

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

MEGAN CLIFFORD, et al.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 17 CH 780
	)	TRIAL
TRUE NORTH ENERGY, LLC, et	)	
al.,	)	
	)	
Defendant.	)	

REPORT OF PROCEEDINGS had at the TRIAL  
of the above-entitled cause, before the Honorable  
BONNIE M. WHEATON, Judge of said Court, recorded on the  
DuPage County Computer-Based Digital Recording System,  
DuPage County, Illinois, and transcribed by LYNN M.  
EVANS, Certified Shorthand Official Court Reporter,  
commencing on the 19th day of February, 2019.

1       PRESENT:

2                   McGUIRE WOODS, LLP, by  
3                   MR. DAVID L. HARTSELL,  
4                   MS. SUSAN E. GROH,

5                               appeared on behalf of the Plaintiffs;

6                   ANCEL GLINK DIAMOND BUSH DiCIANNI & KRAFTHEFER, by  
7                   MS. ELLEN EMERY,  
8                   MS. JULIE A. TAPPENDORF,

9                               appeared on behalf of Village of Glen Ellyn,  
10                              Defendant;

11                   BURKE, WARREN, MACKAY & SERRITELLA, P.C., by  
12                   MS. JAMIE A. ROBINSON,

13                              appeared on behalf of True North Energy, LLC,  
14                              Defendant.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
STACI SPRINGER	
Cross-Examination by Mr. Hartsell (cont.)	5
Redirect Examination by Ms. Emery	73
Recross-Examination by Mr. Hartsell	80
RYAN HOWARD	
Direct Examination by Ms. Robinson	87
Cross-Examination by Mr. Hartsell	120
Redirect Examination by Ms. Robinson	138
Recross-Examination by Mr. Hartsell	139

1 THE CLERK: Case No. 17 MR 1190, Protect Glen Ellyn v  
2 True North.

3 THE COURT: Counsel, would you identify yourselves  
4 again for the record, please.

5 MR. HARTSELL: Good morning, your Honor. David  
6 Hartsell, H-a-r-t-s-e-l-l, on behalf of the plaintiffs.

7 MS. GROH: Good morning, your Honor. Susan Groh,  
8 G-r-o-h, on behalf of the plaintiffs.

9 MS. EMERY: Ellen Emery, E-m-e-r-y, on behalf of  
10 defendant Village of Glen Ellyn.

11 MS. TAPPENDORF: Julie Tappendorf,  
12 T-a-p-p-e-n-d-o-r-f, on behalf of defendant Village of  
13 Glen Ellyn.

14 MS. ROBINSON: Jamie Robinson, R-o-b-i-n-s-o-n, on  
15 behalf of True North Energy.

16 THE COURT: Thank you. Please be seated.

17 Before we resume the testimony, are there any  
18 matters that need to be addressed?

19 MR. HARTSELL: Not from plaintiff, your Honor.

20 THE COURT: Okay. Miss Springer, would you take  
21 the stand again, please, and you're still under oath.

22 THE WITNESS: Yes.

23 THE COURT: Would you state your name, please, and  
24 spell your last name.

1 THE WITNESS: Staci Springer, S-p-r-i-n-g-e-r.

2 THE COURT: You may proceed.

3 STACI SPRINGER,

4 called as a witness on behalf of the Defendant, Village  
5 of Glen Ellyn, having been previously duly sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 CROSS-EXAMINATION (continued)

9 BY MR. HARTSELL:

10 Q. Good morning, Miss Springer.

11 A. Good morning.

12 Q. I know we've had a couple days break here,  
13 but I'm going to try to pick up where we left off and  
14 forgive me if I ask you something that I might have  
15 asked you before, but I'm going to try to avoid that.

16 A. Sure.

17 Q. Okay. We were talking about -- at one point  
18 we were talking about other gas stations in the  
19 vicinity. Do you remember that?

20 A. Yes.

21 Q. Okay. And we talked about the fact that  
22 there were a number of gas stations up on North Avenue  
23 here just about a mile north?

24 A. Yes.

1           Q.     Five corners. Okay. And you suggested that,  
2     well, maybe we should discount those because those  
3     aren't in Glen Ellyn and, therefore -- and you  
4     suggested people like to spend their sales tax dollars  
5     in Glen Ellyn and those stations up on North Avenue are  
6     not in Glen Ellyn, right?

7           A.     Sure. I said some people do like to do that.

8           Q.     Sure. Understood. But there are gas  
9     stations in Glen Ellyn itself on Roosevelt Road, right?

10          A.     Yes.

11          Q.     There is a big Shell station at Roosevelt and  
12     Park?

13          A.     Yes.

14          Q.     There is a big BP station at Roosevelt and  
15     Lambert?

16          A.     Yes.

17          Q.     And, in fact, I think there is a new gas  
18     station going in at Roosevelt by 355, right?

19          A.     Yes.

20          Q.     Okay. So there are choices for people if  
21     they want to buy gas in Glen Ellyn?

22          A.     Yes.

23          Q.     And would you agree too that in addition to  
24     maybe wanting people to want to spend their tax dollars

1 in Glen Ellyn that people also generally want to pay as  
2 little for gas as possible, right?

3 A. Yes. Generally, yes.

4 Q. Okay. And so that might be a motivator for  
5 them to go up to North Avenue if the prices are cheaper  
6 up there?

7 A. It could be.

8 Q. Sure. And we've already talked about the --  
9 I think you said there were at one time three gas  
10 stations on this corner, right? One where the  
11 Walgreens is, one where the garage is, and then the old  
12 Marathon/Speedway station that's at 825, right?

13 A. Yes.

14 Q. And I know we quibble about whether they  
15 failed or not, but you agree they all went out of  
16 business, right?

17 A. Correct. There is none at those three  
18 locations any longer.

19 Q. Okay. And in terms of a convenient store  
20 that's part of this project, I mean, there are already  
21 plenty of options for that here already, aren't there?  
22 I mean, we've got the Walgreens here, right?

23 A. Yes.

24 Q. Can you imagine anything that they're going

1 to sell at this gas station convenient store that you  
2 can't buy at the Walgreens?

3 A. I don't know what they sell.

4 Q. Okay. And then we have -- there is this  
5 little 7-Eleven down here?

6 A. Yes.

7 Q. They sell convenience type items, right?

8 A. Yes.

9 Q. And then if I want to buy a six-pack of beer,  
10 I can go to the 7-Eleven, right?

11 A. Yes. I believe they have a liquor license,  
12 yes.

13 Q. They sell beer and wine, right? I don't  
14 think they have --

15 A. I believe so.

16 Q. I don't think they have a liquor license.  
17 They sell beer and wine, right?

18 A. I don't know exactly.

19 Q. Okay. Well, that's what the gas station is  
20 going to sell, right? It's a convenient store, beer  
21 and wine?

22 A. I believe so.

23 Q. Okay. And you can also get it at the  
24 Walgreens, beer and wine?



1           A.     Yes.

2           Q.     You can also get it at the Discount Liquors  
3     that's right there just north of the Walgreens?

4           A.     Yes.

5           Q.     So you would agree that there are already  
6     options for that as well?

7           A.     Yes.

8           Q.     So we've got three places in this area  
9     where -- this corner where you can already buy beer,  
10    wine, and liquor, and you're saying we need a fourth?

11          A.     I never said that we need a fourth.

12          Q.     We talked a little bit about the  
13    comprehensive plan last week. Do you remember that?

14          A.     Yes.

15          Q.     Is it correct that the village is currently  
16    working on a new comprehensive plan?

17          A.     Yes. We just started, yes.

18          Q.     Just started. To update it because this one  
19    is, what, 18 years old?

20          A.     Yes, I think the process started in 1999 and  
21    was approved in 2001, so it's been -- it's time for a  
22    new one.

23          Q.     Okay. And as part of that process, is it  
24    correct that the Village commissioned a resident

1 survey?

2 A. (No response.)

3 Q. A survey of the residents to ask them  
4 questions about what kind of things they want to see,  
5 what kind of things they don't want to see?

6 A. We did not.

7 Q. You did not?

8 A. You said as a part of this process did the  
9 Village commission a resident survey and we did not.

10 Q. Okay. Forget about the part of this process.  
11 Did you recently commission a resident survey?

12 A. The Village board asked our marketing  
13 communications coordinator to do a resident survey just  
14 because it was time to do a survey. It doesn't have  
15 anything to do with the comprehensive plan.

16 Q. You don't think that would be important input  
17 for the new comprehensive plan?

18 A. Sure, but it had no relation to -- the reason  
19 it was done was not for the comprehensive plan.

20 Q. Okay. Is it going to be -- are the results  
21 of that survey going to be taken into consideration for  
22 the new comprehensive plan?

23 A. They were made available to the consultant.

24 Q. I'm sorry. The what?

1           A.     The results were made available to the  
2 consultant.

3           Q.     I'm not sure that's what I asked you. I  
4 asked you are the results of that survey -- is the  
5 survey completed, by the way?

6           A.     Yes.

7           Q.     So the results are in?

8           A.     Yes.

9           Q.     Okay. Are the results of that survey going  
10 to be considered in the context of developing the new  
11 comprehensive plan?

12          A.     We provided them to the consultant and said  
13 here is some information that might be useful. I'm not  
14 sure where they're at in their evaluation of that or  
15 how they're going to use that information.

16          Q.     You've provided what to the consultant,  
17 the --

18          A.     The survey results.

19          Q.     -- survey results?

20          A.     Yes.

21          Q.     Have you seen the survey results?

22          A.     It was a couple years ago. I'm sure I was  
23 given a copy. I don't believe I read all of them.

24          Q.     This is a couple years ago. This is a survey

1       that was just conducted probably within the last few  
2       months, isn't it?

3           A.     No.

4           MS. EMERY:  Objection.  Relevance.

5           THE COURT:  How is this relevant?

6           MR. HARTSELL:  Well, let me ask -- if I can ask to  
7       tie it up.

8           THE COURT:  You may rephrase the question.

9       BY MR. HARTSELL:

10          Q.     Well, wasn't one of the questions on this  
11       survey that was posted to the residents whether they  
12       wanted to see more or fewer gas stations in Glen Ellyn?

13          A.     There were hundreds of questions, so I don't  
14       know exactly what questions were on there.

15          Q.     You don't remember that being a question?

16          A.     I do not.

17          Q.     Have you -- has the Village ever done a  
18       survey either recently or two years ago where they  
19       asked the residents whether they wanted to see more or  
20       fewer gas stations in Glen Ellyn?

21          A.     I do not know.

22          Q.     And when are the results of this survey -- do  
23       you know when they're going to be made available to the  
24       public?

1           A.     So the survey that we're talking about is the  
2     one that was conducted by the Village of all -- of a  
3     statistical number of the residents, correct?

4           Q.     Well --

5           A.     Because --

6           Q.     Let's make sure that you and I are talking  
7     about the same thing. I'm talking about a survey that  
8     was made available within the last few months that  
9     residents could take online, and so it wasn't limited  
10    to any subgroup of selected residents. It was  
11    available to any resident who wanted to go online and  
12    answer the survey questions.

13          A.     Okay. That's a different survey. That was  
14    conducted as part of the comprehensive plan. A survey  
15    was made available online through the Village's  
16    website, yes.

17          Q.     Okay. That's --

18          A.     That's a completely different survey.

19          Q.     I'm sorry. That's where I started, but --

20          A.     You said made available to all residents and  
21    your terminology made me think it was the Village-wide  
22    survey that was statistically accurate and included  
23    everyone in the village and had hundreds of questions  
24    on it.

1 Q. Okay. Let's back up. Let's talk about the  
2 one -- you said there was a survey that was done in  
3 conjunction with developing the new comprehensive plan?

4 A. Yes.

5 Q. Do you understand that?

6 A. That was the online --

7 MS. EMERY: Objection. Relevance.

8 MR. HARTSELL: I'm just trying to figure out  
9 which -- we finally now -- she and I are finally on the  
10 same page about what survey we're talking about, so now  
11 I just want to ask my questions about that.

12 THE COURT: How is -- how is the survey relevant?

13 MR. HARTSELL: Because the survey contained  
14 questions specifically about do you want to see more  
15 gas stations or fewer gas stations; and when we're  
16 talking about community need, I think its highly  
17 relevant.

18 THE COURT: All right. The objection is  
19 overruled. You may answer the question.

20 THE WITNESS: I still don't recall that being a  
21 specific question.

22 BY MR. HARTSELL:

23 Q. Okay. But the survey is out there and the  
24 results are in from that survey?

1           A.     Yes.  It's been closed and the results have  
2     been tabulated by the consultant.

3           Q.     Okay.  Have you seen the results?

4           A.     I have not.

5           Q.     Have they been made available to the Village?

6           A.     They have.  My staff planner has a copy.

7           Q.     Okay.  And is there -- do you expect that  
8     these results will be released to the public at some  
9     point?

10          A.     I do not know whether that is likely.  I'm  
11     not sure what the contents of the final comprehensive  
12     plan will be.  Often individual survey results that can  
13     go on for 80 pages are not included and the general  
14     takeaways that the consultant deems are important are  
15     included in some sort of goals or policies, so I do not  
16     know.

17          Q.     Okay.  So your answer is you do not know  
18     whether the Village intends to make the results of the  
19     survey public?

20          A.     Correct.

21          Q.     Can you think of any reason you wouldn't?

22          A.     The reason I said.  If there has been --  
23     there was a survey of businesses.  There is a survey  
24     open to residents.  There was a survey -- I think there

1       were three surveys and those results are hundreds of  
2       pages long. They're not going to be probably included  
3       in the final comprehensive plan report.

4               Q.     Are you concerned what one of us might  
5       misinterpret the survey results? Is that what you're  
6       concerned about?

7               A.     Yes.

8               MS. EMERY: Objection. Argumentative.

9               THE COURT: Sustained.

10              MS. EMERY: And -- sustained.

11       BY MR. HARTSELL:

12              Q.     Okay. You also talked a little bit about or  
13       you mentioned the need to -- in considering these  
14       projects to -- the need to generate -- or the desire to  
15       generate sales and property tax revenue for the  
16       Village, right?

17              A.     Yes, that is. Yes.

18              Q.     That's one of the considerations?

19              A.     One, yes.

20              Q.     Okay. But it's also true that virtually any  
21       kind of commercial development at that corner would  
22       generate some level of sales and property tax revenue,  
23       correct?

24              A.     Yes.



1           Q.     It's just a matter of how much? Some are  
2 going to generate more than others, right?

3           A.     Correct.

4           Q.     We talked a little bit last week or you  
5 talked in your direct examination about your efforts to  
6 market the property after the Village purchased it in  
7 2010. Do you remember that?

8           A.     Yes.

9           Q.     Okay. And I think you said one of the first  
10 things you did was hire PT K architects to draw up some  
11 conceptual plans?

12          A.     Yes.

13          Q.     Okay. And I think those -- I'm not sure if  
14 you pointed those out in the record, but I believe  
15 those are at Exhibit 8 in your binder there.

16          A.     Okay.

17          MS. EMERY: Go ahead.

18          BY MR. HARTSELL:

19          Q.     And it doesn't look like there is any text to  
20 this report, but simply that there is a number of --  
21 there is 10 or 12 pages of conceptual drawings,  
22 correct?

23          A.     Correct.

24          Q.     And not one of these is for a gas station,

1 correct?

2 A. That isn't correct because that's not what I  
3 asked them to do.

4 Q. These are all drawings for retail-type  
5 buildings or office-type buildings?

6 A. There is -- there was no intent to create  
7 uses here. It was just show me a building and show me  
8 how much parking we could fit on the property within  
9 the compliance of the zoning regulations. I didn't ask  
10 them to put specific uses.

11 Q. Okay. Well, if you look at the -- if you  
12 look at the very first one, it -- it's kind of hard to  
13 see, but in the dark space in the middle, which is  
14 represents, I presume, the building structure?

15 A. Yes.

16 Q. It says one-story retail?

17 A. Yes. They did that in order to calculate how  
18 much parking would be required.

19 Q. I understand. In fact, if you look at all  
20 the drawings, they all -- they all are titled either  
21 one-story or two-story retail, correct?

22 A. Yes.

23 Q. And then it looks like your next was in June  
24 of 2012 when the Village developed this request for

1 development of proposals, or an RFP as you refer to it,  
2 right?

3 A. Yes.

4 Q. Okay. And that's Exhibit 9, correct, in your  
5 book?

6 A. Yes.

7 Q. By the way, who prepared this? Did your  
8 staff prepare this or did you use an outside  
9 consultant?

10 A. My staff prepared it.

11 Q. Do you yourself have any particular expertise  
12 in marketing commercial properties?

13 A. I've been involved over the last 25 years  
14 with commercial properties that have been marketed and  
15 part of my responsibility is economic development, so  
16 not -- I'm not a commercial broker, if that's your  
17 question, but I have some familiarity, yes.

18 Q. You have some familiarity, but you're not a  
19 commercial broker and you don't hold those kinds of  
20 designations?

21 A. Correct.

22 Q. You are, though, a member -- I think you told  
23 me -- I heard you say you're a member of the American  
24 Institute of Certified Planners; is that right?

1 A. Yes.

2 Q. AI --

3 A. CP.

4 Q. -- CP. How long have you been a member of  
5 that?

6 A. Since 1995.

7 Q. You're in good standing today?

8 A. Yes.

9 Q. Got all your continuing credits?

10 A. I have.

11 Q. All right. Let's go back -- I just want to  
12 look on a couple of things on this RFP, which is  
13 exhibit -- page three. I'll take that back.

14 This request for proposals, this is your --  
15 part of this is your attempt to give potential  
16 interested parties an idea of what you're looking for?

17 A. Correct.

18 Q. Okay. And on page three, the second  
19 paragraph, there is a reference to the comprehensive  
20 plan. Do you see that?

