decide at that point. But my understanding is, right now, you would like to not distribute those handouts?

Styers: They have been labeled, but they have not been introduced into evidence, so at this point—

Weinbrecht: Okay.

Styers: —I’ll just ask my witnesses to explain the background of the information they provided.

Weinbrecht: Very good. Thank you.

Styers: With that, I’ll ask Mr. Jeremy Roberts, our civil engineer, to come forward with his testimony.

Roberts: Good evening. Thank you. My name is Jeremy Roberts. I’m with Eagle Engineering. I’m a senior associate with 13 years of experience. We’ve been working with staff since about March, trying to work through all the comments on the plan. We’re finally to a point that we’ve addressed everything and we’re ready to present before you. Based on the documents that have been—excuse me—based on the documents that have been presented, my work on the project, and my training experience, it is my professional opinion that the development plans comply with all applicable requirements of the LDO and all criteria pertaining to the same has been satisfied. This includes all applicable town specifications and official plans, and manuals or documents adopted by the town. And if you don’t have any questions for me, I’d like to present Rich Kirkland.

Weinbrecht: Thank you.

Roberts: Thank you.

Styers: May I ask one question?

Weinbrecht: Sure.

Styers: Mr. Roberts, you prepared a landscape plan as part of the packet that’s been presented to council, is that correct?

Roberts: That’s correct.

Styers: And is it correct that, even though this exhibit here doesn’t show it, other than in light green, that your landscape plan calls for the planting of 80 trees as part of the buffer and landscaping around the site, is that correct?
Roberts: That is correct.

Styers: Okay. And over—and 200 shrubs are part of the landscaping?

Roberts: Right.

Styers: To meet all of the requirements of the ordinance for this site?

Roberts: That’s correct. A buffer along Franklin Springs Road, a buffer along Campbell Road as well.

Styers: Thank you.

Kirkland: Good evening. Hi, my name is Rich Kirkland. I’m a certified general appraiser in the State of North Carolina. Been appraising in the state for 22, 23 years, somewhere in that range. I’m an MAI through the Appraisal Institute. I’m real familiar with this location, the shopping center and maybe more particular. I’m very familiar with Barry’s, to be specific. But, yeah, I was asked to look at this and see if whether or not it was in harmony with the area and whether it had impact on adjoining property value. It is my professional opinion that the plan adequately protects the adjoining property from any potential adverse effects. It’s also my professional opinion that it’s in harmony and unity with the development around it. To speak just briefly on what I looked at and what I was concerned—I mean, I’ve appraised this type of car wash before and other types of car washes as well, in Chapel Hill and Raleigh. Again, all the adjoining uses are commercial in nature. This is where these types of facilities are located, either in outparcel locations or highway commercial areas. Again, this is very consistent with that. There are no adjoining residential uses to even consider, and I’ve actually looked at these facilities in relation to residential uses before and found, you know, what is appropriate distances in proximity to that. In this case, it really is just a very complementary use, between the mini storage that’s proposed and a brake facility that is right there, the Brakes Plus. Again, the mini storage is complementary with the car wash, as is the automotive repair. So, this is, in my opinion, a very harmonious location for this facility. I’d be happy to go into greater detail or answer any questions.

Weinbrecht: Thank you.

Kirkland: Thank you.

Styers: And our final witness on the other criteria is Mr. Travis Fluitt.

Fluitt: Good evening. Travis Fluitt with Kimley Horne & Associates, 421 Fayetteville Street, Suite 600, Raleigh. I am a professional engineer in the State of North Carolina, performing TIAs for 14 years. Master’s degree in civil engineering from the University of Texas of Austin. I prepared the traffic impact analysis for this site in coordination with
town transportation staff and NCDOT staff. We reviewed seven intersections in the vicinity of the site, including Tryon Road at Holly Springs Road, Walnut Street, and all of the intersections operated at acceptable level of service at buildout of the site. And therefore, no roadway improvements were recommended. The TA was reviewed by both town staff and NCDOT staff, and both concurred with the assessment that no roadway improvements should be required. Based on the TIA document, my work on this project, and my training experience, my professional opinion that the site plan provides safe conditions for pedestrians and motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; that the plan provides safe ingress and egress for emergency vehicles to the site; and that the plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

Styers: Again, if there are any questions regarding the software that was used by Mr. Fluitt to do the analysis of those seven intersections and the data that he compiled from traffic reports, we have that information available to present to you to support his professional opinion. Likewise, we have a report that—by Mr. Kirkland that talks about his review of the analysis that supports his conclusion and professional opinion that it complies with the second and third criteria that the plan adequately protects other properties or residential uses located on the same property from potential adverse effects, and provides harmony and unity with the development of nearby properties. So, with the expert witnesses that you have heard from, that constitutes competent material and substantial evidence that each of the six criteria have been satisfied. Mr. Roberts has been working with staff. There’s Desmond there. Been working with Desmon for a number of months. We’ve gone through a number of revisions to try to address staff issues, and tried to make sure that we comply with all the requirements of the ordinance. It’s been a good working relationship. Sam’s Xpress is excited about providing its services here in the Town of Cary, and believes that this is a prime area for redevelopment, and that their use at this location is very appropriate, consistent with your land use plan—not that that’s part of your consideration, but it is consistent with your land use plan and objectives for redevelopment of areas exactly like this, to provide a service that would be beneficial to the residents of the Town of Cary. I’d be happy to answer any questions that you might have.

Weinbrecht: Thank you. At this—

Smith: I have a question.

Weinbrecht: When we get to the—

Smith: Do it at the deliberative phase?

Weinbrecht: Yes.

Smith: Fine. Fine.
Weinbrecht: Unless it’s a clarification.

Smith: Well, it is clarification.

Weinbrecht: Okay.

Smith: Because the Texas guy. When you did your analysis, the mornings there are horrific. You know, everybody’s coming off of Holly Springs Road, and they back up at Jones Franklin. So, is that—does your data reflect that and the impact it has to the egress and ingress there?

Fluitt: It does. We did see long queues on Jones Franklin Road. You know, people cut the corner from northbound Holly Springs Road to get to Tryon Road, and then up Jones Franklin Road. However, the site doesn’t generate a lot of a.m. peak-hour traffic. So, there are a number of ways people can get out onto Jones Franklin Road from the site. There’s the side driveway shown on this exhibit and the one just off—[OVERLAPPING]

Smith: Okay. So, what I’m hearing is that, from your analysis, and based on the model that a car wash uses, your peak, it’s not a critical time, let’s say, at eight o’clock in the morning?

Fluitt: Correct. Yeah. There is some queueing, but the site is not generating a lot of traffic at that time.

Smith: All right. Thank you.

Weinbrecht: Thank you.

Styers: I have a question for Mr. Fluitt to follow up that question. Is part of your consideration also the multiple points of ingress and egress from the site as well as the circulation within the site that would minimize queuing, as well?

Fluitt: Yes, that is correct.

Weinbrecht: And personally, I’ll have follow-up questions when we get to the deliberative phase, especially about egress. At this time, I’ll invite speakers who’ve been sworn in, who would like to speak in support of the application, to approach the podium. Anyone to speak in support? Any need for any cross-examination at this time? Okay. We’ll open it up to those who are opposed to the request. As a reminder to those testifying, please limit your testimony to facts that you know. The applicant’s representative has a right to object to your testimony. They may object while you’re speaking, and they have the right to do that, and our contractual attorney who is sitting to my left will help determine what
evidence we may consider, and I would invite you to the podium. Anyone to speak in opposition?

[INAUDIBLE]

Lucier: Good evening. My name is Dr. Gregory Lucier. I’m here representing myself, my wife Kathryn [ph], our two children. We live at 2701 Campbell Road.

Johnson: Mayor, we’ll need to interrupt just to swear him in. I don’t have—

Weinbrecht: Oh, you have to be sworn in to speak.

Lucier: I was sworn in with the group. Yes, sir. Yes, ma’am. I was part of your swearing in.

Johnson: We’ll get you to fill out a form afterwards.

Weinbrecht: Okay.

Lucier: Yes. I also represent other neighbors who were unable to be here tonight, who were intimidated to speak at a quasi-judicial hearing, or who were elderly, unable to come out at night. I have some evidence I would like to submit. I have copies for everyone up front. I’ll leave these—

[INAUDIBLE]

(As described below, the exhibits provided were not entered into the official record of these minutes.)

Styers: I’d like to be able to see the evidence submitted first.
Weinbrecht: So, we can only accept evidence from expert witnesses is my understanding, and you have not been clarified as an expert witness. So what you can do is tell what you’ve observed. Like, “At such-and-such time of day, I have observed this.”

Lucier: Yes.

