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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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4 CHURCH OF SCIENTOLOGY)
OF GEORGIA, INC., A)
5 GEORGIA CORPORATION,)
)

6 Plaintiff,) CIVIL ACTION FILE NO.

7

vs.) 1:10-CV0082 CAP

8 CITY OF SANDY SPRINGS,)
GEORGIA, A MUNICIPAL)
9 CORPORATION OF THE)
STATE OF GEORGIA; THE)
10 CITY COUNCIL OF THE)
CITY OF SANDY SPRINGS,)
11 GEORGIA; ET AL,)

12 Defendants.)

13

14

15 Deposition of MARK MOORE, taken on behalf
16 of the Plaintiffs, in accordance with the Federal
17 Rules of Civil Procedure and the Federal Rules of
18 Evidence, pursuant to notice and agreement of
19 counsel, before Darcy L. Quist, RPR, at 7840 Roswell
20 Road, Building 500, Sandy Springs, Georgia, on the
21 27th day of May, 2010, commencing at the hour of
22 10:11 a.m.

23

24 DEB PUCKETT & ASSOCIATES
636 Old Ivy Road
25 Atlanta, Georgia 30342
(404) 365-9015

0002

1 DISCLOSURE

2

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STATE OF GEORGIA

4

COUNTY OF FULTON

5

6 DEPONENT: Mark Moore

7 Date of Deposition: May 27, 2010

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Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter.

I am not disqualified for a relationship of interest under the provisions of

O.C.G.A. 9-11-28 (c).

I am a representative of Deb Puckett & Associates.

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Deb Puckett & Associates will not be taking this proceeding under any contract that is prohibited by Georgia law.

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21

Darcy L. Quist, CCR B-2457
Certified Court Reporter
Date:

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24
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0003

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(Exhibits 1 through 10 have not been attached to the original transcript and have been retained by Ms. Jones.)

0004

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11

12

Also Present:

13

Ms. Nancy Leathers

14

- - -

15

MARK MOORE,

16

having been first duly sworn, was examined and
testified as follows:

17

18

EXAMINATION

19

BY MS. JONES:

20

Q. State your name, sir.

21

A. Mark Moore.

22

Q. Mr. Moore, have you ever had your

23

deposition taken before?

24

A. No, ma'am, I have not.

25

0005

Q. Have you ever been a witness in a lawsuit
before?

1

2

A. No, ma'am, I have not.

3

Q. Have you ever been a plaintiff in a
lawsuit?

4

5

A. No, ma'am, I have not.

6

Q. How about a defendant in a lawsuit?

7

A. No, ma'am, I have not.

8

Q. Okay. So you have absolutely no
experience in a lawsuit?

9

10

A. No, ma'am, not directly.

11

Q. Okay. I'm sure that Miss Henderson gave
you some pointers for answering, and I'm just going
to repeat a couple of them. One is that please -- we
did some depositions yesterday, and this was our

12

13

14

15

16 recurring theme -- let me finish my question before
17 you start your answer, and I will be held accountable
18 for letting you finish your answer before I jump in.

19 A. Okay.

20 Q. So that we don't talk over each other. If
21 you don't understand any questions that I have for
22 you, just tell me.

23 A. Okay.

24 Q. Also, if you would, articulate your
25 response. Say yes, no, right, wrong, incorrect.

0006

1 Nodding is okay, but the court reporter doesn't have
2 words for that nod.

3 A. Yes, ma'am.

4 Q. You know, I've seen transcripts where
5 there was a little word in there that says "nod."
6 Yes nod or no nod or maybe nod? So try not to do
7 that.

8 MS. JONES: I skipped the introductory
9 that this deposition is being taken pursuant to
10 the Federal Rules of Civil Procedure and will be
11 used for all purposes allowed under the Federal
12 Rules of Civil Procedure.

13 Will counsel agree to reserve all
14 objections, except as to the form of the
15 question and responsiveness of the answer, until
16 such time as the deposition is to be used.

17 MS. HENDERSON: Yes.

18 MS. JONES: Okay.

19 Q. (By Ms. Jones) Mr. Moore, you have the
20 right to read and sign your deposition. Do you wish
21 to reserve that right?

22 A. Yes, I do.

23 (Plaintiff's Exhibit 1 was marked for
24 identification.)

25 Q. (By Ms. Jones) Now, Miss Henderson handed

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1 me what looked like your CV right before the
2 deposition started. I'm going to mark that as
3 Plaintiff's Exhibit No. 1 and just ask you to
4 identify that as your CV.

5 A. It is. It's my resuM.

6 Q. Okay.

7 A. Curriculum Vitae. I have my business card

8 also if you need contact information.

9 Q. I see you graduated from Georgia Tech?

10 A. Yes, ma'am.

11 Q. What year did you graduate?

12 A. 1999.

13 Q. And did you have a major at Tech?

14 A. Yes, I did. I got a Bachelor of Science

15 degree in science, technology, and culture.

16 Q. What does that mean?

17 A. It was a multidisciplinary degree that

18 focused on the interplay between science, technology,

19 and culture and society. It was an interesting

20 program. I did all the core curriculum that any

21 engineer coming out of Georgia Tech did. I also did

22 the coursework for a minor in journalism at Georgia

23 State while I was at Georgia Tech. So I had a varied

24 interest academically.

25 Q. Did you do an internship in Sedona?

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1 A. No, I did not. I have only visited Sedona

2 for pleasure.

3 Q. That was a piece of humor arising from an

4 earlier conversation that we had. I won't hold that

5 against you.

6 A. I appreciate that.

7 Q. Okay. Now, while you were in college, did

8 you work in your area in any way?

9 A. No, I did not.

10 Q. So when you got out of college, what was

11 your first job?

12 A. My first job out of college was as a

13 project manager for an Internet start-up called

14 Edaflow.

15 Q. E?

16 A. D-a-f-l-o-w. It is long since defunct.

17 Q. What was it?

18 A. It was an apparel -- it was a

19 business-to-business apparel marketplace, or

20 attempted to create an apparel-buying marketplace. I

21 worked in several start-ups my first two years out of

22 school.

23 Q. And were you mainly in the technology area

24 of it?

25 A. Yes. Primarily, what I was doing was

0009

1 project management and some technical writing.

