

BEFORE THE DU PAGE COUNTY
ZONING BOARD OF APPEALS

November recommendation meeting) 23-000067
28W510 Washington

November 2, 2023

5:30 p.m.

PROCEEDINGS HAD and testimony taken
before the DU PAGE COUNTY ZONING BOARD OF APPEALS,
taken at the DuPage County Administration
Building, 421 North County Farm Road, Wheaton,
Illinois, before LINDA M. CIOSEK, C.S.R. a Notary
Public qualified and commissioned for the State of
Illinois.

BOARD MEMBERS PRESENT:

MR. ROBERT KARTHOLL, Chairman.

MR. DENNIS MORAN, Commissioner.

MR. CARL SCHULTZ, Commissioner.

MR. BARRY KETTER, Commissioner.

MR. ZAIN RAHMAN, Commissioner.

MR. CARL SCHULTZ, Commissioner.

ALSO PRESENT:

MS. JESSICA INFELISE, Planning & Zoning.

MR. PAUL HOSS, Planning & Zoning.

Page 2

1 CHAIRMAN KARTHOLL: So, let's go on the
2 record. This is the DuPage County Zoning Board of
3 Appeals, we're here for our November 2nd, 2023
4 recommendation meeting. And we have a couple --
5 several items on the agenda this evening,
6 beginning with the approval of the transcripts
7 which serve as minutes for several prior hearings.
8 They include Appeal 23; the September
9 recommendation meeting; Zoning 23-022, the
10 QuikTrip case; petition 22-067, the 28W510
11 Washington Avenue Investments, LLC case, hearing
12 September 28th; and finally the QuikTrip October
13 12 hearing.
14 So, can I have a -- I mean I'll
15 take these separately if there's a need to do so,
16 but initially let's take a motion on the approval
17 of all of these minutes.
18 COMMISSIONER KETTER: I'll move to approve
19 all five as presented
20 COMMISSIONER MORAN: I'll second it.
21 CHAIRMAN KARTHOLL: Motion by Mr. Ketter,
22 seconded by Mr. Moran. Is there any discussion on
23 the motion?
24 COMMISSIONER MURPHY: No.

Page 3

1 CHAIRMAN KARTHOLL: Speak for yourself,
2 Jack.
3 MR. HOSS: Excuse me, Mr. Kartholl, who
4 made the motion?
5 CHAIRMAN KARTHOLL: Mr. Ketter.
6 MR. HOSS: And who made the second?
7 CHAIRMAN KARTHOLL: Mr. Moran.
8 All in favor of the motion --
9 this is a very important motion, pay attention.
10 All in favor of the motion, please signify by
11 saying aye.
12 (Whereupon, all commissioners
13 responded aye.)
14 CHAIRMAN KARTHOLL: Any opposed?
15 (No response.)
16 CHAIRMAN KARTHOLL: The motion passes.
17 We have a request to withdraw
18 by the QuikTrip petitioner, which is the 23-022
19 case. It's our custom to have a motion to approve
20 the request for a withdrawal. I'm not sure what
21 would happen if we disapproved it, but it's our
22 custom.
23 So I invite a motion to --
24 COMMISSIONER KETTER: I would so move.

Page 4

1 CHAIRMAN KARTHOLL: -- to approve the
2 request for withdrawal for QuikTrip.
3 Mr. Ketter again makes the
4 motion.
5 COMMISSIONER SCHULTZ: Second.
6 CHAIRMAN KARTHOLL: And Mr. Schultz. Okay,
7 motion then by Ketter, seconded by Schultz.
8 Is there any discussion on that
9 motion?
10 (No response.)
11 CHAIRMAN KARTHOLL: All in favor of the
12 motion, please signify by saying aye.
13 (Whereupon, all commissioners
14 responded aye.)
15 CHAIRMAN KARTHOLL: Any opposed?
16 (No response.)
17 CHAIRMAN KARTHOLL: The motion passes.
18 Please give QuikTrip the good news that they don't
19 have to go forward with their project.
20 And now I would like to have a
21 -- I'm going to call a recess to accommodate the
22 attorney for the petitioner for Washington Avenue
23 Investments, LLC. He's called and said he will be
24 just a couple minutes late as a result of a

