

1 FRANKLIN COUNTY BOARD OF ZONING ADJUSTMENT
2 SECOND FLOOR COMMISSION CHAMBERS
3 FRANKLIN COUNTY GOVERNMENT CENTER
4 400 EAST LOCUST STREET
5 UNION, MISSOURI 63084

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9 APPEAL PROCEEDINGS
10 IN RE:
11 KERR vs MECKLER
12 FILE NO. 170157

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MEETING
AUGUST 22, 2017
(Commencing at 7:00 p.m.)

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23 Reported by:
24 Patsy A. Hertweck, C. R.
25 Midwest Litigation Services

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A P P E A R A N C E S

BOARD OF ZONING ADJUSTMENT MEMBERS:

- Gordon Upchurch, Chairman
- Derek Schriewer, Member
- Tim Tobben, Member
- Fred Thatcher, Member
- Mark Frankenberg, Member

PLANNING AND ZONING DEPARTMENT STAFF:

Ms. Scottie Eagan, Planning Director

MIDWEST LITIGATION SERVICES:

By: Patsy A. Hertweck, C. R.
711 North Eleventh Street
St. Louis, Missouri 63101
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1 P R O C E E D I N G S

2 (AUGUST 22, 2017)

3 CHAIRMAN UPCHURCH: Good
4 evening. I'm Gordon Upchurch, and we're going to call
5 this meeting to order. This is a meeting of the
6 Franklin County Board of Adjustments. I'm joined
7 tonight by Fred Thatcher, Tim Tobben, Derek Schriewer,
8 and Mark Frankenberg. We welcome all of you.

9 We have one matter on the agenda this
10 evening, but before we reach that matter, we have some
11 minor procedural matters to attend to.

12 First, Ms. Eagan, will you call roll.

13 MS. EAGAN: Gordon Upchurch?

14 CHAIRMAN UPCHURCH: Present.

15 MS. EAGAN: Fred Thatcher?

16 MEMBER THATCHER: Present.

17 MS. EAGAN: Mark Frankenberg?

18 MEMBER FRANKENBERG: Here.

19 MS. EAGAN: Derek Schriewer?

20 MEMBER SCHRIEWER: Present.

21 MS. EAGAN: And, Tim Tobben?

22 MEMBER TOBBEN: Present.

23 MS. EAGAN: Okay. We have a
24 quorum.

25 CHAIRMAN UPCHURCH: And next I

1 believe we need to approve the last prior minutes. I'd
2 entertain a motion for approval.

3 MEMBER SCHRIEWER: Motion to
4 approve.

5 CHAIRMAN UPCHURCH: Is there a
6 second?

7 MEMBER FRANKENBERG: Second.

8 CHAIRMAN UPCHURCH: There is a
9 motion and a second. Those in favor aye. Aye.

10 MEMBER SCHRIEWER: Aye.

11 MEMBER TOBEN: Aye.

12 MEMBER THATCHER: Aye.

13 MEMBER FRANKENBERG: Aye.

14 CHAIRMAN UPCHURCH: Those
15 opposed same sign.

16 (NONE)

17 The minutes have been approved.

18 Before moving on to the other matters on
19 our agenda this evening, let me ask for our record. At
20 this time, I'll offer the Board members an opportunity
21 to declare if any have any conflicts, communication or
22 relationship that they may have or might influence
23 their ability to consider today's issues impartially.

24 We do this as a matter of practice and
25 form. I'll start that usually very brief discussion

1 with the fact that in my review of the packet, and not
2 that it impacts my view of the case, but it is
3 something outside of the record that actually should
4 have been contained in the record.

5 I noticed that there was an omission in
6 the applicant's Exhibit C. It appeared that there were
7 about 17 pages missing from Exhibit C.

8 I did take it upon myself to contact the
9 Planning and Zoning Department and ask for a portion of
10 that public record to be provided, and I believe that
11 the record has now been supplemented with those pages.

12 Is that correct?

13 MS. EAGAN: I don't think we did
14 those pages.

15 CHAIRMAN UPCHURCH: Okay.

16 Then I have and I will be providing my
17 copy of those, which is simply to make sure that
18 Exhibit C is full and complete.

19 (Thereupon, evidence was marked
20 and submitted for the record as
21 Chairman Exhibit 1.)

22 Again, that doesn't impact my decision. I
23 will presume that that was done accidentally and not
24 for purpose. It involved a public hearing on December
25 the 21st with -- regarding a rezoning that was referred

1 to in some of the pleadings, but in fact is not before
2 us.

3 In fact, I took the time after discovering
4 that document and the omission to check Case Net and
5 other public record, and found that there is a circuit
6 court pending -- action pending at this time with
7 regard to that rezoning, again, as referred to from
8 time to time throughout the packet so that I would know
9 and our record would be clear that there is a zoning
10 issue. That issue is not before us. There were
11 hearings with regard to that, and that litigation is
12 pending elsewhere at this point in time. I will be
13 providing any or all of those documents that don't
14 already appear in the record.

15 I'll also add at this moment in time, we
16 handle these matters as informally as legally possible.
17 And for the benefit of everyone, if you will, peace of
18 mind, the actual procedures and logistics Scottie will
19 go through in a minute, but of an informal nature. We,
20 as a matter of course, will -- and at this point in
21 time when the case is called, will accept the full
22 record with all the papers that have been submitted by
23 the applicant.

24 We will also, through the course of the
25 hearing, be accepting papers and documents that may be

1 presented by those of you who speak. Any of those who
2 do care to speak this evening will need to step
3 forward, sign in and be sworn. Again, after the first
4 one does it, the rest of you will kind of get it. But
5 again, we try to handle these very informally and give
6 everybody an opportunity to be heard.

7 We've got kind of an average size crowd
8 tonight. I'm going to probably at some point give one
9 side or other or both sides an opportunity. It seems
10 that there's going to be sort of, if you will, a
11 routine of some of the testimony an opportunity for
12 people to simply raise their hand, and I will make
13 something of a record of the people who would gladly
14 get up and want to swear to those same things because
15 we, like all of you, probably want to get home to our
16 family sooner than later tonight, but we also want to
17 give everybody an opportunity to be heard.

18 Even after I give some -- a group, when
19 there's a group here and if they care to do so, to let
20 me identify a rough number of people who would swear to
21 those general facts. We don't consider that preempting
22 your ability to get up and testify. But I would ask
23 that we not repeat because we're smart enough to at
24 least retain what we've heard. Okay. So we're just
25 again trying to handle these informally and to give

1 everybody a full opportunity to be heard and for us to
2 fully hear from everybody.

3 With those things in mind, I'm going to
4 open it up to other Board members, if any of them have
5 any communications or conflict or contact which they
6 care to disclose at this point in time.

7 MEMBER THATCHER: None
8 whatsoever.

9 MEMBER FRANKENBERG: No.

10 MEMBER SCHRIEWER: No.

11 MEMBER TOBEN: No.

12 CHAIRMAN UPCHURCH: Obviously
13 the rest of the Board is smarter than I am, but on a
14 serious note, I think we're prepared to proceed.

15 Ms. Eagan, will you read into the record
16 the hearing procedures.

17 MS. EAGAN: Tonight's Board of
18 Zoning Adjustment hearing is governed by the Franklin
19 County Unified Land Use Regulations.

20 At this time, I would like to place into
21 the record these Regulations as Exhibit A, the official
22 Zoning Map as Exhibit B, the official Master Plan as
23 Exhibit C, and the case file for each case as Exhibit D
24 for all the cases to be heard at this hearing.

25 (Thereupon, evidence was marked

1 for identification and presented for
2 the record as Exhibits A, B, C, and
3 D.)

4 The Board of Zoning Adjustment will
5 address each case as they are listed on the agenda. As
6 each case is opened for hearing, a staff report will
7 first be read to the Board, followed by any questions
8 for the staff.

9 Then if anyone in the audience would like
10 to speak or comment during this hearing, they must
11 first print their name on the sign-in sheet provided,
12 and then be sworn in by the Chairman. When it is your
13 turn to speak, you will come to the front of the room
14 to address the Board and only the Board, not anyone in
15 the audience, with any questions or comments.

16 At the conclusion of all questions,
17 comments, and discussion concerning each case, the
18 public hearing for that case will conclude and the
19 Board of Zoning Adjustment will proceed with a
20 decision. Any decision by the Board may be appealed.
21 If anyone desires to appeal a decision made by the
22 Board of Zoning Adjustment, they need to submit it to
23 Circuit Court.

24 CHAIRMAN UPCHURCH: And with
25 regard to Old Business, I think we have none.

1 MS. EAGAN: (Nodding.)

2 CHAIRMAN UPCHURCH: With regard
3 to New Business, I believe we have only the application
4 of Padraic -- and I may be mispronouncing that -- Kerr.
5 I think I can be mispronouncing that also. File Number
6 170157, and may we have a staff report.

7 MS. EAGAN: This is File 170157
8 for Padraic Kerr.

9 The applicant is appealing the decision of
10 the Planning and Zoning Commission to issue a
11 Conditional Use Permit to Robert Muckler.

12 The property is located off of Highway 00,
13 approximately 3/10 mile north of Spring Valley Road, in
14 Boles Township.

15 The Facts: On April 18, 2017, Robert
16 Muckler received approval for a Conditional Use Permit
17 to operate Special Events, Periodic, with 13 listed
18 conditions.

19 On March 7, 2017, the Franklin County
20 Commission passed new Special Occasion Permit
21 regulations.

22 Because Mr. Muckler applied for the permit
23 prior to the regulations being approved, he was still
24 under the old regulations with regards to Special
25 Events, Periodic requiring a Conditional Use Permit.

1 The total area is approximately 10 acres.
2 The zoning of this property is Non-Urban
3 and Agricultural. In this district, Special Events,
4 Periodic at that time required a Conditional Use
5 Permit.

6 Mr. Muckler wants to use the property to
7 host weddings or similar uses.

8 The properties around the proposed site
9 are zoned Suburban Development.

10 This property is approximately 1,000 feet
11 north of the city limits of Pacific.

12 This property is surrounded by low-density
13 residential land and undeveloped land.

14 This property has access to Highway 00,
15 which is a State-maintained road.

16 Staff Comments: When the County
17 Commission passed Commission Order 2017-96 and
18 2017-106, all special occasion permits became permitted
19 uses in the UNA zoning district as long as the venue
20 hosted events with less than 300 people and followed
21 regulations in Section 237.

22 The purpose of the Non-Urban and
23 Agricultural zoning district is to allow agricultural,
24 recreational, wild life, forestry, open space, farming
25 and related uses to mix with low-density residential

1 development.

2 The Board of Zoning Adjustment has the
3 ability to reverse, affirm or modify the order,
4 requirement, decision, or determination appealed from.
5 In order to reverse or modify, the Board must have a
6 4/5 vote.

7 CHAIRMAN UPCHURCH: And one
8 thing that I failed to cover earlier. Most of you have
9 one of these. We're all going to be kind, and we're
10 going to reach in our pocket. We're going to pull ours
11 out, and we're going to turn it on vibrate or we're
12 going to turn it off.

13 And if you're expecting a phone call that
14 you just have to take, you and that phone need to step
15 on out, because we're not going to interrupt one
16 another during this meeting. Okay.

17 Otherwise, we're going to have security
18 remove that interruption from the meeting, and we don't
19 want to be rude to one another.

20 All right, on vibrate.

21 At this point in time, if we are prepared
22 for the applicant, which I believe is Padraic Kerr, is
23 someone on behalf of the applicant that wishes to
24 present evidence?

25 MR. KEVIN SULLIVAN: Yes, sir.

1 Kevin Sullivan.

2 CHAIRMAN UPCHURCH: We need for
3 you step forward and sign in.

4 (Thereupon, the witness was
5 sworn.)

6 And your name for the record now.

7 MR. SULLIVAN: My name for the
8 record is Kevin A. Sullivan. I'm with the law firm of
9 Sauter Sullivan, and I'm here on behalf of the
10 applicant, Padraic Kerr, as well as Dr. John Holds and
11 Dr. Sophia Chung.

12 CHAIRMAN UPCHURCH: And repeat
13 what I said earlier, we have received a large packet.
14 I, for one, have read at all of it. I won't say word
15 for word, but I've made a genuine effort. It is
16 substantial. But just so everyone is clear, we are
17 receiving that entire packet into the record. So in
18 terms of lawyers being concerned about what lawyers are
19 worried about, that packet has been received.

20 It doesn't mean that we're not inviting
21 you to help explain that packet to us tonight. Now if
22 you will.

23 MR. SULLIVAN: Well, that's --
24 -- that's exactly what I would plan to do, Chairman
25 Upchurch, is to comment upon the packet and also kind

1 of highlight some of the things in the packet, and then
2 we also have the various authors of the reports that
3 were included in the packet who are also going to come
4 forward after me and explain further their methodology
5 and their analysis.

6 Just to give you an idea, Padraic Kerr, he
7 owns the property at 1705 Highway 00. So that is the
8 property right next door due north of the proposed
9 development. I'll call it the Muckler property since
10 it's the Mucklers who are applying for the CUP permit.

11 Dr. Holds and Chung, they built a home at
12 2802 and 2842 Spring Valley Road, which is the property
13 abutting the Muckler property directly to the west.
14 And they have just completed construction of their home
15 in January of 2017.

16 Now, I know that there was a substantial
17 packet that I've submitted, a letter along with
18 exhibits, and I appreciate the Board taking the time to
19 review that. But I think it underscores just the
20 necessity of it because this development is going to
21 have real serious harm upon both the neighboring
22 property owners, the neighbors in the area, and the
23 county as a whole in this area. So in addition to the
24 evidence that's already been submitted, tonight you're
25 going to hear compelling evidence just about how this

1 proposed large-scale wedding facility is going to have
2 a detrimental effect in the area of Franklin County
3 along Highway 00.

4 Applying the governing standards to the
5 evidence, we're going to see that this clearly and
6 convincingly demonstrates that the Conditional Use
7 Permit -- and I'll call it a CUP just to try to keep
8 things short -- for this large-scale wedding facility
9 should not have been issued, and that the CUP should be
10 reversed and revoked.

11 If I could just give just a little bit of
12 background on what happened here, and I know the
13 Chairman commented on the litigation that's pending,
14 and that's set for trial September 1st. And we're
15 certainly not here to litigate those issues, but some
16 of those facts naturally kind of fall into place.

17 CHAIRMAN UPCHURCH: We'll give
18 you some latitude there. It's just that matter is not
19 before us.

20 MR. SULLIVAN: I understand and
21 I'm not -- I'm not going to be presenting the case on
22 that.

23 So Padraic Kerr bought this property
24 basically because it provided a quiet, peaceful place
25 for his home right along Highway 00. These are all,

1 for the most part, large-acre properties with
2 single-family homes or some residential uses.

3 Likewise, Dr. Holds and Dr. Chung bought
4 their property and built their home because they wanted
5 peace and quiet from having lived in St. Louis. When
6 they -- when both Padraic Kerr and the Dr. Holds and
7 Chung bought this property, it was zoned as Suburban
8 Development. No commercial use in the area, a nice
9 pastoral peaceful setting.

10 So last -- and the Muckler property at
11 that point, I should point out, was largely woodland
12 and pasture. So last August the Mucklers bought the
13 property, then applied for it to be rezoned to the
14 non-urban and agricultural use, which would allow them
15 to develop a large-scale wedding facility on the
16 property.

17 Now, they applied for the rezoning at the
18 initial hearing for the Planning and Zoning Commission.
19 They referred it to the Review Committee of Planning
20 and Zoning Commission, which unanimously recommended
21 that it be denied. And when it went before the
22 Planning and Zoning Commission, the Planning and Zoning
23 Commission in turn voted to unanimously deny the
24 application.

25 Then it went to the County Commission. At

1 the County Commission, after a lengthy hearing, it was,
2 for lack of better term, put off. The Mucklers were
3 going to file a new application, and they were given a
4 deadline to do so for a smaller tract of land.

5 Six days later, without any notice to any
6 of the property owners and, in our view, I'm just going
7 to sit -- this is our side of it -- without following
8 the Land Use Regulations, the County Commission
9 approved rezoning.

10 So then that brings us to the Mucklers
11 filing for the conditional use to be able to develop
12 this into a large-scale wedding venue. There was the
13 hearing in March before the County Commission, where at
14 least a dozen neighbors came forward and explained how
15 this was going to affect the use and enjoyment of their
16 property, their property value, how this use was going
17 to have a detrimental effect on the health and safety
18 in the area and along Highway 00, and how this use was
19 not compatible with the largely residential and
20 agricultural use of this property.

21 Again, the Planning and Zoning Commission
22 sent it to the Review Committee. This time the Review
23 Committee recommended approval. Went back to the
24 Planning and Zoning Commission, which in turn, and
25 after a lengthy discussion, voted to approve it 7 to 2.

1 And then Mr. Kerr filed the appeal which
2 brings us here tonight.

3 If I can just touch on what I believe are
4 the three factors that are going to govern this case.
5 And as I think Ms. Eagan had referred to in your
6 review, you can affirm, you can reverse, or you can
7 modify the decision that the Planning Commission made.

8 It should be noted that this Board can
9 consider any of the relevant evidence, and when viewing
10 the relevant evidence, we're going to be able to show
11 under Section 91(C) that this is clear evidence that:
12 one, the use is going to cause serious injury to the
13 use and value of neighboring properties; it's going to
14 be -- have a serious detrimental and significant effect
15 to the health and public safety of the county; and it's
16 also going to show that the use is going to be
17 incompatible with everything in the area.

18 Now, briefly I'd just like to apply the
19 three factors that we have here.

20 First, the use is going to be
21 significantly detrimental to public health, safety,
22 morals or general welfare of the county.

23 I'm not sure that we really credibly
24 challenge that this large wedding venue will be
25 significantly detrimental to the health and safety of

1 the county and those who both live and travel in this
2 area around the venue.

3 The first and foremost danger to the
4 health and public safety is going to be the additional
5 traffic that's going to be placed on Highway 00. As
6 some of you might know, it's a two-lane, curvy road
7 with no shoulders. It has no sidewalks. It has no
8 turning lanes. It has no -- it has no overhead
9 lighting.

10 Now, the proposed venue is going to spill
11 some 150 or so additional spots onto the road. We know
12 this because the parking lot is proposed to be
13 somewhere in excess of 150 spots. These weddings are
14 undoubtedly going to end late at night; meaning that
15 there is going to be tired or maybe even inebriated
16 drivers who are going to pour out onto the highway.
17 Now, it's not hard to imagine that under these
18 circumstances, dark curvy road, tired or -- tired
19 drivers or people who have been drinking, that there is
20 going to be, you know, the serious risk of accidents.

21 Now, what we do have is we have a traffic
22 study performed by Brad Loomis, who's sitting right
23 over there. That's Exhibit K in our submission
24 packet -- submission packet. And this demonstrates
25 that this additional traffic is going to significantly

1 increase the risk of accidents.

2 First you have sheer volume. Let's take
3 for example, if you will, your typical Saturday based
4 on the traffic counts done by Mr. Loomis. We're going
5 to have at 6:00 p.m., which is a safe assumption, when
6 a lot of these people are going to be driving into the
7 venue. You're going to see 160 percent increase at
8 that time. At 11:00 p.m., you're going to see an
9 increase of 560 percent of vehicles on this road.

10 Now also throw in the fact that there is
11 no left-hand turn lane here, and there's going to be --
12 and you're -- also you're going to have stacking of
13 cars because you're going to have to assume when people
14 are entering this property, that most of them are going
15 to be coming at the same time. They want to be there
16 in time for the wedding or the reception.

17 Then you also have the problem with site
18 lines; meaning that the speed limit I believe is 50
19 miles an hour along this road. So when you have
20 curves, when you have hills, and where this driveway is
21 specifically suited, there is not enough sightline for
22 cars exiting the property, for cars going along Highway
23 00 to be able to stop. And that's also going to
24 increase accidents.

25 Next, we do have also some serious

1 potential environmental problems with the proposed
2 development. There is going to be no sewer -- public
3 sewer connected to this property. So what they're
4 going to relying on is a septic system. Now, I haven't
5 seen a study or a plan that -- as to how a septic
6 system will be able to handle the wastewater of 300
7 guests, plus maybe some staff and vendors as well.
8 There could be a real danger of such a septic system
9 failing or leaching. And then you have the two creeks
10 that are close by. So you could have wastewater
11 flowing into those creeks.

12 Also we don't see any study or plan as to
13 how the additional stormwater runoff is going to be
14 handled. So you have at least 15,000 square feet of
15 buildings, which is a lot of impervious area. Then you
16 have a parking lot of concrete and driveways to go out
17 to the road and also walkways going around, which adds
18 to the impervious area. We don't see any plan for
19 that, and that can have serious effect not only on the
20 neighbors where the water is going to run off, but also
21 on the neighboring creeks.

22 This evidence in itself shows that there
23 is a serious detriment to public health and safety, and
24 itself would warrant reversal and denial of this CUP.

25 Moving on to the second factor, which is

1 the use is going to cause serious injury to neighboring
2 property owners to the use and value that they're going
3 to have.

4 Here we have submitted evidence. It's
5 been stated before, and I'll just restate it again,
6 that Mr. Kerr and Dr. Holds and Dr. Chung bought their
7 home because of the setting, because it's a beautiful
8 area of the county. And it's self-evident that a
9 large-scale wedding venue is going to ruin that use.

10 You have two large structures holding
11 15,000 square feet on a hill. There's going to be a
12 huge lighted parking lot. There is going to be outdoor
13 facilities with music. There's going to noise from
14 music and guests and cars going in and out and slamming
15 of doors. There is going to be dangerous roads, and
16 all of this is going to cause serious injury to the use
17 of the property by both Padraic Kerr and John Holds and
18 Sophia Chung, as well as the other neighboring areas.

19 Now, we submitted a noise study, which is
20 Exhibit J, by Bill Elzinga, who's sitting right here,
21 that details just how this increased noise from the
22 venue is going to affect the peaceful enjoyment that
23 neighbors currently have of their homes.

24 It's also going to affect the value of
25 those homes, which is going to be decreased by some 7

1 to 14 percent as a result of just the additional noise
2 that this big venue is going to give off.

3 Furthermore, Ed Dinan and his team did an
4 appraisal and analysis of how the properties would
5 be -- property value would be decreased by this
6 large-scale wedding venue being plopped down between
7 them. And based on -- that's Exhibit L of our
8 submission.

9 Based on his well-accepted methodology,
10 which is pages 63 and 64 of that exhibit, his analysis
11 shows that if the wedding venue is developed,
12 Mr. Kerr's property is going to be reduced by 25
13 percent or \$30,000; that the Holds/Chung property value
14 is going to be decreased by 15 percent, or \$250,000;
15 and that the property 1801 and 1805 Highway 00, which
16 is just a little further north of the proposed
17 development, is going to be decreased by 20 percent or
18 \$175,000 -- \$170,000. And this is real money, and
19 these are real people whose property and these homes
20 are going to be seriously injured by this proposed
21 development.

22 Again, this injury, not only the value but
23 the use of the properties, likewise justifies reversal
24 of the CUP's issuance.

25 Just moving on to the last factor and

1 quickly, this use is not compatible with the plan for
2 the area in question, and it will not comply with all
3 applicable zoning standards and regulations. So what
4 we have here is a proposed large-scale wedding
5 development that is an island of commercial development
6 in a sea of residential and agricultural properties.

7 The neighbors did not buy and in some
8 cases did not build houses in the area thinking that
9 such a commercial venue could plunk right down next
10 door. They thought that they were buying property in a
11 peaceful residential and agricultural area.

12 This clearly demonstrates that there's a
13 lack of compatibility, and would also warrant reversal
14 of the CUP on that ground alone.

15 Furthermore, without going into great
16 detail, the use is not in compliance with the Land Use
17 Regulations on the basis that the County Commission
18 violated Sections 325 and 326 by approving the rezoning
19 without the proper vote or notice.

20 CHAIRMAN UPCHURCH: And again,
21 just so our record doesn't get messed up, you'll get to
22 litigate that one here.

23 MR. SULLIVAN: Certainly.

24 CHAIRMAN UPCHURCH: You smartly
25 timely filed a suit.

1 MR. SULLIVAN: Filed a suite.

2 CHAIRMAN UPCHURCH: And in
3 fairness, it's my guess -- and I get to guess on this
4 one -- if you're successful in that, I think, whatever
5 we may choose to do tonight will probably be a nullity.
6 That's just my guess.

