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Transcript of Hearing

Date: February 16, 2022

Case: Public Hearing for Walter Johnson Road

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1 Hearing, conducted virtually.

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13 Pursuant to agreement, before

14 Shannon Hayes, Court Reporter.

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A P P E A R A N C E S

JOSE THOMMANA, HEARING OFFICER

ERIC WILLIS, MC-DOT

FRANCOISE M. CARRIER, ESQUIRE

ROBERT BIRENBAUM, ESQUIRE

LUCY WIGGINS, ESQUIRE

PATRICK G. LAVAY, WITNESS

DAVID SIMEZ, WITNESS

TIARA MCCRAY, MC-DOT

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1 P R O C E E D I N G S

2 MR. THOMMANA: Greetings and good
3 afternoon to everybody. It is now 2:00 on the
4 16th of February 2022. We are conducting this
5 hearing virtually via Zoom. And we are here for
6 public hearing on abandonment petition AB-779 to
7 consider an application received from Lidl U.S.,
8 LLC, to abandon certain unimproved public right
9 of way located adjacent to Walter Johnson Drive
10 in Germantown.

11 My name is Jose Thommana and I am the
12 county executive designated hearing officer with
13 the county's Department of Transportation. This
14 right of way abandonment hearing is being
15 conducted pursuant to section 4962-F of the
16 Montgomery County code. My role in the
17 abandonment process is to receive testimony
18 concerning the abandonment request, and then
19 write a report and recommendation to the county
20 executive concerning the applicant's petition for
21 abandonment. In order to do this, I will be
22 considering statements made at the hearing,
23 written comments received within the comment
24 period, and comments will be accepted until March
25 2nd, 2022 at 5:00 PM, and any document submitted

1 to support or explain a position.

2 The report and recommendation would
3 then be forwarded to the county executive for
4 consideration. The executive will then forward
5 the report to the county and the county
6 executive's recommendation to the county council.
7 It is the county council that will decide whether
8 to grant or deny the applicant's petition for
9 abandonment. For those who wish to submit written
10 comments, please submit them to Mr. Eric Willis
11 at the Montgomery County Department of
12 Transportation, 100 Edison Park Drive, Fourth
13 Floor, Ginsburg, Maryland 20878, or email them to
14 Eric.Willis@MontgomeryCountyMD.gov by March 2nd,
15 2022.

16 In this case, the applicant is seeking
17 the abandonment of unimproved land previously
18 dedicated as public right of way, that is located
19 adjacent to the Walter Johnson Drive in
20 Germantown. As I understand it, this request is
21 being brought in order to assemble this land with
22 surrounding land owned or controlled by the
23 applicant and upon which the applicant plans to
24 construct and operate a new grocery store. There
25 are a number of representatives for the applicant

1 here today, and they'll be making a presentation
2 shortly that addresses these issues and sets
3 forth the case for why the subject rights of way
4 should be abandoned. Before we get into that
5 presentation, there are a few ground rules I'd
6 like to cover before Mr. Willis introduces the
7 abandonment exhibits into the record.

8 First, please turn off or silence your
9 cell phones. Second, as an issue of decorum, all
10 participants must be given their due
11 consideration. Those seeking to offer comments
12 following the close of the petitioner's case of
13 for abandonment are asked to be mindful of time
14 and to limit their comments to relevant matters.
15 Such comments should be confined to less than
16 three minutes. If an interruption occurs, I will
17 give the individual their first warning. If there
18 is a second interruption, I'll give the
19 individual a second warning and they will be
20 muted. if the same individual receives the third
21 warning, that person will be removed from the
22 call. If there are several people making
23 interruptions, I may close this hearing. I don't
24 anticipate any of that happening today, but I
25 just want to make sure that we read out the

1 rules. Following Mr. Willis's introduction, the
2 applicant will submit its case for why it
3 believes the right of way should be abandoned.
4 After the applicant has completed its case, those
5 who have registered to speak will be afforded the
6 opportunity to make relevant comments. With that
7 I'll hand it over to Eric.

8 MR. WILLIS: Thank you, Mr. Thommana.
9 Good afternoon, everyone. My name's Eric Willis.
10 I'm the chief of the property acquisition section
11 within MC-DOT. It is my section that's
12 responsible for the administration of request for
13 abandonment. As Mr. Thommana noted earlier, this
14 process is governed by the Montgomery County code
15 specifically article 49, section 6, section code
16 section 4962, actually sets forth certain
17 requirements for notice of the hearing, both to
18 members of the public, as well as the certain
19 government agencies.