Weinbrecht: “I know these things.” You cannot give opinions, and you cannot submit evidence unless you’re an expert witness. That’s what I’ve been told.

Lucier: I will proceed in that fashion, and I may wish to be declared an expert on certain topics.

Weinbrecht: Okay.
Lucier: As I said, I’m representing myself and a group of neighbors. I will change my discussion a bit in light of what you just said. But I have five points I plan to speak to, and those points are summarized in the handout for the group.
The first point is an existing and ongoing concern related to a temporary sign at the site, a violation of the Land Development Ordinance. A sign posted on the corner of the property of Campbell Road and Tryon Road seems to be covered by Section 9 of the Land Development Ordinance, but does not seem to be in compliance. The sign is 80 inches tall; that’s twice the height permitted by the LDO. The signboard alone measures seven feet wide by four feet tall. That’s about 28 square feet, which is about twice the area permitted by the LDO. The sign appears to be grossly in excess of LDO requirements, and seems to demonstrate a non-seriousness on behalf of the applicant that has been observed by the neighborhood, of complying with the LDO. The neighbors believe that other claims made by the applicant should be taken with skepticism in result of this demonstrated—[OVERLAPPING]

Weinbrecht: And I think that’s an opinion.

Lucier: Well, it’s a fact that the neighbors believe it, but—

[LAUGHTER]

Weinbrecht: It’s still an opinion.

[OVERLAPPING—INDISCERNIBLE]

Silverstein: Dr. Lucier, let me say something to you.

Lucier: Yes.

Silverstein: You’ve got to follow rules.

Lucier: Understood.

Silverstein: Okay. One of those rules is that if you are here in representative capacity, you must be an attorney. So you need to limit—as the mayor has already said, you need to limit your testimony to your personal observations. You’re not representing anyone else. You’re representing yourself, and you’re making your personal observations known. But you can’t make—represent other people, and you can’t make legal conclusions.

Lucier: Sir, I believe the quasi-judicial hearing procedure on the town website allows non-attorneys to be representatives of their group, and in fact, that group representation is encouraged by the quasi-judicial proceeding.
Silverstein: Well, that’s a misreading of what’s on the website, so maybe that needs to be changed.

Lucier: Very well. The sign is shown in Exhibit 2. It claims the car wash is coming soon. And it has caused concern from the neighbors because they have believed and have stated that they feel like the sign has indicated that no opportunity for comment has existed. You can see the exhibit. Exhibit 1 here, the sign is in the northeast corner of the property. We have the exhibit, if we can distribute those to the council. Is that allowable?

George: Could I ask if a picture is an observation? Is that the same as an observation?

Frantz: If the sign’s in the ground, that’s pretty factual, right?

[OVERLAPPING—INDISCERNIBLE]

Lucier: The sign is cemented.

George: That’s what I’m asking. So we can see the picture. That’s why I’m asking. If it’s truly a picture—

Lucier: It’s a photograph. Yes, sir. I have it here.

Silverstein: Whether or not this evidence is relevant is a different question. But certainly, he can testify as to his observations. You continue to say “the neighbors”; you’re going to have to stop doing that. It has to be your personal observations.

Lucier: I will proceed as best I can with personal observations. Thank you. The applicant has failed to recognize—this is point two. We have environmental concerns. The applicant has failed to recognize and consider substantial environmental issues in their application.

Weinbrecht: That’s an opinion.

Lucier: The application omits the fact that groundwater—

Weinbrecht: So, that’s an opinion.

Lucier: Yes, sir.

Weinbrecht: And you’re not an expert in that area. I hate to do this. We’re bound by state and federal laws that don’t allow this.

Lucier: Can I declare myself an expert in groundwater?
Frantz: You said he’s not. Can he have the opportunity to present himself as an expert before we—[OVERLAPPING]

Silverstein: It’s got to qualify.

Lucier: I would like to present myself as an expert in the area of groundwater remediation and pollution.

Silvertone: You have to describe your—[OVERLAPPING]

Frantz: And your qualifications are?
Lucier: I have a Ph.D. in civil engineering from NC State University. I serve on the faculty of Civil, Construction, and Environmental Engineering at NC State University. I am a co-owner of a research and development company focused on groundwater remediation.

Frantz: There you go.
Lucier: And I hold a U.S. patent—
Frantz: He’s an expert.
Lucier: —in the field of groundwater remediation. May I proceed?
Frantz: Thank you. Yes.

Weinbrecht: Hold on just a second. Mr. Silverstein?

Silverstein: I believe he satisfies that threshold.

[LAUGHTER]

Weinbrecht: I just wanted to make sure I had the legal advice.

George: I didn’t know if you were an M.D. or—I didn’t know what—you said doctor. I didn’t know what you were. That helps.

Lucier: I’m a citizen with concerns, and now I’m an expert.

Weinbrecht: So, you’re an expert in groundwater?

Lucier: In the fields of civil engineering and groundwater remediation.

Weinbrecht: Okay. Very good.
Lucier: May I present opinions in those area?

Weinbrecht: Yes, sir.

Lucier: Thank you. The applicant has failed to recognize and consider substantial environmental issues. The failure to address or even to acknowledge potential environmental impacts to surrounding properties, especially impacts to residential water wells, means that the application is grossly noncompliant with LDO Section 3.9.2 and should be denied. The application egregiously omits the fact that groundwater on the northern boundary of the proposed site is known by the North Carolina Department of Environmental Quality, the NCDEQ, to be contaminated. Information on the contamination is available publicly on the NCDEQ website but is apparently unknown to the applicant. NCDEQ Incident Number 26993 involved three 10,000-gallon underground fuel storage tanks at the former Swift Creek Grocery. The incident remains open. It is classified as high risk and contaminants remain in the groundwater. Does the applicant know the extent of the contaminant plume? Does the pollution cross onto the applicant’s property? Will the applicants encounter contaminated soils or contaminated water during construction? Have the risks of locating a new fuel station with underground storage tanks on or near an already contaminated sensitive site been studied and mitigated? Does the applicant’s proposed construction and excavation risk—potentially cause the existing contaminant plume to migrate towards residential wells, which are located as close as 500 feet to the applicant’s property? This fact was egregiously neglected from the applicant’s application and from the staff report, and I would hope for the opportunity to cross-examine on those points. Does the proposed use that involves substantial volumes of water and the introduction of car-washing chemicals to the site have the potential to cause the existing contaminant plume to migrate? What chemicals does the applicant plan to use as part of their washing process? What are the hazards of those chemicals and is there a potential for those chemicals to further contaminate surface and/or subsurface waters? None of the chemicals have been disclosed in any fashion. Extensive and detailed environmental study would be required to demonstrate the proposed use safe for surrounding properties. Such study would be necessary to properly formulate a competent storm water and wastewater management plan. Failure to present any environmental study or even to acknowledge the documented hazards that already exist indicates that the requirements of LDO Sections 3, 7, 8, and possibly others, could not possibly have been satisfied by the application, and the application should be denied. Moving on, we take issue with the appraisal in some of the same categories.

Weinbrecht: So, we are now back to “I.” And you can’t give an opinion. You’re not an expert in appraisals.

Lucier: I will go back to “I.”
Weinbrecht: I'm sorry to have to—

Lucier: Yes. I understand. I understand.

Bush: He might be.

Lucier: Potentially, yeah. I am not. I am not an expert in—

Bush: Okay. Just checking. We should ask.

Lucier: Under the hazardous material section of the appraisal, the appraiser writes, quote, “I consider this to be a nonfactor for the impact analysis,” end quote. With the hazardous materials discussed in point number two, the materials I raised, considered by the appraiser, is the appraiser an expert in the area of environmental hazards? What evidence was relied upon in determining the, quote, “nonfactor status”? Would the final conclusion of the appraisal change if hazardous materials were considered? I take other issue with the appraisal, and I will try to be factual. Under the stigma section of the appraisal, the appraiser writes, quote, “There is no stigma associated with the proposed use,” end quote. Again, what evidence did the appraiser rely upon to determine that?

Styers: I will object at this point, to opinions pertaining to real estate valuation that have been offered by this witness. There’s—I mean, those types of real estate valuation experts can only be rendered by someone who is qualified in real estate sales and real estate appraisers, so I think an objection is appropriate at this point.

Weinbrecht: Mr. Silverstein?

Silverstein: I think the safest course would be to let him make his points, and then you can argue with respect to whether or not they should be considered by the council.

Styers: Thank you.

Lucier: Yes, I will try to stick to facts. The appraiser states there is no stigma. The car wash industry recognizes that a stigma does exist, and this is evidenced by a December 2014 issue of Auto Laundry News, promoted as one of the leading industry publication. Anthony Analetto’s article entitled, quote, “Car Washing Investing:10 Misconceptions,” end quote, notes that, quote, “Unfortunately, the stigma associated with car washing persists in many communities.” We note stigma was indicated as a nonfactor. There’s no stigma associated with the—

Silverstein: Dr. Lucier, let me—and after I said that we should listen to you, I think that you need to know that when you start quoting articles like that, that’s considered
hearsay, and I would advise the council not to consider that before Mr. Styers even object to it.