7 MR. SULLIVAN: It probably will,
8 but it could come back around. Anyway, I'll move on.

9 I've gone over these three factors, and
10 there was one error made respectfully by the Planning
11 and Zoning Commission when it was considering the
12 application for the Conditional Use Permit.

13 And the first was -- is that the County
14 Attorney had, in no uncertain terms, told the
15 Commission that, well, you basically have to assume
16 it's a conditional use. So you go ahead and grant the
17 permit, and then, based on the clear and convincing
18 evidence, you can place conditions on it.

19 With all due respect, that's not the
20 purpose of a conditional use permit. You look at it
21 from the perspective of is this particular use on this
22 particular piece of property, is that going to
23 negatively affect the three factors that we've
24 discussed.

25 There was also a discussion of well, we

1 don't have to look at compatibility, which is factor
2 three, because the rezoning process discussed
3 compatibility.

4 Again, that's something that the Planning
5 and Zoning Commission should have done. They should
6 have looked at Section 91(C), those three factors, and
7 decided if there was clear and convincing evidence that
8 would warrant the denial of the Conditional Use Permit
9 under any of those three factors.

10 To conclude, I think that the analyses and
11 conclusions that we have here from a qualified real
12 estate appraiser, experts in noise and also an expert
13 in traffic establishes that there's going to be serious
14 harm to the development here.

15 More tellingly, we have submitted and
16 we'll have additional testimony from the neighbors who
17 have first-hand knowledge of the area and of their
18 homes, and will show how this is going to injure their
19 properties severely and permanently.

20 Thank you very much for your time. And --
21 yes, sir?

22 CHAIRMAN UPCHURCH: We also
23 throw questions at you when you're done.

24 MR. SULLIVAN: I was going to ask
25 if there were any questions.

1 CHAIRMAN UPCHURCH: And you have
2 moved along briskly, and I'm going to let you take a
3 breath because I appreciate you doing so. And before
4 you open it up to questions for us as you take a
5 breath, --

6 MR. SULLIVAN: Yes, sir.

7 CHAIRMAN UPCHURCH: -- is there
8 something more that you want to take just a moment or
9 two to review your notes that you have not yet told us
10 that you care to us before we have some questions
11 perhaps for you and then hear from other witnesses?

12 MR. SULLIVAN: I think I've
13 covered everything with my presentation and then also
14 in the letter that I submitted as well. I didn't want
15 to just reread the entire letter that I submitted.

16 CHAIRMAN UPCHURCH: And that's
17 very much appreciated.

18 MR. SULLIVAN: Not that I don't
19 like my own writing.

20 CHAIRMAN UPCHURCH: I have a
21 couple of questions for you, and I'm sure others will
22 also.

23 My belief is that part of that weighing of
24 the factors is determined not on what existed today or
25 over the last year or so but instead what in the Master

1 Plan is zoned, because at that point in time, the
2 County sort of, right or wrong, but they have that
3 political right, if you will, to sort of make a plan.

4 And the plan by my reading and the
5 exhibit, which I believe has all been fully received
6 now into the record, even under the Suburban
7 Development region is a fraternal or private club would
8 be permitted without even a conditional use permit.

9 So my question, which is a hard one, is
10 how is this so different from a private or fraternal
11 club that someone would put on that piece of property?

12 MR. SULLIVAN: Well, I think to
13 be fair, it's the scale of it. So as proposed, you
14 would have a four- to five-thousand-square-foot
15 ceremony facility. Then you have up to a
16 10,000-square-foot wedding reception facility or event
17 facility. There is going to be a planned outdoor area
18 for ceremonies, an outdoor area for receptions. You're
19 going to have a huge parking lot with up to 150 spaces,
20 maybe more. You're going to have driveways coming up
21 for that as well, and if you're talking about a
22 fraternal club or a private club, I think the scale of
23 it matters. But if you're talking, you know, with this
24 could be different if you're just talking about a
25 3,000-square-foot quiet club with, you know, 20 parking

1 spots. But that's not what -- that's not what's been
2 proposed. That's not what they're planning on
3 building.

4 CHAIRMAN UPCHURCH: On that same
5 vein, with the rezoning and as we have already
6 discussed that subject to whatever comes up from your
7 other litigation.

8 MR. SULLIVAN: Right.

9 CHAIRMAN UPCHURCH: The other
10 non-residential uses with that rezoning, if it's
11 affirmed by the court, not our decision, would include
12 agricultural processing, which I would think off the
13 cuff would be a lot more blighting to the area than
14 what we have: agricultural sales; maybe, maybe not, an
15 animal auction house. I've seen some animal auction
16 houses, and I think if I was going to pick -- but those
17 are just -- a convenience store.

18 And again in terms of volume, I get -- I
19 follow your same argument. I'll expect your same
20 argument if fraternal clubs would still be a permitted
21 use.

22 So the same question as to those.

23 MR. SULLIVAN: With respect to
24 the agricultural uses?

25 CHAIRMAN UPCHURCH: Uh-huh.

1 MR. SULLIVAN: I think that would
2 be something that would be foreseeable if you're buying
3 property in this area, because not only is some of the
4 land still being used agriculturally, but historically
5 it would have been so. So if you have someone you --
6 let's say Drs. Holds and Chung buy their property and
7 the Muckler property is undeveloped, you know, woodland
8 and pasture, and as you say, you know, an agricultural
9 auction house goes up there.

10 Well, I don't think they would have
11 because it's in the nature of an agricultural use.
12 That's how it's been zoned, and that's how the area has
13 been used. What we're talking about here is now a
14 large-scale commercial use that is significantly
15 different from, you know, past agricultural use or the
16 current mixed residential and agricultural use.

17 CHAIRMAN UPCHURCH: Okay. Those
18 are the only questions I had, but other questions?

19 MEMBER TOBEN: I don't have
20 any.

21 MEMBER THATCHER: I'm going to
22 save my questions until I hear other expert testimony,
23 but I may throw you a little bit of a curve ball in the
24 meantime.

25 St. Albans is a private club, fraternal

1 club, and it's a pretty big venue. So just food for
2 thought.

3 MR. SULLIVAN: That is, but also
4 part of that is -- I'm trying to think if some of those
5 houses are within the development within St. Albans as
6 well.

7 MEMBER THATCHER: They all
8 agreed to it.

9 MR. SULLIVAN: They all agreed
10 to it.

11 MEMBER THATCHER: It's a
12 different scenario.

13 MR. SULLIVAN: Right. And some
14 people like to be on the golf course and, you know,
15 things of that nature.

16 MEMBER THATCHER: Okay.

17 CHAIRMAN UPCHURCH: If there are
18 no other questions, thank you.

19 MR. SULLIVAN: Thank you.

20 CHAIRMAN UPCHURCH: And we do
21 sort of permit some rebuttal, so I'll give you that
22 relief valve.

23 MR. SULLIVAN: Okay. Thank you.

24 CHAIRMAN UPCHURCH: But rebuttal
25 is rebuttal. It's not repeat.

1 Is there someone out -- thank you again.

2 MR. SULLIVAN: Thank you.

3 CHAIRMAN UPCHURCH: Is there
4 someone else to be heard on behalf of the applicant?

5 Step forward, sign in, and be sworn.
6 Don't all rush up at once.

7 (Thereupon, the witness was
8 sworn.)

9 MS. REPORTER: Your name and
10 address, please.

11 MR. BILL ELZINGA: Bill Elzinga.
12 It's 2730 Forest Glen Drive, Pacific, Missouri.

13 I certainly do appreciate the opportunity
14 to come before you tonight and share with you and talk
15 with you. Both as an expert, I'll be presenting the
16 noise analysis that is in your packet, and as a local
17 resident. I'm a resident of Forest Glen, and certainly
18 my wife and I have particular personal interest as we
19 are in proximity to the proposed venue, and we're
20 certainly frequent drivers along Route 00.

21 I'd like to certainly express our concerns
22 for the project and opposition for the proposed
23 development along Route 00. As I say, we reside in
24 Forest Glen, and as such we'd be exposed to the noise,
25 light, and traffic problems that would disrupt our

1 environmental setting and that of our neighbors.

2 We located to this area about two and a
3 half years ago from Illinois. We were seeking a more
4 quiet serene environment, and we certainly did find
5 that in this area and in the vicinity of Forest Glen
6 and the Little Fox Creek Valley. And we'd certainly
7 appreciate that, and I'm sure our neighbors do too.

8 We do consider this proposed project as a
9 huge disruption to that, that environment character and
10 our particular way of life.

11 I come before you, as I say, both as an
12 interested citizen and neighbor, but also as an expert
13 witness. I'm an environmental scientist with 30 years
14 of experience. I've performed environmental siting,
15 licensing and permitting for a wide variety of
16 projects -- projects, developments similar to this,
17 roadway improvements, freeway development projects,
18 high voltage transmission projects, even nuclear power
19 plants.

20 And so I've practiced across the US and
21 certainly appreciate the opportunity to share some of
22 those observations and assessments. I also teach
23 environmental impact analysis at the graduate level,
24 and I've done so for 20 years. So hopefully my
25 comments have some merit and some -- some weight to

1 them.

2 I have provided written remarks. They're
3 in your packet. I won't read those. I'm going to just
4 summarize some of that material here, and certainly
5 look forward to any discussion or comments that you
6 might have.

7 Again, we do request that you reverse the
8 issuance of the CUP for the following reasons.

9 First of all, the -- number one, based on
10 inadequate details and the presumption of non-impact on
11 behalf of the applicant and the application.

12 The application is not supported by either
13 sufficient detail regarding the proposed design, and we
14 just heard some of that argument here a minute ago, or
15 a level of the use of the facility. Nor does the
16 application have a thorough analysis of the impacts and
17 effects of the proposed development on either adjacent
18 property owners or the surrounding environmental
19 character.

20 As such the claims as to the viability and
21 feasibility are really uninformed because they don't
22 consider all of these factors and reflect the sort of
23 ignorance of some of those issues, the complexity of
24 this particular project setting, and are therefore
25 presumptuous.

1 Again, I've got in your packet a noise
2 study. I'll call particular attention to that. Again,
3 I won't go through it word for word, but fundamentally
4 the analysis that you have before you is an analysis
5 that has been performed by me and in typical similar
6 projects for State and Federal permitting, and so this
7 is the type of analysis that stands before those kinds
8 of review boards and is accepted by those -- those
9 levels of scrutiny.

10 The analysis is technical, empirical, and
11 based upon established, researched and published
12 understanding of the physics of noise and its
13 propagation.

14 I think it's conservative. There's a
15 number of values in that. I -- I picked and -- and
16 used, for example, noise emission values and distance
17 calculations, again, using standardized technics,
18 well-accepted technics that are conservative.

19 And so I'm not trying to sway this one way
20 or another. I just want to give it a fair -- fair
21 assessment on the noise front. Certainly as a result
22 of that study, there's -- there's impacts during the
23 construction phase and the operational phase, and those
24 impacts translate to expected reductions in property
25 value to the tune of 7 to 14 percent, and I have not

1 seen any of the appraisals or assessments, but it
2 sounds like there's similar reductions or even greater
3 reductions that they're planning.

4 These are -- the ones that I'm claiming
5 are really noise-related factors. Okay, noise-related
6 factors only.

7 So we certainly do request that you
8 consider noise as an important issue, and again happy
9 to discuss the details of that as we go forward.

10 Impacts on traffic and safety. I think
11 someone else might be speaking about this in more
12 detail. I'll share just a -- a personal comment.

13 Again, my wife and I have been residents
14 here for two and a half years. We've traveled Route
15 00. We understand the speed issue. We understand the
16 issues related to horizontal and vertical curvatures.
17 I do a lot of assessments for roadway projects, so kind
18 of in engineering-ese in that regard. There's
19 horizontal and vertical curves that limit sightlines
20 and there's no shoulders, and there's no clear zones.

21 And so -- so it's a real problem for the
22 traveling public. Add to that various conditions,
23 environmental conditions, of fog and icing. You have
24 more problems. And add more -- more problems related
25 to animal strikes, deer strikes. We ourselves struck a

1 deer along Route 00, and -- and it's one of those
2 factors that continually is -- is an issue. And so for
3 folks who aren't familiar with Route 00, they're going
4 to encounter some real -- real issues, and those issues
5 are more intensified with the -- with the proposed --
6 proposed project.

7 I suspect that -- that a traffic analysis
8 performed on Route 00 might require additional laneage,
9 turn lanes, into the facility to allow for stacking and
10 proper sightlines.

11 Looking at the map on the wall there, if
12 you zoom in close, you'll note that just to the right
13 of Route 00 there is a stream. It's Kitt Creek, Kitt
14 Creek, which is no more -- in some places, no more than
15 25 feet from the edge of pavement. And so any attempt
16 to widen the roadway in that vicinity would have
17 impacts on Kitt Creek. Okay.

18 So that brings me to another point, and
19 that is impacts to water resources. Number four,
20 impacts to water resources. We've heard just a minute
21 ago some concerns expressed regarding runoff from the
22 facility.

23 I'd expect runoff from the facility during
24 construction and operational phases, just surface
25 water, stormwater runoff, and there is Kitt Creek to

1 the right and then there's a tributary of Kitt Creek
2 that kind of goes to north of the property line. It
3 kind of spalls that slant, and you can imagine that
4 there's runoff from the property that will impact
5 those, those streams.

6 And that runoff is going to be
7 characterized by oils and grease and metals that will
8 get into that waterway. Okay. So there's -- there's
9 just construction phase and stormwater runoff issues.

10 The other issue relates to the septic
11 system that was -- that was discussed. Okay. Septic
12 systems for a size -- venue of this size is going to be
13 a pretty significant system, and any failure of that
14 system is going to result in release of organic
15 materials, okay, into those receiving streams.

16 And when organic materials hit receiving
17 streams, it depresses the dissolved oxygen in those
18 streams, and wipes out all the aquatic life.

19 So you're going to have a dead zone that
20 results from any kind of stormwater or septic release
21 into those streams. I'd imagine it'd hit Kitt Creek
22 and run down into Little Fox Creek. So those are the
23 kinds of surface water effects that could very well
24 happen directly from the venue.

25 The other issue, of course, is the

1 widening of the road. As I mentioned before, direct
2 impacts to -- to Kitt Creek with any widening, would
3 require additional permitting, direct permitting by the
4 U. S. Army Corps of Engineers and the Missouri DNR.
5 Okay.

6 And along with that comes mitigation, and
7 I'm working on a whole bunch of different projects that
8 require stream mitigation right now, and there's a cost
9 per foot that the Corps of Engineers assesses for any
10 kind of stream relocation project. Okay.

11 Again, not recognized, not considered in
12 this particular application.

13 The other water-related issue that I'll
14 just call your attention to is that of groundwater.
15 The facility has a proposed use level of 250 to 300, I
16 think. As such, I would expect water use needs to be
17 substantial. And so as it is, the facility is
18 proposing to use water from groundwater to establish a
19 water supply well.

20 Again, I would expect a -- no details
21 provided in the application. I would expect a
22 substantial groundwater withdrawal system, and no
23 associated consideration of potential drawdown effect
24 from that pumping on adjacent users.

25 There are, of course, adjacent users, and

1 you know what happens when you withdraw water from --
2 from a groundwater zone from a -- from a center point
3 of a pumping system. It depresses -- it depresses the
4 groundwater, and so that has the very strong potential
5 of reducing groundwater in the vicinity of wells of
6 surrounding neighbors.

7 I've got a project in Memphis right now.
8 That water withdrawal system has a cone of depression
9 -- they call it a cone of depression -- that extends
10 two miles from the center point. Okay. Not to say
11 it's going to extend two miles here, but that analysis
12 hasn't really been shown.

13 So we certainly do request your
14 consideration of that.

15 I've made other comments in my written
16 remarks with respect to other resources, endangered
17 species, cultural resources. Those are, again, real
18 concerns, particularly if you're getting into
19 additional permitting from the Corps of Engineers.
20 Those impacts are -- are -- have to be considered, have
21 to -- have to have an investigation to figure out
22 whether or not you've got those resources on your site,
23 and you have to consider impact mitigative measures as
24 well.

25 So in closing, and again, welcome your

1 questions. We certainly respectfully request your
2 appeal of the issuance of the CUP and consideration of
3 project effects related to environmental issues, noise,
4 water, surface water, groundwater, but also safety of
5 the traveling public. We think those are real issues,
6 and we certainly do appreciate your consideration of
7 those.

8 So any questions, be happy to address
9 them. Yeah.

10 CHAIRMAN UPCHURCH: I -- I do
11 not.

12 MEMBER SCHRIEWER: I guess it may
13 not be a correct question directed specifically to you,
14 but on this topic of the stormwater construction runoff
15 that's been being discussed, the Clean Water Act should
16 be a part of that. And you referenced, you know,
17 having to get a permit from Corps of Engineers and DNR.
18 That would be a part of our building process, correct,
19 because all this is contingent upon us having a
20 building permit or that group having a building permit
21 and getting through that? That -- those things would
22 be a part of that, correct?

23 MS. EAGAN: Yeah. Anytime
24 somebody does a commercial building, they will come to
25 our office, and we give it to our highway engineer who

1 will then look at our stormwater codes to ensure that
2 they meet what our requirements are before me even
3 sign-off on it and send it back.

4 CHAIRMAN UPCHURCH: Other
5 questions of this witness?

6 Thank you.

7 MEMBER THATCHER: I'm sorry,
8 Gordon.

9 I just have a few questions. I need to be
10 educated, if you don't mind.

11 MR. ELZINGA: Sure.

12 MEMBER THATCHER: Sound is
13 really, I think, one of the main factors that I'm
14 interested in here. And I have a few questions about
15 sound, and I don't -- I haven't seen the site. So I
16 don't know if it's a low site or high site. Does it
17 make a difference? Does sound travel up, down; how
18 does sound like to travel?

19 MR. ELZINGA: Well, sound is an
20 interesting thing. What I used in my calculations was
21 a straight-line noise attenuation. So from me to you,
22 sound diminishes with distance. It's a logarithmic
23 sort of reduction. So that's reduction.

24 Now, what I would say is, in this
25 particular case, the noise source is elevated. It is

1 quite a bit elevated above Route 00, and there is
2 published literature out there, and I've included some
3 of this in a very conservative fashion. Some of the
4 literature says that noise within valleys like this can
5 be amplified as much as 30 percent. And so I said
6 well, okay. I'm not going to use 30 percent.

7 I did amplify it. I did increase 5 to
8 10 percent, depending on where it was at. So there is
9 this valley effect that can happen, and this is a case
10 in point, where that change in that straight-line noise
11 value.

12 MEMBER THATCHER: And that
13 valley effect will take place whether the sound is on
14 top of the hill or down in valley? I guess what I'm
15 trying to understand --

16 MR. ELZINGA: Yeah. Either
17 place. Either place, right. It's going to basically
18 bounce off of things and come up and down the valley.

19 COMMISSIONER THATCHER: Does
20 daytime or nighttime have a difference with sound, does
21 it make a difference?

22 MR. ELZINGA: The issue on the
23 nighttime side is what's the baseline noise level.
24 Okay. So in this case, you know, the baseline noise
25 level for a very rural quiet environment like this --

1 and these are published values -- is somewhere around
2 30 decibels. And so you might expect that to go down a
3 little bit further at night, but again, I used 30 -- 30
4 decibels as our baseline.

5 MEMBER THATCHER: And correct me
6 if I'm wrong, but that -- if you have a noise that's a
7 constant noise during the day versus night, is it
8 noisier at night or is it the same day and/or night?

9 MR. ELZINGA: It's -- noise is
10 sort of a perception of unwanted sound. So sound is
11 the energy thing. Noise is the perception of that
12 unwanted sound. So yeah. Relative to daytime, that's
13 going to be more intense and more unwanted at night.
14 Yeah.

15 MEMBER THATCHER: I noticed here
16 in your comparables, if you will, excavator, contract
17 or concrete truck, backhoe, trencher.

18 MR. ELZINGA: Yes.

19 MEMBER THATCHER: I didn't -- I
20 missed rock and roll band. Where is that?

21 MR. ELZINGA: Yeah. So that
22 table is a table of construction equipment. So I
23 looked at both construction phase and operational
24 phase. So that table shows typical excavator, et
25 cetera, about 85 decibels.

1 So I used that value as a noise source,
2 noise emission rate during construction.

3 On the other side. on the operational
4 side, there's literature in there, and my narrative
5 cites a published noise level of, I think, 106 decibels
6 for venues of this type. Okay. DJ, DJ related music,
7 which would expect to be potentially occurring on the
8 outdoor reception area, patio, wherever.

9 And so again, I didn't use that. I said
10 let's -- let's be a little more conservative. So I
11 went from 106 to 90 and started there. So if you were
12 to go to 106, the noise values would be notably higher,
13 significantly higher than what I'm even showing in
14 there, probably another 14 decibels.

15 MEMBER THATCHER: The norm of
16 noise is what, 30 decibels? You say that's your
17 baseline?

18 MR. ELZINGA: During -- for this
19 environment, yes. For this environment.

20 MEMBER THATCHER: I also noticed
21 that we did not have fireworks in here.

22 MR. ELZINGA: No. Did not --
23 did not analyze for fireworks.

24 MEMBER THATCHER: I don't know
25 if they're going to have fireworks or not.

1 MR. ELZINGA: I don't know
2 either. So I guess it's possible.

3 MEMBER THATCHER: Okay. That's
4 great. Thank you very much.

5 MR. ELZINGA: Okay. Thank you.

6 CHAIRMAN UPCHURCH: Other
7 questions for this witness?

8 MS. EAGAN: Gordon, can I ask
9 one question?

10 When you talk about the construction noise
11 and all that stuff, am I reading your table correctly
12 that that's measured at 50 feet?

13 MR. ELZINGA: Yes.

14 MS. EAGAN: So how far down from
15 the -- do you know how far the nearest residence is
16 from where the construction site is?

17 MR. ELZINGA: Well, in my table
18 later on in that report, I show, I think, one of the
19 closest is 888 feet. Okay. That is from the actual
20 center point of the venue. Construction would
21 presumably be much closer than that, yes.

22 MS. EAGAN: Okay. So again, I'm
23 not educated when it comes to noise and how it travels.

24 The further away you go, the decibels
25 would go down, correct?

1 MR. ELZINGA: Yes.

2 MS. EAGAN: Okay. And then just
3 to clarify for you guys, we -- unfortunately we don't
4 have noise regulations. So anything having to do with
5 noise that you want to do on the permit, we -- we can't
6 do because we can't enforce those.

7 CHAIRMAN UPCHURCH: Other
8 questions of this witness?

9 (NONE)

10 Thank you.

11 MR. ELZINGA: Okay, thank you.

12 CHAIRMAN UPCHURCH: Next
13 witness.

14 (Thereupon, the witness was
15 sworn.)

16 Your name.

17 MR. BRAD LOOMIS: Brad Loomis.

18 CHAIRMAN UPCHURCH: You've got
19 the floor.

20 MR. LOOMIS: Good evening. I
21 appreciate the opportunity to speak to you all tonight.
22 My name is Brad Loomis. I'm a professional traffic
23 engineer, a Missouri registered civil engineer, and
24 then additionally certified as a professional traffic
25 operations engineer.

1 I authored technical memorandum. I think
2 it's Appendix K; is that right? And again, my intent
3 is to just briefly summarize my methodology, and then
4 answer any questions you have. I won't read through
5 it. It'll just be a summary of what I analyzed.

6 Again, I'm an engineer, not a lawyer. So
7 I like facts and data and things like that. So I try
8 to present everything in a fair and unbiased manner.

9 Basically establishing the baseline
10 traffic volume, the best way for me to do that was to
11 take actual traffic counts. So I took Road 2 counts
12 from a Friday afternoon to a Sunday -- well, Monday
13 morning. So we captured a typical weekend to see what
14 those baseline traffic volumes would be. So it was
15 done in early August of this year. So very recently.

16 And that's what you'll see on these tables
17 if you have the study. So Figure 4 would be the Friday
18 traffic. Looking at Table 2, so type of traffic and
19 events matters, right. So for this particular venue,
20 it's roughly 150 cars coming in and cars going out, but
21 it's what we call, you know, peak volume in the traffic
22 engineering world.

23 There's some people that are going to come
24 early for an event. There's some people that are going
25 to come late, but the vast majority of that traffic is

1 going to arrive in that one hour immediately prior to
2 start time. In all reality, it's probably less than
3 that one-hour period, but for traffic-wise, we analyze
4 things by the hour.