21 A. Yes.

22 Q. Okay. And you quote the comprehensive plan  
23 that says that the area should be revised as a  
24 neighborhood service area and showcased for local

1 history in an attractive gateway to the Glen Ellyn  
2 community. In fact, you attach the five corners  
3 section of the comprehensive plan to this RFP, right?

4 A. Correct.

5 Q. So this is very important to the Village?

6 A. Yes.

7 Q. And if you could turn to page five. If you  
8 look at the very bottom of the page, there is a section  
9 titled evaluation criteria. Do you see that?

10 A. Yes.

11 Q. It's then carried on to the next page?

12 A. Yes.

13 Q. Am I correct that by that you mean you're  
14 telling the reader here or the prospective interested  
15 party that here are the criteria that we, the Village,  
16 are going to evaluate your proposal, right? That's  
17 what that means?

18 A. Yes.

19 Q. Okay. And what are the first two criteria on  
20 page six?

21 A. Sensitivity and compatibility to the historic  
22 character of the area and sensitivity to nearby  
23 single-family residential properties.

24 Q. Those are the first two things in your

1 criteria, right?

2 A. Yes.

3 Q. And I think you told us earlier that you  
4 didn't get a very substantial response, if you will, to  
5 this RFP?

6 A. Correct.

7 Q. You were disappointed by that, right?

8 A. Yes.

9 Q. So you put out another one about two years  
10 later?

11 A. Yes.

12 Q. And that's Exhibit 10, correct?

13 A. Yes.

14 Q. And again on page three of that proposal,  
15 again there is a -- in that second paragraph there is a  
16 reference to the comprehensive plan and the objectives  
17 of the comprehensive plan and again you, as with the  
18 earlier one, you attached the pertinent portions of the  
19 comprehensive plan to the RFP, right?

20 A. Yes.

21 Q. Now, one thing that's different about this  
22 2014 RFP is that by now you've received this no further  
23 remediation letter from Illinois EPA, right?

24 A. Yes.

1 Q. And, in fact, that letter is attached as an  
2 exhibit to the RFP, correct? It's Exhibit D?

3 A. Yes.

4 MR. HARTSELL: Okay. I never know if everybody  
5 can find it. Are you with me?

6 MS. EMERY: Yes.

7 BY MR. HARTSELL:

8 Q. And I assume your purpose in attaching this  
9 no remediation or no further remediation letter from  
10 Illinois EPA is that you wanted the prospective buyers  
11 to be aware of that's a pretty important piece of  
12 information to have here with respect to this property,  
13 right?

14 A. Yes.

15 Q. I just want to digress for a second and ask  
16 you a couple of questions about this letter. You  
17 talked about it yesterday and I had a couple of things  
18 I wanted to follow up with you on.

19 This is the -- this is the entirety of the  
20 letter, right? There is a couple of attachments to it,  
21 but this is the entirety of the letter?

22 A. Yes, I believe so.

23 Q. Okay. And on the second page of the letter  
24 where it talks about level of remediation and land use

1 limitations. Do you see that?

2 A. Yes.

3 Q. Okay. And in subparagraph two, it says, the  
4 remediation site is restricted to industrial/commercial  
5 land use. Do you see that?

6 A. Yes.

7 Q. And I think you made reference to that last  
8 week in your direct testimony?

9 A. Yes.

10 Q. So that means no residential use, right?  
11 That's how you understood that?

12 A. Correct.

13 Q. Okay. Is there anything in this letter that  
14 gives any further guidance or indications of what the  
15 limitations on the land use are, other than what it  
16 says right there, restricted to industrial/commercial  
17 land use?

18 A. Not that I'm aware of, no.

19 Q. And it further says, paragraph three, and in  
20 particular 3A, it says the land use specified in this  
21 letter, which of course was a reference to paragraph  
22 two, correct, that it has to be limited to industrial/  
23 commercial land use, is that how you read it?

24 A. Yes.



1           Q.     Okay.  May be revised if, A, further  
2     investigation or remedial action has been conducted...

3           A.     Yes.

4           Q.     Okay.  Did you understand that to mean that  
5     the restrictions that are identified in this letter,  
6     industrial/commercial land use, could be revised if  
7     there were further remediation efforts taken at the  
8     site?

9           A.     Yes.

10          Q.     But you never pursued that, correct?

11          A.     No.

12          Q.     The Village never looked into what further  
13     remediation could be possible or what it could cost?

14          A.     No.

15          Q.     Would you agree that had you done so that it  
16     might have made the property more marketable in terms  
17     of opening it up for additional uses?

18          A.     Would I agree -- I'm sorry.  Repeat the  
19     question.

20          Q.     Let me rephrase it.  Would you agree that if  
21     the Village had been able to further remediate the  
22     property, such as to revise the restrictions that  
23     Illinois EPA had placed on it, that that would make the  
24     property more marketable in that it would open it up to

1 additional possible uses?

2 MS. EMERY: Objection. Calls for speculation.  
3 Lack of foundation.

4 THE COURT: The objection is sustained.

5 BY MR. HARTSELL:

6 Q. But you never explored the possibility of  
7 further remediation, correct?

8 A. Correct.

9 Q. And as you sit here today, you have no idea  
10 what that would involve or what it might cost?

11 A. No.

12 Q. You also made a comment last week about some  
13 sort of restriction running with the deed. Do you  
14 remember that?

15 A. Yes.

16 Q. Okay. You're talking about the deed whereby  
17 the property was transferred from the prior owners to  
18 the Village?

19 A. No. There was a different deed.

20 Q. What deed was that?

21 A. It's one of the deeds that it has Speedway  
22 listed on it.

23 Q. Okay. Could you turn to Exhibit 14, please.  
24 And this is a copy of ordinance 6386 dated February 22nd,

1 2016?

2 A. Yes.

3 Q. Okay. And this is the ordinance pursuant to  
4 which the Village board authorized the purchase of the  
5 property from the prior gas station owner?

6 A. Yes.

7 Q. Okay. And attached to the ordinance there is  
8 a copy of the property sale and purchase agreement?

9 A. Yes.

10 Q. And you're familiar with that?

11 A. Generally.

12 Q. And -- just bear with me for one second.

13 I'm sorry. I may have misspoke, Mrs. Springer.  
14 This Exhibit 14 -- I'm sorry. This is a copy of the  
15 ordinance by which the Village authorized the sale of  
16 the property to True North. I think I said that this  
17 was the -- let me back up.

18 I'm to trying focus you on the contract by  
19 which the Village purchased the property from the prior  
20 owners.

21 A. Okay.

22 Q. Okay. 14 is the Village selling the property  
23 to True North, right?

24 A. Yes.

1 Q. Okay.

2 A. Entering into a contract to sell it, yes.

3 Q. Okay. So forget all that for the time being.

4 Let's look at -- let's look at your  
5 Exhibit 32, and I think you referred to this before --  
6 you identified this to me as the economic development  
7 plan that was --

8 A. Yes.

9 Q. All right. And so there is a number of  
10 documents that this exhibit is comprised of, so let me  
11 focus you on the first one that says resolution 1021 at  
12 the top. Do you see that?

13 A. Yes.

14 Q. Okay. So this is the resolution pursuant to  
15 which the Village board authorized the purchase of the  
16 property from the gas station owner in September of  
17 2010?

18 A. Yes.

19 Q. Okay. And behind that is the real estate  
20 purchase contract, correct?

21 A. Correct.

22 Q. And I take it you have at least some passing  
23 familiarity with this document?

24 A. Yes.

1           Q.     Okay. So now we have the right document in  
2 front of us. So if you could turn to -- and I'm going  
3 to refer you to these packet page numbers that are in  
4 the bottom right-hand corner.

5           A.     Okay.

6           Q.     So it's packet page number 227.

7           THE COURT: Mr. Hartsell, I have a question. Is  
8 this the entire parcel or is this the parcel on the  
9 corner?

10          MR. HARTSELL: I believe, and Miss Springer, you  
11 can tell me if I'm wrong here, but I believe this was  
12 for the entire parcel, all three lots.

13          BY MR. HARTSELL:

14          Q.     Is that right?

15          A.     Yes.

16          MR. HARTSELL: Yes. And I think, maybe,  
17 your Honor, you might -- my understanding was the first  
18 two parcels at the time were zoned C2, the third parcel  
19 was zoned residential, and then later on the Village  
20 changed the zoning on that third parcel to make the  
21 entire thing C2.

22          THE WITNESS: Correct.

23          THE COURT: But the purchase was for all three of  
24 the parcels?

1 BY MR. HARTSELL:

2 Q. Is that right?

3 A. Yes.

4 THE COURT: Okay. Thank you.

5 MR. HARTSELL: Thank you.

6 BY MR. HARTSELL:

7 Q. Okay. If you could turn now to packet page  
8 227 and specifically paragraph 24 of the contract.

9 A. Yes.

10 Q. And it says, No representations by seller.  
11 As-is condition. Do you see that?

12 A. Yes.

13 Q. Is that your understanding that the Village  
14 was purchasing that property as-is?

15 A. There were some conditions in here somewhere  
16 that our attorney made sure were in there that made  
17 sure that the prior owner retained responsibility for  
18 any LUST incidents. I don't know where that is in this  
19 agreement, but other than that, yes.

20 Q. All right. And, in fact, if you go --  
21 continuing on in paragraph 24 to the next page, third  
22 paragraph, where it says seller will provide all  
23 documents. Do you see that?

24 A. Yes.

1           Q.     Okay. And then second line says, seller  
2 otherwise makes no representation or warranty  
3 whatsoever as to the existence on the subject property  
4 of hazardous materials, the discharge of same, et cetera,  
5 et cetera, right?

6           A.     Yes.

7           Q.     So other than your reference to -- and I  
8 think you're right, that there is language in here that  
9 purports to have the responsibility for the LUST  
10 instance -- the LUST incidents remain with the prior  
11 owner, correct?

12          A.     Correct.

13          Q.     You don't want to have to take responsibility  
14 for that?

15          A.     Correct.

16          Q.     Okay. Other than that, you bought the  
17 property as-is, right?

18          A.     Yes, based on this.

19          Q.     And if you look at the next document in this  
20 packet starting at page 239, packet page 239. Do you  
21 see that?

22          A.     Yes.

23          Q.     Okay. And that's a letter from your  
24 attorneys dated November 19, 2010, saying here is the

1 deed --

2 A. Yes.

3 Q. -- for the property you just bought and then  
4 a copy of the deed is behind it?

5 A. Yes.

6 Q. Okay. It's one, two, three, four pages. Are  
7 there any restrictions that you see in there?

8 A. Not in this.

9 Q. Okay. So you said you got a couple responses  
10 to the 2014 RFP, but for various reasons those didn't  
11 work out or those weren't feasible in the Village's  
12 view, right?

13 A. From the 2012 RFP, yes.

14 Q. I'm sorry. But then you -- you got none from  
15 the 2014?

16 A. Yes.

17 Q. So 2012 you put out an RFP, you had a couple  
18 responses, not satisfactory, you wait two more years,  
19 put out another RFP, get no responses, right?

20 A. Correct.

21 Q. Okay. So, finally, in 2015 you say we're  
22 going to hire a commercial real estate broker, right?

23 A. 2014 or 2015. I think it might be 2014.

24 Q. Okay. By now you've owned the property for



1 almost five years, right?

2 A. Little less than five, yes.

3 Q. And you've tried doing this yourself and  
4 you've had no success, so finally you decide to hire a  
5 commercial real estate broker, right?

6 A. Correct.

7 Q. Okay. And you hired DK Mallon?

8 A. Yes.

9 Q. Pretty reputable company, right?

10 A. I believe so.

11 Q. Pretty well-known?

12 A. I believe so.

13 Q. Okay. And in pretty short order, DK Mallon  
14 had generated a list of prospects, right?

15 A. Yes.

16 Q. In fact, in June of 2015 they brought you an  
17 offer from Glen Ellyn Swimming LLC with plans to  
18 conduct a swimming -- construct a swim school, right?

19 A. Correct.

20 Q. We will talk about that a little bit more,  
21 but let's look at that. That is Exhibit 11 in your  
22 book, please.

23 And I would represent to you, Miss Springer,  
24 that the handwriting that appears here on the sides of

1 the page, that this was on there when it was --

2 A. Okay.

3 Q. -- produced to me, so I didn't put that  
4 there. Do you recognize that handwriting?

5 A. I do.

6 Q. Is it yours?

7 A. Yes.

8 Q. I must say you have really great cursive  
9 handwriting.

10 Okay. So you recognize this document?

11 A. Yes.

12 Q. Okay. And this is -- this is a letter of  
13 intent from Glen Ellyn Swimming, correct?

14 A. Yes.

15 Q. This is an offer?

16 A. Yes.

17 Q. Okay. And looks like this is on DK Mallon  
18 stationery, so it looks like DK Mallon was potentially  
19 on both sides of this deal?

20 A. I don't recall.

21 Q. Okay. And under the first box there it says,  
22 purchase price. It says \$500,000. Do you see that?

23 A. Yes.

24 Q. That's what they're offering?

1 A. Yes.

2 Q. And you wrote reasonable, right?

3 A. I did, yes.

4 Q. Yes, you wrote that, reasonable?

5 A. Yes.

6 Q. In reference to the \$500,000?

7 A. Yes.

8 Q. And there is some drawings attached at the  
9 back of this, right? It says Goldfish Swim School?

10 A. Yes.

11 Q. And picture of a building here on the outside  
12 and then pictures of some kids playing inside in the  
13 pool?

14 A. Yes.

15 Q. Looks pretty sweet, doesn't it?

16 A. Uh-huh.

17 Q. Could you turn to Exhibit 12 and let me  
18 know if you recognize -- this is a memorandum dated  
19 February 5th, 2016?

20 A. Yes.

21 Q. Okay. This is addressed to Mr. Mark Franz,  
22 the Village manager?

23 A. Yes.

24 Q. Okay. And you report up to him, correct?

1 A. Correct.

2 Q. And then he reports up to the board, correct?

3 A. Right.

4 Q. And so this is a memo from you and from  
5 Meredith Hannah, who is -- it says she's the economic  
6 development coordinator. I think you mentioned her  
7 before?

8 A. Yes.

9 Q. So you and Miss Hannah were working together  
10 in some respects to try to market and develop this  
11 property?

12 A. Yes.

13 Q. Okay. And this is titled Re purchase offers  
14 for 825 North Main Street, right?

15 A. Yes.

16 Q. And we know that, oh, about seven months  
17 earlier, you know, you had this offer that we just  
18 looked at from Glen Ellyn Swimming, right?

19 A. Yes.

20 Q. Okay. And it's referred to down in the  
21 fourth paragraph of the background section on the first  
22 page. Do you see that?

23 A. Yes.

24 Q. It says in July 2015 the Village board

1 reviewed a proposal for a Goldfish Swim School  
2 interested in purchasing the site for \$500,000. Do you  
3 see that?

4 A. Yes.

5 Q. And then you wrote, This use did not meet the  
6 Village board's vision for a strong retail use at this  
7 site and was rejected. The board also indicated it  
8 wasn't the offer price, as much as the use itself that  
9 they did not find attractive at this site.

10 Let me ask you, is that just code for it  
11 wasn't going to generate enough sales tax revenue?

12 A. No.

13 Q. Well, what does it mean when it says a  
14 strong -- when you say a strong retail use at the site?  
15 What does that mean, strong retail use?

16 A. So this is a summary of what the Village  
17 board's discussion was related to this. It doesn't  
18 explain everything or their entire conversation about  
19 it.

20 Q. I'm just asking you, ma'am, what you meant  
21 when you wrote the -- didn't meet the Village board's  
22 vision for a strong retail use? What does that mean --

23 A. There was probably --

24 Q. Excuse me.

1           A.     Oh, sorry.

2           Q.     What does that mean a strong retail use?

3           A.     My understanding of that statement, which I  
4     did not write, Meredith wrote that portion, was that  
5     the Village board determined -- one of the things that  
6     they determined was it wasn't a strong retail use.  
7     There wouldn't be a lot of retail sales tax generated.

8           Q.     There wouldn't be a lot of retail sales  
9     tax --

10          A.     There would be some.

11          Q.     There would be some. We established that  
12     earlier, any commercial use at that site is going to  
13     generate some level of --

14          A.     Yes.

15          Q.     -- sales tax?

16          A.     Well, not all. An office use might not.

17          Q.     Okay. Bank branches don't?

18          A.     Correct.

19          Q.     All right. But other than those? I mean,  
20     any kind of a store, a phone store, a swim school,  
21     whatever, it's going to generate some level of sales  
22     tax revenue?

23          A.     Some, yes, uses do. This would have  
24     generated a small amount.

1           Q.     This wouldn't have generated the level of  
2     sales tax revenue that the board wanted to see out of  
3     that site, that's what it means, right?

4           A.     Yes, but that wasn't the only reason they  
5     discounted it.

6           Q.     Then you go on to say the board also  
7     indicated it wasn't the offer price, because we saw  
8     that you wrote there that the offer price was  
9     reasonable, right?

10          A.     Yes. That was my opinion.

11          Q.     Okay. It wasn't the offer price as much as  
12     the use itself that they did not find attractive at  
13     this site. And, again, does that mean it wasn't going  
14     to generate enough sales tax revenue?

15          A.     When Meredith wrote that my impression was  
16     she was trying to summarize a very lengthy conversation  
17     that the board had about the site when they ultimately  
18     determined they didn't want to move forward with it and  
19     that was only a couple of the items that was related to  
20     their discussion.

21          Q.     Well, those were the only two things that  
22     made it into your memo?

23          A.     Yes, they are because we summarize -- I mean,  
24     if we were to put every detail of every thought

1 process, memos would be extremely lengthy.