20 As part of that process, my office has
21 collected a number of exhibits, those comments,
22 and I will shortly introduce those exhibits into
23 the hearing record. If Tiara wouldn't mind
24 pulling up the exhibit list on the screen. I
25 appreciate it.

1 One thing I wanted to note before we
2 get into the exhibits is this hearing was
3 originally scheduled for December 15th, due to an
4 error on my part, frankly, in getting the notices
5 to the government agencies for their responses,
6 we had to reschedule this hearing until today. So
7 that's the reason as we go through the exhibits,
8 you're going to see two executive orders as well
9 as two proofs of advertisement through the
10 newspaper that we utilized, Washington Times.

11 If we could just go through the list of
12 exhibits, Exhibit A is the letter we received
13 from Ms. Carrier on behalf of Lidl U.S., LLC,
14 requesting the abandonment. This letter also
15 attaches a series of exhibits, I believe, it's A
16 through E and maybe we can just identify those
17 exhibits as well. It also contains some
18 illustrations which are helpful and -- we may be
19 relying on some of those as part of the
20 presentation.

21 Exhibit A to the applicants letter, we
22 just saw was the meets and bounds description of
23 the area that's being sought for abandonment.
24 13,451 square feet. Exhibit B is the survey
25 depicting the area being sought for abandonment.

1 Exhibit C is the original deed of dedication. It
2 dedicated this right of way in tot the simple
3 back in 1996. And we kind of make it out at the
4 top there, the (indiscernible) references for
5 where its reported land records. I believe that's
6 14594, page 53.

7 Then it's exhibits -- Yes. Exhibit, we
8 on E -- Oh, there we go. Exhibit D is the opinion
9 from the Montgomery County planning board
10 regarding the preliminary plan application that
11 was being submitted by the applicant for the
12 development of the adjacent land, actually
13 incorporating the abandonment area. I believe
14 there was an Exhibit E, which was, there we go.
15 The concept plan of the proposed development. The
16 area for abandonment is right through the middle.
17 You can kind of see, right, yeah. Right. Just to
18 the left, right up the middle of the gray
19 section, the lower gray section. I think there's
20 another illustration down the bottom left, which
21 shows where the right of way is. Yeah, right
22 there.

23 Okay. Moving on to our Hearing Exhibit
24 B, that's an aerial photo with the abandonment
25 area highlighted in red, adjacent to the -- One

1 thing to point out the property to the right is
2 under contract with the applicant. There is also
3 an additional parcel to the left of the
4 abandonment area that is also under contract to
5 the applicant. Hearing Exhibit C is the original
6 executive order, which was authorizing a hearing
7 for December 15th of 2021. As I mentioned
8 earlier, it's that hearing was postponed until
9 today. We have exhibit, following Exhibit D, I
10 believe there it is. It is the executive order
11 authorizing the hearing for today.

12 Exhibit E is the proof of the
13 advertisement that was run in the Washington
14 Times with the original hearing date. This
15 advertisement ran, at the bottom there December
16 8th and December 1st. One thing to note QR code
17 that's embedded into the advertisement, that is
18 embedded in other notices that we sent out as
19 well. I believe that by this point, most people
20 are familiar with the QR code process. You scan
21 the code with your phone and it automatically
22 takes you to a webpage. That webpage is that
23 registration form for the hearing. It'll be in a
24 subsequent exhibit here. We did print out the
25 registration form page.

1 The following exhibit is the proof of
2 the advertisement that ran for today's hearing.
3 This advertisement was run in the January 26th
4 edition, as well as the February 2nd edition.
5 These are all run through the Washington Times
6 newspaper.

7 MC. MCCRAY: Exhibit E?

8 MR. WILLIS: Excuse me?

9 MC. MCCRAY: Exhibit E?

10 MR. WILLIS: Exhibit E, yes. Thank you.

11 This is just picture the sign that was posted at
12 the property. You can again see the QR code
13 sticker that we had put on to the sign, again,
14 directing people to the registration or signup
15 page form that was created for this.