5 So those trip distributions were based on
6 that. That's Table 2. Table 1 arriving; Table 2
7 departing.

8 So when we look at these figures, Figure
9 4, we're talking about the blue lines are what traffic
10 is out there now today from noon on Friday till
11 midnight on Friday. And then the red tables indicate
12 what would the traffic look like with the venue traffic
13 spread out throughout there.

14 So the takeaway is, I mean, you know, the
15 percentages are percent increase in traffic. And that
16 -- that is relevant. But what I'd like to draw your
17 attention to are the total volumes. Right.

18 So those red bars that show up on Figures
19 5 and Figure 6 that represent Saturday and Sunday
20 respectively, would say that now with this proposed
21 venue with these type of traffic volumes, that hour
22 around 5:00 or 6:00 p.m. is going to be the single most
23 high volume traffic of the entire day. There is change
24 in the dynamic of the road that's out there as far as
25 the use and traffic.

1 That's on the arrival side.

2 On the departure side, clearly it's going
3 to be adding a lot more vehicles later at night on
4 what's a relatively quiet road.

5 So as far as looking at traffic safety and
6 safety of the traveling public, there were five things
7 I specifically looked at. Do traffic volumes warrant a
8 left-turn lane? Do they warrant a right-turn lane?
9 Sight distance, turning from the proposed driveway onto
10 the road, and then sight distance for vehicles avoiding
11 people that are coming out of that road, so traveling
12 along Highway 00.

13 And then access management. This is a
14 state highway regulated by Missouri Department of
15 Transportation. So all of the tables and methodology
16 are straight out of MoDOT's various manuals, the access
17 management guidelines and their published engineering
18 procedures. And I cited all those references in there.

19 So on a pure traffic volume basis, a
20 left-hand lane is not warranted by 150 vehicles in an
21 hour. Right. And a right turn guideline isn't
22 warranted by the number of right turns.

23 However, that guidance isn't always clear.
24 So 2006 Missouri updated their regulations, and that's
25 these fancy tables that are published in there. And

1 you see the red dotted line, where it falls, in 2003 a
2 left-turn lane wouldn't have been warranted. So there
3 is conflicting evidence, I guess I would say.

4 So it's not clearcut based on the traffic
5 volumes.

6 Sight distance is pretty clearcut. So I'm
7 on page 11 now. I assumed the vehicles to travel the
8 speed limit or below. Right. So the posted speed
9 limit is 50 miles an hour, but there's horizontal
10 curves that suggest speeds of 30 miles per hour just in
11 advance of that. So you're not speeding if you're
12 going somewhere between 30 and 50. So I analyzed 30,
13 40, and 50 miles per hour to give some sense of
14 comfort.

15 Two types of vehicles. There's passenger
16 vehicles data and then there's trucks, right, something
17 bigger than a FedEx truck. That's called a combination
18 truck. So it's a semi, a dump truck, something large
19 and traveling. So they have different values.

20 Without getting into a dissertation about
21 sight distance, it's basically physics, right, my
22 reaction time, when I see something, the speed I'm
23 traveling and breaking time. This is empirical data
24 based on tables. It's published by MoDOT, EPG and it's
25 based on the AASHTOG, which is the American Association

1 of State Highway and Transportation Officials
2 Guidelines.

3 So it's a simplistic exercise. I laid out
4 figures just to show comparables. I won't go through
5 them all in detail, but there's little pick marks by
6 each of those speeds on those figures that say, for
7 example, the figure nine in the green.

8 If I'm traveling 30 miles an hour along
9 that road, where do I arrive if I'm sitting at the
10 yellow entrance ready to turn out, when can I see you
11 to safely turn out?

12 So anything, you know, as far as sight
13 distance or anything past that, you can't see. So you
14 -- you know, I weighed it out on both sides. You have
15 horizontal curves both to the north and to the south.

16 What's particularly evident, you know,
17 Figure 10. If you're traveling the speed limit of
18 50 miles an hour and you're driving a truck or a dump
19 truck, I would need to see around that curve, right, to
20 be able to pull out, have time to stop to see me and
21 stop without running into me, based on those sight
22 distances.

23 Moving on to the Table 4 in Figure 11,
24 analyzing. If I've got someone traveling along Highway
25 00 and someone pulls out in front of me, how much time

1 do I need to make an avoidance maneuver? There's two
2 avoidance maneuvers. One is a stop on a rural road.
3 That's avoidance maneuver A. And avoidance maneuver C
4 (sic) is speed or change of direction along there. So
5 Figure 11 shows that at 30, 40 or 50 miles an hour,
6 you're pretty close. You probable have enough room to
7 stop.

8 But Figure 12 which is the decision
9 sequence avoidance maneuver C, again, you'd have to be
10 able to look around curves to have enough time to make
11 that avoidance maneuver.

12 Finally the fifth thing I looked at was
13 the access management. So MoDOT has published driveway
14 spacing guidelines for major non-freeway sections in a
15 rural area. So that applies to Highway 00. It's
16 classified as a major collector. That's its functional
17 classification. That minimum driveway spacing is
18 660 feet. So that would be from an adjacent driveway
19 or an intersection. So Figure 13 shows that there's
20 already an existing driveway that's 110 feet from it.

21 There's an existing intersection that's
22 610 feet. So there's two pre-established conflicting
23 points that violate MoDOT's minimum recommendations.

24 So summarizing, you know, my
25 recommendations for typically what I do when, you know,

1 working with someone on a condition use permit, you
2 know, I would expect to see a traffic study that
3 addresses sight distance concerns, addresses the
4 increased traffic volumes, and kind of explains, you
5 know, why there should be variances granted to state
6 published guidelines on a state route.

7 And then things I didn't look at that
8 typically are looked at are accident and crash data.
9 There's clearly crash data valuable. You're adding
10 significant traffic to there, you know. Everyone's a
11 traffic engineer. It's not hard. You all guys drive
12 cars, you know. If you add more traffic, accident
13 frequency is going to go up.

14 Speed data. I didn't do a speed study,
15 but I spent some time out there, and I'm sure the
16 neighbors that live here. Fifty miles an hour is a
17 posted speed and it's suggested, but speeds exceed that
18 frequently. I did not make any of those assumptions in
19 here. This assumes everyone travels the speed limit or
20 below.

21 Some of the suggestions I made are for
22 when you have a situation like this where you don't
23 have adequate sight distance. Countermeasures you
24 could include are, you know, provide that left-hand
25 lane, right. Take the people that are stopped and move

1 them out of the way of those people who don't have
2 time. That's a common solution, adding a, you know,
3 12- to 14-foot wide left-hand bay. You know, figure
4 out what the length needs to be.

5 Alternatively, you can provide a center or
6 two-way left-turn lane that let's people turn out of
7 the venue and have that refuge lane, and it gives
8 people time to pull over to the left to turn into.

9 Most of the traffic is going to come, you
10 know, from south to north from Interstate 44, you go
11 through there for an event type venue. You will have
12 some people come off 100, but not the majority. So
13 you're going to have mostly northbound left turns into
14 the venue.

15 And then, you know, the third one is
16 provide some additional signage, some striping, some
17 warnings. Right. You're coming around a curve, you're
18 not going to expect to see things. You can do that by
19 time of day with some flashing yellow event signs or
20 some other ways. There is a bunch of countermeasures,
21 but you want to alert people. It's nighttime, it's
22 evening, they're visibly -- you're more tired at night.
23 So it's dark. You want to draw attention to these
24 things.

25 With that, I don't have anything further

1 to present. I'm happy to answer any questions you have
2 or clarify anything.

3 CHAIRMAN UPCHURCH: Are there
4 questions of this witness?

5 MEMBER TOBEN: No.

6 MEMBER THATCHER: So I --

7 CHAIRMAN UPCHURCH: Fred?

8 MEMBER THATCHER: I'm sorry.

9 I see 610-foot sight distance to the south
10 and 750 feet to the north; is that correct?

11 MR. LOOMIS: Which?

12 MEMBER THATCHER: That's clear
13 sight distance. I'm on Figure 12 and Figure -- I'm
14 putting the two together, Figure 13.

15 MR. LOOMIS: Yeah. So for a
16 speed of 50 miles an hour.

17 MEMBER THATCHER: But my
18 question is, so how far can I see? Look at Figure 12.
19 How far north can I see? Can I see up to that 750-foot
20 mark? How far do I actually see?

21 MR. LOOMIS: That's a great
22 question. We didn't measure the actual, you know, how
23 far we can see. I mean --

24 MEMBER THATCHER: To the
25 south --

1 MR. LOOMIS: To the south,
2 there's no way you can see around the corner. You can
3 see somewhat around the corner. You know, if I had to
4 guess based off what I saw out there, you can see
5 almost to the 40 mile-an-hour check mark. You can't
6 see around to the 50.

7 You're starting to work your way back
8 around the 'S'. A lot of it has to do with elevation
9 too. Right. So if you're familiar with sight, if
10 you're, you know, facing north of it, it goes up the
11 hill there. So coming north, once you're around it,
12 you can see pretty well. But coming from the south,
13 you're coming around that corner and this driveway is
14 visually blocked. There's some trees and some roadside
15 shrubbery there. So you could get a glimpse of the
16 parked car sitting in the driveway, but are you going
17 to have a clear view to make decision? No. I mean,
18 there's not a sight triangle that's cleared out through
19 there.

20 MEMBER SCHRIEWER: Going south?

21 MR. LOOMIS: Going south, yeah.
22 And so those are some of the things I'd expect to see
23 in, you know, the application for that, is a sight
24 triangle.

25 You measure the distance from the -- where

1 the person stopped at the driveway, project out to the
2 center line and then how far down can I see in both
3 directions. That's a fairly typical analysis for sight
4 triangles.

5 Again, taking into account what's there.
6 There's shrubs, there's trees, there's stuff. Do you
7 need to do some roadside clearing to make that safe for
8 the -- for the traveling public?

9 MEMBER THATCHER: And the
10 entrance is close to the property line, on that clear
11 property line, correct?

12 MR. LOOMIS: Yeah, it's based
13 off the sight plan. I mean, it's --

14 MEMBER THATCHER: It's only --

15 MR. LOOMIS: It's 25, 30 feet
16 from the fence line, which roughly is the property
17 line. So...

18 MEMBER THATCHER: They really
19 have no --

20 MR. LOOMIS: He can't go further
21 south. I mean, you know, again, this isn't a situation
22 where it's like a five or ten feet matter. Right.
23 It's hundreds of feet. So you can't go further north
24 because you have issues, and you're about as far south
25 on the property as you can go. Again, you can maybe

1 get five or ten feet, but --

2 MEMBER THATCHER: So is that
3 driveway in the best location, in your opinion?

4 MR. LOOMIS: Is it in the best
5 location?

6 MEMBER THATCHER: Yes,
7 considering the sight distances north and south.

8 MR. LOOMIS: As far as south as
9 possible would, you know, would be -- I don't know.
10 You can't see around the curve coming from the south no
11 matter where you put it. So moving it farther south
12 gives you a better chance of not having somebody coming
13 from north to south hit you, but it makes it worse for
14 someone coming around the blind corner. But you have
15 the situation anyway. You have, you know, maybe a 300
16 or 200-foot stretch where it's from the fence line to
17 the north before you start to get into that curve. You
18 definitely don't want to put it on a curve.

19 MEMBER THATCHER: No.

20 MR. LOOMIS: So you're really
21 limited to 150 feet along there where you can put it.
22 It's a, you know -- and anywhere in that band it
23 doesn't meet the metrics. So again, all that analysis
24 is irrespective of, you know, what's going there. If
25 it's a house, a residence house, it's not an issue.

1 Right. But if you're talking a commercial venue that
2 generates 150 cars, no matter what it is, it's -- it's
3 the same issue, right, especially something that has
4 peak traffic volume where either arrival or departure,
5 it's lined up there.

6 If you're selling blinds and you have 150
7 customers, yeah, they come spread out throughout the
8 entire day. All right. That's a different analysis.

9 At this venue, they're all coming and
10 going within a couple-hour time period.

11 MEMBER THATCHER: Thank you.

12 MR. LOOMIS: Welcome.

13 CHAIRMAN UPCHURCH: Other
14 questions?

15 (NONE)

16 Thank you.

17 MR. LOOMIS: Thank you.

18 CHAIRMAN UPCHURCH: Is there
19 somebody else who wishes to speak in support of the
20 applicant?

21 Please step forward and sign in.

22 (Thereupon, the witness was
23 sworn.)

24 Your name for the record.

25 MR. ED DINAN: Ed Dinan. Good

1 evening.

2 CHAIRMAN UPCHURCH: Your name again?

3 I didn't catch that.

4 MR. DINAN: Ed Dinan.

5 CHAIRMAN UPCHURCH: Dinett?

6 MR. DINAN: Dinan, D-I-N-A-N.

7 Okay?

8 I'm the president of Dinan Real Estate
9 Advisors, and it's a professional real estate appraisal
10 and consulting firm. I hold the MAI designation, which
11 is a senior designation of the Appraisal Institute, and
12 I have held that designation since 1980.

13 I'm also a counselor of real estate and
14 hold the CRE designation. I've held that designation
15 since 1996.

16 I'm a State certified appraiser, general
17 appraiser, in both the state of Missouri and the state
18 of Illinois. I've also had designations in other
19 states when I've been doing work there.

20 Our firm primarily works throughout
21 metropolitan St. Louis area, but we also work
22 throughout southwestern Illinois, and have done many
23 jobs from coast to coast. I have Bill Presnell with me
24 tonight. Bill is a principal of our firm, and he's
25 been with me for many years, and he worked on this

1 assignment with me.

2 I'm also a real estate broker in both the
3 state of Missouri and the state of Illinois. I've only
4 been doing this for a few years, like about 46. I've
5 worked throughout the country from the beginning of my
6 career going back to 1972.

7 In this situation, we were retained to
8 measure the impact, if any, on the properties that
9 you've heard about tonight. And rather than go back
10 over a lot of this information, you have my report on
11 this subject, and it's entitled "Executive Summary of
12 Multiple Properties." It gives you the addresses of
13 those properties, 1705, 1801, 1805 Highway 00 and 2802
14 and 2842 Spring Valley Road.

15 Basically what our assignment has entailed
16 is to measure damages, if any, that could result from
17 the approval and construction of this event center.

18 We utilized -- and I would reference you
19 to page 60 of our report. We really utilized the
20 standards of -- of the requirements that -- that a
21 project like this should meet. I would like to talk to
22 you for just a minute about how ownership of real
23 estate is often compared, and we teach this, to a
24 bundle of sticks. It's called the "Bundle of Rights
25 Theory".

1 Each stick represents a separate right of
2 ownership, and the most important stick is the one
3 references quiet enjoyment of your property.

4 Now, the way to measure that is obviously
5 very carefully, but I would warn you there is no magic
6 formula. There's no computer program to derive this
7 type of analysis. It's really predicated thus by
8 market influences and by comparison, if possible. We
9 would call that, in my vernacular, a matched-paired
10 analysis. Rarely, if ever, can a professional find an
11 exact replica or matched-paired analysis. But they can
12 rely on case studies of other similar types of issues
13 that impact value.

14 The key issue here is -- is a definition
15 that is often discussed called external obsolescence.
16 It has nothing to do with any of these properties that
17 we've studied. It has nothing to do with it, but it is
18 an outside influence that negatively impacts those
19 properties, and it's a form of depreciation that, while
20 it has nothing to do with the properties, it has to be
21 charged off against the properties.

22 Examples would often be air pollution,
23 noise pollution, location of an inharmonious land use,
24 and location of a highway or an airport. All of these
25 things would produce some form of external

1 obsolescence, which would have to be charged off
2 against the real estate.

3 Now, some of the elements that we took
4 into account were -- have already been discussed, and
5 they've been discussed in detail, but obviously the
6 noise itself and the public safety as it relates to
7 traffic.

8 And again, this road is a two-lane,
9 farm-to-market road. It was built as a farm-to-market
10 road. And it is -- it is maintained and it is under
11 the management of MoDOT, and the speed limit is 50
12 miles an hour. And anyone who's familiar with it knows
13 that, while it's a beautiful drive, it has turns and
14 you've got rolling topography in this area.

15 There's visual impairments as a result of
16 this, and some of these you're changing the landscape.
17 Instead of looking at the hillside, there's going to be
18 buildings. There's going to be parking lots. There's
19 going to be lighting and so forth, and you might think
20 in terms of many of the high schools that have run into
21 trouble trying to erect stadium lighting for a football
22 game or a baseball game. And there's been tremendous
23 opposition to that.

24 During the course of the assignment, I
25 discussed these problems with my own exerts, experts

1 that I have worked with over the years, to get their
2 thoughts and comments about this.

3 One of the main elements that brought
4 concern to some of them were water -- was the water
5 issues that have been discussed and water treatment and
6 the need. They've talked about a septic system.

7 One of the engineers that I've worked with
8 for many, many years talked about the idea that M-DNR
9 would probably not permit that, that M-DNR would
10 probably require a private wastewater treatment plant
11 be developed. And he indicated that if you're going to
12 have a venue with 300 attendees, that would require a
13 7,000-gallon-per-day primary system.

14 In addition, there's been some comments
15 made about wells. He also indicated for a venue of
16 that type, that you would have to have water available
17 to disperse water at the rate of 200-gallons per
18 minute. Those are just a couple of comments.

19 But I also talked to an environmental
20 engineer, someone that I've worked with many times over
21 the years. And he brought up do you know what's
22 happened at Innsbrook? And over the Fourth of July
23 holiday, they had a large gathering of people out at
24 Innsbrook, and of course that's just over in one county
25 over.

1 And what happened was, because of the
2 amount of sewage that was discharged, there was a major
3 league fish kill, and now they're not only going to
4 deal with a fine, but they're going to have to deal
5 with doing something in terms of a private system.

6 So these are just some of the things that
7 come into play, and obviously we've tried to weigh all
8 these elements in studying this problem, and have tried
9 to bring professional judgment and experience to the
10 table. At any rate, we believe that all of these
11 properties are going to be damaged, and they're not going
12 to be damaged uniformly. That's not going to happen,
13 but it's going to vary from property to property.

14 And you've heard the numbers that we
15 applied, and as it -- as -- when we concluded our
16 analysis, again we looked at 1705, and we damaged that
17 property at the rate of 25 percent. The 1801-1805
18 property we believe will be somewhat -- the impact will
19 be somewhat less but not greatly, and we damaged that
20 at 20 percent.

21 And finally, the property at 2802 to 42
22 Spring Valley. We damaged that property at the rate of
23 15 percent. I think what's of major concern is that a
24 venue like this, an event center like this, would
25 really alter the character of the environs, and it

1 would also set a precedent for future development.

2 At any rate, if you have any questions,
3 I'll be happy to entertain those, and I think we've
4 covered it, and my report goes into substantial detail.

5 CHAIRMAN UPCHURCH: Well, I have
6 the same question that I asked the counsel earlier.

7 I didn't see in your materials any
8 reconning of these other permitted uses that are
9 permitted uses. So I mean, that needs to be a
10 baseline. You seem to have started with a baseline of
11 this is undeveloped, just agricultural land, and I
12 believe that that is an improper standard to start
13 from. So unless I'm missing part of your material here
14 because I don't see where you took into account all
15 these other permitted uses under either of the zoning
16 orders.

17 MR. DINAN: Well, I -- I -- and
18 I want you to understand I listened to your question
19 before, and I'll be happy to comment on that.

20 First of all --

21 CHAIRMAN UPCHURCH: I'm asking
22 you to do so.

23 MR. DINAN: I would be happy to
24 do so.

25 As far as a private club or a lodge type

1 facility, those operations, in my opinion and in my
2 experience, they work under rules of the association of
3 the club. So you have members there that are operating
4 under the rules of the club and so forth.

5 As far as the agricultural issues are
6 concerned, I would say this. And you talked about the
7 different types. Those -- those types of issues or
8 those types of operations would take place during
9 daylight hours, not nighttime hours. I don't think you
10 would have a cattle auction at night. I don't think
11 you would have a slaughterhouse, big or small,
12 necessarily operating at night. So --

13 CHAIRMAN UPCHURCH: A
14 convenience store would operate day and night.

15 MR. DINAN: Well, and a
16 convenience store would be a postage stamp, and I don't
17 think there's a location on 00 that would be -- we do
18 site selection work for convenience stores. I can't
19 imagine a convenience store wanting to be located
20 between Highway 100 and Interstate 44 on 00. I mean,
21 there's just not the volume of traffic. They want to
22 locations where there's traffic and warm bodies and a
23 lot of rooftops. That's where a convenience store
24 would be located. So your point is well taken.

25 There was another comment that came up

1 that I can't recall, but one of the members of your
2 committee asked another question as it related to
3 another type of use. And I can't recall what that was,
4 but I'd be happy to address it.

5 CHAIRMAN UPCHURCH: I didn't
6 have another question.

7 Is there another question of this witness?

8 MEMBER SCHRIEWER: Yeah.

9 As to the variances that you have for the
10 particular properties within this appraisal report, how
11 did you arrive at those variances?

12 And in addition to that, how did you
13 arrive at the numbers you did use? Were they based off
14 some of these other bits of information that we have as
15 to the value loss based on the traffic volume versus --
16 or the noise complaint or both of the noise decibel
17 levels?

18 How did you arrive at the 15 to the 20
19 percent, and then how did -- what caused the
20 variations?

21 MR. DINAN: The variance was
22 primarily caused by proximity and views and so forth. I
23 think all of those will be impacted. I think there's
24 other properties in and around the area that I was not
25 asked to study that would also be impacted ultimately.

1 As far as where the measurements came
2 from, we tried to mirror the market. That was
3 predicated, and again, there is not an exact
4 match-paired analysis out there where you could find
5 something like this where a property sold and it resold
6 after the fact.

7 There's all kind of issues that come into
8 play, and I can give you all kind examples of airport
9 locations and so forth.

10 I think the other one was, the other issue
11 though that came up, someone asked about a country
12 club. I happen to be very familiar with that country
13 club, and I have studied that country club, and I
14 appraised it a number of times for a variety of
15 financial institutions.

16 But the point I would make with that, the
17 location of the clubhouse, where the entertainment or
18 parties would take place. First of all, that was a
19 planned development from the get-go, and it was a
20 relocation of the old Cherry Hills Country Club to St.
21 Albans. But that was a planned design development by
22 Mr. Novelli (ph.), and the location of that clubhouse
23 was such that the other residence properties were
24 buffered.

25 And anyone that bought in there knew what

1 they were buying at the time they bought. But I think
2 it was properly screened and located such to be located
3 near the original golf course, and certainly to the 9th
4 and 18th hole. Okay.

5 MEMBER SCHRIEWER: (Nodding).

6 CHAIRMAN UPCHURCH: Other
7 questions of this witness?

8 MEMBER THATCHER: One question,
9 Ed.

10 In your opinion, what is -- what -- --
11 what facet has the most diminutive effect upon the
12 values of the properties? Was it noise, was it road,
13 was -- what was it? What -- what -- what's...

14 MR. DINAN: I think --
15 initially I was a doubting Thomas, to be quite honest
16 with you. I was a doubting Thomas until I got in the
17 field and we studied this on numerous occasion.

18 I didn't go to the property once. I think
19 initially it was the noise, but the traffic is a major
20 league concern, and especially sightlines and breaking
21 times, and the lack of any left-turn lane, dedicated
22 left-turn lane, or the deceleration lane for a right
23 turn.

24 If you're southbound from Manchester or
25 Highway 100, there's -- there's no dedicated

1 de-acceleration lane to pull in. Likewise, there's no
2 center turn lane.

3 The thing that really bothers me though is
4 the wastewater and also a proper detention area because
5 there has -- that water has to be discharged in
6 accordance with M-DNR, and I would expect that they
7 would require -- and I've seen no plans for any of
8 this, but they would require a major detention area be
9 set up to proper -- and slow the discharge of that
10 water.

11 MEMBER THATCHER: Okay. I don't
12 mean to interrupt you, Ed, but what single facet has
13 the most diminutive value upon the neighboring
14 properties? Is it --

15 MR. DINAN: I didn't look at it
16 that way, sir. I looked at it as a group. All of
17 these elements, in my opinion, come to bear in the
18 analysis. We didn't take into account -- we didn't --
19 I didn't attempt to segregate any of them, but
20 initially just to try to be totally responsive, I -- I
21 was concerned about the noise. But when you get in the
22 field, then you start thinking in terms of the traffic
23 and especially the public safety eliminates.

24 And again, you've got a farm-to-market
25 road with a 50 mile-per-hour speed limit and no ability

1 to -- for braking time or sightlines, and all of these
2 things are very important elements.