2 Q. So shortly after you got the offer from the  
3 swim school, you got an offer from True North, right?  
4 It says it right in the next paragraph, recent  
5 proposals. Do you see that?

6 A. Yes.

7 Q. You got an offer from True North on  
8 August 25th, 2015, which is just about a month or so  
9 after you had the offer from the swim school?

10 A. Okay.

11 Q. Is my timing right there?

12 A. I'm looking. June 30th. August. Yes.

13 Q. Two months, little bit less than two months.  
14 Pretty close together, though, right?

15 A. Yes.

16 Q. And True North made the same offer, \$500,000,  
17 right?

18 A. Yes.

19 Q. So you had a swim school and a gas station  
20 and you picked the gas station?

21 A. I didn't pick anything. I'm staff.

22 Q. Let's shift gears here for a minute to the  
23 March 13, 2017 board meeting, which just for purposes  
24 of reference I'll refer you to Exhibit 24. Are you



1 with me?

2 A. Yes.

3 Q. Okay. And, again, we've been over this  
4 before, but just for context here, this is the meeting  
5 where the board approved the issuance of the special  
6 use permit, correct?

7 A. Yes.

8 Q. So just to get the chronology again, a  
9 special use permit was approved at the March 13th  
10 meeting?

11 A. Yes.

12 Q. And then there was a subsequent meeting in  
13 April where they approved variances?

14 A. Yes.

15 Q. And then there was a third meeting in May  
16 where they directed -- they granted final approval for  
17 the sale and directed staff to proceed, correct?

18 A. Yes.

19 Q. Okay. So let's talk about this March 13th  
20 meeting where the special use permit was discussed; and  
21 if we could go to the second page of the minutes, under  
22 paragraph H down at the bottom, that's where the board  
23 is addressing the proposed development at 825 North  
24 Main Street?

1           A.     Yes.

2           Q.     Okay. And the first sentence says, Director  
3     Halsenberg. Again, that's you, right?

4           A.     Yes.

5           Q.     Okay. And representatives from True North.  
6     Was that Mr. Howard and some of his other people?

7           A.     I think Mr. Howard was there. I couldn't  
8     confirm and I don't know who else from his team was  
9     there.

10          Q.     Okay. Presented an overview of the proposed  
11     development at 825 North Main Street, so you only got a  
12     sentence or half a sentence in the minutes, but you had  
13     a whole presentation, right, with some slides and  
14     pictures? I mean, you gave all the background about  
15     what had happened, right?

16          A.     Yes.

17          Q.     I mean, it was quite a lengthy presentation?  
18     Thorough presentation?

19          A.     I give a presentation.

20          Q.     Okay. That's not a trick question. I'm  
21     trying to give you credit for putting on a thorough  
22     presentation, and then the True North people got up and  
23     they did a presentation, right?

24          A.     I don't know. It doesn't say here, but

1       that's our normal process that they would.

2               Q.     Okay. Well, it says representatives from  
3       True North presented an overview of the proposed  
4       development?

5               A.     Oh, yes.

6               Q.     Okay. So you went put on a presentation,  
7       then they get up and they put on a presentation, and  
8       then the meeting proceeded on with comments from the  
9       residents and so on and so forth, right?

10              A.     Yes.

11              Q.     Okay. Let me ask you something. You said  
12       something yesterday that made me laugh a little bit.  
13       You said I live by the code, is that what you said?

14              A.     Yes, generally. I know the code. I'm very  
15       familiar with it.

16              Q.     Yes. And by the code, you're referring to  
17       the Glen Ellyn zoning code, right?

18              A.     That's one of them, yes. There is many.

19              Q.     Okay. And with respect to the zoning code,  
20       the -- the objective of that code, and you can look at  
21       it, it's in Exhibit 7, but I'm sure you know it, is to  
22       protect and promote the public health, safety, morals,  
23       comfort, and general welfare, right?

24              A.     Yes.

1           Q.     Okay. So you would agree that that is one of  
2 your principle responsibilities as the director of  
3 planning and development, right?

4           A.     That is the purpose of the zoning code. It's  
5 not one of the regulations in the zoning code, and I  
6 don't believe my job description says that that's my  
7 duties, but -- so --

8           Q.     You don't think that's one of your duties as  
9 the director of --

10          A.     It's not listed in my job description.

11          Q.     Sorry. You have to let me get my question  
12 out first.

13          A.     I'm sorry.

14          Q.     So you don't think that one of your duties as  
15 the director of development and planning is to help  
16 implement the objectives of the zoning code?

17          A.     Yes.

18          Q.     Okay. And one of those objectives, the  
19 primary objective, and you can look at it in Exhibit 7,  
20 right, in the first paragraph, is to protect and  
21 promote public health, safety, morals, comfort, and  
22 general welfare, right?

23          A.     That's what, yes, one of the objectives is.

24          Q.     So that's one of your responsibilities,

1 right?

2 A. It's not listed as a responsibility of mine  
3 in my job description.

4 Q. I'm not asking if it's listed in your job  
5 description. In your capacity, you've been the  
6 director of planning and development for 15 years in  
7 Glen Ellyn. I just want to know if you believe that  
8 one of your responsibilities is to protect and promote  
9 the public health, safety, morals, comfort, and general  
10 welfare?

11 MS. EMERY: Objection. Asked and answered.

12 BY MR. HARTSELL:

13 Q. Is the answer no?

14 THE COURT: She's answered the question that it's  
15 not in her job description.

16 MR. HARTSELL: Okay.

17 BY MR. HARTSELL:

18 Q. Now, I also asked you earlier -- you told me  
19 you are a member of the American Institute of Planning?

20 A. Certified Planners, yes.

21 Q. American Institute of Certified Planners, and  
22 that's a professional association?

23 A. Yes.

24 Q. It's kind of like lawyers belonging to the

1 bar association?

2 A. Similar.

3 Q. Okay. And they -- that association, AICPA,  
4 has a code of ethics and professional conduct?

5 A. Yes.

6 Q. And you're familiar with that?

7 A. Yes.

8 Q. Okay. And one of the principals that are set  
9 forth in that code of ethics is to provide -- I can  
10 read it to you and I can show it to you if you want,  
11 but I'm sure you know it, to provide timely, adequate,  
12 clear and accurate information on planning issues to  
13 all affected persons and to governmental decision  
14 makers. Does that sound right to you?

15 A. It does.

16 Q. Okay. And this case would include the  
17 residents, right?

18 A. Yes.

19 Q. Okay. And, in fact, the code goes on to say  
20 that in the rules of conduct, it says, quote, we shall  
21 not deliberately or with reckless indifference fail to  
22 provide adequate, timely, clear, and accurate  
23 information on planning issues. Does that sound right?

24 A. Yes.

1 MS. EMERY: Objection. Relevance, your Honor.

2 THE COURT: How is this relevant?

3 MR. HARTSELL: I'm going to get to that in about  
4 six seconds.

5 MS. EMERY: Your Honor, I -- this is irrelevant  
6 about the code -- the planning code. This is an action  
7 of the Village board in enacting an ordinance with a  
8 special use permit. This is so far afield.

9 THE COURT: I think the issue is what the Village  
10 board decided, so I don't believe that the code of  
11 ethics of the AICP is relevant to what the Village  
12 decided. The objection is sustained.

13 MR. HARTSELL: Okay.

14 BY MR. HARTSELL:

15 Q. So let's go back to the March 13th meeting.  
16 We talked about the presentation you did and the  
17 presentation that True North did, correct?

18 A. Yes.

19 Q. And you helped True North with their  
20 presentation ahead of time, didn't you?

21 A. I do that with most petitioners, yes.

22 Q. In fact, you reviewed their presentation  
23 ahead of time, didn't you?

24 A. Yes.

1 Q. And, in fact, you made -- you suggested  
2 specific edits to their presentation as respect to the  
3 environmental issues section of their presentation --

4 A. I do that with most petitioners, yes.

5 Q. You did it here for sure, right?

6 A. Yes.

7 Q. Okay. Can you look at Exhibit 23. That's a  
8 two-page document. It's an email string?

9 A. Yes.

10 Q. Okay. And let's start at the back of it, the  
11 second page. The very first email that appears there  
12 dated March 10th appears to be from Mr. Howard to  
13 somebody else at True North, correct?

14 A. Yes.

15 Q. Okay. But then Mr. Howard then -- move up  
16 one email. Mr. Howard then emails you on Friday,  
17 March 10th, 2017, regarding Glen Ellyn testimony. Do  
18 you see that?

19 A. Yes.

20 Q. This is the Friday before the Monday meeting  
21 of the board, right?

22 A. Yes.

23 Q. Where they're going to consider the special  
24 use permit?



1           A.     Yes.

2           Q.     Okay. And Mr. Howard provides you with a  
3 draft of his opening comments, what he says here,  
4 right?

5           A.     Yes.

6           Q.     And then he goes on, he says, environmental  
7 is still WIP. Does that mean work in progress?

8           A.     That's what I read it to be.

9           Q.     Okay. And then the next day, Saturday,  
10 Mr. Howard emails you again and says here's the updated  
11 draft with a few modifications and addition of  
12 environmental commentary. Do you see that?

13          A.     Yes.

14          Q.     And he says, we will be prepared to answer  
15 any additional environmental questions which may be  
16 raised as well. Do you see that?

17          A.     Yes.

18          Q.     Okay. So you both understood, both you and  
19 Mr. Howard understood, that there were going to be  
20 questions and there had been questions raised and there  
21 were going to be questions raised by the residents at  
22 this March 13th meeting about environmental issues?

23          A.     Yes.

24          Q.     Because that was one of the -- that was one

1 of the big concerns that the residents had, right?

2 A. Yes.

3 Q. Let's go to the next page. So you wrote back  
4 to Mr. Howard on March 13th, 11:38 a.m., right?

5 A. Yes.

6 Q. This was the morning of the meeting, the  
7 Village board meeting, right?

8 A. Yes.

9 Q. And you had reviewed his draft presentation?

10 A. Yes.

11 Q. Reviewed the environmental section of that  
12 draft presentation, correct?

13 A. Yes, that's what this looks like.

14 Q. Okay. Let me direct your attention to --  
15 there is two bullet points in the middle of your email  
16 and then there is another paragraph that starts with  
17 the word also. Do you see that?

18 A. Yes.

19 Q. Okay. And you wrote to Mr. Howard, Also,  
20 your environmental expert might want to minimize the  
21 usage of words, spills, leaks, and spill incidents.  
22 That language is used heavily and might raise  
23 additional concerns. Perhaps using preventive  
24 measures, protections, or safeguard as substitute terms

1 would be better received. You wrote that?

2 A. Yes.

3 Q. Better received by whom, the residents?

4 A. Anyone who was listening.

5 Q. Why did you feel it necessary to suggest to  
6 Mr. Howard that he use these euphemisms instead of the  
7 actual words that he used?

8 MS. EMERY: Object to the form of the question.

9 THE COURT: Overruled. You may answer.

10 THE WITNESS: Euphemisms I'm not --

11 BY MR. HARTSELL:

12 Q. Do you know what that means?

13 A. No.

14 Q. Okay. Well, True North's report said -- used  
15 words like spills, leaks, spill incidents, right?

16 A. Uh-huh.

17 Q. You told him don't use those words. Use  
18 preventive measures, protections, safeguards, that's  
19 what you suggested to him, right?

20 A. I suggested some wordsmithing of the actual  
21 presentation. I never said to him do not use these  
22 words. I prohibit you from using these words. It says  
23 in here that -- we knew there was going to be  
24 additional questions. They had used that language in

1       their reports before. The language came up in the  
2       public hearing and my job is to assist petitioners,  
3       residents, and my Village staff with all sorts of  
4       written documents. This was -- they asked for  
5       assistance and I was trying to help them.

6           Q.     Well, let me help you, how are you assisting  
7       the residents, how are you assisting Miss Clifford and  
8       Miss Martinez when you tell True North to tone it down?

9           A.     I assist them in different ways. When they  
10      came in to talk to me and answer questions --

11          Q.     I'm asking you how you assist them --

12          A.     I wasn't trying to assist them. I was  
13      assisting --

14          Q.     Oh, you weren't?

15          A.     -- who asked for input or feedback, so when  
16      the residents called and asked for meetings and said  
17      how can we make this better, I explain the process. I  
18      explain everything to anyone who asks and these were  
19      some suggestions of wordsmithing. I do it all the  
20      time.

21          Q.     Wordsmithing?

22          A.     All the time.

23          Q.     These environmental issues amounting to  
24      wordsmithing to you?

1           A.     Yeah, it's helpful.

2           Q.     That's helpful?

3           A.     Yes.

4           Q.     You think it's helpful to deceive the  
5 residents --

6           A.     This is not what --

7           MS. EMERY:  Objection.  Argumentative.

8           THE COURT:  Sustained.

9           BY MR. HARTSELL:

10          Q.     You think it's helpful to say to the  
11 residents, to suggest that the residents be told don't  
12 tell them about spills, leaks, and spill incidents;  
13 tell them about preventive measures?

14          A.     They already --

15          MS. EMERY:  Objection.  Argumentative.

16          THE WITNESS:  -- used that language.

17          THE COURT:  Wait.  Hang on.

18          THE WITNESS:  Sorry.

19          THE COURT:  When anybody says objection, don't  
20 answer.

21          THE WITNESS:  Okay.

22          THE COURT:  You know that.

23                   Please rephrase the question.

24

1 BY MR. HARTSELL:

2 Q. Well, let me ask you, you're making that kind  
3 of suggestion to Mr. Howard to change to wordsmith, as  
4 you said his presentation, how does that square with  
5 promoting the public health, safety, and welfare as set  
6 forth in the zoning code?

7 A. I'm not sure of the specific question.

8 Q. Well, let me ask you, how does it square --

9 A. Square?

10 Q. -- with your responsibility under the code of  
11 ethics of your association to provide timely and  
12 accurate clear information --

13 A. I did.

14 MS. EMERY: Objection. Relevance.

15 THE COURT: Sustained. The objection is  
16 sustained.

17 BY MR. HARTSELL:

18 Q. Let's talk about the traffic study, and I  
19 think that's in volume -- that might be in volume two.  
20 It's at 37.

21 MS. EMERY: Counsel, 37?

22 MR. HARTSELL: 37, yes. It's in volume two.

23 BY MR. HARTSELL:

24 Q. You got that, ma'am?

1           A.     Yes.

2           Q.     And it's kind of hard to see because there is  
3     a header across the top, but this is prepared --  
4     there's initials up there KAO -- KLOA?

5           A.     Yes.

6           Q.     That's the name of the firm that produced  
7     this traffic study?

8           A.     Yes.

9           Q.     And this was -- this was submitted -- this  
10    wasn't done by the Village. This was submitted by True  
11    North as part of their application for the special use  
12    permit, correct?

13          A.     Correct.

14          Q.     But this is something that the Village wanted  
15    to see. You wanted to see a traffic study?

16          A.     Yes.

17          Q.     And if I could turn you to page ten.

18          THE COURT: What is the packet page number?

19          MR. HARTSELL: The packet number is 429.

20    BY MR. HARTSELL:

21          Q.     And this reflects -- there is a chart at the  
22    top and this -- that's titled site generated traffic  
23    volumes. Do you see that?

24          A.     Yes.

1           Q.     And this indicates if you go to the far lower  
2 right-hand corner, it's got a number of total new trips  
3 generated 782. Do you see that?

4           A.     Yes.

5           Q.     And was your understanding what this report  
6 is projecting 782 new daily trips to this site as a  
7 result of the gas station?

8           A.     Yes. It's a little misleading because  
9 there's currently zero. If there was a use on the  
10 site, which is typical, it would say the number of  
11 daily -- new trips generated above the trips that are  
12 currently going there. So if there was a use there,  
13 that number would be much lower, but since it's been  
14 vacant, it goes from zero to 782.

15          Q.     Yeah, I understand. That's a fair point.  
16                 Other uses could generate fewer daily trips,  
17 right?

18          A.     Or more, yes.

19          Q.     Or more. Okay. But 782 that's the  
20 projection, right? 782 every day, 782 new cars going  
21 in and out of that gas station, right?

22          A.     Correct.

23          Q.     A block from the elementary school, right?

24          A.     Yes.



1 Q. And yet there is no mention or analysis in  
2 this report of Forest Glen Elementary School, is there?

3 A. No.

4 Q. They didn't study Elm and Main down here, did  
5 they?

6 A. No, they did not.

7 Q. They only studied Main and Geneva,  
8 St. Charles up here, right?

9 A. Yes.

10 Q. And you mentioned that the Village has its  
11 own consultants that they use to, I guess, kind of peer  
12 review some of these other expert reports that come in?

13 A. Yes.

14 Q. And the firm you use is called James J. Benes  
15 & Associates?

16 A. Yes.

17 Q. Okay. And if I could direct you to Exhibit 38,  
18 please, and this is a memo from Benes & Associates  
19 dated July 14th, 2016?

20 A. Yes.

21 Q. And it's addressed to Michelle Spiegel,  
22 Village planner. Is that somebody that worked in your  
23 department?

24 A. Yes.

1 Q. She's a subordinate of yours?

2 A. Yes. Was.

3 Q. You're the head of planning and development,  
4 correct?

5 A. Yes.

6 Q. She was somebody that worked for you at the  
7 time.

8 All right. And one of the things that Benes  
9 is addressing here is in the second bullet point. Do  
10 you see the traffic impact study prepared by KLOA?

11 A. Yes.

12 Q. Because that's one of the things that you  
13 wanted them to look at, right, in addition to lighting,  
14 layouts and site plan, preparation, and so on and so  
15 forth, right?

16 A. Yes.

17 Q. They were kind of like your overall  
18 consultants for various aspects of this project, right?

19 A. Yes.

20 Q. Including the traffic study?

21 A. Yes.

22 Q. Okay. They wrote a three-page report here  
23 and it doesn't mention Forest Glen Elementary School  
24 either, does it?