Lucier: Okay. I—you'll have to forgive me.

Silverstein: That's fine.

Lucier: This is not something I do frequently. So I appreciate your patience.

Silverstein: This is a good learning process for all of us.

Lucier: Under the odor section of the appraisal, the appraiser writes, quote, “The project as presented has no specific concerns related to odor and is therefore a nonfactor for the impact analysis.” And I assume the quote is acceptable, since it’s a part of the record. Gasoline has an odor and will be sold on site. And the car-washing chemicals used on site potentially have an odor. Those are facts. Another fact of the appraisal is that the conclusions of the appraisal only reference adjoining properties. The Land Development Ordinance requires consideration of nearby and other properties. The appraisal is carefully written to only provide concluding statements on adjoining properties. The residential properties immediately to the south and surrounding the proposed use do not directly adjoin to the proposed use, but are in the immediate vicinity, and I hope those are sufficient facts. Related to the traffic study. A major signaled intersection is located immediately east of the proposed site. That is Yates Mill Pond Road and Tryon Road, and that intersection seems to have been excluded by the traffic study. There are two public schools in the immediate vicinity of this intersection, and those—school traffic would travel through that intersection—I suppose that’s an opinion. My apologies for that.

The traffic study was conducted on a single day for two brief periods: between 7:00 and 9:00 a.m. and again between 4:00 and 6:00 p.m. on Tuesday, April 24th. The report portrays these times as peak; however, the school in the area starts at 9:15 a.m. and ends at 3:45 p.m., hours outside the hours reported as peak. Again, hopefully that is factual. I’m trying to avoid opinions. I should note this major intersection is within one-quarter mile of the proposed site. And we have a photograph, although that’s probably hearsay, based on the prior photographs, so we will move along. We’ve heard the roadway noncompliance requests, reducing the corner distance from 200 feet to 100 feet. We—I am opposed to that. Roadway standards are in place to ensure public safety. That is a fact. And cutting the required safe distance of 200 feet to 100 feet is what is proposed, so a shorter distance should lead to reduced safety. Hopefully, that’s a factual claim.

Weinbrecht: Not really.

Lucier: Yeah, fair enough. Another factual item I would like to mention, the—many of the documents referenced in the application, I believe the appraisal and possibly the traffic
study and others, make mention to an abandoned mini golf, an abandoned ice cream shop and so forth. Those are scattered throughout the application. Many of those documents have dates of April 2018, March of 2018, and so forth. The ice cream shop closed on October 1st of this year. It was open at the time these documents claimed it was abandoned. It is a—and I’ll avoid opinion, so. Those are the facts as I can present them. My apologies for the opinions where they’re not warranted. The groundwater is a major concern. That is my expert opinion. The car-washing chemicals need to be investigated. That is my expert opinion. The substantial water use and how it relates to the groundwater contamination that is in close proximity to the site, if not at the site, is also my expert opinion. And I would also like the opportunity to cross-examine the applicant and the expert witnesses, if you’ll afford that to me.

Weinbrecht: I think you’ll be cross-examined first, but—

Lucier: Fair enough.

Weinbrecht: — I want to thank you for doing it—out of all the citizens that don’t do this for a living, you’re probably the best one we’ve ever had, by far.

Lucier: Thank you. I appreciate that. And I did not—[OVERLAPPING]

Weinbrecht: And you did well. Even though we kept interrupting you, you did very well, and I want to thank you for bearing with us and doing the best you can.

Lucier: Thank you for your time, and I’ll be happy to entertain questions, cross-examination.

Weinbrecht: So, cross-examination, please.

Styers: I just have a few. I won’t take too much time. I think you said you are not a traffic engineer, having studied—from a traffic engineer—you’ve never worked for a traffic engineering firm, have you?

Lucier: That’s correct. I’m a researcher in the field of civil engineering.

Styers: And you have not examined any of the traffic counts generated by a use such as the one proposed at this location, have you?

Lucier: I’ve examined the counts as presented in the report, but not in an expert capacity.

Styers: Do you have any information that those counts are not correct, based upon standards used by traffic engineers?
Lucier: I do not. I don’t question the validity of the counts themselves.

Styers: Okay. Are you aware that the North Carolina Department of Environment and Natural Resources issued a closure decision on the former underground storage tanks at this location on October 3, 2007?

Lucier: That is not what is on their website, which is the facts I am going by. So I am not aware of that, no.

Styers: Okay. Or that there was a full investigation prior to that closure by the North Carolina Department of Environment and Natural Resources’ Groundwater Section in 2006? You were not aware of that.

Lucier: I am not. If it were presented as part of the application, I would be aware of it.

Styers: And you realize that uses such as this, environmental regulation is the province of the North Carolina Department of Environmental Quality Groundwater Section, is it not?

Lucier: Yes, correct.

Styers: And they have standards that govern uses on lands in the State of North Carolina, do they not?

Lucier: They do. Yes.

Styers: Do you have any information before this board that the proposed use would violate any of those—or uses of Sam’s Xpress anywhere else have violated the environmental standards or laws of the State of North Carolina?

Lucier: I do not. I am not concerned with Sam’s in other locations. It is the applicant’s burden of proof to demonstrate that the site is in compliance with the LDO, so I do not have evidence to present.

Styers: Are you aware that Sam’s Xpress had a Phase I environmental study done of this property?

Lucier: Again, that was not included in the application, so I was not aware. That seems to have been withheld.

Styers: And so you’re not aware that that Phase 1 environmental report concluded that there were no environmental risks associated with this property?

Lucier: I am not aware. That has not been available for public review. It seems to have been hidden from the record.
Styers: You’re also aware that there are standards by the North Carolina Department of Labor, Occupational Safety and Health Administration, regarding the use of chemicals at workspaces such as car washes?

Lucier: I am aware there are standards. Yes.

Styers: And do you have any information that those standards by the North Carolina Department of Labor, OSHA, will not be followed in every respect at this Sam’s location?

Lucier: I have no doubt that they will not be followed. They certainly will be followed is what I would expect from any decent organization. That is not what is at issue here.

Styers: You do not, yourself, have a real estate license, do you?

Lucier: I do not. No.

Styers: Or real estate broker’s license?

Lucier: I do not. No.

Styers: And you are not a MAI appraiser?

Lucier: I am not. No.

Styers: If I may go to another slide here? I am pointing you to a slide that was part of the staff’s recommendation. I don’t know when that slide was taken, but generally, is there any information on that slide that is currently not accurate, to your knowledge? The current land uses.

Lucier: The presentation of this slide, ignoring the presence of single-family homes was an inaccurate portrayal of the area.

Styers: No. My question was, is there anything on this slide that is inaccurate?

Lucier: There does not appear to be.

Styers: I have no further cross-examination at this time.

Weinbrecht: Does staff have any cross-examination? Okay. Let’s see where that takes us. So, we are at staff’s professional opinion, or can we allow—

Frantz: Doesn’t he get to cross-examine?
Weinbrecht: That’s what I’m asking.

Silverstein: Yeah, he didn’t ask it at the time. Who did you want to cross-examine?

Lucier: I would like to cross-examine the applicant, to begin with, please.

Glover: Mr. Silverstein, does he need to be a party, or—I’m not sure about the appropriateness of him being able to cross-examine someone.

Silverstein: Yeah. Here’s the problem we’re struggling with: there’s an issue involving his standing. Perhaps you’ve heard that talked about before. In a proceeding like this, it is not necessary to have standing to come and testify before a body, as Dr. Lucier has done. It’s not necessary to have standing. But, in order to cross-examine other parties, you have to be a party to the proceeding. So, when he requests the opportunity to cross-examine, he has to demonstrate that he has standing, and he has not done that. And based on North Carolina law, I don’t think he can demonstrate standing. So, he can come, and he can give his personal observations, but he cannot act as a party to the proceeding. And I think that’s the point Ms. Glover was making.

Weinbrecht: I’m sorry. I have to go by the attorneys. I’m not an attorney.

Lucier: Understood. Thank you for your consideration.

George: Can I ask? Do we mail out notifications to neighbors for the quasi-judicial?

Lucier: You do, but only to adjacent property owners. There was one neighbor on our street that received notification. No one else.

George: We don’t do the 800 feet or 400 feet? He’s going to see if—

Hales: We did. State statute requires abutting property owners be notified; however, the town does exceed that threshold—800 foot is what we use for rezonings; for development plans, we have, historically, for years, used 400 foot, and this is the notification map that we used.