3 MEMBER THATCHER: Thank you very
4 much.

5 MR. DINAN: Thank you.

6 CHAIRMAN UPCHURCH: Other
7 questions?

8 (NONE)

9 Thank you.

10 Is there someone else to speak on behalf
11 of the applicant?

12 Step forward, sign in, be sworn.

13 MR. PADRIAC KERR: I'm going to
14 use a PowerPoint.

15 CHAIRMAN UPCHURCH: Sign in, be
16 sworn.

17 MS. EAGAN: Do you have a copy
18 of it?

19 MR. KERR: I do.

20 I have my remarks, and then I have the
21 PowerPoint. I'll be brief.

22 MS. REPORTER: How do you want
23 it marked?

24 MS. EAGAN: Let's do Kerr 1 and
25 2.

1 (Thereupon, evidence was marked
2 for identification and submitted for
3 the record as Kerr Exhibit Nos. 1
4 and 2.)

5 CHAIRMAN UPCHURCH: You need to
6 sign in and be sworn.

7 MR. KERR: I've signed in. I'm
8 waiting to be sworn.

9 (Thereupon, the witness was
10 sworn.)

11 My name is Padraic Kerr. I live at 1705
12 Highway 00. Also co-owner of Kicking the Grass, who
13 owns 1805 Highway 00, which is immediately to the north
14 of 1705.

15 I'm going to start with a few of my
16 remarks.

17 The Franklin County Planning and Zoning
18 decision to issue a Conditional Use Permit to Robert
19 Muckler on April 18, 2017 was unauthorized by law,
20 procedurally unlawful, arbitrary, capricious,
21 unreasonable, and constituted an abuse of discretion.

22 Mr. Muckler and his representatives failed
23 to submit any substantial evidence, was not supported
24 upon the whole record, and was contrary to the weight
25 of evidence submitted by the neighbors.

1 This evening on appeal, additional
2 statistical analyses and testimony has been presented
3 to you at Franklin County Board of Adjustment.

4 First, I would like to discuss an incident
5 that occurred on Saturday, July 29th. I arrived home
6 to hear gunshots coming from the south of the creek and
7 treeline on my property. Gunshots are not unusual in
8 this area, but the proximity of the shots on my
9 property greatly disturbed me.

10 I walked down to the creek and the
11 treeline on the north side. I did not cross because I
12 did not want to confront and startle these individuals.
13 I could hear conversation clear as day.

14 Second, the event venue has not even been
15 built, and I've got individuals trespassing on my
16 property on the south side of the creek and treeline.

17 What will happen if this venue is built?
18 What happens when children at a wedding meander off to
19 discover nature and make their way down to my property
20 to investigate the creek and an incident occurs? What
21 will happen if this site is developed and hundreds of
22 people are mere feet away from my property?

23 I believe I will be subjected to future
24 liability issues, which will force me to defend and
25 protect my property from potential trespassers week in

1 and week out.

2 I'll start my PowerPoint. I'll start with
3 some testimony from March 12th of 2017, of this year,
4 obviously.

5 Andrea Lowmeyer testified that the venue
6 would look to have 300 guests, and would be about 4 to
7 5 thousand square foot, primarily used for wedding
8 ceremonies. In the reception building 300 guests would
9 be seated for dinner, roughly 85 to 95 hundred square
10 feet of this would be used for the reception and
11 corporate gatherings.

12 The venue is showing it's actually 7,500
13 square feet. So it's quite a bit larger than the
14 ceremony building they were wanting to build because
15 they're looking at about -- they were looking at about
16 4,000 square feet.

17 So the courtyard itself they plan on
18 having is around 2,000 square feet would be used for
19 cocktail parties and outdoor ceremonies. And then that
20 overlooks the hillside from the south and to the east
21 directly in line with my residence.

22 The parking lot required by the County for
23 300 guests was 120 spaces -- is 120 spaces. They're
24 going to provide an extra 26 spaces for vendor parking,
25 146 total. That's a lot of cars on this hillside.

1 I want to further go into testimony
2 between Commissioner Schulteheinrich and Andrea
3 Lowmeyer.

4 Commissioner Schulteheinrich was initially
5 concerned with the property lines and where they
6 actually ran. He is quoted by saying:

7 "On the maps on the
8 north side of the property,
9 there is a treeline that is
10 basically in front of what
11 looks and appears to be the
12 closest residence that I see
13 to the venue.

14 "That treeline on
15 the map shows it to be
16 over on the other property,
17 and on the other map, it
18 shows some treeline on
19 property that you're
20 testifying on."

21 He goes on to say, "Can you tell us
22 whether or not the treeline does mingle with both
23 property lines?"

24 Ms. Lowmeyer testified:

25 "It does mingle with

1 and actually the property
2 line looks to follow a
3 waterway, a creek. So there
4 are some trees on both sides
5 of that property, from
6 what I can tell."

7 Ms. Lowmeyer further goes on to say:

8 "They have not staked
9 the boundary of the property.
10 So by the aerial view, it
11 looks to be that way.

12 "This venue will be
13 similar to the one at Mt.
14 Pleasant that you can
15 have a true outside
16 wedding and venture out
17 into the grass."

18 Well, the grass is not far from my
19 property. How far are they going to venture out? How
20 far, you know, how far will they venture?

21 Here is a plot of my land, 1705 Highway 00
22 clearly shows that my southern property line, which is
23 on the bottom of the screen, toward the bottom, extends
24 across the creek and in some points about a hundred
25 feet across the creek, depending on where you're at.

1 I have not found any evidence or
2 statements from the Commissioners or officials making a
3 personal visit to my property or standing on the hill
4 where the event center will be located and gazing out
5 over the area to get a better feel for the area. So...

6 Here is the proposed event center plot and
7 diagram. The red circles are all pictures of -- I have
8 taken and I will proceed to show you those.

9 Picture one is me standing about 200 feet
10 away from Highway 00. In the background there, you can
11 see the yellow "turn ahead" sign to give you some
12 perspective.

13 The property line does follow the creek.
14 I'm a mere 15 feet off of the creek bank at this
15 location. I am looking east toward 00. South side of
16 the creek.

17 The same position, I'm now looking
18 westward toward the back corner, or west corner, of my
19 property line.

20 Continuing to look west about 600 feet
21 from Highway 00 now. The tree we see in the background
22 is on my property.

23 Closer view, same slide, same picture,
24 just a little closer view.

25 Back to looking east, I am on the

1 west/northwest side of the tree now, and the next slide
2 will show I'm looking up the hill where the proposed
3 event center and parking lot will be.

4 The parking lot will be about a hundred
5 feet off my left, behind my right shoulder there. The
6 event center will -- is approximately a hundred yards,
7 120 yards, to that treeline. I'm standing right on my
8 property line on the south side of my property.

9 Same as the previous slide. The parking
10 lot will be located to the left. It just gives you a
11 better perspective, proximity to the parking lot.

12 This is a picture taken from the creek
13 bank, which is 105 feet off of my property line.
14 Again, 121 yards from me to the top of the hill where
15 the event center will -- would be erected.

16 Again, standing on my property line. The
17 parking lot would be directly behind me, slightly to --
18 over my right shoulder.

19 Looking southwest to grant you more
20 perspective and proximity to the event center and the
21 parking lot. My property line extends further across
22 the creek than show -- shown on an aerial view. It
23 doesn't really grant it credit.

24 I'm still standing on my property line
25 with the big tree being on my property.

1 Same as the previous view. The parking
2 lot will be directly behind me about a hundred feet.
3 And I add that 150 cars will be parked at this parking
4 lot at certain times.

5 Looking east, the event center is going to
6 be toward -- behind me. Kind of hard to get a
7 perspective with the grass being four feet tall, three
8 feet tall.

9 I have posted "No Trespassing" signs on or
10 close to my property line south of the creek and
11 treeline. I have prepared this PowerPoint just to show
12 you exactly where the property's located, proximity to
13 one another.

14 This is the west corner of my property
15 where 1705, 1805 and the Muckler property all meet.
16 Oop.

17 In your PowerPoint packet, I did not have
18 it on the computer, but there the last page on the
19 PowerPoint or the hard copy of the PowerPoint is a
20 picture from my bedroom window of a truck on top of the
21 hill where the wedding venue will be located and where
22 the parking lot would be located.

23 It's rather close. If you can only
24 imagine 150 cars parked on that hillside causing major
25 problems for myself and my property.

1 I want to finish by saying that Robert
2 Muckler does not live in our valley, nor does he reside
3 in Franklin County. Therefore, he does not realize his
4 efforts to construct a venue of this size will cause
5 great destruction for the serenity of the surrounding
6 area.

7 I've worked very hard to acquire my
8 property. I'm living a dream. I want to live the rest
9 of my life here. Nevertheless, my dream will turn into
10 a nightmare if this venue is constructed. The Mucklers
11 have everything to gain, and we have everything to
12 lose.

13 Thank you for your time this evening.

14 CHAIRMAN UPCHURCH: Are there
15 questions of this witness?

16 MEMBER SCHRIEWER: (Negative head
17 shake.)

18 CHAIRMAN UPCHURCH: Thank you.

19 Is there someone else to be heard on
20 behalf of the applicant?

21 Please step forward and sign in.

22 MS. EAGAN: Can you mark this
23 Holds 1.

24 (Thereupon, evidence was marked
25 for identification and submitted

1 for the record as Holds Exhibit
2 No. 1.

3 Thereupon, the witness was
4 sworn.)

5 MS. REPORTER: Name and address,
6 please.

7 DR. JOHN HOLDS: John Holds,
8 2802 Spring Valley Road, Pacific, 63069.

9 And thank you for the opportunity to
10 address you this evening. I brought some additional
11 attachments. I had enclosed a letter which there is a
12 second copy in here in case for some reason my letter
13 from September 6th did not make it into your packet.
14 If it did, it's a duplicate and I apologize.

15 I also attached some materials that were
16 presented at the CUP hearing which obviously was not
17 successful from the point of view of Paddy Kerr and I.
18 And I had initially not enclosed those, but decided I
19 would enclose them because if I did not, you might not
20 have access to those.

21 The part of the bottom line of including
22 those is that I would sort of summarize by noting that
23 you've now heard from Mr. Dinan, a certified appraiser,
24 you actually had received a appraisal report with
25 estimate of damages from from Tom Noonan, which you now

1 have a copy of. Also for Rita Harrison, who is a
2 retired Missouri certified appraiser sat at one time on
3 the Real Estate Commission, State Real Estate
4 Commission. So I think she's no lightweight had
5 testified at the March 21 hearing that she believed our
6 testimony was accurate.

7 And so basically you've heard from three
8 certified appraisers. Also with Bill Elzinga's report,
9 you've got a, I think, well-performed noise study that
10 has an estimate of damages derived in a totally
11 different fashion, which is -- would be any legal
12 standard that's peer-reviewed information. So that
13 is -- that is already been reviewed by other experts in
14 his field and is accepted sort of data.

15 But ultimately, my wife and I bought our
16 property in February of 2014 to sort of fulfill a
17 lifelong dream of mine. We're both physicians. I
18 still work 12 to 14 hours almost everyday. I've been
19 doing this -- that since I was 19. Yes, I started med
20 school at age 19. So I have not kicked back a whole
21 lot, and this sort of my opportunity to try to kick
22 back. I don't like noise. I see a lot of people all
23 day. So you could argue how much I really like people
24 at the end of the day. And I like dark and quite.

25 And our master bedroom faces east. So it

1 faces towards this venue. I think there is some effort
2 to suggest shield it, lighting. Although that's not
3 really any specific standard. There is something
4 called the International Dark Sky Foundation, and
5 lighting that met their standard would be certainly
6 better. However, you still have all the lights from
7 the cars coming and going. So I think we're going to
8 get some significant light pollution. I think we're
9 going to get some significant noise pollution.

10 Ms. Eagan noted that there are county
11 noise regulations, and thank you for pointing that out.
12 I guess even if the Committee didn't buy our other
13 arguments, you could probably say no outdoor music for
14 the venue, which would certainly mitigate some of that
15 nuisance. Not the traffic noise, but the others.

16 The safety is huge issue to us. My wife
17 was almost head-on the other morning heading to work up
18 00, going north on 00, in the exact zone where this
19 venue is anticipated. So that's in the morning when
20 presumably the driver's not inebriated and it's
21 probably a local who knows the road well but just likes
22 to drive in the middle.

23 But certainly we -- we do not look forward
24 to noise, light, traffic, et cetera. That's not why we
25 sort of bought in, literally and figuratively, into

1 this concept.

2 I will note that the older farmer,
3 Slambert (ph.), called me up and related the issues he
4 has from Silver Oaks, which is a little ways from his
5 house, and he -- he basically strongly urged me several
6 months ago to persevere as hard as I could in trying to
7 prevent this from going on.

8 He's got Silver Oaks near him. He
9 believes he has some groundwater contamination related
10 to it, and he says he does not welcome the fireworks
11 going off every single event when the bride and groom
12 leave, because apparently that's the -- shooting off
13 fireworks is a standard part of that.

14 I don't mind people shooting in the area
15 during the day because that's an activity I would take
16 part in, but I do note that people don't tend to do
17 that at night, and that's when I sort of want some
18 peace and quiet.

19 I would ask, Chairman Upchurch, you have
20 brought up both fraternal clubs, and you know, the
21 question I would have if you have a club like I
22 attended the -- the Quail Forever banquet in the Elk's
23 Club in Washington, Missouri and was quite astounded
24 because I thought there were going to be 15 or 20
25 people there, and there was about 800 I think.

1 But these clubs, if you have something
2 like the Elk's Club that rents the club out, is that
3 still something that would not require a conditional
4 use permit? Haven't you sort of become a commercial
5 venue once you start renting the club out to other
6 organizations or --

7 CHAIRMAN UPCHURCH: I'm here to
8 receive information from you, --

9 DR. HOLDS: Okay, all right.
10 Okay. Well, that's something I'd question.

11 CHAIRMAN UPCHURCH: -- not to
12 speculate what the laws are.

13 DR. HOLDS: All right. All
14 right.

15 CHAIRMAN UPCHURCH: I'm here to
16 hear your argument.

17 DR. HOLDS: All right.

18 And -- well, by that same argument, I
19 would presume that I've heard a number of non-urban and
20 agricultural uses, and we, as you are aware, are
21 continuing to challenge the zoning decisions that were
22 made, but I would assume if someone wants to put in a
23 convenience store or one of these other uses that might
24 be objectionable, there would be a use permit process
25 for those. I don't -- I can't imagine you can put in a

1 commercial slaughterhouse without a use permit.

2 CHAIRMAN UPCHURCH: You would be
3 mistaken in that regard, and that's the reason that I
4 asked this question, --

5 DR. HOLDS: Okay, well --

6 CHAIRMAN UPCHURCH: -- because
7 clearly if you examined the zoning order, which has
8 been offered into the record, and that's the reason
9 that I asked those questions and have asked them of all
10 of you, and you've brought that up at this point in
11 time. So I'm going to address that rather than accept
12 it as a given, because you've misstated the law and
13 misstated what I stated.

14 Those are permitted uses. There would be
15 no application for a conditional use permit for any of
16 those uses. That's the reason that I asked those
17 questions.

18 DR. HOLDS: Thank you, sir, and
19 I'm glad based on that that we're pursuing the suite
20 against the County on the zoning, which would move it
21 away from this forum and help everybody to get home.

22 And Bill Elzinga's comments about how
23 sound travels. Walking my dog on the west side of my
24 property, so as far away on the property line as I can
25 get, at least due west of my home, I can clearly hear

1 the Kerrs the other night speaking at their barn. I
2 just sort of brought up Google Map for informational
3 purposes. And that's about 1,500 feet. So sound can
4 at night travel very well. I'm sure wind direction and
5 so forth plays some role in that, but still that's, for
6 somebody who likes peace and quiet, I didn't tell them
7 to hush up.

8 In any case, I would conclude that I hope
9 that this -- this Board of Zoning Adjustment would
10 overturn this use permit based on the testimony
11 submitted.

12 Thank you so much.

13 CHAIRMAN UPCHURCH: Hold
14 on. You've permit -- you've given us a packet, and as
15 I told everybody, we're in receipt of all that. So no
16 one has to worry about did my stuff get in.

17 For what it's worth, your cover sheets
18 were already included in the packet.

19 DR. HOLDS: Yes.

20 CHAIRMAN UPCHURCH: We don't
21 mind having a duplicate. That way we get it and you
22 get it also.

23 With regard to your property, it appears
24 that you have a 57-acre tract?

25 DR. HOLDS: That's correct.

1 CHAIRMAN UPCHURCH: And just
2 relying on it, I don't think you said in here, but
3 it's --

4 DR. HOLDS: It's 57 acres and
5 point somebody, but correct.

6 CHAIRMAN UPCHURCH: And the
7 Noonan appraisal, again with regard to these other
8 permitted uses that are permitted under the zoning
9 order, are they referred to anywhere in here because I
10 just received it, and I have not reviewed that?

11 DR. HOLDS: I do not believe that
12 Tom Noonan considered the possibility of a permitted
13 use such as a slaughterhouse appearing separate and
14 distinct from this activity.

15 CHAIRMAN UPCHURCH: Okay. If
16 so, I would want to get to that.

17 DR. HOLDS: No, I understand your
18 point now, and thank you so much for clarifying that.

19 CHAIRMAN UPCHURCH: Okay. I
20 don't have any other particular questions, but hang on.

21 Are there other questions from the Board
22 for this witness?

23 (NONE)

24 Thank you. And again, we're receiving
25 your exhibit, and on that topic, I had marked as

1 Chairman's Exhibit 1 the items that I referred at the
2 outset of the hearing, and will include those in the
3 record.

4 In addition to that, we've received a
5 packet with witness -- I think I had it as witness
6 number five. I believe that's Witness Kerr, and we're
7 receiving that also, and I hope that's been marked and
8 made part of the packet. Again, I want everybody to be
9 assured that their materials are received and being
10 received into the record so that they don't have to
11 worry about that.

12 MS. EAGAN: We have Kerr Exhibit
13 1, and now Holds Exhibit 1 in addition to Chairman.

14 CHAIRMAN UPCHURCH: Okay. Thank
15 you.

16 Other witnesses on behave of the
17 applicant?

18 (NONE)

19 Seeing none, I'm going to give the, I
20 guess, Meckler, those resisting the application which
21 are the ones favoring the CUP, an opportunity to be
22 heard.

23 I will state that, as I did earlier, we
24 will permanent some rebuttal. So to the extent that
25 something new comes up here, I expect that some of the

1 witnesses that we've already heard from may want to be
2 heard from again. I will caution those people with
3 that opportunity that will be rebuttal to respond to
4 something new, not repeat, please, but you will have
5 that opportunity for rebuttal. So I want to give you
6 that assurance.

7 Again seeing no hands with regard to those
8 in support of the application, I now turn it over to
9 those who are in opposition to the application, who
10 logically would be people associated with the Condition
11 Use Permit awarded to Robert C. Meckler.

12 Is there anyone here to speak on behalf of
13 Meckler or that side of the issue?

14 Step forward, sign in, be sworn.

15 MR. ANDREW LAMMERT: Thank you,
16 Mr. Chairman. Is this being used anymore? Can I
17 move...

18 (Thereupon, the witness was
19 sworn.)

20 CHAIRMAN UPCHURCH: Are you
21 signed in?

22 MR. LAMMERT: Thank you. I do
23 have --

24 CHAIRMAN UPCHURCH: Your name
25 for the record.

1 MR. LAMMERT: Yes, Andrew
2 Lammert. I am legal counsel for Robert Muckler, the
3 applicant, and Brentwood Material Company, the owner of
4 the property.

5 MS. EAGAN: We'll do Lammert 1
6 and 2.

7 (Thereupon, evidence was marked
8 for identification and submitted for
9 the record as Lammert Exhibit Nos. 1
10 and 2.)

11 MR. LAMMERT: I'm not going to
12 reference those immediately. I just wanted to get
13 those passed out.

14 All right. If I may proceed. If I call
15 anybody, your Honor or call you the Court, please
16 excuse me, but I know I'm bound to do that.

17 Very quickly before I get into what I want
18 to say, and I'm sure you all have reviewed the
19 Regulations, and you're very aware of what they say.
20 But I think it's key to point out in this situation
21 after all the evidence we heard what basis and what
22 standard this Board has to decide the issues and weigh
23 the evidence upon.

24 We look at Section 91(B) of the -- of the
25 Land Use Regulations. It states:

1 "Subject to Subsection
2 C, the Planning and Zoning
3 Commission shall issue the
4 requested permit unless it
5 concludes, based upon the
6 information submitted at
7 the hearing that..."

8 And then it goes through three
9 circumstances, which are no applicable here. So I
10 won't waste time reading through it.

11 If you jump over to Section 95, and again
12 this is -- and I know this has to do what the Planning
13 and Zoning Commission did preceding this hearing today,
14 but Section 95 states, quote:

15 "In considering whether
16 to approve an application for
17 a conditional use permit,
18 the Planning and Zoning
19 Commission shall proceed
20 according to the following
21 format:

22 "The Planning and
23 Zoning Commission shall
24 consider whether there is
25 substantial credible

1 evidence to support the
2 application.
3 "If the Planning and
4 Zoning Commission determines
5 there is substantial credible
6 evidence supporting the
7 application, they shall make
8 a motion to approve the
9 application and determine what
10 conditions are necessary."

11 Now, preceding this matter, obviously the
12 Planning and Zoning Commission found that there was
13 substantial and credible evidence to issue this
14 Conditional Use Permit, or the CUP.

15 What the opposition, the appellants, are
16 asking this -- this Board to do today is to overturn
17 the Conditional Use Permit, which obviously under
18 Section 91(C) states, as Mr. Sullivan read: "Even --
19 quote:

20 "Even if the Planning
21 and Zoning Commission finds
22 that the application complies
23 with all other provisions of
24 these Regulations, the
25 Planning and Zoning Commission

1 may still deny the permit if
2 it concludes based upon clear
3 and convincing evidence submitted
4 at the hearing for the following
5 jurisdictional requirements:

6 "The use will be
7 significantly detrimental to
8 the public health, safety,
9 morals or general welfare;

10 "The use will cause serious
11 injury to neighboring properties
12 or use values; and

13 "The use will not be
14 compatible with the plan for
15 the area in question, and will
16 comply with all applicable
17 zoning standards and
18 regulations."

19 Now, again, I know you've all read those
20 probably several hundred times, but I wanted to restate
21 those because that'll essentially lay the framework to
22 my argument moving forward.

23 Now, the one thing that is -- is I think
24 very relevant to this Board's decision is the fact that
25 there are three currently existing wedding venues in

1 this county as we speak: Haue Valley, Silver Oaks,
2 Chateau, and 2603 Plum Valley Road.

3 So there is precedent in this county. I
4 will note that at the Planning and Zoning Commission
5 hearing, there were Sunshine requests responses from
6 both the Franklin County Sheriff's Department and the
7 Pacific Police Department, wherein on behalf of my
8 client we requested any -- essentially any criminal
9 activity reported, any complaints, any violations, any
10 citations issued.

11 I'll let you know that both Pacific Police
12 Department and the Franklin County Sheriff's Department
13 came back with absolutely zero with respect to those
14 three other wedding venues in this county.

15 So the use will be significantly
16 detrimental to the public health, safety, morals or
17 general welfare. That is what the appellants are
18 arguing and all of the witnesses that they've presented
19 here today have argued.

20 This has not been demonstrated at this
21 hearing by the appellants, and I will get into that
22 more here in a second.

23 The second circumstances were
24 jurisdictional requirement under 91(c), "The use will
25 cause serious injury to neighboring property use or

1 values."

2 Again, this has not been demonstrated here
3 today. There are two reports -- or previously there
4 have been two appraisals submitted so far, and I think
5 I heard Mr. Holds testify that there was another one,
6 but two appraisal reports that have been submitted by
7 Mr. Kerr and Mr. Holds.

8 The Noonan appraisal which was submitted
9 at the March 21st hearing, I'll jump right to the
10 conclusion by the Noonan appraisers. The Kerr
11 property, they said, would reduce by a means of 60
12 percent reduction in value. The Holds property, 35
13 percent reduction value.

14 Presumably because the Conditional Use
15 Permit was issued ultimately, they now have gone out
16 and got Dinan Real Estate Advisors. Well, be it Mr. --
17 Mr. Dinan concludes that the Kerr property will
18 decrease in value by 25 percent if this wedding venue
19 goes up. And just by reference purposes, Mr. Noonan
20 said 60 percent.