1           A.     In quickly skimming it, I do not see that.

2           Q.     Okay.  If you look at Exhibit 39, please.

3     This is another report from Benes & Associates dated  
4     February 2nd, 2017.  Do you see that?

5           A.     Yes.

6           Q.     And this one is addressed John Sterrett, he  
7     also works for you or did work for you?

8           A.     Yes.

9           Q.     Is he still there?

10          A.     Till Friday.

11          Q.     Okay.  And in this report, in the third  
12     paragraph, there is also a reference to the traffic  
13     impact study, the KLOA impact study?

14          A.     Yes.

15          Q.     Because he previously reviewed it and then  
16     they had some additional comments?

17          A.     Yes.

18          Q.     Okay.  And this is also a three-page report  
19     and, once again, there is no mention of Forest Glen  
20     Elementary School in there, is there?

21          A.     In quickly skimming it, I do not see any.

22          Q.     Okay.  Exhibit 40.  And this is now -- now  
23     we're past -- this one is dated April 20th, Exhibit 40,  
24     right, April 20th, 2017?

1           A.     Yes.

2           Q.     Now we're past the special use permit  
3     hearing? That was a month earlier in March, right?  
4     Special use permit has been granted already?

5           A.     Yes.

6           Q.     Okay. But here is a third report from Benes  
7     & Associates. This one is four pages long?

8           A.     Yes.

9           Q.     It also addresses some traffic issues, left  
10    turns out, left turns in, so on and so forth?

11          A.     Yes.

12          Q.     Again, it doesn't say anything about  
13    Forest Glen Elementary School, does it?

14          A.     The purpose of this memo appears --

15          Q.     Just asking you, ma'am, does it say anything  
16    about -- I didn't ask you the purpose. I just said  
17    does it mention Forest Glen Elementary School?

18          A.     Not that I see in my quick perusing.

19          Q.     Exhibit 41, if you will, please. Okay. This  
20    is an email string and --

21               MR. HARTSELL: Just for clarity sake, your Honor,  
22    on the first page this is just a transmittal from  
23    Miss Springer to her counsel, so the first email there  
24    really is not relevant.

1 BY MR. HARTSELL:

2 Q. That's just being transmitted from you to  
3 your counsel, right, copy of this email?

4 A. I'm sorry?

5 Q. That first email that's at the top of the  
6 first page, that's just you transmitting the copy of  
7 the lower email to your counsel, right?

8 A. Yes.

9 Q. Okay. So let's start with the back, on the  
10 bottom of the second page. It starts with an email  
11 from John Sterrett, who works for you, right?

12 A. Yes.

13 Q. Dated April 24th, 2017, right?

14 A. Yes.

15 Q. Which again is now we're a month past the  
16 special use permit being granted, right?

17 A. Yes.

18 Q. Okay. And the Re line is 825 North Main  
19 Street traffic study. Do you see that?

20 A. Yes.

21 Q. And he's addressing himself to D Schoenberg  
22 at Benes & Associates; is that right?

23 A. Yes.

24 Q. Okay. And John writes, Dan, do you know if

1 the traffic study took into account or looked at the  
2 Elm Street/Main Street intersection? Is that what he  
3 wrote?

4 A. Yes.

5 Q. So it's not until April 24th, a month after  
6 the special use permit has been granted, that John  
7 Sterrett is saying, Hey, did that traffic study look at  
8 this intersection down here by the elementary school?

9 A. Yes.

10 Q. It's not till a month after the special use  
11 permit has been granted, right?

12 A. Yes.

13 Q. And you've been working on this project for  
14 well over a year, right?

15 A. Yes.

16 Q. And that traffic study we saw was dated May  
17 of 2016.

18 A. Okay.

19 Q. It's almost a year later and he's finally  
20 asking about did it look at this corner down here by  
21 the elementary school?

22 MS. EMERY: Objection. Asked and answered at  
23 least four to five times.  
24

1 BY MR. HARTSELL:

2 Q. Okay. And so Mr. --

3 MR. HARTSELL: I will withdraw.

4 BY MR. HARTSELL:

5 Q. So Mr. Schoenberg writes -- Schoenberg, am I  
6 pronouncing that right?

7 A. Yes.

8 Q. Mr. Schoenberg writes back to John that same  
9 day and said, John, the short answer is no.  
10 Main/St. Charles and the new access points were the  
11 centers of attention.

12 And what he's referring to there is the  
13 access points for the gas station, the left in, left  
14 out, right-in, right-out, all that, right?

15 A. Correct.

16 Q. Then he goes on to say, With its proximity to  
17 the school, the peak traffic times at Main and Elm are  
18 probably different than Main/St. Charles and the rest  
19 of the overall road network.

20 So your consultant is telling you we didn't --  
21 they didn't study Main and Elm down here by the school,  
22 and it's probably different than what's going on up  
23 here and Main and St. Charles. Is that what he's  
24 saying?

1 MS. EMERY: Objection. Counsel just read all that  
2 right into the record from the email. This is  
3 repetitive.

4 MR. HARTSELL: I think it's important.

5 THE COURT: That's a proper question. This is in  
6 evidence, but go ahead.

7 BY MR. HARTSELL:

8 Q. Well, what I'm really trying to get at -- and  
9 then John writes back that same day and says, Thanks,  
10 Dan. So that was it?

11 I take that back. It wasn't it. Dan writes  
12 back a little later in the day and says, continue our  
13 discussion, and he refers to it as a different traffic  
14 dynamic at Main and Elm, doesn't he?

15 A. Yes.

16 Q. Different traffic dynamic. And then he goes  
17 on to say, well, this intersection at Main and Elm  
18 where the school is, he calls it a traffic control  
19 intersection for pedestrian crossing purposes, right?

20 A. Correct.

21 Q. So that was it, right? You didn't take any  
22 further action?

23 A. Not that's in an email.

24 Q. Not that's anywhere?



1           A.     In writing.

2           Q.     Did you request that True North submit an  
3     updated traffic study to consider the intersection of  
4     Main and Elm?

5           A.     No, because our consultant said that it  
6     was -- basically what he's saying here is it's not  
7     relevant because of what the traffic study is -- the  
8     intent of the traffic study and what traffic studies  
9     are supposed to track and report. The peak times were  
10    different. The intent of a traffic study is to look at  
11    the peak time, the worst condition, and then see what  
12    type of traffic will be generated by the new use and  
13    added in to that and there is a pedestrian crossing  
14    signal, which also -- it is a different peak time and  
15    has a different purpose and the focus of the traffic  
16    study, as it should be, is where -- near where the  
17    entrances are to the development, so our consultant --

18          Q.     So --

19          A.     I'm sorry. Our consultant, their answer was  
20    no, it didn't need to include that intersection.

21          Q.     Yeah, and you just said because it wasn't  
22    relevant, isn't that what you said, not relevant?

23          A.     It didn't meet the intent or the need for a  
24    traffic study.

1 Q. I heard you say it's not relevant.

2 A. You don't usually go a -- okay. Yes.

3 MR. HARTSELL: Larry, could you zoom in on the  
4 other --

5 BY MR. HARTSELL:

6 Q. Okay. Now, the Village is currently  
7 considering another development project out on Main  
8 Street, correct?

9 A. Yes.

10 Q. It's called the Apex 400 apartment  
11 development?

12 A. Yes.

13 Q. Okay. And this is --

14 MR. HARTSELL: Zoom out a little bit, Larry, so we  
15 get a little bit better idea.

16 BY SPEAKER ONE:

17 Q. This is -- up at the top here, sort of this  
18 dark line running through here, the middle, that's the  
19 railroad tracks, right?

20 A. Yes.

21 Q. Okay. And then north of the tracks, this  
22 cluster of buildings here, this is downtown Glen Ellyn,  
23 right?

24 A. Yes.

1 Q. Okay. And then south the of the railroad  
2 tracks, the downtown continues. There is a cluster of  
3 buildings we see down here, correct?

4 A. Yes.

5 Q. Okay. So that's what you call the central  
6 business district or the downtown district?

7 A. Yes.

8 Q. Okay.

9 MR. HARTSELL: Zoom up Larry. Tight on the site.  
10 BY MR. HARTSELL:

11 Q. Okay. And right now there is -- the Village  
12 board is considering redeveloping this piece of  
13 property here on Main Street that starts -- this is  
14 Hillside down here, right?

15 A. Yes.

16 Q. Okay. And this is --

17 A. Duane.

18 Q. Okay. So this section of Main Street on the  
19 east side of the street between Duane and Hill there is  
20 currently a proposal to redevelop all that into an  
21 apartment building, correct?

22 MS. EMERY: Objection. Relevance.

23 THE COURT: Overruled.  
24

1 BY MR. HARTSELL:

2 Q. Correct?

3 A. Among other uses, yes.

4 Q. Yes, it's going to have retail on the ground  
5 level and then there is a parking garage and then there  
6 is apartments above, right, so it's kind of a mix the  
7 use kind of building?

8 A. Yes.

9 Q. Okay. And you did a -- or the petitioner in  
10 that case submitted a traffic study to the Village just  
11 like was done with the 825 North Main project, right?

12 A. Very similar, yes.

13 Q. And just kind of walking around the  
14 neighborhood here, if you go one block to the east, you  
15 see a couple of large buildings here, right here. Do  
16 you know what that is?

17 A. St. Petronille church and school.

18 Q. Okay. So there is a school right there at --  
19 we call St. Pet's, right?

20 A. Yes.

21 Q. Okay. St. Petronille. St. Pet's. They've  
22 got a school there that is, what, like, K through 8?

23 A. Yes.

24 Q. Okay. And, again, this is all residential

1 around here. I mean, I can zoom out, but you know this  
2 is residential to the south, to the west, and to the  
3 east, correct?

4 A. It's zoned C5B, which is downtown -- it's a  
5 downtown zoning district. Some single-family homes are  
6 to the south. The library is in the area, but yes,  
7 generally it's mixed uses in our downtown.

8 Q. Okay. So there is a lot of kids that attend  
9 St. Pet's that walk to school, right?

10 A. Yes.

11 Q. Okay. Just like at Forest Glen they walk to  
12 school, right?

13 A. I would imagine, yes.

14 Q. In fact, that's one of the greatest things  
15 about Glen Ellyn, isn't it, that you can walk to places  
16 and you can walk to school, right?

17 A. Yes.

18 Q. Okay. We agree on that.

19 So that school is about a block from this  
20 proposed development, right?

21 A. It's actually adjacent to the development.

22 Q. Okay. Can you look at Exhibit 40, please.  
23 Is that the traffic study that was prepared by the  
24 petitioner or was submitted by the petitioner --

1 MS. EMERY: Counsel, I believe it's 42.

2 MR. HARTSELL: I'm sorry. What did I say?

3 MS. EMERY: 40.

4 BY MR. HARTSELL:

5 Q. I'm sorry. 40.

6 A. Yes.

7 Q. Okay. That's the traffic study that was  
8 submitted by the petitioner in support of the proposed  
9 development at the Apex 400 complex, right?

10 A. Yes.

11 Q. Okay. The fact that it was prepared by the  
12 same company, KLOA, K-L-O-A, that prepared the one that  
13 we saw that was done for 825 North Main, right?

14 A. Yes.

15 Q. Okay. And if you look at page three of the  
16 report, which is packet page 364, that's an aerial  
17 photo of the area with the site sort of superimposed on  
18 it?

19 A. Yes.

20 Q. It's similar to what we did here, right? You  
21 take an aerial photo and you drop the site on top of  
22 it?

23 A. Actually, that's not what's being proposed.  
24 That's the outline of the subject property.

1           Q.     Fair enough. It is the footprint of the  
2     subject property?

3           A.     Yes.

4           Q.     Okay. And so we can see there -- and then we  
5     can see right over to right there, there is  
6     St. Petronille church and school, right?

7           A.     To the left, yes.

8           Q.     I'm sorry. To the left, you're correct.

9                    Okay. So if you go forward a couple of  
10    pages, on page seven of the report, packet page 368,  
11    there is a whole section titled St. Petronille school  
12    operations. Do you see that?

13          A.     Yes.

14          Q.     Because in this traffic study they did  
15    consider the school that's a block away, or in your  
16    words, adjacent to the property. They did consider it  
17    here, right?

18          A.     Because it's adjacent. It touches the  
19    subject property.

20          Q.     Well, there is a road in between these two  
21    properties, right?

22          A.     Right, but it's not a block away.

23          Q.     That's your distinction? This is not a block  
24    from here -- from Hillside and Main to Hillside and --

1       what's this street here?

2           A.     Glenwood.

3           Q.     Glenwood.  That's --

4           A.     The subject property has frontage on the  
5       same -- so similar to the True North property, the two  
6       access points are on St. Charles and on Main Street.  
7       Here they have three access points, one on Main Street,  
8       one on Hillside, and one on Glenwood, so the objective  
9       is to assess all of those three curb cuts and the  
10      impact on that particular street within that block, so  
11      very similar.

12          Q.     All I'm saying is this report has a section  
13      on school and our report doesn't, right?

14          MS. EMERY:  Objection.  Argumentative.

15      BY MR. HARTSELL:

16          Q.     Is that right?

17          THE COURT:  That's --

18          MS. EMERY:  Asked and answered.

19          THE COURT:  I get the point.  I get the point.

20          MR. HARTSELL:  Thank you, your Honor.

21      BY MR. HARTSELL:

22          Q.     You also on Friday talked about all the  
23      changes that True North made to this proposal, all the  
24      concessions, as you say, was quite a breathless answer



1       you gave there. Do you remember that?

2           A.     Yes.

3           Q.     Okay. And all that aside, all those  
4       concessions, all those changes, it doesn't change the  
5       footprint of the property, does it? None of those  
6       things do, do they?

7           A.     It doesn't change the footprint, no. It's  
8       still 58,000 square feet.

9           Q.     Right.

10          MR. HARTSELL: Thank you, Miss Springer.

11          THE COURT: Miss Robinson, do you have any  
12       questions?

13          MS. ROBINSON: No questions.

14          THE COURT: All right. Redirect.

15          MS. EMERY: I just have a few follow-ups.

16                   REDIRECT EXAMINATION

17       BY MS. EMERY:

18           Q.     Okay. Miss Springer, last week a number of  
19       questions were asked of you regarding whether the  
20       4200-square-foot convenient store and the gas -- the  
21       gas station of True North constituted small retail. Do  
22       you recall those questions?

23           A.     Yes.

24           Q.     And I believe you said that yes, it

1       constituted small retail; is that correct?

2           A.     It is correct.

3           Q.     For those of us who don't live in the world  
4       of urban planners, what would a large retail -- what  
5       would constitute a large retail project?

6           A.     I would say 200,000 square feet. The reason  
7       I said it was small -- or we talked about compact and  
8       met the intent of the comprehensive plan is when you  
9       look at the site in comparison to the northwest corner  
10      and the northeast corner of the intersection, which are  
11      both commercial, it's less than half the size of the  
12      northwest corner, which is three acres. This is 1.3  
13      acres. It's frontage on Main Street, while all three  
14      of those have about the same width of frontage on  
15      St. Charles Road, both the northwest -- the northeast  
16      and the southeast corner have somewhere between 240 and  
17      280 feet of frontage. The northwest corner has almost  
18      800 feet of commercial property, frontage on Main Street,  
19      so it is small. It's not a big shopping center. It is  
20      a shopping center by definition in the zoning code or  
21      in the sign code, but it is not encroaching into the  
22      residential areas. It's being self-contained within  
23      that commercial area.

24          Q.     Okay. So would something like a Costco or a

1 Walmart be considered large retail?

2 A. Yes.

3 Q. Or Yorktown shopping center?

4 A. Yes.

5 Q. Does the Village of Glen Ellyn require  
6 developers to do a valuation study when they come  
7 before the board for a special use permit?

8 A. Evaluations -- I'm not sure what you mean.

9 Q. A valuation study?

10 A. We require sometimes a market study,  
11 depending on what the proposed use is, but no valuation  
12 studies have ever been required.

13 Q. Do you recall this morning Mr. Hartsell  
14 showed you in Exhibit 8 various renderings that were  
15 done by -- you had asked PBK Architects to do some  
16 renderings?

17 A. Yep.

18 Q. And you said they were renderings for retail,  
19 no specific use, correct?

20 A. They were renderings -- so when I hired PBK  
21 and asked them to prepare those -- those exhibits or  
22 those maps, the assignment was please show me on that  
23 site the largest building that you could put there  
24 along with the amount of parking that would be required

1       within the confines of the zoning code. I wanted to  
2       give developers a conceptual pan kind of idea on how  
3       big of a building they might be able to fit on that  
4       property.

5           Q.     Okay. And we looked at those renderings and  
6       they said one- or two-story retail that was imposed on  
7       the roof?

8           A.     Yeah, I didn't specify any use. They may  
9       have selected retail in order to calculate the required  
10      amount of parking for such uses.

11          Q.     And True North, how many stories is their  
12      project?

13          A.     One.

14          Q.     And it's retail?

15          A.     Yes.

16          Q.     The Goldfish Swim School, you recall that  
17      discussion this morning. You said that the fact that  
18      it wasn't a strong retail use was not the only reason  
19      why the board rejected it and I believe you were cut  
20      off in your answer, so what was the other or other  
21      reasons -- reason or reasons why it was rejected?

22          A.     So there was other research that was done and  
23      we ultimately shared that with the Village board, but  
24      the -- the research -- I got concerned because I

1       remembered that deed restriction in a prior Speedway  
2       deed that listed schools and day cares weren't allowed,  
3       and I also knew the current no further remediation  
4       letter had a restriction on use could only be used as  
5       commercial or industrial. I didn't know what that  
6       meant. I don't know what federal codes are or the  
7       state codes related to that. I didn't know the  
8       definition of commercial and industrial.