16 MC. MCCRAY: Exhibit F.

17 MR. WILLIS: Exhibit F is an email that
18 I received from Greg whims, who was our director
19 of the Up County Regional Services Center of the
20 Germantown advising me that he had made an
21 announcement to his Up County advisory board
22 meeting Monday night, that would've been Monday,
23 February 7th. As well as -- reached out to the
24 Germantown Historical Society, provide additional
25 notice of the hearing.

1 MC. MCCRAY: Exhibit G.

2 MR. WILLIS: This is our registration
3 signup page. When you click on the QR code,
4 you're directed to this page and we provide a
5 brief summary and then some questions, basic
6 questions to get background information from the
7 people who are responding, asking if they might
8 participate in the hearing, how'd they hear about
9 the hearing, et cetera. I checked this form
10 shortly before the hearing today, Mr. Hearing
11 Officer just a good representation that no one
12 had responded or signed up to register for the
13 hearing.

14 MC. MCCRAY: H.

15 MR. WILLIS: The next set of exhibits
16 are comments that we received from government
17 agencies regarding the requested abandonment.
18 This is one we received from Montgomery County
19 Department Transportation recommending approval
20 with certain conditions, as set forth in the
21 memorandum.

22 MC. MCCRAY: Exhibit I.

23 MR. WILLIS: Exhibit I is a email I
24 received from our division of traffic indicating
25 no objections to the proposed abandonment.

1 MC. MCCRAY: J.

2 MR. WILLIS: J, is email received from
3 our fire marshal's office indicating no
4 objections to the requested abandonment.

5 MC. MCCRAY: Exhibit K.

6 MR. WILLIS: K, is email received from
7 the police department and no comments regarding
8 the proposed abandonment.

9 MC. MCCRAY: Exhibit L. Oh my
10 apologies. Let me see.

11 MR. WILLIS: Oh yeah. Exhibit L. Yes.
12 This is comments were received from our
13 Department of Permitting Services. No objection.
14 Did raise a question about the roadway network as
15 that goes through the preliminary planning
16 process. It's not really an objection, it's more
17 of a comment about that.

18 MC. MCCRAY: Exhibit M.

19 MR. WILLIS: Following exhibit -- Thank
20 you -- Is a memorandum received from the
21 Montgomery County Planning Office recommending
22 the abandonment, approving of the abandoned
23 request with certain conditions. I believe this
24 memorandum also includes several exhibits that
25 were provided by the planning office, including

1 the applicant's letter. There may be some that
2 are duplicative, but --

3 MC. MCCRAY: Yep. That is correct. They
4 have attachment A and then all of the other
5 exhibits that we've already you read into record

6 MC. MCCRAY: Exhibit N.

7 MR. WILLIS: N is a letter received
8 from WSSC indicating that they had no objection
9 to the request. They do not maintain any existing
10 easements or facilities within the area to the
11 abandoned.

12 MC. MCCRAY: Exhibit O.

13 MR. WILLIS: O is an email received
14 from Verizon or representative of Verizon
15 indicating that they do not have any facilities
16 or issues with, they say with the lot being
17 developed, I take that to mean they have no
18 objection to the proposed abandonment.

19 MC. MCCRAY: Exhibit P.

20 MR. WILLIS: Exhibit P is email
21 received from representative Washington Gas also
22 indicating no objections to the abandonment as
23 they do not have been gas facilities in this
24 area. Gas facilities are in Wisteria Drive in
25 Germantown Road.

1 MC. MCCRAY: Exhibit Q.

2 MR. WILLIS: Exhibit Q is a email
3 received from Pepco actually just yesterday. Not
4 necessarily objecting to the abandonment, but
5 just asking questions. If there could be time
6 while the hearing record is still open, which we
7 can try to resolve those responses and say they
8 were received late.