2 Q. I see you've gotten a bunch of computer
3 skills. Generally, would you consider yourself an
4 IT-type person?

5 A. I'd like to think that I'm fairly computer
6 literate.

7 Q. Do you write code?

8 A. No, I do not. That would be my wife.

9 Q. You're a user?

10 A. Yes. I would like to think that I'm a
11 reasonable user, but I am not a coder by any means.

12 Q. You've got computer skills listed on your
13 resumT. Are these all skills that you use in your
14 position with Sandy Springs?

15 A. Almost. There's a couple pieces of
16 software that are specifically related to traffic
17 count equipment that I don't currently use much. The
18 TRAXPro and PETRAPro are that, but Synchro/Sim
19 Traffic and HCM and PC-Warrants are all traffic
20 analysis software or simulation software that is very
21 germane to what I do: reviewing traffic studies and
22 looking at new developments.

23 Q. So after you moved away from the
24 start-ups, what was your next job, if any?

25 A. Well, I had a friend that worked for

0010

1 Fulton County, and they had some intern positions;
2 and after, I believe, three layoffs in two years,
3 government service sounded like a much more
4 relaxingly stable option.

5 I was back to waiting tables at the time,
6 and he said, I need your project management and your
7 writing skills, which we don't really have in the
8 office, and would love to have you.

9 So I started, got very interested in
10 transportation and traffic engineering, and started
11 reading everything I could and so forth and got hired
12 on initially as an engineering assistant and then as
13 a full-time Engineer 1 after about a year. I've got
14 the actual dates. About eight months, I guess, I got

15 the full permanent position as an Engineer 1 at the
16 County and have stayed in my field ever since, in my
17 chosen field.

18 Q. Are you a PE?

19 A. No, I am not.

20 Q. How about a PTOE?

21 A. No, ma'am.

22 Q. All right. So you were with the County
23 from 2001 to 2002, and then is that when you went
24 to --

25 A. Well, it was County '01 through '05,

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1 through the end of '05.

2 Q. '01 through '05.

3 A. Just two different positions with
4 different responsibilities.

5 Q. Okay.

6 A. And then I had started with Sandy Springs
7 -- well, I was hired by CH2MHill and started with
8 Sandy Springs on January 1, 2006. Well, I think it
9 was the 3rd, actually.

10 Q. And that was the beginning of Sandy
11 Springs?

12 A. Yes. The beginnings of public works with
13 Sandy Springs.

14 Q. So you've been with Sandy Springs since
15 the very beginning?

16 A. Yes, ma'am.

17 Q. So any traffic issues that we have with
18 Sandy Springs --

19 A. You have my card. Be happy to do what I
20 can.

21 Q. Now, I see that you've got a lot of
22 responsibilities. Could you give me a picture of
23 what you do during your day.

24 A. Sure.

25 Q. Specifically.

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1 A. The majority of what I do is related to
2 development -- or review of development plans and
3 zoning cases. So the majority would be do the public
4 works and transportation review for land disturbance
5 permits, platting, miscellaneous, fence, retaining

6 wall, grading permits, all of the permit review; and
7 I also do the public works and transportation review
8 for zoning cases and variances, use permits,
9 modifications and the analysis thereof.

10 Q. At what point do you come into the review
11 process on zoning cases?

12 A. I usually attend the preapplication.
13 Well, yes, the preagenda meeting. I'm getting
14 confused. Preagenda, preapplication meeting.

15 About the time that the -- if we have
16 notice of a preapplication meeting and the zoning
17 staff informs me that they think there will be some
18 transportation issues with the case, I'm usually
19 invited to attend that meeting; and then once the
20 application is submitted, then I am one of the
21 departmental stops.

22 There are a number of departments that
23 review the zoning cases for their various areas of
24 expertise, and in due course I get my set of their
25 applications and information and then produce

0013

1 comments from the staff report.

2 Q. Is a preap. meeting a requirement of the
3 Sandy Springs ordinance?

4 A. I do not know.

5 Q. Does everybody go to a preap. meeting?

6 A. I do not go to all of the preapplication
7 meetings.

8 Q. You only go to the preapplication meetings
9 when there's an issue of wheels?

10 A. I believe. I seem to be invited to ones
11 that they anticipate that there could be some
12 transportation-related questions or issues, but you'd
13 have to ask Nancy on exactly why. I just kind of go,
14 and it shows up as a meeting invite.

15 Q. Okay. So when you're talking about
16 transportation, you're talking about volume of
17 traffic?

18 A. Typically with -- well, yes. One piece of
19 that would be.

20 Q. Traffic controls?

21 A. Yeah. Typically, if I'm reviewing -- to
22 kind of maybe broaden that, if I'm reviewing a zoning

23 case, I'm looking for a few issues at the time of
24 zoning.

25 One is the impact, the potential impact of
0014

1 the development on the surrounding transportation
2 network, and that would be something where I'd be
3 looking at, you know, projected volumes, what sort of
4 effect this may have on the surrounding roadway
5 network.

6 I also look at the site, at least the
7 initial conceptual site decision, for access issues,
8 typically looking also if I see that there would be
9 that at least the concept is in accordance with our
10 development regulations.

11 And probably the third thing that I'm
12 looking for at the time of zoning is any right of way
13 related issues -- how much right of way is there, is
14 there any capital -- are there any capital
15 improvement projects in the immediate vicinity that
16 would relate to it or conflict with it -- to be able
17 to bring any of those issues to light as early as
18 possible in the process.

19 Q. How about parking? Do you do a parking
20 analysis?

21 A. No, ma'am.

22 Q. Who does the parking analysis?

23 A. Community Development. Parking
24 regulations, my understanding is they're part of the
25 zoning ordinance.

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1 Q. So you don't concern yourself with whether
2 there's adequate parking or not on the site?

3 A. No, ma'am.

4 Q. Are you ever involved in the Community
5 Development Department's analysis of parking on a
6 site?

7 A. No, ma'am.

8 Q. Are you familiar with Kimley-Horn?

9 A. Yes, I am.

10 Q. Do you work with any of the engineers from
11 Kimley-Horn on transportation issues?

12 A. What do you mean by "work with"?

13 Q. Well, you know, meet with, discuss.

14 A. Yes. I have interacted with them as
15 colleagues and as the clients' engineers on a number
16 of cases doing transportation analyses for various
17 developments.