9               So I called the Illinois Environmental  
10       Protection Agency, the contact that I had been working  
11       with and who had provided the NFR letter, and said,  
12       hey, I've got a Goldfish Swim School interested because  
13       we thought it was a -- you know, a decent use and he  
14       said that would not be allowed on the site. It's  
15       considered within our definition of residential and,  
16       therefore, we couldn't even consider it any further.

17       Q.     And if you look at Exhibit 41 in front of  
18       you, at that -- in the middle of the page where we have  
19       the Dan Schoenberg email back to John Sterrett, where  
20       it says, John, continuing our discussion of a different  
21       traffic dynamic. Do you see that?

22       A.     Yes.

23       Q.     Next paragraph down it says the Main/Elm  
24       signal is unusually -- is in unusually close proximity

1 to the main St. Charles signal. Section 9-5-1 suggests  
2 why.

3 Where did he get Section 9-5-1? What does  
4 that refer to?

5 A. That is a section in the Village code.

6 Q. Okay. And he goes on and says that section,  
7 so it would be that Section 9-5-1 of the Village code,  
8 labels Elm and Main as a, quote, traffic control  
9 intersection, unquote, for, quote, pedestrian crossing  
10 purposes, end quote.

11 So that is in the Village code that that  
12 traffic signal is for pedestrian crossing purposes,  
13 correct?

14 A. Correct. Otherwise it would be too close to  
15 the other signal.

16 MS. EMERY: Your Honor, at this time, I forgot to  
17 do it on direct the first time, but I would like to  
18 tender Miss Springer as an expert in urban planning and  
19 pursuant to our Rule 213 disclosures.

20 MR. HARTSELL: Your Honor, we object.

21 THE COURT: It's a little late now.

22 MR. HARTSELL: She put her on in direct as -- she  
23 didn't tender her as a witness -- as an expert witness,  
24 as a 213 F expert on direct. I cross-examined her, now

1 at the end of redirect oh, my gosh, all of a sudden  
2 she's an expert. I've got a couple -- I've got  
3 objections to the 213 F notice, but, you know, this  
4 should have been addressed at the outset before she was  
5 subject to cross-examination. I assumed that she -- I  
6 had these disclosures, but she never presented her as  
7 an expert.

8 MS. EMERY: Your Honor, counsel never called  
9 anybody as an expert and -- other than Mr. Pogacnik and  
10 has no planning expert and never moved to quash my 213s  
11 identifying Miss Springer as an expert.

12 MR. HARTSELL: I don't have to move to quash them,  
13 your Honor. She brings her in, she presents her as an  
14 expert, she establishes her qualifications, I get an  
15 opportunity to voir dire, and then we decide whether --  
16 you decide whether or not she qualifies as an expert.  
17 None of that was done.

18 THE COURT: I think it's highly prejudicial to  
19 when you're halfway through your redirect examination  
20 to offer her as an expert. I will, however, consider  
21 her testimony in light of the experience and education  
22 to which she testified, but I am not qualifying her as  
23 an expert.

24 MS. EMERY: Okay. Thank you, your Honor.

1                   No further questions.

2           THE COURT: Miss Robinson.

3           MS. ROBINSON: I don't have any questions,  
4 your Honor.

5           THE COURT: Anything further?

6           MR. HARTSELL: I've got a couple things, if I may,  
7 your Honor.

8           THE COURT: All right.

9                   RE CROSS EXAMINATION

10          BY MR. HARTSELL:

11               Q. Let's talk about that Goldfish Swim School  
12 again for a minute. And, again, looking at Exhibit 11,  
13 which was the swim school's offer of purchase.

14               A. Yes.

15               Q. At the time they made this offer to purchase,  
16 I think we established this, you would have made  
17 available to them the no remediation letter, correct?

18               A. Yes.

19               Q. And, presumably, they would have reviewed  
20 that and come to their own conclusions about it, right?

21               MS. EMERY: Objection. Speculation. Relevance.

22          BY MR. HARTSELL:

23               Q. Do you believe that they would have done  
24 that, that they would have reviewed the documents and



1 the evidence made available to them?

2 MS. EMERY: There's --

3 THE COURT: Well, wait.

4 MS. EMERY: Same objections.

5 THE COURT: The objection is sustained.

6 MR. HARTSELL: Okay.

7 BY MR. HARTSELL:

8 Q. But all of that was available to them, right?  
9 You would not have held anything back from them had  
10 they asked?

11 A. Correct.

12 Q. Okay. And for all you know, they could have  
13 called the Illinois Department of EPA, correct?

14 MS. EMERY: Objection. Speculation.

15 THE COURT: Sustained.

16 BY MR. HARTSELL:

17 Q. You don't know if they did or didn't, right?

18 A. They never told me they did when we told them  
19 why we couldn't move forward.

20 Q. Okay. And your understanding of why they  
21 couldn't move forward was based solely on a telephone  
22 call that you placed to somebody at Illinois EPA,  
23 right?

24 A. Yes.

1 Q. That was it? Did you document that anyplace?

2 A. There is an email from me to Manager Franz, I  
3 believe.

4 Q. Is that the one that we looked at, Exhibit 12,  
5 where it says the board rejected it because it wasn't a  
6 strong retail use?

7 A. No. I think I just reported to him I called  
8 the State. The State knows what their codes and  
9 regulations are. He provided me with the definition of  
10 residential and day cares and private schools fell into  
11 that and, therefore, no, Staci, you cannot sell it and  
12 have it built for that use because it would be a  
13 violation of the NFR letter.

14 Q. Okay. But that's not mentioned in this  
15 Exhibit 12 when you summarized --

16 A. No. This is just a summary. No.

17 Q. You didn't think that was an important  
18 reason?

19 A. My name is on the memo. Meredith's is above  
20 it because she wrote it.

21 Q. Okay. And we don't have this other memo  
22 you're referring to where you say you talked to -- you  
23 explained all this to Mr. Franz?

24 A. I'm sure it was just an email.

1 Q. We haven't seen it here?

2 A. I don't know.

3 MS. EMERY: Objection, your Honor. Whether  
4 counsel -- counsel got all of the documents in this  
5 case, so it was up to him to provide what he wanted for  
6 exhibits. This is an improper question.

7 THE COURT: The objection is sustained.

8 BY MR. HARTSELL:

9 Q. And what definition of residential property  
10 did this person at the Illinois Department -- at the  
11 Illinois EPA give you during this phone call?

12 A. I asked him if we could put a Goldfish Swim  
13 School in there and if that would comply with the land  
14 use restrictions and he said no. It falls into our  
15 definition of residential. Now, I don't know what code  
16 they have.

17 Q. Well, that's what I'm asking you, what was  
18 his definition of residential? What did he tell you?

19 A. He said I couldn't put in --

20 MS. EMERY: Objection. Asked and answered.

21 THE COURT: Overruled. You may answer.

22 THE WITNESS: He gave me a list of uses. I don't  
23 remember all of them, but I remember private school and  
24 day care were on that list, and he said that -- what we

1       were talking about -- because he asked, he's like what  
2       is a Goldfish Swim School, so I explained it to him and  
3       he said it would not be permitted.

4       BY MR. HARTSELL:

5             Q.     Have you ever reviewed the definition of  
6       residential property in the Illinois Environmental  
7       Protection Act?

8             A.     No.

9             Q.     So you just basically went with what this  
10      person told you over the phone?

11            A.     Yes. He's the expert.

12            Q.     Are you aware that the primary concerns with  
13      the kind of soil contamination that we're dealing with  
14      here are either through ingesting it, the soil, or  
15      inhaling the contaminants as they come out of the soil?

16            A.     I know those are problems.

17            Q.     Okay. So, for instance, that's why you said  
18      you couldn't put a park here, because you don't want  
19      kids rolling around in the dirt, and you know kids eat  
20      dirt sometimes, right?

21            A.     Not mine, that I remember.

22            Q.     Okay. So that's why -- that's what you were  
23      concerned about not being able to put a park in here,  
24      because you talked about why -- at the very beginning

1       you talked about why you can't have a park in here?

2           A.     I said it was a special use and that there  
3       were a number of parks in the area.

4           Q.     Okay. By the way, you didn't hear  
5       Miss Clifford or Miss Martinez say that's what they  
6       thought should be there, did you?

7           A.     No.

8           Q.     Okay.

9           A.     I was responding to a question.

10          Q.     Okay. And in terms of exposure to  
11       contaminants through soil inhalation, breathing it, do  
12       you have an understanding of whether those effects  
13       could be mitigated through a proper ventilation system?

14          MS. EMERY: Objection. Lack of foundation.

15          THE COURT: And this is well beyond, well beyond  
16       the redirect.

17          MR. HARTSELL: Okay. That's fine.

18                 That's all.

19          THE COURT: Any recross?

20          MS. EMERY: None.

21          THE COURT: Miss Robinson.

22          MS. ROBINSON: No.

23          THE COURT: Thank you, Miss Springer. You may  
24       step down.

1 THE WITNESS: Thank you.

2 THE COURT: Any further witnesses, Mr. Hartsell?

3 MR. HARTSELL: Well, I'm done. This was --

4 THE COURT: That's right. I'm sorry.

5 Any other witnesses, Ms. Emery?

6 MS. EMERY: The Village rests, your Honor.

7 THE COURT: All right. We'll take about 10, 15  
8 minutes and then you may put on your case.

9 MR. HARTSELL: Thank you.

10 (A short recess was had.)

11 THE DEPUTY: Come to order. Court is again in  
12 session.

13 THE COURT: Please be seated. Miss Robinson, you  
14 may call your first witness.

15 MS. ROBINSON: Yes, your Honor. I would like to  
16 call Ryan Howard to the stand.

17 THE COURT: Please remain standing and raise your  
18 right hand and be sworn.

19 (Witness sworn.)

20 RYAN HOWARD,  
21 called as a witness on behalf of the Defendant, True  
22 North Energy, LLC, having been first duly sworn, was  
23 examined and testified as follows:  
24

## 1 DIRECT EXAMINATION

2 BY MS. ROBINSON:

3 Q. Good morning.

4 A. Good morning.

5 Q. Could you please state and spell your last  
6 name for the record?

7 A. Yes. Ryan Howard, H-o-w-a-r-d.

8 Q. Mr. Howard, where do you work?

9 A. I work for True North Energy.

10 Q. What is your position there?

11 A. I'm the chief operating officer.

12 Q. Can you explain to the court what True North  
13 does?14 A. Yes. True North owns, operates, or supplies  
15 around 300 gasoline and convenient store locations.

16 Q. How long has True North been in operation?

17 A. So True North was formed in 1999, so about 20  
18 years, and it's comprised of Shell Oil Company is 50  
19 percent equity owner of True North and the Lyden family,  
20 a family owned business, is the other 50 percent owner.  
21 The Lyden family has been in business for 100 years, so  
22 this year is the 100th year. It was created in 1919.23 Q. And when you said that half -- Shell is part  
24 owner and True North is part owner, can you explain

1       that and what happened?

2           A.     Yeah. So there was a contribution of assets  
3       of both partners and basically doubles the size of the  
4       company at the formation; and each company, each  
5       respective company, Shell as a 50-percent equity stake  
6       in the company and the family, True North, the family,  
7       the Lyden's have a 50-percent stake in the new company,  
8       True North Energy.

9           Q.     Okay. And when did that happen?

10          A.     In 1999.

11          Q.     That was in 1999?

12          A.     Correct.

13          Q.     Okay. How long have you been at True North?

14          A.     I've been at True North since 2011.

15          Q.     What positions have you held there?

16          A.     Just the chief operating officer. I hired as  
17       the chief operating officer.

18          Q.     What about -- well, let me ask you this  
19       first, what are your duties and responsibilities as the  
20       chief operating officer?

21          A.     So as the chief operating officer, I have  
22       responsibilities related to our company operated  
23       outlets, our dealer operated business, so independent  
24       dealer operated locations, as well as we truck all of



1       our fuel, so the trucking business reports to me; and  
2       then I also team up with our CEO and president on  
3       development and portfolio activities.

4           Q.     Okay. When you said that they're company  
5       owned and dealer owned, can you explain the difference  
6       between those two?

7           A.     Sure. So our company owned assets are just  
8       that. The company owns the real estate, owns the  
9       improvements, operates the facilities with our own  
10      employees. We basically are -- it's a highly involved  
11      model that we have great control over.

12                Independent dealers are either leased out to  
13      independent business people or they own those  
14      improvements themselves, so if they're leased out, we  
15      obviously own the real estate and the improvements. If  
16      they -- or they may own the things themselves and then  
17      we just have a supply relationship with them on fuel.

18          Q.     Okay. And out of the 300 locations that True  
19      North owns, how many are dealer operated versus how  
20      many are company operated?

21          A.     So roughly 110 are company operated and the  
22      balance are dealer operated.

23          Q.     And what about for your future plans?

24          A.     So, strategically, our future and our bread

1 and butter is really our company operated operations.  
2 In 2010 it was our entry into Chicagoland and we  
3 purchased from Shell 100 locations up here that were  
4 dealer. Since that time, we've sold off a substantial  
5 amount of those, roughly 40 percent. We will continue  
6 to sell off the real estate there and just have the  
7 supply relationship. We're taking that money and  
8 reinvesting that into company operations.

9 Q. Why?

10 A. We -- we like the annuity stream. We like  
11 the diversity of both classes of trades, but the  
12 independent dealer class of trade there is sustainability  
13 concerns there, so they're typically one single site to  
14 less than five site operators. So they don't have  
15 economies of scale. They don't have geographic  
16 diversification. They don't have diversification of  
17 revenue streams. They don't have sophisticated back  
18 office systems.

19 Within our company operated units, I have a  
20 whole team of category managers that have manufacturers  
21 coming directly into our office to negotiate deals on  
22 convenience items. We're able to leverage the amount  
23 of gallons that we do with our fuel supplier to get a  
24 competitive price on product. So there is just great

1 efficiencies that we can get with being a chain versus  
2 an independent dealer could with one to, say, five  
3 sites.

4 Q. You indicated that you have about 110 in the  
5 Chicagoland area today?

6 A. Yes, roughly 110 sites in the Chicagoland  
7 area.

8 Q. And while you have been the COO of True North  
9 Energy, about how many gas station developments have  
10 you been involved with?

11 A. So we've probably done 50 either new  
12 developments or redeveloping older sites. That's --  
13 since we kind of concluded our acquisition activity  
14 with the 2010 acquisition and we transitioned over to  
15 more organic growth and redeveloping our sites and  
16 building new sites, we spent about \$150 million  
17 probably within that -- within that eight-year period.

18 Q. And has that included developments in the  
19 Chicagoland area?

20 A. It has and today we have a robust pipeline of  
21 new locations that we'll be adding in future years.

22 Q. Prior to being employed with True North  
23 Energy, did you have experience in the energy industry?

24 A. Yes. So for the first 14 years of my career,

1 actually going all the way back to intern between my  
2 sophomore and junior year, as well my junior and senior  
3 year in college, I worked for Shell Oil Company.

4 Q. What did you do for Shell Oil Company?

5 A. So I had numerous different job titles, job  
6 roles, responsibilities and different geographic areas  
7 of increasing responsibility. I started out in various  
8 operational kind of roles. Eventually did a role in  
9 network planning for across the United States where we  
10 visited numerous different markets.

11 Q. And I'm going to just stop you right there.

12 A. Sure.

13 Q. Can you explain what networking development  
14 is?

15 A. Yes. So in network planning, we essentially,  
16 for Shell, we're looking at within certain markets what  
17 an ideal network for Shell would be of locations. We  
18 plotted that against what was there today. We made  
19 investment decisions on where we should build new sites,  
20 where we should do improvements on sites, whether  
21 they're small remodels or even adding dispensers,  
22 replacing dispensers all the way up to complete scrape  
23 and rebuilds or adding new locations.

24 Q. How long did you work in that department?

1           A.     So roughly four years.

2           Q.     Okay. And I did interrupt you. What other  
3 positions did you hold while you were at Shell?

4           A.     So after network planning, I went into joint  
5 ventures, and that is exactly what True North is, and,  
6 again, I operated at the board level with numerous  
7 organizations across the country that Shell had equity  
8 positions in, and my role was to look out for the  
9 health of that -- that overall business and protecting  
10 Shell's equity within that business.

11          Q.     How long did you work for Shell Oil Company?

12          A.     So roughly 14 years.

13          Q.     Sorry if I --

14          A.     No worries.

15          Q.     Could you describe briefly your educational  
16 background for the Court?

17          A.     Yeah. I have a bachelor's degree in business  
18 administration.

19          Q.     How did True North become informed or aware  
20 of the subject site at issue here?

21          A.     So we have a developer partner Terraco. They  
22 also act as -- they do some broker work for us and they  
23 presented us the site in 2015.

24          Q.     Were you responding to an RFP?

1           A.     No. I've only learned of the RFPs through  
2     the process. We -- I understand it was 2012 and 2014  
3     that those RFPs were attempted. We were never -- we  
4     never seen the property at that time, so we didn't  
5     respond to those -- that's why we didn't respond to  
6     those RFPs.

7           Q.     So this was just an independent investigation  
8     you did? It wasn't in response to an RFP?

9           A.     Correct.

10          Q.     So let's talk about what you did once your  
11     broker brought this opportunity to you. What did True  
12     North do?

13          A.     So we studied the market area. We looked at  
14     the various competitors in the area. We looked at the  
15     demographics of the area. We looked at the traffic  
16     counts of the area. We prepared preliminary site plans  
17     to say what could the facility look like on this  
18     property. We prepared preliminary economics; and  
19     ultimately, as we got through the stages, we saw it was  
20     an attractive project for us and we submitted a letter  
21     of intent.