George: So, we notified people who have no standing. I’m trying to figure out if we notify them, they have no standing because they’re adjacent?

Silverstein: It’s a legal—standing is a legal concept. So they have a—let me use this word. They have an interest, and they can come in, and they can present their views to you, and their observations to you. But they do not have the same standing a party before you would.

George: Okay.
Silverstein: The party would be the applicant. They are a party before you. Just because someone lives within a certain distance of the site does not automatically make them a party.

George: So, the questions he posed were questions that we have on our minds now that were questions of the testimony, so then they become our questions, basically. That’s what you’re saying? He doesn’t cross-examine them, but—

Silverstein: They can become your questions.

George: That’s what I’m saying, they can become our questions.

Silverstein: They don’t automatically become your questions, but it’s possible.

George: Okay.

Silverstein: And it’s also possible that some of his questions are not appropriate for anyone to ask.

George: Okay. And as—without standing, are we able to ask questions of any expert that’s been sworn in?

Silverstein: Sure.

Weinbrecht: Sure.

George: Okay. That’s good.

Weinbrecht: We’re getting there.

George: I’m just making sure we can ask him if he’s an expert, we’ll take notes.

Styers: I believe, Mr. Silverstein, is it appropriate for me to call a rebuttal witness at this time? Or you tell me when it would be appropriate for me to call a rebuttal witness.

Silverstein: Where are you in your proceedings, Mayor?

Weinbrecht: So, we just had the—those speaking in opposition. We did cross-examination. The next thing on my list is to provide professional observations. So I would think it would be appropriate at this time. Rebuttal witness.

Styers: Okay. I’ll call Mr. Chris Morgan to the witness stand. He has been previously sworn.
Morgan: Good evening. During our due diligence phase—

Styers: Let me just frame this. Would you like to respond to some of the questions that have been made—statements that have been made by the opposing witness tonight?

Morgan: I do.

Styers: Okay. What were some of the corrections and/or information you’d like to provide?
Morgan: I would like to provide that, during our due diligence phase, we do, typically, do Phase I’s. We are a fueling company, so we do know the State of North Carolina and federal regulations. So, during our due diligence phase, we did do a Phase I, which did bring the leak—the underground storage tank issue. During that, we found that there was a closure report by the North Carolina DEQ. So, at that point in time, it becomes a closed issue for us. The tanks are remediated. The dirt was remediated. In the Phase I, it was shown that the contaminated dirt was removed from the site, replaced with good dirt. This report was actually done by ECS here out of Raleigh, on November 15th of 2017.

Styers: Do you have a copy of the closure report there on your phone?
Morgan: I do.

Styers: And you have reviewed that closure report?
Morgan: I have.

Styers: Are there any unresolved issues that are identified in that closure report by the North Carolina Department of Environment and Quality?

Morgan: It does not say. And in regards to the question about our chemicals, all of the chemicals that we use in our car wash facility are 100% biodegradable. We do capture all of our water in reclaim tanks and recycle that water, with very minimal water leaving our system and going into the city system.

Styers: Mr. Morgan is available for any questions that you may have, or any questions that are in your mind, at this point, about the issues that have been raised or about the quality of the operations of this facility.

Weinbrecht: So, I’m guessing we’re going to have a lot of questions when we get to the deliberative phase, which we’re getting very close to.

Styers: Okay.
Morgan: Thank you.

Weinbrecht: Thank you. Staff professional observations about the request? Hales: Pivot reformat a little bit, because there was a lot of information that just came forward, but staff’s general observations is generally consistent with the requirements of the LDO and all other applicable regulations. A lot of what the resident spoke about was state regulations or federal regulations, which are outside the purview of the town, so I cannot speak to those.

No interior buffers on the site. It’s in a mixed use district, and therefore properties within are not required to buffer from other properties that are within. Mentioned before the streetscapes are being supplemented to bring them into compliance with current LDO standards. The applicant did indicate they are providing additional evergreen screening along Campbell Road and along the internal travel way to the south, so the driveway—the drive-through lanes will be screened by additional material. If you remember, there was a staff observation about pedestrian connectivity to the parking spaces located on the western end of the site. Subsequent to the staff report preparation and uploading the attachments, there was a resubmittal for this plan, and they have added a sidewalk, shown here along the western edge of the site, to get pedestrians from those parking spaces over to wherever they would like to go from there. TIA was performed and was attached to the staff report as an attachment, so you do have all of the calculations, and data, and all that. That was reviewed by NCDOT and the town, and both agencies agreed to those findings and the suggestion that no mitigations would really make a difference in the surrounding neighbor—the surrounding intersections, given the proportion of traffic being added and the variety of options available to get out of the site. Briefly, the applicant did mention that they’re recycling all their water. That is probably true; however, any discharges do not go into the groundwater or do not go into the storm water system. They go in a sanitary sewer, and therefore, they would be required to comply with our sanitary sewer discharge requirements. I’ll talk very briefly about architecture. It’s predominately brick building, two-tone brick. A little bit of EIFS trim. No garish colors. Red, a toned-down, darker, desaturated red awning is the only color being used in the proposed building. The speaker, prior to this, also mentioned the construction sign. That was brought to our attention earlier in the week. That construction sign was erected in violation of our Land Development Ordinance; you’re not allowed to have a construction sign until you have an approved development plan. Development compliance officers are aware of that, and are taking appropriate actions, and working that through the system. So, we have responded to that citizen, and responded that we’re on it, and we’ll be working to get that removed.

And with that, that concludes my remarks. We’re available for questions. Thank you.

Weinbrecht: Thank you, Mr. Hales. So, we have had—and I’ll call an unexpected expert witness. We have had new information tonight. So this is the point in the hearing where I ask council if they want this hearing continued. I know the applicant has stated he
does not want that. But this is the opportunity for council to continue this hearing, if you believe it’s warranted. So, before we move forward.

Styers: May I summarize? I believe I have an opportunity to kind of provide a summary concluding remarks and move my evidence—exhibits into evidence. Mr. Silverstein, is that correct? That seemed to be the practice from earlier this evening.

Silverstein: You do, but certainly the mayor can bring up this point whenever he would like to. I don’t see any problem with him continuing this discussion as to whether or not the council wants to defer this matter, which I think they can do at any time. I think they can do that prior to your summary.

Weinbrecht: So, thoughts, Council? I'll ask if there’s any objection to continuing. That’ll make it easier.

Robinson: I have no—well, I understand that some people would like to see it go on, go ahead and be voted on. The only concern I have is you have an expert witness who did not get to review the documents, so if that expert witness had a chance to review the documents and then come back and tell us, “The documents satisfied the concerns that I have,” then that would—you know, that would kind of close that—those outlying concerns. I just don’t know—I just don’t know what the right thing to do is here, because this is—I have no experience with this.

George: And I would agree with what was quoted earlier. If somebody’s reading from an article about washing—whatever you call it—“car washes unlimited” or whatever, and they can’t do that because it’s hearsay, can someone stand up and read from their cell phone from the state website about the EPA closing something, and we accept that and it not be hearsay, without us actually knowing it for ourselves, or our staff hadn’t reviewed that? Because I don’t see the difference between the two.

Robinson: Interesting.

Weinbrecht: Good question.

Styers: There’s two major—two key differences there, as Mr. Silverstein will explain.

Silverstein: The difference is that this gentleman was actually involved, and the other gentleman spoke about an article that he read in some publication. And there was no ability to—I’m not sure what that publication is.

George: Okay.

Silverstein: He was speaking of his personal experience with the state on this determination. I mean, I think that’s what you were going to say.
George: All right. Well, then what about the—if the state website in another place doesn’t show that it’s been—if there’s a website out that doesn’t show that it’s been remediated, why would—that sounds like it’s two conflicting websites to me.

Frantz: You might be having high expectations for a state government entity.

[OVERLAPPING—INDISCERNIBLE]

Frantz: For comment. You asked for comment.

Silverstein: But the bottom line for that, though, is that what Mr. Hales said earlier is that there are certain issues that are within the jurisdiction of the state and certain issues that are within the jurisdiction of the town. So I think what they would say to you is it doesn’t matter what’s on the state website. That’s a state issue, and that’s—and any concern that the citizen might have should be taken to the state, for action rather than to us.

George: Okay. I hear you.

Weinbrecht: So, let me review where we are, Don. So, if we don’t, at this moment, continue and we hear closing arguments, then we move to the deliberative phase, and we can continue at any time. If you’d rather do that, proceed a little further where you can make comments, ask questions, and then we can decide, “Hey, let’s continue this or not,” then that might be the way to go.

Frantz: I would pursue—prefer to pursue further.

Robinson: Boy, you’re so emphatic about it.