9 MC. MCCRAY: That's the last exhibit
10 that we have.

11 MR. WILLIS: Thank you. I believe
12 that's all the exhibits and I'll turn things back
13 over to the hearing officer.

14 MC. MCCRAY: You should be able to
15 share your screen, now. Let me know if you have
16 any trouble.

17 MS. CARRIER: Thank you. Should we
18 proceed?

19 MR. WILLIS: Yes.

20 MS. CARRIER: Okay. My name is Francois
21 Carrier, as you know, I'm land use counsel for
22 the applicant, Lidl, and I won't add to Mr.
23 Willis's introduction. He and you both laid out
24 the basics. Well, I have two witnesses. The first
25 will be David Simez, who is with Lidl, and he'll

1 be testifying about the project site, what the
2 project is, the site, Lidl status as a contract
3 purchaser and the need for the abandonment. And
4 my second witness will be Patrick LaVay, who is
5 the applicant's engineer for this project. He'll
6 go through in a little more detail, all of the
7 exhibits that we submitted earlier. Then of
8 course, we're happy to answer any questions that
9 you might have.

10 EXAMINATION OF DAVID SIMEZ

11 BY MS CARRIER:

12 Q Mr. Simez, would you please state your,
13 company name, and business address for the
14 record?

15 A Hello, good afternoon. My name is David
16 Simez. My company is Lidl U.S., LLC, and our
17 address is 3500 South Clark Street, Arlington,
18 Virginia 22202.

19 Q What is your position with Lidl and how
20 long have you been with the company?

21 A I'm currently a development manager with
22 Lidl and I've been here nearly five years.

23 MS. CARRIER: I have Mr. Simez's
24 resume. Would you like me to have him identify
25 it, share it on the screen, or is that not

1 necessary, Mr. Thommana?

2 MR. THOMMANA: Yeah, we -- If you can
3 share it on, with-

4 MS. CARRIER: Sure.

5 MR. THOMMANA: On the screen, that
6 should be good.

7 MS. CARRIER: Chris, it's always easier
8 to share in theory than it is in actuality.

9 MC. MCCRAY: I'll have it pulled up if
10 you, if you'd like me to do it.

11 MS. CARRIER: Oh, do you?

12 MC. MCCRAY: Yes.

13 MS. CARRIER: Sure. That would be
14 great.

15 BY MS CARRIER:

16 Q Mr. Simez, does this look like your
17 resume?

18 A Yes, it does.

19 Q I'd like to introduce Mr. Simez's resume
20 as an exhibit, please. I have a few more
21 questions and then I'll ask Mr. LaVay to share
22 his screen, to show, to start our presentation,
23 because I'd like Mr. Simez to look at it, to
24 speak to a couple of the slides. Mr. Simez, what
25 is Lidl's business?

1 A Lidl is in the business of retail
2 grocery.

3 Q Is Lidl currently expanding into the
4 U.S. market?

5 A Yes, we are.

6 Q That includes the Washington, DC area?

7 A Yes, it does.

8 Q What are your general responsibilities
9 at Lidl?

10 A My general responsibilities include site
11 selection, due diligence, hiring of professional
12 consultants, such as architects, engineers,
13 attorneys, and receiving approvals and
14 entitlements to build the site.

15 Q How long have you been doing this work
16 either at Lidl or elsewhere?

17 A Nearly five years at Lidl, and about 15
18 years total.

19 Q Thank you. Does Lidl have plans to build
20 a store in Germantown?

21 A Yes, we do.

22 Q Where is that site located?

23 A 19430 Walter Johnson Road in Germantown,
24 Maryland.

25 MS. CARRIER: Mr. LaVay, may I ask you

1 to please put our presentation up on the screen?

2 MR. LAVAY: Yes, I will. Make this a
3 little more --

4 MS. CARRIER: If we could go to the
5 second slide, please.

6 MR. LAVAY: That's not working. Sorry.
7 I may have to keep it like this. Because it won't
8 -- Does this look okay? Is that legible for you?
9 Big enough?

10 MS. CARRIER: It's fine for my --

11 MR. LAVAY: Okay.

12 MS. CARRIER: Great.

13 BY MS CARRIER:

14 Q Okay. Mr. Simez, what does this photo
15 depict?

16 A This is an aerial view of the site
17 showing an approximate location of the
18 abandonment area in the oval.

19 Q Okay. Does this accurately depict the
20 site as far as you're aware?

21 A Yes, it does.

22 Q Does Lidl own or have a contract to
23 purchase all of the land that makes up this site
24 except for the abandonment area?

25 A Yes, we do.

1 Q Please tell us what the proposed project
2 consists of?

3 A The proposed projects consist of
4 building a surface mounted parking lot, adjacent
5 to a retail grocery store.

6 Q Mr. LaVay, let's see the next slide. Mr.
7 Simez, does this depict the grocery store
8 building and the parking lot that you just
9 mentioned?