22          Q.     I want to talk a little bit about your market  
23     analysis, and you've heard a lot of testimony about the  
24     different gas stations --

1           A.     Correct.

2           Q.     -- that are located around this area. Do you  
3 recall that testimony?

4           A.     I do.

5           Q.     Okay. Based on just your recollection and  
6 knowledge of this area, obviously knowledge of the  
7 project, can you identify where the closest gas  
8 stations are and the proximity of those to the subject  
9 site?

10          A.     Yeah, I can, and I'll start and end in the  
11 same place here kind of. It was one of the reasons  
12 that we were attracted to the facility -- to the  
13 property. There is basically a gap within the  
14 marketplace here.

15          Q.     What do you mean by that?

16          A.     So I'll take you kind of through where the  
17 competitors are and I think then I'll circle back and  
18 finish with that, but to the west, if you go on  
19 St. Charles Road, three miles to the west before you  
20 get to the first gas location. It's about three miles  
21 also up Geneva Road before you get to the first gas  
22 location, neither of which are within Glen Ellyn. So  
23 there is a Shell location in Wheaton. There is a BP  
24 location that I think is in Carol Stream.

1           As you come down to the south into  
2   Glen Ellyn, as you've heard numerous times today, there  
3   are gas stations within Glen Ellyn on Roosevelt Road.  
4   However, that's about two and a half miles to the  
5   south. There is 28,000 people within Glen Ellyn, so  
6   there is nothing within the center of Glen Ellyn or to  
7   the northern part of Glen Ellyn that allows for those  
8   people to be captured. There is also what we consider  
9   a barrier to a trade area and that's the downtown area  
10  of Glen Ellyn.

11           Q.    What does that mean?

12           A.    Yes. So something that people don't -- that  
13  cross over easily, it takes more effort to cross over,  
14  so in their daily patterns, it inhibits convenience.  
15  Our business is all about convenience.

16                    So, you know, another one that is actually  
17  downtown as well is the train tracks, so it creates  
18  kind of a natural barrier, something that you have to  
19  cross over that kind of creates an edge to a trade  
20  area, so these are obstructions that prevent that for  
21  being very convenient to someone.

22           Q.    So what did you consider to be the barriers  
23  to trade in this instance?

24           A.    So on the eastern side, there is no gas



1 stations and the barrier on that side is 355, so  
2 that's, I don't know, a mile and a half or so over. I  
3 know to the next gas station is east of 355, that would  
4 be two and a half miles.

5 To the south, I would consider the barrier  
6 the downtown area, as well as the train tracks,  
7 certainly. And then to the west, you know, there is  
8 nothing. It's pretty open, but there's people that are  
9 moving to the east, downtown Chicago obviously is the  
10 to the east, so that's the way people naturally migrate.

11 There are stations on North Avenue, not  
12 within Glen Ellyn. It's also extremely heavily  
13 traveled and so, you know, people like to buy  
14 convenience and fuel as close to their home as they  
15 possibly can.

16 Q. And is that based on the market research that  
17 you've done working for True North?

18 A. It's based not only on the market research,  
19 but on, you know, success factors that we see in like  
20 properties.

21 Q. You heard testimony today about the pricing  
22 of gas and how you also understand that consumers want  
23 to buy gas where it's cheapest, correct?

24 A. Correct.

1           Q.     Does True North have any sort of envision  
2 pricing strategy for this location?

3           A.     Sure. I mean, we have to be competitive  
4 within the marketplace, so as I named off some of the  
5 competitors around the area, to the west there is a BP  
6 and a Shell. These are branded fuel operators, so, you  
7 know, we certainly would be competitive with them.  
8 Typically our strategy would be match them penny for  
9 penny.

10                     Subsequently, up on North Avenue, there is a  
11 Mobil. That's also another branded fuel. Again, we  
12 would be competitive with them, so price wouldn't be  
13 really a reason that people would or would not shop us.  
14 It really, what we saw here at this site, was the  
15 convenience factor.

16           Q.     You talk about competitors in the area. Can  
17 you describe what competitors you view in this area  
18 being Stacy's Corner?

19           A.     Yeah. So, I think it -- we don't see --  
20 obviously there is no fuel and that's about 50 percent  
21 of the overall income to our business, not necessarily  
22 the revenue, but 50 percent of the income. The other  
23 50 percent is convenience items, so in terms of  
24 convenience items, 7-Eleven certainly sells similar

1 convenience items. However, 7-Eleven doesn't have fuel  
2 and today it's seen as a legacy kind of business to  
3 have a stand-alone convenience store. 7-Eleven used to  
4 build stores without fuel, but today 7-Eleven is  
5 building stores with fuel and convenience at the same  
6 time, so that's what the consumer is demanding.

7 Q. What about Walgreens?

8 A. You know, just about anywhere there is a  
9 Walgreens there is probably a gas station across the  
10 street, and we've had them come into developments  
11 across the street from us where we have a development  
12 and we really haven't seen much impact from that.

13 You typically don't get in and out of a  
14 Walgreens as quickly as you get in and out of a  
15 convenience store and, again, people can't buy their  
16 fuel and their convenience items at the same time.

17 Even as I was driving in this morning on  
18 Naperville Road near Danada Square, there is a  
19 Walgreens across the street from a CVS across the  
20 street from a Shell, Circle K. Within a block, there  
21 is a Jewel Osco, complete grocery store, and a block to  
22 the north there is a Dollar Store, so I think the other  
23 thing is there is enough demand within areas that  
24 where, you know, just one simple location is not going

1 to satisfy the overall demand.

2 So while we did recognize that the 7-Eleven  
3 was a convenience competitor, you know, there is enough  
4 demand there from the 28,000 people in Glen Ellyn and  
5 the passerbys on -- from neighboring communities which  
6 are also densely populated.

7 Q. So what were your primary responsibilities  
8 with respect to this project?

9 A. So I was involved in the real estate aspects  
10 of the project, purchasing, negotiating the contract  
11 obviously with counsel. Preparing the studies that I  
12 talked about, again demographics, traffic, analysis,  
13 competitor surveying, preliminary economics. I took  
14 this project to our board to have approval and then I  
15 got into the various planning aspects of this and  
16 zoning.

17 Q. Who else was involved from True North  
18 primarily?

19 A. So we take development and growth as one of  
20 our primary focuses of the company and so we're  
21 involved at the highest level. Our CEO and president  
22 actually leads construction activities, so he was  
23 involved as well, attended some of the meetings. I  
24 attended some of the meetings, but not all. If I

1 weren't there, he were; or we also had Lindsey Lyden,  
2 who is an owner, fourth generation owner, of the  
3 company. She's our vice president of growth and  
4 development, as well as our general manager of  
5 environmental services, David Nie.

6 Q. Tell me about David Nie and how long has he  
7 been with the company.

8 A. So David Nie has been with the company, I  
9 believe, 20 years. I know overall he has 33 years in  
10 environmental services within the industry. He  
11 graduated -- he has a bachelor's degree in environmental  
12 science. Master's degree in environmental science from  
13 Cal State Fullerton and he's worked in the industry for  
14 33 years.

15 Q. Was Mr. Nie present at some of the meetings  
16 that were discussed earlier?

17 A. Yes. He's definitely been at the meetings,  
18 he gave testimony at the meetings, and on technical  
19 standards that are -- that we adhere to as outlined by  
20 the Illinois State fire marshal, the Illinois EPA.  
21 He's recognized as an expert within our industry. He's  
22 one of only six people that are qualified to teach AB  
23 operator trading within the state of Illinois.

24 MR. HARTSELL: Your Honor, I'm going to object.

1 Mr. Nie should be here testifying then. Instead we  
2 have Mr. Howard up here acting as a -- I guess  
3 channelling Mr. Nie, so --

4 THE COURT: I haven't heard a question yet that  
5 would elicit that. I think your objection is  
6 premature.

7 MR. HARTSELL: Thank you.

8 THE WITNESS: So he was made available and -- for  
9 questions, as well as to prepare testimony.  
10 BY MS. ROBINSON:

11 Q. Mr. Howard, I would like you to look at the  
12 exhibits I set before you.

13 THE COURT: This is probably a good time to break  
14 for lunch and we can get into the exhibits after lunch.

15 All right. We'll resume promptly at 1:30.

16 Mr. Howard, please do not discuss your  
17 testimony with anyone until we resume.

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Thank you.

20 (A short recess was had.)

21 THE DEPUTY: Come to order. Court is again in  
22 session.

23 THE CLERK: This is back on Protect Glen Ellyn vs.  
24 True North Energy.

1 THE COURT: Please be seated.

2 Counsel, would you identify yourselves again  
3 for the record, please.

4 MR. HARTSELL: Good afternoon, your Honor. David  
5 Hartsell, H-a-r-t-s-e-l-l, on behalf of the plaintiffs.

6 MS. GROH: Susan Groh, G-r-o-h, on behalf of the  
7 plaintiffs.

8 MS. EMERY: Ellen Emery, E-m-e-r-y, on behalf of  
9 defendant Village of Glen Ellyn.

10 MS. TAPPENDORF: Julie Tappendorf,  
11 T-a-p-p-e-n-d-o-r-f, on behalf of defendant Village of  
12 Glen Ellyn.

13 MS. ROBINSON: Jamie Robinson, R-o-b-i-n-s-o-n, on  
14 behalf of True North Energy.

15 THE COURT: Mr. Howard, would you please take the  
16 stand again.

17 THE WITNESS: Yes.

18 THE COURT: Would you state your name and spell  
19 your last name again, please.

20 THE WITNESS: Yes. Ryan Howard, H-o-w-a-r-d.

21 THE COURT: You may proceed.

22 MS. ROBINSON: Thank you, your Honor.

23 BY MS. ROBINSON:

24 Q. Mr. Howard, right before we broke for lunch,

1 I was going to show you a few exhibits I set up there  
2 for you. One is a larger set of renderings and that  
3 will be Exhibit 55.

4 A. Okay.

5 Q. There is a smaller set of renderings and that  
6 is going to be Exhibit 56.

7 Do you have those in front of you?

8 A. I do.

9 Q. We've heard a lot of testimony today about  
10 this project, a number of different levels, but I don't  
11 think anybody has really fully described the project in  
12 it's entirety, and I'm going to try to break up your  
13 testimony a little bit by asking you some questions,  
14 but why don't we go through Exhibit 55 first.

15 A. Okay.

16 Q. Can you tell me what the first picture of 55  
17 depicts?

18 A. Okay. So this is a total site rendering of  
19 our proposed development. The 4200-square-foot  
20 convenience store, as well as the six multi-product  
21 dispensers under the canopy and then there is an  
22 adjacent dry cleaners, which is not actually part of  
23 the development, but it's also shown in the picture.

24 Q. I want to draw your attention to what appears



1 to be a wall on two sides of the development. Can you  
2 just explain what side of the development that backs up  
3 to?

4 A. Yes. So the -- what you'd see at the -- it's  
5 the eastern end of the development is a wall that  
6 buffers -- there is a wall and then there is a  
7 detention pond and then there is a canopy. The wall  
8 buffers to the neighboring residents and -- it is  
9 actually a wall. Initially this was proposed as a  
10 fence and through the -- through the process we were  
11 asked by actually some of the residents to consider  
12 putting a sound -- a wall that was up to 98 percent  
13 sound attenuation, prevented 98 percent sound  
14 attenuation.

15 Q. Do you recall whose suggestion or request  
16 that was made by?

17 A. Yeah. It was actually Joe Abel.

18 Q. Okay. Go ahead.

19 A. And that wall goes to the eastern edge of the  
20 property and then goes --

21 Q. I just want to interrupt you. Which wall are  
22 we talking about right now? Are we talking about the  
23 one on the left-hand side of the rendering or on the  
24 right-hand side?

1           A.     Correct, the left-hand side. It's the same  
2 material, though, on the right-hand side of the  
3 building as you're facing it. The fence is consistent  
4 throughout.

5           Q.     Okay. And can you tell me which street runs  
6 in front of which side of the property?

7           A.     Okay. So the entrance to the convenient  
8 store is facing St. Charles and the side street here  
9 that you can see the dry cleaners is Main.

10          Q.     Okay. And we had some discussion earlier,  
11 there was some testimony about the signage, and it  
12 looks like -- so you have a fairly modest sign in  
13 front?

14          A.     Yes. So, you know, it is a small sign. Not  
15 typical of what you have within the industry.  
16 Typically what you'd see in the industry is a larger  
17 pole sign that may go, say, 20, 25 feet into the air.  
18 This one is, as you characterized, more modest, as well  
19 as outlined in brick material and limestone caps to  
20 coordinate with the rest of the development.

21          Q.     And the wall that we were talking about, I  
22 think, on the east side of the property, you said that  
23 there was a detention pond that was behind that,  
24 correct?

1           A.     Correct. The detention pond would be on the  
2 west side of the wall, so on the development side of  
3 the wall.

4           Q.     Right. There also is going to be buffering  
5 behind that in terms of trees; is that right?

6           A.     Correct. There will be some evergreen trees  
7 over there, as well as some other species of trees. I  
8 don't recall exactly.

9           Q.     You heard some testimony earlier about how  
10 many trees were going to be kept. Do you have any  
11 knowledge about the tree study that was done on this  
12 property and what's going to remain there and what  
13 you're putting in?

14          A.     Yeah, I do. So the tree preservation plan as  
15 required by Glen Ellyn only required that we tagged  
16 trees that were ten inches in diameter or larger.  
17 Certain species, I think, were required at five inches  
18 and then it was determined by the health of those by an  
19 arborist if those should be kept or not and those  
20 were -- that was part of the process. That's not to  
21 mean that trees that weren't to be tagged wouldn't be  
22 kept. Many of those would also be kept, so for  
23 instance -- for example, an eight-inch tree that  
24 doesn't meet the specification of the Village to be

1 tagged still may be kept. It doesn't mean that we're  
2 going out there to clear cut.

3 Q. What about -- let's look at the second page.  
4 I think this is more of a close-up of the same thing.  
5 Do you agree with me?

6 A. Yes. This is just zoomed in a little bit and  
7 got a little bit blurry.

8 Q. And this is the landscaping in front of the  
9 building that's also going to be provided by True  
10 North.

11 A. It is. What we do is we take the actual  
12 landscaping plan and apply that in the rendering, so  
13 it's very realistic to scale, completely to scale.

14 Q. So am I correct in that you -- other than the  
15 sign in front, you don't have a pole with a sign on it?

16 A. That's correct. That's the -- that is the  
17 sole primary ID sign that you see there in that  
18 picture.

19 Q. And other than the Village in terms of  
20 working with the Village with these plans, were there  
21 other entities or organizations that were involved in  
22 helping you come up with the design for this building?

23 A. So early on in the process, I believe, it was  
24 at the preliminary architectural review board, the

1 historical society had been engaged, and we actually  
2 sent our architects from Ohio. They came over and sat  
3 down with the historical society and worked on  
4 different aspects that they could integrate into this  
5 development to better fit within the community.

6 Many of our competitors are very rigid about  
7 how they protect their -- they think they're protecting  
8 their brand when they protect how they construct a  
9 facility. We take a different approach. We want to  
10 fit within the communities that we do our developments,  
11 and so we're willing to alter -- we still want to  
12 protect our brand, but we're willing to alter our  
13 builds to fit in with that community.

14 Q. Is this a typical building that you would  
15 have in your portfolio?

16 A. No.

17 Q. And why is that?

18 A. There has been many modifications to this  
19 building. The gable dormers on the side, the cupola on  
20 the top, you know, various architectural features, just  
21 the downspouts, some of the materials used. Certainly,  
22 one of the biggest things is on the fuel canopy.  
23 Typically you would have the red and yellow of the  
24 Shell colors.

1           We went to the fuel supplier and said, hey,  
2   look, this development has got to be different. The  
3   community wants something different. We're in a  
4   historical society and we got -- we're in a historical  
5   area. We got their permission to remove that and go  
6   with a mansard shingle roof that coincides with the  
7   convenience store, as well as, you know, that's what  
8   you see at a residential building as well. You see  
9   roofs, you see shingles, so it kind of all carried  
10   through to kind of fit within the community.

11           Q.    I'm going to show you -- why don't you take a  
12   look at Exhibit 56 to illustrate your point. If you  
13   could look at page four of that document.

14           MR. HARTSELL: I'm sorry, Jamie. Is this the  
15   smaller one?

16           MS. ROBINSON: Correct.

17           MR. HARTSELL: Thank you.

18           THE WITNESS: Yes.

19           THE COURT: Am I looking at the right one?

20           MS. ROBINSON: No. This is the small packet that  
21   was provided to you. If you don't have it, I have  
22   another one.

23           THE COURT: Oh, here it is.

24           MS. ROBINSON: So that's page four of the smaller

1 document.

2 BY MS. ROBINSON:

3 Q. Can you describe what is on this rendering,  
4 please?

5 A. So the top section is the typical Shell  
6 canopy. This is their globally recognized canopy to  
7 their standards, so you'll see the red, yellow, large,  
8 what they call, Shell pectens. You'll notice that the  
9 canopy columns are steel. That's typically how they're  
10 built. And at the bottom, you'll see the modifications  
11 that we've made, bricking the canopy columns, putting  
12 some stone accents. Certainly, as I mentioned, the  
13 mansard shingled roof material around the -- you'll  
14 notice the signs that are on the canopy don't protrude  
15 above the top of the mansard. They have been reduced  
16 in size to not go above that, so there has been  
17 numerous modifications made versus the typical Shell  
18 canopy.