21 The Holds property Mr. Dinan concludes
22 will reduce in value by 15 percent. Again, Noonan
23 concluded that it would be a 35 percent reduction.

24 So we have some inconsistencies and
25 contradictions on that side of the table as to what

1 would be the real reduction in value, if any, if this
2 wedding venue is ultimately built.

3 Now, I won't belabor the issue of -- of
4 the reduction in value or appraisals. Obviously I'm
5 not an expert witness in that respect or an appraiser.
6 I will tell you that Mr. John Neff of Mueller and Neff
7 Real Estate Appraisers and Consultants is here tonight.
8 I previously submitted his curriculum vitae, and he
9 will get up after me and speak with respect to some of
10 the reduction value issues that you've heard from the
11 appellants here.

12 And then finally the third jurisdictional
13 requirement that the -- this Board can overturn the
14 Conditional Use Permit or modify it is:

15 "The use will not
16 be compatible with the
17 plan for the area in
18 question, and will comply
19 with the applicable zoning
20 standards and regulations."

21 You've heard that the property, my
22 client's property, was originally zoned Suburban
23 Development, now rezoned Non-Urban Agricultural.

24 The Future Land Use Map of Franklin County
25 shows this area zoned as Non-Urban Agricultural. If

1 you look at page 46 of Exhibit L to Kevin Sullivan's
2 August 11, 2017 written testimony, or letter, that
3 Future Land Use Map can be found.

4 I only bring that up for the simple point
5 that somewhere in Franklin County, the Legislature or
6 the proper authorities got together and planned what
7 would be the future uses of this county.

8 The current zoning of that property is the
9 permitted future -- or at least the planned future use.
10 Obviously if that's the planned future use, that
11 contemplates other commercial opportunities and
12 developments for -- for others in the future.

13 I also would like to mention this property
14 was on the market for two years before my clients
15 purchased it. Neither Mr. Kerr nor Mr. Holds or anyone
16 else, you know, purchased the property. I'm not saying
17 that they could have done that to avoid what, you know,
18 a purported wedding venue, but you know, something at
19 some point with that property being for sale was going
20 to be either developed or someone was going to move
21 onto that property.

22 So back to the big one that we've heard
23 most of the witnesses testify to for the appellant's
24 side tonight. The use will be significantly
25 detrimental to the public health, safety, morals or

1 general welfare.

2 Now, Mr. Holds and Mr. Kerr have submitted
3 a traffic study, a noise study, and new appraisal as we
4 have discussed and as you've heard tonight. It should
5 be noted that none of this was submitted at the hearing
6 before the Planning and Zoning Commission.

7 But the most important thing about all the
8 testimony and the reports that you received into
9 evidence tonight is -- and also from hearing from these
10 other witnesses, is none of these witnesses, expert or
11 not, have seen any design element of this proposed
12 wedding venue. They haven't seen plans, no
13 engineering. They haven't spoke to any engineers.

14 Yet, they sit up here and tell you based
15 upon a lot of assumptions that certain things are going
16 to occur, whether it be the noise, light or traffic,
17 drunk drivers, all of the above. But not taking into
18 account the design elements and the actual plans, which
19 again, I think Mr. -- and I don't want to butcher your
20 name -- Derek Schriewer.

21 MEMBER SCHRIEWER: Schriewer.

22 MR. LAMMERT: Schriewer. Excuse
23 me. You -- as you correctly pointed out earlier, none
24 of that stuff is -- is supposed to be presented by my
25 client before this Board or the County Commission.

1 That's the Franklin County Building Department, and I
2 will reference the Board to Exhibit 1 that I submitted.

3 I took this straight from the Franklin
4 County Building Department website. It says required
5 -- it's entitled "Required Plans for Commercial
6 Building and Structures."

7 If we look at the fourth paragraph down,
8 it starts with site plan, it specifically tells you
9 what the plans must address, which is a lot of these
10 issues that these experts have brought up tonight,
11 stormwater detention raw calculations, erosion control.

12 You go down a couple more, and it says
13 plumbing. Then they finally have to address septic to
14 include not, you know, septic system.

15 Again, these are all of the things that
16 you've heard these people testify tonight that they've
17 argued to this Board that my client hasn't
18 demonstrated. They haven't shown you how 300 people
19 can use the rest room and the septic system will hold
20 up.

21 Again, those are -- there's a time and a
22 place for that, and it's not before this Board or the
23 County Commission. But more importantly, even if --
24 even if they had credible evidence to -- upon which to
25 base their opinions that there's going to be a problem

1 with stormwater or wastewater, they don't even have the
2 plans to criticize that. So they can't tell you if
3 there's -- the system -- the septic system is going to
4 be deficient.

5 They can't tell you if the stormwater
6 calculations are deficient. This is just information
7 they don't have. So while I appreciate -- and all of
8 them come very well qualified. They do. I've looked
9 at their curriculum vitae, but the bottom line is
10 everything they're doing is based upon assumptions,
11 especially with regard to the traffic study.

12 Which I will note another thing in the
13 Conditional Use Permit, one of the conditions is,
14 Condition Number 3, "All new and/or existing entrances
15 to Highway 00 will need to be examined by MoDOT for
16 commercial entrance -- "for a commercial entrance."

17 Another condition: "Parking and parking
18 surface shall be provided in accordance with the
19 Franklin County Land Use Regulations."

20 And then finally, Number 1, which is most
21 relevant to the -- what I just discussed states:

22 "Any buildings used
23 or built in connection with
24 the CUP will need to be
25 approved by the Franklin

1 County Building Department
2 for a commercial building."

3 So all of these things will be addressed
4 at some point by different authorities, which will --
5 I'm sure that -- I haven't read through the Land Use
6 Regulations all the way through to see what
7 involvement, if any, the Planning and Zoning Commission
8 or this Board may have once the proper authorities are
9 addressed with respect to the design elements of this
10 wedding venue.

11 But nonetheless, those are issues that, at
12 least according to this print-off that I've taken from
13 the Building Department, is to be addressed through
14 them. I'm -- also the third page of Exhibit 1, it's
15 just an application checklist when you're turning in
16 your application to the Building Department for a new
17 development.

18 And another thing that you've got to have
19 is a highway entrance permit, a site plan showing road
20 right-of-way, sewer design, and you know, you've got to
21 turn in two sets of your plans.

22 Now, just to get into a little bit with
23 respect to some of the experts that's here to testify
24 for the appellants, Mr. William Elzinga noted in his
25 report he is an environmental consultant, and he does

1 live in Forest Glen Subdivision. His wife testified
2 actually at the March 21st hearing.

3 I think it's pretty obvious he is an
4 interested party to some extent. I think he -- he said
5 as much. So we would just ask this Board to give
6 proper weight to his testimony in that respect, just
7 given the fact that this does personally affect him as
8 you heard -- as you heard him testify tonight.

9 Now, while Mr. Elzinga's report is
10 entitled this, you know, and leads the reader to
11 believe that it's a sound study, there is some mention
12 of zoning, safety and environmental considerations.
13 And I think that's where the waste -- wastewater,
14 stormwater runoff, and septic issues came up.

15 But the report does make clear that it's
16 for the purpose to assess the effective noise impacts
17 and traffic volumes. So there is a lot of opinions
18 that he either testified to or that are set forth in
19 his report, but the report is aimed at the --
20 predominantly the sound issues that you heard him
21 testify to.

22 The one thing -- the one opinion that
23 jumped out at me from his report he opined, "The value
24 of real estate decreases 1.8 to 2.3 percent for every
25 decibel increase."

1 Again, I didn't hear any qualifications as
2 to his expertise in value of real estate or appraisal,
3 you know, ventures, but I can tell you that that seems
4 a little hard to believe that for every decibel. And
5 again, he doesn't take into account distances or
6 anything with that conclusion when he tells that you're
7 literally going to have a -- almost a knock for knock
8 reduction in your -- the value of your home.

9 Now, his curriculum vitae does show that
10 he's qualified on environmental issues, and that he
11 even states in the report that the burden remains on
12 Mr. Muckler and Brentwood Material Company to
13 demonstrate that the design of the property will not
14 affect the environment in the area and that the
15 applicant has not produced any evidence to address
16 these issues.

17 Those are part of his conclusion. Again,
18 this just not the -- my client is not required to prove
19 at this point the design elements before this Board.

20 Now, much of the study is based upon
21 construction noise, which -- which is temporary, I
22 think we can agree. While it's easy to speculate as to
23 construction noise and the type of -- the typical
24 instruments and equipment that's used in construction,
25 such as an excavator, it's a whole different beast to

1 speculate upon what noise issues are going to come from
2 a venue that hasn't even been construction --
3 constructed yet, a venue that he has never seen plans
4 for.

5 He doesn't know -- not to mention a
6 business plan. He's never seen how my client intends
7 to operate this -- this wedding venue. But on page --
8 and then on page 3 he admits that. He does not know
9 the type, limits or location of the entertainment for
10 the proposed venue.

11 I think you heard most of the experts get
12 up here and state the same, that they have not seen any
13 design elements, and they are not aware of the specific
14 entertainment occurrences that will take place for each
15 one of these events or weddings.

16 It is worth noting with respect to the
17 entertainment side of things that the Conditional Use
18 Permit has placed the following restrictions relative
19 to music hours. From -- they're limited to 10:00 p.m
20 on Sunday through Thursday, 10:30 p.m. on Fridays and
21 Saturdays, and I will share with you that the majority
22 of the outside music that will occur at this wedding
23 venue is going to be low background music. There will
24 only be a handful of times that there would be a band
25 or DJ outside, and that again would be due to the

1 minimal patio size.

2 Most of the -- with the larger wedding,
3 it's going to be inside just due to the size of the
4 planned patio. So I think that what you'll typically
5 see for larger weddings is you'll see a cocktail hour
6 with some background music, but when people are seated
7 for dinner and off you go to the late night
8 entertainment DJ or band, that's going to be inside.
9 But nonetheless, the Conditional Use Permit does place
10 restrictions with regard to music.

11 The one thing that was interesting, and I
12 believe one of the Board members were asking, is how
13 does sound carry and how was the test performed by Mr.
14 Elzinga. And again, I think he told -- he testified
15 there was a noise test, direct line. I don't think
16 that's appropriate in this situation because I'll share
17 with you that my client's proposed wedding venue sits
18 at the top of the -- at the top of a peak almost.

19 And I believe he might have said it's less
20 noisy at night. But nonetheless, my client is -- is
21 elevated relative to these two properties of Mr. Kerr
22 and Mr. Holds.

23 Now, you also heard from Mr. Loomis with
24 regard to the traffic study. This -- he did admit it's
25 based upon the site plan. It was part of the

1 PowerPoint presentation to the County Commission and
2 the Planning and Zoning Commission. So he also has not
3 reviewed any actual plans or drawings.

4 One assumption that was made with regard
5 to Mr. Loomis' report is that he assumes that all
6 weddings are going to start at the same time and be the
7 same length. It's going to be whatever the particular
8 customer wants. I mean, there are weddings that start
9 at noon, early in the day, and then there are ones that
10 will go at night. But for the basis of his report, he
11 had to assume that they're all going to be at the same
12 point in time.

13 Now, one thing I'd like to point out
14 relative to I think someone brought up Manchester Road.
15 Highway 00 is not a road that is traversed as often as
16 you can see in some -- some other counties, St. Louis
17 County and other roads in Franklin County.

18 The -- the driveway issue which was part
19 of his opinion, again, that is addressed in the
20 condition of the CUP, Number 3, which says that all new
21 and existing entrances have to be examined by MoDOT.

22 Another assumption that Mr. Loomis' report
23 is based upon is that there's going to be 151 cars
24 during every wedding, that every wedding is going to
25 have 300 people. That is also not going to be the

1 case. Weddings are going to vary in size, but for the
2 purposes of his report, he assumed max capacity.

3 Now, according to his report, one thing
4 that particularly jumped out at me is there's more
5 traffic that comes to that area on Highway 00 between
6 12:00 to 4:00 p.m. than would come through 5:00 p.m.
7 through midnight on the same day. And assuming the
8 5:00 p.m. to midnight are those wedding guests.

9 Without -- without the venue, I also
10 notice -- and these are coming straight from the bar
11 charts that -- that are in Mr. Loomis' report. Another
12 thing I noticed is there would still be 150 cars
13 traversed on the road on Saturdays and 120 cars on the
14 road on Sundays at different times.

15 When the wedding lets out, his study shows
16 that is when the least amount of people are on the
17 road, which I -- I would think is a benefit. I mean, a
18 lot of the times you've got all these wedding guests
19 who are leaving, at least there's not the -- at least
20 it's not during a time of increased traffic. So if --
21 if his assumption is correct and most of these weddings
22 will occur at night, when they are let out, it's going
23 to be very little other traffic. It will be
24 predominantly the wedding guests.

25 I think what this all says is that Highway

1 OO can sustain the increased traffic at these times.
2 In fact, the study shows that traffic without the venue
3 is at one of its lowest points when the guests are
4 going to the wedding and leaving the wedding. So other
5 traffic, again, is -- is -- is at a low point for the
6 day at the time these people are coming and going to
7 the wedding.

8 This study then goes on to discuss
9 different -- the left-turn auxillary lanes, right-turn
10 auxillary lanes, sight distance from both sides and
11 access management.

12 In discussing these items, his report does
13 cite the MoDOT guidelines. Again, the Conditional Use
14 Permit requires us to comply with MoDOT and to have
15 them examine the traffic and obviously the driveway
16 entrance.

17 Another part of Mr. Loomis' opinion he
18 says, quote:

19 "To fully evaluate
20 the impacts of the public
21 safety, it is recommended
22 that the applicant provide
23 a traffic study that
24 evaluates and documents
25 accident car crash data and

1 increased risk due to the
2 venue traffic, speed data,
3 explanation as to why an
4 exception to MoDOT policy
5 for a minimum driveway
6 spacing should be accepted
7 for this application, and an
8 explanation as to why sight
9 distance requirements should
10 be waved for this application."

11 Again, these are all issues that are
12 really not specifically to be addressed at this point,
13 but will later go through the Building Department and
14 also go through MoDOT as required by Conditional -- the
15 Condition Number 3 of the CUP.

16 And just a final thought on the traffic
17 study. I mean, Franklin County has -- and I will admit
18 I am a resident of St. Louis County, but I come down
19 here quite often for court and other matters. There's
20 a lot of two-lane roads in this county. You know, the
21 Future Land Use Map does show that things could turn in
22 the future for this county, and there could be more
23 commercial venues such as my client's.

24 You know, I -- I would think that simply
25 because the -- there are two-lane highways, that the

1 progress and future development of this county, you
2 know, is not going to be stalled as a result of just
3 infrastructure issues such as a two-lane highway.

4 Again, MoDOT will address those issues
5 specifically with this development, but who knows, in
6 the future there could be changes with regard to the
7 roads themselves. I think that's all part of, you
8 know, futuristic planning use for any county, and you
9 know, it's progress. I mean, let's not forget that one
10 of the big issues for Franklin County in reviewing
11 zoning changes and conditional use permits is economic
12 benefit that these developments can and will bring to
13 the county.

14 Now a couple of other things that I heard
15 some of these experts testify. You know, it wasn't a
16 specific subject of their report, but was definitely
17 mentioned in Mr. King (sic) and Mr. Sullivan's August
18 11th letter, was, you know, the issues with the septic
19 system, the groundwater and the stormwater issues. And
20 again, I don't think any of those experts were
21 specifically tendered to testify. At least their
22 reports didn't address those in great detail. But
23 again, they didn't have any plans or drawings for those
24 issues, and those are issues that will be taken up in
25 the future with the Building Department and, you know,

1 the DNR and other authoritative bodies.

2 You know, my client is not just going to
3 go throw a wedding venue up on top of a hill and not
4 comply with all the other laws, whether it be local,
5 state, federal. I mean, these are things that any
6 development has got to go through in order to
7 essentially get to the building phase.

8 Also it is worth noting that Article 20
9 and Appendix C of the Land Use Regulations my client
10 must comply with, and those are specific requirements
11 for commercial buildings.

12 And in closing, I will note that Section
13 91(B) does state that the Conditional Use Permit shall
14 issue unless these three circumstances are met and
15 shown with clear and convincing evidence. And again,
16 that's a high standard, and we don't -- I -- I do not
17 believe that they have met that standard with the
18 evidence that you've heard tonight.

19 And I do think that the one thing that I
20 did want to mention to you, this -- the way this all
21 started, and I'm not going to get into the rezoning
22 issues. I know that's not before this -- this Board,
23 but this was all -- this all began with Mr. Holds. I
24 believe this lives and dies with, you know, everything
25 that's transpired since he became in opposition or at

1 least began, you know, taking issues with attorneys
2 with respect to the property. Everything else has
3 unraveled from there.

4 I mean, I believe Mr. Holds, who again is
5 not even a Franklin County resident. This is only his
6 weekend home. You know, he -- he went out and he
7 incited all these neighbors, Mr. Kerr in particular,
8 and in reality, they're the only ones who have direct
9 view of the property. But at the same point in time,
10 if you look at Exhibit 2 that I submitted, you'll see
11 we've circled the Kerr property and the Holds property,
12 and they are a thousand and 1,500 square feet (sic)
13 respectively.

14 That diagram that I show you is from L3
15 Corporation who's been retained by my client,
16 obviously, with regard to the design elements of their
17 proposed venue.

18 And also another mention with respect to
19 the fraternal club which the Chairman brought up, I can
20 tell you I live in St. Louis County in Creve Coeur off
21 Ladue Road. If anyone's been to the Elk's Lodge No. 9,
22 right smack in the middle of the -- you know, nothing
23 but residential. I can tell you that it's -- I live
24 within a shout, much closer than Mr. Holds or Mr. Kerr
25 live.

1 And yes, do I -- do I hear music at times,
2 but it's always over at a reasonable hour, and it's --
3 you know, again, just because this was -- there was
4 only -- I mean, just because this is residential
5 previously, there are only two properties that are
6 really being affected, which you're hearing from Mr.
7 Holds and Mr. Kerr.

8 But there-- there -- I mean, at some point
9 in time, commercial development does come into
10 residential areas, and there are countless -- you know,
11 countless areas right here in St. Louis County and
12 Franklin County and all over this country that have
13 proven that they can coexist together despite some of
14 the testimony you've heard from the appellants tonight.

15 And I have nothing further. Any questions
16 from the Board?

17 CHAIRMAN UPCHURCH: I have some
18 questions for you. I've heard you offer rebuttal with
19 regard to what was offered, but I'm keenly interested
20 in what you care to offer with regard to what this
21 development is going to do. For example, there's been
22 some discussion and concern with regard to fireworks.

23 Is that an intention, that fireworks be
24 any part of this development?

25 MR. LAMMERT: I don't know that

1 I'd be specific to --

2 CHAIRMAN UPCHURCH: Will I hear
3 from a witness that can answer that question?

4 MR. LAMMERT: I can bring a
5 witness up right now if you wouldn't mind.

6 CHAIRMAN UPCHURCH: I don't want
7 a witness right now because we're going to finish with
8 you first --

9 MR. LAMMERT: Understood.

10 CHAIRMAN UPCHURCH: -- so that
11 the court reporter when I get done is not going to be
12 mad at me.

13 MR. LAMMERT: Understood. No
14 I -- I am unaware of any planned fireworks.

15 We heard --

16 CHAIRMAN UPCHURCH: So if we
17 were going to amend this order and add a prohibition of
18 fireworks, you, at least at this moment in time,
19 wouldn't have any objection to that?

20 MR. LAMMERT: I -- I -- I can't
21 say.

22 CHAIRMAN UPCHURCH: There may be
23 somebody that gives me a different opinion, and I'm
24 going to wait to hear for that opinion.

25 MR. LAMMERT: I mean, I -- I

1 don't have -- I'll abstain if that's fair.

2 CHAIRMAN UPCHURCH: Okay. I'll
3 take that. Honesty always gets a plus with me.

4 The sight and stopping distances, I'll
5 just tell you bluntly, that seems to me like that's a
6 concern. It should be a concern for this Board. If it
7 wasn't for the County, it should have been.

8 What can you tell me about sight distances
9 and stop distances, if anything? If not, am I going to
10 hear somebody who's going to answer that question?

11 MR. LAMMERT: I can -- I can
12 tell you that my client will meet with MoDOT and go
13 through all the requirements and all the guidelines and
14 all the laws that they have to comply with in order to
15 make sure that people on Highway 00 are safe traveling,
16 and also that the wedding guests coming to and from the
17 venue are safe.

18 CHAIRMAN UPCHURCH: And you can
19 permit me a moment.

20 Scottie, MoDOT has done some turn lanes,
21 et cetera before. Is that -- would that normally
22 happen, or am I misremembering a case? Because we had
23 a couple of matters that have come up over the years
24 where MoDOT stepped in, and there were turn lanes and
25 there were studies and the requirements of that. Is

1 that something that is normally going to happen? Is
2 that something that needs to be ordered further than
3 was already entered?

4 MS. EAGAN: The only time since
5 I've been here that I know that MoDOT has looked into
6 turn lanes were with subdivisions. I haven't seen any
7 commercial developments that MoDOT has come in and said
8 that.

9 They were notified about this project, but
10 we haven't received anything from them stating anything
11 about turn lanes.

12 CHAIRMAN UPCHURCH: Okay. But
13 under the existing order which you've seen, it
14 expressly requires that MoDOT be notified so that if
15 MoDOT had any concern with regard to sight distance and
16 stop distance or left-turn lane, they would have to be
17 notified under the existing order. Is that what --

18 MS. EAGAN: Well, we would not
19 issue the Conditional Use Permit without a MoDOT permit
20 in hand approving what they are recommend -- or what
21 they're proposing.

22 If MoDOT comes back and says you need to
23 do X, Y and Z before we give this, then we say we're
24 not issuing the Conditional Use Permit until you get
25 that permit to us.

1 CHAIRMAN UPCHURCH: So we
2 wouldn't have to have changed that order at all for
3 that to happen?

4 MS. EAGAN: Correct.

5 CHAIRMAN UPCHURCH: Okay. Thank
6 you for that.

7 I think those are all the questions I
8 have -- I have of you right now. I'm guessing there
9 will be questions by others.

10 MEMBER SCHRIEWER: Yeah.

11 You continue to reference that the
12 opposition hasn't heard anything or seen any of the
13 design elements as far as plans and future structures
14 and how that all kind of balance out, whether it be the
15 stormwater, you know, mitigation systems that may be
16 necessary.

17 Have you seen any of these design plans?

18 MR. LAMMERT: I have not.

19 MEMBER SCHRIEWER: Okay. Have
20 they been -- you mentioned that they've been working
21 with an engineering firm. So have they been working on
22 design elements, or has that been on hold while they
23 waited to hear the decisions of this and future Boards?

24 MR. LAMMERT: They have been
25 working with an engineering company, Cochran

1 Engineering. Andrea Lowmeyer from Cochran Engineering
2 is actually here tonight, but yes, they have been with
3 regard to things. There may have been a -- and I can't
4 speak for certain. So I won't even say. There could
5 be a pause just until this unravels.

6 But no, they are working with an
7 engineering firm.

8 CHAIRMAN UPCHURCH: Are there
9 other questions of this witness?

10 MEMBER THATCHER: I have
11 questions with the CUP, and I don't know if, Andrew,
12 you can answer some of these questions for me or not.

13 MR. LAMMERT: I'll give it a go.

14 MEMBER THATCHER: You know,
15 focused lighting. Any idea what that entails?

16 MR. LAMMERT: To my
17 understanding, that is meant to ameliorate the --
18 the -- you know, the light, but I can't get into the
19 specifics as to what it does to, I guess, lessen the
20 impact of light from in the area.

21 MEMBER THATCHER: I see that the
22 events shall be limited to a maximum of 300 people.
23 Does that include people that work there as well, or is
24 that 300 guests? And who do you think monitors that?
25 What if you have 500?

1 MR. LAMMERT: Well, typically I
2 guess with actual Fire Department max capacities,
3 they'd monitor that. But with regard to the
4 Conditional Use Permit, I mean, I would entrust that my
5 clients who are honest business people would enforce
6 that, abide by the restrictions that this Board and
7 this County have put on them.

8 MEMBER THATCHER: So really your
9 building permit would be one that has seating for 300
10 people, I guess.

11 MR. LAMMERT: That sounds
12 reasonable, but as you bring up, there is staff and
13 such. Again, I would have to defer to someone who has
14 more knowledge on the particulars, either my client or
15 the engineering firm that he's retained.