Page 5

1 traffic emergency.
2 (Whereupon, a recess was
3 taken.)
4 CHAIRMAN KARTHOLL: Let's go back on the
5 record. We've reconvened without any substantive
6 discussion about the agenda this evening during
7 our hiatus, and we've reconvened to consider
8 28W510 Washington Avenue Investments, LLC. I
9 suppose we should start with a motion on that
10 before we open for discussion.
11 COMMISSIONER MURPHY: I so move that we
12 approve it subject to the eight conditions.
13 CHAIRMAN KARTHOLL: Mr. Murphy makes a
14 motion for approval. Is there a second?
15 COMMISSIONER KETTER: I'd second it.
16 CHAIRMAN KARTHOLL: Seconded by Mr. Ketter.
17 I have a couple of questions.
18 Number one, we have a letter talking about some
19 corporate gyrations, which I presume was intended
20 to resolve this issue -- Mark, which I presume was
21 intended to resolve this issue about transfer of
22 ownership, which is a prior condition?
23 MR. GERSHON: Right. I don't even know if
24 we were still having the issue after the meeting,

<p style="text-align: right;">Page 6</p> <p>1 because as I confirmed, both Monte Nido entities 2 remain in place, the LLC that is there remains in 3 place. But, because the question was asked, I 4 wanted to just, you know, clarify it for you. 5 CHAIRMAN KARTHOLL: I thought you were 6 trying to outline some distinctions and corporate 7 transfers that technically might create a problem, 8 and I see a potential issue that says your relief 9 expires upon a change of ownership. Well, who 10 knows what that means. I think we ought to have 11 more sort of customary change-of-control-type, you 12 know, majority interest language or something to 13 that effect, if you agree with that. 14 MR. GERSHON: We certainly can look at 15 that. I think that what your concern initially 16 was not who ultimately owns Monte Nido, and I'm 17 talking about multiple layers in the chain, but 18 whether or not Monte Nido as an entity is owning 19 and running this facility. 20 CHAIRMAN KARTHOLL: We are interested in 21 the operator, because we take testimony about the 22 operation from the operator. 23 MR. GERSHON: Right. 24 CHAIRMAN KARTHOLL: However, we always --</p>	<p style="text-align: right;">Page 8</p> <p>1 operation. 2 CHAIRMAN KARTHOLL: Right. 3 COMMISSIONER KETTER: That's why I thought 4 it covered it, and any transfer of ownership would 5 then negate it. 6 MR. GERSHON: I certainly wouldn't mind 7 cleaning that up, because the practical answer is 8 I think the intent is incredibly clear, but the 9 actual owner isn't Monte Nido, it's an LLC, and 10 that LLC is 100 percent owned by Monte Nido, which 11 I think is what you meant. But if you're okay 12 with us clearing that up with the staff. 13 CHAIRMAN KARTHOLL: You know what our 14 intent is, our staff knows what the intent is. 15 The maker of the motion and the second will permit 16 some clarification language to be undertaken by, 17 you know, you folks consistent with our intent. 18 Then, my next point, I asked 19 for your operating agreement, or whatever. You 20 submitted your admissions statement. What I was 21 looking for in that agreement was some detailed 22 information that would bolster the testimony that 23 you gave concerning the comings and goings of 24 guests, et cetera. I took that from my</p>
<p style="text-align: right;">Page 7</p> <p>1 we virtually always have a condition that says 2 upon the change of ownership the relief expires. 3 So, I'm only suggesting that we revise that 4 because of your structure, which is a little, you 5 know, it's not like a ma-and-pa store, so we have 6 -- so maybe you could work with the staff. 7 MR. GERSHON: I would be happy to work with 8 the staff. 9 CHAIRMAN KARTHOLL: And we could have some 10 more customary, like, change of control majority 11 interest, majority transfer, something like that. 12 MR. GERSHON: The prior one said should 13 Monte Nido no longer own it and operate it. I 14 mean I actually said operate, I think it said 15 owned. And I understand you really care more 16 about operations, so we can certainly clear that 17 up. 18 CHAIRMAN KARTHOLL: If that's consistent 19 with the intent of the maker of the motion and the 20 second, we'll -- 21 COMMISSIONER MURPHY: Yes. 22 COMMISSIONER KETTER: I thought this kind 23 of mirrored, because when we came up, you said 24 they'll continue to have oversight of the</p>	<p style="text-align: right;">Page 9</p> <p>1 recollection of a statement that was made either 2 at the hearing or in the prior case. You know, 3 this says you have the right to impose those rules 4 and regulations, it does not include the rules and 5 regulations. I don't need them, I wanted just to 6 bolster the record. So, my point is this is no 7 longer a concern to me. If it is in any -- you 8 also said that it may need redacting. If it is in 9 any way proprietary, it would be fine with me if 10 you withdrew it from the record and it was not a 11 matter of public record. 12 MR. GERSHON: And I apologize if we 13 misunderstood. That's actually almost the 14 identical document -- it's not identical because 15 it's changed over the years -- to what you asked 16 us for not on the Winfield project, but on the 17 Naperville project three years ago. So that's 18 what we assumed you wanted. I gave you a more 19 current version. It is redacted, however. 20 CHAIRMAN KARTHOLL: Well, it's what I asked 21 for, but it's not what I expected. So my point is 22 it serves no purpose. If, therefore, you want to 23 withdraw it from the record just so somebody 24 doesn't --</p>