19 Q. Can you look at the next page?

20 A. Yes.

21 Q. Could you please describe what that shows?

22 A. So the building at the top was our initially  
23 proposed, actually, and our typical prototype  
24 4200-square-foot convenient store. We start off from a

1     pretty good place when we go into most communities  
2     because they want to see brick on all four sides of the  
3     building, and obviously the back, as well as all the  
4     other sides. They also want to make sure that you  
5     don't see things like HVAC units and things like that,  
6     an all brick dumpster area, so all of those things are  
7     even in the top rendition of our buildings.

8                 So typically when we go into communities for  
9     zoning or permitting, we're pretty well received, but  
10    the bottom is the one that we through the process made  
11    numerous concessions and, I think, Miss Springer did a  
12    great job of outlining many of those, and a lot of  
13    those were architectural-type features that were  
14    integrated into the bottom picture, rendering.

15            Q.     I'm not going to ask you to go through those  
16    again.

17            A.     Thank you.

18            Q.     But can you tell the Court whether there was  
19    any costs associated with those changes and  
20    modifications?

21            A.     Certainly. We had a preliminary estimate of  
22    around \$3 million on this project and today we're  
23    probably somewhere in excess of \$3.8 million. We  
24    haven't bid it out yet, but obviously a lot of the



1 changes that we've made in terms of the development,  
2 which were much more expensive. You know, the sound  
3 attenuation wall is much more expensive, the mansard  
4 canopy was more expensive, the gabled dormers, the  
5 Cupola, virtually all of these things. None by  
6 themselves ran the price up significantly, but in  
7 concert they all did, as well as the time delays and  
8 those are the things that bring the price up.

9 Q. In your experience with Shell and True North  
10 Energy, would you consider this a large project?

11 A. Certainly not. Our competitors are building  
12 stores -- again 4200-square-foot convenient store. Our  
13 competitors like Thornton's is building 5500 square  
14 feet, so about 25 percent larger. Bucky's is building  
15 7100-square-foot buildings, so about 40 percent larger  
16 than ours. This is -- furthermore, on the four court,  
17 there is six multi-product dispensers here. Bucky's is  
18 building ten multi-product dispensers with three more  
19 dedicated diesel islands with four product dispensers  
20 there, so, you know, we're about 50 percent less in  
21 terms of fueling capacity, fueling locations.

22 Q. I don't want to get into a lot of detail  
23 about the environmental issues or the, I guess, what  
24 True North does to help prevent all of the

1 environmental concerns that there might be associated  
2 with a gas station, but I do understand that there are  
3 a couple of fairly simple things to explain and one of  
4 them has to do with the fumes that you might see at a  
5 gas station.

6 Do you have an understanding of how True  
7 North deals with the fumes that you might get from a  
8 dispenser or from a truck that has come onto site and  
9 is dispensing fuel or filling up the fuel tanks?

10 A. So I do understand how True North does it and  
11 it's not just True North. This is regulated by -- this  
12 is regulated that you would find -- a regulation that  
13 you would find through any gas station convenient store  
14 company, but it's essentially a closed loop system,  
15 which is to mean that fumes don't come out into the  
16 environment.

17 Essentially, when fueling occurs, there's  
18 technology that captures the vapor within the -- the  
19 vapors within the fuel dispensing. That goes -- fuel  
20 dispensing unit. That goes back into the tank and  
21 those fumes are stored in the tank. When the tanker  
22 truck makes a delivery of fuel, that fuel obviously is  
23 dispensed into the tanks. They hook up another line to  
24 the tanker truck and from there the fumes go back into

1 the tanker truck. Tanker truck then takes those back  
2 to the terminal and they essentially are turned back  
3 into the liquid form and used as fuel -- used as  
4 gasoline once again.

5 Furthermore, in, I believe it was, the '90s,  
6 they started requiring on-board canisters within cars,  
7 so a similar thing happens is each car during that  
8 period has canisters that basically capture those  
9 fumes. The fumes go back into the tank and then those  
10 are burnt, so there is no -- there is no fumes that are  
11 going out into the environment, not in today's  
12 regulated era.

13 Q. How much money did True North put into it's  
14 efforts to design this project and to complete the SUP,  
15 the special use permit, application?

16 A. So to date we have paid third-party  
17 organizations about \$135,000 on this project. That  
18 doesn't count any attorney's fees, obviously, or any --  
19 the significant staff time. We do most of the things  
20 ourself, so there has been significant staff time,  
21 myself and others, on this particular project.

22 Q. Who do you anticipate would manage the store?  
23 How would that work?

24 A. We hire locally. We go to the communities

1       that we do business in and we try to hire there. We  
2       put things out -- postings out on job boards, but we  
3       hire locally.

4             Q.     So is this going to be a company owned  
5       project or is it going to be a dealer project?

6             A.     Absolutely company owned project. All of our  
7       new projects, all of our new money, new investments are  
8       company owned projects. I went through some of the  
9       reasons earlier. That we have just greater control.  
10      We can leverage our economies of scale and compete  
11      better when we are operating them ourselves.

12            Q.     What would be the hours of operation?

13            A.     So the hours of operations would be  
14      restricted. We would have to close from 12 midnight to  
15      5:00 a.m. That was not something that we -- it's not  
16      something that we have at any of our other new  
17      developments.

18                    It was not something that we were willing to  
19      concede on when asked by the Village to concede on  
20      numerous different things. We did on a lot of them.  
21      We were able to give those concessions, that was not  
22      one of them, but at the final meeting, the Village  
23      board imposed that upon us and we made a determination  
24      that we still will go forward with the project.

1           Q.     At the time that you submitted your special  
2     use permit application, were there other competitors or  
3     other businesses in the area that were operating 24/7?

4           A.     Yes. I believe the 7-Eleven was 24 hours at  
5     that time.

6           Q.     Do you know if it is any longer?

7           A.     I don't know at all.

8           Q.     Miss Springer testified that there were about  
9     11 meetings that True North had with the Village. Does  
10    that comport with your recollection?

11          A.     So there were certainly in the formal  
12    meetings, planning commission, architectural review  
13    board, Village board, there were somewhere 11 to 12  
14    meetings, but certainly there was a lot of outside of --  
15    of those meetings a lot of time spent on various  
16    teleconferences, various meetings, working on the  
17    project and trying to make it as strong as we possibly  
18    could.

19          Q.     Did you have any other meetings with  
20    community members or anyone else?

21          A.     Well, as I mentioned, we sent our architects  
22    to meet with the historical society. We did not have  
23    any other meetings with any residents with the  
24    exception I did get a phone call after the final board

1 meeting from actually Joe Abel, and he just -- he told  
2 me that he still didn't support the --

3 MR. HARTSELL: Objection, your Honor.

4 THE COURT: Sustained. That's hearsay.

5 BY MS. ROBINSON:

6 Q. When you were originally planning this  
7 project, when did you anticipate that it would be  
8 completed?

9 A. So typically from start to finish, we're six  
10 to eight months from when we put a letter of intent in  
11 until we have full permits in hand.

12 Q. How much did you pay for this property?

13 A. \$630,000.

14 Q. And how many projects do you anticipate --  
15 does True North anticipate doing per year?

16 A. So it varies by year depending on what's  
17 going on, but, you know, this year we'll intend to get  
18 eight to ten projects out.

19 Q. How many in the Chicagoland area?

20 A. This year we'll do three new builds in the  
21 Chicagoland.

22 Q. And is this project now -- this particular  
23 project was it scheduled to be a project that could  
24 have been completed in 2017?

1           A.     Absolutely. 2017 or 2018 and where we sit  
2 today we're running out of time in 2019 and that may  
3 sound surprising given that it's only February, but it  
4 takes times to stage these things and then it takes  
5 about six to seven months to build them from start to  
6 finish.

7           Q.     And if you -- does that mean that you lost  
8 that opportunity in years '16 and '17 and '18?

9           A.     Yes, it does. We did not have other projects  
10 at that ready to go to replace this project, so it was  
11 a lost opportunity that we will never get back. Today  
12 we have more projects in the pipeline and so it's a bit  
13 different position today than it would have been then.

14          Q.     You heard some testimony about the tax  
15 revenues that would be captured by the Village in this  
16 project and there was those based on revenue  
17 projections of True North?

18          A.     Correct.

19          Q.     What -- what did you anticipate the revenues  
20 for this particular project to be on an annual basis?

21          A.     Around \$7 million and that has an assumption  
22 in it on the price of fuel of about \$2.75 a gallon.  
23 The split on that was about a \$5.8 million for fuel  
24 revenue and 1. -- I think it was \$1.6 million for in

1 store revenue.

2 Q. And where did you come up with those numbers?

3 A. Well, we did an analysis based on going back  
4 to how we analyze the site to come up with, you know,  
5 if this was a good site for us to invest in. We looked  
6 at the demographics of the area. We looked at the  
7 traffic of the area. We looked at the competition in  
8 the area. We then benchmark that against other sites  
9 we have in the market, other sites that others have in  
10 the marketplace. We understand what kind of volumes  
11 they do and we come up with projections. Those are  
12 consistent with our investment proposals and all the  
13 way through to the tax revenue generation.

14 Q. Mr. Howard, did True North do everything that  
15 was requested by the Village in terms of submissions or  
16 studies or information?

17 A. We did.

18 MS. ROBINSON: I have no further -- well -- I have  
19 no further questions.

20 THE COURT: Thank you.

21 Cross.

22 CROSS-EXAMINATION

23 BY MR. HARTSELL:

24 Q. Good afternoon, Mr. Howard.



1           A.     Good afternoon.

2           Q.     We met before, right?

3           A.     We have.

4           Q.     These renderings here that you've given us,  
5 Exhibits 57 and 56 --

6           A.     Yes, sir.

7           Q.     -- do you have those in front of you?

8           A.     I do.

9           Q.     I don't -- there aren't pictures of how this  
10 looks from the back, are there?

11          A.     I'm sorry.

12          Q.     There are no pictures in here of how it looks  
13 from the back?

14          A.     There are no pictures in these particular  
15 exhibits. However, we did submit pictures of the  
16 renderings from the back and those were shared during  
17 the public meetings.

18          Q.     Okay. But you don't have them here today, do  
19 you?

20          A.     I don't.

21          Q.     Okay.

22          MR. HARTSELL: So zoom in on this, Larry. Come up  
23 a little bit. Other way. Sorry.

24

1 BY MR. HARTSELL:

2 Q. By the way, when you were building this  
3 project, did you walk around the neighborhood?

4 A. I didn't walk around the neighborhood. I did  
5 drive around the neighborhood. I got a good feel for  
6 the neighborhood.

7 Q. Okay. So you know and you probably heard  
8 that Miss Martinez here lives right about there? Her  
9 backyard is going to back up to this, right?

10 A. I did hear where Miss Martinez lives.

11 Q. And you agree her backyard is going to back  
12 right up to your property line on this project?

13 A. I would agree it's an adjacent property.

14 Q. Well, can you answer that question? I mean,  
15 do you agree her property is backing right up to your  
16 property?

17 A. I said it was adjacent. I think that is  
18 adjacent.

19 MS. ROBINSON: Objection asked --

20 THE COURT: The answer will stand.

21 BY MR. HARTSELL:

22 Q. Okay. That's fine.

23 And you look at Exhibit 2 in your book there,  
24 sir. Do you have the binder? If you could look at

1 Exhibit 2. It's just kind of a bigger picture of it.

2 A. Yes, sir.

3 Q. So all of these pretty things you did here --  
4 it's a nice looking building, okay, but all of these  
5 dormers and the cupola and the downspouts and the  
6 materials and the change in the canopy and all that,  
7 I'll just ask you the same thing I asked Miss Springer,  
8 that doesn't change the footprint of this project, does  
9 it?

10 A. It works to fit in with the community. It's  
11 a commercially zoned property and we did our best to  
12 fit in with the community.

13 Q. Well, I'm asking you, none of those things  
14 that you described in your testimony change the  
15 footprint of the property, do they?

16 A. Does it change the size of the property, no.

17 Q. Yes, the size of the property,  
18 60,000-square-foot footprint?

19 A. I think it's 58,000, but no, it doesn't  
20 change that.

21 Q. Okay. And you talked about when you were  
22 investigating this opportunity, you talked about there  
23 being a gap in the market. Are those your words?

24 A. That's correct.

1           Q.     And that there was consumer demand for a gas  
2     station here at this intersection. Did I understand  
3     you correctly?

4           A.     That's correct.

5           Q.     Okay. And you were at a lot of these  
6     meetings in front of the planning commission and  
7     Village board, right?

8           A.     That's correct.

9           Q.     And you heard neighbor after neighbor after  
10    neighbor after neighbor get up and speak out in  
11    opposition to this project, didn't you?

12          A.     I did hear some neighbors speak in opposition  
13    of the project, and I also spoke with people outside of  
14    the meeting that said they supported the project. I  
15    think it's not typical that --

16          Q.     Okay.

17          A.     If I could finish. I think it's not typical  
18    that people come to project their support on something.  
19    People usually get more energy around, you know,  
20    something they don't want there, so we did see a group  
21    of people, you know, a small percentage of the overall  
22    Glen Ellyn community that spoke at those board  
23    meetings.

24          Q.     There were dozens of people that spoke at

1       these meetings, weren't there?

2             A.     There were.

3             Q.     Okay. And not one of them that stood up and  
4 spoke in favor, right?

5             A.     Like I said, there were -- I acknowledge that  
6 no one at the board meetings spoke in favor. However,  
7 I spoke with people outside of the board meetings that  
8 did support the project.

9             Q.     Okay. But none of those people came in and  
10 made their views known, did they?

11            A.     No one made their views known.

12            Q.     Okay. And when we asked Miss Springer  
13 whether she got any letters of support, she said she  
14 got six. Do you remember that?

15            A.     I do remember that testimony.

16            Q.     Did you ever see the online petition that was  
17 circulated by Protect Glen Ellyn?

18            A.     I did not see that petition.

19            Q.     You never saw that? You never looked at it?

20            A.     I didn't.

21            Q.     You weren't aware that over 1200 people  
22 signed that petition in opposition to the gas station?

23            MS. EMERY: Objection. Asked and answered and  
24 counsel is now testifying.

1 THE COURT: Objection is sustained.

2 BY MR. HARTSELL:

3 Q. You talked about how gas stations on  
4 Roosevelt Road -- you're aware that there is a Shell  
5 station down on Roosevelt Road in Glen Ellyn?

6 A. I am aware of that.

7 Q. And there is another BP station on Roosevelt  
8 Road?

9 A. I am aware of that.

10 Q. And you talked about how --

11 MR. HARTSELL: Larry, zoom out here a little bit.  
12 Come back out. No, not up. Come out.

13 BY MR. HARTSELL:

14 Q. Okay. You talked about --

15 MR. HARTSELL: Bring it up a little bit, Larry,  
16 north. Come out this way. No, sorry. South. Go  
17 down.

18 BY MR. HARTSELL:

19 Q. Okay. And you talked about how the downtown  
20 area, and particularly the railroad tracks, you talked  
21 about it as being a -- maybe I got the words right, a  
22 trade barrier?

23 A. Trade area boundary line.

24 Q. But some kind of disincentive, if you will,

1 for people to come down Roosevelt Road because they  
2 would have to cross through the downtown, right?

3 A. Correct. The train comes by, it stops. You  
4 know, it just makes it less convenient.

5 Q. Sure. So that's why people might just go up  
6 to North Avenue, right?

7 A. And many of the people that live in the area  
8 probably travel both ways, north and south. As they  
9 travel north, it would be more convenient to, you know,  
10 have something close to home where people typically  
11 like to buy fuel and convenience items.

12 Q. And they can go up to North Avenue right now?

13 A. Well, that's a mile and a half, two miles  
14 away; and as you see, gas stations and convenient  
15 stores, typically, you know, there is a lot of them out  
16 there and that's because people like them very close to  
17 their home.

18 Q. Okay. This is North Avenue up here at the  
19 top, right?

20 A. Yes.

21 Q. Okay. That's a mile from five corners?

22 A. That's about a mile.

23 Q. Right. And since you signed the contract to  
24 purchase this property, there have been -- back in 2015,

1       there have been several other gas station developments  
2       that have been gone online on North Avenue, correct?

3           A.     Correct.

4           Q.     Okay.

5           MR. HARTSELL: Bring this down a little bit,  
6       Larry. Other way.

7       BY MR. HARTSELL:

8           Q.     You mentioned -- you mentioned a Bucky's  
9       Mobil that's gone in right here, right, on the -- I  
10      guess this would be the northeast corner of Main and  
11      North Avenue?

12          A.     I mentioned Bucky's. I didn't mention a  
13      particular site, but I did mention Bucky's.

14          Q.     Are you aware of that Bucky's right there?

15          A.     I'm aware of that Bucky's.

16          Q.     Okay. And are you aware that coming north on  
17      Main Street you cross North Avenue and then you can  
18      take a right-hand turn right into that Bucky's there?

19          A.     I am aware that you can do that. However, it  
20      certainly is not capturing -- that Bucky's is certainly  
21      not capturing any traffic on St. Charles. It's going  
22      east to westbound.

23          Q.     Okay. And there's --

24          MR. HARTSELL: Move to the east, Larry. Just move



1 to the east.

2 BY MR. HARTSELL:

3 Q. You're aware that there is also a Speedway  
4 station here along North Avenue between just going east  
5 on North Avenue for Main Street?

6 A. I'm aware there is a Speedway. Also, that  
7 Speedway and the Bucky's, neither of those reside in  
8 Glen Ellyn, and they're on the very, very busy North  
9 Avenue area that some people try to avoid.

10 Q. Okay. And you recognize this over here?  
11 This is 355?

12 A. I do recognize that as 355.

13 Q. Okay. By the way, St. Charles Road, when you  
14 go east on St. Charles Road down here, there is no  
15 intersection at 355, right? It's just an overpass,  
16 correct?