Frantz: And while I appreciate the concerns that we’ve heard, I actually have a lot of concerns and questions that haven’t even been addressed or talked about yet.

Weinbrecht: Okay. Okay. So, let’s go there—

Smith: Let’s keep going, and then—

Bush: See where we are.

Weinbrecht: So, if there’s not an objection, we’re going to keep on. And I’ll recognize Mr. Styers. You want to do closing arguments, correct?

Smith: Do your closing.
Styers: I just want to summarize, very briefly. You know, you have six specific criteria in Section 3.9.2(I) that pertain to whether or not, you know, we have submitted the competent, material, and substantial evidence as an evidentiary matter to—that these criteria have been satisfied or not. So, the first criteria is whether we have complied with sections—Chapter 7 and 8 of the ordinance, in terms of the LDO requirements of a site plan, through the six rounds of comments and our working with Desmond and others to make sure that we have met every single technical requirement of the ordinance. And you have that set of site plans in front of you, and you’ve heard the report of staff, so that first criteria is satisfied. The second criteria and the third criteria has to do with protection of property or residential uses located on the same property. And there you have the—your knowledge as well as the exhibit that has been presented showing the surrounding area, showing the other uses in the area, showing the shopping center, the Brakes Plus, the Kangaroo, plus the other areas. So, you can both use the surrounding area as well as the expert testimony of Mr. Rich Kirkland, too, as substantial material and evidence that the second item and the third item have been satisfied. And there is no competent material or substantial evidence with regards to those two issues, based upon the cross-examination that Dr. Lucier is not a real estate broker, has no license, is not an appraiser, has not looked at other properties. Whereas, Mr. Kirkland testified he had looked at other properties in other areas, other car washes, as well as was very familiar with this site. So, Items 2 and 3 have been satisfied, and there’s been no competent material or substantial evidence to the contrary. Items 4 and 5 and 6 have to do with the traffic flow and ingress and egress, and I’m sure you may have other questions. But it’s worth noting, as Mr. Hales said, that the traffic reports have been reviewed by both DOT and the Town of Cary Transportation Department. There’s a very thick report prepared by Kimley-Horne that looked at seven different intersections, so we have presented competent material and substantial evidence as to the fourth, fifth, and sixth criteria, and there is no competent material or substantial evidence to the contrary. So, given that the six criteria have been satisfied, then we think it would be appropriate for the board to vote tonight and vote to approve. Now, I will also say that, as Mr. Silverstein has pointed out, that the concerns have been raised are not concerns that fall under those six categories and are not within the province of the town, but rather subject to regulation by the Department of Labor or Department of Environmental Quality, or other state agencies that have specific expertise and specific standards to govern those issues—groundwater issues, such as he was an expert on. But those are not the issues that fall to the jurisdiction of the town or are subject to a land use approval of a permitted use in the general commercial district that is only before you because of it being classified as a drive-through use. So, I will say that we will make a point to go meet with the gentleman who spoke earlier. We will provide him with as much information as we would like—as he would like. We will present to him the information from the state and the other information regulated by the state, because we’re going to make sure we do the right thing and comply with all regulations that are before us. So, and with regards to the sign, you know, that was an oversight for which we apologize, and we are making efforts by text tonight— in the last 30 minutes—to make sure that sign is taken down. That was put up by someone who did not understand what the regulations were, and
that is not going to be an issue going forward. Again, but that’s also not one of the six criteria that is before you. We are happy to answer any questions that you may have, and we’ll be here as long as you want to. But we know you have a busy agenda at each of your meetings coming up. We are, in fact, coming back to you in the not too distant future with a rezoning of our own, and we know how many other items are on your agenda. There is no reason, we believe, to continue this case tonight, given the evidence that’s before you. But, if that is the board’s decision, we will certainly respect that and come back at another time. All the witnesses and all the persons sworn in tonight are available to answer any questions that you might have, and we appreciate your patience and consideration listening to our case tonight.

Weinbrecht: Thank you. Anything else from the town? Okay. We’ll move into the deliberative phase of the hearing, then I’ll open it up to council members for questions, comments. Mr. Frantz?

Frantz: First question, okay? The blue rectangle, that’s the gas pumps, right?

Hales: That is the gas pumps. Correct.

Frantz: Okay. And then the brown building, that’s the car wash, right?

Hales: That is correct.

Frantz: Where is the convenience store?

Hales: There is no convenience store.

Frantz: None at all?

Hales: Just gas pumps.

Frantz: So stand-alone gas pumps under a canopy?

Hales: Correct.

Frantz: Okay. What I’m looking at here looks like a sea of asphalt to me with stand-alone gas pumps on one side of the site, very disconnected from the car wash on the other far side of the site. Can somebody explain to me why this site is laid out the way it is? I have seen gas stations, convenience stores, with car washes occupy a third of this much property. Why is this much land, this much asphalt needed here?

Morgan: It’s actually concrete. It’s not asphalt.

Frantz: Okay. But it’s still impervious surface.
Morgan: I do—it’s pavement. The reason that it is laid out the way that it is, is because we require—our prototype requires a certain amount of stacking. And that stacking actually elongates the site. The stacking is actually the two areas that are right there before the pay station islands. The yellow striped area will actually be changed, and that will be put into landscaping, so it will not be a concrete product or asphalt product. But, that’s one of the reasons why it’s so elongated, because we do have the need for stacking for the vehicles. And as far as the gas canopy being sort of out there on its own, everything is controlled by the car wash. You can pay underneath the gas canopy or at the pumps, but the customer also has the opportunity to come to the car wash office, which can take payment, too. So it’s integrated into one, and we do not have a convenience store.

Styers: This isn’t a typical—I mean, this is a new concept, a new product—provide a customer setting, customer experience that—with ancillary filling pumps for those who want to pump gas while they’re there, but it is not first and foremost a filling station. It’s not a convenience store. But given—ensuring the traffic flow through there, and the drying stations, and this layout is fairly typical—I won’t say typical—every site is unique, given the property. But to ensure that, you know, based upon the experience of how many Sam’s Car Washes have you developed now?

Morgan: Twenty-three.

Styers: Twenty-three car washes that we’ve developed, you know, throughout North Carolina, this is a layout that works, given the necessary stacking, the drying, and the experience of the customers at these locations.

Frantz: How is storm water handled on the site?

Styers: Want to address the storm water retention on site, Mr. Roberts? And there is a page in the site plan that addresses that, as well.

Roberts: Storm water is being handled by an underground storage system as well as a filter system, so the storm water quality is being treated by the filter system and detention is being provided in the underground storage system.

Styers: It’s an extensive system, but if I remember correctly, it’s in this area of the site underground.

Roberts: That’s correct.

Bush: Now that we know this site was remediated for, and perhaps closed for an environmental problem, what is the impact of that? Were the storage units removed?
You know, what is the impact of having this underground storage close to a—what may have been a brown site at one point?

Styers: None whatsoever. Again, this site was completely—given complete closure. The underground—the former storage tanks by Cary Oil were removed. The soil was removed, and clean soil placed in. So it’s an absolute nonissue.

Morgan: And during construction, if—

Bush: Can you come up to the—

Morgan: Sure. During construction, if contamination is encountered, then we are obligated by the state to have an environmental engineer on site, to monitor that, and it will be removed and replaced.

Styers: The state reports do not indicate any current contamination, because it was given foreclosure by the state.

Bush: What was this date of the closure?

Morgan: November 17th. Well, actually our report—our Phase I is November 17th, and—

Styers: But the closure was 2007?

Morgan: I think it was.

Bush: So, it was 10 years ago—ish? That must be why the site is flat and nothing there.

Styers: There were a lot of—the old storage tanks were removed and remediation process in the ‘90s and 2000s. I did a lot of wiggle work back in that period, the closure of stations and removal of storage tanks. And quite frankly, got out of it, because there wasn’t much work to be done, because they were all remediated and the soils removed.

Glover: And Mr. Styers, can I ask you a question? So, are there any deed restrictions or covenants that were placed on the site as the result of any of the remediation work that was done?

Styers: We have not investigated that, but none that we’ve encountered. I have not done the real estate title work for it, but none—and can—we purchased the property. This is not under option. And there were no concerns raised at the time of the purchase.

Morgan: And to answer your question, it was December 2008 is whenever ATC actually done a comprehensive site assessment and led to the closure of the report.
George: And that was for the Ramcat branch of Grocery Boy Jr. to the north? Okay.

Weinbrecht: Other questions?

Smith: Well, the—my questions are more traffic-related.

Weinbrecht: Okay.