Page 10

1 MR. GERSHON: I guess then I would withdraw
 2 that exhibit.
 3 CHAIRMAN KARTHOLL: Can we pull that out of
 4 our record? I've read it very carefully, I'd be
 5 happy to point out the typographical errors after.
 6 MR. GERSHON: That's good. Since I didn't
 7 draft that, I would be very happy to see those.
 8 CHAIRMAN KARTHOLL: Finally, we have a
 9 condition that you submit a photometric plan,
 10 which I think is probably gilding the lily a
 11 little bit; however, you're required to do that, I
 12 understand, at the building permit phase.
 13 MR. GERSHON: You should have a photometric
 14 plan.
 15 CHAIRMAN KARTHOLL: Oh, we do?
 16 MR. GERSHON: Yes, it's there.
 17 CHAIRMAN KARTHOLL: Is it a current one?
 18 MR. GERSHON: A current one.
 19 CHAIRMAN KARTHOLL: Well, then, we can
 20 leave that as a condition. I don't have any other
 21 modifications. So, we've already had a
 22 concurrence about the minor modification of
 23 ownership. I think, unless there's other
 24 discussion, we're ready to vote. But is there

Page 11

1 anyone who wishes to raise any other points?
 2 (No response.)
 3 CHAIRMAN KARTHOLL: Fine. Let's undertake
 4 the vote on the motion to approve.
 5 MS. INFELISE: Member Murphy?
 6 COMMISSIONER MURPHY: Yes.
 7 MS. INFELISE: Member Ketter?
 8 COMMISSIONER KETTER: Aye.
 9 MS. INFELISE: Member Rahman?
 10 COMMISSIONER RAHMAN: Aye.
 11 MS. INFELISE: Member Schultz?
 12 COMMISSIONER SCHULTZ: Aye.
 13 MS. INFELISE: Member Moran?
 14 COMMISSIONER MORAN: Aye.
 15 MS. INFELISE: Chairman Kartholl?
 16 CHAIRMAN KARTHOLL: Aye.
 17 Motion passes by a vote of six
 18 in favor and none opposed. And then the only
 19 other -- so good luck with your project once
 20 again.
 21 The only other items on the
 22 agenda is old business and new business, of which
 23 we have none, and public comment. And there is no
 24 public comment offered this evening.