18 Q. Do you know John Walker?

19 A. Yes, I do.

20 Q. Do you consider John Walker to be a
21 competent traffic engineer?

22 A. Yes, I do.

23 Q. Now, CH2MHill contracts with Sandy Springs
24 for various services; is that correct?

25 A. Yes, ma'am.

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1 Q. And is that an ongoing contract?

2 A. Yes, it is.

3 Q. So once you start looking at the portion
4 of the application that would relate to your issues,
5 for example, looking at the impact of the development
6 on the surrounding transportation network, how would
7 you go about looking at that impact?

8 A. Typically, I look at the information
9 that's provided. I look at the land use or the
10 applicant's offered land use, the densities. So if I
11 have they're going to put up, say, a 50,000 square
12 foot building, I know that. I know what the intended
13 use is going to be, and I look at the -- the other
14 critical piece from the applicant is typically the
15 concept site plan. So I can see ingress and egress
16 and site access features.

17 Depending on the scale of the site, I may
18 be reviewing a traffic study that's submitted from an
19 engineering firm, such as Kimley-Horn, when it's
20 required by zoning at certain thresholds.

21 Q. Anything else?

22 A. I can run various analyses and try to
23 answer any questions that I am asked by elected
24 officials or the public or that come up from staff
25 through the zoning process.

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1 Q. And how do you determine the projected
2 volumes and their effect on surrounding roads?

3 A. Volumes are determined -- well, predicted,
4 and I say "predicted" because trip generation truly

5 is sort of -- back maybe to the Sedona example, you
6 can say it's sort of a very educated crystal ball
7 gazing, in fact, because it is predictive and it's
8 predictive analysis. It's not a hundred percent.

9 There's a methodology that is used by
10 traffic engineers throughout the profession, so
11 ultimately, whether I come up with the numbers or
12 Kimley-Horn or any other knowledgeable professional
13 does, you're pretty much going to come up with the
14 same numbers for trip generation, because we all use
15 a methodology that is produced by the Institute of
16 Transportation Engineers.

17 They publish a trip generation manual. It
18 is a collection of studies that have all followed a
19 rigorous methodology that have defined the number or
20 have studied the number of daily trips, both daily
21 and within peak hours, for set land uses that meet
22 certain described criteria, and then they take
23 multiple studies from across the country from
24 multiple jurisdictions and they aggregate them and
25 run statistical analyses on them.

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1 So to the extent that any given site
2 operates like the studied sites do and meets the sort
3 of land use criteria, and to the extent that the
4 sites have been studied themselves, you can get
5 pretty accurate in predicting what you think the
6 number of trips are going to be. Less studied land
7 uses, you're a little more predicting. You're doing
8 a little more educated guessing on what the results
9 may actually end up being.

10 Veterinary clinics are the one that I use
11 as a classic example as something that's actually not
12 a defined land use in the ITE Trip Generation Manual.

13 So you can use medical office, but it's
14 not exactly the same as your dentist office in its
15 characteristics.

16 Q. And the dogs don't drive.

17 A. And the dogs don't drive, thankfully. In
18 some cases, we might be better off if they did.

19 Q. So then you can project the volumes. How
20 do you project the effect on the surrounding roads?

21 A. Well, I take the volume -- you take the

22 volumes that you anticipate, based on, again, the
23 density and the land uses or combination of land
24 uses, if it's a mixed-use or a multi-use facility,
25 and then you sort of project those onto the
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1 surrounding roadway networks.

2 So you look at adding those volumes. You
3 look at the distribution. So do I think someone is
4 turning left or right, say, for example, out of the
5 parking lot and why? You make some very -- try to
6 make as educated and accurate a prediction as you can
7 of where people are going to be going, based on
8 surrounding patterns, or proportional distribution as
9 it exists today.

10 You add those volumes to what's going on
11 on the roadway network, and then you can run any of a
12 number of analytics on intersections that may be in
13 the area or the path of that, adding those new
14 volumes to it.

15 That's where things like the HCM software
16 would come in handy or the Synchro or Sim Traffic
17 Analysis, because they give you a level of service
18 analysis for the surrounding intersections.

19 Q. And would it be fair to say that once
20 you've looked at the volumes and run these analyses
21 on the effect on surrounding roads that you would be
22 able to say whether you thought that the proposed
23 development or use of the property was acceptable or
24 unacceptable from a traffic standpoint? Is that how
25 it works?

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1 MS. HENDERSON: I'm going to object to the
2 form of the question. It's not -- I don't
3 understand the question.

4 Q. (By Ms. Jones) Well, I guess the question
5 is: Once you've looked at the volume and the effect,
6 do you render an opinion as to whether that's a
7 negative effect that would prohibit the proposed
8 development or it's acceptable?

9 MS. HENDERSON: To the extent you can
10 answer, if you don't -- if you need
11 clarification, ask her and explain, if you need
12 clarification, why.

13 THE WITNESS: Let me try this: I do not

14 opine on whether a proposed development is
15 acceptable or not, in any circumstance. I can,
16 once I've done an analysis, render a
17 professional opinion on whether or not I believe
18 that use of that location is going to be overly
19 burdensome on the surrounding transportation
20 network or not.

21 Q. (By Ms. Jones) Much better said. That's
22 exactly what I was trying to ask you. Okay.

23 And then with the conceptual design on
24 site, would that go into your mix of volume and
25 effect is whether or not the site design is workable?

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1 A. Yes. It's sort of a separate analysis,
2 but it would feed into whether or not a particular
3 site design would cause problems or operational
4 difficulties based on that design.

5 Q. And in looking at that analysis, are you
6 talking about traffic flow within the site or traffic
7 flow on and off the site? What is it that you look
8 at?

9 A. Both.

10 Q. Both?

11 A. Typically.

12 MS. JONES: Could I stop just a second?
13 My phone buzzed a little while ago, and it's the
14 number of the nursing home. My mother is having
15 a medical crisis.

16 MS. HENDERSON: Let's take a break.

17 (Recess from 10:34 a.m. to 10:38 a.m.)

18 Q. (By Ms. Jones) We were at the conceptual
19 design. You look at that and then you said you look
20 at the development regulations.

21 A. I try to flag early and let the applicant
22 know if there is a site design issue that I know is
23 going to conflict with the City's development
24 regulations, primarily, I guess, as a courtesy so
25 they don't get too far down the proverbial street

0022

1 before they realize that they would or wouldn't be
2 allowed to do something from a design standpoint.