Smith: I think the most interesting thing that I heard during all of this was the fact that—you know, I’m not convinced that, you know, the way it was presented about the timing and the backup, that the factor of the school was in. I mean, when you read—when we’ve had all these other car washes come through, a lot of the things that we found, just like with storage centers, is they want to be closer and closer now to communities. And that there’s actually—was data presented in past things that we’ve had here where a lot of times, the car washes are more frequented by the female drivers. And then, you think about a school and picking up kids and everything, you know, have we really—has your analysis really addressed the volume of traffic midday as was presented earlier is my question.

Fluitt: We did not look at the midday peaks. We focused on the commuter peaks, 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., because that’s when there’s the most traffic on these roadways adjacent to the site. It may not—obviously, there is school traffic in the off-peaks, if the schools do, in fact, occur—you know, start at 9:15, end at 3:45. That would not fall within those peaks. But there would be less overall traffic during that time than the periods we studied.

Smith: I understand, but also, as we keep hearing, it’s a brave new world out there. Traffic patterns change, people have cut-through traffic, GPS. We deal with traffic models in the past that just don’t recognize how traffic redirects itself based on the technology they have, both on their phones and in their cars, and I’m really just having a problem with this reduction of the queuing—this 200 to 100. It just—I mean, this is a godawful area. I mean, this is just awful, and you know, I applaud a lot of the new thinking that you’re talking about, but, you know, my caution is still the traffic. That’s my observation.

George: On what he’s—how do you know that it’s—if you didn’t count it between 9:00 and 4:00, how do you know it wasn’t worse at 9:30?

Fluitt: I do not. But I relied on staff to dictate the peak hours that we would study and DOT to dictate the peak hours we were—that we would study. And staff had us study 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.

George: I’d like to know from staff how we know that that’s the peak in this location; obviously, not in general.
Jensen: I’m not sure. I’m not sure that we would tell them when the peak hour is out there.

Weinbrecht: Mr. Jensen, will tell you everybody who you are?

Jensen: Jerry Jensen, director of transportation/facilities. Yeah, again, this is not a traditional traffic study that goes in accordance with our LDO. This is upon the applicant to provide testimony and burden of proof that he—that the adequacy of the road system out there is based on their judgment and professional analysis. And I don’t believe we’ve ever—that I’m aware of, that my staff or myself have dictated when actual—the peak hour of the school system matches with the peak hour of this facility. We generally, in standard engineering practices, though, the peak hour is generally from those times that Mr. Fluitt had talked about. That’s generally when we see the most volume of cars on the roadways, but when in proximity to schools, that may be different. So I think I would suggest that he clarify those remarks about whether—who from staff would have dictated that.

Styers: I have a question for Mr. Jensen. There was a question about the backing up and queueing. Can you just briefly explain what the SimTraffic—software does and how you use the SimTraffic analysis for determining queueing and backing up?

Jensen: I’m not sure that I need—what that—that is—it’s a software used by traffic engineers to simulate how traffic would enter and exit a site, based on projected models and volumes that they put into that.

Styers: So, that would be the type of software that would be utilized to determine the potential queueing?

Jensen: It could be one method, yes.

Styers: Okay.

Jensen: There’s a lot of different methods to do that.

Styers: And the SimTraffic and simulations that were run indicated that the maximum queues on Franklin Springs would not be even 100 feet. They’d be 42 and 43 feet was the report that your office reviewed.

Jensen: That’s the report that we received. Yes. From the test—from the expert that would—that wrote that document. Yes.

Styers: And you approved that report?
Jensen: I didn’t approve the report. I approved the modification from 200 feet to 100 feet, so you’ve got to be very specific about what you’re asking me.

Styers: I understand.

Jensen: Okay.

Styers: It just says “approved,” and I want to make sure I understood what the approval was.

Jensen: I approved—again, our LDO and our—does allow the director of transportation/facilities the ability to make modifications to our standards and specifications. Based on the testimony I received from the engineer, I felt comfortable that we would not have any queueing or safety issues, and I made the modification.

Styers: Thank you.

Weinbrecht: Thank you, Mr. Jensen.

George: Can we continue on that? Because I understand if, like, we’ve had out near Green Hope High School, discussions of traffic, and the 7:00 to 9:00 was clearly in play, because that’s when high school goes. But when we’re talking about next to a place that has a day care, and next to a public school, and there’s another school not too far away, it just doesn’t seem right to me that we do traffic studies and accept them when there’s not—we’re not at the commuter time when people get dropped off at school, because that’s when I see the longest queueing lines, is when elementary schools—because they don’t drive themselves.

Bush: I think you have a really good point, because I didn’t realize that that triangular building right there that’s on this slide is Swift Creek Elementary.

George: Yeah, on the corner.

Bush: So, the one directly west—not even two blocks away—is where that queueing problem is. Right, from so many, you know, folks queueing it for carpool. That does seem to me something that’s left out. It’s information we don’t have in order to make, I think, a valid decision—a business—you know, or I’m sorry, an evidence-based decision.

Robinson: I agree.

George: And I don’t know how many get—I mean, I know there’s rules from elementary schools about how early you can drop them off, unless you pay for early whatever is it—so you shoot for that 15-minute window that’s just outside the traffic study.
Weinbrecht: So, other questions or comments, or do we need to move to motion phase?

George: I have one more question, a technical question.

Weinbrecht: Please.

George: So, from the staff standpoint, did we specifically name car washes as a drive-through? We made them a drive-through, specifically?

Bush: Well, they—

George: Are they named that?

Bush: They do drive through this one.

Hales: They drive through the building, therefore it’s a drive-through. There is no specificity. It could be a drive-through tailor.

George: So, I’ve got a question for the car wash people. Do people stay in their car at your place? So this is not like someplace where you get out? Okay. That answers that question. It’s a drive-through. I just—I know that sometimes they get out, and they put it on a conveyor and it sucks it through. And I just was making sure I was understanding it was a real drive-through. Okay.

Bush: So, if it’s a drive-through and you stay in it, why is there seating? I’m just curious. Why is there outdoor seating and all the extra seating?

Morgan: Because in the lobby, we actually provide free coffee. We have a couple vending machines actually inside of the lobby. So, we actually have, like, a Wi-Fi bar in the lobby, plus we give outdoor seating in case somebody—let’s say a family—one person is vacuuming the car, the other ones can actually sit out.

George: This is self-serve?

Bush: So, if you put a great big barricade at the end of it, is it no longer a drive-through? And it could be administrative—I’m just curious. It would have been administratively approved because it’s not a drive-through? I’m not giving you a suggestion, but I just want to understand—

Hales: You have a hypothetical. What kind of barricade, where?

Bush: So—

Hales: Typically, if the car is going through the building, we consider it a drive-through—.
Bush: So, if it was just a car wash, it wouldn’t come to a—I’m sorry, if it was just a—

George: Pull-up.

Bush: No. If it was just a gas station, it wouldn’t come up to—wouldn’t come to us?

Hales: Correct. It’s the drive-through facility of the car wash that’s driving a QJ approval.

Bush: Okay. That’s just what I wanted to make—

Styers: Just for the record, we have expressed our objection to this being classified as a drive-through use. For not knowing what a non-drive-through car wash might be. So I just wanted to say, you know, for the record, there’s no notation in your permitted use table that this requires anything more than site plan approval. Staff and I have discussed, and we are here voluntarily to proceed in this fashion, while reserving that argument if we need to make it in another forum.

Bush: Well, I’m sure the Bojangles’ people would have agreed with you, too, but I’m actually glad that it’s a drive-through so that we can have this discussion and—

Styers: And we’re happy to be here so we can have the discussion, but Bojangles’ may or may not have a drive-through. I’m not so sure what a non-drive-through car wash is. But that having been said, we are glad to be here to answer your questions.

Weinbrecht: Other—

Morgan: And to also—to, sort of, expand on what we just said, yes, we do—the customer does sit in the car. They’re not driving. It’s being pulled.

Morgan: They’re on a—

George: Conveyor. Okay.

Morgan: And the car is not in drive, so—

George: But it’s running? They turn it off?

Morgan: They could cut it off, if they wanted to, but it is being pulled through.

Weinbrecht: Other questions?

Glover: Mr. Mayor? Me, sorry. Mr. Silverstein, I wonder—what’s on my mind as I hear this discussion, Mr. Styers, is the recent City of Asheville Court of Appeals case, which I
had actually planned to do a blurb about and send out to the entire council, about expert testimony. And so I don’t know if you want to talk a little bit about that, in terms of the traffic, and what that might mean for—as they think about their deliberations right now.

Silverstein: Well, I think it’s a little hard to extrapolate that into this situation. I think that—I guess what Ms. Glover might be getting at is that, once a prima facia case is made, based on traffic information from a traffic expert, which has been done here, and then you come—what you are dealing with is speculation. You don’t have evidence to the contrary. Is that what you’re getting? So what you are dealing with is speculation. So, the question is, from a legal standpoint, do you have evidence to deny this? And that’s why, you know, one thing you consider—you can consider, I think, would be to defer this case to get the information that you want. There wouldn’t be a problem with doing that at all. But it’s questionable as to whether or not you could deny this application based on speculation as to what traffic might be at a particular time, since you don’t have any evidence of that the traffic would be at that time.