10 A Yes, it does.

11 Q What are your responsibilities for this
12 project?

13 A I'll be handling the design development,
14 due diligence, entitlement, and permitting
15 process.

16 Q Do you know roughly where the proposed
17 abandonment is on this site plan that we're
18 looking at?

19 A Yes, it's right in the middle of our
20 building on the bottom of this image.

21 Q Does Lidl intend to build any road
22 connections as part of this project?

23 A Yes. You can see there's two road
24 connections on this.

25 Q Is this abandonment necessary for Lidl

1 to be able to move forward with the project?

2 A Yes. This abandonment is critical to the
3 development of this project.

4 Q Is there anything else you'd like to
5 add?

6 A No. Just that Lidl is excited about
7 coming to Germantown.

8 Q Great. Thank you very much, Mr. Simez,
9 that completes my questions for you.

10 A Thank you.

11 MS. CARRIER: I'd like to call Patrick
12 LaVay. I guess, might be useful to put up Mr.
13 LaVay's resume.

14 MR. LAVAY: I'll stop sharing my
15 screen.

16 MS. CARRIER: Ms. McCray, if you could
17 do that for us.

18 EXAMINATION OF PATRICK LAVAY

19 BY MS. CARRIER:

20 Q Meanwhile, Mr. LaVay, please state your
21 name, company, and business address for the
22 record.

23 A Patrick LaVay. I'm with Macris,
24 Hendrick, and Glasscock also known as MHG. Our
25 address is 9220 Whiteman Road, Suite 120,

1 Montgomery Village, Maryland.

2 Q What is your position with MHG. How long
3 have you been with the company?

4 A I am a vice president and senior project
5 manager. I've been with the company for 15 years.

6 Q What are your general responsibilities
7 there?

8 A I am responsible for project specific
9 management and oversight of MHG civil
10 engineering, land planning, and land surveying
11 services.

12 Q Are you a licensed professional engineer
13 in Maryland?

14 A I am.

15 Q How long have you been a licensed
16 engineer?

17 A 12 years.

18 Q Could you estimate roughly how many
19 building projects you've been involved in as an
20 engineer?

21 A I would say it's probably between
22 somewhere between 100 and 200.

23 Q Have you testified previously as an
24 expert witness in civil engineering?

25 A Yes.

1 Q Where have you provided that testimony?

2 A In Montgomery county, Maryland and
3 Frederick County, Maryland.

4 Q Have you been recognized as an expert?

5 A Yes.

6 Q Is this a copy of your resume on the
7 screen?

8 A Yes.

9 MS. CARRIER: I would like to submit
10 Mr. LaVay's resume for the record and request
11 that he be recognized as an expert in civil
12 engineering. I don't know Mr. Tamana, if that's a
13 request that you'll rule on at this time.

14 MR. THOMMANA: No, that --Yeah. That's
15 --It's fine.

16 MS. CARRIER: Okay, great.

17 BY MS CARRIER:

18 Q Mr. LaVay, would you please then put the
19 presentation back up on the screen? I'd like to
20 ask you to provide some background on the project
21 for which this abandonment has been requested?
22 Here we are back at this first slide that we
23 looked at. First, what is your firm's role in
24 this project?

25 A We are the civil engineer, land planner,

1 and landscape architect of record, oh, and land
2 surveyor as well.

3 Q What does this slide depict?

4 A This is an aerial photo of the existing
5 condition of the development site. The
6 development site itself is bordered in the red
7 area. The abandonment area is the blue, oval
8 shape in the center of the red bordered area.

9 Q Can you please give us a brief
10 description of the site and the immediate
11 surroundings, including what uses are being
12 conducted on the neighboring properties?

13 A Sure. True north on this page is
14 actually to the, I'd say to the top right, so
15 we're a little bit skewed here from north just to
16 keep a nice square image. But to the plan north,
17 it would be technically Northwest is Germantown
18 Road. The lanes that are the closest to the red
19 border would be eastbound. Then Wisteria Drive is
20 to the right of the development site, separated
21 by some additional property. On the south end,
22 the low end of the page, is Walter Johnson Road.
23 The red area includes three different pieces of
24 land currently that will be subdivided
25 eventually. Actually, excuse me, four, if you

1 include the area of this abandonment. As I
2 mentioned before, the abandonment area is roughly
3 shown in the oval.