Page 12

1 So, I think we're ready to
 2 adjourn. We are adjourned.
 3 (Which were all the proceedings
 4 had and testimony taken in the
 5 above-entitled cause.)
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Page 13

1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF DU PAGE)
 3 I, LINDA M. CIOSEK, C.S.R. No.
 4 084-2892, duly qualified and commissioned for the
 5 State of Illinois, County of DuPage, do hereby
 6 certify that at the request of the DU PAGE COUNTY
 7 ZONING BOARD OF APPEALS, subject to the usual
 8 terms and conditions of Veritext, reported in
 9 shorthand the proceedings had and testimony taken
 10 at the public hearing of the above-entitled cause,
 11 and that the foregoing transcript is a true,
 12 correct and complete report of the testimony so
 13 taken at the time and place hereinabove set forth.
 14
 15
 16
 17
 18 CERTIFIED SHORTHAND REPORTER
 19
 20 My Commission Expires:
 21 July 26, 2026.
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 24

&	adjourn 12:2	b	8:13 9:20 10:3
& 1:21,22	adjourned 12:2	back 5:4	10:8,15,17,19
0	administration 1:8	barry 1:17	11:3,15,16
084-2892 13:4	admissions 8:20	beginning 2:6	change 6:9,11 7:2,10
1	agenda 2:5 5:6 11:22	bit 10:11	changed 9:15
100 8:10	ago 9:17	board 1:1,7,13 2:2 13:7	ciosek 1:10 13:3
12 2:13	agree 6:13	bolster 8:22 9:6	clarification 8:16
2	agreement 8:19 8:21	building 1:9 10:12	clarify 6:4
2 1:5	answer 8:7	business 11:22 11:22	cleaning 8:7
2023 1:5 2:3	apologize 9:12	c	clear 7:16 8:8
2026 13:21	appeal 2:8	c.s.r. 1:10 13:3	clearing 8:12
22-067 2:10	appeals 1:1,7 2:3 13:7	call 4:21	comings 8:23
23 2:8	approval 2:6 2:16 5:14	called 4:23	comment 11:23 11:24
23-000067 1:3	approve 2:18 3:19 4:1 5:12 11:4	care 7:15	commission 13:20
23-022 2:9 3:18	asked 6:3 8:18 9:15,20	carefully 10:4	commissioned 1:11 13:4
26 13:21	assumed 9:18	carl 1:16,19	commissioner 1:15,16,17,18 1:19 2:18,20 2:24 3:24 4:5 5:11,15 7:21 7:22 8:3 11:6,8 11:10,12,14
28th 2:12	attention 3:9	case 2:10,11 3:19 9:2	commissioners 3:12 4:13
28w510 1:3 2:10 5:8	attorney 4:22	cause 12:5 13:10	complete 13:12
2nd 2:3	avenue 2:11 4:22 5:8	certified 13:18	concern 6:15 9:7
4	aye 3:11,13 4:12,14 11:8 11:10,12,14,16	certify 13:6	concerning 8:23
421 1:9	assumed 9:18	cetera 8:24	
5	attention 3:9	chain 6:17	
5:30 1:5	attorney 4:22	chairman 1:14 2:1,21 3:1,5,7 3:14,16 4:1,6 4:11,15,17 5:4 5:13,16 6:5,20 6:24 7:9,18 8:2	
a	avenue 2:11 4:22 5:8		
above 12:5 13:10	accommodate 4:21		
actual 8:9	actually 7:14 9:13		