George: But I asked the question, and got the answer, that there was speculation that 7:00 to 9:00 was the prime, and they didn’t count it after nine o’clock. So there’s speculation on the traffic study. So that’s what I’m questioning. I’m questioning the traffic studies log because there was speculation, because he did not study to know that that was the peak.

Silverstein: I think that the peak is accepted by experts to be in the morning and in the afternoon. What you are adding is a dimension created by a school that has not been considered. And so that is speculation because you don’t have any concrete evidence of what impact it’s had one way or another.

George: Right.

Silverstein: And I think that’s the question.

George: Don’t have enough information.

Silverstein: It’s a question. That’s right.

George: That’s correct. I don’t have enough information.

Silverstein: That’s right. So, your choice might be to either get that information or to approve it. But it’s questionable as to whether or not you could deny it based on speculation.

George: Gotcha.

Silverstein: Is that fair?
Weinbrecht: Other questions or comments? Or should we move to motion phase? I’m hearing no comments, so we’ll move to the motion phase. So, I think, summarizing what I’ve heard, we can make a motion to approve or deny, even though denying, you’ve got to have a reason, one of the six, or you can move to have this continued.

Robinson: And if we move to have it continued, what does the next meeting look like?

Silverstein: That’s up to you. You can continue it—we talked before about you want to continue to a specific date. But you can also limit what evidence you could consider at that date, if you want to.

Robinson: Okay.

Silverstein: If you want to put parameters on it, you can.

Robinson: Okay.

Overton: Mr. Silverstein, do we have to continue it to a date certain?

Silverstein: You don’t have to, but if you don’t, then you’ve got to go through the advertising—

Overton: Right. And I just wanted council to be aware of that.

Silverstein: Right.

Robinson: Okay. All right. I’m in favor of continuing it, because I think it would be fair to everybody. I think it would be fair to the applicant to be able to take the time to get the information that we feel like we need, to say, “Yeah, you have a compelling case that you’ve made here.” I think it’s fair to the expert citizen here to be able to look at the documents that they say they have, so that, you know, he can then come back and say, “My concerns are satisfied,” or, “My concerns are not satisfied because of X, Y, Z.” So, I would be in favor of continuing it, and—

Weinbrecht: Without any limitation on what can be discussed?

Robinson: I have no limit—I would not, unless somebody else wants to, you know, tell me otherwise. But I, you know—

Frantz: While I appreciate the expert citizen’s concerns regarding the environment, I think based on state and federal laws, I think they’ve been satisfied. I really do. I appreciate the concerns regarding traffic after nine o’clock, but as somebody who goes through that area on peak times, the traffic is worse at 7:00 to 9:00 and 4:00 to 6:00.
There’s a queueing issue you have with the school and the carpool, but traffic is predominately worse at—in your typical peak-hour times. My concern is the site plan. I don’t think the site plan jibes with Number 3 and provides harmony and unity with the surrounding development. I think it is a sea of impervious surface. You’ve stuck a building on a far side of the site, and a stand-alone canopy gas station thing. I think it’s totally underwhelming and not what we’re looking for as a community. So, I’m totally cool with voting to deny it, or you can enhance the site plan.

Weinbrecht: Well, we’re at a point of making a motion.

Robinson: If we continued this, are they allowed to modify their site plan in that period and come back to us with a different site plan, or does it need to stay the same site plan?

Glover: They can make changes between now and then and give staff time to evaluate those and come back to you.

Robinson: Well, I would be okay with that. I mean, you know, we all have our passion points, and Don doesn’t often express passion points for aesthetics. [LAUGHTER] And when he does, I think everybody should sit up a little bit higher and listen, because, I mean, I think that’s a big deal. I mean, I think the fact that you—and you understand the auto world. You understand a lot of the nuances about it, and for you to look at this and say, “This isn’t adequate.” I think it’s worthwhile.

Frantz: I mean, no disrespect. I feel like I’m looking at almost a truck-stop-type site. I mean, it’s—

Robinson: Yeah.

Frantz: You know? Total open impervious surface. Just very underwhelming. It’s just—it’s not Cary.

Robinson: Yeah. I think that’s a fair point.

Bush: And I have concerns with the—

Frantz: And it is not my district. It’s—

Robinson: I know.

Smith: But you’re doing such an eloquent job.

Bush: Kind of let him go.
Weinbrecht: I mean, you can make a motion to deny, if it doesn’t meet one of the—

Frantz: I will say—I mean, I would love to give the applicant who has come this far in the process an opportunity to make it better. I understand others have some other concerns and have some questions that they would like addressed, and I think it’s fair to give them the opportunity to do that. So—

Bush: And while they’re doing that, I mean, I have concerns for the—I think it’s trash that’s kind of out in the middle, not screened by anything. You know, again, that’s not in Cary standards. You know, I’m looking at what, 16 or 17 loading places for vacuum spaces, right? Or 13 or 14 of them, you know.

Robinson: Go back to the drawing—

Bush: You know. That, you know, there’s—it just seems like so much, right? And it doesn’t seem to fit Cary.

Weinbrecht: Okay. So, I’m hearing that we want to continue this. Can I get a motion?

Robinson: Or deny.

Weinbrecht: Or deny. Can I get a motion?

Robinson: It doesn’t look like anybody wants to approve it, so—

Frantz: Do we need a day to continue it to?

Bush: No.

Overton: I would recommend not having a date.

Weinbrecht: What’s the June? Okay.

Frantz: I make a motion to continue.

Bush: I second.

Weinbrecht: Okay. There’s a motion and a second. And then the discussion. First of all, I want to know, we can have anything when we come back. What should we expect from the applicant? I’m sure they want to know what should they bring back? They can discuss anything, because we haven’t limited it, so they’re going to make a presentation. Are we going to go through the whole process: have people in opposition, have people—
Silverstein: Yes.

Weinbrecht: Okay. So, we’re going to go through the entire thing again is what I understand. And you had information you wanted to submit. Would you like to submit that now, and then we can have that ready when we come back?

Smith: Assuming the continuance gets approved.

Weinbrecht: Assuming it gets approved. Yes.

Silverstein: I think you could also assume that, in the meantime, staff would meet with the applicant and attempt to narrow the issues that they’ve heard discussed this evening.

George: And that’s a good—that was my point, is that, since they can’t talk with us—

Silverstein: Right.

Weinbrecht: Correct.

George: —then I would like in open court for them to ask us what they’re—if they’ve got questions that they’re supposed to address, mine would be to cover parking that extra hour overlapping the school time would be my—but I don’t know whether that’s—

Silverstein: They can’t talk with you—

Weinstein: Right.

Bush: Right.

Silverstein: —but they’ve certainly heard you.

George: Okay. That would be my—I’m just being very specific.

Bush: Feedback now.

George: That’s my feedback I’m giving now.

Weinbrecht: So, as we leave tonight, assuming this is continued, we’re back to where we were before. We can’t talk to anybody. We can’t hear anything else.

George: Questions now or forever hold your peace.
Hales: What I’m hearing Mr. George say is you’d like an opportunity now for you to provide any direct feedback, because I’m sure Mr. Styers is going to want to know—

George: That’s what I’m asking.

Hales: —what are your direct concerns?

Weinbrecht: Now you can.

George: I would like to be able for us to give direct feedback and let him ask questions, if he’s got things that he’s fuzzy on, that would help him because he can’t come meet with us, one on one, and ask us questions.

Weinbrecht: So, let me ask a procedural question. We’re still in the middle of a motion. Should we go ahead and see if the motion passes? Then, at that point, can we give feedback or are we shut out then?

Silverstein: I think as part of the discussion of this motion, you can open up the—that discussion to hear input from the applicant and staff, if that’s necessary.

Weinbrecht: Okay.

George: That’s good.

Silverstein: I think that’s appropriate.

Weinbrecht: So, so, yes. Now is the time.

George: That’s good. So, that would be my first thing, would say just if it went till 7:00 to 10:00 and 3:00 to 5:00—3:00 to 6:00, then I’d be happy as a clam to hear that it goes down at 9:15, if that’s the case. I just need to know.

Weinbrecht: Other information we want the applicant to provide?

Frantz: I mean, I’m not going to design their site. I’m just letting you know what my concerns are.

Smith: Yeah.

Weinbrecht: It’s visual for you?