16 MEMBER THATCHER: The indoor
17 activity shall be set back at least 50 feet from any
18 property line and at least a hundred feet from any
19 neighboring residence.

20 I just -- I'm trying to understand;
21 50 feet is not a whole heck of a lot, in my opinion,
22 for a commercial venue. I think some of our industrial
23 uses -- I hate to use industrial, but I think their
24 setbacks --

25 MS. EAGAN: We covered setbacks

1 in 2014. Those conditions were taken straight out of,
2 at that time, the proposed Special Occasion Regulations
3 that are now in place.

4 MR. LAMMERT: I will plan on for
5 the Exhibit 2, while it obviously may not be -- well,
6 actually it is to scale even though there's not a scale
7 there. You can see where the Holds and the Kerr
8 property are located.

9 MEMBER THATCHER: Uh-huh.

10 MR. LAMMERT: The proposed
11 venue, I would think, is well over 50 feet away from
12 the proposed venue.

13 MEMBER THATCHER: Well, it is.
14 But then again, as they moved -- and that's -- I think
15 50 feet, in my opinion, is not much of a buffer at all.

16 I see that the Kerr property here is
17 really quite fairly close. He's a thousand feet away.
18 By country standards, it's getting pretty damn close.

19 MR. LAMMERT: Understood.

20 MEMBER THATCHER: Let's see. I
21 think that's the extent of my questions. Thank you.

22 MR. LAMMERT: Thank you.

23 CHAIRMAN UPCHURCH: Scottie, did
24 I hear you say that the 100 and 200 -- or I'm sorry,
25 the 1,500 actually tracks what the County has done with

1 other venues like this elsewhere in the current
2 Regulations?

3 MS. EAGAN: In the Regulations,
4 yes. Other venues, no. Other venues didn't have
5 specific setbacks on them in the past. What we did
6 with this one -- it was a weird situation where he was
7 in limbo between us trying to pass regulations for
8 special events. So what we did with this Conditional
9 Use Permit is put conditions on it that mimic what the
10 Regulations were going to be in the future.

11 CHAIRMAN UPCHURCH: And that was
12 my question. Those are the -- those exactly track the
13 Regulations --

14 MS. EAGAN: Yes.

15 CHAIRMAN UPCHURCH: -- that you
16 have put on wedding venues on these matters for other
17 vendors in the future?

18 MS. EAGAN: Yes.

19 CHAIRMAN UPCHURCH: Well,
20 already on the books?

21 MS. EAGAN: Yes.

22 CHAIRMAN UPCHURCH: Okay.

23 How many feet roughly of highway frontage
24 do you have if MoDOT is to say that you need a
25 left-turn lane or you need a pull-off lane?

1 MR. LAMMERT: I would have to
2 defer to the engineering company or my client. I -- I
3 do not know that specifically. I apologize.

4 CHAIRMAN UPCHURCH: Seems to be
5 putting a lot of weight on Andrea's shoulders, but
6 we'll see.

7 MR. LAMMERT: She's good at her
8 job. I think she can take it.

9 CHAIRMAN UPCHURCH: Okay.
10 That's the only question I have of you.
11 Are there other questions from the Board
12 members?

13 (NONE)
14 Thank you.

15 MR. LAMMERT: Thank you very
16 much.

17 CHAIRMAN UPCHURCH: And again, I
18 don't know if you offered new exhibits that weren't in
19 the original packet. If so, we'll have them marked,
20 we'll receive them, and we'll put them in the exhibits,
21 be part of the record.

22 MS. EAGAN: Yes, we did Lammert
23 1 and Lammert 2.

24 CHAIRMAN UPCHURCH: Okay. Thank
25 you.

1 MR. LAMMERT: Thank you,
2 Chairman.

3 CHAIRMAN UPCHURCH: Who else is
4 to speak on behalf of -- I'm going to call this
5 Meckler?

6 (Thereupon, the witness was
7 sworn.)

8 MS. REPORTER: You need to sign
9 in and give me your name.

10 MR. JOHN NEFF: John Neff.

11 MS. REPORTER: And state your
12 name and address for the record.

13 MR. NEFF: John Neff, and I'm at
14 4400 South Lindbergh in St. Louis.

15 I'm with Mueller and Neff Real Estate
16 Appraisers Consultants, Inc. Been an appraiser for 41
17 years. I have the SRA designation, which is Senior
18 Residential Appraiser designation from the Appraisal
19 Institute. I'm State licensed general in the state of
20 Missouri, which allows for all type of property
21 appraisals.

22 We do appraisal and consulting work for
23 banks and mortgage companies, for individual property
24 owners, lawyers, accountants, municipalities, utility
25 companies, local, state and federal courts and many

1 others.

2 I've been asked to render an opinion
3 regarding a very specific issue, to estimate the
4 diminution in value, if any, a proposed event venue
5 would have on adjoining and nearby properties.

6 I've been to the property in question, and
7 I understand that you are all familiar with it, and the
8 surrounding area as well. So I don't intend to cover
9 that at all.

10 In real estate, this concern relates to
11 economic obsolescence, which can be caused by negative
12 influences outside the property line, things like
13 noise, odor, lack of privacy, view, traffic or lights.

14 Specific examples of economic
15 obsolescence: an interstate or busy street, a fast-food
16 restaurant or a convenience store, a daycare center, a
17 bank or other type of commercial or industrial
18 property, a storage tank, a treatment facility,
19 transmission lines and others, things that a house
20 could be in close proximity to, and these are examples
21 of economic obsolescence.

22 In the residential market, being in close
23 proximity to a property that does not have the same use
24 does not automatically result in a measurable value
25 difference. It may, but it's not automatic, and there

1 are different -- many different levels of economic
2 obsolescence.

3 Highway 00, for example, is a much busier
4 street than Wood Lawn, Forest Glen or Kindred Way,
5 which are all streets right around this stretch of 00.
6 If two identical homes, each of them on 30 acres, was
7 on 00 or one of these side streets, I don't think that
8 you'd see any difference in the value of either one of
9 these properties. Yet, the property that fronted on 00
10 would be on a street that has a much, much higher
11 traffic count than a side street.

12 Or assume two identical homes that back to
13 a 4,000-square-foot commercial property. One of them
14 is a convenience store, and one of them is an insurance
15 office. There's a difference. Both homes would see a
16 diminution in value in both of those instances, but one
17 has a more intense use than the other.

18 The C-store is commercial, 4,000 square
19 feet. The insurance office is commercial, 4,000 square
20 feet, but there's a different level of economic
21 obsolescence and different diminution in value
22 consideration.

23 Schools or religious facilities. Market
24 data indicates that typically there can be no
25 difference in value to maybe a minor difference in

1 value for a home that adjoins a church. And usually a
2 little higher diminution in value if it adjoins a
3 school. And it's typical to see increased traffic,
4 noise and activity levels at different times at these
5 types of facilities.

6 If there was 30 people that might be
7 interested in a home that backs to one of these types
8 of institutions, we would -- the potential exists for
9 buyer resistance.

10 Some small percentage would likely pass on
11 buying a house that backed to one of these types of
12 properties, but enough buyer interest would remain to
13 suggest there would be no measurable diminution in
14 value in some cases, and possibly a minor indication in
15 diminution in value or economic obsolescence in others.

16 This is, and there are other situations
17 we've actually researched over the years, where
18 economic obsolescence exists. Most everyone in this
19 room has seen a home that backs directly to an
20 interstate, without any mitigation whatsoever like a
21 sound wall and earth berm, landscaping or trees or a
22 buffer of any kind, just a wire fence between your
23 front porch or your patio and the interstate.

24 Remember that this is a 24-hour-a-day,
25 7-day-a-week, 365-day-a-year issue that's present every

1 day all day, and here's what happens in the market. If
2 direct exposure and no mitigation to that kind of
3 influence, sales typically show a 10 to 15 percent
4 diminution in value compared to that same house that
5 might be on an interior lot and away from that -- that
6 item.

7 If there's some mitigation that exists,
8 whether it's landscaping or a berm or trees or
9 whatever, a sound wall, maybe 5 percent diminution in
10 value is typical compared to a typical lot.

11 With excellent mitigation, sound wall,
12 berm, trees, the market shows that there could be in
13 the range of 5 percent diminution in value.

14 Add distance to those scenarios, farther
15 away from the interstate but still with some exposure,
16 if you add distance and -- and footage, economic
17 obsolescence and the resulting diminution in value is
18 diminished.

19 The top level diminution in value with
20 direct exposure and no mitigation to traffic, noise, a
21 poor view, lack of privacy, remember all day every day,
22 is about 15 percent. I don't know if we have that here
23 at this proposed venue.

24 A single-family residence that adjoins a
25 convenience store or other high volume use, you know,

1 right next door, no room between them, might see 15 to
2 20 percent if a distance level between the improvements
3 is very close. And I'm sure most of us could come up
4 with any number of examples or combinations.

5 You know, C-stores, fast-food restaurants,
6 interstates, these situations tend to be at the extreme
7 end of the economic obsolescence level. I don't know
8 if this proposed center meets that standard.

9 We've complete research on proximity to
10 power lines, large apartment complexes, grocery stores,
11 wineries that have wedding venues and many other
12 properties. I can tell you that in many cases,
13 proximity to a large apartment complex, grocery stores
14 and other non-residential uses can result in a
15 diminution in value anywhere from 0 to 15 percent in
16 market.

17 Proximity to some power lines but maybe
18 not the actual tower that holds up the power lines,
19 certain types of commercial property and other
20 non-residential uses can be in the 0, no difference, to
21 10 percent.

22 There's no one-size-fits-all correct
23 answer to any of these issues, but the right answer is
24 it depends.

25 To bring some perspective to the issue, a

1 wedding venue would likely experience a similar
2 activity level to a church, a fraternal hall, a club,
3 but in most cases less activity on a regular basis than
4 a school, but not near the level of an interstate or
5 apartments or a convenience store, facilities that have
6 high diminution in values where that range could be 5
7 to 15 percent.

8 We would expect to see some buyer
9 resistance to an event venue, but based on the actual
10 market and sales activity where we're able to measure
11 the differences, the estimated diminution in value for
12 adjoining and nearby properties would likely be in the
13 range of nothing to maybe something in the range of 5
14 percent.

15 The proposed use for this 32-acre property
16 is different, but it doesn't automatically equate to a
17 diminution in value. Our conclusions are based on
18 actual activity in the marketplace. So regardless of
19 who would ask us this question, everybody would get the
20 same answer from us.

21 And I'd be happy to answer any questions
22 you might have.

23 CHAIRMAN UPCHURCH: I don't have
24 any questions for you.

25 Is there other questions of this witness

1 from the Board?

2 (NONE)

3 Thank you.

4 MR. NEFF: Thank you.

5 CHAIRMAN UPCHURCH: Is there
6 someone else to be heard on behalf of the -- I'll just
7 call it, the Meckler position?

8 (Thereupon, the witness was
9 sworn.)

10 MS. REPORTER: And state your
11 name and address, please.

12 MS. ANDREA LOWMEYER: Andrea
13 Lowmeyer, 803 Lincoln Street in Washington, Missouri.

14 CHAIRMAN UPCHURCH: Are you
15 signed in?

16 MS. LOWMEYER: I am, yeah.

17 I represent Cochran Engineering, and I'm
18 just here basically to answer the few questions that
19 were brought up by the Board regarding some of the
20 engineering-specific questions.

21 The one, the frontage along Highway 00, I
22 apologize. I do not know what that distance is. I do
23 not have the information with me. I could take a
24 guess, but I don't have that information.

25 CHAIRMAN UPCHURCH: Take a wild

1 guess over not an answer.

2 MS. LOWMEYER: I would guess
3 it's -- and like if I had one of the maps that had the
4 circles on it, I could tell you, but I don't.

5 CHAIRMAN UPCHURCH: Here, I'll
6 give you Fred's.

7 MS. LOWMEYER: Okay.

8 MEMBER THATCHER: That's all
9 right.

10 MS. LOWMEYER: I would say over
11 500 feet is the frontage. Yeah.

12 CHAIRMAN UPCHURCH: Would some,
13 most, or all of that be available if MoDOT required
14 some other laneage construction?

15 MS. LOWMEYER: The front part of
16 that property?

17 CHAIRMAN UPCHURCH: Uh-huh.

18 MS. LOWMEYER: Since he's not
19 looking to develop to the very back end of it, I would
20 say that most, if not all of it, would be available to
21 make it accommodate whatever entrance MoDOT would
22 require.

23 CHAIRMAN UPCHURCH: It is your
24 understanding also -- and I try to make these records a
25 little thorough and complete so that when someone wants

1 to say at a later date, gee, we didn't think that's
2 what that meant.

3 MS. LOWMEYER: Sure.

4 CHAIRMAN UPCHURCH: It's your
5 understanding that what Scottie's understanding is that
6 MoDOT's going to look at this, and if MoDOT requires
7 another lane or whatever, that's going to have to
8 happen before the County is going to permit this
9 process. Is that your understanding also?

10 MS. LOWMEYER: Yes, I've been
11 involved with MoDOT on other projects where we've had
12 to put in commercial entrances, and they will not
13 approve it unless it meets their requirements. That
14 has been stated earlier this evening by other people as
15 well. So...

16 CHAIRMAN UPCHURCH: And would
17 they be looking at stop -- sight distances and stop
18 distances, et cetera?

19 MS. LOWMEYER: Yes.

20 CHAIRMAN UPCHURCH: Is that part
21 of their calculations usually?

22 MS. LOWMEYER: Usually, yes.
23 And a lot of them will depend on also the -- what they
24 feel is the additional traffic and the timing of
25 traffic on their end as well. They'll look at that

1 calculations on their end.

2 CHAIRMAN UPCHURCH: And
3 candidly, I hope I'm not misremembering this from
4 another file. This is actually around 30 acres, and
5 the development, if you will, thumbprint is about 10
6 acres of the 30?

7 MS. LOWMEYER: Correct.

8 CHAIRMAN UPCHURCH: And not to
9 pick at something that I guess doesn't need to be
10 picked at tonight. If there is going to be further
11 development of -- at a later time that would require --
12 I'm going to ask that of Scottie.

13 If there's going to be other development
14 on this property of the remaining 20 acres, would that
15 require other applications?

16 MS. EAGAN: I believe, if I
17 remember correctly, Mr. Muckler only rezoned this ten
18 acres. So the rest of the property is still Suburban
19 Development.

20 CHAIRMAN UPCHURCH: So it would
21 be the original zoning and wouldn't be -- wouldn't have
22 anything permitted that's not permitted to every piece
23 of property around there without a conditional use
24 permit?

25 MS. EAGAN: Yeah. He'd have to

1 rezone or get a conditional use permit, depending on
2 what he wanted to do.

3 CHAIRMAN UPCHURCH: And from
4 any -- I -- I'll ask this of Scottie or of you, Andrea.
5 I sort of view the 10 as sort of coming out of the
6 middle of the 30, but know Fred was worried about some
7 distances to adjacent property.

8 MS. LOWMEYER: Sure. And to be
9 truthful, that was placed purely on they wanted to be
10 at a high spot on the property. And that's at the top
11 of the hill, and they also were trying to be aware of
12 their neighbors. So they were trying to be as close to
13 the middle so they weren't close to their property
14 lines.

15 CHAIRMAN UPCHURCH: Would that
16 be sort of -- you were here to see the pictures that
17 were Power-Pointed up behind me?

18 MS. LOWMEYER: Yeah.

19 CHAIRMAN UPCHURCH: Would that
20 have been up near the trees on the top of the hill? Is
21 that kind of where the development would be?

22 MS. LOWMEYER: Correct, yes.

23 Uh-huh.

24 CHAIRMAN UPCHURCH: I would
25 presume that, but didn't know that.

1 MS. LOWMEYER: Yes, and I cannot
2 remember now the acreage, but there's about five acres
3 of wooded area up there at the top of the hill.

4 CHAIRMAN UPCHURCH: Candidly,
5 somewhere in the material in the record there was a
6 reference to, I think, Mt. Pleasant.

7 MS. LOWMEYER: Uh-huh.

8 CHAIRMAN UPCHURCH: Went there
9 once. Candidly, in my limited experience in that
10 singular experience, there really wasn't a lot of
11 people wandering off the reservation. I mean, they
12 stayed kind of close. Am I -- am I misthinking how
13 these actually happen, and can you enlighten me on what
14 you have?

15 MS. LOWMEYER: That would be my
16 understanding, and my reference to that was purely to
17 they have exterior weddings, events where they would
18 have their chairs set up on the hillside, very similar
19 to the topography of this site. So that was why that
20 was referenced, is they have ceremonies outside on the
21 hill, very similar to what this setup would be.

22 So it was just really in reference of
23 giving everyone a visual of what they were anticipating
24 doing there.

25 CHAIRMAN UPCHURCH: The

1 fireworks issue. Did you chime in on that, or am I
2 going to hear from somebody else to tell me they are or
3 aren't going to be doing that, because clearly sound is
4 an issue here?

5 MS. LOWMEYER: It is, and I
6 believe my client's perspective is that they're allowed
7 in the county by anyone at any time. Am I right about
8 that, or no?

9 CHAIRMAN UPCHURCH: Well, not if
10 we don't allow that in our Conditional Use Permit.

11 MS. LOWMEYER: Okay. I'm sure
12 he wouldn't like to limit himself if he didn't have to.

13 At this time, I don't believe he was
14 planning on saying you cannot do fireworks, but if that
15 is what you all feel he has to do...

16 CHAIRMAN UPCHURCH: I don't know
17 what we feel, because I just ask the questions and I'm
18 often surprised myself.

19 So I think that's the extent of my
20 questions off the top of my head. I'm sure there'll be
21 other questions of others.

22 MS. LOWMEYER: I do want to
23 address the drawings.

24 CHAIRMAN UPCHURCH: Yes, please.

25 MS. LOWMEYER: We have been

1 hired to do them, and he has not decided to move
2 forward with completing them until he is for sure going
3 to be approved. Just for his business, that made sense
4 to wait to go full design until he knew for sure he was
5 going to have a project.

6 MEMBER SCHRIEWER: That makes
7 sense. That was my assumption when I asked the
8 question.

9 MS. LOWMEYER: Right.

10 MEMBER SCHRIEWER: I just wanted
11 to make sure it was clear for the record.

12 My question would be primarily maybe to
13 you, and it may be to Scottie, but that so we have 30
14 acres. Ten has been subdivided. As a requirement of
15 this Condition Use Permit, they have to -- let me find
16 the way they phrased it -- they have to divide off the
17 proposed ten acres prior to issuing the Conditional Use
18 Permit. You mentioned that maybe that has not happened
19 yet.

20 How do we have 10 acres that is zoned NAU
21 inside Suburban Development of the 20 acres, but don't
22 we have them divided yet?

23 MS. EAGAN: We do our rezonings
24 based on legal descriptions. So the legal description
25 is actually attached to the Commission Order so in the

1 future when the parcel number changes, somebody can go
2 back and actually map it out to show it.

3 And they have started the process to
4 divide it off. They just stopped it, waiting to see
5 what happens.

6 MS. LOWMEYER: Again, waiting to
7 see if it would be approved or not. It's in the middle
8 of the process actually.

9 MEMBER SCHRIEWER: So right now
10 we have two legal descriptions. One is set up as an
11 NAU that's already been rezoned, and one in -- the
12 other parcel is still SD at 20 acres. We have two
13 legal descriptions, but we do not have two distinct
14 parcels yet --

15 MS. EAGAN: Correct.

16 MEMBER SCHRIEWER: -- for tax
17 IDs?

18 MS. EAGAN: Correct.

19 MS. LOWMEYER: And part of that
20 was also due to the entrance that we're talking about.
21 The Suburban Development parcel would have to given an
22 easement to that NUA parcel. And not knowing where
23 MoDOT and the County will want us to put that road, it
24 doesn't make sense to create that easement yet until we
25 know where that needs to go. So that's also part of

1 it.

2 CHAIRMAN UPCHURCH: Any
3 questions?

4 MEMBER THATCHER: I have a
5 question, Andrea.

6 MS. LOWMEYER: Sure.

7 MEMBER THATCHER: In this --
8 this is in regard to the orientation of the -- of the
9 building and the outside --

10 MS. LOWMEYER: Okay.

11 MEMBER THATCHER: -- outside
12 use, the outdoor activity.

13 MS. LOWMEYER: Uh-huh.

14 MEMBER THATCHER: Can you
15 describe for me the size of the outdoor activity and
16 the direction that it's going to face? And will it
17 face west, will it face north, will it face south; do
18 you know?

19 MS. LOWMEYER: It will actually
20 face --

21 CHAIRMAN UPCHURCH: Will it face
22 the road?

23 MS. LOWMEYER: No, from my
24 understanding, it will face southeast. So they -- the
25 view that they, as the owners thought was the best way

1 looking southeast off that hillside.

2 MEMBER THATCHER: Which is over
3 towards the road, correct? Southeast --

4 MS. LOWMEYER: I'm basing it on
5 that orientation.

6 MEMBER THATCHER: Okay. This
7 way?

8 MS. LOWMEYER: Sorry. Yeah.

9 MEMBER THATCHER: This way?

10 MS. LOWMEYER: Yes, correct.

11 MEMBER THATCHER: I guess the
12 concerns that I have were of light and noise, --

13 MS. LOWMEYER: Sure.

14 MEMBER THATCHER: -- and
15 mitigation of the two. Parking lot, I don't know
16 what's required in Franklin County for lighting, but
17 the lighting in the parking lot I think concerns me a
18 little bit --

19 MS. LOWMEYER: Uh-huh.

20 MEMBER THATCHER: -- from the
21 standpoint of what is visually impacted by the
22 neighbors. Is there a way to mitigate that lighting?
23 Is there a way to berm or landscape the parking lot?

24 MS. LOWMEYER: What we propose
25 to do is, I believe it's referred to a shielded or what

1 it really is, is the lighting fixtures have a cutoff
2 point so that the light themselves does not spill over
3 past a certain point. So the technology has gotten to
4 such that they will shield the light to whether the
5 light will only shine onto the parking lot and it's not
6 basically lighting a general area. It's very specific
7 as to where it's lighting. So it's angled itself so
8 it's lighting just the parking lot.

9 MEMBER THATCHER: So what I
10 would see from, for example, from the Kerr property
11 would be the reflexion off the ground, or would you see
12 the light hitting the ground?

13 MS. LOWMEYER: You would see the
14 light lighting the parking lot, but there wouldn't
15 necessarily be the general lighting of the whole entire
16 hillside.

17 MEMBER THATCHER: Right.

18 MS. LOWMEYER: It would be
19 lighting the parking lot.

20 MEMBER THATCHER: But there'd
21 still be a -- there'd be a --

22 MS. LOWMEYER: You would still
23 see the lights, yeah. Exactly. But I do believe at
24 some point those will be turned off, so they won't be
25 on all night long.

1 MS. EAGAN: I mean, just
2 unfortunately, the two things you are worried about are
3 the two things we don't regulate in Franklin County.

4 CHAIRMAN UPCHURCH: And if you
5 don't regulate it, then you -- this has come up in some
6 municipalities. So I'm acquainted with the process.

7 You would also not have the equipment even
8 regulation -- even if we put something in the
9 regulation with regard to lighting, --

10 MS. EAGAN: Right.

11 CHAIRMAN UPCHURCH: -- you would
12 not have the equipment with which to regulate that?

13 MS. EAGAN: Right. That's why
14 they did -- the closest thing they could do to
15 regulating it was putting a condition in there of
16 focused lighting. Which at that point, they explained
17 they wanted the lighting focused in on the property
18 towards the activity so it wasn't polluting the outside
19 and other properties.

20 MEMBER THATCHER: Which comes
21 under compatibility.

22 Thank you, Andrea.

23 MS. LOWMEYER: Yeah.

24 CHAIRMAN UPCHURCH: Do you have
25 anything more for us?

1 MS. LOWMEYER: Not that I can
2 remember any other questions that you guys had earlier.

3 CHAIRMAN UPCHURCH: Other
4 questions?

5 MEMBER FRANKENBERG: Are you
6 planning any landscape to block the lights? I mean,
7 could you put up some cedar trees along the parking
8 lot?

9 MS. LOWMEYER: I mean, they were
10 actually really wanting to preserve a lot of the wooded
11 areas that were there. They like the natural state
12 that it's in. So they would like to keep as much of
13 the trees that are there already and add landscaping to
14 it. That is part of the plan, yes.