17 A. That's correct.

18 Q. Okay. This is an interchange, people can get  
19 off and get back on the interstate over here, right?

20 A. That's correct.

21 Q. Okay. And you're aware that there is a --  
22 right here at North Avenue and Swift on the north side  
23 of the street there is a big Speedway station right  
24 there, right?

1           A.     I'm aware there is a Speedway there.

2           Q.     Okay. And just across the street from it in  
3 what looks like the south side of North Avenue, it  
4 looks like a bunch of trees and couple of buildings  
5 there, you're aware that there is another big Bucky's  
6 Mobil going in there, right?

7           A.     I'm aware of it. Again, none of those stores  
8 are in Glen Ellyn.

9           Q.     Well --

10          MR. HARTSELL: The other way, Larry.

11          BY MR. HARTSELL:

12          Q.     Why does it matter to you if they're in  
13 Glen Ellyn?

14          A.     Well, people do like to buy their fuel and  
15 convenience items within their own town.

16          Q.     Okay. But you're going to get your revenue  
17 regardless of where you build it, right?

18          A.     Well, there is a very strong demographic in  
19 Glen Ellyn and that's one of the reasons we were  
20 attracted to that community, so, yes, it is important  
21 to us.

22          Q.     Okay. If you go just on the other side of  
23 355 at Illinois 53, you're aware there is a big  
24 Thornton's that's gone in over here?

1           A.     Again, 355 acts as a gap -- as a barrier, a  
2 trade area barrier.

3           Q.     I just asked if you're aware of it?

4           A.     I'm aware of it.

5           Q.     Okay.

6           MR. HARTSELL: Let's back up.

7           THE COURT: Mr. Hartsell, before you back up, is  
8 that Swift Road you're taking about?

9           MR. HARTSELL: Yes, this is -- this is Swift Road,  
10 this sort of diagonal road here, your Honor.

11          THE COURT: Okay.

12          MR. HARTSELL: It runs from -- Larry, bring it up  
13 a little bit. It runs from -- other way. Keep going.  
14 Move that way a little bit.

15                 This is St. Charles Road and you pick up  
16 Swift Road through here. It runs through the Forest  
17 Preserve and goes up through North Avenue.

18                 And while we're here, let's go east. I'm  
19 sorry. Let's go west. I don't know my left from my  
20 right. Okay. Stop.

21          BY MR. HARTSELL:

22                 Q.     So you see the -- this is your site right  
23 there at Main and North, right? Right? You with me?

24                 A.     St. Charles and --

1           Q.     I'm sorry. St. Charles and Main. Can you  
2 see this okay?

3           A.     Yes.

4           Q.     Okay. And this -- you were talking about you  
5 have to go this distance in either way to get to a gas  
6 station, but if you go east on St. Charles Road, this  
7 is all residential on both sides of the street, right,  
8 and then we got the Ackerman Park here and this is all  
9 Forest Preserve all the way to 355, isn't it?

10          A.     Yes, but you still have to drive through the  
11 Forest Preserve. You still have to drive the two and a  
12 half miles.

13          Q.     And so this is all Forest Preserve --

14          MR. HARTSELL: Keep going Larry.

15          BY MR. HARTSELL:

16          Q.     And then once you cross over, now you're in  
17 Lombard, you're back in a residential area, right,  
18 before you get to downtown Lombard?

19          A.     Correct. It would be a long way to go to get  
20 to that gas station.

21          MR. HARTSELL: Okay. And then go that way. Other  
22 way. Go west.

23          BY MR. HARTSELL:

24          Q.     Okay. You talked about then Geneva Road and

1       you talked about a Shell station over there in Wheaton?

2           A.     Uh-huh.

3           Q.     There is a Shell station there; there is a  
4     Jewel Osco shopping center, right?

5           A.     There is.

6           Q.     There is a Home Depot there?

7           A.     There is.

8           Q.     And we've got a Walgreens and 7-Eleven,  
9     right?

10          A.     You've got a Walgreens and 7-Eleven.

11          Q.     Okay. And you said that that -- let's talk  
12     about that 24/7, because that was an important part of  
13     this project for True North originally, wasn't it? You  
14     were insistent on 24/7?

15          A.     We were not willing to concede on the hours  
16     restriction.

17          Q.     Okay. And that went right down to the last  
18     minute in that final meeting in front of the board  
19     where they imposed that restriction, right?

20          A.     As I commented, I think, in the meetings,  
21     that I was asked if that was a deal breaker per se, and  
22     I said what -- I believe my response was something to  
23     the effect that we would need to take everything -- if  
24     everything were in whole and we understood all the

1 restrictions, everything that was going to need to be  
2 done to do the project we could make that determination,  
3 but if it were, you know, just one more thing and then  
4 there was going to be eight things after that, then we  
5 might not have been able to, so, you know, we did not  
6 concede through the process to the 24-hours  
7 restriction. The Village of Glen Ellyn imposed that as  
8 part of the final meeting.

9 MR. HARTSELL: Move to the five corners, Larry.  
10 Okay. That's good.

11 BY MR. HARTSELL:

12 Q. So you said you thought that the 7-Eleven,  
13 which is down here on the corner of Main and Elm, that  
14 little 7-Eleven there you thought was open 24/7?

15 A. At the time of the meetings, it was open  
16 24/7. I'm not sure of its status today.

17 Q. Okay. This Walgreens closes at 10:00 at  
18 night, right?

19 A. I was aware of that.

20 Q. You were or weren't?

21 A. I was aware that the Walgreens did close at  
22 night. I didn't know it necessarily closed at 10:00.

23 Q. Okay. You're aware it doesn't open until  
24 8:00 in the morning?

1           A.     I'm not aware of what time it opens, but I  
2 did know it closed overnight.

3           Q.     Okay. And what about any of these other  
4 little businesses here, this dry cleaner, the dry  
5 cleaner over here, historical museum, the garage that's  
6 up there on that corner, any of those businesses open  
7 24/7?

8           A.     I'm not aware of their hours.

9           Q.     Okay. You talked about the investment that  
10 True North has made in this thus far --

11          A.     Yes.

12          Q.     -- and you said that -- I guess the biggest  
13 piece of it so far is the purchase of the land, right,  
14 \$630,000?

15          A.     Correct.

16          Q.     Okay. But I'm correct, aren't I, that if you  
17 lose this lawsuit, the Village is obligated to buy the  
18 property back from you?

19          A.     Not at \$630,000.

20          Q.     And how much?

21          A.     About \$608,000, I believe.

22          Q.     Representing a difference in the broker's  
23 fee?

24          A.     Correct.

1           Q.     Yeah. So then you said you had about  
2     \$135,000 that you paid to third-party consultants to  
3     help you with the project?

4           A.     Correct.

5           Q.     Okay. And you've had some staff time and --

6           A.     Significant, significant staff time.

7           Q.     Well, that was going to be incurred no matter  
8     what, right?

9                     I mean, you had to incur those costs and that  
10    staff time as part of the effort to get the special use  
11    permit, right?

12          A.     But we incurred significant dollars on the  
13    project after we achieved the special use permit. We  
14    still tried to work tirelessly to make the project  
15    better.

16          Q.     Because you still had to get the variances  
17    that didn't come until April 24th, right?

18          A.     We had a meeting on variances April 24th.

19          Q.     Right, and then you had to come back again on  
20    May 1st to get the board to finalize the transaction,  
21    right?

22          A.     That's correct.

23          Q.     Well, none of those things were guaranteed  
24    for you, were they?



1           A.     They were not guaranteed.

2           Q.     No.    So you were going to have to make -- put  
3     in that effort and spend that money just as part of the  
4     effort to get the special use permit to get the variances  
5     and to get the final approval and to -- regardless,  
6     isn't that fair?

7           A.     Could you ask your question again?

8           Q.     Sure.   These costs that you incurred  
9     internally for your staff time, for your time, for the  
10    \$135,000 that you spent on this third-party consultant  
11    to help you with this project, that was all going to be  
12    incurred no matter what as part of the effort to get  
13    the special use permit, to get the variances, and to  
14    get the final approval?

15          A.     Well, if we weren't -- if we wouldn't have  
16    gotten the special use permit, the work would have  
17    stopped, so we would not have occurred -- incurred  
18    anymore fees after that point.

19          Q.     Okay.   But you did get it and then you had to  
20    incur some more to get the variances and get the final  
21    approval, right?

22          A.     That's correct.

23          MR. HARTSELL:   All right.   That's all I've got.

24          Thank you, sir.

1 THE COURT: Miss Robinson or -- Miss Emery, do you  
2 have anything?

3 REDIRECT EXAMINATION

4 BY MS. ROBINSON:

5 Q. Mr. Howard, you were asked on cross about the  
6 additional developments that had occurred, or the  
7 additional development of gas stations specifically  
8 that has been occurring, on North Avenue after you  
9 submitted your special use permit application, correct?

10 A. Correct.

11 Q. What does that tell you?

12 A. There is a need still for gasoline and  
13 convenience stores.

14 Q. Is True North in the business of locating  
15 places where there is no need for them to be?

16 A. We have an exemplary record of making  
17 investment decisions. We have -- our Shell partners  
18 recognize us as being one of the best capital  
19 allocators of any of their joint ventures.

20 Q. Have you ever spent this much time on a  
21 development before?

22 A. We have never went to 12 meetings on a single  
23 development in the history of the company.

24 MS. ROBINSON: I have no further questions.

1 THE COURT: Anything further, Mr. Hartsell?

2 RECROSS EXAMINATION

3 BY MR. HARTSELL:

4 Q. Well, all those gas stations that I pointed  
5 out to you that they're building on North Avenue, that  
6 tells you there is a need for gas stations on North  
7 Avenue, right?

8 A. There is a need for a gas station in this gap  
9 that I've already expressed within the marketplace.

10 Q. Where nobody else is proposing to build a gas  
11 station but you?

12 A. Thornton's wanted to build a gas station at  
13 this particular location as well.

14 Q. And where did they build? They built up on  
15 Route 53 and North Avenue, didn't they?

16 A. Possibly because they weren't awarded this  
17 particular location.

18 Q. But nobody else --

19 A. They --

20 Q. I'm sorry. Go ahead, sir.

21 A. They placed the offer, I believe, on this  
22 particular property before they invested in the other  
23 one.

24 MR. HARTSELL: Okay. Thank you.

1 THE COURT: Any recross?

2 MS. ROBINSON: No, your Honor.

3 THE COURT: All right. Thank you, Mr. Howard.

4 You may step down.

5 THE WITNESS: Thank you, your Honor.

6 THE COURT: Miss Robinson, do you have any other  
7 witnesses?

8 MS. ROBINSON: We do not.

9 THE COURT: Are you resting at this point?

10 MS. ROBINSON: The defense is resting.

11 THE COURT: All right. Is there any rebuttal?

12 MR. HARTSELL: There is none from plaintiffs,  
13 your Honor.

14 THE COURT: We're done with testimony?

15 MR. HARTSELL: I think we're done.

16 THE COURT: Okay. All right. And you have all of  
17 the exhibits in evidence that you want?

18 MR. HARTSELL: We have just the --

19 MS. GROH: We have agreed to the admissibility of  
20 all of the exhibits, except the one exhibit, No. 43;  
21 and on that exhibit, we agreed to a stipulation as to  
22 some pages that we agree should be admitted. There are  
23 two pages that are in dispute, pages 38 and 39.

24 MS. EMERY: Your Honor, we would ask that

1 Exhibit 43 that you remove that from your book and  
2 Miss Groh will give you the pages that we have agreed  
3 to and we'll hand you the two pages that are in  
4 dispute.

5 THE COURT: Is it easier -- here, I'll just give  
6 these to you and you can figure it out.

7 MS. EMERY: Yes, it's only a small amount of  
8 those.

9 THE COURT: Do you want argument on those two  
10 pages?

11 MS. GROH: Yes, your Honor.

12 THE COURT: Okay.

13 MS. GROH: Would you like to have those --

14 MR. HARTSELL: I think you need to have the  
15 exhibit in front of you, Judge. I'm not sure why we  
16 took it out of the book.

17 MS. EMERY: Because there are only a few pages  
18 that are going to the Judge.

19 THE COURT: All right. Why don't we take ten  
20 minutes. You can figure this out and then I'll come  
21 back.

22 MR. HARTSELL: All right. Thanks, Judge.

23 (A short recess was had.)

24 THE DEPUTY: Come to order. Court is again in

1 session.

2 THE COURT: Please be seated.

3 Counsel, have you figured out what is agreed  
4 and what is not?

5 MS. EMERY: Yes, your Honor. We have a copy of  
6 the pages that are agreed so you can put that in under  
7 Exhibit 43.

8 MS. GROH: The pages that are agreed are on that  
9 side and sticking out are the two pages that are in  
10 dispute.

11 MS. EMERY: Your Honor, we object to these because  
12 they are not rebuttal. The door was not opened as to  
13 Mr. Pogacnik's findings and his hearsay discussions  
14 with brokers in the area; and page 39, importantly, he  
15 has material and his guesses at valuations which goes  
16 way beyond what he was allowed to testify to.

17 MS. GROH: Your Honor, part of his report is in  
18 direct response to Mr. DeLacy's report. It's part of  
19 his rebuttal. It was the subject of his testimony and  
20 counsel specifically asked him in cross about the  
21 paired data and the lack of comparable pair data. The  
22 second page is just the backup to the -- that supports  
23 that opinion, and we believe that this is appropriate  
24 to be admitted.

1 THE COURT: I'm going to admit this not as  
2 substantive evidence, but only as it goes to rebuttal  
3 to Mr. DeLacy's testimony. I think that's the proper  
4 function of rebuttal testimony, so I will consider it  
5 only for that purpose.

6 MS. EMERY: Okay.

7 MS. GROH: Thank you, your Honor.

8 MS. EMERY: Your Honor, I'll reiterate that page 39  
9 contains nothing in rebuttal.

10 THE COURT: Wait. Just a minute. Page 39.

11 MS. EMERY: It's this one that's objected to.

12 THE COURT: All right. To the extent that it  
13 contains something that is not in rebuttal, I will not  
14 consider it.

15 MS. EMERY: Okay. Your Honor, I think we've  
16 agreed that we can have our closing arguments in in a  
17 week and can we have a page limitation. I think the  
18 15-page limit of briefs in this court is appropriate,  
19 if that works.

20 THE COURT: Are you going to need more than 15  
21 pages?

22 MR. HARTSELL: If I can't say it in 15 pages,  
23 Judge, then shame on me. 15 is plenty.

24 THE COURT: 15 is fine. Miss Robinson, if you

1 want 15 pages as well.

2 MS. ROBINSON: I'm just going to be probably  
3 joining with the Village's.

4 THE COURT: Okay. There are some things that I  
5 think need to be addressed. One is -- well, I've heard  
6 testimony that the Village is a home rule unit; is that  
7 correct?

8 MS. EMERY: Yes.

9 THE COURT: What, if any, effect there is on  
10 Glen Ellyn being a home rule municipality.

11 Two, what, if any, effect on the fact the  
12 Village was the owner of the property at the time all  
13 of the operative ordinances were passed. I think those  
14 were the two major concerns that I had that would not  
15 be addressed by the LaSalle factors.

16 MS. EMERY: Okay. We will address those.

17 THE COURT: All right. If you want to email  
18 them -- let's see, today is Tuesday. So if you could  
19 just email them by close of business on next Tuesday  
20 that will be fine.

21 I do have to give you a future date simply  
22 because it's an open case. I'll continue the case  
23 until March 19th, but I am quite hopeful that I will  
24 have a written order entered and sent to you prior to



1       that date.

2             MS. EMERY:   Okay.

3             MS. ROBINSON:  Your Honor, I don't believe I'm  
4       going to be in town that date.

5             THE COURT:  You don't have to appear.

6             MS. ROBINSON:  Okay.

7             MS. EMERY:  So is that for status and ruling if we  
8       haven't gotten the order.

9             THE COURT:  Correct.  Correct.

10            MR. HARTSELL:  So it's 9:30, Judge.

11            THE COURT:  9:00, but that's purely for the clerk.  
12       I don't believe it's necessary for anyone to appear on  
13       that day.

14            MS. EMERY:  Okay.  So do we need to do a written  
15       order, your Honor?

16            THE COURT:  Just one of the computer orders  
17       continuing the case to that date for --

18            MS. EMERY:  Status?

19            THE COURT:  For judgment.

20                    All right.  And I would be remiss if I did  
21       not compliment counsel and the parties on the  
22       excellence of the conduct of the proceedings today.  It  
23       makes my job easier.  Thank you.

24            MR. HARTSELL:  Thank you, Judge.

1 MS. EMERY: Thank you.

2 MS. ROBINSON: Thank you, Judge.

3 THE COURT: And you can take all your boxes with  
4 you.

5 MS. EMERY: Yes.

6 Judge, is there -- will this go to Mary for  
7 her email then to give to you?

8 THE COURT: You can send it to her. You have my  
9 private email, my AOL account, so if you want to send  
10 it to that, you can send it. It all comes to me one  
11 way or the other.

12 MS. EMERY: I don't have it.

13 MR. HARTSELL: I don't think I have it either.

14 THE COURT: Oh. If you send it to Mary by  
15 Tuesday, then I'll get it probably Wednesday morning  
16 and that's fine.

17 MS. EMERY: Okay.

18 (Which were all of the proceedings had  
19 in the above-entitled matter.)  
20  
21  
22  
23  
24

I, LYNN M. EVANS, hereby certify that I am a Certified Shorthand Official Court Reporter assigned to transcribe the computer-based digital recording of proceedings had of the above-entitled cause, Administrative Order No. 99-12, and Local Rule 1.03(b). I further certify that the foregoing, consisting of Pages 1 to 147, inclusive, is a true and accurate transcript completed to the best of my ability, based upon the quality of the audio recording.

Lynne H. Evans

-Lynn M. Evans, CSR #084-003473-