3 Although, full review of a plan for

4 purposes of the development regulations takes place
5 typically at time of land disturbance permit and
6 really is only applicable once I have a fully
7 engineered set of plans, which I typically don't have
8 access to at the time of zoning.

9 Q. What types of site design issues do you
10 tend to flag at this point?

11 A. Common ones would be ingress and egress
12 issues, so site access issues; number of driveways;
13 location of driveways; any of a number of project
14 improvement features that may be required based on
15 the size and the scope or the design of the project,
16 such as deceleration lanes, left-turn lanes; if I
17 anticipate a development will need to be -- the
18 entrance would need to be signalized, issues such as
19 that.

20 Q. Right of way related issues, what would
21 that include?

22 A. Again, looking to see if we have -- well,
23 how much right of way is on the frontage. I usually
24 will write for the staff report a right of way
25 comment based on what the City would require based on
0023

1 the functional classification of the roadway or
2 future plans for the roadway as far as future right
3 of way dedication requirements; also, look at the
4 existing capital improvement program and see if there
5 are any planned or funded projects that would be
6 going along the frontage and how they might relate to
7 or conflict with the proposed development.

8 Q. And then your last -- well, that's your
9 last notation was capital improvement projects?

10 A. Those are kind of the three big areas that
11 I look for at the zoning review.

12 Q. Okay. At that point, once you've looked
13 at those things, what do you do with that analysis?

14 A. At that point I write a -- I guess my
15 portion, the public works portion of the staff
16 comments and submit them to the planner that is at
17 community development that is ultimately responsible
18 of running the case. It's usually in the form of a
19 bullet-pointed list with proposed comments, both
20 proposed conditions and any sort of editorial

21 comments that may be made on it.

22 Q. And then are you done?

23 A. Nope. It would be nice, I guess, if I was
24 at that point. My understanding, though, and Nancy's
25 folks can speak to that, that gets wordsmithed and
0024

1 turned into the staff report, along with all the
2 other inputs. And then I'm typically present for
3 briefings for officials and, a rezoning case, the
4 planning commission. And then I sit in the planning
5 commission meetings and the zoning hearings to answer
6 any -- and in that capacity, I'm typically just
7 answering questions about the analysis work that I've
8 done.

9 Of course, any citizen questions that I
10 may get or emails we may get, I answer those and copy
11 responses to the planner running the case so it can
12 go in the case file.

13 Q. Okay. Well, you said you were present for
14 briefings of the planning commission and the counsel
15 members?

16 A. Uh-huh.

17 Q. Are there formal briefings for each
18 application? Is that part of the process?

19 A. On the agenda, per agenda we have a
20 planning commission briefing before the meeting where
21 they can ask questions about the applications.

22 Q. So it's held in connection with the
23 planning commission meeting? It's on the same night
24 as the planning commission meeting or day?

25 A. No. There's also a briefing on the Monday
0025

1 morning before the planning commission meeting.

2 Q. Okay. So there's --

3 A. So any last-minute questions, we have the
4 dinner sort of before that's open, and if they have
5 any last-minute questions, obviously, they can ask
6 during that. But there is a briefing for the
7 planning commission.

8 Q. And is that the same for the counsel
9 members? Do they get briefed separately from the
10 meeting?

11 A. They do if they want. There's a couple

12 set meetings before the zoning hearing where they
13 come in two at a time.

14 Q. Good policy. Are you familiar with the
15 property at 5395 Roswell Road?

16 A. Yes, I am.

17 Q. Okay. How are you familiar with it? How
18 do you know about this property?

19 A. Well, let me make sure the address -- I
20 believe we're talking about the proposed -- the
21 Church of Scientology site.

22 Q. Yes.

23 A. Okay. I just wanted to make sure that I
24 had the address right because I didn't remember the
25 exact address number in my head. I'm familiar --

0026

1 well, I'm familiar with the site just from obviously,
2 you know, observation from driving by. I'm familiar
3 with the area. More specifically, I'm familiar with
4 it because I did review the zoning case for the
5 proposed rezoning for the Scientology.

6 Q. Did you attend a preap. meeting?

7 A. No, I did not.

8 Q. Okay. At what point were you invited to
9 be involved in the zoning of this application for
10 this property?

11 A. With the normal distribution of the agenda
12 materials prior to putting together the staff report.
13 So on a monthly basis they distribute the application
14 materials as they've come up with the proposed
15 agenda, and then we run our analysis on those.

16 Q. Did you meet with any representatives in
17 the Church of Scientology to discuss the project at
18 that point?

19 A. No, I did not.

20 Q. What was in your application materials?

21 A. The conceptual site plan, the -- not the
22 preliminary staff report, but the -- I can see it in
23 my head. It's the agenda memo, the same thing they
24 put together every month. You probably -- I'm sure
25 you've probably got a copy of it. It just talks

0027

1 about the location.

2 It will have a few map sheets showing the

3 area, the comp plan map, the future land use map, a
4 brief narrative of the density, proposed use, any
5 concurrent variances that are requested at the time,
6 and it also has the letter -- like I said, the
7 conceptual site plan -- it also has the letter of
8 intent attached from the applicant.

9 Q. So you received these application
10 materials in a package?

11 A. Yes.

12 Q. And you were asked to -- what opinion were
13 you asked to render, if any?

14 A. None specifically other than to review it
15 and produce any comments that public works would have
16 on the application, at least initially.

17 (Plaintiff's Exhibit 2 was marked for
18 identification.)

19 Q. (By Ms. Jones) Let me give you what has
20 been marked as Plaintiff's Exhibit 2. This was
21 produced by counsel in response to some discovery
22 requests we had made. Those numbers down at the
23 bottom, the R numbers are what used to be called
24 Bates stamp numbers that just simply help us to
25 identify where the documents came from.

0028

1 A. Absolutely.

2 Q. Are you familiar with this document?

3 A. Yes. Looks like the staff report that was
4 produced prior to the planning commission --

5 Q. What part -- sorry?

6 A. -- the zoning case.

7 Q. Sorry.

8 A. Oh, no, no. Go ahead. I'm sorry.

9 Q. What part of this report, if any, are you
10 responsible for, or what part of the report contains
11 analysis or information provided by you?