15 CHAIRMAN UPCHURCH: Any other
16 questions?

17 (NONE)

18 Thank you, Andrea.

19 MS. LOWMEYER: Uh-huh.

20 CHAIRMAN UPCHURCH: Is there
21 someone else here to speak on behalf of the Meckler
22 position?

23 (NONE)

24 Seeing no hands, I'm going to open for
25 rebuttal -- rebuttal is not repeat -- for the

1 applicant.

2 MR. SULLIVAN: If I may,
3 Chairman.

4 Again, Kevin Sullivan for the applicants
5 and Drs. (sic) Holds and Kerr.

6 Thank you very much for your patience.
7 We've thrown a lot of information at you, and I'll try
8 to be as brief as possible, but I wanted to hit on some
9 scatter points that have been brought up.

10 First, let me point out that the
11 Conditional Use Permit was not a fait accompli, as Mr.
12 Lammert has said.

13 Under 91(C), both Planning and Zoning
14 Commission and this Board have the power and the
15 obligation to consider health and safety, damage to
16 property use and value and compatibility.

17 To kind of push that off saying well,
18 everything is going to be handled by the Building
19 Department, I don't think is a valid argument, because
20 unless I'm mistaken, there's not going to be public
21 hearings before the Building Department as they're
22 working through their processing.

23 I don't know if there is an appeals
24 process -- and I'm sure the County officials can
25 correct me if I'm wrong -- throughout the building

1 process.

2 So it's important for this Board to take
3 into consideration all of the evidence that has been
4 given with respect to these three points because it's
5 not other proper authorities. It's Planning and Zoning
6 and this Board are the proper authority to handle it.

7 Another point that's been brought up, it
8 was brought up by Mr. Neff and it's been brought up by
9 the Chair as well, just about what other -- you know,
10 are there other permitted uses that would be in this
11 zoning category. And respectfully, we're -- we're just
12 dealing with this proposed use.

13 Other uses of a hypothetical nature I
14 don't really think should be considered or can be
15 considered when you're talking about is it going to
16 harm the value of the property, because the reality is,
17 is that you're plopping this large commercial venue
18 right in the middle of all these residential and
19 largely a residential area. And that's going to
20 negatively affect it.

21 Mr. Neff says well, it's going to be --
22 it's no different than if a church was, you know, if
23 something was built next to a church. Well, with the
24 exception of maybe a -- you know, a Christmas Eve
25 midnight service, I'm not aware of many churches that

1 are letting out at 11:00 p.m. at night or that have
2 large ceremonies and music outside at night. Most of
3 those are going to be happening during the daytime
4 activity. So this is really unique, and it's certainly
5 not the equivalency of a church.

6 Also with respect to Mr. Neff, really I
7 didn't see any evidence of anything. I just heard a
8 speech about generalities. Didn't see a report as Mr.
9 Dinan and Mr. Presnell submitted that gives real data
10 as to how the three properties referenced in that
11 report are going to be negatively affected.

12 Finally, what we also have is Mr. Lammert
13 referencing, really speculating, about how it's been
14 John Holds who's been behind this. I don't think he
15 has any evidence of that, and to say that he's, you
16 know, strongarmed people into supporting his position,
17 I think doesn't carry any weight on --

18 CHAIRMAN UPCHURCH: I don't
19 think that was his position, and that's not what this
20 Board is going to decide.

21 MR. SULLIVAN: Okay. I know,
22 but I -- I just wanted to rebut that and also say it's
23 not just Mr. Holds and Mr. Kerr who -- who have spoken
24 out against this.

25 If you look at the record in our

1 submission, there were a dozen neighboring property
2 owners who came before Planning and Zoning and
3 expressed their concerns about public safety, about the
4 welfare, about how this is going to damage their land
5 -- their use of their land, the value of their land,
6 and also how this is incompatible with all the uses.

7 Additionally, we're finding out there
8 might be fireworks now used at the -- at the venue.
9 There's no noise regulations. There are no light
10 regulations. So those lights can go on all night.

11 Noise, yes, the music can stop at 10:30.
12 That doesn't keep people who are attending these
13 receptions and celebrating from remaining in the
14 parking lot and creating noise.

15 Dr. Holds testified that he just -- he
16 heard the Kerrs talking, just having a conversation
17 near their barn. Imagine amplifying that by 100 loud
18 people out in the parking lot.

19 So I think what we have submitted -- that
20 it was submitted both before the Planning and Zoning
21 Board where you have the testimony of all these people.
22 Now you have experts and land -- real estate appraisal,
23 noise pollution, and also traffic who have come forward
24 with clear and convincing evidence that this
25 Conditional Use Permit should not be issued for this

1 specific use and this specific piece of property in
2 this area of Franklin County.

3 If you have any other questions, I'd be --
4 I'd be happy to address them.

5 CHAIRMAN UPCHURCH: Permit me,
6 please.

7 MR. SULLIVAN: Yes, sir.

8 CHAIRMAN UPCHURCH: And I knew
9 only because of collateral -- collateral hearings we've
10 had that there are these other wedding venues have been
11 in the materials and in the testimony. I didn't hear
12 anybody refer to any of those existing venues that are
13 currently operating in Franklin County having any
14 effect on neighboring properties.

15 I hope I didn't miss that.

16 MR. SULLIVAN: Well, I think
17 first off, with it -- I think with respect to let's say
18 Silver Oaks, which I think is --

19 CHAIRMAN UPCHURCH: I don't know
20 them individually. I just -- I know there's one that's
21 been in front of us a couple of times on collateral. I
22 know they exist.

23 MR. SULLIVAN: So the Silver Oak
24 Chateau is directly off of Manchester Road. Is that --
25 is that correct?

1 MS. EAGAN: Highway 100.

2 MR. SULLIVAN: Highway 100.

3 Sorry. So I think that's an apples-and-oranges
4 comparison to Highway 00, which is not a -- which is a,
5 you know, purely residential agricultural road as
6 opposed to Highway 100.

7 Then you have Haue Valley as well, which
8 from what I understand, it's kind of in a subdivision
9 which is very close to 44, and I don't know if that was
10 some type of planned unit.

11 So I think those two are different as
12 well, but what we have submitted is Mr. Dinan's
13 analysis of how this specific planned development is
14 going to affect these three neighboring properties.
15 And you know, when you're talking about -- when you're
16 talking about land and land use, that is something that
17 can't always equate to something four miles away on
18 Highway 100.

19 CHAIRMAN UPCHURCH: Are there
20 any questions of this witness?

21 MEMBER SCHRIEWER: On this
22 specific topic, for our Future Use Map for the county,
23 Highway 100, what is that typically zoned in that
24 stretch from, let's say, you know, from Highway 00 five
25 miles each direction? Highway 00 five miles each

1 direction. Sorry, I just didn't have my --

2 MEMBER THATCHER: I can answer
3 that. It's mostly SD.

4 MS. EAGAN: No.

5 MEMBER THATCHER: No?

6 MS. EAGAN: You're incorrect.

7 MEMBER THATCHER: There's some
8 commercial tract here --

9 MS. EAGAN: Right at the corner
10 of -- you're talking future use?

11 MEMBER SCHRIEWER: Yes, future
12 use.

13 MS. EAGAN: Right at the corner
14 of Highway 100 and 00, about probably a mile to a mile
15 and a half east and west is commercial. The rest of it
16 is non-urban.

17 MEMBER SCHRIEWER: And since
18 Silver Oaks is -- if I have it wrong. Silver Oaks is
19 within that stretch, right?

20 MS. EAGAN: Yes.

21 MEMBER SCHRIEWER: It actually
22 falls in the one and a half miles, and it is --

23 MS. EAGAN: I believe Silver
24 Oaks is right on the -- it's either right on the edge
25 of the commercial or right in the non-urban.

1 MEMBER SCHRIEWER: Just wanted a
2 good frame of reference.

3 MS. EAGAN: And then Haue Valley
4 is also right in the non-urban.

5 MEMBER SCHRIEWER: That's all
6 the questions.

7 CHAIRMAN UPCHURCH: Other
8 questions of this witness?

9 (NONE)

10 Thank you.

11 MR. SULLIVAN: Thank you again
12 for your time.

13 CHAIRMAN UPCHURCH: Other
14 rebuttal?

15 MR. ELZINGA: Bill Elzinga
16 again. If I could make some comments to rebut some of
17 the -- some of the comments by others. In particular,
18 I will make a few comments with respect to Mr.
19 Lammert's statements regarding noise in particular.

20 He seemed to indicate that -- that the
21 analyses that I performed did not take into effect
22 (sic) distance. There seemed to be some confusion
23 about that. I can assure you it did take into effect
24 (sic) distance. And so the calculation made in -- in
25 the report that I submitted do attenuate noise from the

1 source to distances. And you can see those in the
2 tables. They're actual distances to receptors, and by
3 receptors, I mean residences. That's often the term
4 for receptors. You might have churches or schools or
5 residences as an example as sensitive noise receptors,
6 and I -- I've developed those -- those measurements
7 using Google Earth. So they're pretty -- pretty close
8 to each receptor, and those distances were actually
9 entered into the calculation and factored into those
10 attenuated noise values.

11 There also be -- seemed to be some
12 indication that -- that the noise values were based
13 inside emission rates for construction equipment. I
14 can -- I can clarify and make sure that we all
15 understand that that was a construction phase noise
16 analysis. There was also an operational phase noise
17 analysis.

18 And the calculation or estimation of
19 percent reduction in value was based upon operational
20 noise, and so recognizing construction is in fact
21 temporary, one would expect a long-term operational
22 phase to be more significant in terms of its effect on
23 actual land value, real estate value. And that -- that
24 was the basis of the calculation for reduction in
25 value.

1 I might also indicate that, while I am not
2 an appraiser, you seemed to indicate that I have no
3 basis with which to offer some reduction in land value
4 or real estate value. The -- the calculations were
5 derived based upon a peer-reviewed information,
6 literature from Penn State University, not my own
7 opinion about real estate value and relationships with
8 noise.

9 So again, I'll just call that to your
10 attention, that -- that there's a legitimate basis for
11 those estimates of reduction in actual real estate
12 value.

13 Along that line, I'll just make another
14 comment, and this goes to the overall, I guess,
15 perceived reduction in value and perhaps suitability of
16 -- of the site. I've heard -- I've learned -- myself,
17 standing here, I've learned about different approaches
18 and -- and assessments as it relates to real estate
19 value.

20 I've heard from -- from opinions on both
21 sides. So I'm kind of learning that part of it, but
22 what I heard and this aligns with -- with the analysis
23 that I made -- they're all negative. They're all
24 adverse. It's not a zero effect. It's 5, 15, 20, 25
25 or whatever. In any case, those are adverse effects

1 that are happening because of this. And so that was an
2 interesting point.

3 Now, what I would say in addition to -- to
4 my analysis, I think you'll see seven receptors, A, B,
5 C, D, E, F, G. Those are all residential receptors,
6 and those are really a sampling. They're intended to
7 be a sample of residential receptors.

8 For example, not all receptors
9 potentially, you know, subject to noise-related effects
10 in Forest Glen, are identified. I just picked one for
11 the sake of -- of doing a calculation.

12 And so you might imagine if there's some
13 damage to real estate value, you could apply that to
14 just about any receptor within that general range, and
15 come up with, again, appropriate and similar reductions
16 in real estate values beyond those that are indicated.

17 So I'll just make that point to clarify
18 the magnitude of -- of those effects beyond the
19 receptors that I -- I analyzed for.

20 Again, I think there was again some
21 comment about the inappropriateness of straight-line
22 attenuation. I can assure you that straight-line noise
23 attenuation is a pretty well-accepted approach for
24 noise analysis. It's a very simplistic approach that's
25 based upon vetted and approved and accepted

1 methodologies that are based on physics, not a matter
2 of some opinion or bias. So it's just straight-up
3 engineering counts that will get you that kind of
4 attenuated factor.

5 Another quick comment. Again, I noted in
6 my -- my listening to the presentations tonight that
7 there is setbacks of 50 to a hundred feet from the --
8 from the adjacent property lines.

9 My analyses were essentially focused on
10 the center point of the facility, up on top of the
11 hill, and that was the point of my measurement. One
12 can imagine that again if the -- if the activity levels
13 are -- are moved from that center point, closer to the
14 property line where there is -- again, there's a
15 setback, and it seems like anything can happen up to
16 that setback. Well, those noise emission rates would
17 go markedly higher, markedly higher.

18 I might also just expand just a bit. Mr.
19 Lammert seems to suggest that there's some
20 inappropriateness for me to comment on other matters
21 related to noise. He made some comment with respect to
22 my notes or prior comments as it relates to water
23 issues, traffic and so on and so forth.

24 And I guess I would -- I would again just
25 share with you my -- my broader experience and over 30

1 years of impact analysis that extend beyond the noise
2 issue. They extend to -- to water issues, surface
3 water, groundwater issues, wetlands, endangered
4 species, culture resources and a host of other -- other
5 factors.

6 So when I -- when I approach a project
7 from an impact assessment standpoint, and I think this
8 goes to the -- the conversation that we had a little
9 while ago with respect to whether or not there's
10 sufficient design or should be sufficient design at
11 this stage of the game.

12 And I understand the process, but I think
13 there's enough information out here and enough
14 questions that have been called to everyone's attention
15 about whether or not this site is suitable for this
16 development. So -- so there's -- there's enough
17 questions here that bring forward, to me at least,
18 perhaps you that there's reasonable doubt about the
19 site suitability.

20 And it's for that reason that -- that the
21 question about design detail is an appropriate one.
22 And so in the absence of those kinds of details, again,
23 from an environmental impact analysis standpoint and
24 the state of the -- state of the art in doing these
25 things, you really need to -- to -- to do those

1 analyses based upon reasonable assumptions of -- of
2 activity, of design, of suitability that are lacking in
3 this case in order to arrive at a conclusion.

4 And so again, I'll just share that with
5 you. For example, we've got a commitment for ten acres
6 for this particular zoning piece, but I don't -- I have
7 no clue as to how you put all that development on ten
8 acres, you know, the road, the facility itself, a huge
9 parking, a well, septic systems, et cetera, et cetera.
10 How do you fit it on that site? Not the 30-acre site,
11 the 10-acre site.

12 So how's that work in order to really
13 arrive at suitability and whether or not this -- this
14 is impactful.

15 So I'll leave it there. I certainly
16 appreciate the opportunity. Any questions for me,
17 certainly happy to address.

18 MEMBER SCHRIEWER: Yeah,
19 actually a few.

20 First off, my understanding of these,
21 Table 1 and Table 2 of page 7 of the document you've
22 provided, you provided charts on the construction
23 phase. You were into the 50 decibel levels, you know,
24 at the receptors.

25 You did use the Cross Valley calculation

1 in the --

2 MR. ELZINGA: Not for -- not the
3 construction phase.

4 MEMBER SCHRIEWER: -- the
5 operation phase.

6 MR. ELZINGA: The operation
7 phase, yes.

8 MEMBER SCHRIEWER: Just making
9 sure I understood the term.

10 MR. ELZINGA: Not for
11 construction phase, yeah.

12 MEMBER SCHRIEWER: Okay. And
13 then based off your professional experience, and let me
14 know, and if you do not potentially know this figure,
15 what would you estimate the interstate decibel levels
16 would be.

17 So Neff's comparison was across to houses
18 that are situated backing up into interstates, and he
19 actually denoted that they would have a decrease in
20 value if they were backing up to an interstate.

21 I'm curious as to what a decibel level
22 would be for an interstate, and then we can have that
23 rough estimation.

24 MR. ELZINGA: Sure, sure.
25 Interstates, and again, it's really going to depend on

1 -- on traffic intensity and volume. Right, and it's
2 going to depend on slope, whether or not you're going
3 uphill or downhill, and all that stuff, speeds.

4 You might expect 60 to 70 decibels. But
5 the issue here is -- is not just that decibel, but it's
6 the change in noise levels. Change in sound level,
7 that is the "noise", and that's the basis of arriving
8 at, you know, impacts to -- to property values. It's
9 that delta from baseline. Yeah.

10 MEMBER FRANKENBERG: I have a
11 question.

12 MR. ELZINGA: Yeah.

13 MEMBER SCHRIEWER: I had one
14 more. I apologize.

15 MEMBER FRANKENBERG: Go ahead.

16 MEMBER SCHRIEWER: Just as a
17 matter of their questioning of the validity of the
18 document here, would you submit this document for peer
19 review, and are you confident this is unbiased and that
20 they would approve of it?

21 MR. ELZINGA: Sure, you bet.

22 MEMBER SCHRIEWER: You have no
23 problem?

24 MR. ELZINGA: It's straight-up
25 comps.

1 MEMBER SCHRIEWER: Okay.

2 MR. ELZINGA: You bet.

3 MEMBER FRANKENBERG: On your
4 report here on page 4, it says the average decibels
5 right now there is 30, --

6 MR. ELZINGA: Yeah.

7 MEMBER FRANKENBERG: -- 30
8 decibels taken at Highway O (sic). And then on your
9 chart on the 7th, of course, the construction phase
10 that you're raising quite a bit. But it looks to me
11 like they're only going up to 1.7 to 6 points, to 31.7
12 to 36, only going up 1.7 --

13 MR. ELZINGA: Uh-huh.

14 MEMBER FRANKENBERG: -- up to 6,
15 up to 36. So 31.7 to 36 from 30.

16 MR. ELZINGA: Right.

17 MEMBER FRANKENBERG: What's the
18 decibels in here right now?

19 MR. ELZINGA: Decibels in here,
20 probably 40-ish.

21 MEMBER FRANKENBERG: Okay. So
22 I'm just saying --

23 MR. ELZINGA: I'm guessing.

24 MEMBER FRANKENBERG: -- is that
25 real noticeable? I can see in the construction stage,

1 that's -- of course, it's going to be louder.

2 But how much do you really notice that, in
3 your opinion?

4 MR. ELZINGA: It's -- it's
5 noticeable. I mean, I think you heard Dr. Holds talk
6 about, you know, his ability to understand a
7 conversation from some of the neighbors who were a
8 thousand feet away. I mean, some of those things are
9 -- some of that noise is attenuated is very noticeable.

10 Now, yeah, the numbers don't -- don't seem
11 large, but again, it is a difference from baseline, a
12 difference from that expectation.

13 So -- so noise is -- is a change in sound
14 level that's unwanted. Okay?

15 So that's the basis of the -- of the
16 calculation and the conclusion on that.

17 MEMBER FRANKENBERG: There is
18 some change?

19 MR. ELZINGA: Yes.

20 MEMBER FRANKENBERG: And some
21 voices do carry further than others; is that not right,
22 or some sounds?

23 MR. ELZINGA: Sure, sure.

24 MEMBER FRANKENBERG: Okay.

25 CHAIRMAN UPCHURCH: Thank you.

1 MR. ELZINGA: Okay, thank you.

2 CHAIRMAN UPCHURCH: Is there
3 other rebuttal to be offered?

4 MR. LOOMIS: Brad Loomis,
5 Traffic Engineer.

6 Wanted to discuss the whole of Mr.
7 Lammert's comments. He had a well-thought-out and
8 well-spoken argument regarding the volumes and time of
9 day. I mean, he's correct. I picked and assumed.
10 Start time and end time, I mean, we could cherry pick
11 times and say it's a noon start, but then when's it
12 going to let out. Maybe it's five hours and it's out
13 -- letting out at 5:00 p.m. in the worst traffic time
14 during the day.

15 So you know, it's a representative
16 analysis. The bottom line is there's 300 trips coming
17 out on the road, and it's changing the character of the
18 volume of the road. Time of day, understood that there
19 may be a hundred different days and times and venues.

20 I think the big point that we're missing
21 here is that the sight distance stuff is irrelevant of
22 the traffic volumes or time of day. Sight distance is
23 a geometric feature of the driveway location and the
24 surrounding roadway.

25 You know, there's some wiggle room, and

1 I'll refer to testimony and discussion on noise or real
2 estate values. There's no wiggle room on sight
3 distance. Right? Those values are published values
4 and generally accepted. So there's no margins or
5 factors that you can reduce those by. That's cast in
6 stone, and you know, Cochran Engineering is a
7 well-respected firm. I'm confident they're going to
8 work with MoDOT and, you know, do what they can.

9 That 500 feet roughly of available
10 frontage isn't really all available for the driveway.
11 Right? The whole northern part of it is in the middle
12 of that horizontal curve. So while it's available on
13 the inside, as far as nothing obstructs it, it's not an
14 appropriate location for a driveway.

15 So the comment was made, you know, we're
16 not reviewing design and drawings, and then, you know,
17 further testified that there's nothing further for us
18 to read. So we're going off the location that we have,
19 and you know, based on that, I don't see an engineering
20 solution that works anywhere on that site and meets the
21 sight distance criteria.

22 So I think it's, you know, Section 91(B)
23 that it gives this Board of Zoning Adjustment the right
24 to, with clear and convincing testimony and evidence,
25 you know, overturn or modify the CUP for public safety.

1 There's enough questions here about public
2 safety and, you know, punting the ball to MoDOT to fix
3 it. You know, this is the local agency here, this
4 Board, to solve these types of issues. And while MoDOT
5 will be a partner, it's a state highway, you know. In
6 my opinion, there's enough here to call into question
7 the viability of granting the Conditional Use Permit or
8 adding restrictions at your discretion.

9 That's all I had. I'll be happy to answer
10 any questions.

11 MEMBER FRANKENBERG: You said
12 earlier that the traffic count does not warrant a turn
13 lane, correct?

14 MR. LOOMIS: Correct, on traffic
15 volumes alone, yes. As I stated before, you know,
16 that's one aspect. There are other reasons to add
17 traffic volume or auxillary lanes, safety, crash,
18 conditions, you know, unsafe sight distance.

19 MEMBER FRANKENBERG: Merging.

20 MR. LOOMIS: Yes, I mean, so
21 that -- but yeah, so I tried to present an unbiased
22 report, you know, that some of the answers were no,
23 things aren't warranted. Right. Just going through
24 the list of things you check on traffic impact study.
25 So...

1 CHAIRMAN UPCHURCH: Thank you.

2 MR. LOOMIS: Thanks.

3 MR. DINAN: Ed Dinan. And I
4 just wanted to make a couple of quick points.

5 First, we did and I did talk to two
6 engineers -- one was a civil engineer, and one was an
7 environmental engineer -- to gain their insight on the
8 impact of this type of development.

9 The other comment that I would just make
10 is, as the price point goes up on real estate, the
11 buyer pool typically shrinks, and in the subject area
12 that's certainly the case. And you have what amounts
13 to elongated marketing periods today already.

14 The impact of an external problem or
15 impact of a non-harmonious land use is far different if
16 the use is existing today. In other words, if you have
17 two properties and one backs the highway and the other
18 one is buried in a subdivision, that's one situation.
19 But it's a different situation where you have a
20 residential property that has no impact and then it is
21 impacted by a non-harmonious land use such as a
22 highway.

23 And I have a situation like that right now
24 in St. Charles County where the property was located on
25 a lake heavily wooded, and now Highway N which becomes

1 Page, goes right through it.

2 So the impact to that property is far
3 different because it's a proposed or new impact versus
4 one that's existing in the marketplace.

5 And I just think that's important to point
6 out.

7 CHAIRMAN UPCHURCH: Thank you.

8 Other rebuttal?

9 I think I have to take it and ping-pong it
10 back to Meckler rebuttal. Rebuttal is not repeat.
11 It's 20 till 11:00.

12 (NONE)

13 Seeing none, we're going to close the
14 receipt of testimony at this point in time.

15 We normally discuss these matters among
16 the Board. We do it publicly, and candidly, I'll start
17 that process that we've -- just so our record is clear,
18 we've received every exhibit and every document that
19 everybody has offered. I retained possession of
20 Chairman's Exhibit 1, which I'll tax Scottie to get
21 from me so I don't wander off with it.

22 With regard to this circumstance, this
23 case is a little bit different because, to some extent,
24 there is pending litigation that may -- we'll let the
25 lawyers figure that out -- make whatever we do moot.

1 With regard to our charge, it's been this
2 Board's belief and conduct in the past, and candidly my
3 reading and the Board's reading before me and during my
4 tenure on the Board, that we leave the burden upon
5 those presenting that position with regard to that
6 position. And tonight from frankly both parties, I
7 think we've heard a lot of we didn't know but we're
8 worried about really on both hands, and I don't know
9 that that necessarily moves this Board.

10 We have heard concerns from many people,
11 and some of those are somewhat valid concerns, such as
12 various standards. I note from any review of the Order
13 that was issued before us that we could modify, reject,
14 or receive as it was entered as a number of conditions
15 which we could either approve or modify.