4 Then to the left of that, there is a
5 long narrow strip of unrecorded parcel that's in
6 the heavily wooded area. Then what's labeled as
7 the Germantown copy center in the top right
8 corner of the red box is another lot. Then the
9 lower right corner of this red box is actually a
10 piece of a lot that Lidl will be acquiring and
11 re-consolidating with their subdivision. To the
12 south and left of this red box would be there's
13 an existing 7-Eleven gas station and convenience
14 store. In the lower left side of the box, which
15 would be the south corner of the site, or just
16 off the south corner of the site is a Verizon
17 facility.

18 Q What about the top right corner there,
19 there's a building?

20 A That is --That is a Mid-Atlantic Federal
21 Credit Union bank and to the below them on the
22 page is a parking facility that's associated with
23 that bank.

24 Q Great. Thank you. Let's go to the next
25 slide, please. This is not the slide that I was

1 hoping would be next.

2 A This one, perhaps.

3 Q Yeah, that's the one I was hoping for.

4 Thank you. Did your office prepare this exhibit?

5 A We did.

6 Q What does it --Can you explain what it
7 depicts?

8 A Sure. Similar to the area that we just
9 looked at, the blue border is the legal
10 development site. It's what they intend to
11 develop and what they'll be purchasing. The red
12 bordered area is the area that was conveyed in
13 1996 by a deed of dedication to the right of way.
14 Then the area that's shaded in green within the
15 red is the area that's subject for our discussion
16 today. It's the abandonment area.

17 Q Great. Thank you very much. Now I'd like
18 to go with --Go through with you the background
19 of the dedication that included the abandonment
20 area we're discussing and identify some
21 documents. Next slide, please. What is this
22 document and what does it tell us about the
23 abandonment area we're discussing?

24 A This is a, on the left is a legal
25 description, or portion of it, and the right is a

1 sketch showing the area, a meets and bounds
2 description and sketch of the area that's to be
3 abandoned, which is a portion of the original
4 1996 dedication. It's approximately well, it is
5 13,451 square feet.

6 Q Okay. Next slide please. What is this
7 document and what does it tell us about the
8 abandonment area we're discussing?

9 A This is the deed of dedication that was
10 recorded in 1996. It tells us that the area was
11 dedicated to Montgomery County in fee simple. It
12 does show that the ownership was conveyed to the
13 county from the owner at the time.

14 Q Thank you. Next slide. What is this
15 document, Mr. LaVay?

16 A This is the planning board's opinion for
17 preliminary plan 19900680, which was approved in
18 October of 1995.

19 Q What property did that preliminary plan
20 application pertain to?

21 A That preliminary plan application
22 pertained to all of the property subjects to this
23 --Well, that's been shown in this discussion,
24 with the exception of the sliver of land, the
25 unrecorded land on the south end of the site.

1 Q I wonder if it be worthwhile for just a
2 moment to go back to the outside acquisition
3 exhibit and perhaps you could use your cursor to
4 just indicate what land was included in that
5 preliminary plan.

6 A Sure. It was, as I follow here, I trace
7 it was all of this here.

8 Q Great. Thank you. Let's go back. Was
9 there language in this planning board opinion
10 that's relevant to the abandonment area?

11 A Yes. As highlighted here in yellow is
12 condition number four, which states blanketly
13 that dedication to all rights of way are, is
14 provided and in conformance with the Germantown
15 center study.

16 Q What was that study and how is it
17 relevant to this hearing?

18 A That was a --It's similar to say a
19 master plan or a sector plan, but it was actually
20 a guidance document that was adopted in 1992,
21 following the adoption of the 1989 Germantown
22 master plan as additional urban design guidance
23 for the Germantown town sector area.

24 Q What was required by this condition, the
25 dedication and this condition?

1 A In this particular property, the
2 dedication required was along Walter Johnson
3 Road. Then there was a recommendation to have an
4 internal connection through the property that
5 would marry up with what's also called Walter
6 Johnson Road now to the south of the site.