12 A. Let me flip through it and I will tell
13 you. Okay. The first thing that I commented on in
14 the original report was on --

15 MS. HENDERSON: Use this number referring
16 to it so we're all on the same page.

17 THE WITNESS: Yes, ma'am. R000155.

18 Q. (By Ms. Jones) Okay.

19 A. Under variance conditions, No. 3, the

20 bottom of the page --

21 Q. Okay.

22 A. -- is a comment on a variance request to
23 allow an existing sign structure to encroach within
24 the right of way -- or within property acquired as
25 right of way. I did not write the staff opinion, but

0029

1 I did put in my comments that the sign was outside of
2 the required clear zone area. So, therefore, we had
3 no objection to that variance.

4 On the next page, R000156 --

5 Q. And you can just shorten that to the last
6 three numbers.

7 A. The last three. Okay. 156. Sorry. You
8 have engineers who try to be precise.

9 MS. HENDERSON: It's good to be precise,
10 but that's okay.

11 Q. (By Ms. Jones) This is the engineer
12 speaking here.

13 A. The transportation section, sort of the
14 middle of the page, where it says Sandy Springs
15 Transportation Planner, the two right of way
16 comments, I produced.

17 Q. And that was just simply information that
18 was of record?

19 A. Yes. Right of way dedication requirements
20 based on functional classification in our long-range
21 planning inference.

22 Q. And where is that found?

23 A. I have a spreadsheet, and there's also
24 some -- that kind of lists out for my reference --
25 and there are also our comprehensive plan, the

0030

1 transportation master plan, and the development regs
2 all have pieces that speak to right of way dedication
3 requirements.

4 Q. When you say the development regs, are
5 they separate from regulations contained in the Sandy
6 Springs zoning ordinance?

7 A. Yes, ma'am, it's a separate ordinance.
8 It's the Sandy Springs development regulations
9 ordinance.

10 Q. Okay.

11 A. Then 159 just shows some of the comments,
12 the right of way comments in recommended condition
13 form.

14 Q. And what portion of these comments do you
15 take ownership of?

16 A. 3a, b, and c, which is sort of boilerplate
17 wording for our right of way comments. And that's
18 it. That is all.

19 Q. Okay. Well, let me get you to look at
20 page 153. That's the site plan analysis.

21 A. Okay.

22 Q. That discusses the -- I guess that's the
23 parking ordinance for Sandy Springs in the second
24 paragraph.

25 A. Uh-huh.

0031

1 Q. Did you have any participation in that
2 information provided there?

3 A. No, because I don't do the parking
4 analysis.

5 Q. Okay. And go to the next page. I'm not
6 trying to be repetitive. I just want to make sure
7 that I know what you know.

8 A. Absolutely.

9 Q. The traffic impact analysis, parking and
10 traffic impact analysis --

11 A. Uh-huh.

12 Q. -- did you have any participation in the
13 information provided there?

14 A. No, I did not. I did not do this
15 analysis.

16 Q. Now, I have a stack of photographs here.

17 A. Okay.

18 (Plaintiff's Exhibit 3 was marked for
19 identification.)

20 Q. (By Ms. Jones) I'm just going to label
21 them Plaintiff's Exhibit 3, and we may have to come
22 back and label them A, B, C, or whatever, but for
23 right now, let me just show you these photographs and
24 ask you if you know what the source of the
25 photographs is first.

0032

1 A. They are photographs of the site and

2 surrounding area. I'm not sure what the source is.

3 Q. These are not photographs that were
4 generated by your department?

5 A. No, ma'am.

6 Q. Does the transportation department go out
7 and photograph ingress and egress to the site and
8 that sort of research?

9 A. No, ma'am. We will visit -- I will visit
10 the site if I am unfamiliar with it or if I have any
11 questions about it or want to see it on the ground,
12 which I typically do as a matter of course with each
13 zoning case, but photo documentation is usually done
14 by community development. It's part of their
15 process.

16 Q. Okay. Well, you can give those photos
17 back to me and we will save them for somebody else.

18 A. Sorry.

19 Q. That's okay. You know, lucky for you.

20 A. I am just a cog in the machine.

21 Q. I brought a lot of stuff that you are not
22 going to have to talk about. I just wanted to make
23 sure I have it.

24 MS. HENDERSON: It does shorten the
25 deposition, doesn't it?

0033

1 MS. JONES: Can I have my copy back?

2 MS. HENDERSON: Oh, you're not going to --

3 MS. JONES: You've got a copy because they
4 came from you.

5 MS. HENDERSON: You're going to
6 re-introduce your exhibit back to me later?

7 MS. JONES: Yeah.

8 MS. HENDERSON: Okay. That's fine.

9 MS. JONES: Yeah. You'll get it back
10 later.

11 MS. HENDERSON: That seems fair.

12 MS. JONES: You know, these are the ones
13 that I copied.

14 MS. HENDERSON: I get it.

15 MS. JONES: They're precious, my precious
16 time.

17 I'm going to mark this as 4.

18 (Plaintiff's Exhibit 4 was marked for

19 identification.)

20 Q. (By Ms. Jones) Let me show you what I've
21 marked as Plaintiff's Exhibit 4 and ask you to
22 identify that document.

23 A. This is an email. Oh, you want me to
24 identify it. This is an email that I sent subsequent
25 to, I guess, Exhibit 2, subsequent to the staff

0034

1 analysis, staff report that was produced.

2 In response to questions, I was asked
3 about the potential impact of the site by
4 Councilmember Karen McEnery.

5 Q. Does this email accurately represent your
6 opinions regarding the volumes or the traffic impact
7 as a result of the zoning application?

8 A. Yes, I believe it does.

9 Q. Okay. And what was your bottom line
10 opinion?

11 A. Bottom line was that the amount of --
12 well, let me qualify it. There's sort of been two or
13 three parts, because that was the problem with doing
14 a traffic analysis with this site. And, as I said,
15 to the extent that, especially with trip generation,
16 any site operates per the norm, so to say general
17 office operates as general office would be expected
18 to operate, it's pretty predictive.

19 Based on all the information that I was
20 given from the applicant on how they operate or would
21 operate their facility, it did not fit neatly into
22 any of the standardized categories.

23 Q. And that's what you were talking about
24 earlier is that --

25 A. Yes, exactly. And that was what I was

0035

1 alluding to. So, for example, you know, it's a
2 church, but the church synagogue land use in the ITE
3 manual is the studies are predicated on a facility
4 that operates almost like an event facility where
5 people show up for two to three services at a set
6 time on a weekend morning. There's a surge peak of
7 traffic and then they leave, and then it's ancillary
8 activities the rest of the time. That was not my
9 understanding from the applicant of how this would

10 operate.