<p>concurrency 10:22 condition 5:22 7:1 10:9,20 conditions 5:12 13:8 confirmed 6:1 consider 5:7 consistent 7:18 8:17 continue 7:24 control 6:11 7:10 corporate 5:19 6:6 correct 13:12 county 1:1,7,8 1:9 2:2 13:2,5 13:6 couple 2:4 4:24 5:17 covered 8:4 create 6:7 current 9:19 10:17,18 custom 3:19,22 customary 6:11 7:10</p>	<p>10:24 distinctions 6:6 document 9:14 draft 10:7 du 1:1,7 13:2,6 duly 13:4 dupage 1:8 2:2 13:5</p>	<p>fine 9:9 11:3 five 2:19 folks 8:17 foregoing 13:11 forth 13:13 forward 4:19</p>	<p>i</p>
<p>d</p>	<p>e</p>	<p>g</p>	<p>identical 9:14 9:14 illinois 1:10,12 13:1,5 important 3:9 impose 9:3 include 2:8 9:4 incredibly 8:8 infelise 1:21 11:5,7,9,11,13 11:15 information 8:22 initially 2:16 6:15 intended 5:19 5:21 intent 7:19 8:8 8:14,14,17 interest 6:12 7:11 interested 6:20 investments 2:11 4:23 5:8 invite 3:23 issue 5:20,21 5:24 6:8 items 2:5 11:21</p>
<p>dennis 1:15 detailed 8:21 disapproved 3:21 discussion 2:22 4:8 5:6,10</p>	<p>effect 6:13 eight 5:12 either 9:1 emergency 5:1 entities 6:1 entitled 12:5 13:10 entity 6:18 errors 10:5 et 8:24 evening 2:5 5:6 11:24 excuse 3:3 exhibit 10:2 expected 9:21 expires 6:9 7:2 13:20</p>	<p>gershon 5:23 6:14,23 7:7,12 8:6 9:12 10:1,6 10:13,16,18 gilding 10:10 give 4:18 go 2:1 4:19 5:4 going 4:21 goings 8:23 good 4:18 10:6 11:19 guess 10:1 guests 8:24 gyrations 5:19</p>	<p>j</p>
<p>d</p>	<p>f facility 6:19 farm 1:9 favor 3:8,10 4:11 11:18 finally 2:12 10:8</p>	<p>h happen 3:21 happy 7:7 10:5 10:7 hearing 2:11,13 9:2 13:10 hearings 2:7 hereinabove 13:13 hiatus 5:7 hoss 1:22 3:3,6</p>	<p>jack 3:2 jessica 1:21 july 13:21</p>

k	looking 8:21	moran 1:15	old 11:22	
kartholl 1:14 2:1,21 3:1,3,5,7 3:14,16 4:1,6 4:11,15,17 5:4 5:13,16 6:5,20 6:24 7:9,18 8:2 8:13 9:20 10:3 10:8,15,17,19 11:3,15,16 ketter 1:17 2:18,21 3:5,24 4:3,7 5:15,16 7:22 8:3 11:7,8 kind 7:22 know 5:23 6:4 6:12 7:5 8:13 8:17 9:2 knows 6:10 8:14	luck 11:19	2:20,22 3:7 11:13,14	once 11:19	
	m	m 1:10 13:3	motion 2:16,21	open 5:10
	ma 7:5	made 3:4,6 9:1	2:23 3:4,8,9,10	operate 7:13,14
	majority 6:12	majority 6:12	3:16,19,23 4:4	operating 8:19
	7:10,11	maker 7:19	4:7,9,12,17 5:9	operation 6:22
	maker 7:19	8:15	5:14 7:19 8:15	8:1
	makes 4:3 5:13	mark 5:20	11:4,17	operations 7:16
	mark 5:20	matter 9:11	move 2:18 3:24	operator 6:21
	matter 9:11	mean 2:14 7:14	5:11	6:22
	mean 2:14 7:14	means 6:10	multiple 6:17	opposed 3:14
	means 6:10	meant 8:11	murphy 2:24	4:15 11:18
	meant 8:11	meeting 1:3 2:4	5:11,13 7:21	ought 6:10
	meeting 1:3 2:4	2:9 5:24	11:5,6	outline 6:6
	member 11:5,7	members 1:13	n	oversight 7:24
	11:9,11,13	mind 8:6	naperville 9:17	own 7:13
members 1:13	minor 10:22	need 2:15 9:5,8	owned 7:15	
mind 8:6	minutes 2:7,17	negate 8:5	8:10	
minor 10:22	4:24	new 11:22	owner 8:9	
minutes 2:7,17	mirrored 7:23	news 4:18	ownership 5:22	
4:24	misunderstood	nido 6:1,16,18	6:9 7:2 8:4	
mirrored 7:23	9:13	7:13 8:9,10	10:23	
misunderstood	modification	north 1:9	owning 6:18	
9:13	10:22	notary 1:10	owns 6:16	
modification	modifications	november 1:3,5	p	
10:22	10:21	2:3	p.m. 1:5	
modifications	monte 6:1,16	number 5:18	pa 7:5	
10:21	6:18 7:13 8:9	o	page 1:1,7 13:2	
monte 6:1,16	8:10	october 2:12	13:6	
6:18 7:13 8:9		offered 11:24	passes 3:16	
8:10		oh 10:15	4:17 11:17	
		okay 4:6 8:11	paul 1:22	
			pay 3:9	
			percent 8:10	