16 Candidly with regard to the project with
17 regard to the -- certainly, the property values, there
18 are other venues in Franklin County, and I don't
19 believe I've still received evidence that wedding
20 venues seriously impact those issues.

21 I think I've heard that the applicant
22 doesn't have any -- pardon me, but -- hell-bent desire
23 to do fireworks. Inasmuch as noise and the light --
24 and the light seem to be a big concern, maybe that's
25 something we should think about.

1 Other than that, all I've done is start
2 the discussion.

3 So I turn it over to other Board members
4 for their impressions and thoughts.

5 Fred?

6 MEMBER THATCHER: Well, it's
7 interesting that we have a commercial use that really
8 kicks into gear when people get home in the evening to
9 relax and be quite, and that's when events really take
10 place, six o'clock and on. And so it's a tough
11 balancing act that one has to do.

12 I don't agree with the setback. I think
13 they should be greater setbacks, and I think that the
14 -- every effort should be made to mitigate the lighting
15 pollution, if you will, and the noise pollution. I
16 know that's not Franklin County's point, but I go back
17 to compatibility, and compatibility to me is -- is not
18 having lights in my backyard. It's still the country.
19 Yes, we've got 5-acre lots, we've got 20-acre lots, and
20 we've got 30-acre lots. It is changing, but Franklin
21 County has approved wedding venues. And I think it's
22 my charge to at least help them mitigate as much as
23 possible for the neighbors.

24 So that's my two cents.

25 CHAIRMAN UPCHURCH: Other --

1 MEMBER FRANKENBERG: I think all
2 those questions can be answered with a decent site
3 plan. I mean, you can block light, you can block sound
4 with trees, shrubbery. It's done all the time.

5 So I think with a -- and I don't know how
6 we go about it, but we require that that's addressed.
7 You know, you put up some cedar trees along the parking
8 lot; you maintain them. You make sure you have
9 directional lighting and sound. You put up some trees.

10 You can slow it down with the sound.
11 You're not going to stop it, but it will slow it down.
12 So...

13 CHAIRMAN UPCHURCH: On the
14 setback issue, I'd be hard pressed to support a setback
15 in excess of what the County is now actually declared
16 for these venues and other properties and sort of
17 countywide, which is setbacks that are actually set out
18 in this Order.

19 And that is a reaction to Fred's concern
20 with the setbacks.

21 MEMBER THATCHER: I don't mind.

22 MEMBER SCHRIEWER: I guess my
23 main concern of the comments or the debate that we've
24 heard, the biggest thing that jumps out to me is the
25 statement that was actually from one of the appraisers

1 that's for the side that is in support of the CUP.

2 And it is actually appraised zero to
3 minimal diminution of value. So you have zero to
4 minimal, and that was in the worst case or best case
5 scenario. And he admitted that there could be a 5 to
6 7 percent or 10 to 15 percent reduction in value based
7 on an interstate.

8 Then we basically come to find out that
9 we're running right around the interstate levels when
10 you factor in the cross -- or the sound analysis and
11 decibel levels as presented by the counterargument.

12 So to me the biggest item that's jumping
13 out is that we're going to have trouble overcoming one
14 of the four requirements, which is will not
15 substantially injure the value of adjoining or abutting
16 property. We basically heard both sides say that there
17 will be diminution of property value.

18 Then when you start talking into numbers,
19 2 or 3 percent doesn't sound much. When you start
20 talking about a million dollar property, you're talking
21 about 30K, if my math is right.

22 Now, that certainly is a notable number,
23 and I don't care what level your income is at. Thirty
24 thousand is a good chunk of money. That's my stumbling
25 point at this point in the conversation.

1 MEMBER TOBEN: I agree with
2 Mark's comment about changes to the site plan, changes
3 to the site plans and some things could be done to
4 address sound and light. Those can all be addressed
5 with the site plan. That kind of falls on the
6 construction site.

7 MEMBER FRANKENBERG: We'll just
8 call on the engineer to -- you know, we do it all the
9 time. We do address site and lighting in our plans,
10 and I know Andrea does too.

11 It can be addressed. It might not be
12 cheap, but it can be addressed.

13 COMMISSIONER SCHRIEWER: I'm not
14 naive of the fact that some of the major concerns and
15 ultimately some of the concerns that are bringing the
16 value down are concerns that could be dealt with here,
17 the sound as well as the traffic concerns. So I get
18 that the premise of the value reduction is based upon
19 things that can be mitigated through some of the steps
20 that are in the conditional use. I just feel the need
21 to discuss the idea of whether we think property values
22 will go down because of this, and if they are, I think
23 we have trouble proving it.

24 CHAIRMAN UPCHURCH: And I have
25 to respond to that with what I've thrown out and still

1 haven't heard any compelling evidence. I haven't heard
2 any specific evidence that -- that anyone's gone to any
3 of these other wedding venues where I know we have
4 fireworks, and that anybody's property values have gone
5 down a dollar.

6 So I -- and I realize every location is
7 different. It is. But a wedding venue isn't a wedding
8 venue. I think it's kind of a wedding venue, which is
9 a wedding venue. And I haven't heard any evidence that
10 we've done that, and it's not like, gee, where would we
11 go find a wedding venue. We have some around here and
12 we get, well, it's a different wedding venue.

13 It's a different wedding venue, but you
14 know, tell me if somebody lost a dollar worth of value,
15 and I didn't hear that.

16 In addition to that, with regard to the
17 zoning, it is not, I don't think, our charge that you
18 can't do any development on your property that's zoned
19 because it might have some impact on your neighbor.

20 That's one of the reasons we have zoning,
21 is so they can't put up anything next door to you, but
22 also what has not been addressed in any of the
23 documentation that I have reviewed, is that with the
24 zoning that is in place that has permitted uses, which
25 I am sure, if candidly asked and answered, would have a

1 grave impact.

2 If they put a slaughterhouse on the
3 hillside, I will guarantee you that it would have
4 grave impact on the values, a permitted use.

5 So to suggest that this use somehow
6 gravely impacts the value of those homes that are
7 protected with zoning, I don't think it's damaged that
8 property one whit based upon what it's exposed to right
9 now with a use that is absolutely permitted or a
10 fraternal organization.

11 With regard to traffic, that's a concern,
12 but it appears that that's been addressed at some level
13 with MoDOT.

14 So those are my musings sort of in
15 response to -- for your concerns.

16 In an effort to just move this forward to
17 some extent, made after I'll second. Trying to meet
18 Fred halfway. If we would add to -- and some of this I
19 think would be duplicative, but to add to the
20 conditions that were already included in the Order a
21 requirement that a site plan be submitted to the
22 satisfaction of the zoning department.

23 Scottie, I guess that would be you. To
24 mitigate the lighting pollution and the light to be
25 shrouded, because I think that's what we discussed, and

1 that is something that wouldn't require testing. But
2 that it be more that shrouded lighting, and that there
3 be -- help me out here, Mark -- green space. What
4 would you call it?

5 MEMBER FRANKENBERG: We wanted
6 landscape or berms to mitigate the lighting and get rid
7 of some of the sound. I said we can't do that with --

8 CHAIRMAN UPCHURCH: By landscape
9 or berm.

10 MEMBER FRANKENBERG: I said we
11 can't do that with trees.

12 MR. ELZINGA: Trees do not
13 mitigate sound.

14 MEMBER FRANKENBERG: But the
15 cedar trees will.

16 CHAIRMAN UPCHURCH: It's my
17 motion, and evidence is closed. By a tree or a berm to
18 the satisfaction of the zoning department, and that the
19 parking light be buffered by trees or berm to the
20 satisfaction of the zoning department.

21 Just throwing that out as a start. So I
22 would make that motion, and I consciously have not
23 changed the setback for the reasons that I stated
24 earlier.

25 So I throw that out there as either a

1 work-in-progress or invite a second.

2 MEMBER THATCHER: I'd like to
3 modify it.

4 I think you should say tree and berm, not
5 or, tree and berm.

6 CHAIRMAN UPCHURCH: In the
7 spirit of moving this forward, it's -- in some fashion,
8 I would add that to my motion.

9 Is there discussion on that motion?

10 MEMBER SCHRIEWER: Have we had a
11 second?

12 CHAIRMAN UPCHURCH: We have not.
13 We have not.

14 MEMBER SCHRIEWER: Just
15 checking.

16 CHAIRMAN UPCHURCH: I've amended
17 to say berm and trees as a buffer for the parking area
18 and for lighting to the satisfaction of the Planning
19 and Zoning Department. We're considering this a
20 work-in-progress either open for discussion or a
21 second.

22 MEMBER FRANKENBERG: I'll second
23 that.

24 CHAIRMAN UPCHURCH: There is a
25 second.

1 MEMBER SCHRIEWER: Are we adding
2 that as a condition, or are we adding that on to a
3 previous existing condition?

4 CHAIRMAN UPCHURCH: We're adding
5 that onto all of the previous conditions that were set
6 out in the original Order which has been provided to us
7 dated April 18th of 2017.

8 If there is no further discussion, I'm
9 going to ask that that --

10 MS. EAGAN: Can I ask you for
11 clarification. In terms of when you say shrouded
12 lighting, what exactly do you mean?

13 CHAIRMAN UPCHURCH: I'm
14 contemplating the -- frankly what I've seen all over.

15 MS. EAGAN: Like shielded and
16 downcast lighting?

17 CHAIRMAN UPCHURCH: Yes.

18 MS. EAGAN: Okay.

19 CHAIRMAN UPCHURCH: Unless I'm
20 wildly mistaken, Oakland's facility in the city of
21 Washington, which is tucked into a subdivision, has
22 shielded -- shielded lighting where it's shielded on,
23 if not three sides, four sides.

24 MS. EAGAN: Okay. I know what
25 you're talking about now.

1 CHAIRMAN UPCHURCH: So that's
2 physically what I'm trying to describe. So by way of
3 explanation when I say shielded lighting, that's what
4 I'm talking about.

5 MS. EAGAN: So can we leave it
6 at downcast and shielded lighting instead of shrouded?

7 CHAIRMAN UPCHURCH: What are
8 we -- what do you think you would call that?

9 MS. EAGAN: Downcast.

10 CHAIRMAN UPCHURCH: If you think
11 that's the proper word, then that's what we'll use.

12 And with that explanation out there, does
13 my second still exist?

14 MEMBER FRANKENBERG: Yes.

15 CHAIRMAN UPCHURCH: And if there
16 is no further questions on this verbiage, then I will
17 ask that we have that called for the vote.

18 MS. EAGAN: Individually?

19 CHAIRMAN UPCHURCH: Yeah.

20 MS. EAGAN: Fred Thatcher?

21 MEMBER THATCHER: Aye.

22 MS. EAGAN: Mark Frankenberg?

23 MEMBER FRANKENBERG: Aye.

24 MS. EAGAN: Derek Schriewer?

25 MEMBER SCHRIEWER: Nay.

1 MS. EAGAN: Tim Tobben?

2 MEMBER TOB BEN: Aye.

3 MS. EAGAN: And, Gordon

4 Upchurch?

5 CHAIRMAN UPCHURCH: Yes.

6 MS. EAGAN: Okay. With four in
7 favor and one opposed, that will potentially be added
8 to the Conditional Use permit.

9 CHAIRMAN UPCHURCH: It will be
10 added to the Conditional Use permit.

11 MS. EAGAN: Just depending on
12 what you do for your other vote. Was this your vote
13 vote, as like...

14 CHAIRMAN UPCHURCH: It's my vote
15 that we make that amendment to the motion.

16 MEMBER THATCHER: That's not the
17 sole amendment.

18 CHAIRMAN UPCHURCH: Okay.

19 MEMBER THATCHER: Fireworks.

20 How do we address fireworks?

21 MS. EAGAN: Okay. That's what I
22 said. You had me worried there.

23 MEMBER SCHRIEWER: We've amended
24 CUP, and now we're looking to vote on the topic of
25 that; is that correct?

1 CHAIRMAN UPCHURCH: And that's
2 valid because we talked about that.

3 MEMBER SCHRIEWER: Okay.

4 MS. EAGAN: You guys are
5 confusing me.

6 MEMBER SCHRIEWER: We haven't
7 voted on the topic at hand, which is the appeal. What
8 we've done is all we've looked at is the CUP and edited
9 it so we can vote on the appeal.

10 Does that seem right?

11 CHAIRMAN UPCHURCH: It does and
12 doesn't.

13 MEMBER SCHRIEWER: Okay.

14 CHAIRMAN UPCHURCH: I did want
15 to address the fireworks issue. And I would add to my
16 motion that there not be any fireworks on this facility
17 in light of the proximity to other families and
18 developments and homes, et cetera, as an additional
19 condition.

20 Is there discussion on that?

21 MEMBER SCHRIEWER: I'll second
22 that.

23 CHAIRMAN UPCHURCH: It's been
24 seconded. Can we have a vote on that added condition?

25 MEMBER THATCHER: Aye. I'm

1 jumping the gun here. It's allowed.

2 MS. EAGAN: Mark Frankenberg?

3 MEMBER FRANKENBERG: Aye.

4 MS. EAGAN: Derek Schriewer?

5 MEMBER SCHRIEWER: Aye.

6 MS. EAGAN: Tim Tobben?

7 MEMBER TOBBEN: Aye.

8 MS. EAGAN: Gordon Upchurch?

9 CHAIRMAN UPCHURCH: Aye.

10 MS. EAGAN: And, Fred Thatcher?

11 MEMBER THATCHER: Aye.

12 MS. EAGAN: With 5 in favor and

13 0 opposed on that condition...

14 CHAIRMAN UPCHURCH: Would be

15 added?

16 MS. EAGAN: You guys haven't

17 actually made a motion to modify the Conditional Use

18 Permit. That's the issue I'm having.

19 CHAIRMAN UPCHURCH: And I think

20 we're about to get to that.

21 MS. EAGAN: Okay. So you're

22 just voting?

23 CHAIRMAN UPCHURCH: We've added

24 conditions to the -- to the underlying Order.

25 MEMBER SCHRIEWER: And we've

1 agreed to put changes.

2 CHAIRMAN UPCHURCH: And my
3 question is: Are there any other changes which we want
4 to discuss or add to the existing conditions in the
5 original Order?

6 MEMBER SCHRIEWER: One question.
7 In the Building Department, are you guys
8 double checking this again? DNR will get involved with
9 the wastewater and runoff waters?

10 MS. EAGAN: Building Department
11 does everything with wells and septics. So I don't
12 know how their process works.

13 CHAIRMAN UPCHURCH: Is there
14 other discussion of other additional conditions to be
15 discussed or added to the drafted order, the order that
16 was originally submitted?

17 MEMBER THATCHER: I have a real
18 problem with the setbacks, but those are County
19 regulations. I can't change that; I can't make it part
20 of the CUP. I don't think the setbacks are great
21 enough. Item Number 8, for example, the parking space.
22 Parking area shall be setback at least 100 from any
23 property line or 200 feet from any neighboring
24 residence.

25 To me that is just really, really close.

1 It meets the guideline.

2 CHAIRMAN UPCHURCH: We'll ask
3 Scottie. Is that in accord with the existing
4 guidelines currently?

5 MS. EAGAN: Ones that were
6 approved after his application, yes.

7 CHAIRMAN UPCHURCH: Okay. And
8 I'd be hard pressed to say that --

9 MEMBER THATCHER: I can't.

10 CHAIRMAN UPCHURCH: -- that he
11 would have to reach a higher standard than what the
12 County has done out for other people who would want to
13 do this in the future. I'm just telling you I had a
14 struggle with that. I mean, I understand the argument.
15 I don't necessarily quarrel with it. I just -- I think
16 that's pretty harsh.

17 MEMBER THATCHER: Yes, I would
18 agree with that, but it's --

19 CHAIRMAN UPCHURCH: I
20 understand.

21 MEMBER THATCHER: I need to take
22 it to a higher level.

23 CHAIRMAN UPCHURCH: Okay.

24 I'm now going to make a motion that may or
25 may not draw a second that we enter our final order in

1 this matter of berming with the modifications that we
2 have voted on immediately prior to this motion, as
3 being our final decision with regard to the order
4 including those additions to the conditions that were
5 originally stated in the original Order of April 18th
6 of 2017.

7 That would be my motion. Is there a
8 discussion or a second on that motion?

9 MEMBER FRANKENBERG: I'll second
10 that.

11 CHAIRMAN UPCHURCH: There is a
12 second. Is there discussion on the second or on the
13 motion?

14 (NONE)

15 Then I'm going to call for a vote.

16 MS. EAGAN: Derek Schriewer?

17 MEMBER SCHRIEWER: No.

18 MS. EAGAN: Tim Tobben?

19 MEMBER TOBBEN: Yes.

20 MS. EAGAN: Gordon Upchurch?

21 CHAIRMAN UPCHURCH: Yes.

22 MS. EAGAN: Fred Thatcher?

23 MEMBER THATCHER: No.

24 MS. EAGAN: And, Mark

25 Frankenberg?

1 MEMBER FRANKENBERG: Yes.

2 MS. EAGAN: With 3 in favor and
3 2 opposed, I --

4 CHAIRMAN UPCHURCH: We're at an
5 impasse, and it does not pass. So we'll discuss it
6 further.

7 MS. EAGAN: You guys are doing
8 it so weird tonight, but that's fine. If you want to
9 keep going, but if it goes to court, I really don't
10 know how this is going to play out.

11 CHAIRMAN UPCHURCH: We never do.

12 MS. EAGAN: So...

13 CHAIRMAN UPCHURCH: And, Fred,
14 your struggle with that is what?

15 MEMBER THATCHER: I'm -- well,
16 once again, I guess I'm going back to the setbacks and
17 as the setbacks are related to the Regulations.
18 Correct me if I'm wrong or maybe I'm going down the
19 wrong path here, but it's the Regulations that I'm
20 having trouble with.

21 CHAIRMAN UPCHURCH: And the
22 Regulations that the County has created after this
23 application was made provide those setbacks for wedding
24 venues?

25 MS. EAGAN: Yes.

1 CHAIRMAN UPCHURCH: So my
2 reaction to your struggle is, on that issue, I can't
3 see putting a heavier burden on this applicant than the
4 County has told anyone tomorrow where wedding venues
5 are permitted is an adequate setback.

6 Again, the Commissioners have made that
7 decision.

8 MEMBER SCHRIEWER: My main
9 impasse is the idea that we had professional appraisers
10 who are the one of two sources of valuations of
11 property stating that there probably is a negative
12 impact. Nobody said that there is guaranteed zero, and
13 no one said guaranteed positive.

14 You know, I don't recall any of the four
15 appraisers we heard from, and those are the only people
16 we can trust with valuations in my profession. So I
17 have a real trouble overcoming that rule.

18 CHAIRMAN UPCHURCH: But the
19 issue is that -- that issue was the burden of those who
20 brought that argument before us.

21 And their failure to establish that under
22 the regs is their failure, not our struggle. They have
23 the burden to support their positions.

24 MEMBER SCHRIEWER: And I feel
25 they've done so. That's my impasse, and I -- I get

1 where you're coming from that they didn't explain that
2 other wedding venues haven't caused the diminution of
3 value, but we also are being told that noise volumes
4 and traffic volumes do affect it, and all we've seen
5 from the other side, we haven't seen anything that said
6 it doesn't.

7 CHAIRMAN UPCHURCH: Okay.

8 MR. SULLIVAN: Respectfully to
9 the Board, if you check the prior agreement, we did do
10 analysis of the other venues. And there is evidence.

11 CHAIRMAN UPCHURCH: Evidence is
12 closed.

13 MR. SULLIVAN: I got you. I get
14 it.

15 MEMBER SCHRIEWER: And I've read
16 that tonight. It didn't jump out to me as strong as
17 the other evidence tonight.

18 CHAIRMAN UPCHURCH: Okay.

19 MS. EAGAN: And, Derek, I think
20 what we need that you can do for yourself as well as
21 for everybody else, is will it cause serious injury?
22 What is serious injury to you? What do those numbers
23 represent to you? Is it considered serious? That's
24 something only you as a Board member can answer as well
25 as the --

1 make a motion that we affirm the Order, and I seek a
2 second on that or discussion.

3 MEMBER FRANKENBERG: What are
4 you saying?

5 CHAIRMAN UPCHURCH: That we
6 affirm the Order as written.

7 MEMBER FRANKENBERG: I'll second
8 that.

9 MS. EAGAN: Keep the CUP as is.

10 MEMBER FRANKENBERG: I'll second
11 it.

12 CHAIRMAN UPCHURCH: Is there
13 discussion on that motion?

14 COMMISSIONER SCHRIEWER: Just to
15 clarify, one vote to move as the motion is stated?

16 CHAIRMAN UPCHURCH: That's
17 absolutely correct because we have reached an impasse
18 after amendment on two different reasons and discussed
19 with two different members their position is -- and
20 they're dug in. Which I respect, but we have also an
21 obligation to conclude, and in light of that, if there
22 is not further discussion...

23 MEMBER THATCHER: I would like
24 to state with my landscaping and lack of fireworks.

25 Sorry.

1 CHAIRMAN UPCHURCH: I'll accept
2 that as discussion but not to amend my motion. I have
3 a second. Is there further discussion?

4 MEMBER SCHRIEWER: To me the
5 fireworks topic was a big one until just a little -- a
6 little later here, and that's the one I didn't have an
7 issue with, an ideology on. But I would -- it's an
8 interesting situation. I would -- I respect that you
9 didn't take that as amendment.

10 That's all I'll say.

11 CHAIRMAN UPCHURCH: If there is
12 no further discussion, I'll ask that it be called for a
13 vote.

14 MS. EAGAN: Tim Tobben?

15 MEMBER TOBEN: Yes, in support
16 of Gordon's.

17 MS. EAGAN: Gordon Upchurch?

18 CHAIRMAN UPCHURCH: Yes,
19 affirming the CUP approval with conditions as ordered.

20 MS. EAGAN: Fred Thatcher?

21 MEMBER THATCHER: With the
22 conditions of fireworks and with the conditions of --

23 MS. EAGAN: That's not what
24 we're voting on.

25 MEMBER THATCHER: No? Then no.

1 MS. EAGAN: And, Mark
2 Frankenberg?

3 MEMBER FRANKENBERG: Yes.

4 MS. EAGAN: Okay. With 3 in
5 favor and 2 opposed, the Conditional Use Permit stays
6 as is.

7 AUDIENCE MEMBER: As is what?

8 MS. EAGAN: As is written.

9 AUDIENCE MEMBER: It was never
10 seconded.

11 CHAIRMAN UPCHURCH: So we have
12 concluded this meeting. If there are other logistic
13 matters for us to take up, Scottie?

14 MS. EAGAN: I don't think so.

15 MEMBER SCHRIEWER: I did not
16 vote on that.

17 MS. EAGAN: Oh, my God. I am so
18 sorry.

19 MEMBER SCHRIEWER: My vote would
20 stand as no. I'm sorry.

21 MS. EAGAN: I went around the
22 room, I thought you voted. Sorry. Derek Schriewer?

23 MEMBER SCHRIEWER: No.

24 MS. EAGAN: Okay. Still with 3
25 in favor and 2 opposed, the Conditional Use Permit

1 stays as is.

2 I'm sorry, Derek.

3 CHAIRMAN UPCHURCH: If there is
4 no other business for us to take up tonight, I'm going
5 to invite a motion for us to adjourn.

6 MEMBER THATCHER: I will second
7 that.

8 CHAIRMAN UPCHURCH: Those in
9 favor, aye.

10 MEMBER SCHRIEWER: Aye.

11 MEMBER THATCHER: Aye.

12 CHAIRMAN UPCHURCH: Aye.

13 MEMBER FRANKENBERG: Aye.

14 MEMBER TOBBEN: Aye.

15 CHAIRMAN UPCHURCH: Opposed,
16 same sign.

17 (NONE)

18 We are adjourned.

19 (Thereupon, the proceedings
20 concluded at 11:12 p.m.)

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CERTIFICATE OF REPORTER

I, PATSY A. HERTWECK, Professional Court Reporter and Notary Public within and for the State of Missouri, before whom the foregoing proceeding was taken, do hereby swear that the aforementioned was held at the time and in the place previously described; that the proceedings were taken down in stenographic notes by me, and transcribed by me, or under my supervision, to best of my ability; and that the aforementioned represents a true and accurate transcript of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand.

Patsy A. Hertweck, Court Reporter
Notary Public, State of Missouri

My Commission Expires:
August 26, 2018

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