11 So the second sheet here was, I believe,
12 provided by the applicant, and it shows a breakdown
13 on the various proposed square footages and trip
14 generation based on both church and general office.

15 It seemed to me in the final analysis and
16 that early on there had been produced a breakdown of
17 "x" square feet would be like church, "x" square feet
18 would be like general office, "x" square feet would
19 be sort of education use, which I applied sort of a
20 community college, adult education sort of land use
21 to as trying to model as best I could.

22 In the final analysis, in looking for a
23 worst-case scenario of traffic generated, I settled
24 on general office at the maximum density, which was
25 this almost 43,916 square feet, ran that trip

0036

1 generation as what I thought, again, would be a
2 worst-case scenario -- not necessarily perfectly
3 predictive of the traffic that it would generate, but
4 what could be generated a worst-case -- I applied
5 that to the surrounding areas, and given the
6 percentage of the traffic that that would add, sort
7 of a drop in the bucket, you can see it would produce
8 a PMP trips anticipated of 115 trips, 71 in the a.m.
9 peak hour for that square footage of general office.

10 Oh, I'm sorry. I was looking at the wrong part of
11 the paragraph. Up that a little bit to 97 in the
12 morning and 128 in the afternoon at the approximately
13 44,000 square feet as a general office.

14 Given that Roswell Road at that area is
15 just under 36,000 trips average daily trips per day,
16 average daily traffic, and Glenridge Drive is almost
17 17,000 vehicles per day, proportionally, it was not
18 enough traffic and to really affect the level of
19 service of the operation.

20 I also did the highway capacity analysis
21 for the intersection, which is the LOS, the A, B, and
22 C sort of scale that you hear, and I indicated I
23 believe that bases on our current timing data and
24 adding that volume to those roads that it would not
25 have a detrimental effect on the -- in fact, it did

0037

1 not change the level of service in the morning or
2 evening peaks of the Glenridge and Roswell Road
3 intersection that's most immediately adjacent.

4 Q. Let me make sure I understand that. You
5 assumed a worst-case scenario using the general
6 office ITE category?

7 A. Yes.

8 Q. And you did not use the ITE trip
9 generation, trip numbers for church because you felt
10 that the way this building was going to be used did
11 not lend itself to using those numbers?

12 A. Yes, that's correct.

13 Q. Okay. Did you make any assumption that
14 this building was not going to be used as a church?

15 A. No, other than to try to find a land use
16 category that matched operationally what the
17 applicant had described as to how their facility
18 would run. So if --

19 Q. Is there any manual or policy or ordinance
20 that directs you to use one ITE category over another
21 in making an analysis?

22 A. Not that I'm aware of.

23 Q. I just want to make sure I understand this
24 is that in doing this traffic analysis, you have the
25 discretion to use whatever ITE categories you feel

0038
1 are best, regardless of the actual land use?

2 MS. HENDERSON: Object to form.

3 Q. (By Ms. Jones) I guess my -- you know, my
4 question really is: Is it your standard practice to
5 go outside of the ITE categories to do a traffic
6 analysis?

7 MS. HENDERSON: Object.

8 THE WITNESS: Okay. I'll try to answer
9 that as best I can. I won't say that I'm going
10 outside of the ITE categories at all. I'm using
11 the categories that they have. Typically, a
12 development is readily apparent what sort of
13 land use category it is. If it's an office
14 building, it's general office. If it's a
15 medical office, it's a medical office.

16 In this case we did and the numbers -- you
17 can see that the numbers, and I had them

18 available, were run for and I did and confirmed
19 them for all that square footage being used as
20 church, all that being used a general office,
21 looking at trying to come up with sort of a mix,
22 which was difficult to do.

23 I did not feel that just running the trip
24 generation based on 44,000, or approximately
25 44,000, or 32,000 square feet, as the church

0039

1 synagogue land use would be accurate, especially
2 given the fact that the facility wasn't designed
3 as if designed similar to the other facilities
4 that are studied in the ITE manual for that use,
5 and the operations as far as the comings and
6 goings that were described from the applicant
7 did not match to operational patterns of those
8 facilities as described in the ITE manual.

9 Q. (By Ms. Jones) Now, so ITE Code 560
10 actually describes the operations of that particular
11 category?

12 A. There's a brief description of the land
13 use in the manual.

14 Q. And does it describe the use as being
15 concentrated during particular times of the week?

16 A. I believe it does. I'm not a hundred
17 percent sure what it says, off the top of my head. I
18 would have to go look it up.

19 Q. Is that code online?

20 A. It's not online, but it is pretty
21 readily -- it's a readily available manual. Anybody
22 that does traffic engineering will have a copy of it.

23 MS. JONES: Could I get just the page for
24 the 560 ITE Code and the 710 ITE Code that was
25 used for this report?

0040

1 MS. HENDERSON: Yeah, we can get that to
2 you.

3 MS. JONES: I don't want the whole ITE
4 Manual.

5 MS. HENDERSON: Let me suggest this: We
6 will make the code available for you to look at,
7 and then you can mark what pages you want and we
8 will give you those pages.

9 MS. JONES: Okay.

10 THE WITNESS: It's in three volumes, so
11 you probably don't want the whole set of them.

12 MS. JONES: No. Don't be too generous,
13 Laurel.

14 Q. (By Ms. Jones) Okay. And just let me
15 verify that this Table No. 1 that is Document No. 381
16 of Plaintiff's Exhibit 4, did you say that that was
17 provided by Church of Scientology or is that your
18 table?

19 A. If I remember correctly, this was
20 submitted by the applicant's engineer, this
21 particular table was, because there were questions
22 subsequent to the staff report about the traffic
23 impact of the church; and the applicant provided some
24 additional material to speak to that. And I believe
25 that this was a part of that, and I was referencing

0041

1 it in this email.

2 Q. Does this email in any way express an
3 opinion regarding compliance with parking
4 requirements?

5 A. No, ma'am.

6 Q. Did you examine ingress and egress
7 access --

8 A. Site access. Yes, I did.

9 Q. -- on the site, and did you find it to be
10 adequate for the purposes that the church intended to
11 use this site?