George: It’s covered.
Frantz: Visual. I see very little green in the interior. Quite frankly, I don’t know, you know, why they’re not putting a convenience store in there. That’s not my decision to make. But stand-alone canopies, to me, are not the most visually appealing thing in the world, and you know, I think there’s work to be done there. I totally get the whole stacking, drive-through, and the car wash thing. I’m not questioning their business model. I actually think the car wash building from the street is probably not that unattractive. But the site itself is underwhelming. And so, I’m looking for more. I would really—the disconnect between the gas station and the car wash itself, to me, is mind-boggling, honestly. When you have that—actually, using that barrier in between there, so even if somebody wanted to walk over there, they’re—it’s just an impediment. I just—

Styers: We will try to explain the business model better. Why the—

Frantz: Actually, I get the business model. What you’re not getting is I don’t like the site plan.

Styers: Okay.

Smith: Right. And you know, it’s like a death of a thousand cuts. It’s just a horrible place. And you know, you can have six things, and you just barely meet the spirit and the letter of the law, but, you know, it’s going to take a lot to convince me on some of this traffic modeling. It’s a godawful place. It’s jammed. It’s queued up. You’ve got the school next door, Campbell Road, you’ve got the two roads on both sides here. You know, sometime in the past, we should have looked at how the hell we ended up with two cut-through roads that go nowhere. And then you’ve got the remaining triangle out there. So you’ve got a hurdle. I mean, you have a hurdle. I’m trying to be fair to you. But, living over there, just the very thought that I’ve got—every day, I’ve got to go down that Jones Franklin Road and sit in that queue, and now I’ve got to look at this. You know, I guess it has to be if I have to do everything evidence-based, but I’ve got a real jaundiced look at all—at—I’m taking at faith right now the LDO compliance. I think Number 3—2 and 3, I found, you know, just showing a couple pictures of the dilapidated stuff next to it, as a surrounding use, and this is better. This is just another more of the same that we don’t need there. So, I guess I have to understand how I have to apply my decision to 2 and 3, but 4, 5, and 6, it’s going to take a lot of data that’s going to convince me to change my mind there. That’s why I’d rather just do it today, and then face whatever legal challenges we have. I’d rather get it—I’d rather move on.

Styers: We’d like to go ahead and move into evidence all of the documents that we’ve submitted, including all the backup information by Mr. Travis Fluit, at Kimley-Horne, as well as the back-up analysis by Mr. Rich Kirkland, so we would ask that all of that information be submitted into—introduced into evidence, as well as take judicial notice of the LDO, of the staff report, of the application that’s been filed, so that the information in the record—the record is complete at this time, with all of the information that we have presented. We would welcome the opportunity to come back, and, you know, one thing
that this illustration does not show is the extensive landscaping that is proposed at this site, and we can address that, and we can increase that with interior landscaping, as well. We can look at reconfiguration. We certainly can look at the traffic during the school area—school hour, and we’ll work with staff. And, of course, you can communicate to staff, staff can communicate to us, and we can do what we can and we’ll be glad to come back.

Weinbrecht: And I would ask that all of this be in the staff report ahead of time, not at the table. That would really help us.

Styers: I understand. That’s helpful for me to understand. And the only thing I would add is that, you know, this is a general use district in which there are a lot of uses that are absolutely allowed at this location. And we are only here because of the staff’s position that this is a drive-through use.

Frantz: Thank God.

Styers: A convenience store, a gas station. Again, we want to make sure this is a–we want this to be a good site. We want this as something for Cary to feel good about. And if we can improve this site, we will improve this site. But there—we have purchased this property. It is not under option. And there is a long list of permitted uses that are allowed here with site plan approval with staff. And so, we think that we will come up with a better product working with you, through this process, than if we were to propose a site that would not come before you.

George: Okay.

Smith: That's fair.

George: Let me—I’m going to tag on what Don said, and I think that when I hear what Don’s saying, and I support him, I’d like to see this—this is—now that I’m—I actually thought this was like a Bunkey’s where they—you had attendants, and then I realized it’s self-serve. I heard that you drive it through yourself. So all—I just realized that when I asked that question. So, what I’m trying to figure out, this disjointed thing Don’s talking about, I don’t see how—I’d like to see where this traffic flow—if you’re going to fill up before or after, it just does not—it doesn’t look like it flows, like Don’s saying. It just looks like it’s disjointed, and you have to walk across all these people vacuuming their cars out to go get a snack. And it just doesn’t seem to me that it’s as safe as it could be.

Weinbrecht: Maybe photos from existing facilities?

George: Or layouts of existing ones that would work?
Styers: Yeah, we could—again, we have 23 of these that are functioning extremely well, and I think—and also some—I think some photo simulations, some artist renderings of what this site with the layout at this location, from the perimeter, would also help explain what we’re trying to do and why we think this is an appropriate, compatible piece.

Robinson: May I ask a quick question? Do you have this big sea of parking between the gas station area and the building—the car wash building—because we require the building to be on the street and not the parking? Was that—or is this the way you always do it? This is the way you always do it? Okay.

Morgan: Yes, ma’am. This is our prototype. I mean, the thought process is, is people—excuse me. People enter the car wash. They go through the car wash. They come out, and then they immediately hit the vacuum spaces. And then, once they leave the vacuum spaces, they can either depart from the site, or they can go to the fuel. So, I mean, it—based off of our concept, it flows.

Styers: And that’s the experience we’ve had at other locations, about how people want to use the site. And we’ll look at other configurations, but, you know, this is based upon how people like to use this type of car wash and what works, so you don’t have problems with ingress and egress. You don’t have stacking out into the streets; no one wants that. And so, I do think that there is opportunities for some interior landscaping. We will look at additional layouts. But, when I talked about our business model, it’s based upon how people like to use these facilities. And you know, and the popularity and receptivity that they’ve been—that they have experienced at other locations.

Smith: Yeah, and I—you know, I respect that you reminded me of the other uses. You know, I appreciate that, because that is a critical factor. And I know that during the whole proceeding tonight we learned a lot more about the environment, and I appreciate that that all came forward. The area is under siege. You’ve got to respect that, and you ought be talking to those folks, too. You get them on your side, and it just—you know, it makes a better community. It makes a better relationship all around. You’ve identified a lot tonight that was a learning curve for us, and I think it’s important, since we can’t—I can’t talk to my constituents, which is frustrating, it’s nice that you keep them in the loop and try to work with them, reasonable people who come to the table.

Styers: Yeah, I definitely—I don’t know if the gentleman is still here. Yes. I will—we will definitely—

Smith: All right. Thank you.

Styers: — make sure I get his contact information and we will try to be—reach out to him.

Smith: I appreciate that.
Styers: Certainly. Yeah. We will—again, we would, in given alternative uses, you know, we would humbly and respectfully believe that the result that we would get through this process and ultimate approval would both be better than an alternative that we would be able to build by right without city council approval, or that the courts would order. And so we would be willing to come back, because we think of the three options we see, that would be the optimal option of the other two.

Weinbrecht: So, last chance for comments before—

Bush: Is there no neighborhood meeting requirement for QJs at all? But we have had—some have had them.

Hales: No.

Styers: Usually for quasi-judicial, that’s not been my experience.

Hales: No.

Bush: Okay. Maybe they were just individual meetings with the applicants.

Hales: The applicant can always set up a meeting with the surrounding neighborhood, but that’s not required by LDO.

Bush: But not a neighborhood requirement. Okay.

George: But the clerk—

Weinbrecht: Any other—I’m sorry.

George: The clerk could provide him contact information for anybody that reached out to us, if he wanted to so reach out to those people.

Bush: Certainly.

George: Not that we could consider it as evidence, but he certainly could.

Weinbrecht: Any other comments before we lose our voice until this comes back to us again?

Styers: I will say Mr. Hill, the COO of the company, says that, based—he has appreciated your comments and he does believe that we can address these if we’re allowed to come back.

George: Good. Thank you.
Weinbrecht: Okay. We have a motion to continue this to an undetermined date, just to be clear, and all in favor of this motion, please say, “Aye.”

All members present said aye.

Weinbrecht: Those opposed? Motion carries unanimously. So this will be continued until another date.

Weinbrecht: Thank you, Mr. Styers.

Styers: Thank you. We’ll see you another day.

**MOTION (summarized from verbatim wordage above):**
Frantz moved to continue to an undetermined date.
Second: Bush
Vote: Unanimously approved (7-0)

**RESULT:** CONTINUED

3. **CLOSED SESSION**

   No closed session held.

4. **ADJOURNMENT**

   The meeting was adjourned at 9:22 p.m.

**RESULT:** ADJOURNED [UNANIMOUS]
**MOVER:** Jack Smith, District C Representative
**SECONDER:** Ken George, District D Representative
**AYES:** George, Weinbrecht, Smith, Robinson, Frantz, Bush, Yerha