7 Q Let's move on to the next slide. What
8 are we seeing on this slide?

9 A On the left hand side is the 2009
10 Germantown master plan. It's an excerpt, it's a
11 picture that shows a road segment through the
12 subject property as recommended and on the right
13 is the more recent 2019 Mark Rail's community
14 master plan, which continues to show this
15 connection, albeit it has some caveats about
16 being a possible connection.

17 Q Does --And the one on the right, the
18 more recent one, does it show two pieces of road
19 segment, one heading more or less north, south
20 and the other heading more or less east, west?

21 A Yes.

22 Q Does the plan that your office prepared
23 for Lidl, for this project, include the
24 construction of road connections that will
25 fulfill the master plan goals for connectivity

1 that are shown on these excerpts?

2 A Yes.

3 Q Next image please. Mr. LaVay, what are
4 we looking at here?

5 A This is a color site plan of the
6 proposed development. What you see here is in
7 red, the approximate area of the requested
8 abandonment, in the middle of the property, in
9 the middle of the proposed building, labeled as
10 grocery store, and then the proposed site design
11 surrounding that new grocery store shows new
12 drive number one, which is the more or less east
13 west connection through the property and new
14 drive two is the more or less north south
15 connection through the property connecting to
16 Walter Johnson Road. To the left of new drive one
17 is actually also called Walter Johnson Road, but
18 that is a public right of way. Effectively we've
19 taken the red area and just moved it to the right
20 on this image and provided the same through
21 connection.

22 I'll also note there is, as you can see
23 here, shaded in gray between the site and
24 Wisteria Drive an existing drive aisle that
25 provides a further east west connection to

1 Wisteria Drive and that's existing and it's
2 within a existing egress easement.

3 Q Great. Would you consider this to be a
4 good location for these road connections from an
5 engineering perspective?

6 A Yes. A couple reasons. One that it
7 allows us to reuse, new drive number two allows
8 us to reuse the existing curb cut location that's
9 there today, which being on the curve the way it
10 is, it actually provides optimal sight distance
11 while also enabling us to meet the master plan
12 goals for connectivity through this and building
13 placement and circulation of other things.

14 Q Thank you. Next slide, please. We saw
15 this image earlier when Mr. Simez was testifying.
16 For the record, what is this image? Was it
17 prepared by your office?

18 A This is a --This was. This image was
19 prepared by our office. It's an excerpt from a
20 conceptual site plan that we submitted through
21 park and planning last year.

22 Q Please, can you please point out the
23 proposed road connections on this image?

24 A Sure. Just left of the --First of all
25 the development site is all the colored area.

1 Just to the left of this development site, you'll
2 see, as I described there's Walter Johnson Road,
3 public right of way. Then we have the more or
4 less the east west connection through the
5 property here. There's a difference in color here
6 because we do have some traffic calming measures
7 in the form of different alternative paving
8 treatments in the middle of the site, but
9 effectively there's a paved connection from east
10 west through the property, and then north, south
11 through the property. As I described the existing
12 curb cut on Walter Johnson to the south, and that
13 marries up with the site in a L shape.

14 Q Thank you. Could you point out roughly
15 where the abandonment area would be on this
16 slide?

17 A Sure. It's pretty faint, but I'll trace
18 it here. It's right in the middle of the
19 building. There's a line here that comes down and
20 it goes up. Up here just about into the parking
21 lot, and comes back down in a finger shape here.
22 It's almost smacked dead in the middle of the
23 building.

24 Q How is that, the proposed abandonment
25 area currently being used?

1 A It's actually unused today.

2 Q In your professional opinion, is it
3 possible for Lidl to build this project in
4 accordance with the Montgomery County master plan
5 goals without the abandonment?

6 A No, it's not. We studied this
7 extensively both internally and with planning
8 staff and found that this is the configuration
9 that meets the goals for the county.

10 Q Thank you. I have one more slide I'd
11 like you to discuss.

12 A That's the last one I have in my-

13 Q Ah, you don't have the update. The most
14 updated version. I did --Let me see if I can
15 share my screen because I added a slide because,
16 well, I'll let you --I'll let you answer
17 questions rather than testifying myself. But let
18 me see if I can pull that up. This should be it.
19 Can you all see this?

20 A Yes.

21 Q Great. this was just to show for the
22 record, this is the same presentation. I'll just
23 flip through the pages so that you can all see
24 it's exactly what Mr. LaVay just testified about.
25 do you recognize this image, Mr. LaVay?