12 A. Yes, I did, and yes, it was.

13 MS. HENDERSON: And let her finish the
14 question --

15 THE WITNESS: I'm sorry. You're right.

16 MS. HENDERSON: -- before you answer it.
17 You know what she's going to ask, but let her
18 finish.

19 THE WITNESS: I apologize.

20 Q. (By Ms. Jones) And did you submit a
21 written report that said that access, ingress, egress
22 was adequate, or was that tacit?

23 A. It was tacit. If I see a problem with it
24 at the level of the conceptual design, I flag it and
25 make a comment about it. If it looks like it will be

0042

1 adequate, then I don't say anything. I would wait
2 until I had, again, land disturbance permit, had
3 fully engineered drawings.

4 Q. Were there any conceptual design issues
5 that you spotted on this site?

6 MS. HENDERSON: Related to his area of
7 expertise?

8 Q. (By Ms. Jones) Related to yours, yes.

9 A. None with the site as I am related to
10 transportation.

11 Q. Were there any right of way related
12 issues?

13 A. Only insofar as the dedication comment
14 that I provided or comments I provided.

15 Q. And were you aware of any capital
16 improvement projects that would affect the site?

17 A. No, none that would impact further than
18 the right of way comment that I already made.

19 Q. Okay. I saw something in a letter
20 regarding a sidewalk project from Meadowbrook to Long
21 Island. Did you review -- and it was from the City
22 of Atlanta. I will show you.

23 (Plaintiff's Exhibit 5 was marked for
24 identification.)

25 Q. (By Ms. Jones) That's Plaintiff's 5.

0043

1 A. Actually, I think this is from the
2 Department of Transportation.

3 Q. From the DOT. You're right. It is.

4 A. Yes. We do have in the transportation
5 improvement program, state program, we have a
6 sidewalk project programmed for this area, and it
7 would be simply installing streetscape and sidewalk
8 along both sides of Roswell Road where it does not
9 exist to the zoning standard.

10 Q. Okay. So you didn't see this to be an
11 issue as far as the application --

12 A. No.

13 Q. -- and the proposed use of the building?

14 A. No, not at all.

15 (Plaintiff's Exhibit 6 was marked for
16 identification.)

17 Q. (By Ms. Jones) Okay. Let me show you
18 Plaintiff's Exhibit No. 6. Let me get you to look at
19 Plaintiff's 6. Do you recognize this particular
20 document?

21 A. No, I don't.

22 Q. Okay. It was in documents produced to us,
23 and this was not a document you reviewed in doing
24 your traffic analysis?

25 A. No. This is the first time I've seen this
0044

1 document.

2 Q. Okay. Well, you can give that back to me
3 too.

4 (Plaintiff's Exhibit 7 was marked for
5 identification.)

6 Q. (By Ms. Jones) I'm going to show you
7 Plaintiff's Exhibit No. 7.

8 A. Okay.

9 Q. And it is a memorandum to the City manager
10 from Mr. Willard, the City attorney, and
11 Miss Leathers. I'm going to ask you to look at that
12 document and tell me if any portion of that document
13 reflects your input or analysis.

14 A. Okay. The R, representing the R numbers,
15 the No. 278.

16 Q. Okay.

17 A. Points 3b, c, d, and e were comments that
18 either were generated by me or with my input; and,
19 also, 3g reflects our analysis that that variance
20 request would not be detrimental to health, safety,
21 welfare.

22 Q. So are you saying that you did not -- 3f
23 does not reflect your opinion?

24 A. No.

25 Q. Or your input?
0045

1 A. No. Just 3b, c, d, e, and g. And that
2 looks like it. That looks like everything that I had
3 commented on in this document.

4 (Plaintiff's Exhibit 8 was marked for
5 identification.)

6 Q. Okay. Now, the City of Sandy Springs and
7 the church had agreed that parking studies would be

8 done on other sites to try to ascertain the impact of
9 parking by the church on this site, and I'm going to
10 show you Plaintiff's No. 8. And you can skip the
11 letter part of it. It's a parking study prepared by
12 Kimley-Horn.

13 Did you review that Kimley-Horn parking
14 study?

15 A. I was given a copy of it, and I did look
16 at it. I had no opinion on it as far as its validity
17 other than just to look at it as part of the
18 materials that I was given in regards to this case.

19 Q. Did it factor in any way to your opinion
20 in terms of traffic impact?

21 A. No, it did not.

22 Q. Did you make any kind of comments or
23 analysis of it to be given to the Community
24 Development Department?

25 A. Not that I recollect.

0046

1 Q. Do you have any opinion as to the
2 accuracy, adequacy, and sufficiency of this traffic
3 study?

4 A. No. None that I could comment on.

5 Q. Okay.

6 MS. HENDERSON: Do you want that one back,
7 too, or are we going to keep it in the pile?

8 MS. JONES: Well, why don't you give me
9 that one back since we're going to be talking
10 about it at greater length elsewhere.

11 (Plaintiff's Exhibit 9 was marked for
12 identification.)

13 Q. (By Ms. Jones) I'm going to ask you the
14 same questions about Plaintiff's Exhibit No. 9.

15 A. Answer the same question?

16 Q. Well, yes. Did you review the exhibit
17 Plaintiff's No. 9?

18 A. Similar to the previous study, I did
19 receive a copy of this as part of materials the
20 applicant provided. I did not issue any opinion or
21 commentary on it that I recollect.

22 Q. Okay. Make sure I've got the words to say
23 here so that your counsel won't object to the form of
24 my question.

25 Okay. So would it be fair to say that

0047

1 your opinion and your input into this particular
2 zoning application is expressed in Plaintiff's No. 4,
3 which is your memo to the council, and that you found
4 that there was no change in the overall or individual
5 approach level of service for the intersection if it
6 were used as a 43,916 square foot general office
7 building?

8 A. That is correct.

9 Q. Okay. And that was the sum total of your
10 opinion regarding this zoning application; is that
11 correct?

12 MS. HENDERSON: Objection.

13 Q. (By Ms. Jones) Were there any other
14 opinions other than your suggestions for conditions?

15 A. Other than the commentary on the right of
16 way, the variance for the right of way, the sign and
17 encroachment of the right of way, and the right of
18 way conditions themselves, this reflects sort of the
19 sum total of my overall opinion on the analysis, the
20 final, I guess, opinion on the analysis of the
21 possible future traffic impact at the site.