<p>permit 8:15 10:12 petition 2:10 petitioner 3:18 4:22 phase 10:12 photometric 10:9,13 place 6:2,3 13:13 plan 10:9,14 planning 1:21 1:22 please 3:10 4:12,18 point 8:18 9:6 9:21 10:5 points 11:1 potential 6:8 practical 8:7 present 1:13,20 presented 2:19 presume 5:19 5:20 prior 2:7 5:22 7:12 9:2 probably 10:10 problem 6:7 proceedings 1:6 12:3 13:9 project 4:19 9:16,17 11:19 proprietary 9:9 public 1:11 9:11 11:23,24</p>	<p>13:10 pull 10:3 purpose 9:22</p> <p>q</p> <p>qualified 1:11 13:4 question 6:3 questions 5:17 quiktrip 2:10 2:12 3:18 4:2 4:18</p> <p>r</p> <p>rahman 1:18 11:9,10 raise 11:1 read 10:4 ready 10:24 12:1 really 7:15 recess 4:21 5:2 recollection 9:1 recommenda... 1:3 2:4,9 reconvened 5:5 5:7 record 2:2 5:5 9:6,10,11,23 10:4 redacted 9:19 redacting 9:8 regulations 9:4 9:5 relief 6:8 7:2</p>	<p>remain 6:2 remains 6:2 report 13:12 reported 13:8 reporter 13:18 request 3:17,20 4:2 13:6 required 10:11 resolve 5:20,21 responded 3:13 4:14 response 3:15 4:10,16 11:2 result 4:24 revise 7:3 right 5:23 6:23 8:2 9:3 road 1:9 robert 1:14 rules 9:3,4 running 6:19</p> <p>s</p> <p>saying 3:11 4:12 says 6:8 7:1 9:3 schultz 1:16,19 4:5,6,7 11:11 11:12 second 2:20 3:6 4:5 5:14,15 7:20 8:15 seconded 2:22 4:7 5:16 see 6:8 10:7</p>	<p>separately 2:15 september 2:8 2:12 serve 2:7 serves 9:22 set 13:13 several 2:5,7 shorthand 13:9 13:18 signify 3:10 4:12 six 11:17 somebody 9:23 sort 6:11 speak 3:1 ss 13:1 staff 7:6,8 8:12 8:14 start 5:9 state 1:11 13:1 13:5 statement 8:20 9:1 store 7:5 structure 7:4 subject 5:12 13:7 submit 10:9 submitted 8:20 substantive 5:5 suggesting 7:3 suppose 5:9 sure 3:20</p>
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t	u	y
take 2:15,16 6:21 taken 1:6,8 5:3 12:4 13:9,13 talking 5:18 6:17 technically 6:7 terms 13:8 testimony 1:6 6:21 8:22 12:4 13:9,12 think 6:10,15 7:14 8:8,11 10:10,23 12:1 thought 6:5 7:22 8:3 three 9:17 time 13:13 took 8:24 traffic 5:1 transcript 13:11 transcripts 2:6 transfer 5:21 7:11 8:4 transfers 6:7 true 13:11 trying 6:6 type 6:11 typographical 10:5	ultimately 6:16 understand 7:15 10:12 undertake 11:3 undertaken 8:16 usual 13:7 v veritext 13:8 version 9:19 virtually 7:1 vote 10:24 11:4 11:17 w want 9:22 wanted 6:4 9:5 9:18 washington 1:3 2:11 4:22 5:8 way 9:9 we've 5:5,7 10:21 wheaton 1:9 winfield 9:16 wishes 11:1 withdraw 3:17 9:23 10:1 withdrawal 3:20 4:2 withdrew 9:10 work 7:6,7	years 9:15,17 z zain 1:18 zoning 1:1,7,21 1:22 2:2,9 13:7