1 A Yes. This is a GIS image from Montgomery
2 County.

3 Q Are you familiar with the report that
4 the planning staff submitted or the planning
5 department submitted into the record for this
6 hearing?

7 A Yes.

8 Q Does the appear in that report?

9 A Yes.

10 Q Can you explain what we're seeing here
11 first?

12 A You're seeing the --Well, first of all,
13 in red is this area subject of abandonment. You
14 see a little bit more than development property
15 here, bordered in blue. The actual development
16 property, the southern edge, or I guess the
17 bottom left edge of it would be the south limits
18 of the development. However, the northern limits
19 actually are between the two, there's polygons
20 there that are shaded darker, in a darker orange
21 there, between the two of those actually is where
22 the proposed Lidl site stops and runs down the
23 page on that same line that's parallel with
24 Wisteria Drive, which is the road furthest to the
25 right on the page.

1 Q I'm going to try and run my cursor where
2 I think the line is, can you just tell us if I've
3 got it right?

4 A Yep.

5 Q I'm thinking the line. I think I see a
6 faint line on here between these two.

7 A Yep.

8 Q Lots. I think the line comes down here
9 and then it maybe angles a little bit.

10 A Yeah.

11 Q Was that about right?

12 A That's correct.

13 Q So would you please explain why the
14 planning department identified a subject property
15 that's larger than the project sites that we
16 showed on our slides?

17 A I don't know exactly their intentions,
18 but I would speculate that, when this was
19 created, we were still having discussions and
20 there was an early part to the preliminary plan
21 process where, because this was all created as
22 part of an original subdivision that included
23 that full blue box, blue polygon. Because Lidl is
24 purchasing and consolidating a portion of one of
25 the other properties within that blue polygon,

1 the staff may have felt like the entire original
2 subdivision plus the sliver to the south should
3 be in this image. But I don't think it was
4 intended to convey anything different with
5 regards to the matter at hand today.

6 Q Okay. Thank you very much. Is there
7 anything else you'd like to add?

8 A I could also just point out that just
9 roughly generally speaking, it just must be an
10 error in the county's GIS system then but there
11 is the public roadway that I described as sort of
12 the secondary or duplicate Walter Johnson Road is
13 not shown as in that lighter color as a public
14 road, just to the south of the site. But that in
15 fact does, there is a dedicated public right of
16 way that runs right through there that comes into
17 our site. Just to avoid any confusion there, that
18 realistically should be shown in that lighter
19 color.

20 Q Is that here where I'm moving my cursor?

21 A Yes.

22 Q Okay. Great. Anything else, Mr. LaVay?

23 A Nope.

24 MS. CARRIER: Thank you very much. I
25 appreciate your assistance with that. That

1 concludes our witness testimony. We'll be happy
2 to answer any questions that the hearing officer
3 may have.

4 MR. THOMMANA: I do not have any
5 questions at this time. Are there any --Is there
6 anybody else that has registered or come in
7 during this time for comments?

8 MR. WILLIS: I am double checking right
9 now. I don't believe so.

10 MR. THOMMANA: Okay.

11 MC. MCCRAY: There are none in the
12 chat.

13 MR. THOMMANA: Okay.

14 MR. WILLIS: No. And no responses to
15 the registration form.

16 MR. THOMMANA: Okay. Well, I think I do
17 not have any more questions. At this time we can
18 then conclude this hearing. The record will still
19 remain open until March 2nd, 2022 for any written
20 comments that may come in. With that, we can
21 conclude this hearing.

22 (Off the record at 2:42 PM.)

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CERTIFICATE OF COURT REPORTER

I, Shannon Hayes, the officer
before whom the foregoing proceedings were taken,
do hereby certify that said proceedings were
electronically recorded by me; and that I am
neither counsel for, related to, nor employed by
any of the parties to this case and have no
interest, financial or otherwise, in its outcome.

Shannon Hayes

Shannon Hayes, Court Reporter

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CERTIFICATION OF TRANSCRIPT

I, Olivia Wilke, do hereby certify that the foregoing transcript, to the best of my ability, knowledge, and belief, is a true and correct record of the proceedings; that said proceedings were reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Olivia Wilke

Olivie Wilke, AAERT CET
Planet Depos, LLC
March 1, 2022

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