22 Q. Okay. And just so I have you make sure I
23 understand is you contributed no opinion or analysis
24 or expertise in determining whether the parking
25 proposed for the site was adequate?

0048

1 A. No, ma'am, I did not.

2 Q. Okay.

3 MS. JONES: Well, let me talk to
4 Mr. Dillard just a second.

5 (Recess from 11:19 a.m. to 11:25 a.m.)

6 (Plaintiff's Exhibit 10 was marked for
7 identification.)

8 Q. (By Ms. Jones) I'm going to show you
9 Plaintiff's 10, and I will represent to you that this
10 was given to us by counsel. The same R numbers are
11 at the bottom that you've seen on the other
12 documents, and it appears to be the staff report, the
13 final staff report, produced by the planning
14 department for the zoning application. The reason
15 why I say that is because there's writing on the

16 front of it by somebody about the final decision.

17 A. Okay.

18 Q. If you would just flip through here and do
19 what you did for me on Plaintiff's No. 2, which was
20 the first report.

21 A. Okay.

22 Q. Just go through and identify for me the
23 portions that you are responsible for in this report.

24 A. Okay. R459, middle of the page, under
25 transportation, the section Sandy Springs

0049

1 transportation planner, there are two right of way or
2 three, I guess, right of way comments that I'm
3 responsible for.

4 Q. Okay.

5 A. And then the numbers are cut off. It's
6 463. It should be three conditions. 3a, b, c, and
7 d, are the results -- or one talks about streetscape
8 requirement, but the rest are resultant proposed
9 staff recommending conditions based on the right of
10 way comment that I made.

11 On 466, again, the number is cut off.
12 That should be three. I just wanted to double-check.
13 It should still be 3b. In this case, 3b, c, d, and e
14 were, again, the sidewalk and resultant right of way
15 comments for the proposed alternative conditions,
16 zoning conditions, and that's it.

17 Q. Okay. Let me get you to look at page 444.

18 A. Okay.

19 Q. It says the staff held a focus meeting on
20 April 4th, 2009, at which the following City
21 departments provided comments.

22 A. Uh-huh.

23 Q. What comments did the transportation
24 division provide at that focus meeting? Do you
25 remember?

0050

1 A. I did not actually provide comments at the
2 focus meeting. That is a staff meeting that we have
3 typically within a week of, within a few days of the
4 distribution of that initial applicant sort of
5 agenda, proposed agenda packet, and we get together
6 and try to get all these departments in one room and

7 have the planners that are in community development
8 that are responsible for running the individual cases
9 sort of present and talk through the application and
10 answer any questions the staff may have.

11 We then take that material back, do our
12 individual analysis, and then I submit my comments,
13 as I referenced earlier to I believe I email in sort
14 of a memo format.

15 So that meeting that they're referring to
16 is that initial staff meeting where we review the
17 applications.

18 Q. And which you did not attend?

19 A. No. I did attend, but I did not provide
20 my comments then --

21 Q. Oh, okay.

22 A. -- that would have been provided.

23 Typically, I provide my comments within a week after
24 that initial meeting.

25 Q. Okay. And one other thing. If you would

0051

1 look at the preceding paragraph that references the
2 website of the U.S. Department of Transportation
3 Federal Highway Administration National Household
4 Travel Survey. Did you provide that information?

5 A. No, I did not.

6 MS. JONES: That's all I have.

7 (Deposition concluded at 11:33 a.m.)

8 (Pursuant to Rule 30(e) of the Federal

9 Rules of Civil Procedure and/or O.C.G.A.

10 9-11-30(e), signature of the witness has been
11 reserved.)

12

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0052

1
2 CERTIFICATE

3
4 STATE OF GEORGIA:
5 COUNTY OF FULTON:

6
7 I hereby certify that the foregoing
8 transcript was taken down, as stated in the
9 caption, and the questions and answers thereto
10 were reduced to typewriting under my direction;
11 that the foregoing pages 1 through 51 represent
12 a true, complete, and correct transcript of the
13 evidence given upon said hearing, and I further
14 certify that I am not of kin or counsel to the
15 parties in the case; am not in the regular
16 employ of counsel for any of said parties; nor
17 am I in anywise interested in the result of said
18 case.

19 This, the 14th day of June, 2010.

20
21
22 DARCY L. QUIST, GA CCR-B-2457
23
24
25

0053
1 DEPOSITION OF MARK MOORE/DLQ

2 I do hereby certify that I have read all
3 questions propounded to me and all answers given by
4 me on the 27th day of May, 2010, taken before
5 Darcy L. Quist, and that:

- 6 1) There are no changes noted.
7 2) The following changes are noted:
8 Pursuant to Rule 30(e) of the Federal Rules of
9 Civil Procedure and/or the Official Code of Georgia
10 Annotated 9-11-30(e), both of which read in part:
11 Any changes in form or substance which you desire to
12 make shall be entered upon the deposition...with a
13 statement of the reasons given...for making them.

9 Accordingly, to assist you in effecting corrections,
please use the form below:

10

11 Page No. Line No. should read:

12

Page No. Line No. should read:

13

14 Page No. Line No. should read:

15

Page No. Line No. should read:

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17 Page No. Line No. should read:

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20 Page No. Line No. should read:

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Page No. Line No. should read:

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Page No. Line No. should read:

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24 Page No. Line No. should read:

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0054

1 DEPOSITION OF MARK MOORE/DLQ

2

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4 Page No. Line No. should read:

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8 Page No. Line No. should read:

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Page No. Line No. should read:

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12 Page No. Line No. should read:

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Page No. Line No. should read:

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15 Page No. Line No. should read:

16

17 If supplemental or additional pages are necessary,
18 please furnish same in typewriting annexed to this
19 deposition.

20

21

MARK MOORE

22 Sworn to and subscribed before me,

This the ____ day of _____, 20 ____.

23

24 Notary Public

My commission expires:

25

0055

1

AMENDED CERTIFICATE

2

3 Deposition of MARK MOORE

4

STATE OF GEORGIA

5

COUNTY OF FULTON

6

7

8 I hereby certify that in addition to the
9 certification made on page 54 of the transcript, more
10 than thirty (30) days provided the deponent to read
11 and sign the original transcript has expired.
12 Therefore, the original is being filed without
13 signature of the witness.

14 This the ____ day of _____, 2010.

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19

Darcy L. Quist
Certified Court Reporter

20

21

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